REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

FOR THE YEAR ENDED 31 MARCH 1988

No. 5 of 1989

UNION GOVERNMENT

(REVENUE RECEIPTS—INDIRECT TAXES)

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PREFATORY REMARKS

This Report relates to results of audit of Indirect Taxes of the Union Government for the year ended 31 March 1988 and is arranged in the following four chapters:—

CHAPTER 1—deals with systems appraisal on Customs Receipts and Union Excise duties.

CHAPTER 2—sets out trends in customs receipts and arrears of customs duties, time barred demands, adhoc exemptions and results of test audit of such receipts.

CHAPTER 3—highlights revenue trends in respect of Union Excise duties, time barred demands and results of test audit of such receipts.

CHAPTER 4—refers to volume of receipts of Union Territories without Legislatures and results of audit of Forest Revenue, Entertainment Tax and Stamp and Registration Fee receipts in the Union Territories of Dadra and Nagar Haveli, Daman and Diu and Chandigarh. The results of test check of the records of the Revenue Departments of the Union Territory of Delhi are included separately in the Audit Report of the Comptroller & Auditor Genera lof India —Union Government (Delhi Administration).

OVERVIEW

Introduction

This Audit Report of the Comptroller and Auditor General of India presents the results of test audit of the levy, assessment and collections of the receipts of Union relating to Indirect Taxes viz, Customs Receipts and Union Excise duties as also of the Union Territories of Chandigarh; Dadra and Nagar Haveli: Andamans and Nicobar Islands and Minicoy and Lakshdweep for the year ended 31 March 1988, and of the adequacy of the regulations and procedures in the Revenue department to secure an effective check in levy, assessment and collection of taxes, as enjoined in the Audit Act.

The administration of Indirect Taxes viz. Customs Receipts and Union Excises duties is vested in the Central Board of Excise and Customs under the Ministry of Finance, Department of Revenue.

II Trend of receipts

The Central Government collected following revenues under Indirect Taxes during the years 1986-87 and 1987-88. The Budget Estimates 1987-88 and Revised Estimates 1987-88 in respect of Customs Receipts and Union Excise duties are also shown against them :

(Rupees in crores)

	Receipts 1986-87	Receipts 1987-88	Budget Estimates 1987-88	Revised Estimates 1987-88
Customs Receipts	11,475	13,702	12,867	13,500
Union Excise duties	14,387	16,345	16,633	16,580

Cost of collection of customs receipts as percentage of receipts is 0.94 during 1987-88 as against 1.02 during 1986-87, whereas on the central excise side this percentage is 0.69 during the year 1987-88 as against 0.73 in the preceding year (**Paras 2.04 and 3.03**).

The total tax and non-tax receipts of the union territories without Legislatures during the year 1987-88 were Rs. 800.29 crores as against Rs. 698.14 crores during the year 1986-87 (**Para 4.01**).

III Results of audit

Results of test audit of post assessment records of the Customs and Central Excise departments during the period from 1 April 1987 to 31 March 1988 revealed under assessment of tax and loss of revenue of Rs. 141.78 crores as under. The Ministry of Finance/ Customs and Central Excise Collectorates have already accepted underassessments and losses of revenue amounting to Rs. 37.64 crores.

(Rupees in crores)

Nature of Tax	Under Assessment/Losses
Customs Receipts	9.72
Union Excise duties	132.06

In respect of Chandigarh, Dadra and Nagar Haveli and Daman and Diu under assessments of stamp duty and registration fee, forest receipts and entertainment tax amounting to Rs. 1.11 lakhs have been pointed out (**Paras 4.02 to 4.04**).

The number of objections raised in audit upto 31 March 1987 and pending settlement as on 30 September 1987 was 9,908 having revenue effect of Rs. 395.43 crores (**Paras 2.11 and 3.10**).

The high pendency of audit objections suggested the need for greater compliance in their settlement specially in view of Government drive to raise resources.

SYSTEMS APPRAISAL

System studies on three vital areas of administration of indirect taxes was also conducted. These studies revealed that the desired objectives have not been achieved, the rules framed and procedures prescribed had not been properly applied and the internal controls were inadequate.

IV Working of the Manifest Clearance Department

Manifest Clearance Department of a Custom House scrutinises all the transactions pertaining to a ship/ aircraft for import and export to ensure that all those transactions have taken place in accordance with the various provisions of the Customs Act, 1962 and the Rules and Regulations made thereunder. For this purpose the Manifest Clearance Department compiles ship's file (sea and air) for arrival and departure of each ship/ aircraft separately. One of the documents contained in the ship's file relating to import of goods is import general manifest (IGM), which is considered closed only when all the cargo imported thereunder has been cleared on payment of duty or free of duty according to the orders in force or on satisfactory accountably way of transhipment permit or otherwise to the satisfaction of the customs officers. Similarly, export general manifest is one of the documents contained in ship's file relating to exports. An appraisal of the working of Manifest Clearance Department of the various Custom Houses and Air Customs collectorates disclosed the following :

—there was lack of effective follow up action in Manifest Clearance Department to obtain import general manifests from the Import department e.g. in Madras Customs House 1,123 import

general manifests pertaining to the years 1982 to 1986 were not sent by the Import department to Manifest Clearance Department even by the end of 31 December 1987.

—14,022 import general manifests were pending closure as on 31 December 1987 out of which 3,603 import general manifests were pending for more than two years.

—3,608 letters of calls had not been issued to the steamer agents till 31 December 1987 for initiating penal action.

—there was lack of coordination between Customs Department and Port Trust authorities leading to the delay in receipt of out-turn statements from Port Trust—1,146 nos. of out-turn statements from Bombay Port Trust for the years 1981 to 1986 and another 884 nos. of out-turn statements from the Madras Port Trust for the years 1985, 1986 and 1987 were not received till 31 December 1987.

—on 31 December 1987, 1,175 penalty cases were pending finalisation. Of these, 643,204 and 175 cases pertained to Calcutta, Madras and Bombay Custom Houses respectively.

—there was delay in closure of export general manifests. As many as 13,834 export general manifests for the years 1984 to 1987 were pending closure in Madras Custom House alone on 31 December 1987 (**Para 1.01**).

The high pendency of Import General Manifests and other aforesaid shortcomings show the lack of control by the Customs Department over the quantum of short or excess landed goods/uncleared goods and about the magnitude of customs duty liability/penalty realisable thereon.

V. Provisional Assessment

Section 18 of the Customs Act, 1962 enables the Customs authorities to assess provisionally duty on the imported goods or the export goods in the circumstances specified in that section. The Ministry of Finance have issued (23 April 1973) instructions that ordinary type of provisional assessment cases should be finalised within one year. As regards cases of imports of machinery under contract agreements, the provisional assessment is required to be finalised with in one year of the date of import of the last consignment covered by the contract.

An appraisal of provisionally assessed cases in 17 Custom Houses/Collectorates disclosed the following :

—the total number of cases which were assessed provisionally upto 31 March 1987 and could not be finalised till 31 March 1988 was 25,151.

—the finalisation of provisional assessmen cases did not keep pace with the fresh cases in which provisional assessments were resorted to in the year 1986-87 thereby leading to increase in provisional assessments cases from 13,668 at the beginning of the year to 17,113 at the end of that year.

—non-finalisation/delay in finalisation of provisional assessment cases involving tests bonds.

—improper maintenance of Provisional Duty Register leading to non-finalisation/delay in finalisation of provisional assessment cases. Non-review of the Register by the departmental officers.

—non-review of provisional assessment cases by the Internal Audit department.

—non-production of 11,817 files relating to provisional assessment cases pending in Bombay Custom House to Audit (**Para 1.02**).

VI. Adjudication cases

The Central Excise Law contains provisions in regard to the redressal of grievances of any assessee aggrieved by any decision or order passed under that law by a Central Excise Officer. The Law also provides for taking action to recover duty not levied or short levied or erroneously refunded or for booking offences against the assessees for contravention of any provision of the law. There exists a departmental machinery to review the adjudication orders decided against the Government to ascertain whether appeal lies to those orders and if so, an appeal is actually filed against those orders.

An appraisal of the adjudication cases pending with the Courts, CEGAT and the departmental officers disclosed :

—there were 7,631 appeal cases in which confirmed demands amounting to Rs. 419.61 crores were pending realisation on 31 March 1988. Of these, 4,643 cases (Rs. 320.54 crores); 1,929 cases 77.58 crores) and 1,059 cases (Rs. 21.49 crores)were pending with the Courts, CEGAT and the departmental officers respectively.

—revenue amounting to Rs. 46.36 crores was lost due to non-issue or delay in issue of show cause notices.

—duty amounting to Rs. 307.64 crores could not be recovered owing to grant of stay orders by the various courts in 3,373 cases.

—failure of the department to recover duty of Rs. 12.90 crores in 1,270 cases even though the court did not grant stay orders in those cases.

—non-realisation of confirmed demands amounting to Rs. 4.28 crores adjudicated during the year 1985-86 to 1987-88 in Jaipur Collectorate.

—non-maintenance of records (Para 1.03).

CUSTOMS RECEIPTS

VII Short levy of duty due to misclassification

The rates of customs and countervailing duties are given under various headings and sub-headnigs of the schedules to Customs Tariff Act, 1975 and Central Excise Tariff Act, 1985 respectively. The short levy of duty

amounting to Rs. 332.15 lakhs due to misclassification of imported goods was noticed in a number of cases. Out of this, Rs. 324.67 lakhs have already been accepted by the Ministry of Finance/Collectors of Customs. Some of these cases are given below :

—two consignments of complete railway brake down crane (self propelled power crane operated on rails), on their import in May and August 1986 were misclassified under headings 84.26 and 84.31 of the Customs Tariff Act, 1975 instead of heading 86.04 ibid, resulting in short levy of duty of Rs. 290 lakhs. The Ministry of Finance have accepted the short levied amount and already recovered Rs. 273 lakhs (**Para 2.13**).

—'Seamless stainless steel U tubes, cold finished (Tube bundle for heat exchanger)', imported in May 1986, were misclassified as parts of 'heat exchanger' instead of as 'metal tubes and pipes of base metals'. This resulted in short levy of Rs. 19.66 lakhs. The Ministry of Finance have confirmed the facts [**Para 2.14(i)**].

VIII Non levy/short levy of import duties

Goods on their import are leviable to duty under Section 12 of Customs Act 1962. Non levy/short levy of import duties amounting to Rs. 133.39 lakhs was noticed in a number of cases of imports in audit. Out of this the Ministry of Finance/Customs Collectorates have already accepted short levy/non levy of duty of Rs. 7.69 lakhs. Some of these cases are given below :

Auxiliary duty

—the goods imported under project contracts were classified under heading 98.01 of the Custom Tariff Act, 1985 and assessed to basic customs duty at the concessional rate. However, those imports were treated as non-projects imports, classified on merits and assessed to auxiliary duty at rates lower than those applicable to project imports. This resulted in non-levy of auxiliary duty of Rs. 81.83 lakhs (**Para 2.23**).

—drawings imported in August 1987, were treated as 'charts and plans' and cleared without levy of auxiliary duty of Rs. 18.57 lakhs (**Para 2.22(i)**].

Additional (Countervailing) duty

—'colour scanner' and 'electron guns' imported in February and November 1987 respectively were irregularly cleared without levy of countervailing duty of Rs. 7.63 lakhs. The Ministry of Finance have accepted the whole amount of non-levy of duty (**Para 2.25**).

IX Short levy due to undervaluation

In cases where rates of duty depend upon the value of the goods, such value is required to be determined under Section 14 of the Customs Act, 1962. Short levy of duty amounting to Rs. 48.78 lakhs on account of incorrect valuation of goods was noticed in audit. The Ministry of Finance/Customs Collectorates have already accepted short levy of duty of Rs. 47.61 lakhs. Some of these cases are given below :

—in 57 cases of imports, the value of goods was determined by applying incorrect rates of exchange. This resulted in short levy of duty of Rs. 32.74 lakhs. The Ministry of Finance/Collectors of Customs accepted the short levies in all cases and took necessary action to recover the duty levied short (**Para 2.27**).

—the assessable value of goods imported in August, 1986 by an assessee from his 'related supplier in the foreign country, was determined without loading the invoice price by seven per cent as required under the departmental instructions. This resulted in short levy of duty of Rs. 1.28 lakhs which has been accepted by the Ministry of Finance [**Para 2.28(i)**].

—similarly, the invoice values of other imports made by another assessee from his 'related supplier' during the period 8 December 1980 to 31 December 1987, were required to be loaded by ten per cent as per those instructions. No loading of invoice prices was, however, done. This resulted in short levy of Rs. 1.16 lakhs [**Para 2.28(ii)**].

X Short levy of duty due to incorrect grant of exemption

As per Section 25 of the Customs Act, 1962 the Central Government can grant exemption from customs duties unconditionally or subject to fulfilment of certain conditions before or after the import of goods. The short levy of import duty amounting to Rs. 34.68 lakhs due to incorrect grant of concession, was noticed in a number of cases. The Ministry of Finance have already accepted audit objections amounting to Rs. 28.58 lakhs. Two of these cases are given below :

—countervailing duty of Rs. 5.99 lakhs was not collected on the components of hydraulic rough terrain crane cleared from a warehouse under a notification of March 1987. When Audit pointed out that the benefit of said notification was not admissible to those parts, the customs department recovered the whole amount [**Para 2.32(ii)**].

—on a consignment of components of forklift truck cleared in August 1987, basic customs and auxiliary duties were incorrectly levied at the concessional rates in force prior to 30 June 1987. This resulted in short levy of duty and interest amounting to Rs. 6.42 lakhs. The Ministry of Finance have confirmed the facts [Para **2.32(i)**].

XI Application of incorrect rate of duty

Five cases of short levy of duty amounting to Rs. 20.03 lakhs due to application of incorrect rates were

noticed in audit. The Ministry of Finance have already accepted the short levy of duty of Rs. 11.21 lakhs. Some of these cases noticed are given below :

—five consignments of pulses imported on 4 and 5 February 1987, were cleared duty free instead of charging duty at 25 per cent ad valorem prevalent on those dates. This resulted in short levy of duty of Rs. 9.91 lakhs. The Ministry of Finance have accepted the mistake (**Para 2.38**).

—a hundred per cent export oriented unit was required to pay central excise, basic customs and auxilary duties on jute twine and jute yarn, diverted for sale in the domestic market. It, however, paid central excise duty alone. This resulted in short payment of basic customs and auxiliary duties amounting to Rs. 8.82 lakhs (**Para 2.39**).

XII Short levy due to mistakes in computation

Short levy of duty amounting to Rs. 16.68 lakhs was noticed in the following two cases in audit. The whole of the amount has been accepted and recovered.

—in one case the countervailing duty was short paid by Rs. 15.47 lakhs mainly due to mistakes in computation [**Para 2.40** (i)].

—in the other case, a sum of Rs. 13,476 only was collected against the assessed duty amount of Rs 1,34,758. This resulted in short payment of duty by Rs. 1.21 lakhs [**Para 2.40 (ii)**].

XIII Irregularities in duty exemption entitlement certificate scheme

Following three cases of short levy of duty amounting to Rs. 314.74 lakhs, have been noticed in audit:

—an assessee produced forged documents in regard to fulfilment of his export obligation to the customs department and unauthorisedly diverted and sold the imported raw material involving duty of Rs. 233 lakhs in the domestic market [**Para 2.46 (i)**].

—three consignments imported against open general licence, which were warehoused under bond between 29 May 1985 and 16August 1985, were irregularly cleared between 6 September 1985 and10 December 1985 without payment of duty amounting to Rs. 70.69 lakhs [**Para 2.46 (ii)** (a)].

—an importer imported polyester staple fibre under open general licence and warehoused it under bond in April 1983. He cleared a portion of the imports without payment of duty of Rs. 11.05 lakhs from the warehouse in May and June 1983. This was irregular. The Customs Collectorate has already accepted the objection [**Para 2.46 (ii)** (b)].

XIV Irregular duty free clearnace of yachts from bond

Imported goods subjected to manufacturing operations under Section 65 of Customs Act, 1962 can be exported to a place outside India without payment of duty, or cleared for home consumption on payment of duty. However, as per Section 66 ibid, if the imported materials are used in accordance with the aforesaid provisions of Section 65 for the manufacture of goods in bond, and if the rate of duty on raw materials exceeds the rate of duty leviable on finished goods, Government may exempt, by notification, the imported materials from the whole or part of the excess rate of duty.

—two yachts were built in bond under the aforesaid provisions. One yacht in the building of which imported raw materials/ components worth Rs. 2.69 lakhs were used, was sold to a Government department in November 1983. The second yacht in the building of which imported raw materials and components costing Rs. 6.11 lakhs were used, was sold to a domestic firm in March 1984. In both the cases exemption from customs duty on yacht was allowed under notification no 163/65-Cus dated 16 October 1965. The sales were treated as 'deemed exports' in satisfaction of export obligation against an advance licence. The irregular grant of exemption from levy of duty on yachts instead of on raw materials and components resulted in short collection of revenue of Rs. 14.04 lakhs (**Para No. 2.47**).

XV Incorrect rate of duty vis-a-vis date of clearance from warehouse

—The crucial date for determining the rate of duty in the case of goods which on their import, are warehoused under bond and cleared therefrom is the date of clearance of such goods from the warehouse. Duty amounting to Rs. 5.32 lakhs was collected short on the clearance of six consignments of warehoused goods as a result of application of incorrect rate of duty. The customs department has accepted the short levy in five of the six cases (**Para 2.48**).

XVI Incorrect rate of duty vis-a-vis date of entry inwards of the vessel

In cases where the importer presents bills of entry to the proper officer before the actual entry inwards of the vessel, the rate of duty is the rate prevalent on the date of entry inwards of the vessel.

—duty amounting to Rs. 4.02 lakhs was collected short on one consignment in which bill of entry was presented before the entry inwards of the vessel, by applying the rate of duty prevalent on the date of presentation of bill of entry instead of the rate of duty prevalent on the date of entry inwards of the vessel [**Para 2.50** (i)]

—in another case, Karwar Port was declared as a customs port for purpose of unloading of imported goods on 1 March 1984. The bills of entry in respect of two foreign ships imported for breaking were presented on 29 February 1984 for their clearance. The ships were assessed to duty at the rates prevalent on 29 February 1984 instead of 1 March 1984 on which date only the vessels could have been treated as imported for unloading into a customs port. This resulted in short levy of duty of Rs. 5.10 lakhs [**Para 2.50 (ii)**].

CENTRAL EXCISE DUTIES

XVII Non levy of duty

As per Rule 9 read with Rule 173 G of the Central Excise Rules, 1944 excisable goods can be removed from the place of their production, manufacture or curing on payment of duty only. A number of cases where excisable goods were removed without payment of duty were noticed in audit. The duty not levied amounted to Rs. 35.49 crores. The Ministry of Finance/the Central Excise department has already accepted the non levy of duty to the extent of Rs. 18.93 crores. Some of these cases are given below:

(a) *Excisable goods captively consumed*

—a manufacturer produced alkali cellulose and used the same, within the factory of production in the manufacture of viscose filament yarn without payment of duty of Rs. 12.96 crores during the years 1984-85, 1985-86 and 1986-87 [**Para 3.12(i)(a)**].

—twenty four cement manufacturers brought lime stone from the quarries, powdered it and used such powder captively in the manufacture of clinkers and cement without payment of duty of Rs. 3.15 crores during the period from 28 Febuary 1986 to 12 November 1986. The Ministry of Finance have admitted the objection [**Para 3.12 (ii)(a)**]

—eight manufacturers of packed tea brought duty paid loose tea from different tea gardens, blended it and used the blended tea captively in the manufacture of packed tea/tea bags without payment of duty of Rs. 1.71 crores during the period from 1 March 1986 to 28 February 1987. The Ministry of Finance have admitted the non levy of duty [**Para 3.12(iii)**].

—an integrated factory produced pig iron/molten iron and consumed it captively for manufacture of ingots, moulds and bottom stools without payment of duty of Rs. 45.37 lakhs during the period from 1 November 1983 to 30 September 1984. The Central Excise department accepted the objection and raised demands for Rs. 1.43 crores covering the period from 1 August 1983 to 30 April 1986. The Ministry of Finance have also admitted the non levy [**Para 3.12 (iv)(a)**].

—an assessee produced lime fine from lime stone and used such lime fine internally in the manufacture of sinter without payment of duty of Rs. 1.27 crores during the period from 28 February 1986 to 28 February 1987 [**Para 3.12 (ii)(b)**].

—sixteen textile mills and a yarn mill manufactured cotton yarn in the form of cones, cheese and bobbins and converted them into hanks without payment of duty of Rs. 72.22 lakhs during the period from September 1983 to July 1987. The Supreme Court in its judgement (30 October 1987) in case of M/s. J. K. Cotton Spinning and Weaving Mills Ltd. as well as the Law Ministry (at Joint Secretary's level) have upheld the view of Audit [**Para 3.12 (v) (a & b)**].

(b) *Excisable goods cleared as non-excisable*

—fiftythree ship breakers obtained iron and steel products by breaking up of ships and other floating structures and cleared them without payment of duty of Rs. 7.41 crores during the period from November 1985 to August 1986 [**Para 3.13 (i)**].

—three units cleared one barge each during the period from April 1986 to March 1987 without payment of duty of Rs. 38.10 lakhs [**Para 3.13 (ii)**].

(c) *Duty non levied on transit, storage losses or wastes*

—duty amounting to Rs. 19.18 lakhs was not demanded from three assessees on account of transit storage losses and wastes. The Ministry of Finance have admitted the objections [**Para 3.14**].

(d) *Irregular clearnaces allowed without levying duty*

—a manufacturer treated cotton yarn as semi-finished goods and cleared it without payment of duty of Rs. 18.88 lakhs during the period from April 1986 to November 1986. The Ministry of Finance have admitted the non levy [**Para 3.15(i)**].

—two manufacturers of jute bags and a manufacturer of jute sacking cloth cleared their products without payment of duty of Rs. 15.47 lakhs during the periods from 22 July 1982 to 25 July 1984 and 28 February 1986 to 23 April 1986. The Ministry of Finance have accepted the non levy of duty [**Para 3.15(iii)**].

(e) *Duty not levied on production suppressed or not accounted for*

— three manufacturers suppressed the production of excisable goods leading to non levy of duty of Rs. 12.82 lakhs. The Ministry of Finance have accepted the objection [**Para 3.16**].

XVIII. Short levy of duty due to misclassification

The rates of Central Excise duties are given under various headings and sub headings of the schedule to the

Central Excise Tariff Act, 1985. The short levy of duty of Rs. 19.47 crores due to misclassification of excisable goods in a number of cases was noticed in audit. Out of this the Ministry of Finance and the Central Excise department have already accepted short levy of duty to the extent of Rs. 4.53 crores. Some of these cases are given below :

—a public sector oil refinery misclassified S. R. Naphtha as mineral oil suitable for use as fuel for internal combustion engine, resulting in short levy of duty of Rs. 13.31 crores during the period from April 1985 to February 1986 [**Para 3.18(i)**].

—a manufacturer misclassified blended yarn as 'not containing any man-made fibres of non cellulosic origin' instead of 'containing man-made fibres of non cellulosic origin'. This resulted in short levy of duty of Rs. 1.49 crores during the period from 1 August 1985 to 3 January 1988. The Ministry of Finance have admitted the objection [**Para 3.19(i)**].

—a manufacturer of polyester fibre misclassified the cut and processed waste as non-cellulosic waste. This resulted in short levy of duty of Rs. 1.19 crores during May 1982 to March 1984. The Central Excise department have accepted the objection and raised demands for Rs. 2.61 crores for the period May 1982 to May 1985 [**Para 3.19(ii)**].

—a lube blending unit of a public sector undertaking misclassified speciality oil as furnace-oil resulting in short levy of duty of Rs. 51.88 lakhs during the period from March 1986 to February 1988. The Ministry of Finance have accepted the short levy [Para **3.18 (ii)(a)**].

—two assessees misclassified dead burnt magnasite and calcined magnasite leading to short levy of duty of Rs. 45.69 lakhs during the period from March 1986 to September 1987 [**Para 3.20(i)**].

—a manufacturer misclassified paper laminates and glass fabrics laminates as electrical insulators which resulted in short levy of duty of Rs. 34.45 lakhs from 1 March 1986 to 18 May 1987 [**Para 3.21(i)**].

—a public sector undertaking misclassified parts of cranes as cranes leading to short levy of duty of Rs. 24.60 lakhs during the period from April 1986 to February 1987 [**Para 3.23(i)(a)**].

—an assessee misclassified lime as an organic chemical which resulted in short levy of duty of Rs. 17.74 lakhs during the period from March 1986 to February 1987. The Ministry of Finance have admitted the objection [**Para 3.20(ii)**].

XIX. Short levy of duty due to undervaluation

In cases where rates of central excise duty depend on the value of excisable goods, such value is required to be determined under Section 4 of the Central Excises and Salt Act, 1944 and the Central Excise (Valuation) Rules, 1975. Short levy of duty of Rs. 7.00 crores on account of incorrect valuation of goods was noticed in audit. The Ministry of Finance/the Central Excise Collectorates have already admitted short levy of duty of Rs. 3.53 crores. Some of these cases are given below :

(a) *Valuation of goods consumed captively*

—a factory manufacturing internal combution engines and using them captively in the manufacture of diesel electric locomotives, did not work out the assessable value for the year 1981-82 and onwards on the basis of cost data for relevant years. This resulted in short levy of duty of Rs. 93.65 lakhs. The Ministry of Finance have admitted the objection [**Para 3.29(i)**].

—an assessee manufactured printed circuit boards. He sold part of the production and used the remaining part for manufacture of colour television sets in his factory. He did not pay duty on the printed circuit boards used by him in the manufacture of colour television sets on the sale price of the circuits. This resulted in short levy of duty of Rs. 59.59 lakhs during the period from April 1985 to July 1987. The Ministry of Finance have admitted the objection [**Para [3.29(ii)**].

—an assessee manufactured electronic capacitors and used them in his factory. While working out their values on cost basis, the department did not include his margin of profit. This resulted in short levy of duty of Rs. 26.27 lakhs for the period from March 1982 to August 1986. The Ministry of Finance have admitted the objection [**Para 3.29(iii)**].

(b) *Price not the sole consideration for sale*

—after sale service charges were not included in the value of motor vehicles by a motor vehicle manufacturer leading to short levy of duty of Rs. 52.05 lakhs for the year 1984-85, 1985-86 and 1986-87 [**Para 3.27(i)(a)**].

—a motor vehicle manufacturer adopted self insurance scheme to cover transit insurance of vehicles from the factory to the stock dealers. He did not include the excess amount of Rs. 1.04 crores recovered under the scheme in the assessable value of motor vehicles which resulted in short levy of duty of Rs. 26.12 lakhs [Para **3.27(ii)**].

—a unit manufacturing vegetable products, recovered distribution charges from the dealers but did not include those charges in the asses-

sable value during the period 1 April 1985 to 7 October 1985. This resulted in duty being realised short by Rs. 25.65 lakhs [**Para 3.27(i)(b)**].

(c) *Excisable goods not fully valued*

—a manufacturer paid duty on decorated glass-ware based on the value of plain glass-ware. This resulted in short levy of duty of Rs. 71.45 lakhs during June 1983 to August 1985. The Central Excise department has accepted the objection and issued a show cause notice [**Para 3.28(i)**].

—a manufacturer did not include the value of truck chassis in the value of mobile drilling rigs during the years 1985 and 1986. This resulted in under-assessment of duty of Rs. 22.69 lakhs. The Ministry of Finance have admitted the objection [**Para 3.28(ii)**].

XX Short levy of duty due to incorrect grant of exemption

As per Rule 8(1) of the Central Excise Rules, 1944, Government is empowered to exempt excisable goods from whole or any portion of the duty leviable thereon conditionally or unconditionally. A number of cases of short levy of duty of Rs. 5.98 crores were noticed in audit. The Ministry of Finance/Central Excise Collectorates have already accepted objections of short levy of duty of Rs. 1.80 crores. Some of these cases are given below :

(a) *Chemicals and pharmaceutical product*

—an assessee produced spent liquor and used it captively in the manufacture of wood pulp during the period from 29 July 1986 to31 March 1987. He did not pay duty of Rs. 1.31 crores by treating spent liquor as black liquor which was exempted from the payment of the whole of duty [**Para 3.38(i)**].

—a manufacturer of patent and proprietary medicines produced 'dembulot' and 'entromycetin capsules 500' which did not contain the specified ingredients. He, however, did not pay duty of Rs. 33.59 lakhs during the period from January 1985 to November 1986 under a notification dated 19 June 1980 which was applicable to medicines containing the specified ingredients [**Para 3.38(ii)(a)**].

(b) *Flat glass sheets*

—a manufacturer paid short duty of Rs. 70.61 lakhs between March 1982 to September 1985 on flat glass sheets by declaring the thickness of such sheets incorrectly and consequently availing excess exemption from duty [**Para 3.40**].

(c) *Dental equipments*

—an assessee paid duty on X-Rays, X-Ray tubes and other X-Ray generators at lower rates applicable to electronic valves and tubes. The incorrect availment of exemption from duty resulted in short payment of duty of Rs. 44.89 lakhs during the period from August 1986 to September 1987 [**Para 3.41**)].

(d) *Petroleum products*

—five paint manufacturers obtained toluene for the manufacture of paints and varnishes and paid duty at the concessional rate. They used such toluene in the manufacture of thinner which was not used in the manufacture of paints and varnishes and was sold as such. This resulted in short levy of duty of Rs. 51.68 lakhs between January 1985 to December 1987. The Ministry of Finance have accepted the objection [**Para 3.39 (i)**].

(e) *Textile and textile articles*

—an assessee paid duty on glass fibre mats at the lower rate on the grounds that the product was not glass fabrics, impregnated with plastic. This resulted in short payment of duty of Rs. 26.73 lakhs during the period from March 1986 to June 1988. The Ministry of Finance have admitted the objection [**Para 3.42 (i) (a)**].

XXI Irregular utilisation of credit of duty paid on inputs

As per Rule 56 A of the Central Excise Rules, 1944, the credit of duty paid on specified inputs is allowed to be utilised towards payment of duty on specified finished goods in the manufacture of which such inputs are utilised subject to fulfilment of conditions specified in that rule. Irregular credits of Rs. 1.94 crores were noticed in audit. The Ministry of Finance/the Central Excise department have already accepted irregular credits amounting to Rs. 1.41 crores. Some of these cases are given below :

—a manufacturer of photostat machines, was irregularly allowed to avail of the credit of Rs. 80,53, 392 on account of countervailing duty paid on imported parts of those machines (erstwhile tariff item 68). The Ministry of Finance have admitted the objection [**Para 3.50**].

—a manufacturer of iron and steel products was permitted irregular credit of Rs. 46.70 lakhs on account of duty paid on ferro alloys brought into the factory without payment of duty under Chapter X procedure during the period from 1 October 1984 to 31 December 1985. The department accepted the objection and intimated confirmation of demands of Rs. 88.31 lakhs for the period 1 October 1984 to 30 June 1987 [**Para 3.51**].

XXII Non-levy of cess

Cess is a tax imposed on specified goods for the purpose of carrying out measures for the development of production of those goods and matters connected therewith. Non-levy/Short levy of cess amounting to Rs. 63.41 lakhs was noticed in a number of cases in audit. The Ministry of Finance have already admitted objections involving Rs. 19.04 lakhs. Some of these cases are given below :

—non-inclusion of basic excise duty, special excise duty, sales tax etc. in the value of motor vehicles resulted in short levy of cess amounting to Rs. 21.95 lakhs during the period from April 1984 to September 1987. The case is under examination with the Ministry of Industry [**Para 3.58(i)**].

—different bidi producers paid cess on branded bidis at the rate of 10 paise instead of 30 paise per thousand bidis. This resulted in short levy of cess of Rs. 13.31 lakhs between 1 March 1987 and 30 June 1987. The Ministry of Finance have admitted the objection [**Para 3.58 (iii)**]

—cess amounting to Rs. 11.81 lakhs was not recovered on tea waste from a manufacturer of instant tea during the period from January 1979 to December 1987 [**Para 3.57 (i)**].

XXIII Procedural delays and irregularities with revenue implications.

A number of cases of procedural irregularities with revenue implications were noticed in audit. The total Central Excise duty involved in those cases was Rs. 1.31 crores out of which Ministry of Finance/ Central Excise department have already admitted irregularities involving duty of Rs. 1.30 crores. One of the cases is given below :

(*a*) *Non-levy of duty of goods not re-warehoused*

—an oil installation did not receive back re-warehousing certificates in respect of 41 consignments of mineral oils removed under bond without payment of duty of Rs. 24.75 lakhs between October 1986 and March 1987. The assessee has since paid the whole amount. The Ministry of Finance have confirmed the facts [**Para 3.68 (ii)**].

(*b*) *Delay in adjustment of excess credit of duty availed*

—a number of tyre manufacturers took credit of Rs. 1.57 crores on account of duty paid by them to a manufacturer of tyre cord fabrics. Subsequently, in the light of the Supreme Court judgement the manufacturer of tyre cord fabrics was refunded Rs. 1.57 crores on 17 June 1985 but the department did not simultaneously take any action to expunge the corresponding credits of duty availed by the tyre manufacturers. The department could recover Rs. 88.54 lakhs till January 1988 leaving unrecovered balance of Rs. 68.59 lakhs. The Ministry of Finance have admitted the objection [**Para 3.69**].

XXIV Other irregularities

Other irregularities involving non-levy/short levy of duty of Rs. 7.14 crores were pointed out in audit. Out of these, non-levy/short levy of duty of Rs. 91.91 lakhs has already been admitted by Ministry of Finance/ Central Excise Collectorate. One such case is given below :—

—a scheme of compounding of offences and settlement of court cases resulting to Customs and Central Excise duties known as 'Amnesty Scheme', was promulgated in 1986. The scheme applied to those manufacturers or importers who had paid lower amount of duty in respect of excise clearances or on import of cargo upto 31 December 1984 consequent to declaration of incorrect value or wrong classification where the transactions were fully reflected in the accounts of the concerned assessee. The Central Excise department had issued show cause notices to a motor vehicles manufacturer for Rs. 31.55 lakhs on account of non-payment of duty on bolts and nuts which were misclassified under erstwhile tariff item 68 instead of erstwhile tariff item 52 and were used in the factory of production during different periods from April 1980 to February 1986. These show cause notices were not adjudicated but withdrawn under the aforesaid Amnesty Scheme, which was not applicable to that case [**Para 3.75**].

CHAPTER-1

SYSTEMS APPRAISAL

1.01 Working of the Manifest Clearance Department (MCD)

Introduction

The Manifest Clearance Department (MCD) of a Custom House scrutinises all the transactions pertaining to a ship/aircraft for import and export to ensure that all those transactions have taken place in accordance with the various provisions of the Customs Act 1962 and the rules and regulations made thereunder. In order to achieve this, the Manifest Clearance Department compiles what is known as ship's file (sea and air) for arrival and departure of each ship/aircraft separately. The ship's file contains all documents pertaining to a ship/aircraft after the lapse of the normal period (45 days) for transactions relating to import and export. The compilation and scrutiny of the ship's /aircraft's file alongwith the relevant document pertaining thereto is done to close the ship's file. An Import General Manifest (IGM) is considered as closed only when all the cargo imported thereunder has been cleared on payment of duty or free of duty according to the orders in force or on satisfactory accountal by way of transhipment permit or otherwise to the satisfaction of Customs officers.

If, for any reason, a few of the imports covered by an IGM are not cleared for a long time, the Manifest is closed after transferring the out-standing items to the "Pending Register/Disposal Register for Watching the disposal". As the delay in disposal of the goods may result in their pilferage, deterioration, damage, etc. and consequential loss of revenue to the Customs Department and port authorities action has to be taken to clear the outstanding items promptly.

The working of the M.C.D. falls broadly under the following categories :

(i) to compile the ship's file (Import) with all documents pertaining to a vessel (Aircraft) after the expiry of the normal period of 45 days from the date of entry inwards of the vessel.

(ii) to scrutinise and close the I.G.Ms promptly in accordance with the time schedule prescribed in the provisions of the M.C.D. Manual and to see that all the documents relating to ship/aircraft's files are forthcoming and complete in all respects.

(iii) to take prompt action and expeditious steps against steamer agents for the imposition and realisation of penalty in respect of short landed goods which are not accounted for by them under section 116 of Customs Act 1962. As per that section the person in charge of the vessel/conveyance is liable to penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or the deficient goods as the case may be, had such goods been imported.

The inordinate delay in closing the Manifests had invited the adverse criticism from the Public accounts Committee in their 44th Report (1965-66) as follows :

Para 2.122

The committee regret to note that 14,000 items pertaining to the imports for the period from 1940 onwards had been pending clearance at the time of Audit Report. They feel that there cannot be any reasonable justification for non-clearance of such items for such a long time as 25 years. They are of the view that had the customs authorities taken prompt action in accordance with the M.C.D. Manual, there would not have been accumulation of items pending clearance for 25 years.

Para 2.123

".....The committee desire that all efforts should be made to clear outstanding items without any further delay and some suitable device should be found out to check accumulation of goods at ports. They feel that accumulation of goods could be stopped to a large extent by proper coordination between the Customs Department and the Port Trust Authorities."

With the object of reducing the then prescribed period of 10 months for the closure of the I.G.Ms., a revised procedure for closing the manifest was introduced in the Custom House, Cochin on experimental basis in the year 1977. Subsequently, it was extended to all the Custom Houses/Collectorates in the year 1981. The salient features of the revised procedure are:

(i) M.C.D. is responsible for the accountal of landed cargo and short landed goods.

(ii) M.C.D has been divested of the responsibility of pursuing the accountal of cargo which is landed but against which no payment is indicated in the manifest.

(iii) M.C.D. can close the IGMs without waiting for the disposal particulars of unaccounted cargo/abandoned goods which are to be watched by Assistant Collector (Cargo/disposal).

Scope of Audit

The scope of audit in regard to the working of M.C.D. was designed to test check whether the revised procedure has achieved the object of expeditious closure of the manifests. Following points were also seen.

(i) Whether the M.C.D. observed all the provisions of the Manual in regard to time schedule, procedure etc., for compilation and closure of manifests.

M.C.D. : Manifest Clearance Department.
I.G.M. : Import General Manifest.
E.G.M. : Export General Manifest.
O.T.S. : Out Turn Statements.

(ii) Whether proper coordination was maintained with Port Trust Authorities for calling the out-turn statements in time and necessary steps were taken to send reminders to Port Trust authorities for expediting out-trun statements

(iii) Whether the letters of calls/show cause notices were issued to the steamer agents in respect of short landed goods, within one month from the date of receipt of out-turn statements from the Port Trust Authorities.

(iv) Whether prompt action was taken to levy penalties, realise the amounts of penalties and credit them to the consolidated fund of India under Section 116 of Customs Act.

(v) Whether any financial accommodation was shown to the steamer agents in realisation of penalties from them and grant of refunds to them.

Highlights

An appraisal of the Manifest Clearance Department was conducted. The results of appraisal are contained in the succeeding paragarphs which highlight the following:

(i) There was lack of effective follow up action in M.C.D. to obtain I.G.Ms from the Import department, e.g. in Madras Custom House 1123 I.G.Ms. pertaining to the years 1982 to 1986 were not sent by the Import department to M.C.D. even by the end of 31 December 1987.

(ii) 14,022 I.G.Ms. were pending closure as on 31 December 1987 out of which 3,603 I.G.Ms were pending for more than two years.

(iii) 3,608 letters of calls had not been issued to the steamer agents till 31 December 1987 for initiating penal action.

(iv) There was lack of coordination between Customs Department and Port Trust Authorities leading to the delay in receipt of O.T.S. from Port Trust—1,146 nos. of O.T.S. from Bombay Port Trust for the years 1981 to 1986 and another 884 nos. of O.T.S. from the Madars Port Trust for the years 1985, 1986 and 1987.

(v) On 31 December 1987 1,175 penalty cases were pending finalisation. Of these, 643, 204 and 175 cases pertained to Calcutta, Madras and Bombay Customs Houses respectively.

(vi) There was delay in closure of E.G.Ms. As many as 13,834 E.G,.Ms. for the years 1984 to 1987 were pending closure in Madras Custom House alone on 31 December 1987.

(vii) The high pendency of Import General Manifests and other aforesaid shortcomings show the lack of control by the Customs Department over the quantum of short or excess landed goods/ uncleared goods and about the magnitude of customs duty liability/penalty realisable thereon.

1. *Non-receipt of Import General Manifests (IGMs) from Import Department*

As per the revised procedure, the I.G.Ms. are required to be sent to M.C.D. immediately after the expiry of 45 days from the date of entry of the vessels. If the bills of entries are received after forwarding the I. G.Ms. to M.C.D., a list (in duplicate) indicating I.G.M. number, line no., Cash account no. and date and number of each package has to be prepared by the Import Department and sent to M.C.D. for further action.

It was noticed that the import department in the Madras Custom House did not send to the M.C.D. as many as 1,123 I.G.Ms. out of 5,417 filed with the former department during the years 1982 to 1986 till 31 May, 1988 with the result that those I.G.Ms. could not be closed by the M.C.D. There was nothing on record to show that any effective follow up action was taken by the M.C.D. to obtain those I.G.Ms. from the import department defeating the very object of introducing the revised procedure. The year-wise details of the I.G.Ms. received by the import department during the years 1982 to 1986 and pending with that department on 31 May 1988 is given below:

Year	No. of IGMs filed for the year	No. of IGMs pending with import deptt. on 31 May 1988
1	2	3
1982 . . .	982	76
1983 . . .	985	251
1984 . . .	1,040	290
1985 . . .	1,159	190
1986 . . .	1,251	316
Total .	5,417	1,123

2. *Pendency of Import General Manifest*

Following was the position of I.G.Ms. pending closure at the beginning of the years 1985, 1986 and 1987 received and closed in those years and remaining out standing at the end of those years in 12 out of 14 Custom Houses/Collectorates. The details in respect of Delhi and Vizag Custom Houses were not available.

No. of I.G.Ms.	Years		
	1985	1986	1987
(*i*) pending closure at the begining of the year . . .	14,053	14,294	16,091
(*ii*) received during the year . . .	6,619	8,110	6,647
(*iii*) closed during the year	6,378	6,313	8,716
(*iv*) pending closure at the end of the year .	14,294	16,091	14,022

The Custom House/Collectorate-wise details are given in Annexure 1.1.

The status of the 14,022 I.G. Ms. pending closure on 31 December 1987 was as under :

Period of pendency from the date of entry inwards of the vessel/aircraft	No.
(1) upto 10 months	2,231
(2) between 10 months and one year	6,668*
(3) between one year and two years	1,520
(4) over two years	3,603
Total	14,022

*includes 2,614 I.G.Ms relating to Calcutta Custom House in respect of which further analysis was not available.

In this connection following observations are made :

—The number of I.G.Ms. pending closure at the end of the years 1985, 1986 and 1987 vis-a-vis number of I.G.Ms. received in each of those years was very high. With the efflux of time closure of I.G.Ms. becomes difficult.

—The high pendency of 11,791 I.G.Ms. for more than 10 months which include 1,520 I.G.Ms. between one and two years and another 3,603 I.G.Ms. over two years shows that the purpose of introducing the revised procedure for the expeditious closure of I.G.Ms. has not been fulfilled.

—One of the main factors contributing to the high pendency of I.G.Ms. was lack of follow up action by Custom Houses in sending periodical reminders to the various authorities/persons.

3. *Delay in issue of letters of calls*

According to Para 64 of the Manual of M.C.D., the Manifest Clearance Department of each Custom House has to issue letter of calls within a time schedule of 120 days from the date of receipt of out-turn statements from the Port Trust Authorities.

The position of letters of calls which were pending for issue in the nine Custom Houses/Collectorates at the end of the years 1985, 1986 and 1987 was as under:

	No. of letters of calls	1985	1986	1987
(*i*)	due for issue at the beginning of the year	3,366	4,803	4,306
(*ii*)	due for issue during year	6,326	5,998	5,143
(*iii*)	actually issued during the year	4,889	6,495	5,841
(*iv*)	pending issue at the closure of the year	4,803	4,306	3,608

The Collector-wise details of the 3,608 cases is given in Annexure 1.2.

The year-wise analysis of the 3,608 letters of calls outstanding on December 31 1987 was as under :

Year	No.
prior to 1985	510
1985	590
1986	1,022
1987	1,486
Total	3,608

All the 510 pre-1985 cases pertained to Calcutta Custom House.

(i) **Madras Custom House**

A review of the procedure regarding issue of letters of calls to steamer agents in the Madras Custom House revealed abnormal delay on the part of the department in issuing letters of calls even after the receipt of out-turn statements from the Port Trust authorities. Though the out-turn statements were received from the Port Trust authorities within one month from the date of receipt of I.G.Ms. yet more than sixteen per cent of the letters of calls for the years 1985 and 1986 were issued only during February 1987 and March 1987 respectively (i.e. after a delay of more than a year) as indicated below :

Year	Total No. of I.G.Ms. filed for the year	No. of items for which letters of calls issued after one year
1985	1,159	199
1986	1,251	211
Total	2,410	410

The delay on the part of the Customs department had led to delay in finalising penalties in 410 cases under Section 116 of Customs Act 1962. The Customs department could not explain the reasons for the inordinate delay in issue of letters of calls.

(ii) **Delhi Customs Collectorate**

A perusal of the segregation register in the Delhi Custom Collectorate for the year 1987, disclosed that the letters of calls/show cause notices were not issued in any of the 13,957 cases of shortlanded packages covered by 267 I.G.Ms. The segregation registers for the earlier period were not made available to audit. Because of non-issue of any letters of calls as also of not keeping a note of the shortlanded goods in the segregation register, it could not be verified in audit whether all the shortlanded goods had been properly accounted for.

4. *Delay in receipt of out-turn statements (O.T.S.) from Port Trust Authorities*

As per Para 3 (Appendix A, Sr. No. XIV) of Manual of M.C.D. out-turn statements are to be received in M.C.D. from the Port Trust Authorities in the first week of second month from the date of arrival of the vessel.

(i) **Bombay Custom House**

On 31 December 1987; O. T. S. in 1,146 cases relating to the years 1981 to 1986 were not received in M.C.D. of Bombay Custom House from the Port Trust authorities. The year-wise analysis of those 1,146 cases was :

Year	No. of O.T.S.
1981	133
1982	89
1983	72
1984	102
1985	246
1986	504
Total	1,146

(ii) **Madras Custom House**

Out-turn statements in the case of 884 out of 3,669 I.G.Ms. filed in the years 1985, 1986 and 1987 had not been received from the Port Trust authorities by the Madras Custom House till 31 May 1988.

Year	No. of IGMs filed	No. of OTS not received till 31 May, 1988	Percentage of (3) to (2)
1	2	3	4
1985	1,159	230	20
1986	1,251	265	21
1987	1,259	389	31
Total	3,669	884	

Thus the percentage of O.T.S., not received as compared to the total number of I.G.Ms. filed was quite high. It was stated by the Custom House (June 1988) that the matter had been taken up with the Port Trust authorities.

The non-receipt of 642 OTS for the years 1981 to 1985 in Bombay Custom House and 230 OTS for the year 1985 in Madras Custom House from the Port Trust authorities shows that those Custom Houses did not take sustained action and no proper co-ordination existed between the Customs authorities and Port Trust authorities in this regard which in turn resulted in delay in issue of letters of calls and action under Section 116 of Customs Act 1962.

5. *Cases of penalty leviable under Section 116 of Customs Act 1962 in respect of shortlanded goods*

Following was the position of the cases of penalty booked and finalised during the years 1985, 1986 and 1987 and those pending at the end of those years in nine Collectorates of Customs/Land Customs:

No. of cases	1985	1986	1987
1. Pending at the beginning of the year	227(a)	321(a)	1,164
2. Booked during the year	738	2,455	2,408
3. Finalised during the year	644	1,612	2,397
4. Pending finalisation at the end of the year	321(a)	1,164	1.175

(a) This column does not include the data relating to Calcutta Custom House.

The collectorate-wise break up of those cases is given in Annexure 1.3.

An year-wise analysis of the cases pending as on 31 December 1987 showed that Bombay Custom House accounted for 170 cases pertaining to the years from 1979 to 1984, while Madras Custom House accounted for 41 cases for the period from 1982 to 1984.

(i) **Madras Custom House**

The departmental figures of the Madras Custom House were not susceptible of verification in audit; but an effort was made to collect the data independently from the demand register. This showed that the total amount of penalties exceeding Rs. 10,000 each pending realisation on 31 December 1987 was Rs. 59.56 lakhs in respect of 106 cases as against the figure of Rs. 34.36 lakhs for all the 204 pending cases given by the department. The discrepency in figures could be attributed to the following reasons viz;

(*a*) realisation particulars were not noted in the demand register;

(*b*) particulars of withdrawal of demand notices were not entered in the demand registers;

(*c*) Particulars of closure of manifests were not noted in the demand register.

(ii) **Gujarat Ports**

In Gujarat Ports, there were 82 penalty cases involving an amount of Rs. 200.76 lakhs. Most of these cases related to the years upto 1986 and were stated to be cases of short-landed goods. The reasons for delay in finalisation of those cases were stated to be delay in submission of papers and also pendency of the cases at Divisional office itself. Some of the goods imported in those cases were melting scrap, crude oil, Bulgar wheat, corn and soya milk.

(iii) **Delhi Custom Collectorate**

As already stated, the Delhi Custom Collectorate neither issued letters of calls/show cause notices to the airline companies to account for short landed goods, nor obtained the information regarding the payment of compensation by the airlines to the owners of the goods for the short landed goods for taking action for imposition of penalty. At the instance of audit, the Customs collectorate obtained the requisite information from the major airlines and furnished a statement showing the amount of compensation of Rs. 2.13 lakhs paid by one airline during the period from December, 1985 to February, 1988. The above fact indicated that the short landed goods were not accounted for in the segregation register.

It was also stated (May 1988) by the Customs Collectorate that penalties had never been imposed under Section 116 of Customs Act 1962, on any airlines in any case of short landed goods.

A scrutiny of the segregation register maintained in the same collectorate revealed that there were 11,036 packages landed in excess in respect of 367 I.G. M. and the Custom House had not issued any letter of calls to airlines in such cases in terms of Paras 50, 62 and 63 of the Central Manual of Manifest Clearance Department. As such the excess landed goods had neither been accounted for nor confiscated by the Customs authorities. In reply, the Custom Collectorate stated (May 1988) that no case of confiscation in respect of excess landed goods had been booked and the audit observations have been noted for guidance.

6. *Delay in realisation of penalty-undue financial accommodation to steamer Agents*

The Manifest Clearance Department of the Custom House ascertains deficiency in the unloading of the imported or transhipped goods by reconciliation of the manifest and the Port Trust out-turn statement and issue "letters of call" indicating the deficiency to the steamer agents, with a request to account for the deficiency. Central Manual of Manifest Clearance Department stipulates a maximum period of eleven months for reconciliation work and imposition of penalty as prescribed under Section 116 of the Customs Act, 1962.

Further, Section 23(1) of the Customs Act, 1962 provides for remission of duty in respect of goods lost (otherwise than as a result of pilferage) or destroyed at any time before clearance for home consumption. The importers who wish to avail of the remission of duty should apply for such refund before expiry of six months from the date of payment of duty under Section 27 of Custom Act 1962. According to the Manifest Clearance Department Manual, where all the documents are supplied by the party, action for refund is required to be completed within one month and in all other cases within a maximum period of five months.

Review of the functioning of the Manifest Clearance Department of three major Custom Houses revealed that while in most of the cases, refunds were being made within a reasonable period of time, imposition and realisation of personal penalty took unduly long time resulting in loss of revenue by way of interest and financial accommodation to steamer agents.

The table below indicates the time taken in making refunds and realisation of penalty in the three Custom Houses of Bombay, Calcutta and Madras.

TABLE

Refunds on account of short landed goods and realisation of penalty from steamer Agents

(In lakhs of Rupees)

Refunds/Realisation made within	Bombay				Calcutta				Madras			
	No. of cases	Amount re-funded	No. of cases	Amount Rea-lised	No. of cases	Amount Re-funded	No. of cases	Amount Rea-lised	No. of cases	Amount Re-funded	No. of cases	Amount rea-lised
First Year	1,129	335	318	257	385	326	—	NIL	91	116	21	7
Second Year	3,076	655	214	89	1,157	376	72	14	93	35	142	37
Third Year	2,625	505	229	75	597	155	132	19	10	2	228	65
Fourth Year	927	201	186	88	286	87	190	43	—	—	232	88
Fifth Year	448	152	265	146	172	56	375	100	—	—	84	26
Sixth Year	197	35	301	342	100	10	528	160	—	—	29	15
Seventh Year	—	—	326	257	29	4	536	178	—	—	16	9
Eighth Year	—	—	—	—	8	1	180	56	—	-	4	3
Ninth Year	-	-	—	—	9	2	80	20	—	—	3	4
Tenth Year	—	—	—	—	6	—	24	5	—	—	—	—
Eleventh Year	—	—	—	—	—	—	7	1	—	—	—	—
Twelfth Year	-	-	—	—	—	—	—	—	—	—	—	—
	8,402	1,883	1,839	1,254	2,749	1,017	2,124	596	194	153	759	254
	Period during which refund/penality was made/realised		January 1987 to December 1987		Refund was given during the period		August 1983 to August 1988		Refund was given during the period		January 1985 to March 1988	
					Penality realised during the period		January 1988 to March 1988		Penality realised during the period		January 1982 to March 1988	

NOTE : (1) Year of preferring claim as well as payment of refund has only been considered instead of actual month and date.

(2) Year of arrival of vessel as well as realisation of penalty has only been considered instead of actual month and date.

The reasons given by the customs department for the delayed realisation of penalty from steamer agents and pendency of most of these cases were:—

(i) out-turn statements were not received from the Port Trust;

(ii) import manifest statements were not received from Import department;

(iii) documents were not received from the steamer agents;

(iv) payments were awaited from the steamer agents;

(v) stay order granted by the Tribunal or Courts.

The reasons given by the department for delayed realisation of penalty from steamer Agents are not acceptable since suitable time schedule, which has been provided in the Departmental Manual (M.C.D.) for the various processes relating to imposition of penalty on the steamer Agents, had taken into accunt these factors. The fact remains that non-adherence to the time schedule provided in the various provisions of the M.C.D. Manual has contributed to the abnormal delay ranging from five to eight years in the majority of these cases.

The Ministry of Finance stated (November 1988) that the main reason for delayed realisation of penalty from the steamer agents under Section 116 of Customs Act 1962 was non-receipt of out-turn report within the stipulated period from the Port Trusts and even on receipt of the out-turn reports the process of adjudication, where involved, was time consuming and required issue of show cause notice etc.

The Ministry added that the Custom Houses have been in touch with the Port Trusts on the question of expediting the out-turn reports so that relevant ship files could be completed.

The high pendency of Import General Manifests and other aforesaid shortcomings show the lack of control by the customs department over the quantum of short or excess landed goods/uncleared goods and about the magnitude of customs duty liability/penalty realisable thereon.

7. *Pendency of Adjudication cases against imposition of penalty.*

A study of the adjudication cases pending as on 31 December 1987, in respect of the imposition of penalty by the various Custom Houses/Collectorates revealed the following :—

Adjudication Authority	No.	Amount of penalty involved (Rs. in lakhs)
1. Collector of Customs (Appeals) .	87	205.08
2. CEGAT	14	63.04
3. High Courts	34	25.43
Total .	135	293.55

The collectorate-wise break up of these cases is given in Annexure 1.4.

The year-wise details of these cases was as under :—

Upto 1982 . . .	20
1984 . . .	1
1985 . . .	13
1986 . . .	23
1987 . . .	75
Details not available . .	3
Total .	135

8. *Pendency of E.G.Ms.*

The position of EGMs pending closure at the beginning of the years 1985, 1986 and 1987; received and closed in those years and pending closure at the end of those years in various Custom Houses and Collectorates excluding Madras and Mangalore Custom Houses was as under :

	1985	1986	1987
1. No. of EGMs pending closure at the beginning of the year . . .	1,675	2,207	637
2. No. of EGMs received during the year . .	3,351	3,540	3,511
3. No. of EGMs closed during the year . .	2,819	5,110	3,596
4. No. of EGMs pending closure at the end of the year . . .	2,207	637	552

The Collectorate-wise figures are given in Annexure 1.5.

(i) **Mangalore Custom House**

The year-wise analysis of the EGMs pending closure on 31 December 1987 in Mangalore Custom House was as under :

Year	No.
1	2
1983-84	259
1984-85	330
1985-86	278
1986-87	487

(ii) Madras Custom House

There were 13,834 E.G.Ms. pending closure as on 31 December 1987. Their year-wise analysis was as under :

Year	E.G.Ms filed	E.G.Ms closed out of (2)	Balance on 31 December, 1987 (2) minus (3)
1	2	3	4
1984	3,609	64	3,545
1985	3,245	529	2,716
1986	3,480	58	3,422
1987	4,151	—	4,151
Total .	14,485	651	13,834

The matter was reported to the Ministry of Finance in September 1988; their reply has not been received in respect of all the sub paras except 6 (November 1988)

1.02. Provisional Assessments

Introduction

To enable the importers to clear the goods immediately so that there may not be damage or deterioration or loss of goods, provisional assessments are resorted to by the Customs Department under the circumstances laid down in Section 18 of the Customs Act, 1962. These circumstances are :

(*a*) Where the proper officer is satisfied that an importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty on the imported goods or the export goods, as the case may be; or

(*b*) Where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test for the purpose of assessment of duty thereon; or

(*c*) Where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty.

As per Customs (Provisional duty assessment) Regulations 1963:

—The proper officer has to make an estimate of the duty likely to be levied on the goods;

—The importer is to execute a bond binding himself to produce such further information required by the department within one month and to pay up the deficiencies of duty, if any, between the provisionally assessed amount and final amount of duty determined.

—The amount of bond should be for a sum equal to the difference between provisional duty amount and the final duty payable with such surety/security as demanded.

The Ministry of Finance have issued (23 April 1973) instructions to finalise the ordinary type of cases in which provisional assessment is resorted to within one year of the date of provisional assessment. In respect of machinery contract cases where import takes place over long period, sometimes extending over a number of years and where action to finalise the cases can be taken only after all the imports under the contract have been made, the provisional assessment cases should be finalised within one year of the date of import of the last consignment covered by the contract.

The Central Board of Excise and Customs has laid down the following procedures and controls (vide Chapter 2, Part V of Appraising Manual Vol. II) to watch the clearance of provisional assessments.

A record of the provisional assessments made is required to be kept in a Provisional Duty Register (Form 321 CBR) in which all particulars relating to provisionally assessed cases right from their registration to their finalisation are to be recorded. At the time of provisional assessment, particulars like the name of the importer, description of goods, bill of entry no., value, reasons for provisional assessment, duty payable, particulars of bonds and its validity period are to be recorded. The Register also provides for recording the date of receipt of documents/test results etc. On finalisation of the cases, particulars regarding refund/collection of differential duty are to be recorded and the bonds are to be closed.

The following controls have also been provided :

(*a*) to ensure that entries are correctly and promptly made in the register and that there is no undue delay in finalisation; the register is to be put up monthly to the group Assistant Collector for inspection;

(*b*) the register is to be sent once a month to the Internal Audit Department for review so that any case requiring further investigation may be brought to the notice of the Assistant Collector of the group;

(*c*) A list of cases where the importers had failed to produce documents, information etc. towards the finalisation of assessments, is to be maintained in each group and submitted to Assistant Collector every month to ensure that the facility is not abused.

Scope of Audit

The audit of provisional assessment cases was designed to check that resort to provisional assessment was taken under the circumstances laid down in Section 18 of the Customs Act, 1962, and the procedure pres-

cribed in the Customs (Provisional Duty Assessment) Regulation 1963 was followed. Following points were also examined :

(*a*) The pendency of provisional assessment cases and their period pf pendency.

(b) The pace of finalisation of provisional assessment cases together with reasons for delay in their finalisation.

(*c*) Amount of duty recoverable or payable from or to the assessee on finalisation of provisional assessment cases

(*d*) Proper maintenance of records relating to provisional assessment cases by the department.

HIGHLIGHTS

An appraisal of cases provisionally assessed in seventeen Custom Houses/Collectorates was conducted. The results of appraisal are contained in the succeeding paragraphs which highlight the following :

(a) The total number of cases which were assessed provisionally upto 31 March 1987 and could not be finalised till 31 March 1988 was 25,151.

(b) The finalisation of provisional assessment cases did not keep pace with the fresh cases in which provisional assessments were resorted to in the year 1986-87 thereby leading to increase in provisional assessment cases from 13,668 at the beginning of the year to 17,113 at the end of that year.

(c) Non-finalisation/Delay in finalisation of provisional assessment cases involving test bonds.

(d) Improper maintenance of Provisional Duty Register leading to non-finalisation/delay in finalisation of Provisional assessment cases. Non-review of the register by the departmental officers.

(e) Non-review of provisional assessment cases by the Internal Audit Department.

(f) Non-production of 11,817 files relating to provisional assessment cases pending in Bombay Custom House to Audit.

1. OUTSTANDING PROVISIONAL ASSESSMENT CASES

The total number of cases which were assessed provisionally upto 31 March 1987 and could not be finalised till 31 March 1988 was 25,151. Out of these cases, details of 15,580 cases pertaining to Bombay (12,567) and Delhi (3,013) Custom Houses were not available with the department. The yearwise analysis of the remaining 9,571 cases was under :

Year		Machinery Imports	Other Imports
Upto	1984-85	959	1,932
	1985-86	357	1,866
	1986-87	620	3,837
	Total	1,936	7,635

The year-wise analysis of these 9,571 cases between private parties and Government departments/Companies and public sector undertakings was as under :

Year		Private Parties	Government Department/Companies & Public Sector Undertakings
Upto	1984-85	2,194	697
	1985-86	1,611	612
	1986-87	3,229	1,228
	Total	7,034	2,537

The Custom House/Collector-wise details of these outstanding cases are given in Annexures 1.6, 1.7, and 1.8.

A test check of outstanding provisional assessment cases was conducted. The results of test check are given below :

(i) Bombay Custom House

(*a*) *Sea Customs*

The Custom House made available to Audit, files relating to 600 cases out of 6,861 pending cases. The scrutiny of those files revealed :

—The deposits amounting to 20 per cent of the duty assessed provisionally were not collected from the importers in four cases.

—In four other cases duty was assessed provisionally in March-April 1982, but no action was taken to finalise these cases even after the lapse of six years. Further, the original bonds which were executed by the importers and accepted by the department did not even mention the amounts therein.

—No surety/security was obtained at the time of acceptance of bonds executed by 27 private importers.

—The bank guarantees in two provisional assessment cases of imported synthetic resin (bond value Rs. 1,33,700 + bank guarantee Rs. 26,740 in each case) expired on 1 July 1985. No action was taken either to get the guarantees renewed or to finalise the assessments. It resulted in non-collection of revenue of Rs. 3,20,880.

In two cases of import of 'footwear components—shoe upper' provisional assessments were done in 1986. Bank guarantee expired in 1987. No action was taken either to renew the bank guarantee or to finalise the assessments which resulted in non collection of revenue of Rs. 3,14,500.

—The original bills of entry in 33 cases involving duty amounting to about 411.3 lakhs which were assessed provisionally in the year 1986-87 were misplaced resulting in non-finalisation of those cases.

(*b*) *Air Customs*

The Custom House made availbe to Audit files relating to 150 cases out of 5,706 pending cases. The scrutiny of these files revealed :

—The deposit of Rs. 1,30,642 (20 per cent of the duty of Rs. 6,53,197 provisionally assessed) was not collected from the importer in one case.

—In 12 other cases of provisional assessments done in the year 1984, though orders had been issued to finalise them, these had neither been finalised nor were the reasons for their non-finalisation available in the files.

Further, the original bonds which were executed by two other importers and accepted by the department did not even mention the amounts therein.

—No surety/security was obtained at the time of acceptance of bonds executed by 34 importers.

—In four cases the guarantees had expired, but no action was taken to extend the validity period.

—Original bonds were not available in five cases in which provisional assessment was done in the year 1984 and had not been finalised.

—The original bills of entry in 40 cases (bond value Rs. 83.59 lakhs) which were assessed provisionally between March 1984 and October 1986 were not available and those cases were pending finalisation for want of original bills of entry.

(ii) Madras Custom House

A test check of the 2,088 cases in which duty was assessed provisionally till 31 March 1987 and pending finalisation on 31 March 1988 revealed :

—1,033 cases were pending finalisation of investigation by the special valuation branch. In another 47 cases (bond value Rs. 41.33 lakhs) relating to imports made by a private company during the years 1985 and 1986, such investigations had been completed in 1987, but the issue regarding finalisation of these cases with the concerned Central Excise Authorities who exercised control over ex-bond clearance was taken up in April 1988 only.

—In yet another nine cases (bond value Rs. 2.16 crores) the related documents had been received between November 1984 and October 1986, but the provisional assessment in those cases had not been finalised (June 1988).

—In another 43 cases (bond value Rs. 1.43 crores) the bonds had expired between 1980 and 1987, but no action was taken to extend their validity period (June 1988).

—In another 12 cases (bond value Rs. 22.34 lakhs) of provisional assessment—1 (1981), 2(1984) and 9 (1985), the wanting documents were called from the importers in April and May 1988 only.

—The provisional assessments done in 31 cases between 1981 and 1984 were finalised in the year 1987-88. However, the consequential demands amounting to Rs. 98.98 lakhs were issued between December 1987 and May 1988 only. They have not been realised (June 1988).

—Another case in which the import duty on stainless steel rods were assessed provisionally in February 1986 was finalised and a demand for differential duty of Rs.1.85 lakhs was issued for in February 1988. The same has not been realised (June 1988).

As a matter of fact the import was not eligible to the concessional rate of duty under notification 70/81-Cus. dated 1 March 1981 and final assessment should, therefore have been done in Feburary 1986 itself.

—Differential duty of Rs. 1.40 lakhs was found recoverable on the finalisation of four provisional assessment cases (1 each pertaining to the year 1980, 1981, 1982 and 1983) in May 1986 and February 1987. However, the demands were issued in the year 1988 only.

—Another 13 cases relating to the years 1982 and 1983 (bond value Rs.1.76 crores) were pending adjudication in the courts (June 1985).

(iii) Ports in Gujarat

—There were 20 cases, each with a duty effect of Rs.50 lakhs and above (total duty Rs. 15.87 crores) which were assessed provisionally till 31 March 1987 and pending finalisation on 31 March 1988.

—There were 14 cases of project imports at Air Cargo Complex, Ahmedabad and Kandla Custom Houses, in which the provisional assessments had not been finalised by 31 March 1988, although the imports of those projects had been completed more than a year back. The department stated that (i) in 10 cases the importers were advised to come forward with the requirement of finalisation of the contracts; (ii) in 3 cases reconcillation had not been done and (iii) in the last case the matter had been referred to Bombay Port through which he import was made. No reply has been received from Bombay Port (October 1988).

—In Baroda collectorate, 646 provisional assessment cases had been pending for more than 3 year on account of stay orders from the courts, classification disputes etc.

—In 10 cases of provisional assessment in Ahmedabad Collectorate which had been

pending for more than 3 years (May 1988) the dispute was regarding classification of 'polyester filament tow' as 'polyester fibre' or 'all others.' This dispute was not warranted because the Collectors conference held in September 1983, had already decided that 'polyester filament tow' is different from 'polyester fibre.' In another case in Ahmedabad collectorate (preventive) the stay order granted by Supreme Court was vacated in November 1984, but the provisional assesment in that case was not finalised (March 1988). The amount of Rs.8.67 lakhs plus interest thereon has not been receiveed from the importer (May 1988).

—In Rajkot Collectorate 370 provisional assessment cases were pending on account of :

(i) wanting test reports of bunkers in the case of ship breaking yard Alang (15 cases).

(ii) dispute regarding classification of sulphur through Kandla port (32 cases);

(iii) non-production of demurrage certificates (75 cases);

(iv) classification disputes pending before Supreme Court (248 cases);

2. PACE OF FINALISATION OF PROVISONAL ASSESSMENT CASES DURING THE YEAR 1986-87.

Following table gives analysis of rate of clearance of provisional assessment cases in the year 1986-87 :

	Number
Cases outstanding on 1 April 1986 . . .	13,668
Additions during the year 1986-87 . . .	9,927
Clearance during the year 1986-87 . . .	6,482
Cases outstanding on 31 March 1987 . .	17,113

This indicates that the additions of provisional assessment cases out paced the clearances of such cases during the year 1986-87. The Collectoratewise figures are given in Annexure 1.9. The information in respect of Bombay Custom House (Sea and Air) was not made availabe to Audit.

As per Annexure, 6,482 provisional assessment cases were finalised in all Custom Houses (excluding Bombay Custom House) (Sea and Air) during the year 1986-87. In 80 of these cases an amount of Rs.1.71 crores was recovered and in another 169 cases an amount of Rs. 1.64 crores was refunded. It follows that in 6,233 cases which account for approximately 93 per cent of the total provisional assessment cases finalised during the year 1986-87, neither any differential duty was recovered nor was any refund allowed. However, keeping these assessments provisional for long periods kept the importers in suspense about their liability to customs duties. In the circumstances the Ministry of Finance may consider the desirability of fixing the statutory time limit for the finalisation of provisional assessment cases, so that the importers are able to know about their liability towards customs duties within reasonable time.

A test check of the cases finalised during the year 1986-87 revealed the following:

(i) Madras Custom House

Seventy seven provisional assessment cases (bond value Rs. 91.19 lakhs) for the years 1977 to 1981 were dropped from the provisional Duty Register in 1986 under the orders of the Deputy Collector on the ground that the concerned files were not available.

(ii) Jaipur Collectorate

The department noticed short levy of duty of Rs. 1,00,657 at the time of finalisation of three provisional assessment cases in May 1987. However, the demand for the same was made (25 December 1987) after the expiry of the limitation of six months. The amount has not been recovered (May 1988).

3. NON-FINALISATION/DELAY IN FINALISATION OF PROVISONAL ASSASSMENT CASES INVOLVING TEST BONDS :

(i) Bombay Custom House

Sea Customs

18 cases were assessed provisionally to duty between March and October 1985 for want of test reports. It was however, noticed in audit that the test reports of chemical Examiner issued in the year 1985, were available in all those cases, but the department did not take any action to finalise them. On the contrary, show cause notices under Section 124 of the Customs Act, 1962, were issued to the importers on 30 July 1987. When the importer did not reply, the department issued enforcement orders on 22 April 1988. Further, the guarantees furnished by the clearing Agents which were valid for one year from the date of execution of bonds also expired in those cases. The failure of the Custom House in not finalising the provisional assessments even though test reports were available with them in all those 18 cases resulted in non-realisation of government revenue to the extent of Rs .50.17 lakhs and consequential financial accommodation to the importers.

In yet another case, the department did not finalise the provisional assessment made in March 1986 on receipt of the test report in July 1986. It was noticed in audit that a differential duty of Rs. 4,47,762 was recoverable in that case, for the recovery of which no action has been taken by the department (July 1988).

(ii) Bhavnagar Custom House Collectorate of Custom, Ahmedabad

14 cases involving provisional duty of Rs. 77.04 lakhs were assessed provisionally between December 1985 to August 1986 for want of test reports and other certificates. Although those documents were received in all the 14 cases during the period October 1986 to December 1986, yet the assessments in those cases had not been

finalised (31 March 1988). When this was pointed out in audit, the department stated that those cases had already been scrutinised and kept in a bundle for finalisation. The report of finalisation of those cases has not been received (June 1988).

(iii)(a) Delhi air Cargo Unit

As per records 263 and 645 test bond cases pertaining to the years 1984 and 1985 respectively were outstanding in October 1987 because either the samples had not been drawn for testing, or they were not sent for chemical analysis for testing. A scrutiny of about 100 such files in audit revealed that neither the reasons for taking test bonds were available in the records nor were any samples lying with Air cargo unit for sending to the laboratory for testing. Apparently, test bonds were taken without following the instructions of drawing of samples.

In most of those 908 cases even test memos had not been prepared, the samples were either missing, or where the samples were available the testing would not serve any purpose because of the deterioration of the samples on account of passage of time. It was therefore decided by the department to close those test bonds by accepting the party's declaration at the time of original assessment as final subject to the production of copies of bonds, invioces, bills of entries and factory's test certificate. On the basis of those orders, the importers were asked to furnish the requisite records.

The system failure such as non-preparation of test memos, not sending of samples for testing, sending samples very late for testing and non-linking of test reports where ever received was not looked into by the department Further the cancellation of all the test bonds on the basis of documentary evidence produced by the importer without test reports defeated the very purpose of obtaining the samples/test bonds abinitio as provided in the Act, The extent to which interest of revenue has been jeopardised and the amount of revenue involved could not be quantified.

While the adequacy of the equipment in the laboratory for testing the samples was not known, the Custom House did not look for the alternate facility for testing the samples before cancelling the test bonds.

(b) Delhi Air Cargo Complex

(i) In 91 cases (bond value Rs.232.12 lakhs), the test reports in respect of samples sent for testing between January 1985 and Novembet 1987, had not been received from the laboratory (June 1988)

(ii) In another 46 cases (bond value Rs.156.72 lakhs) (Air Cargo 11; Inland container depot 35) there was no record to show that the samples had been sent to laboratory for test.

(iii) Yet another 34 cases (bond value Rs.120.01 lakhs) (Air Cargo) and 27 (I.C.D.) had not been finalised inspite of the fact that the test report from the laboratory had been received.

(iv) In 9 more cases the bonds valuing Rs.11.94 lakhs were cancelled without going into the results of test reports which were not in conformity with the constituents for which samples were drawn and got tested.

(v) A private limited Co., imported through Inland Container Depot, Pragati Maidan, New Delhi, "polyol and Iso-cyanatpur" valuing Rs.2.74 lakhs in January 1985. The chemicals were assessed provisionally after getting a test bond for Rs.3 lakhs executed by the impoter and a sample was drawn and sent for chemical test. The test reports showed that the constituents of the materials tested did not agree with those mentioned in the bill of entry presented to the department for clearance of goods. Based on the test report the imported chemicals attracted higher rate of duty and differential duty of Rs. 2.88 lakhs was recoverable from the importer. The demand notice for Rs.2.88 lakhs issued in July 1987 was received back with the report of the postal department to the effect that no such company was in existance. No further action has been taken by the customs authorities for realising the short levy (June 1988)

(iv) Madras Custom House

Four cases of imports of urea (bond value Rs.14.33 crores) were assessed to duty provisionally in the year 1985. Those assessments could not be finalised as the test reports had not been received. Reasons for the non-receipt of test reports were not available in the concerned files. The validity of the bonds in those cases had also expired by November 1985.

4.OTHER IRREGULATIES

(*i*) *Bombay Custom House* (*Sea Custom*)

The provisional Duty Registers were not maintained properly. Only eight out of twenty nine columns in the provisional Duty Registers were found filled up. Particulars such as, duty on provisional assessment, duty on final assessment, details of extra duty demanded/or refunded were not filled in. The entries in the register were not seen by the Asstt. Collector at any stage. The Bond Register was not maintained.

As per para 4 of the Appraising Manual of Bomaby Custom House the Bond Register is to serve as control for taking timely effective action to enfore /cancel bonds before their expiry. The improper maintenance of the P.D. Register coupled with non-maintenance of Bond Register and its non-submission to the Asstt. Collector led to the lack of effective control over the pursuance and finalisation of provisional assessment cases.

In this context, a review of 150 cases produced to Audit, showed that although 11 cases of provisional assessments were finalised and less charge demands for Rs. 2,87,180 were issued in Novembet /December 1987, yet the amounts have not been recovered, (July 1988). In fact, immediately on the expiry of 10 days from the date of receipt of less charge demand notice by the importers, the department should have enforced the bonds against the importers. This has not been done (July 1988).

On the recomendations of Public Accounts Committee the Government issued instructions in the year 1979

that in all cases wherein goods are assessed provisionally, the department should send a communication to the concerned parties that if the documents are not furnished, within the stipulated period, the case would be decided ex-parte. Those instructions have not been followed.

Similarly, there does not exist any monitoring mechanism in the Calcutta Custom House as well.

The same position viz improper maintenance of the P.D. Register and nonsubmission of the Registers to the Asstt. Collectors as per the system evolved prevailed in Madras and Delhi Custom Houses.

(ii) The requirement of preparing monthly list of pending cases of importers who had failed to produce the required documents in time as laid down in the Appraising Manual, was not being followed at Madras, Bombay, Calcutta and Delhi Custom Houses.

(iii) The Internal Audit Department did not carry out any review of provisional assessment cases at Bombay, Calcutta, Madras Custom Houses as also at the Gujarat ports and land customs stations under the C.E. Collectorate, Chandigarh.

(iv) Non-production of records and furnishing of information.

The Bombay Custom House did not produce to audit files relating 11,817 out of 12,567 provisional assessment cases pending with it. The Custom House did not also furnish to audit the particulars of provisional assessment cases each involving duty of Rs. 50 lakhs and above.

The matter was referred to Ministry of Finance in September 1988; their reply has not been received (November 1988).

1.03 Adjudication cases

Introduction

The Central Excise Law contains provisions in regard to the redressal of grievances of any assessee aggrieved by any decision or order passed under that law by a Central Excise Officer. There is also provision for taking action to recover duty not levied or short levied or erroneously refunded or for booking offences against the assessees for contravention of any provision of the law. These provisions are contained in Chapter VI A (Sections 35-A to 35-E, 35-EE, 35-F to 35-Q, 36 and 36-A) of the Central Excises and Salt Act, 1944 and the Central Excise Rules, 1944 made thereunder.

The Central Board of Excise and Customs issued (17 January 1983) the following instructions to the departmental officers for the expeditious adjudication of the demands :

(a) Demand cases should be decided within a maximum period of six months from the date of issue of the show cause-cum demand notices;

(b) A list of all the cases which cannot be adjudicated within six months should be sent to Collector monthly with precise reasons for non-adjudication ;

(c) A suitable time limit should be fixed by Collector/Additional Collector/Deputy Collector for each case within which the Assistant Collector should adjudicate the demand cases;

(d) If the cases are still not decided within the extended time limit, the matter should be further examined to consider the reasons for delay and further direction should be issued to the Assistant Collector.

Scope of audit

The scope of audit of adjudication cases was designed to check that the cases which have been decided against the Government are reviewed to see whether appeals can be filed against those cases and if so, whether such appeals have actually been filed. Following points are also seen :

(i) Timely demands are raised in cases decided in favour of the department;

(ii) The confirmed demands are realised without loss of time and credited to Government;

(iii) No amount of revenue is lost due to time bar; and

(iv) Regular monitoring is done of the pending adjudication cases.

Machinery for review of adjudication orders

The Central Excise Law provides for departmental machinery to review the adjudication orders decided against the Government to ascertain whether appeal lies to those orders and if so, an appeal is actually filed against those orders.

HIGHLIGHTS

An appraisal of the adjudication cases pending with the courts, the CEGAT and the departmental officers was conducted. The results of the appraisal are contained in the following paragraphs which highlight :

(i) there were 7,631 appeal cases in which confirmed demands amounting to Rs. 419.61 crores were pending realisation on 31 March 1988. Of these, 4,643 cases (Rs. 320.54 crores) 1,929 cases (Rs. 77.58 crores) and 1,059 cases (Rs. 21.49 crores) were pending with the Courts, CEGAT and the departmental officers respectively;

(ii) revenue amounting to Rs. 46.36 crores was lost due to non-issue or delay in issue of show cause notices;

(iii) duty amounting to Rs. 307.64 crores could not be recovered owing to grant of stay orders by the various courts in 3,373 cases;

(iv) failure of the department to recover duty of Rs. 12.90 crores in 1,270 cases even though the courts did not grant stay orders in those cases;

(v) non-realisation of confirmed demands amounting to Rs. 4.28 crores adjudicated during the years 1985-86 to 1987-88 in Jaipur Collectorate.

(vi) other irregularities.

(vii) non-maintenance of records.

(*i*) *Outstanding confirmed demands*

There were 7,631 confirmed demands amounting to Rs. 419.61 crores which were pending realisation on 31 March 1988. Their status was as under :

Pending with	No.	Amount (Rs. in crores)
Courts	4,643	320.54
CEGAT	1,929	77.58
Departmental Officers	1,059	21.49
Total	7,631	419.61

The year-wise analysis of these cases is given below:

	Pending with					
	Courts		CEGAT		Departmental Officers	
	No.	Amount (Rs. in crores)	No.	Amount (Rs. in crores)	No.	Amount (Rs. in crores)
Less than 1 years	232	47.08	332	20	355	8.12
Between 1 & 5 years	1,963	154.16	1,014	45	446	11.74
Between 5 & 10 years	1,769	107.20	458	49	202	1.17
Above 10 years	679	12.10	125	2.08	56	0.46
TOTAL	4,643	320.54	1,929	77.58	1,059	21.49

(Details in Annexure 1.10 to 1.12)

In this connection following observations are made :

—The high pendency of cases indicates need for expediting disposal at every stage;

—The pendency of 704 cases for over 1 year with 258 over 5 years with the departmental officers shows that the executive instructions have not been implemented effectively;

—The Institution of CEGAT was created in the hope that it will help in deciding the disputed cases early and will reduce the period of pendency. However, the pendency of 1,014 cases between 1 and 5 years, another 458 cases between 5 and 10 years and 125 for over 10 years indicated that such hope has been belied.

(ii) *Loss of revenue amounting to Rs.* 46.36 *crores due to non-issue of or delay in issue of show cause notices*

In cases where the Central Excise duty has not been levied or not paid or has been short levied or short paid or erroneously refunded, a Central Excise Officer under Section 11 A of the Central Excises and Salt Act, 1944, can issue a show cause notice within a period of six months from the relevant date. The expression 'relevant date' is the date on which the monthly return (RT 12) showing the particulars of Central Excise duty paid on the excisable goods removed during the month is filed by the assessee or where no such monthly return is filed the last date on which such return is to be filed under the Central Excise Rules 1944.

It was noticed in audit that duty amounting to Rs. 46.36 crores could not be recovered in 854 cases in 16 collectorates either because of non-issue of any show cause notice or because the show cause notices/ demands were issued after the expiry of limitation period. The Collector-wise number of these cases is given in Annexure 1.13. In each of the following cases out of the aforesaid cases, the loss exceeded Rs. 10 lakhs :—

(a) A unit in Delhi Collectorate, manufactured synthetic resin (erstwhile tariff item 15 A) and used it captively without payment of duty for the manufacture of coated fabrics (erstwhile tariff item 19). However, the unit neither held any licence nor maintained any records for the manufacture of the said synthetic resin. The proforma credit for the duty paid on inputs (erstwhile tariff item 68) needed for the manufacture of synthetic resin was also being availed of by the unit and utilised for discharging duty liability on the coated fabrics which was irregular. On this being pointed out in audit, the department issued (August 1981) a show cause notice demanding duty of Rs. 47.86 lakhs on synthetic resin manufactured during the period 1977 to 1980 and Rs. 2.22 lakhs for the inadmissible proforma credit availed during the years 1979-80 and 1980-81, which was confirmed. The assessee went in appeal before the appellate authority who held that the demand was time barred as no allegation of suppression of facts or fraud was clearly made in the demand cum show cause notice or in the adjudication order and as such the extended period of five years was not applicable in this case and set aside the demand in January 1987.

(b) A Public Sector steel plant in Patna Collectorate, manufactured and cleared hot rolled strips of 5 mm thickness paying duty applicable to hot rolled strips of thickness exceeding 5 mm during the period from 1 August 1983 to 31 August 1985. The department noticed the irregularity and raised (25 March 1986) a demand for recovery of differential duty of Rs. 53 lakhs (approximately) which was revised to Rs. 57.37 lakhs for the said period and confirmed by the department.

The assessee paid the differential duty of Rs. 13.43 lakhs for the period of six months (i.e. 1 September 1985 to 28 February 1986). However, he declined to pay duty for the ramaining period on the ground of time bar and filed an appeal to that effect with the Collector (Appeals). The Collector (Appeals) set aside the balance demand of Rs. 43.94 lakhs on the ground of time bar.

(c) A manufacturer in Delhi Collectorate, procured clutch facing (erstwhile [redacted] item 34) without payment of duty under [redacted] X procedure and used them in the manufacture [redacted] clutch plate assembly (erstwhile tariff item 68). He cleared such assembly as original equipment for manufacture of parts and accessories of motor vehicles, tractors and trailers. The department demanded (December 1986) duty amounting to Rs. 30.46 lakhs on the ground that such plate assembly were cleared for sale in the market for replacement purposes and not as original equipment during the period from November 1982 to March 1986. The same was confirmed by the adjudicating authority. However, on appeal the same was set aside by the appellate authority on the ground that the demand was raised after the expiry of a period of six months and the extended period of five years was not applicable as there was no suppression of facts or fraud on the part of the assessee.

(d) An assessee in Cochin Collectorate took credits of Rs. 29.15 lakhs on 26 May 1986 and 27 May 1986 being duty paid on inputs (viz. calcined alumina, soder berg paste and recovered cryolite) brought for use in manufacture of output goods. As the credit of duty paid on those inputs was not available from 1 March 1986, the department issued two show cause-cum demand notices on 7 and 9 February 1987 and confirmed both the demands on 27 April 1987. Since the demands were raised after six months from the relevant date of availing the credit, the Collector (Appeals) quashed both the demands as time barred.

(e) A manufacturer of bulbs and tubes (erstwhile tariff item 32) in Delhi Collectorate charged additional amount on account of the cost of secondary packing of his products from the customers but did not include this element in the assessable value. A demand of Rs. 15.43 lakhs on account of differential duty for the period 1979-80 was raised in February 1984. The same was confirmed by the adjudicating authority. The assessee went in appeal and the appellate authority set aside (1987) the demand as time barred because it was raised after the expiry of the prescribed perlod of six months. Similarly the demand of Rs. 18.53 lakhs for the period from April 1981 to February 1983 issued on 2 February 1984 was set aside by the appellate authority on the ground of time bar in August 1986.

(f) Perfumed hair oil was classifiable under erstwhile tariff item 14 F (ii)(b) and assessable to duty at the rate of 105 per cent ad valorem. The tariff item was amplified to include hair oil concentrate therein from 17 March 1985.

An assessee in Madras Collectorate, produced hair oil concentrate and cleared it after payment of duty under erstwhile tariff item 68 even after the enlargement of description of erstwhile tariff item 14 F on 17 March 1985. The misclassification of the concentrate resulted in the grant of an irregular refund of Rs.48,593 and short levy of Rs. 18.46 lakhs on account of duty paid on clearances from 17 March 1985 to February 1986.

The Collector (Appeals) set aside (15 February 1988) the whole demand of Rs. 18.46 lakhs as time barred because he concluded that the show cause notice was issued on 25 September 1986.

(g) As per a notification dated 16 July 1966 as amend ed, copper wire rods/rolled rods, were exempted from the whole of Central Excise duty if manufactured from 'copper in crude form' [erstwhile tariff item 26 A(i)].

A unit in Jaipur Collectorate manufactured copper wire rods/rolled rods from copper wire bars [erstwhile tariff item 26 A(1a)] and cleared them without payment of duty during the period from March 1983 to April 1984 under the aforesaid notification. This was irregular because the goods were not manufactured from the raw materials falling under sub-item (1) of erstwhile tariff item 26 A.

A show cause-cum demand notice for Rs. 22.95 lakhs for the non-levy of duty was issued by the department on 7 May 1984. The Assistant Collector, Jaipur confirmed (9 April 1985) the demand for Rs. 9.39 lakhs for the period from November 1983 to April 1984 only and held the demand amounting to Rs. 13.56 lakhs for the period from March 1983 to October 1983 as time barred, on the ground that the show cause notice was not issued within the stipulated period of six months.

(h) A tyre manufacturer 'X' in Cochin Collectorate, purchased cord wrap sheets (erstwhile tariff item 68) from a cord wrap sheets manufacturer 'Y' and took credit of duty paid thereon during the period from 12 July 1978 to 19 September 1980 in terms of a notification dated 4 June 1979. M/s. 'Y' were paying duty on tyre cord wrap sheets 'under protest' as they disputed the classification of their product under erstwhile tariff item 68. Subsequently, it was held that their product was classifiable under erstwhile tariff item 22 and was exempt from the whole of duty. Accordingly, the duty paid on it was refunded to M/s. 'Y' by the Assistant Collector, Kota. The Assistant Collector, Kota informed (August 1985) the Assistant Collector, Ernakulam about the aforesaid refund of duty. Thereupon the Assistant Collector, Ernakulam issued two

show cause notices to M/s 'X' for disallowing the credit of duty of Rs. 12.91 lakhs on tyre cord wrap sheets availed of by them during the period from 12 July 1978 to 28 July 1978 (to which the refund to M/s 'Y' related).

The show cause notices were confirmed by Assistant Collector on 20 July 1987. But the company went in appeal. The Collector (Appeals), Madras citing decision No. 335/86/P dated 4 June 1986 of the CEGAT, New Delhi held that the show cause notices were time barre d.

(i) An assessee in Delhi Collectorate, engaged in th manufacture of motor vehicle parts (erstwhile tariff item 68) was issued (September 1981—April 1984) six show cause-cum demand notices amounting to Rs. 14.15 lakhs in respect of clearances made during the period from May 1979 to March 1984. These demands were confirmed in July 1984.

The assessee went in appeal to the Collector (Appeals), who confirmed the demand to the extent of Rs. 1.46 lakhs only and rejected the remaining demand of Rs. 12.69 lakhs being time barred (April 1986).

These cases were brought to the notice of the Ministry of Finance in September 1988, their comments have not been received (November 1988).

(iii) Non-recovery of Rs. 307.64 crores on account of grant of stay by the courts

As per Supreme Court judgment in Assistant Collector v/s Dunlop India Ltd. [1985 ECR 4(SC)] stay must not deprive Government of its legitimate revenue where duty has been collected from the customer, there is no case for stay; lower courts (including High Courts) must obey the higher court decision loyally etc. On receipt of the aforesaid judgment of the Supreme Court the department should have reviewed cases of demand which had been stayed by the courts and should have moved the courts for vacation of such stay orders. As per information furnished by the Ministry of Finance 3,373 cases involving duty of 307.64 crores in which demands had been stayed by the various courts were outstanding on 31 March 1988 (Annexure 1.10). It was not known in how many of these cases the department took action for getting the stay order vacated and what were the results of such actions. The Ministry of Finance was asked to furnish the said information in September 1988; the same has not been received (November 1988).

An assessee in Madras Collectorate manufactured nylon yarn (sub-heading 5402.12) and utilised the same captively for production of tyre cord fabric. As per Rules 9 and 49 of the Central Excise Rules, 1944 as amended on 20 February 1982, excise duty at the appropriate rate is payable on the yarn captively consumed. It was seen in audit (October 1987) that the assessee did not pay duty on the nylon yarn captively consumed on the strength of a stay order obtained from Delhi High Court on 7 January 1982. Although Rules 9 and 49 were amended on 20 February 1982 with retrospective effect, no action was initiated by the department to get the stay vacated. The assessee, however, voluntarily paid duty under protest perhaps to get relief from income tax. The monthly duty liability of the assessee on this account was about Rs. 35 lakhs which was being paid after delay ranging upto 10 months. For the period from October 1986 to September 1987 the duty liability was Rs. 436.62 lakhs of which only Rs. 22.95 lakhs had been paid by October 1987.

When the non-getting of the stay order vacated by depatment was pointed out in audit on 30 November 1987, the collectorate stated (December 1987) that the assessee had been advised to withdraw the writ petition

Subsequently, it was noticed in audit in July 1988 that the assessee had paid duty upto September 1987 (Rs. 413.67 lakhs) in two instalments in March and July 1988. However, the duty for the subsequent period from October 1987 to June 1988 amounting to Rs. 345.30 lakhs (approximately) has not been paid (July 1988).

The case was reported to the Ministry of Finance in September 1988; their reply has not been received (November 1988).

(iv) Non recovery of duty in cases in which stay for recovery of duty was not ordered by the courts.

The Central Board of Excise and Customs issued (15 December 1982) instructions to the effect that in case of an order passed by the Appellate Tribunal or the lower court, recovery should be enforced immediately unless the party produces stay order from the higher court.

Annexure 1.10 shows that 1,270 cases involving duty of Rs. 12.90 crores were pending in various courts, where stay orders had not been granted by those courts. It is not clear as to why recovery of duty has not been enforced by the department in those cases. The Ministry of Finance was asked to clarify the position in September 1988; their reply has not been received (November 1988).

(v) Non-realisation of duty against finalised adjudication cases

As per Section 11 A(2) of the Central Excises and Salt Act, 1944, the Assistant Collector or the Collector of Central Excise is empowered to determine the amount of duty due from the person to whom notice demanding duty is served under sub-section (1) of that section after considering the representation, if any, made by him and such person should pay the amount so determined.

The Central Board of Excise & Customs, issued instructions (15 December 1982) that duty adjudged in an order passed by the adjudicating officer, Collector (Appeals) or reviewing authority should be recovered immediately unless stayed by the appellate authority.

In Jaipur Collectorate 608 cases were adjudicated during the years 1985-86 to 1987-88. Of these, in 436 cases demands amounting to Rs. 5.74 crores were confirmed and the remaining 172 cases were decided in

favour of assessees resulting in refund of Rs. 26.38 lakhs to the parties. Against the demands created (5.74 crores) only, Rs. 1.45 crores (about 25 per cent) were recovered till March 1988. The amounts due for refund were, however, allowed in full.

The details of two cases of confirmed demands in which recoveries were not effected are given below :

(a) A demand of Rs. 25.41 lakhs on account of excess availment of set off of duty paid on monoethylene glycol by a unit for the period from 1 April 1987 to 1 August 1987 was confirmed (30 December 1987) by the jurisdictional Assistant Collector, Central Excise directing the unit to deposit the amount within 15 days. The party had also not filed any appeal against the order passed by the Assistant Collector. But the amount was not recovered (May 1988).

(b) As per Collector, Central Excise & Customs, Jaipur adjudication order dated 8 May 1986 a manufacturer was required to pay the duty amounting to Rs. 1.98 lakhs on fencing poles etc. removed by him without payment of duty. On appeal, the CEGAT, New Delhi vide order dated 15 September 1986, directed the manufacturer to deposit 50 per cent of the demand (Rs. 99,190) pending finalisation.

The recovery has not been effected (June 1988).

The matter was reported to the Ministry of Finance in September, 1988, their reply has not been received (November 1988).

(*vi*) *Other irregularities*

Delhi Collectorate

(a) Demands of Rs. 43.18 lakhs created in 22 cases against 12 assessees as per Annexure 1.14 were not realised as these cases could not be adjudicated on the ground that these units had been closed and their whereabouts were not known. Adjudication proceedings in respect of one of these demands of Rs. 24.72 lakhs raised in 1982 against a limited Pharmaceutical concern at Faridabad could not be started (April 1988) because the unit had shifted to another place which could not be located.

(b) Demands of Rs. 7.38 lakhs raised during the years 1977 and 1978 in 5 cases against two owners of unmanufactured tobacco were not adjudicated as those units were reported to be closed. One of the assessees had offered (May 1978) that the dues amounting to Rs. 5.97 lakhs might be recovered by auctioning the tobacco lying in the store. The department did not take any action to auction the goods, nor was certificate action initiated as required under Section 11 ibid (April 1988).

The matter was reported to the Ministry of Finance in September 1988; their reply has not been receiveed (November 1988).

(*vii*) *Non-Maintenance of records*

The Central Board of Excise and Customs issued (28 July 1980) instructions for the maintenance of registers showing the position of confirmed and unconfirmed demands in the Ranges as well as in the divisions and their submission to the Range Superintendents and Assistant Collectors respectively. The Board in their subsequent instructions of 17 January 1983 also prescribed for the submission of the gist of pending cases which could not be decided within the stipulated period of six months to the Collector for his review and issue of instructions for their expeditious disposal. A test check of the said register in six collectorates revealed:

(a) *Indore collectorate*

The prescribed procedure was not found to have been followed in Satna, Indore and Gwalior divisions. In Indore division even the records were not complete and files were not traceable.

(b) *Calcutta-I, II and Bolpur collectorates*

The Divisional Offices did not maintain properly the unconfirmed and confirmed demands registers. The show cause notices which were issued by the Range Superintendents were not entered regularly in the Divisional Office's registers. As a result there were discrepancies between the Range Offices records and the Divisional records.

The realisation particulars of the cases adjudicated in favour of the department were not noted regularly in the confirmed demands register of Divisional Offices. As a result there was no scope to see the amount of duty realised against a particular case and also the amount remaining unrealised. Only the Range Offices submitted a monthly statement showing the amount realised during the month without indicating the full particulars of the amount realised against individual cases. In several cases delay was noticed in making entries in the registers after the cases have been adjudicated.

(c) *Cochin collectorate*

The register maintained by the divisions did not show the details of all adjudication orders passed by the Assistant Collector. The register for allotting serial number to the orders in original passed by the Assistant Collector was found to have been maintained by Ernakulam-I and II divisions from July 1987 and by other divisions from January 1988.

In the absence of such a register showing the details of adjudication orders relating to various sections such as demands, offences, refunds, classification lists, price lists etc., it is not known whether it was ensured that all the adjudication orders passed by the officers were sent to collectorate for review.

(d) *Bhubaneswar collectorate*

The confirmed demand register maintained in the division contained cases of adjudication finalised in favour of the department by the Divisional Officer only leaving the other cases of confirmation of demand adjudicated by higher authorities. The result was that the pursuance of additional demands raised by the officers higher than the Divisional Officer could not be watched at the divisional level.

Non maintenance of the said records was brought to the notice of the Ministry of Finance in September, 1988; their reply has not been received (November 1988).

ANNEXURE 1.1

(Referred to in Sub-para 2 of Para 1.01)

Showing the I.G.Ms received, I.G.Ms closed and I.G.Ms held in balance as on 31 December 1987

	Year	Bom-bay	Cal-cutta	Madras	Cochin	Vizag	Gujarat Ports (R—Rajkot A—Ahmedabad)	Delhi	Jaipur	Chandi-garh	Ranchi	Manga-lore	Total
1	2	3	4	5	6	7	8	9	10	11	12	13	14
I Number of I.G.Ms. pending closure at the beginning of the year (Ist January)	1985	1,823	5,992	2,713	1,133	N.A.	428 (R-157) (A-271)	I.G.Ms. are not closed	Nil	3	Nil	1,961	14,053
	1986	2,532	4,167	3,392	1,468	N.A.	465 (R-182) (A-283)	Do.	Nil	9	Nil	2,261	14,294
	1987	3,970	3,102	3,921	1,738	N.A.	690 (R-315) (A-375)	Do.	Nil	20	Nil	2,650	16,091
II No. of I.G.Ms received during the year	1985	2,070	579	1,159	622	N.A.	1489 (R-544) (A-945)	Do.	Nil	400	—	300	6,619
	1986	3,014	953	1,251	641	N.A.	1528 (R-639) (A-889)	Do.	Nil	334	—	389	8,110
	1987	1,042	1,535	1,259	576	N.A.	1453 (R-634) (A-819)	Do.	Nil	351	—	431	6,647
III No. of I.G.Ms. closed during the year	1985	1,361	2,404	480	287	N.A.	1452 (R-519) (A-933)	Do.	Nil	394	—	—	6,378
	1986	1,576	2,018	722	371	N.A.	1303 (R-506) (A-797)	Do.	Nil	323	—	—	6,313
	1987	1,328	2,023	2,544	374	N.A.	1239 (R-540) (A-699)	Do.	Nil	359	—	849	8,716
IV No. of I.G.Ms pending closure at the end of the year . . .	1985	2,532	4,167	3,392	1,468	N.A.	465 (R-182) (A-283)	Do.	Nil	9	—	2,261	14,294
	1986	3,970	3,102	3,921	1,738	N.A.	690 (R-315) (A-375)	Do.	Nil	20	—	2,650	16,091
	1987	3,684	2,614	2,636	1,940	N.A.	904 (R-409) (A-495)	Do.	Nil	12	—	2,232	14,022

Figures for Ports given in Brackets.

ANNEXURE 1.1—*contd.*

(*Referred to in sub-para 2 of Para 1.01*)

Analysis of I.G.Ms pending closure on 31 December, 1987

Analysis of I-G.Ms pending Closure on 31-12-1987	Bom-bay	Cal-cutta**	Madras	Cochin	Vizag	Gujarat Ports	Delhi	Jaipur	Chandigarh	Ranchi	Manga-lore	Total
1	2	3	4	5	6	7	8	9	10	11	12	13
1. Pending upto 10 months from the date of arrival of vessel . .	963	.NA.	—	468 (466)*	N.A.	421 (R214+A207)	N.A.	Nil	11	Nil	368	2,231
2. Pending beyond 10 months from the date of arrival of vessel .	2,721	N.A.	2,636	1,472	N.A.	483 (R195+A288)	N.A.	Nil	1	N.A.	1,864	9,177
(*a*) Less than 3 months . .	765	N.A.	702	160 (137)*	N.A.	115 (R55+A60)	N.A.	Nil	—	Do.	96	1,136
(*b*) 3 months to 6 months .	813	N.A.	—	149 (109)*	N.A.	82 (R52+A30)	N.A.	Nil	—	Do.	84	1,830
(*c*) months to 12 months .	551	N.A.	—	211 (26)*	N.A.	131 (R52+A79)	N.A.	Nil	Nil	Do.	195	1,088
(*d*) 1 year to 2 years . .	343	N.A.	345	414 (128)*	N.A.	80 (R30+A50)	N.A.	Nil	Nil	Do.	338	1,520
(*e*) Over 2 years . . .	249	N.A.	1,589	538	N.A.	75 (R6+A69)	N.A.	Nil	1	Do.	1,151	3,603

**Break up of 2,614 is not available.

umber of I.GMs not sent to M.C.D. by Import Department.

ANNEXURE 1.2

(Referred to in sub-para 3 of Para 1.01)

Statement showing the pendency of letters of calls to be issued

Letter of calls		Bombay	Calcutta	Madras	Cochin	Vizag	Gujarat Ports R—Rajkot A—Ahmedabad	Delhi	Chandigarh	Ranchi	Jaipur	Mangalore	Total
1		2	3	4	5	6	7	8	9	10	11	12	13
(i) No. of letters of calls which became due for issue by the beginning of the year and which were not issued	1985	1,517	1,670	85	45	N.A.	49 (R-24+A-25)	N.A.	Nil	Nil	Nil	N.A.	3,366
	1986	2,133	2,167	369	50	N.A.	84 (R-45+A-39)	N.A.	Nil	Nil	Nil	N.A.	4,803
	1987	1,136	2,442	585	46	N.A.	97 (R-73+A-24)	N.A	Nil	Nil	Nil	N.A.	4,306
(ii) No. of letters of calls which became due for issue during the year .	1985	1,217	672	284	81	N.A.	4072 (R52+A-4020)	N.A.	Nil	Nil	Nil	N.A.	6,326
	1986	955	758	216	77	N.A.	3991 (R-77+A-3914)	N.A.	Nil	Nil	Nil	N.A.	5,998
	1987	626	761	267	26	N.A.	3463 (R-85+A-3378)	N.A.	Nil	Nil	Nil	N.A.	5,143
(iii) No. of letter of calls actually issued during the year	1985	601	175	—	76	N.A.	4037 (R-31+A-4006)	N.A.	Nil	Nil	Nil	N.A.	4,889
	1986	1,952	483	—	81	N.A.	3978 (R-49+A-3929)	N.A.	Nil	Nil	Nil	N.A.	6,495
	1987	803	654	852	67	N.A.	3465 (R-72+A-3393)	N.A.	Nil	Nil	Nil	N.A.	5,841
(iv) No. of letters of calls which were pending issue at the close of the year	1985	2,133	2,167	369	50*	N.A.	84 (R-45+A-39)	N.A.	Nil	Nil	Nil	N.A.	4,803
	1986	1,136	2,442	585	46*	N.A.	97 (R-73+A-24)	N.A.	Nil	Nil	Nil	N.A.	4,306
	1987	959	2,549**	Nil	5*	N.A.	95 (R-86+A-9)	N.A.	Nil	Nil	Nil	N.A.	3,608
	1986	333	Prior to 1985-510	**1985-590 1986-689			*Pendency has been worked out with reference to Port trust out turn statements received.						
	1987	626		1987-760									

ANNEXURE 1.3

(Referred to in sub-para 5 of Para 1.01)

Number of penalty cases finalised during the last three years : (Amount : Rupees in lakhs)

		Bom-bay	Cal-cutta	Mad-ras	Cochin	Vizag	Gujarat Ports (R—Rajkot) (A—Ahmedabad)	Delhi	Jaipur	Chandi-garh	Ranchi	Manga-lore	Total
1		2	3	4	5	6	7	8	9	10	11	12	13
(i) Number of penalty cases pending finalisation at the begining of the year :													
	1985	79	N.A.	41	7	N.A.	77 (R-2+A-75)	Nil	Nil	—	Nil	23	227
	1986	127	469 (From July 1986)	79	14	N.A.	78 (R-14+A-64)	Nil	Nil	—	Nil	23	790
	1987	245	627	138	41	N.A.	90 (R-10+A-80)	Nil	Nil	—	Nil	23	1,164
(ii) Number of penalty cases booked during the year													
	1985	265	N.A.	383	20	N.A.	39 (R-24+A-15)	Nil	Nil	31	Nil	—	738
	1986	301	1,551	448	92	N.A.	56 (R-10+A-46)	Nil	Nil	7	Nil	—	2,455
	1987	326	1,653	335	27	N.A.	57 (R-36+A-21)	Nil	Nil	10	Nil	—	2,408
(iii) Penalty cases finalised during the year													
	1985	217	N.A.	345	13	N.A.	38 (R-12+A-26)	Nil	Nil	31	Nil	—	644
	1986	183	924	389	65	N.A.	44 (R-14+A-30)	Nil	Nil	7	Nll	—	1,612
	1987	396	1,637	269	48	N.A.	36 (R-18+A-18)	Nil	Nil	10	Nil	1	2,397
(iv) Number of penalty cases pending finalisation at the end of the year													
	1985	127	N.A.	79	14	N.A.	78 (R-14+A-64)	Nil	Nil	—	Nil	23	321
	1986	245	627*	138	41	N.A.	90 (R-10+A-80)	Nil	Nil	—	Nil	23	1164
	1987	175	643*	204	20	N.A.	111 (R-28+A-83)	Nil	Nil	—	Nil	22	1,175

*No. of cases prior to July 1986 not available.

ANNEXURE 1.4

(Referred to in sub-para 7 of Para 1.01)

No. of penalty cases pending on 31 December 1987 (Rupees in lakhs)

Adjudication pending at		Bombay	Calcutta	Madras	Cochin	Vizag	Gujarat Ports R—Rajkot A—Ahmedabad	Delhi	Jaipur	Chandigarh	Ranchi	Mangalore	Total
1		2	3	4	5	6	7	8	9	10	11	12	1
(1) Collector (Appeals)	No.	52*	N.A.	—	2	—	33 (R-25+A-8)	Nil	Nil	Nil	Nil	—	87
	Amount	145.46*	N.A.	—	6.1	—	53.52 (R-49.15+A-4.37)						205.08
(2) Customs and Excise Gold control Appellate Tribunal . .	No.	Nil	Nil	—	—	—	14 (R-3+A-11)	Nil	Nil	Nil	Nil	—	14
	Amount	Nil	Nil	—	—	—	63.04 (R-9.13+A-53.91)						63.04
(3) High Court . .	No.	4**	20a	1	1	—	8 (R-Nil+A-8)	Nil	Nil	Nil	Nil	—	34
	Amount	6.47*	N.A.	3.08b	4.25	—	11.63 (R-Nil+A-11.63)						25.43
(4) Supreme Court .	No.	Nil	Nil	—	—	—	—	Nil	Nil	Nil	Nil	—	Nil
	Amount	—	—	—	—	—	—	—	—	—	—	—	—
	Total No.	56	20	1	3	—	c55	—	—	—	—	—	135
	Amount	151.93	—	3.08	10.35	—	128.19	—	—	—	—	—	293.55

Year wise Break up :

*1986-1—Rs. 12.75 lakhs
1987-51—Rs. 132.71 lakhs

**1984-1-3.07 lakhs.
1985-1-2.63 lakhs.
1987-2-0.77 lakhs.

a1977—2
1978—Nil
1979-8
1980—5
1981—3
1982-1
1987-1
20

b1981—1

c1985-4-10.00R
8-11-.63-A
1986-8-21.17-R
14-41.67-A
1987-16-27.10-R
5-16.62-A

ANNEXURE 1.5 (*Referred to in sub-para 8 of Para 1.01*)

No. of E.G.Ms received from Export department No. of E.G.Ms. closed Number of E. G. Ms. pending closure at the end of the year

E.G.Ms.		Bombay	Calcutta	Madras	Cochin	Vizag	Gujarat Ports A—Ahmedabad R—Rajkot	Delhi	Jaipur	Chandigarh	Ranchi	Mangalore	Total
1		2	3	4	5	6	7	8	9	10	11	12	13
No. of E.G.Ms. pending closure at the beginning of the year i.e. on 1 January	1985	1,465	N.A.	N.A.	N.A.	N.A.	210 (A-210+R-NIL)	Export manifests are not closed	NIL	NIL	NIL	—	1,675
	1986	1,962	N.A.	N.A.	N.A.	N.A.	245 (A-245+R-NIL)		NIL	NIL	NIL	—	2,207
	1987	322	N.A.	N.A.	N.A.	N.A.	315 (A-315+R-NIL)		NIL	NIL	NIL	—	637
No. of E.G.Ms. received during the year	1985	2,117	N.A.	—	N.A.	N.A.	1234 (A-752+R-482)					—	3,351
	1986	2,300	N.A.	—	N.A.	N.A.	1240 (A-647+R-593)					—	3,540
	1987	2,287	N.A.	—	N.A.	N.A.	1224 (A-590+R-634)					—	3,511
No. of E.G.Ms. closed during the year	1985	1,620	N.A.	—	N.A.	N.A.	1199 (A-717+R-482)					—	2,819
	1986	3,940	N.A.	—	N.A.	N.A.	1170 (R-577+R-593)					—	5,110
	1987	2,417	N.A.	—	N.A.	N.A.	1179 (A-545+R-634)					—	3,596
Nos. of E.G.Ms. pending closure at the end of the year i.e. 31 December	1985	1,962	N.A.	—	N.A.	N.A.	245 (A-245+R-NIL)					—	2,207
	1986	322	N.A.	—	N.A.	N.A.	315 (A-NIL+R-315)					—	637
	1987	192*	N.A.	—	N.A.	N.A.	360 (A-360+R-NIL)					—	552

*Pending upto 10 months from the date of departure of vessel.

ANNEXURE 1.6 (Referred to in sub-para 1 of para 1.02)

Provisional assessment cases which were pending as on 31-3-1987 *and finalised during the year* 1987-88.

(No. of cases)

Sr. No.	Collectorate/Custom House	Upto 1984-85			1985-86			1986-87		
		Pending as on 31-3-87	Finalised during 1987-88	Pending as on 31-3-88	Pending as on 31-3-87	Finalised during 1987-88	Pending as on 31-3-88	Pending as on 31-3-87	Finalised during 1987-88	Pending as on 31-3-88
1	2	3	4	5	6	7	8	9	10	11
1	CC (Prev.), Ahmedabad	109	17	92	429	304	125	367	302	65
2	CC&CE, Ahmedabad	10	—	10	9	—	9	242	129	113
3	CC&CE, Rajkot	670	23	15	289	453	468	1,876	348	1,528
4	CC&CE, Baroda	646	—	646	730	—	730	360	3	357
5	CC, Chandigarh	—	—	—	—	—	—	15	15	—
6	Addl. CC, Visakhapatnam	84	51	33	283	174	109	478	347	131
7	Asstt. CC, Hyderabad	44	18	26	191	130	61	159	59	100
8	CC&CE, Meerut	218	—	218	52	—	52	58	—	58
9	CC, Calcutta	951	417	534	457	196	261	1,417	421	996
10	CC, Patna	—	—	—	—	—	—	1	—	1
11	CC, Madras	1,538	375	1,163	486	161	325	1,309	709	600
12	Custom House, Cochin	100	6	94	34	22	12	74	59	15
13	Custom House, Karwar	24	14	10	10	10	—	11	11	—
14	Custom House, Mangalore	141	91	50	108	63	45	260	11	249
15	CCE, Jaipur	—	—	—	46	20	26	259	15	244
16	CC, Delhi	660	350	310	1,028	44	984	1,833	114	1,719
17	Custom House, Bombay (Sea and Air)	Details not available		—	—	—	—	—	-	12,567
	TOTAL	5,195	1,362	3,201	4,152	1,577	3,207	8,719	2,543	18,743

ANNEXURE 1.7 (*Referred to in sub-para* 1 *of para* 1.02)

Yearwise analysis of provisional assessments pending as on 31-3-88 *between machinery imports and other than machinery imports*

(No. of Cases)

Sr. No.	Collectorate/Custom House	Upto the year 1984-85		1985-86		1986-87	
		Machinery Imports	Other than Machinery Imports	Machinery Imports	Other than Machinery Imports	Machinery Imports	Other than Machinery Imports
1	2	3	4	5	6	7	8
1.	C.C. (Prev), Ahmedabad	—	92	—	125	—	65
2.	C.C.E., Ahmedabad	10	—	—	9	26	87
3.	C.C.E., Rajkot	15	—	12	456	14	1,514
4.	C.C.E., Baroda	—	646	—	730	—	357
5.	C.C.E., Chandigarh	—	—	—	—	—	—
6.	Addl. Collr., Vizag	12	21	38	71	19	112
7.	Asst. Collr of Customs and C.E., Hyderabad	—	26	—	61	—	100
8.	C.C.E., Meerut	7	211	10	42	2	56
9.	C.C., Calcutta	467	67	194	67	273	723
10.	C.C., Patna	—	—	—	—	1	—
11.	C.C., Madras	428	735	100	225	281	319
12.	Custom House, Cochin	8	86	1	11	2	13
13.	Custom House, Karwar	—	10	—	—	—	—
14.	Custom House, Mangalore	12	38	1	44	—	249
15.	C.C.E., Jaipur	—	—	1	25	2	242
16.	C.C., Delhi	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
17.	C.C., Bombay						
	(Sea)	——No information is available——					
	(Air)	——No information is available.——					
	Total	959	1,932	357	1,866	620	3,837

NOTE :—N.A.=Not available.

ANNEXURE 1.8 (Referred to in sub-para 1 of para 1.02

Yearwise Analysis of provisional assessment cases pending on 31-3-1988 between private parties and Government companies/ Public Sector undertakings (No. of cases)

S. No.	Collectorate/Custom House	Upto 1984-85		1985-86		1986-87	
		Pvt. Parties	Govt. Companies	Pvt. Parties	Govt. Companies	Pvt. Parties	Govt. Companies
1	2	3	4	5	6	7	8
1	Collector of Customs (Prev.), Ahmedabad	74	18	41	84	51	14
2	Collector of Customs & C.E., Ahmedabad	10	Nil	7	2	108	5
3	Collector of C.E. & Customs, Rajkot	15	Nil	210	258	845	683
4	Collector of C.E. & Customs, Baroda	646	Nil	730	—	357	Nil
5	Collector of CE & Customs, Chandigarh	—	—	—	—	—	—
6	Addl. Collector of Customs, Visakhapatnam	5	28	25	84	29	102
7	Asstt. Collector of Customs, Hyderabad	26	—	61	—	82	18
8	Collector of C.E. & Customs, Meerut	218	—	52	—	58	—
9	Collector of Customs, Calcutta	318	216	181	80	726	270
10	Collector of Customs, Patna	—	—	—	—	1	—
11	Collector of Customs, Madras	800	363	239	86	512	88
12	Custom House, Cochin	76	18	4	8	4	11
13	Custom House, Karwar	2	8	—	—	—	—
14	Custom House, Mangalore	4	46	35	10	212	37
15	Collector of Customs, Jaipur	—	—	26	—	244	—
16	Collector of Customs, Delhi	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
17	Bombay Custom House (Sea and Air)	——No information is available——					
	Total	2,194	697	1,611	612	3,229	1,228

NOTE :—N.A.=Not available.

ANNEXURE 1.9

(*Referred to in sub-para 2 of para 1.02*)

Pace of finalisation of provisional assessment cases during the year 1986-87 (Number of cases)

S. No.	Custom House/Collectorate	(a) Provisional assessment pending finalisation on 1 April 1986	(b) Cases provisionally assessed during 1986-87	(c) Finalisation of cases of provisional assessment during 1986-87	Cases of Provisional assessment pending as on 31 March 1987
1	2	3	4	5	6
1	Collector of Customs (Pre.), Ahmedabad	714	597	406	905
2	Collector of Central Excise & Customs Ahmedabad	192	114	64	242
3	Collector of Central Excise & Customs, Rajkot	1,358	2,370	893	2,835
4	Collector of Central Excise & Customs, Baroda	1,420	494	178	1,736
5	Collector of Customs, Chandigarh	29	115	129	15
6	Addl. Collector of Customs, Visakhapatnam	542	478	175	845
7	Asstt. Collector of Customs, Hyderabad	251	219	76	394
8	Collector of C. Excise & Customs, Meerut.	270	58	—	328
9	Collector of Customs, Calcutta	3,168	1,434	2,711	1,891
10	Collector of Customs, Patna	21	34	54	1
11	Collector of Customs, Madras	2,889	1,354	910	3,333
12	Custom House, Cochin	185	126	103	208
13	Custom House, Karwar	67	11	33	45
14	Custom House, Mangalore	290	266	47	509
15	Collector of Custom, Jaipur	50	371	116	305
16	Collector of Custom, Delhi	2,222	1,886	587	3,521
17	Collector of Customs, Bombay	——No information received——			
	Total	13,668	9,927	6,482	17,113

ANNEXURE 1.10

Statement showing details of cases pending in Courts where parties have gone to Court against demands for duty confirmed by departmental officers

(Referred to in para 1.03

(Amount in Rs. lakhs)

Sl. No.	Name of Collectorate	Where enforcement of demand has been stayed									
		Less than one year		Between 1 to 5 years		Between 5 to 10 years		Above 10 years		Total (1)	
		No. of Cases	Amount	No. of Cases	Amount	No. of Cases	Amount	No. of Cases	Amount	No. of Cases	Amount
1	2	3	4	5	6	7	8	9	10	11	12
1	Ahmedabad	4	5.27	353	2,408.39	179	1,900.64	46	123.96	582	4,438.26
2	Allahabad	2	12.60	10	38.78	44	213.81	19	7.63	75	272.82
3	Aurangabad	—	—	26	144.55	8	323.90	2	0.93	36	469.38
4	Belgaum	5	12.35	31	343.57	11	30.30	1	0.69	48	386.91
5	Bhubaneswar	—	—	109	328.11	41	11.20	4	0.38	154	339.69
6	Bombay-I	17	57.28	23	1,456.83	57	300.85	38	100.01	135	1,914.97
7	Bombay-II	48	259.66	110	2,233.39	48	1,699.16	—	—	201	4,192.21
8	Bombay-III	4	2,366.07	32	1,333.91	47	2,914.15	12	183.23	95	6,797.36
9	Calcutta-I	5	92.31	55	338.33	33	78.93	35	16.14	128	525.71
10	Calcutta-II	17	14.41	55	190.68	212	438.02	104	107.16	388	750.27
11	Chandigarh	15	501.40	10	62.85	14	27.54	5	15.31	44	607.10
12	Cochin	3	46.11	14	377.27	11	47.12	4	0.52	32	471.02
13	Coimbatore	3	32.48	53	42.16	27	100.31	2	16.75	85	191.70
14	Meerut	4	136.41	18	892.47	35	457.48	10	105.74	67	1,592.10
15	Hyderabad	—	—	7	24.36	18	16.32	6	6.37	31	47.05
16	Bolpur	—	—	4	1.89	3	166.38	4	22.75	11	191.02
17	Guntur	—	—	12	42.18	2	12.78	2	5.06	16	60.02
18	Jaipur	2	0.45	15	175.70	11	142.92	5	41.92	33	360.99
19	Kanpur	1	3.25	51	43.64	14	23.69	254	36.16	320	106.74
20	Madras	—	—	31	140.31	36	1,125.65	2	31.46	69	1,297.42
21	Madurai	10	361.94	130	115.13	33	37.86	11	3.84	184	518.77
22	Nagpur	6	124.85	28	194.40	5	8.44	4	40.05	43	367.74
23	Pune	2	189.00	29	720.00	15	116.00	11	11.00	57	1,036.00
24	Trichi	—	—	13	133.43	4	55.23	—	—	17	188.66
25	Goa	3	3.83	2	1.56	—	—	—	—	5	5.39
26	Bangalore	15	56.99	51	1862.96	22	32.42	2	0.60	90	1,952.97
27	Baroda	4	70.00	86	574.00	48	35.00	—	—	138	679.00
28	Indore	22	53.05	191	533.37	4	74.52	—	—	217	660.94
29	Rajkot	4	18.01	4	15.51	11	77.39	—	—	19	110.91
30	Shillong	2	43.46	23	87.14	14	93.13	9	6.84	48	230.57
	Total	198	4,461.18	1,576	14,856.87	1,007	10,561.14	592	884.50	3,373	30,763.69

NOTE : Figures for Delhi and Patna Collectorates have not been furnished by the Ministry of Finance (November 1988).

ANNEXURE 1.10—*contd.*

Statement showing details of cases pending in Courts where parties have gone to Court against demands for duty confirmed by departmental officers

(Amount in Rs. Lakhs)

(Referred to in para 1.03)

Sl. No.	Name of Collectorate	Others										Grand Total 1+2	
		Less than one year		Between 1 to 5 years		Between 5 to 10 years		Above 10 years		Total (2)			
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
1	2	13	14	15	16	17	18	19	20	21	22	23	24
1	Ahmedabad	—	—	19	82.35	27	33.36	10	0.62	56	116.33	638	4,554.59
2	Allahabad	—	—	—	—	1	0.11	11	9.26	12	9.37	87	282.19
3	Aurangabad	1	2.65	—	—	—	—	4	0.10	5	2.75	41	472.13
4	Belgaum	—	—	4	108.10	1	0.16	12	0.15	17	108.41	65	495.32
5	Bhubaneswar	—	—	1	2.52	—	—	—	—	1	2.52	155	342.21
6	Bombay-I	—	—	—	—	3	7.16	1	0.22	4	7.38	139	1,922.35
7	Bombay-II	1	131.67	4	15.18	1	1.11	4	0.57	10	148.53	216	4,340.74
8	Bombay-III	—	—	—	—	2	5.64	—	—	2	5.64	97	6,803.00
9	Calcutta-I	1	1.79	4	15.78	7	2.84	1	0.16	13	20.57	141	546.28
10	Calcutta-II	2	0.41	13	38.26	99	37.25	21	7.67	135	83.59	523	833.86
11	Chandigarh	—	—	—	—	—	—	—	—	—	—	44	607.10
12	Cochin	—	—	7	40.82	—	—	—	—	7	40.82	39	511.84
13	Coimbatore	—	—	—	—	—	—	—	—	—	—	85	191.70
14	Meerut	5	77.85	4	0.62	4	1.38	—	—	13	79.85	80	1,671.95
15	Hyderabad	1	0.07	2	3.17	—	—	1	4.25	4	7.49	35	54.54
16	Bolpur	1	—	1	46.72	32	26.03	3	2.20	37	74.95	48	265.97
17	Guntur	—	—	1	5.13	1	0.32	—	—	2	5.45	18	65.47
18	Jaipur	—	—	2	2.16	1	0.75	—	—	3	2.91	36	363.90
19	Kanpur	2	3.21	6	3.84	24	19.48	2	0.05	34	26.58	354	133.32
20	Madras	—	—	2	38.58	5	0.19	5	291.91	12	330.68	81	1,628.10
21	Madurai	—	—	—	—	1	0.12	2	0.03	3	0.15	187	518.92
22	Nagpur	—	—	4	3.90	—	—	2	0.06	6	3.96	49	371.70
23	Pune	—	—	6	21.00	1	3.00	8	8.00	15	32.00	72	1,068.00
24	Trichi	—	—	12	2.88	—	—	—	—	12	2.88	29	191.54
25	Goa	—	—	—	—	—	—	—	—	—	—	5	5.39
26	Bangalore	3	24.83	4	41.83	—	—	—	—	7	66.66	97	2,019.63
27	Baroda	1	2.00	2	9.00	5	3.00	—	—	8	14.00	146	693.00
28	Indore	8	1.18	270	23.28	530	9.07	—	—	808	33.53	1,025	694.47
29	Rajkot	—	—	—	—	—	—	—	—	—	—	19	110.91
30	Shillong	8	1.40	19	53.71	17	7.89	—	—	44	63.00	92	293.57
	Grand Total	34	247.06	387	558.83	762	158.86	87	325.25	1,270	1,290.00	4,643	32,053.69

NOTE : Figures for Delhi and Patna Collectorates have not been furnished by the Ministry of Finance (November 1988).

ANNEXURE 1.11

Statement Showing details of cases pending before Collector (Appeals) against confirmed demands

(Amount in Rs. lakhs)

(*Referred to in para 1.03*)

Sl. No.	Name of Collectorate	Less than one year		Between 1 to 5 years		Between 5 to 10 years		Above 10 years		Total	
		No. of Cases	Amount	No. of Cases	Amount	No. of Cases	Amount	No. of Cases	Amount	No. of Cases	Amount
1	Ahmedabad	10	3.90	67	43.50	9	5.66	—	—	86	53.06
2	Allahabad	1	0.05	75	89.89	20	5.32	8	0.87	104	96.13
3	Aurangabad	30	85.93	11	60.64	2	0.34	—	—	43	146.91
4	Belgaum	—	—	1	9.67	—	—	—	—	1	9.67
5	Bhubaneshwar	—	—	—	—	—	—	—	—	—	—
6	Bombay-I	13	7.94	34	28.57	32	8.55	8	1.58	87	46.64
7	Bombay-II	3	2.63	10	103.46	1	0.03	4	0.11	18	106.23
8	Bombay-III	2	0.40	15	75.60	27	26.95	2	0.21	46	103.16
9	Calcutta-I	9	45.89	16	99.92	—	—	4	4.60	29	150.41
10	Calcutta-II	125	78.91	22	217.16	44	15.33	23	2.31	214	313.71
11	Chandigarh	19	17.98	38	34.18	12	4.02	—	—	69	56.18
12	Cochin	1	1.62	3	4.11	—	—	—	—	4	5.73
13	Coimbatore	3	0.04	3	—	—	—	—	—	6	0.04
14	Meerut	8	25.01	16	73.68	10	22.02	—	—	34	120.71
15	Hyderabad	4	6.51	—	—	2	0.32	1	0.24	7	7.07
16	Bolpur	—	—	11	12.12	—	—	2	2.62	13	14.74
17	Guntur	1	0.25	—	—	1	2.98	—	—	2	3.23
18	Jaipur	7	15.02	6	60.17	7	12.10	4	33.19	24	120.48
19	Kanpur	35	293.89	14	27.39	12	7.75	—	—	61	329.03
20	Madras	7	60.89	—	—	—	—	—	—	7	60.89
21	Madurai	2	0.60	1	0.02	—	—	—	—	3	0.62
22	Nagpur	3	2.22	15	4.16	4	2.90	—	—	22	9.28
23	Pune	23	52.00	15	52.00	2	0.56	—	—	40	104.56
24	Trichi	—	—	—	—	—	—	—	—	—	—
25	Goa	—	—	—	—	—	—	—	—	—	—
26	Bangalore	20	76.00	9	46.60	—	—	—	—	29	122.60
27	Baroda	5	9.00	42	48.00	16	2.00	—	—	63	59.00
28	Indore	3	17.86	11	51.00	—	—	—	—	14	68.86
29	Rajkot	21	7.88	8	24.97	1	0.02	—	—	30	32.87
30	Shillong	—	—	3	7.36	—	—	—	—	3	7.36
	Grand TOTAL	355	812.42	446	1174.17	202	116.85	56	45.73	1059	2149.17

ANNEXURE 1.12

Statement showing details of cases pending before C.E.G.A.T. against confirmed demands

(Amount in Rs. lakhs)

(Referred to in para 1.03)

Name of the Collectorate	Less than 1 year		Between 1 to 5 years		Between 5 to 10 years		Above 10 years		Total	
	No. of years	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
1. Ahmedabad	5	2.22	78	154.45	32	37.27	21	15.03	136	208.97
2. Allahabad	—	—	4	15.70	10	06.09	4	35.41	18	57.20
3. Aurangabad	1	2.06	40	40.30	10	7.35	2	1.40	53	51.11
4. Belgaum	14	63.76	14	80.76	3	0.76	—	—	31	145.28
5. Bhubaneshwar	4	4.16	75	117.19	15	67.76	—	—	94	189.11
6. Bombay-I	6	28.36	40	81.36	40	33.87	10	3.39	96	146.98
7. Bombay-II	12	504.92	466	497.18	20	33.56	—	—	78	1035.66
8. Bombay-III	2	7.35	21	91.46	21	156.39	6	15.60	50	269.80
9. Calcutta-I	4	8.07	77	228.76	50	46.45	16	11.99	147	295.27
10. Calcutta-II	12	48.19	61	436.25	58	65.68	21	29.25	152	597.35
11. Chandigarh	8	16.08	31	124.11	3	0.85	—	—	42	141.04
12. Cochin	27	315.08	44	136.83	5	12.04	13	0.67	89	464.62
13. Coimbatore	23	92.11	30	82.24	5	12.57	1	0.05	59	186.97
14. Meerut	5	187.60	26	147.06	25	20.91	2	1.10	58	356.67
15. Hyderabad	9	58.50	35	238.35	23	37.57	—	—	67	334.42
16. Bolpur	—	—	23	225.77	6	17.10	—	—	29	242.85
17. Guntur	1	1.46	4	11.23	12	15.55	3	6.68	20	34.92
18. Jaipur	2	2.57	21	44.31	9	12.92	—	—	32	59.80
19. Kanpur	16	136.79	34	86.65	10	18.69	7	4.00	67	246.17
20. Madras	16	280.77	32	113.31	31	72.06	1	1.22	80	467.36
21. Madurai	94	63.17	17	17.94	10	5.56	4	0.17	125	86.84
22. Nagpur	2	50.69	37	112.11	7	3.27	—	—	46	166.07
23. Pune	23	67.00	40	137.00	8	22.00	—	—	71	226.00
24. Trichi	1	2.16	—	—	—	—	—	—	1	2.16
25. Goa	—	—	3	6.48	—	—	—	—	3	6.48
26. Bangalore	29	99.21	62	363.42	4	10.72	—	—	95	473.35
27. Baroda	8	12.00	78	699.00	20	157.00	2	1.00	108	864.00
28. Indore	—	—	18	248.61	2	00.58	—	—	20	249.19
29. Rajkot	7	3.24	16	4.72	1	0.92	2	1.09	26	9.97
30. Shillong	1	0.35	7	6.55	18	73.17	10	80.87	36	160.14
Grand TOTAL	332	2057.87	1014	4543.10	458	948.66	125	208.16	1929	7757.79

ANNEXURE 1.13

Statement Showing details of case of Loss of Revenue to Government due to time bar during the year 1935-86, 1936-37 *and* 1987-88

(Amount in Rs. Crores)

(*Referred to in para 1.03*)

Sl. No.	Name of Collector	1985-86		1986-87		1987-88	
		No.	Amount.	No.	Amount.	No	Amount.
1.	Ahmedabad	—	—	3	0.03	—	—
2.	Allahabad	—	—	2	0.01	—	—
3.	Bhubaneshwar	—	—	—	—	5	0.03
4.	Bombay I	163	5.75	244	20.84	199	12.51
5.	Calcutta II	10	0.09	1	0.03	—	—
6.	Chandigarh	7	0.02	5	0.01	4	0.10
7.	Cochin	4	0.13	7	0.22	11	0.44
8.	Delhi	35	0.43	23	0.99	10	0.54
9.	Hyderabad	1	0.15	2	0.03	—	—
10.	Indore	3	0.01	—	—	—	—
11.	Jaipur	3	0.14	5	0.04	6	0.01
12.	Kanpur	5	0.02	2	0.01	—	—
13.	Madras	—	—	—	—	1	0.19
14.	Patna	29	2.12	8	0.07	24	1.07
15.	Shillong	1	0.01	—	—	3	0.01
16.	Vadodara	1	0.07	25	0.23	2	0.01
	Total	262	8.94	327	22.51	265	14.91

ANNEXURE 1.14

Statement showing the details of closed Units

(*Referred to in para 1.03*)

Sl. No.	Name of Unit	Case file No.	S.C.N. No. & date	Amount
DIVN. No. I FARIDABAD				
1	General Rubber (P) Ltd., Fbd.	V (16A) 3/37/D/83.	CE 3/IAR/GR/RII/82/1336 dated 10-10-83	49,300.27
2	Do.	V(16A) 3/33/D/83.	Do. /83/668 dated 1-6-83	16,264.47
3	National Textile Mills, Fbd.	V(18) 3/40/84/DII	CE-13/BNT/IAR/84/2139-39dated 8-10-84	24,531.60
4	Fritse & Singh Co. Ltd., Fbd.	V(34A) 3/76/81/D	CE/Farm I/P&S/75/1189 dt. 24-6-81	—
5	Anand Synthetics, Fbd.	V(22) 3/39/DII/80	GL 3/IAR/AS/80/167 dt. 22-7-80	18,820.00
DIVN. No. II FARIDABAD				
6	Venus Paper Mills Ltd., Fbd.	V(17) 3/39/85/DII	CE-20/CESS/VPM/85/722 dt. 8-11-85.	10,168.35
7	Do.		CE/IAR/735/83/683 dt. 10-6-83	892.00
8	Do.	V(17) 3/13/83/DII		13,433.17
9	Dhanda Engineers (P) Ltd., Fbd.	V(68) 3/6/86/DII	CE/-R-XI/SCN/DEL/85/117 dated 5-2-86.	1,836.25
10	Dabriwala Steel & Engg. Ltd. Fbd.	V(25) 3/31/85/5	CE-2/Dabriwala/83/1022 dt. 19-6-85.	92,260.07
11	Do.	V(26) 3/23/83/DIII	CE-11/D/Dabriwala/83/1118 dt. 29-8-83.	45,020.14
12	Do.	V(69) 3/14/81/DIII	CE/LAR/Dabriwala/steel/19-3-80 to 27-3-80/7126/8029 dt. 16-4-81.	2,15,924.63
13	Fibre Processors (P) Ltd., Fbd.	V(8) 3/63/D/78	GL 3/Adt. /SRPI/77/3313 dt. 8-6-77.	14,320.18
14	Do.	V(68) 3/1/77/D		70,627.36
15	Do.	V(8) 3/63/78/D	Demand /J.B. Oil/1/78/638-39 dated 28-8-87	2,514.75
DIVN. No. III FARIDABAD				
16	Chemicals Vessels Ltd., Fbd.	V(68) 3/65/84/DIII	GL 3/LAR/RXVI/Chem. 83/767 dated 23-11-84	5,23,745.93
17	Do.	V(29) 3/6/84/DIII	—	5,23,577.00
18	S.G. Steels, Ltd., Fbd.		S.C.N. dated 30-8-84.	99,640.20
19	Do.	V(29) 3/9/84/DII	GL/Demand/S.G. Steel/81/27 dated 16-2-84.	90,833.49
20	Do.	V(26) 3/24/83/DIII	GL 3/IAR/SOS/76/83/1239 dated 20-3-83.	14,688.52
21	Greaves Enterprises, Fbd.	V(68) 3/2/83/DIII	LAR/Greaves/82/84 dated 1-2-83.	18,656.30
22	Physer (India) Ltd., Fbd.		S.C.N. dated 6-11-82.	24,71,628.97
			Total	43,18,323.62

2.03 Imports and Exports and receipts from duties thereon

Value of goods imported and exported during the last three years (wherever available) and collections from duties on imports and exports, classified under statistical headings are given in Annexures 2.1 to 2.4 to this chapter.

2.04 Cost of Collection

The expenditure incurred on collection of customs duties during the year 1987-88 alongside the figures for th e previous year are given below :

(In crores of Rupees)

Cost of collection on	1986-87	1987-88
Revenue-cum-import export and trade control functions	29.82	20.08
Preventive and other functions . . .	90.48	112.93
	120.30	133.01
Cost of collection as percentage of gross receipts	1.02	0.94

2.05 Searches, Seizures and confiscations

The number of searches conducted and seizures effected by the Customs Officers in recent years, as per information made available by the Ministry of Finance, are given portwise in Annexure 2.5 to this Chapter.

The number of cases of confiscation of goods imported or attempted to be improperly exported as per information made available by the Ministry of Finance are given in Annexure 2.6.

2.06 Ad hoc exemptions

Under Section 25(2) of the Customs Act, 1962, the Central Government may, if it is satisfied that it is neecessary in the public interest so to do, by special order in each case, exempt, under circumstances of an exceptional nature to be stated in the order, any goods from the payment of customs duty, where such duty is leviable. The number of such exemptions issued and availed of during the year 1987-88 and the preceding three years are given below :—

	1984-85	1985-86	1986-87	1987-88
(*i*) Number of exemptions issued and availed of	69	91	113	222
(*ii*) Total duty involved (in crores of rupees)	314.71	535.19	588.62	551.21
(*iii*) Number of cases having a duty effect above Rs. 10,000	60	86	106	204
(*iv*) Duty involved in cases at (*iii*) above (In crores of rupees)	314.70	535.19	588.62	551.20

2.07 Verification of end use where exemption from duty was conditional

As per provisions of Section 25 of the Customs Act, 1962, where the Central Government is satisfied that it is necessary in the public interest so to do, they may, by notification in the official gazette, exempt generally, either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of the duty of customs leviable thereon. When Government imposes an end use condition, a bond is obtained from the importer which is enforced for recovery of duty, in case the condition of end use is not fulfilled.

Information on value of goods exempted from duty subject to end use condition, the amount of duty involved value of end use bond held by Customs authorities, and the number of cases where fulfilment of end use condition was verified during the last four years, as furnished by the Ministry of Finance, are given in Annexure 2.7

The value of goods exempted from duty (subject to end use conditions) decreased from Rs. 473.45 crores in 1984-85 to Rs. 384.69 crores in 1987-88. The amount of import duty foregone every year on goods exempted from duty (subject to end use verification) went down from Rs. 501.69 crores in 1984-85 to Rs. 478.44 crores in 1987-88.

2.08 Arrears of Customs duty

The amount of customs duty assessed up to 31 March 1988 which was still to be realised on 31 October 1988 was Rs. 63.13 crores. Of this, Rs. 47.26 crores was outstanding for more than a year. The corresponding amount as on 31 October 1987 was Rs. 18.61 crores. The arrears included Rs. 17.88 crores, Rs. 14.11 crores, Rs. 9.14 crores, Rs. 6.29 crores, Rs. 4.20 crores and Rs. 2.30 crores in Ahmedabad, Bombay, Calcutta, Hyderabad, Jaipur and Madras Collectorates respectively.

2.09 Time barred demands

Of the demands raised by the department up to 31 March 1988 which were pending realisation as on 31 October 1988, recovery of demands amounting to Rs. 7.05 crores raised in Custom Houses and Collectorates was barred by limitation.

2.10 Write off of duty

Customs duties write off, penalties abandoned and ex-gratia payments made during the year 1987-88 and the preceding three years are given below :—

Year	Amount
	(in lakhs of rupees)
1987-88	0.43
1986-87	2.53
1985-86	11.30
1984-85	11.65

2.11 Pendency of Audit objections

The number of audit objections raised in audit upto 31 March 1987 and the number pending settlement as on 30 September 1987 in the various Custom Houses and combined Collectorates of Customs and Central Excise are given below:—

Number of outstanding objections and amount of revenue involved

Name of Custom House or Collectorate	Raised upto 1983-84		Raised in 1984-85		Raised in 1985-86		raised in 1986-87		Total	
	No.	Amount (Rs. in lakhs)	No.	Amount (Rs. in lakhs)	No.	Amount (Rs. in lakhs)	No.	Amount (Rs. in lakhs)	No.	Amount (Rs. in lakhs
1	2	3	4	5	6	7	8	9	10	11
1. Collector of Customs Ahmedabad, including Collector of Cus. (Prevn.) Ahmedabad, Vadodra and Rajkot	1	0.05	1	39.93	16	72.98	25	849.19	43	962.15
2. Collector of Customs, Bangalore	2	—	—	—	59	13.01	3	—	64	13.01
3. Collector of Customs, Bombay	25	80.52	29	28.99	29	51.19	13	26.60	96	187.30
4. Collector of Customs, Calcutta, Collector of Customs (Prevn.), West Bengal, Collector of Customs, Shillong	6	3.55	31	485.64	34	74.01	76	809.78	147	1,372.98
5. Collector of Customs & Excise, Chandigarh	1	0.71	1	5.60	1	0.57	2	2.42	5	9.30
6. Collector of Customs, Cochin	—	—	2	0.48	2	0.06	14	23.50	18	24.04
7. Collector of Customs, Delhi	49	6.47	39	8.12	72	32.96	179	117.39	339	164.94
8. Collector of Customs & Excise, Guntur	4	—	1	—	5	—	9	—	19	—
9. Collector of Customs, Madras	196	83.21	563	175.37	979	127.76	1,249	229.66	2,987	616.00
10. Collector of Customs, Tiruchirapalli	1	—	4	—	8	0.31	14	1.00	27	1.31
11. Additional Collector of Customs, Visakhapatnam	3	—	16	21.83	14	9.45	15	72.61	48	103.89
12. Collector of Central Excise, Meerut, Kanpur, Allahabad	5	1.33	6	2.28	5	4.60	13	300.63	29	308.84
13. Collector of Customs, Prevn. Patna	1	0.02	1	9.19	—	—	—	—	2	9.21
14. Collector of Central Excise, Jaipur	3	11.84	3	0.05	9	1.49	8	3.24	23	16.62
15. Collecort of Customs & Central Excise, Coimbatore	—	—	—	—	3	—	3	—	6	—
Total	297	187.70	697	777.48	1,236	388.39	1,623	2,436.02	3,853	3,789.59

The outstanding objections fall under the following categories :—

(Rupees in lakhs)

S. No.	Category of objections	Amount
1	Short levey due to misclassification	1,164.84
2	Short levey due to incorrect grant of exemption	427.73
3	Non-levy of import duties	217.79
4	Short-levy due to under valuation	124.41
5	Irregularities in grant of draw back	24.14
6	Irregularities in grant of refunds	75.30
7	Irregularities in levy and collections of export duty	0.98
8	Other irregularities	1,741.63
9	Over assessment	12.77
	Total	3,789.59

The Ministry of Finance stated (September 1988) that the pendency of audit objections was kept under constant review and Collectorates were being instructed to settle audit objections expeditiously.

2.12. Results of audit

Test check of records in Custom Houses/Collectorates conducted in audit during 1987-88 revealed short levy of duties, irregular payments of refund, excess/irregular payments of draw-back and losses of revenue amounting to Rs. 9.72 crores. The department has accepted short levies and irregular refunds and drawback amounting to Rs. 4.50 crores. Over assessments and short payments by department detected in audit and pointed out to department also amounted to Rs. 14.40 lakhs.

Some of the important irregularities, noticed in audit, are given in the following paragraphs categorised as follows :

(a) Short levy due to misclassification.
(b) Non-levy of import duties.
(c) Short levy due to undervaluation.
(d) Short levy due to incorrect grant of exemption.
(e) Application of incorrect rates of duty.
(f) Mistakes in computation.
(g) Irregularities in the payments of drawback.
(h) Irregular refund.
(i) Non-levy of export duty.
(j) Other irregularities.

SHORT LEVY DUE TO MISCLASSIFICATION

2.13 Railway and tramway locomotives, rolling stocks

Railway or tramway maintenance or service vehicles like cranes are classifiable under heading 86.04 of the Customs Tariff. According to the harmonised system, railway breakdown cranes if they are mounted on wagons or trucks of a kind suitable for coupling to a train designed to run on a railway net-work are classifiable under heading 86.04 of the Customs Tariff Act, 1975. 'Breakdown cranes' used by the Railway are classifiable under heading 86.04.

On a consignment consisting of "Complete railway break-down crane" amplified as "self propelled power crane operated on rails" and "lifting tackles" amplified as "specially designed component parts of the above crane" imported in August 1986 auxiliary duty of customs was levied at nil rate and 25 per cent ad valorem respectively, classifiying the items under heading 84.26 and 84.31 respectively. Another consignment of 'railway breakdown crane' imported in May 1986 was also cleared free of auxiliary duty under heading 84.26.

It was pointed out in audit (July and November 1987) that as the subject goods being railway breakdown cranes and parts thereof, they were classifiable under heading 86.04 and chargeable to auxiliary duty at 40 per cent ad valorem. The misclassification resulted in duty being levied short by Rs. 2.90 crores.

The Ministry of Finance, while confirming the facts, stated that an amount of Rs. 2.73 crores had already been recovered and the balance amount was under recovery process.

2.14 Iron and Steel products

(*i*) 'Seamless stainless steel tubes' are classifiable under sub-heading 7304.49 of the Custom Tariff Act, 1975 and chargeable to basic customs duty at 300 per cent ad valorem plus auxiliary duty at 40 per cent ad valorem with additional duty at Rs. 385 per tonne under sub-heading 7303.21 of the Central Excise Tariff Act, 1985.

A consignment of 'seamless stainless steel U-tubes cold finished ASTM A 213 Type 316 L' (Tube bundle for heat exchanger), imported through a major Custom House in May 1986, was assessed to duty under sub-heading 8419.50 of the Customs Tariff Act, 1975 at 70 per cent ad valorem (basic) and at 40 per cent ad valorem (auxiliary) with the additional duty at 15 per cent ad-valorem. Metal tubes and pipes which are parts of general use would be classifiable under section XV as base metals and not as parts of the heat exchanger. The incorrect classification of 'seamless stainless steel tubes' under Chapter 84 as part of the head exchanger instead of under Chapter 73 (base metals) resulted in duty being levied short by Rs. 19.66 lakhs.

On this being pointed out in audit (February 1987), the department contended that the 'U' tubes were to be simply arranged in a particular manner to suit the requirements of heat exchanger and that without undergoing any change in size and shape they formed part of the assembly of tubes required for heat exchanger.

The contention of the department is not acceptable since the 'U' tubes imported for the purpose of manufacture of 'tube bundle' were assembled, fabricated, drilled and fastened with materials like 'U' tubes, long Baffles, Bundle Runner Bar, Imprigment Plate, Tie-Rods, Spacer Tube, Tube sheets and Flex Nuts. The goods at the point of importation would, therefore, not become a part of heat exchanger unit until their manu-

facturing operations were complete. The goods imported would, thus, merit classification under Chapter 73 of the Customs Tariff Act, 1975 only.

The Ministry have confirmed the facts.

(*ii*) Grinding balls are classifiable under heading 7326.11 of the Customs Tariff Act, 1975. Parts of grinding balls mills are, however, classifiable under heading 98.06. In terms of a notification 69—Cus- issued on 1 March 1987, the effective rate of basic cus toms duty leviable on the parts of grinding balls mills was 45 per cent ad valorem and they were also exempted from additional duty.

"Grinding balls" imported in October 1987 were classified under heading 98.06 of the customs tariff Act, 1975 and assessed to the concessional rate of 45 per cent ad valorem in terms of the aforesaid notification treating the goods as parts of raw grinding ball mill. It was pointed out in audit (March 1988) to the department that grinding balls were not parts of raw grinding balls mills and as such were not classifiable under heading 98.06. They were classifiable under the specific heading 7326.11 attracting basic customs duty at 100 per cent and additional duty at 15 per cent ad valorem. Misclassification of the goods resulted in duty being levied short by Rs. 1,33,069.

The Ministry of Finance have confirmed the facts.

2.15 Machines, mechanical appliances and other equipments including parts

(*i*) Parts of articles of Chapter 84 of the Customs Tariff Act, 1975 are assessable under heading 98.06 even though they may be covered by a more specific heading elsewhere in the aforesaid Tariff.

As per note 7(d) to Chapter 98 of the Customs Tariff Act, 1975 read with notification No. 132/87 Cus. issued on 19 March 1987, various parts of machinery, having general application, including those of machinery falling under headings 8481.80, 8483.10 8430.40 and 85.04 were excluded from being classified under heading 9806.00 ibid. Customs duties on those parts were. therefore, leviable at the rates applicable to headings of the machinery concerned.

(*a*) A consignment of parts of articles falling under heading 84.08 imported in July 1987, was classified under heading 98.06. It was noticed that the consignment also included, besides other things, 'crank shaft' and 'gear box'. They were correctly classifiable under heading 84.83 instead of heading 98.06. The misclassification resulted in duty being levied short by Rs. 2,71,147.

On the mistake being pointed out by Audit (January 1988) the Collectorate realised the short levied duty (May 1988).

The Ministry of Finance have confirmed the facts.

(b) Parts of various machinery of general application included in the table appended to the aforesaid notfication dated 19 March 1987 were allowed to be cleared during the period from 1 April 1987 to 11 August 1987 from a customs bonded warehouse by classifying them under heading 9806.00. These parts were correctly classifiable under sub-headings 8481.80,8483.10,8483.40 and 85.04.

On the misclassifications being pointed out in audit in December 1987, the department accepted the objection and recovered the short levied amount of Rs.1,69,552 in February and April 1988.

The Ministry of Finance have confirmed the facts.

(c) "Output and input sleeve assembly complete' amplifled as 'parts of machanical transmission equip ments" imported through a major Custom House in April 1987 was classified under heading 98.06 and assessed to basic customs duty at 45 per cent plus auxiliary duty at 40 per cent with additional duty at "nil" rate in terms of the aforesaid notification dated 19 March 1987.

It was pointed out in audit (September 1987) that since the subject goods were imported after 19 March 1987, they were not eligible for classification under heading 98.06 and would fall under sub-heading 8463.90 and be assessable to basic customs duty at 100 percent and auxiliary duty at 40 per cent with additional duty at 20 per cent under heading 84.83 of the Central Excise Tariff Act, 1985. The misclassification resulted in duty being levied short by Rs. 2,68,900.

The department, while admitting the misclassification (March 1988) clarified, after checking up with the technical write-up and drawings submitted by the importer, that the subject goods were found to be complete assembly of hollow shafts and these would have to be treated as "transmission shafts" classifiable under heading 8483.10 of the Customs Tariff Act, 1975.

The short levy of duty on account of misclassification after taking into account the clarification of the department amounted to Rs. 1,43,603.

The Ministry of Finance have confirmed the facts.

(ii) Goods described as "cooling system for hydraulic system" imported along with a grinding machine through a major Custom House in September 1983, were assessed to basic Customs duty under heading 84.45/48 of the Customs Tariff Act, 1975 at 40 per cent ad valorem plus auxiliary duty at 20 per cent ad valorem and additional duty at 10 per cent ad valorem under item 68 of the erstwhile Central Excise Tariff.

It was enquired in audit (April 1984) whether any refrigerating principle was involved in the cooling system in which case, additional duty would be leviable under item 29 A of the erstwhile central Excise Tariff. On further examination the Custom House stated (February 1988) that refrigerating principle was involved and the cooling system was correctly assessable to duty under heading 84.15 (1) of the Customs tariff Act, 1975 at 40 per cent plus auxiliary duty at 20 per cent ad valorem with additional duty under item 29 A ibid at 80 per cent ad valorem with special excise duty at 5 per cent thereon.

The Custom House also stated that importers were also asked to pay the differential duty amounting to Rs. 2,31,100. Report on recovery has not been received.

The Ministry of Finance have confirmed the facts.

2.16 Articles of Mica and of similar materials

Two consignments of goods described as "samica therm tape" and "Samica flex tape" imported through a major port between December 1982 and June 1985, were assessed to basic customs duty at 100 per cent ad valorem under heading 68.01/16(1) of the Customs Tariff Act, 1975 as an article of mica as well as at 60 per cent ad valorem under heading 70.20 ibid as an article of glass. For purposes of levy of additional duty the goods were classified under item 22 F of the erstwhile Central Excise Tariff and assessed duty free in two cases in terms of a notification of March 1976 covering glass fabrics and under item 68 ibid in other cases.

The inconsistency in the assessments was pointed out in audit (June 1983 and December 1985) As the test reports indicated predominance of mica, classification under heading 68.01/16(1) of the Customs Tariff Act, 1975, was considered more appropriate. The Custom House, after examination, decided (March 1988) that the goods in question were correctly classifiable under heading 68.01/16 (1) of the Customs Tariff Act, 1975 for basic customs duty at 100 per cent ad valorem and for additional duty under item 68 of the erstwhile Central Excise Tariff. Report on recovery of the short levied amount of Rs. 3,35,567 in three cases has not yet been furnished.

The Ministry of Finance, while confirming the facts, stated (November 1988) that, out of 3 cases involved demand notice had been issued in one case for Rs. 86,877 which was yet to be confirmed and, in the remaining two cases, persuasive action was initiated to recover the amount by way of voluntary payments.

2.17 Mineral oils

Furnace oil which is ordinarily used as furnace fuel, is assessable to additional duty at the rate of Rs. 127.10 per kilolitre under sub-heading 2710.50 of the Central Excise Tariff Act, 1985. Petroleum oils and their preparations falling under heading 27.10 of the Tariff for which no specific sub-heading has been provided are assessable under sub-heading 2710.80 at 20 per cent ad valorem plus Rs. 250 per tonne. Mineral oil in which the weight of the aromatic constituents exceeds that of non-aromatic constituents and for which no specific sub-heading has been provided in the Tariff is assessable at Rs. 2,750 per kilolitre under sub-heading 2787.90.

Six consignments of 'aromatic rubber plasticisers dutrex 729 UK' imported between June 1986 and July 1987 were assessed to additional duty under sub-heading 2710.50 of the Central Excise Tariff.

It was observed in audit (January 1987) that since the subject goods were rubber plasticisers and were not ordinarily used as furnace oil, they were not classifiable under sub-heading 2710.50 but were classifiable under 2710.99 as an unspecified type of mineral oil, subject to the chemical examination of the composition of the substance. Differential duty on this basis in the aforesaid six cases worked out to Rs. 3,41,925.

The department obtained a test report on the composition of the substance in the light of the audit comments and clarified (February 1988) that weight of the non-aromatic constituents of the goods did not exceed that of the aromatic constituents as per chemical composition and hence the subject goods were appropriately classfiable under sub-heading 2707.90.

In view of the aforesaid report of Dy. Chief Chemist the short levy of duty on the six consignments resulted in duty being levied short by Rs. 3,25,895. Report on recovery has not been received (June 1988).

The Ministry of Finance have stated (November 1988) that even though 'Dutrex 729" was originally assessed under heading 2710.99 of Central Excise Tariff, on the misclassification being re-examined at the instance of audit on the basis of the chemical composition of the substance, the Deputy chief chemist advised the classification of the goods under heading 2707.90 ibid; the Ministry have added that demand for the revised amount of short levy had been issued consequent to the classification of the goods under heading 2707.90.

The fact remains that the audit observations led to the reassessment in this case.

2.18 Electrical machinery and equipment

Goods, described as "typewriters and Power source. transformers" imported along with a "Mitsui Seiki Machining Centre Machine" and cleared in November 1984 from a public bonded warehouse, were classified as a machine tool under heading 84.45/48 of the Customs Tariff Act, 1975 attracting basic customs duty at 40 per cent ad valorem with auxiliary duty at 25 per cent ad valorem plus additional duty at 10 per cent ad valorem under item 68 of the erstwhile Central Excise Tariff.

It was pointed out in audit (May 1985) that the goods described as typewriter being "NC controlled pro Typer for typing, making tape and punch out from NC Memory" would fall under heading 84.51/55 ibid and attract basic customs duty at 100 per cent ad valorem with auxiliary duty of 40 per cent ad valoerm plus additional duty of customs at 20 per cent ad valoerm with special excise duty at 5 per cent thereon under item 33 D of the erstwhile Central Excise Tariff. Power source transformer, in the absence of details regarding its core and output voltage, would be classifiable under heading 85.01(3) ibid, attracting basic customs duty at 100 per cent ad valorem with auxiliary duty at 40 per cent ad valorem plus additional duty at 10 per cent ad valorem under item 68 of the erstwhile Central Excise Tariff. This resulted in duty being levied short by Rs. 1,07,158.

The Custom House admitted the objection and recovered the short levied amount (August 1985).

The Ministry of Finance have confirmed the facts.

2.19 Parts of motor vehicles

(*i*) In terms of Note 2(e) of Section XVII of the Customs Tariff Act, 1975, while transmission parts of vehicles in the nature of integral parts of engines and motors, would fall under heading 84.83 ibid, other transmission parts would be classifiable as parts of vehicles to which they relate.

Motor vehicle parts "Universal joint" and "Worm-wheel" cleared in December 1986 through a major Custom House were clasified under heading 84.83 and charged to basic customs duty of 60 per cent ad valorem with auxiliary duty at 40 per cent ad valorem plus additional duty of 20 per cent ad valorem under heading 84.83 of the Central Excise Tariff.

It was pointed out (July 1987) in audit that as per the technical writeup, the goods were not integral parts of engines and motors, and hence merited classification under heading 8708.90 of the Customs Tariff Act, 1975 attracting basic customs duty of 100 per-cent ad valorem with auxiliary duty of 40 per cent ad valorem plus additional duty of 20 per cent ad valorem under heading 87.08 of the Central Excise Tariff. This resulted in duty being levied short by Rs. 1,24,619.

The Custom House admitted the objection (February 1988). Report on recovery has not been received (March 1988).

The Ministry of Finance have confirmed the facts.

(*ii*) Parts and accessories of motor vehicles are classifiable under heading 87.04/06 of the Customs Tariff Act, 1975.

Several spare parts for dumpers cleared in October 1985 by a public Sector undertaking were classified under heading 84.23 ibid and assessed to customs duty at 40 per cent ad valorem while some transmission parts were classified under heading 84.63 (1) and assessed to customs duty at 60 per cent ad valorem. As the spare parts were for a dumper (motor vehicle). it was pointed out in audit (July 1986) that these were correctly assessed under heading 87.04/06(1) at 100 per cent ad valorem. This resulted in duty being levied short by Rs. 1,21,048. The Custom House admitted the objection (November 1987).

Report on recovery has not been received.

The Ministry of Finance have confirmed the facts.

2.20 Synthetic resins and plastic materials

'Silicones in primary forms', are classifiable under sub-heading 3910.00 of the Customs Tariff Act, 1975. As per note 6 in Chapter 39, the expression 'primary forms' applies to forms viz. liquids and pastes including dispersions and solutions. Accordingly, silicone oil imported into India was chargeable to basic customs duty under sub-heading 3910.00 at 150 per cent ad valorem. Auxiliary duty and additional duty were also chargeable at 40 per cent each ad valorem.

A consignment of silicone oil imported by a unit engaged in the manufacture of nylon and polyester fibre/yarn and cleared from a public bonded warehouse during December 1986, was assessed at the concessional rate of basic customs duty of 60 per cent ad valorem under sub-heading 3403.99 as preparations for oil and grease treatment of textile material instead of under sub-heading 3910.00. Auxiliary duty and additional duty were charged at 40 per cent ad valorem and 12 per cent ad-valorem respectively.

The incorrect classification under sub-heading 3403.99 resulted in duty being levied short by Rs. 2,70,640.

On the misclassification being pointed out in audit in January 1988, the department accepted the facts as substantially correct and intimated (May 1988) that the party had deposited the amount of Rs. 2,70,640 in April 1988 under protest.

The Ministry of Finance have confirmed the facts.

2.21 Other goods

Tyres, made of rubber, were classifiable under heading 40.05/16(2) of the Customs Tariff Act, 1975 attracting basic customs duty at 100 per cent ad valorem.

A consignment of Duthane tyres, imported in December, 1985, was assessed to basic customs duty at 60 percent ad valorem under heading 87.07 treating the goods as parts of forklift trucks.

'Duthane' is a proprietary trade name for a type of synthetic rubber and so tyres made of 'Duthane' are synthetic rubber tyres identifiable and consequently classifiable under heading 40.05/16(2), attracting basic customs duty at 100 per cent ad valorem instead of at 60 per cent ad valorem under heading 87.07.

On this being pointed out in audit (September 1986) the department stated (October 1986) that the goods were not made of rubber, were fitted with steel rims specially designed as parts of forklifts and hence were not classified under heading 40.05/16(2) *ibid.*

The department's contention is not acceptable as it has been established by chemical definition that 'Duthane' is a type of synthetic rubber and the basic position as to 'Duthane tyre' being a 'synthetic rubber tyre' is not altered on account of special steel fittings. Further, it is seen from subsequent assessments (May 1987) made that Duthane tyres have been classified by the same Custom House under chapter 40 as rubber tyres.

Short levied amounts on six more consignments of Duthane tyres, in respect of those imported between July 1983 and May 1986, worked out to Rs. 1,14,490.

The Ministry of Finance stated that the said tyre was moulded on the rim which was inbuilt with hub.

The Ministry added that the moulding fused the polyurethane portion with the rim and hub makes it inseparable unlike in the the case of ordinary tyres. The Ministry was therefore of the view that the goods in question are an assembly of wheel and tyre and cannot be identified as tyre only.

The reply of the Ministry is not acceptable because the relevant catalogue described the goods as "tyres" and the invoice attached to the bill of entry described the goods as 'Duthane Tyres'. The fact remains that the goods have not lost their identify as 'tyres' and further the subsequent assessments of these goods made in the same custom House confirm that the goods are known as tyres only in the trade parlance.

NON LEVY OF IMPORT DUTIES

2.22. Non Levy/Short Levy of Auxiliary Duty

(*i*) As per notification 111-Custom dated 1 March 1987, 'charts and plans' classifiable under Chapter 49 of the Customs Tariff Act, 1975 are exempted from the whole of auxiliary duty leviable thereon.

On a consignment of drawings having assessable value of Rs. 46,43,684 imported through a major Custom House in August 1987, auxiliary duty was not levied in terms of the said notification.

It was pointed out (January 1988) in audit that the imported goods being 'drawings' of industrial use and commercial value and not 'charts and plans', auxiliary duty was leviable at 40 per cent ad valorem. Non levy of auxiliary duty resulted in duty being levied short by Rs. 18,57,470. The Collector admitted the short levy and stated (May 1988) that as the assessments were part of project imports, they were provisional. As such the short levy of duty was recoverable.

(*ii*) As per a notification of March 1983, paper money, printed books, periodicals, maps, charts and plans were, inter-alia, exempt from the whole of the auxiliary duty leviable thereon.

A consignment of 'diagrams and drawings' imported (April 1983) through a major Custom House was exempted from the whole of auxiliary duty under the said notification.

It was pointed out in audit in June 1986 that 'diagrams and drawings' would not be eligible for the exemption from auxiliary duty as the notification did not specifically cover them. The Custom House admitted the objection and stated (April 1987) that particulars of recovery of short levied amount of Rs. 46,645 would be intimated in due course.

Report on recovery has not been received (December 1987).

The Ministry of Finance stated (July and October 1988) that diagrams and drawings had been exempted from auxiliary duty since charts and plans were already covered by auxiliary duty exemption. The Ministry, therefore, contended that the meaning of the word 'plan' is 'drawing' as per Concise Oxford Dictionary and hence 'plans' and 'drawings' were synonymous. Apart from this the Ministry felt that 'charts' were sheets of tabulated and diagrammatic information and hence charts and plans were not essentially different from diagrams and drawings

The Ministry's reply is not acceptable because the Collectors of Customs in the tariff conference held at Bombay in August 1982 had accepted the views that in C.T.A. headings 'plans' and 'drawings' were shown as different articles. Further, the word 'drawings' has not been specifically mentioned in the exemption notification. As a matter of fact the Ministry have already accepted the above view in Para 1.50(*a*) of Audit Report 1985-86.

(*iii*) On imported goods classifiable under heading 8515.39 of the Customs Tariff Act, 1975 auxiliary duty was leviable at 40 per cent with effect from 1 March 1986.

On consignment of welding units with assessable value of Rs. 12,71,258 imported in 1985 and cleared from bond (September 1986), basic customs duty was levied at the appropriate rate under heading 8515.39 *ibid* but auxiliary duty was levied at 25 per cent against the correct rate of 40 per cent. This resulted in short levy of duty of Rs. 2,19,292 plus interest due thereon under Section 61(2) on account of delay in clearing the goods.

On the mistake being pointed out in audit in November 1987, the department accepted (February 1988) the objection.

The Ministry of Finance, while confirming the recovery of the short levied amount of Rs. 2,19,292, stated (September 1988) that the interest amount of Rs. 26,308 was being recovered.

2.23. Non levy/Short levy of Auxiliary Duty on goods imported under project contract

(*i*) Goods imported in accordance with the regulations framed under the provisions of Section 157 of the Customs Act, as project imports, are classifiable under heading 98.01 Goods falling under heading 98.01 of Customs Tariff Act, 1975 are assessable to customs duty at 30 per cent ad valorem in terms of notification 132/85-Cus dated 19 April 1985 and auxiliary duty at 25 per cent ad valorem under another notification 313-Cus. dated 13 May 1986.

(*a*) On a consignment of "web off set rotary printing machine" (assessable value Rs. 2,65,65,590) imported in February 1987 through a major Custom House, customs duty was levied as project import under heading 98.01. However, no auxiliary duty was levied on the ground that the goods on merits would be classifiable under heading 84 of the Customs Tariff Act, 1975 and would be assessable to a concessional rate of basic Customs duty of 30 per cent ad valorem in terms of notification 114-Cus dated 19 June 1980 (as amended) plus nil auxiliary duty in terms of notification 312-Cus dated 13 May 1986.

It was pointed out (August 1987) in audit that since the goods were registered under project contract, the same were liable to the concessional rates of duty under the project contracts under heading 98.01 of Customs Tariff Act, 1975 and, therefore, attract auxiliary duty at 25 per cent ad valorem. Non-levy of auxiliary duty on the the imported goods, in terms of the notification 312-Cus dated 13 May 1986, resulted in duty being levied short by Rs. 66,41,390.

(b) A consignment of 'Induction Melting Furnace' imported through a major Custom House during November 1986 was classified under tariff heading 98.01 of the Customs Tariff Act, 1975 as project imports and charged to customs duty at 30 per cent ad valorem with 'Nil' auxiliary duty as per notification No.187 dated 1March 1986 which did not cover goods classifiable under heading 98.01 ibid.

It was pointed out (August 1987) in audit that as the goods were project imports (heading 98.01) duty was chargeable at the rate of 30 per cent ad valorem with auxiliary duty at 25 per cent ad valorem applicable to project imports. Non-levy of auxiliary duty resulted in duty being realised short by Rs. 5,27,780.

(c) A consignment of 'Gear shaving Machine' imported through a major Custom House during November 1986 was classified under tariff heading 8461.40 of the Customs Tariff Act, 1975 and charged to customs duty at 35 per cent ad valorem with 'Nil' auxiliary duty in terms of a notification 188-Cus dated 1 March 1986.

It was pointed out (July 1987) in audit that as the goods were of 'project imports' customs duty was chargeable at the project rate of 30 per cent ad valorem with auxiliary duty at 25 per cent ad valorem under heading 98.01 of the Customs Tariff Act,1975.

On this being pointed out, the department stated (December 1987) that the benefit of exemption from auxiliary duty could be extended to the goods under 'project imports' if such benefits are available to the said goods under any other heading of the Customs Tariff.

As per the clarification contained in the Board's letter of 8 August 1987, once a contract is registered as for initial setting up or for substantial expansion of an existing plant, the imports covered by the contract become classifiable under the heading 98.01 of the Customs Tariff liable to duty at the project rate. Therefore, the concessional rate available under some other notification would not apply to goods of project imports. This resulted in duty being levied short by Rs. 2,79,946.

(d) A consignment of 'PVC resin' imported through a major Custom House in February 1987, was classified under heading 98.01 as project import and charged to auxiliary duty at 'Nil' rate as per a notification 187-Cus issued on 1 March 1986, which covered PVC resins classifiable under Chapter 39.

It was pointed out (February 1988) in audit that the exemption notification 187/86 exempted the levy of auxiliary duty on PVC resins falling under Chapter 39 of the Customs Tariff Act, 1975 and since the goods were classified under heading 98.01 ibid, the same attracted auxiliary duty at 25 per cent ad valorem. Non-levy of auxiliary duty resulted in duty being realised short by Rs.1,84.490.

(ii) As per a notification dated 24 May 1985 goods falling under heading 84.66 of the Customs Tariff Act, 1975 are chargeable to auxiliary duty at 25 per cent ad valorem.

A consignment of 'Asea press pair automatic pouring furnace' imported through a major Custom House in July 1985 was assessed to customs duty at 80 per cent ad valorem under heading 84.66 of Customs Tariff Act, 1975, read with a notification of April 1985. However, no auxiliary duty was levied on the goods by extending the benefit of another exemption notification dated 17 March 1985. It was pointed out in audit that as the notification dated 17 March 1985 did not cover heading 84.66, the grant of exemption from auxiliary duty to the said consignment was irregular and resulted in non levy of auxiliary duty of Rs. 5,49,708.

The department stated (June 1986) that the goods besides being eligible to fall under heading 84.66 of the Customs Tariff Act, 1975 would be classifiable on merits under heading 84.14 or 84.11 which are covered by serial no. 14 of the table appended to the exemption notification of March 1985 as amended.

The contention of the department is not acceptable because wherever exemption from auxiliary duty is granted specific tariff headings specifying the goods are mentioned in the notification itself.

The exemption from auxiliary duty under the notification of March 1985 being specific for the heading 84.14 or 84.11 the same would not cover the subject goods which were classified under heading 84.66.

In reply to sub-paras (i) and (ii), the Ministry of Finance stated (August, September and November 1988) that the practice in the Custom Houses was to allow concurrent benefit of exemption even for the goods which were imported under a project contract and classified under heading 84.66. The Ministry added that this was based on the decision taken in a conference of officers of the department and also based on a decision of CEGAT. The Ministry added that, only on 8 August 1987, the Board took a final view that, once a contract for project import is registered under heading 98.01 of Customs Tariff Act, 1975 (earlier heading 84.66 of Customs Tariff Act), such goods cannot be classified on merit under any other heading and any differential rate of duty prescribed by exemption notification of individual goods will not be applicable for assessment of project goods. The Ministry, therefore, contended that assessments, which were made prior to 8 August 1987, were based on established practice.

The Ministry's view that the assessment was based on established practice is not acceptable since the issue was one of applicablility of the exemption to goods covered by specific headings. The exemption notifications are to be construed strictly and anything which is not specifically mentioned in the notification should not be read into it or intended by the wording of the notification. The clarification issued by the Ministry on 8 August 1987 was only a corollary to the aforesaid principle and the Government's instructions dated 8 August 1987 were only clarificatory in nature on the disputed point which too has already been confirmed by the department.

2.24. Short levy of Auxiliary Duty due to application of incorrect exemption notification

(i) As per notification 114/Cus dated 1 March 1987 certain specified goods falling within the chapters indicated against them are assessable to auxiliary duty at the concessional rate of 25 per cent ad valorem. Chapter 98 is not specified in that notification.

On a consignment of 'hot strip mill 2 to 5 roughings stand work roll' imported in March 1987 basic Customs duty was levied at 45 per cent ad valorem under heading 98.06 and auxiliary duty was levied at the concessional rate of 25 per cent ad valorem in terms of the aforesaid notification dated 1 March 1987.

It was pointed out in audit (September 1987) that since Chapter 98 was not specified in the said notification the subject goods were not eligible for the concessional rate of auxiliary rate of 25 per cent and would attract auxiliary duty at 40 per cent ad valorem. The irregular grant of exemption resulted in duty being levied short by Rs. 95,447.

The collectorate admitted the mistake and realised the short levied amount (February 1988).

The Minisrty of Finance have confirmed the facts.

(ii) while 'ladles' fall under heading 84.54 of the Custom Tariff, parts thereof are classifiable under heading 98.06.

According to notification 112/87-Cus dated 1 March 1987, certain specified goods falling within the chapters indicated against them in the said notification are exempted from the whole of auxiliary duty leviable thereon. Although Chapter 84 is specified in the notification, Chapter 98 is not specified therein.

A consignment described as 'spring pad assembly with stainless steel springs' amplified as 'parts of teeming ladles slide gate system' was classified (August 1987) under heading 98.06 and assessed to basic customs duty at 45 per cent ad valorem without additional duty in accordance with a notification 69-Cus dated 1 March 1987. No auxiliary duty was levied by applying the aforesaid notification (112/87).

It was pointed out in audit (February 1988) that since Chapter 98 is not specified in the said notification the subject goods were not eligible for the exemption granted therein and would attract auxiliary duty at 40 per cent ad valorem. The irregular grant of exemption resulted in duty being levied shotry by Rs.67,763.

The short levy of duty was pointed out in audit to the department in February 1988 and to the Ministry of Finance in September 1988. The Ministry of Finance have confirmed the facts.

2.25. Non-levy of additional duty under Section 3(1) of Customs Tariff Act, 1975

Under Section 3(1) of the Customs Tariff Act, 1975, in addition to basic customs duty leviable on imported goods, an additional duty is leviable at a rate equal to the excise duty for the time being leviable on like goods produced or manufactured in India.

(*i*) As per a notification 188-Customs dated 29 April 1987 "electron guns" when imported into India were exempt from basic customs duty in excess of 50 per cent ad valorem and the whole of additional duty. By an amendment notification No. 230-Cus. dated 5 June 1987, the exemption from additional duty was withdrawn. Hence electron guns imported on or after 5 June 1987 became liable to additional duty at 15 per cent ad valorem under heading 85.40 of the Central Excise Tariff Act, 1985.

In respect of a consignment of 'electron guns' imported through an Air Cargo Complex in November 1987 by a public sector undertaking, no additional duty was levied with reference to the aforesaid notification dated 29 April 1987.

When Audit pointed out (March 1988) that exemption from additional duty was not availble to these goods as they were imported in November 1987, the Custom House accepted the objection and recovered the short levied amount of Rs. 4,51,070 in May 1988.

The Ministry of Finance have confirmed the facts.

(*ii*) On import of a colour scanner for use in printing industry in February 1987, customs duty was levied at the appropriate rates, but no additional duty was levied in an Air Custom House in terms of a notification dated 1 March 1986 which exempted certain goods from levy of special excise duty.

Non collection of additional duty at 15 per cent ad valorem under heading 90-10 of the Central Excise Tariff Act, 1985 resulted in duty being levied short by Rs. 3,11,538. This was pointed out in audit (January 1988).

The Ministry of Finance have confirmed the facts.

(*iii*) 'Tyre' has been defined under item 16 of the Central Excise Tariff as a 'Pneumatic tyre in the manufacture of which rubber is used, and includes the inner tube, the tyre flap and the outer cover of such a tyre'. The tyre meant for vehicles or equipments designed for use off the road were chargeable to additional duty at 66 per cent ad valorem under item 16 III (I) ibid.

A consignment of 56 sets of 'Tyres complete with tubes and flaps' imported through a major Custom House in December 1985 was assessed at appropriate rates of customs duty under heading 40.15/16 of the Customs Tariff and charged to additional duty at Rs. 1,470 per tyre, Rs. 400 per tube and Rs. 20 per flap in terms of a notification issued in March 1985.

It was pointed out (December 1986) in audit that, since the 'tyres complete with tubes and flaps' were meant for vehicles designed for use off the road, the said notification was not applicable and that additional duty under item 16 III (1) of the Central Excise Tariff at 66 per cent advalorem was correctly leviable. This resulted in additional duty being levied short by Rs. 3,06,790.

The Ministry of Finance have confirmed the facts.

(*iv*) As per a notification of April 1986, bulk drugs falling under Chapter 28 (inorganic chemicals etc.) or Chapter 29 (organic chemicals) of the Central Excise Tariff are exempted from the whole of the central excise duty, subject to production of a certificate from the Drug Controller of India, that the drugs for which the exemption is claimed are bulk drugs as defined in the notification.

Pancreatin I.P., imported through a major port and cleared in two consignments (November 1986 and March 1987) from a warehouse was classified as 'enzymes' under Chapter 35 of the Central Excise Tariff but allowed exemption from additional duty in terms of the aforesaid notification on the basis of a certificate issued by the Drug Controller of India.

It was pointed out (July and October 1987) in audit that the goods cleared, though covered by a certificate as prescribed in the notification, did not fall under Chapter 28 or 29 of the Central Excise Tariff and the exemption granted in respect of the additional duty was, therefore, not in order.

The Custom House accepted the objection in respect of one consignment covered by the objection issued in July 1987.

Reply to the objection raised (October 1987) in respect of the other consignment as also results of action taken to review the remaining ex-bond clearances have not been received (June 1988). It was, however, verified in audit that one more consignment was also allowed free of additional duty.

The total short collection involved in all the three cases worked out to Rs. 92,224.

The Ministry of Finance have confirmed the facts.

2.26. Non-levy of aditional duty under Section 3(3) of Customs Tariff Act, 1975

Under sub Section 3(3) of the Customs Tariff Act, 1975, the Central Government is empowered, in the public interest, to levy on any imported article (whether on such article duty is leviable under sub section 3(1) or not) such additional duty as would counterbalance the excise duty leviable on any raw materials, components and ingredients of the same nature as or similar to those, used in the production/manufacture of such article. For the purpose of determining the quantum of excise duty leviable on such raw materials, components and ingredients, Government have framed the Additional Duty Rules, 1976. Synthetic fibre and yarn used in the manufacture of fabrics containing more than 10 per cent by weight of synthetic fibre or yarn are the raw materials liable to such additional duty.

Narrow woven fabrics was classifiable under heading 5806.00 of the Central Excise Tariff Act 1985 and was liable to additional duty equal to excise duty (including cess) aggregating basic duty at 12 per cent, basic excise duty on yarn content at the rate of Rs. 73.70 per kilogram, additional excise duty at the effective rate of 13.64 per cent of excise duty on yarn and cess at the rate of 0.05 per cent ad valorem. By notification 316/86 dated 21 May 1986 (CE) narrow woven fabrics made of polyester yarn was, however, exempted from the whole of the duty of excise leviable thereon.

On a consignment described as 'webbing' and amplified as narrow woven fabrics imported in March 1987, additional duty was levied at 0.05 per cent ad valorem only (i.e. duty equal to the cess) omitting to levy the aforesaid additional duty at Rs. 73.70 per kilogram and additional excise duty at 13.64 per cent on such levy. This resulted in duty being levied short by Rs. 2,09,381.

On this irregularity being pointed out in audit (August 1987), the department admitted the mistake (March 1988). The report on recovery has not been received (November 1988).

The Ministry of Finance have confirmed the facts.

SHORT LEVY DUE TO UNDERVALUATION

2.27. Short levy due to application of incorrect rate of exchange

As per proviso to Section 14 (1) (*a*) of the Customs Act, 1962, the rate of exchange for conversion of value in foreign exchange in respect of any imported goods is the rate in force on the date on which a bill of entry in respect of such goods is presented to the Customs department.

In 4 major Collectorates/Custom Houses, 57 cases involving short levy of duty of Rs. 32.74 lakhs due to application of incorrect rates of exchange were noticed in audit. The customs department has already accepted the short levy.

The particulars of the seven cases in each of which the amount of duty short levied exceeded Rs. 1,00,000 are given below :

Sl. No.	Description of goods imported	Date of Import	Foreign Currency	Exchange rate per Rs. 100		Short levy Amount (Rs. in Lakhs)	Month of Audit Objection
				Incorrect rate	Correct rate		
1	2	3	4	5	6	7	8
Bombay Collectorate							
1	X-ray baggage Inspection system	20 February 1986	Deutsche Marks	20.07	18.72	2.34	August 1987
Delhi Collectorate							
2	Computer System	13 February 1987	Norwegian Kroner	56.65	53 05	1.32	August 1987
3	Computer System	21 February 1987	Do.	56.65	53.05	1.03	October 1987
4	T.V. Parts	3 October 1985	Japanese Yen	1993	1797	1.06	May 1986
5	Components	31 July 1986	Japanese Yen	1315	1242	3.79	May 1987
6	Components and Clips	18 and 21 February 1986	Japanese Yen	1655	1444	1.60	July 1987
Cochin Collectorate							
7	Machinery	26 May 1986	Deutsche Mark	18.645	17.710	2.93	February 1987

The Ministry of Finance have confirmed the facts and accepted the short levy in these cases.

2.28. Short levy of customs duty due to non-loading of assessable value of imports from a 'related' supplier

As per Section 14(1)(b) of the Customs Act, 1962 read with Customs Valuation Rules 1963, when the importer has special relationship with the foreign supplier (as an agent, a collaborator or a distributor etc.), the assessable value is arrived by loading the invoice value of the imported goods. The loading factor in each case is determined by the Special Valuation Branch of the Custom Houses after examination of the books of accounts of importers and the results of such examination are communicated in the form of circulars issued by them.

(*i*) In terms of the departmental instructions, issued by Special Valuation Branch of a major Custom House in December 1982 and April 1987, the CIF value of imports of service spares by a public sector undertaking from a firm in USA was required to be loaded by seven per cent.

On a consignment of import of spares for the dumpers by the said undertaking from its related foreign supplier in August 1986, the Custom House assessed the goods without loading the CIF value of the goods by seven per cent as aforesaid. On the mistake being pointed out in audit (October 1987) the Custom House accepted the objection and recovered the short levied amount of Rs. 1,27,957.

The Ministry of Finance have confirmed the facts.

(*ii*) As per another circular issued by the said branch of the Custom House in August 1985, the F.O.B. value of invoices in respect of all the imports for the period from 8 December 1980 onwards made by a specific importer from a specific supplier were to be loaded by ten per cent.

As the details of the imports made by the said specified importer were not made available to Audit by the department, a review of the import documents made available by the said importer was carried out. The review revealed that F.O.B. value of 35 consignments imported during the period from 8 December 1980 to 31 December 1987 was not loaded. This resulted in duty being levied short by Rs. 1,15,945. The fact that the Custom House did not maintain any records to watch the implementation of the circulars, issued by the Special Valuation Branch and having a bearing on revenue, was also pointed out in audit in March 1988.

The Ministry of Finance have admitted the facts in 25 out of 35 cases. In 6 out of the remaining 10 cases the Ministry have stated that loss of revenue is marginal. The under assessment in the remaining four cases has not been accepted on the grounds that the imports related to spares and not to life saving drugs and raw materials.

2.29 Short levy of customs duty due to adoption of foreign currency itself as the rupee equivalent

In arriving at the assessable value under Section 14(1) of the Customs Act, 1962, the value of imported goods in foreign currency is converted into Indian Rupees with reference to the rate of exchange prevailing on the date of presentation of the bill of entry relating to the imported goods.

On an import of shaft valve and bearings by a private importer in April 1986 through a major Custom House, while computing the assessable value, the amount in Deutsche Marks shown in the invoice was itself adopted as the Rupee value, without converting it into Rupee equivalent. This resulted in duty being levied short by Rs. 2,14,355.

On this being pointed out in audit (March 1987) the Custom House admitted the objection in May 1987. Report on recovery has not been furnished (November 1988).

The Ministry of Finance have confirmed the facts.

2.30 Short levy of customs duty due to substitution of bills of entry

As per section 14 of the Customs Act, 1962 the value of imported goods shall be calculated with reference to the rate of exchange as determined by the Government and in force on the date of presentation of the bill of entry. Section 46 (5) of the said Act, however, provides that the proper officer can permit substitution of bill of entry for home consumption by a bill of entry for warehousing or vice versa, if he is satisfied that interests of revenue are not prejudicially affected and there is no fraudulent intention.

(*i*) The bills of entry for home consumption in respect of four consignments of imported machinery were presented on 18 June 1986, 23 June 1986, 2 July 1986 and 22 July 1986 in a collectorate. These bills of entry were subsequently permitted to be substituted in terms of the provisions of Section 46(5) ibid by bills of entry for warehousing on 8 September 1986 but the assessable value was calculated with reference to the rates of exchange prevalent on the aforesaid earlier dates instead of the date of substitution of bills of entry i.e., 8 September 1986. This resulted in under valuation of the imported goods. The consequential short levy of customs duty and interest amounted to Rs. 1,52,232.

On the omission being pointed out in audit (February 1988), the department realised the amount in March 1988.

(*ii*) In the same collectorate, bills of entry for home consumption relating to three consignments of refractory material were presented on 16 August 1985, 2 September 1985 and 12 September 1985. Subsequently, those bills of entry were permitted to be substituted by bills of entry for warehousing on 1 October 1985. Similarly two more consignments were imported for which the bills of entry for home consumption presented on 6 August 1986 were also permitted to be substituted by the bills of entry for warehousing on 12 August 1986. In these cases also assessable value was not recalculated on the basis of rates of exchange prevalent on the dates of submission of substituted bills of entry. This resulted in undervaluation and consequential short levied amount of customs duty was Rs. 59,463.

On the irregularity being pointed out in audit (September 1987), the department contended (November 1987 and January 1988) that the relevant date in question was the date on which the bill of entry was registered/numbered or received in the Custom House and that the rate of exchange was always fixed only once. The contention of the department is not acceptable as the dates on which the bills of entry in these cases were presented for home consumption ceased to be of any relevance after the subsequent substitution of bills of entry for warehousing which formed the basis for the assessment of duty. In terms of the aforesaid provisions of the Act, in permitting such substitution, the proper officer did not ensure that the interest of revenue was not prejudicially affected.

The Ministry of Finance stated (November 1988) that the bills of entry for home consumption were allowed to be substituted by bills of entry for warehousing, under provisions of Section 46(5) of the Customs Act, 1962. The Ministry added that the rate of exchange, applicable for assessment of such goods, as per section 14(1)(a) of the Customs Act, 1962, is that which is in force on the date of filing of bills of entry in respect of which substitution was done. Accordingly, in these cases of substituted bills of entry for warehousing, the Ministry argued that the relevant rate of exchange was the same as that which was in force on the date on which the bills of entry for home consumption were filed, because substituted bills were not separately noted in the manifest afresh since they had replaced the home consumption bills of entry which had been noted already. The Ministry therefore contended that the goods convered by the substituted warehousing bills of entry were correctly assessed to duty on the basis of the rate of exchange in force on the date of the filing of the bills of entry for home consumption.

The Ministry's reply is not acceptable in respect of both the sub-paras because by substituting the bills of entry for home consumption by the bills of entry for warehousing on later dates, the provisions of section 46(5) of the Customs Act, 1962 came into operation in terms of which the interests of revenue should not have been jeopardised by the customs officers while exercising their discretion to allow the substitution. The altered circumstances and actual events should not, there fore, have been overlooked. The Ministry's argument regarding the non noting of the substituted bill of entry in the manifest is not at all relevant in as much as Customs Officers did not exercise their discretion as contemplated in provisions of Section 46(5) ibid.

The argument now advanced by the Ministry is contrary to their views expressed in replying to para 1.19(*e*) of Audit Report 1985-86.

2.31 **Short levy due to non inclusion of the element of commission in the assessable value**

As per section 14 of Customs Act 1962, assessable value of the goods is the price at which the goods are ordinarily sold in the course of international trade, where the buyer and the seller have no interest in the business of each other and the price is the sole consideration for sale. No deduction from the price of an article by way of commission to an individual importer is admissible.

It was noticed in audit (July 1987) that commission at 5 per cent of F.O.B. Value allowed by the foreign supplier was not included in the assessable value of a consignment of "nonwoven sellable slitted tape" imported in February 1987. This resulted in customs duty being levied short by Rs. 54,157.

The mistake was pointed out in audit in July 1987. The department admitted the mistake and recovered the short levied amount (December 1987).

The Ministry of Finance have confirmed the facts.

SHORT LEVY OF DUTY DUE TO INCORRECT GRANT OF EXEMPTION

2.32 **Machinery, mechanical appliances and parts thereof**

(*i*) Under notification 216/85 Cus. dated 3 July 1985, components required for the manufacture of fork lift trucks having capacity exceeding 10 tonnes, when imported into India were exempt from payment of basic customs duty as was in excess of 40 per cent ad valorem. Auxiliary duty was leviable on such goods at 25 per cent ad valorem under notification 209/87-Cus. dated 12 May 1987. The rate of basic customs duty at concessional rate was raised from 40 per cent to 45 per cent ad valorem by virtue of two amending notifications 251 and 252-Cus dated 30 June 1987.

In a Customs Collectorate, a consignment of components of fork lift truck over 10 tonnes capacity, warehoused in August 1986, were cleared for home consumption in August 1987. The goods were assessed to duty at the concessional rate of 40 per cent basic plus 25 per cent (auxiliary) which had been in force prior to 30 June 1987 instead of the correct rate of 45 per cent (basic) plus 40 per cent (auxiliary). The import was assessed provisionally on the basis of an undertaking given by the importer in respect of its intended use.

This resulted in duty being levied short by Rs. 5,90,595.

Since the goods were not cleared within the period of warehousing, interest at the rate of 12 per cent per annum also was payable from 29 November 1986 to 29 August 1987 on the differential duty of Rs. 5,90,595. This worked out to Rs. 51,623.

The mistakes were pointed out in audit to the department in February and April 1988 and to the Ministry of Finance in July 1988.

The Ministry of Finance have confirmed the facts.

(*ii*) Twenty one items of components for 'hydraulic rough terrain crane' imported and cleared from warehouse during April 1987 (after the expiry of bond period in February 1987) were assessed under various headings of Customs Tariff Act, 1975 at appropriate rates of duty. But no additional duty was levied by extending the benefit of a customs notification 59-Cus. dated 1 March 1987.

It was pointed out (December 1987) in audit that the imported goods were to be charged additional duty at the rates ranging from 15 per cent ad valorem to 30 per cent ad valorem under different headings of Central Excise Tariff Act 1985 without allowing the benefit under the aforesaid notification dated 1 March 1987 as they do not fall under the items specified in the table annexed to that notification. Incorrect application of exemption resulted in duty being levied short by Rs. 5,98,791.

On this irregularity being pointed out, the Custom House admitted the objection and recovered the amount in May 1988.

The Ministry of Finance have confirmed the facts.

(*iii*) Spare parts of gas compressor were correctly assessable to customs duty at 100 per cent ad valorem till 14 April 1986 under sub-heading 8414.90 of the Customs Tariff Act, 1975 (with auxiliary duty at 40 per cent ad valorem). From 15 April 1986 they are eligible for a concessional rate of duty at 40 per cent ad valorem in term of an amending notification issued on that date.

A consignment of aforesaid goods imported on 3 April 1986 by a public sector undertaking was incorrectly assessed to basic customs duty at the concessional rate of 40 percent (with auxiliary duty at 25 per cent) by a major Custom House. This resulted in duty being levied short by Rs. 1,82,145.

On this being pointed out in audit (April 1987), the Custom House admitted the objection and agreed to recover the short collection.

Report on recovery has not been received (April 1988).

The Ministry of Finance have confirmed the facts.

(iv) As per a notification issued on 1 March 1986, 'air compressors of a kind used in air conditioning equipment' which fall under heading 8414.30 of the Customs Tariff Act, 1975 are chargeable to basic customs duty at 70 per cent ad valorem.

Out of 448 numbers of 'hermetically sealed air conditioning compressors' imported and bonded during March/April 1986, 96 numbers were cleared from bond during January 1987 and assessed to basic customs duty under heading 8414.30 at 60 per cent ad valorem instead of at 70 per cent ad valorem.

Short levy in repsect of 96 numbers worked out to Rs. 25,348 and that on the entire consignment amounted to Rs. 1,25,016.

On this being pointed out (Septmber 1986), the Custom House accepted the objection and recovered (November 1987) the short levied amount of Rs. 25,348. Report regarding recovery of the balance amount relating to clearnaces made from April 1986 onwards has not been received (April 1988)

The Ministry of Finance have confirmed the facts.

2.33 Chemicals

As per a central excise notification of 3 April 1986, bulk drugs falling under Chapter 28 (inroganic chemicals) or Chapter 29 (organic chemicals) of the Central Excise Tariff Act, 1985 are exempted from the whole of Central excise duty, if a certificate is produced from the Drugs Controller of India within the prescribed time that the drugs are bulk drugs as defined in the notification and are normally used for the purposes specified therein.

Five consignments of 1000 kilograms of 'Oil of anethi' (dil oil IP) imported through a major Custom House and cleared from a warehouse were "natural essential oil" according to the test report and were classified under chapter 33 of the Central Excise Tariff for levy of additional duty. But the goods were exempted from additional duty under the aforesaid notification on the basis of a certificate from the Assistant Drug Controller of India that the goods were bulk drugs.

It was pointed out (June and September 1987) in audit that the goods cleared through three ex-bond bills of entry (covering clearance of 600 kilograms out of 1000 kilomgrams of imported goods) did not fall under Chapter 28 or 29 of the Central Excise Tariff and were, therefore, not entitled to the exemption from additional duty.

The Custom House admitted the objection (September 1987) in respect of one consignment of 200 kilograms.

Reply to two other objections issued in September 1987 and results of the review undertaken in respect of the balance of 400 kilograms of the goods have not been received (December 1987). The total short collection of duty in respect of 1000 kilograms of goods imported would work out to Rs. 1,26,113.

The Ministry of Finance have confirmed the facts.

2.34 Scientific and technical instruments, apparatus and other equipments

As per notification 70/81—Customs dated 26 March 1981, scientific and technical istruments, apparatus and equipments including spare parts, component parts and accessories thereof but excluding consumable items imported by a research institution are exempt from the whole of customs duty and additional duty subject to conditions specified therein.

A consignment of aluminium alloy plates, imported in February 1987 through an airport, was cleared free of duty under the aforesaid notification.

It was pointed out (September 1987) in audit that the subject goods were not scientific instruments, apparatus, equipments, components etc, but only raw materials for the manufacture of further articles and hence were ineligible for the exemption from duty under the aforesaid notification.

The department recovered the short levied amount of Rs. 2,09,063 (January 1988).

The Ministry of Finance have confirmed the facts.

2.35. **Iron and steel products**

'Tin plates and sheets', when imported into India are assessable to basic customs duty of 25 per cent ad valorem plus Rs. 2500 per tonne under subheading 7210.11 of the Customs Tariff Act, 1975 read with notification No. 57/87-Cus dated 1 March 1987. However, these goods imported from specified countries are eligible for a concessional rate of 50 per cent of the standard rate of duty in terms of notification 342/76 of 2 August 1976.

On a consignment of 'electrolytic tin plates' imported through a major port in March 1987 and cleared from a warehouse in April 1987, basic customs duty was levied under sub-heading 7210.11 of the Customs Tariff Act, 1975 at 12.5 per cent ad valorem plus Rs. 1250 per tonne.

It was pointed out (January 1988) in audit that as the country of origin of the imported goods was Spain which was omitted with effect from 6 February 1987 from the said notification of 2 August 1976, the benefit of concessional rate of duty was not available in this case. It was, therefore, observed that the correct rate of basic customs duty chargeable should be at 25 per cent ad valorem plus Rs. 2500 per tonne with auxiliary and additional duties at the rates already levied. This mistake resulted in duty being levied short by Rs. 1,61,815.

The Custom House accepted the objection and recovered the short levied amount (January 1988).

The Ministry of Finance have confirmed the facts.

2.36. **Electronic goods**

As per notification 179/80-Cus dated 4 Septembr1980, parts required for the manufacture/assembly of certain specified articles of machinery, are assessable to customs duty at the rate applicable to the said articles when imported complete. However, parts like diodes, thermionic valves, transistors, similar semi-conductor devices, light emitting diodes, electronic microcircuits, capacitors or any combination thereof or with other parts are not eligible for assessment under the said notification.

On a consigment of 'digital readout' imported through a major Custom House in June 1983 customs duty was levied under the aforesaid notification, by extending the rate of duty applicable to the complete article viz. textile machinery. The 'digital readout' treated as a 'part' for the purpose of this notification was a device containing the electronic items mentioned above and hence applicability of the notification was objected to in audit (December 1983). The incorrect grant of exemption resulted in duty being levied short by Rs. 1,14,795. The Custom House accepted the objection and recovered the short levied amount on 1 August 1988.

The Ministry of Finance have confirmed the facts.

2.37. **Other goods**

(i) In terms of a notification dated 28 February 1985, as amended from time to time, parts of digital digiana, electronic wrist watches and wrist watches of similar combinations, falling under Chapter 91 of the First schedule to the Customs Tariff Act, 1975 and imported into India, were chargeable to customs duty at the rate of 50 per cent ad valorem plus auxiliary duty at 25 per cent ad valorem upto 19 September 1987 (30 per cent advalorem thereafter) and additional duty at 2 per cent ad valorem. Further, in terms of a notification dated 2 December 1985 as amended, component parts of electronic modules (including semi knocked down packs and completely knocked down packs) of digital, analogue, digiana and similar combination type electronic wrist watches, when imported into India for the manufacture of electronic modules, were exempted from the payment of customs duty in excess of 25 per cent ad valorem and from the whole of the additional duty leviable thereon. By a subsequent notification dated 25 June 1987, 'quartz crystals' were specifically excluded from the scope of this exemption.

It was noticed (January-February 1988) in audit that consignments of Quartz Crystals imported by parcels through a foreign post office after the issue of notification dated 25 June 1987 were continued to be assessed at the rate of 25 per cent instead of 50 per cent ad va.orem. This resulted in duty being levied short by Rs. 1,80,634 on consignments imported between 27 June 1987 and 31 December 1987.

On the irregularity being pointed out in audit, the department recovered Rs. 1,80,634 in March 1988.

The Ministry of Finance have confirmed the facts.

(ii) In terms of note to Chapter 88 of the Customs Tariff Act, 1975, helicopters fall outside the purview of the term "aeroplanes".

Goods described as 'Central floor assembly" and imported by a public sector undertaking in December 1985 through a major port were amplified in the bill of entry as 'component parts of aeroplanes' and assessed to basic customs duty at 3 per cent ad valorem under heading 88.01/03(2) of the Customs Tariff Act, 1975 read with a notification of July 1977 and free of auxiliary duty. Additional duty was levied at 12 per cent advalorem under item 68 of the erstwhile Central Excise Tariff.

As the goods in question were imported by the helicopter division of the said undertaking it was pointed out in audit (May 1986) that, if the imported goods were parts of helicopters, they would merit assessment as parts of helicopters only at the standard rate of basic customs duty at 40 per cent with auxiliary duty at 30 per cent ad valorem.

On verification of the documents, the Custom House confirmed (February 1988) that the goods were parts of helicopters only. Consequential short collection of duty amounting to Rs. 1,78,842 was recovered in July 1987.

The Ministry of Finance have confirmed the facts.

(iii) In terms of a notification of August 1976, Polyvinyl acetate' on import from specified countries, is assessable to basic customs duty at 50 per cent of the standard rate of duty.

Two consignments of 'polyvinyl acetate acrylate copolymers' imported and cleared in March 1987 were classified under heading 3905.19 of the Customs Tariff Act, 1975 and assessed to basic customs duty in terms of the aforesaid notification of August 1976.

As the goods imported were not "polyvinyl acetate" but "polyvinyl acetate acrylate co-polymers" they were assessable to basic customs duty at 100 per cent ad valorem in terms of another notification of March 1987. The resultant short levy of duty amounted to Rs. 62,098. On this being pointed out in audit (July 1987), the collectorate accepted the objection (December 1987) and issued a demand.

Similar irregularity involving short levy of duty of Rs. 1,38,116 was noticed in four other consignments cleared between April 1987 and June 1987.

The Ministry of Finance have confirmed the facts.

(iv) Two consignments consisting of plain glass tissue 60 G.S.M. thin sheets (voils) non-woven products of 27 rolls imported were warehoused in a custom bonded warehouse by a unit in September 1985 and April 1986. It was noticed during audit (May 1987) that the goods were classified as "thin sheets (voils) non-woven products" under customs tariff heading 7019.32. However, for the levy of additional duty, they were classified under heading 70.14 of the Central Excise Tariff and assessed under a notification of February 1986 at nil rate applicable to 'glass fabrics" instead of at 20 per cent ad valorem under the same notification as applicable to "all goods other than glass fabrics". This incorrect classification for purpose of exemption resulted in duty being levied short by Rs.48,048 in respect of 15 rolls of the goods cleared during the period from March 1986 to May 1987.

On the irregularity being pointed out in audit (July 1987), the department stated (January 1988) that plain glass tissue was made of glass fibres bonded together with artificial resin and would come under the meaning of woven fabrics. The contention is not acceptable as weaving is a distinct process carried on with warp and weft and mere bonding together of fibres with some adhesive would not make an article "Woven fabric". Moreover, the department has already accepted the goods as a non-woven product while assessing basic and auxiliary duties under customs tariff heading 7019.32. As such, treating the same goods as "woven fabrics" for additional duty is not correct.

The Ministry of Finance confirmed the facts and stated (November 1988) that recovery proceedings were being intiated.

APPLICATION OF INCORRECT RATE

2.38. Short levy due to application of incorrect rate of duty

As per notification dated 4 February 1987, the effective rate of duty on pulses falling under Chapter 7 of the Custom Tariff is 25 per cent ad valorem.

It was noticed that five consignments of pulses imported on 4 and 5 February 1987 were assessed free of basic duty of customs. This resulted in duty being levied short by Rs. 9,91,352

The omission was pointed out in audit to the Custom House in July 1987 and to the Ministry of Finance in June 1988.

The Ministry of Finance have confirmed the facts.

2.39. Application of incorrect rate of duty in respect of goods cleared from 100 per cent export oriented unit

Section 45 of the Finance Act, 1984 amended Section 3 of the Central Excise and Salt Act, 1944 to provide for levy of duty of excise on excisable goods produced or manufactured by a 100 per cent export oriented unit and sold in India. The proviso to Section 3 (1) of the Act ibid stipulated that the duties of excise which shall be collected on any excisable goods from 100 per cent export oriented units shall be equal to the duties of customs leviable under Section 12 of the Customs Act, 1962 on importation of the like goods from abroad.

A 100 per cent export oriented unit, manufacturing jute yarn and jute twine for export, sold 40,073 tonnes of jute yarn and 58,030 tonnes of jute twine in home market on payment of additional duty equal to central excise duty only. Basic customs duty and auxiliary duty leviable on the goods were not paid by the assessee. The department also did not raise any demand while finalising the assessment. This resulted in short levy of duty of Rs. 8.82 lakhs in respct of clearances during the period from August 1986 to February 1987.

This was pointed out in audit (January 1988).

The Ministry of Finance have confirmed the facts and stated (November 1988) that demand notice had since been issued.

MISTAKES IN COMPUTATION

2.40. Short levy due to arithmetical errors/misakes in compuation of duty

The Public Accounts Committee, in paragraph 14 of their 21 Report(Third Lok Sabha) (1963-64) stated that ".....the committee are far from happy at the failure of the Internal Audit Department to detect even ordinary mistakes in calculations. Such lapses betray the perfunctory nature of checks by the Internal Audit Department....." The Committee in Para 3.22 of their 44 Report (Seventh Lok Sabha) (1980-81) also observed that ".....these-cases are symptomatic of the defective functioning of the Internal Audit."

(i) A consignment of parts of compressor valued at Rs. 95.13 lakhs, was imported by a public sector undertaking in January 1987. The goods were assessed to basic customs duty at 40 per cent ad valorem +25 per cent auxiliary duty+additional duty at 15 per cent ad valorem under the heading 8414.90. It was noticed in audit that the Custom House made the following three types of mistakes in the assessment.

(a) Computation mistake in working out the amount of countervailing duty leading to a short levy of duty of Rs. 14,49,911;

(b) Non-inclusion of insurance charges at 1 1/8 per cent (Rs. 1,07,513) in the C.I.F. value; and

(c) In arriving at the C.I.F. Value, the freight of Rs. 1902 alone was taken into account instead of the actuals of Rs. 43,537 as per the Airway Bill. The short levy of duty on account of (b) and (c) above amounted to Rs. 96,946.

These mistakes were pointed out in audit (August 1987); the department recovered the short levied amount of Rs. 15.47 lakhs in August 1988.

The Ministry of Finance have confirmed the facts.

(ii) In respect of goods (lubricating oil additive) cleared from a private bonded warehouse by a public sector undertaking in October 1987, duty leviable was correctly indicated in the bill of entry as Rs. 1,34,758 but a sum of Rs. 13,476 only was actually collected.

On this being pointed out in audit (March 1988), the Custom House admitted the mistake and recovered the short collected amount in May 1988.

The Ministry of Finance have confirmed the facts.

IRREGULARITIES IN THE PAYMENT OF DRAWBACK

2.41 Fixation of All Industry rates of drawback

Drawback of Customs and Central Excise is granted as per the provisions of Section 75 of the Customs Act, 1962 and Section 37 of the Central Excise and Salt Act, 1944. Customs and Central Excise duties Drawback Rules, 1971 have been framed in exercise of the powers conferred by these Sections. Drawback as defined in these Rules, in relation to any goods manufactured in India and exported, means rebate of duty chargeable on any imported materials or excisable materials used in the manufacture of such goods in India.

Under the Rules, the amounts or rates of drawback (All Industry) are determined by Government having regard to the average quantity or value of each class or description of duty paid materials from which a particular class of goods is ordinarily manufactured in India.

The class or description of exported goods is identified and a sub-serial number is allotted to each class or description in a table appended to the said drawback Rules. The amount or rate of drawback determined on the basis of the averages aforesaid is mentioned against each class or description in the table.

The Public Accounts Committee in Para 1.117 of their 216 Report (Seventh Lok Sabha) observed that the Ministry of Finance should aim at arriving average rates based on manufacturing data of atleast 50 per cent of the exporters of any group of products. If a target of 50 per cent is aimed at, their rates are not likely to be distorted too much by taking brand rates into account in averaging calculations, nor distorted by data of dominant exporters influencing the fixation of rates unduly.

An analysis of the drawback rates fixed by the Ministry with effect from 1 June 1987, was made to see how far the observations of the Public Accounts Committee have been met in regard to calculations and utilisation of data for fixing the All Industry rates and the findings were reported to the Ministry of Finance in July 1987.

A similar study of the All Industry rates fixed with effect from 1 June 1988 has also been made and the two analyses are as follows:—

		1 June 1987	1 June 1988
1.	Number of items for which all Industry rates were announced . .	307	332
2.	(i) Number of items for which data on duty element in recent exports was not received . . .	140	117
	(ii) Out of 2(i) above, number of items for which the rates were changed on the basis of changes in the rates of duty of Customs and Central Excise	66	64
3.	Nunber of itmes for which duty element in recent exports was received from	167	215
	(i) one manufacturer . . .	67	84
	(ii) two manufacturers . .	39	57
	(iii) more than two manufacturers	61	74
4.	Number of rates fixed on the basis of data received where weighted average on duty element in exports covered		
	(a) Exports by one manufacturer or exporter	1	3
	(b) Exports by two manufacturers or exporters	3	2
	(c) Exports by more than two manufacturers or exporters . . .	—	2

The Ministry of Finance stated (September 1988) that for collecting the manufacturing data much larger number of exporters under each commodity group covered by the drawback schedule as compared to last year had been approached through various Export Promotion Councils, Commodity Boards and Trade Associations apart from collecting the same through the collectors in the field and the response from the manufacturers considerably improved.

The Ministry added that input/output norms approved by D.G.T.D. and other technical authorities for earlier years were taken into account while revising the All Industry rates of drawback on several items where inputs were few. The Ministry contended that there were only a few cases where, in the absence of any fresh data or input/output norms, the consumption pattern of the manufacturing units (which had responded in the previous year and submitted data for All Industry rate purposes) was relied upon and drawback rates worked out considering the latest duty rates.

The Ministry also stated that computerised information from the Custom Houses and detailed information on prices from Central Excise Collectorates were also used extensively in reviewing the rates of drawback. The Ministry felt that with the computerisation of export documentation in Custom Houses and assessment data in Central Excise Collectorates in the ensuing months more comprehensive information would become available for reviewing the rates of drawback in future. The Ministry also mentioned that all efforts would be made to collect comprehensive data from the maximum number of exporters, wherever input/output norms could not be determined to avoid any distortion in the rates of drawback.

2.42. **Irregular Payment of Drawback**

With effect from 1 June 1986, the rates of drawback fixed under the Drawback Rules, 1971, expressed in specific terms or on ad valorem basis in the drawback schedule are inclusive of draw back on packing materials used, if any.

In a Custom House, drawback amounting to Rs. 98,670 was paid on packing materials (galvanised iron products), used for packing of tobacco for export even after 1 June 1986, which was irregular. On the mistake being pointed out in audit, the Custom House admitted (December 1987) the objection and recovered the entire amount of drawback of Rs. 98,670 from 28 exporters during the period from September 1987 to March 1988.

The Ministry of Finance have confirmed the facts.

2.43 Irregular payment of drawback due to misclassification

Textile machinery and parts and accessories of textile machinery not otherwise specified fall under sub-serial 4402 of drawback rate schedule. According to General note 6(a) of Drawback Public Notice 17/83 of June 1983, the drawback rate mentioned against the aforesaid sub-serial number is based on duty on steel.

On two consignments of 'shuttles for Toyoda Loom made of Indian wood special type, with special tongue fittings' exported through a major Custom House during August and September 1983, drawback was paid at 3 per cent of FOB value under the sub-serial 4402, treating them as 'Textile machinery parts made of steel'.

It was pointed out in audit (June 1986) that since the exported goods were made of wood, no drawback was admissible on this export. The Custom House admitted the mistake and stated that demand for the incorrect payment of drawback amounting to Rs. 19,093 had been issued in September 1986. Similarly on two other consignments of the same goods made of wood exported during August 1983, drawback amounting to Rs. 15,022 was allowed (May 1984) on the same basis to the same exporter. The total irregular payment involved in the four cases worked out to Rs. 34,115.

The Ministry of Finance stated (November 1988) that it would not be correct to interpret note 6(a) to Drawback Public Notice No. 17/83 dated 1 June 1983 to mean that the rate of 3 per cent was to apply in case of textile accessories/parts falling under sub-serial 4402 only if these were made of steel. The Ministry contended that the General note was added only to provide a facility to the exporter to claim a higher drawback rate for relevant items if these were made of other materials for which All Industry rates existed without going in for brand rate procedure. The Ministry felt that export items in question are textile accessories and hence are classifiable under sub-serial 4402 of drawback schedule at the material time. They added that the metallic fittings and packings involved in the export of textile accessories would have borne some incidence, however small they might be. The Ministry therefore justified the grant of drawback at 3 per cent F.O.B. value on these goods.

The Ministry's a reply is not acceptable because the relevant note 6(a) under the drawback schedule would have no meaning if it were not to be read along with the description of the goods in the sub-serials. It is evident that the description of the goods and the rates prescribed therefor in the various sub-serials for payment as drawback would be subject to the overall conditions presented in the general notes to drawback schedule. It is doubtful whether the goods in question made of wood would have sufferedany duty incidence at all and that too, even the minimum of 3 per cent prescribed. Further, the argument of the Ministry presumes that basically the general notes to drawback schedule do not have any link to the goods covered by the sub-serials.

IRREGULAR REFUND

2.44 Irregular grant of refund

As per a notification of August 1976, certain polymerisation and Copolymerisation products viz. "resins" in various forms (heading 39.01/06) imported from specified countries of their origin, are assessable to duty at the rate of fifty per cent of the standard rate of duty.

On a consignment of "PVC Sheeting" (a product manufactured from PVC resin) imported (July 1985) through a major port, the aforesaid concession in duty was allowed and an amount of Rs. 1.23 lakhs was refunded. When it was pointed out (June 1986) in audit that only the polymerisation/copolymerisation products per se (i.e., resins in the primary forms and not the products of such resins) could be assessed at the concessional rate under the aforesaid notification, the Custom House contended (April 1988) that the concession could be granted to the sheet also because the notification applied to (a) liquid (b) powder and grains and (c) other forms. According to the Custom House, the PVC sheeting would fall under the category "other forms" covered by heading 39.01/06 of the Customs Tariff Act in terms of note 3(d) of Chapter 39.

The reply of the Custom House is not acceptable because the notification contemplates concession only to PVC resins in (a) liquid (b) powder and grain and (c) other forms of polymerisation and copolymerisation, since PVC resin is known to exist in all the three forms. The action of the Custom House in invoking the provisions of Note 3(d) of Chapter 39 of the Customs Tariff

Act, 1975 to determine the classification of PVC sheetings under heading 39.01/06 ibid is not tenable because the said notification refers to resins only and not to products of resins.

The audit view is supported by the wording of the same notification under the Harmonised System of Commodity Classification Tariff, as the heading 39.04 under the Harmonised System covers only resins in their primary forms (and not their products).

If the intention of Government was to extend the concession to all products of resins as contended by the department, the question of classifying them under heading 39.04 under the harmonised system may not have arisen.

The refund of Rs. 1.23 lakhs arising out of incorrect application of the notification was, therefore, irregular.

The Ministry of Finance merely reiterated (November 1988) the views of the Custom House, which are not acceptable to Audit for the aforesaid reasons. Further, the analogy of harmonised system of tariff and the corresponding notification issued thereunder, has been drawn by Audit to prove that the intention of the Government was to retain parity in the rates and there was no intention to increase or decrease the effective rates of duty on products covered by an exemption notification on their transposition under the H.S.N. introduced with effect from 28 February 1986. This intention had already been made clear at the time of introduction of the Bill for Harmonised System of Tariff. In view of the above the intention of Government could not have been different in regard to levy of duty on P.V.C. under the exemption notification 342/76 Cus. dated 2 August 1976 issued under the then existing Tariff Act, 1975.

EXPORT DUTIES

2.45 Non-levy of export duty on the export of fur lamb skin.

Hides and skins falling under heading 14 of the export tariff attracted export duty at the rate of ten per cent ad valorem under a notification issued in January 1981 while 'raw fur lamb skins' are wholly exempt from levy of export duty under another notification issued in January 1976.

A consignment of 'fur lamb skins' was exported, through an airport, free of export duty in February 1984. It was pointed in audit in January 1985 that as the exported goods were "fur lamb skins" and not raw fur lamb skins, export duty at the rate of ten per cent ad valorem amounting to Rs. 37,021 was leviable.

The Custom House admitted the objection in November 1987 and stated that a demand had been raised for Rs. 77,746 covering the shipments pointed out in audit and another shipment effected in February 1985. The department added that in respect of yet another consignment exported in March 1984 and pointed out in audit in August 1985, action was being taken to recover the differential duty of Rs. 20,486.

The Ministry of Finance have confirmed the facts.

OTHER IRREGULARITIES

2.46 Irregularities in Duty Exemption Entitlement Certificate Scheme.

(i) Under Duty Exemption Entitlement Scheme introduced in 1976 as an export promotion measure, raw materials and components imported under licence for execution of export orders are exempted from levy of customs duty. Discharge of the export obligations is watched by the office of the Chief Controller of Imports and Exports. The importer executes bonds/bank guarantees/legal undertakings for payment of duty on the imported items inthe event of failure to discharge export obligations. The customs authorities act as agents of licensing authorities. The bonds are cancelled by the licencing authorities when exports are effected. Export obligations are normally to be completed within six months from the date of importation of the first consignment against advance licences but this period can be extended in individual cases on merits by the Advanced Licencing Committee, depending on the nature of products to be exported. However, exemption from duty is granted by the customs authorities under notifications issued by the Ministry of Finance.

A firm dealing with dyes obtained duty exemption entitlement certificate in July 1982 for importing raw materials (alkylbenzene/dodecyl benzene) with an obligation to export the resultant product (synthetic detergent washing powder) within one year from the date of import of first consignment. The value of import licence was Rs. 1.50 crores and the target fixed for export obligation was Rs. 1.90 crores. The legal agreement was executed with the licensing authority for Rs. 1.44 crores. Raw materials valued at Rs. 22.18 lakhs and Rs. 1.18 crores. respectively were imported in May 1983 and April 1984. The D.E.E.C's were registered at the Bombay and Calcutta Custom Houses. There was no documentary evidence to show that the licensing authority extended the original period of one year which had expired by May 1984.

Before permitting clearance of goods, the deparment obtained a bond for Rs. 1.18 crores from the importer for payment of customs duty in case of non-fulfilment of export obligations within a period of six months. Although this period of six months expired in October 1984, the customs department asked the importer about fulfilment of export obligations in May 1985 only to which the importer did not respond.

Meanwhile, a letter stated to have been issued in November 1984 by the licensing authority about the cancellation of legal agreement consequent upon the fulfilment of export obligations by the said firm was received in the Kandla Custom House in June 1985. The department neither ascertained from the licensing authority the reasons for the delay of 8 months in the delivery of the said letter of November 1984 nor took any follow up action thereon.

In December 1985, the department, however, came to know about the sale of imported material in the open market through a seller of the imported material on a profit of 200 to 300 per cent and about the presentation

by the importer of the forged shipping bills in support of fulfilling the export obligation. On 9 December 1985, a show cause notice was issued to the importer under Section 28 of the Customs Act 1962, demanding duty of Rs. 1.72 crores and interest amounting to Rs. 60.69 lakhs at the rate of 18 per cent per annum from the date of release of consignment (18 April 1984 to 31 May 1986).

The fraud in this case could be perpetrated by the importer due to the absence of any independent system of

(a) verification of the authenticity of the signatures of the customs officers authorised to sign the examination report on the shipping bills and who signed the completion report regarding the export made in part F of the D.E.E.C. Book at the minor port of 'Tuna'; and

(b) Separate communication regarding the fulfilment of export obligation by the customs officers at the port of exportation to the Custom Houses where D.E.E.C.'s were registered. This was necessary to enable the customs officers of the port of registration of D.E.E.C.'s to correlate the export with the D.E.E.C. Book and shipping documents and to detect the possibility of presentation of forged documents before a no objection certificate could be issued by the Customs officers at the port of registration of D.E.E.C.

Further, there was failure on the part of the licensing authority at Ahmedabad in as much as that authority sent intimation about the fulfilment of export obligations by this importer to the customs authorities at Kandla Custom House instead of to the customs authorities at the ports of registration of D.E.E.C. viz., Bombay and Calcutta who were actually concerned with the monitoring of the fulfilment of export obligations.

The Ministry of Finance, in their reply, disclosed the following:

(*a*) From the detailed investigations which were carried out by the Licensing Authorities and those made by the Custom House, Kandla it was evident that this was a case of fraud and a pre-planned attempt on the part of an importer to fraudulently claim the benefit of the Advance Licensing Scheme. The Advance Lincence itself was obtained on the basis of a fabricated order and by mis-declaration of facts, duty free goods were sold in the market and bogus shipping bills, Bank Certficate, invoices etc. were prepared and entries in the DEEC manipulated by the firm to claim discharge of the export obligation.

(*b*) There was, *prima facie*, no evidence to suggest that in this whole case there was any failure of duty or non-observance of any rules or prescribed procedure on the part of any Customs officer. The major part of the duty free clearance of the imported L.A.B. was permitted by the Custom House, Kandla on the basis of Advance Licence produced and in fact, though the party had executed a legal undertaking with the licensing authorities the Kandla Custom House had also taken another bond from the party for an amount of Rs. 1.17 crores which inter alia, bound the party to pay on demand amount equal to the duty otherwise leviable on the goods cleared if the conditions of the exemption notifications were not complied with or to face action under Section 142 of the Customs Act. The facts of the case showed that no exports were actually effected from Tuna port and the party had only fabricated certain bogus shipping bills for having effected five shipments of detergent powder from the said port. The party had also manipulated entries in the DEEC book which was presented to the licensing authorities at Ahmedabad alongwith bogus shipping balls for claiming discharge of export obligation. There was no evidence to show that the party had obtained a no-objection certificate from the Custom House, Bombay the port of registration of the DEEC.

(*c*) Under the DEEC Scheme, exports could be effected from any port other than port of registration and the Customs officers at the port of shipment are required to make appropriate entries in part 'F' of the DEEC book. As per the original instructions, where exports were effected from a port other than the port of registration the Custom House at the port of Exports were required to separately communicate the export particulars to the concerned Custom House (port of registration) apart from making appropriate entries in the DEEC book to check any possible manipulation in the entries in the DEEC book at a subsequent date. These instructions were reiterated last year to major Custom houses and were being again circulated to all Custom Houses

(*d*) No doubt, no stipulation made that the signature of the Customs officers authorised to sign the examination report on the shipping bills and entries in part 'F' of the DEEC book, should be verified for authenticity by the Custom House of the port of registration before giving the No-objection certificate, or by the licensing authorities when finally accounting for the export obligation and closing the DEEC book. It might not be practicable to make such a check especially considering the fact that exports are effected from different ports including minor ports and licensing officers are situated at different ports of the country. It is open to the licensing authorities to check from the Custom House concerned wherever any doubts arise about the genuineness of any entries made in any particular DEEC book.

(*e*) There was no lapse or any lack of communication regarding exports by the officials of the Custom House, Kandla/Tuna port to Bombay in this case as no *shipments of L.A.B. were actually effected.* Enquiries at Bombay Custom House and other available documents showed that the party had not approached Bombay Custom House for taking a no-objection certificate. There was, therefore, no occasion for the Custom House to check the entries in the DEEC Book.

(*f*) The licensing authorities, whose team had inspected the factory in November 1985 and found certain malpractices have already taken serious action against the party for the fraud committed by them. The Addl. CCI&E, in his order dated 3 December 1986 debarred the firm and its directors from importing goods, receiving Import licence/CCPs and allotment of imported goods through canalized agencies for 15 licensingperiods as also imposed a pnalty of Rs.85 lakhs on the firms. The case was also

handed over to C.B.I. in 1986 itself for detailed investigations and it is understood that the prosecution proceeding also had been approved and launched. Custom House, Kandla also initiated immediate action for issue of a demand to the party as soon as the Collector of Customs (preventive) brought to its notice the fraudulent practice and disposal of duty free goods by sale in the first week of December 1985. A detailed show-cause notice had also been issued for taking penal action against the firm and various other persons involved in the fraud under Section 112 of the Custom Act, apart from recovery of duty and interest. After the detailed report of CBI is received, the Government would also consider if any changes in the existing procedure of finalisation of DEEC are called for.

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The Ministry's reply is not correct because the system failure on the following fronts had occurred, which could have detected the fraud in this case:

(*i*) It was the duty of Bombay and Calcutta Custom House swhere the DEECs were registered to determine whether export obligations had been fulfilled within six months or not and to initiate follow-up action. Evidently this was not done by the two Custom Houses.

(*ii*) It was incumbent on the Custom House of registration to approach the licensing authorities for updating the figures as indicated in para 5 of Member Board's letter No. 605/14/85-DBK dated 30 April 1985. Evidently this was not done by these two Custom Houses.

(*iii*) The fraud in this case could be perpetrated by the importer with all the bogus entries in the DEEC Book, forgeries, submission of forged documents etc. to the licensing authorities and was made possible due to non-observance of the procedure prescribed for cancellation of the Bond executed with the licensing authorities.

(*iv*) The fraud only highlights the absence of effective co-ordination between the licensing authorities and the Custom Houses before discharging the DEEC book and the fulfilment of export obligation thereunder.

(*ii*) As per notification 117/78-Customs dated 9 June 1978 specified goods, when imported against an advance licence or obtained against the Advance Release order on canalising agency for release of goods already imported and warehoused, being materials required to be imported for manufacture of goods of export orders, were exempt from basic customs duty and additional duty. Goods imported under Open General Licence and warehoused and subsequently cleared against advance licence were not covered by this notification and hence were not entitled to the duty free clearance. However, such duty free clearance against advance licences from the warehouses were permitted with effect from 16 April 1986 under notification 253/86 dated 16 April 1986.

(*a*) Three consignments imported against Open General Licence, were warehoused during the period from 29 May 1985 to 16 August 1985. They were cleared on various dates between 6 September 1985 and 10 December1985, against advance licenses and were allowed duty free clearances under the aforesaid notification dated 9 7une 1978, even though such exemption was not admissible. This resulted in duty being levied short by Rs.70.69 lakhs.

On the non-levy of duty being pointed out in audit in September 1987, the department stated (March 1988) that goods which can be imported under open General Licence (O.G.L.), can also be imported against advance licence and para 11 of appendix 19 to the Import Export Policy of 1984-85 and para 19 of appendix 19 to the Import Export policy of 1985-88 states that where the applicant is eligible for duty exemption for an item allowed under O.G.L., it will be open to him to import that item and keep it in customs bond for getting clearance against a valid unexpired licence under the scheme. The department added that it may not be correct to say that the exemption under notification dated 9 June 1978 was not available merely because the notification did not specifically exempt importation under open General Licence and after depositing the goods in a warehouse. The department also stated that the notification dated 16 April 1986 is of a clarificatory nature and cannot have an over-riding effect over the spirit of the basic concept of the law in force.

The departmental stand that the notification dated 16 April 1986 is of a clarificatory nature is not acceptable. The opening paragraph of the said notification reads "..... The Central Government, being satisfied that it is necessary in the public interest to do so, hereby makes the following further amendment to the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.117-Customs dated 9 June 1978, namely ....." Therefore, it is clear that it is an amending notification and not a clarificatory one. As the provisions of amending notification came into force from the date of its issue, the provisions of the notfication dated 16 April 1986 could not be applied to clearances made from the warehouse before that date.

The fact remains that the policy provisions contained in Para 11 of Appendix 19 to the Import Export Policy 1984-85 (later para 19 of the appendex 19 of Import Export policy 1985-88) had not been incorporated in the exemption notification 117/78 dated 9 June 1978 and to that extent the exemption from duty was inadmissible to the goods not covered by the said notification.

(*b*) An importer imported a specified material viz. polyester staple fibre under open General Licence through a major Custom House and warehoused the same in a public bonded warehouse in another collectorate in April 1983. Part of the warehoused goods were cleared duty free in May, June and July 1983 (*i.e*) prior to the issue of the notification of April 1986. This resulted in non-levy of duty of Rs.11,04,708.

On this being pointed out in audit (March 1987) the department admitted the objection (March 1988) and stated that the demand was being processed.

The Ministry of Finance stated (November 1988) that, in terms of the Advance Licence scheme in vogue at material time an Advance licence holder was authorised to import and clear out of customs control duty free specified inputs upto particular quantity and value as indicated in the Advance Lincence/DEEC to execute an export order and this facility was provided subject to the basic condition that the goods were used for the manufacture of specified resultant product and the Advance Licence holders showed their export upto prescribed quantity and value.

The Ministry admitted that a very legalistic and strict interpretation of the wording of the relevant custom notification at the material time could be that it did not permit duty free clearances of the goods specified in the Advance Licence/DEEC which had been earlier imported under OGL and were lying in custom bond. But it was considered that such a narrow and strict view would not be warranted nor it would have been in the larger interest of the country's exports. So long as the Advance Licence holder lifted the goods of same specification within the permissible limits from bond and satisfactorily accounted for the goods allowed duty free aginst the Advance Licence, and discharged his export obligation, the manner of the original importation of the goods under OGL or Advance Licence was not a critical issue. There was no loss of revenue in allowing such clearances against the Advance Licence from Custom bond whether goods are used for this intended purpose and not misutilised or diverted for home consumption. Such clearances in fact only facilitated quicker execution of the export order and even avoided unnecessary foreign exchange which would have been spent if fresh imports of the same goods against the Advance Licence were insisted upon.

The Ministry felt that amendment in the Advance Licenceing notification No. 117/78 effected on 16 April, 1986 by notification No.253/86 Cus. 16 April 1986, was, in fact, only a clarificatory amendment to specifically take care of this procedural facility and to set at rest any possible doubts. There was no intention to strictly restrict this facility only from 16 April, 1986 and to deny them to earlier clearances. In fact, this facility was specifically provided under the Import Export Policy even much earlier to the amendment in Custom notification effected in April 1976. The Government considered that it might lead to serious difficulties for the exporters who might have been allowed this facility prior to April 1986, if they were suddenly asked to pay huge amount of duties as in the present case, by taking a very legalistic view. As it was essentially only a procedural relaxation and not a substantive additional benefit and the Advance Licence holder accounted for the goods allowed duty free by way of exports there was thus no loss of any revenue in the process, there appeared to be no strong case to re-open such assessments.

The Ministry's reply to the aforesaid two subparas is not acceptable because the amending notification issued under Section 25(1) of Customs Act 1962 had the effect of enlarging the scope of the notification 117/78 Cus. dated 9 June 1978 by including within its ambit the warehoused goods which were imported earlier under OGL Scheme. Since the exemption notification by way of amendment or otherwise takes effect from the date of effect of the amending notification, the same could not be given retrospective effect. Since the original notification 117/78 did not cover the goods imported under OGL and warehoused (lying in bond), it cannot be argued that the manner of importation under OGL or advance Licencing Scheme was not relevant.

2.47 Irregular duty free clearance of yachts manufactured in bond

Imported goods subjected to manufacturing operations under Section 65 of the Customs Act 1962 may be exported to a place outside India without payment of duty or cleared for home consumption on payment of duty. The rate of duty is the rate applicable to the manufactured goods. Under Section 66 of the Customs Act, 1962, if any imported materials are used in accordance with the aforesaid provisions of Section 65, for the manufacture of any goods and the rate of duty leviable on the raw materials, exceeds the rate of duty leviable on finished goods, the Central Government may exempt the imported materials from the whole or part of the excess rate of duty. In other words, a notification exempting from customs duty is needed for the imported materials/components used in manufacture of goods and not on the finished goods themselves manufactured in bond operations under Section 65 ibid.

A private limited company had a licence for manufacture of boats out of imported goods for export out of India. A fibre glass day cruiser ocean going yacht manufactured out of the imported parts and components valued at Rs. 2,69,434 was sold to a Government department in November 1983 for use in pleasure cruiser in Indian waters. Another yacht manufctured out of imported parts and components valued at Rs. 6,11,676 was sold to a domestic firm in March 1984. In both the cases, no customs duty was levied on the ground that exemption notification no. 163/65-Cus dt. 16 October 1965 issued under Section 65(1) of the Customs Act, 1962 exempted ocean going vessels manufactured under bond from levy of customs duty. It was also stated by the department that even though yachts were not physically exported, the sales in both the cases were treated as 'deemed exports' by the Chief Controller of Imports and Exports in satisfaction of export obligation against advance licences. The duty forgone in the two cases amounted to Rs. 14.04 lakhs.

It was pointed out in audit that notification 160/65-Cus dated 16 October 1965 applicable to 'ocean going vessels' would not be relevant in this case as duty was leviable at the rate applicable to the imported parts and components and not on the yachts as such, so long as Government had not issued any notification under Section 66 of the Customs Act 1962. Also duty free clearance under D.E.E.C. scheme (vide notification 117/78-Cus dt. 9 June 1978 as amended and under 104/83-Cus dt. 5 April 1983 (Replenishment licence) was not admissible as the conditions prescribed in those notifications were not satisfied.

The Ministry of Finance have confirmed the facts,

2.48 Incorrect rate of duty vis-a-vis date of clearance from the warehouse

According to Section 15(1) (b) of the Customs Act, 1962, in case of imported goods stored under bond in a warehouse and later cleared therefrom, the customs duty is leviable at the rate in force on the date on which the goods are actually removed from the warehouse.

(*i*) In a major Custom House six consignments of components of motor vehicles classifiable under heading 8708.99 of the Customs Tariff Act, 1975. on their import during the period from May 1986 to September 1986, were warehoused under bond. Subsequently, they were cleared from the warehose on 1 January 1987 by levying customs duty at the rate of 25 per cent ad valorem instead of 50 per cent ad valorem in force on the date of their removal from the warehouse. This resulted in duty being levied short by Rs. 5.32 lakhs in six cases.

The Ministry of Finance have confirmed the facts.

(*ii*) Basic customs duty on viscose rayon staple fibre was raised by a notification of September 1985 from 35 per cent to 55 per cent from 18 September 1985 and on regenerated viscose staple fibre from 40 per cent to 55 per cent from 4 October 1985 by a notification of October 1985.

(*a*) On a consignment of 125 bales of viscose rayon staple fibre valued at Rs. 3,58,572 cleared from bonded warehose on 18 September 1985, duty was collected at 35 per cent only instead of 55 per cent. Consequential short levy of duty of Rs. 71,714 was pointed out in audit in November 1986.

(*b*) On another consignment of 60 bales of regenerated viscose staple fibre cleared from bond on 4 October 1985, duty was collected at 40 per cent only instead of at 55 per cent resulting in duty being levied short by Rs. 33,179. On this being pointed out (September 1986) in audit, the department admitted the objection and requested the importer to make voluntary payment in December 1986 as recovery was time barred.

The Ministry of Finance have confirmed the facts.

2.49 Short-levy of interest on delayed clearance of goods from warehouse

Under Section 61(1)(b) of the Custom Act, 1962 as amended with effect from 13 May 1983, goods other than non consumable stores may be allowed an initial warehousing period of three months. However with effect from 27 December 1985, goods in the case of :

(*i*) non-consumable stores; or

(*ii*) goods intended for supply to a foreign diplomatic mission; or

(*iii*) goods intended for use in any manufacturing process or other operations in accordance with the provisions of Section 65; or

(*iv*) goods intended for use in any 100 per cent export oriented undertaking; or

(*v*) goods which the Central Government may, if it is satisfied that it is necessary or expedient so to do, by notification in the official gazette specify for the purpose of this clause.

may be left in the warehouse in which they are deposited or in any warehouse to which they may be removed till the expiry of one year.

For clearances made after the expiry of initial warehousing period, interest at 12 per cent on the amount of duty shall be leviable from the date of expiry of initial warehousing period till the date of clearance.

In the case of manufacturing company having the facility of private bonded warehouse, goods like gas welding wire, anti-corrosive primer, sealing compound, enamel paint, steel sheets etc., were allowed to be warehoused for an initial warehousing period of one year instead of three months permissible under the aforesaid amended section 16(1)(b) ibid with effect from 13 May 1983. Interest at 12 per cent on the amount of duty was calculated from the date of expiry of the initial warehousing period of one year till the date of clearance. In respect of clearances made during the period 1984 to 1986, short collection of interest, leviable from the date of expiry of initial ware housing period of three months, amounting to Rs. 1.88 lakh, was pointed out by Audit (January 1987).

The department raised a demand for the amount of differential interest in June 1987.

Report on recovery has not been received (June 1988).

The Ministry of Finance while confirming the facts, stated (November 1988) that the warehousing licensee was carrying on manufacturing operations in bond under Section 65 of Customs Act, 1962 and, therefore, was eligible for initial warehousing period of one year in terms of sub-section 61(1)(b)(iii) of Customs Act, 1962.

2.50 Incorrect rate of duty vis-a-vis date of entry inwards of the vessel

As per proviso to Section 15(1) of the Customs Act, 1962, if a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards.

(*i*) On a consignment of raw materials for preparation of additives for lubricating oil imported in September 1987, auxiliary duty was levied at the rate in force on the date of presentation of the bill of entry (10 September 1987) (i.e. 40 per cent) instead of at the rate of 45 per cent applicable on the date of entry inwards (21 September 1987) of the vessel. This resulted in duty being levied short by Rs. 4,02,766.

On the mistake being pointed out in audit (February 1988), the Custom House recovered the short levied amount.

The Ministry of Finance have confirmed the facts.

(*ii*) Under Section 7 of the Customs Act, 1962 Government may appoint ports which alone shall be the customs ports for unloading of specified imported goods.

Karwar was notified on 1 March 1984 for the importation of ships for breaking. Two foreign flags ships were imported for breaking and they arrived at that port on 26 January 1984 and 9 February 1984. Two bills of entry both dated 29 February 1984 were filed for their clearance and the Custom House assessed the vessels to duty at the rates prevalent on 29 February 1984.

It was pointed out in audit (August 1985) that the import of the vessels at Karwar prior to its declaration as port and the assessment made in this case was irregular. As a matter of fact, the department itself intimated the importer that the said port had not been declared a port for import of ships for breaking and hence the vessels should have been treated as entered on prior entry basis and assessed to duty at the enhanced rates of auxiliary duty in force on 1 March 1984. The department contended that, though the port was notified on 1 March 1984, the decision, therefor, had been taken by the Government much earlier.

The department, while raising the demand for the short levied amount of Rs. 5.10 lakhs in April 1986 stated (July 1986) that the provisional assessment was made in this case and the short levy would be recovered at the time of finalisation of assessment.

However, the fact remains that the provisional assessment in this case has been pending for more than 3 years and bank guarantees in support of the bonds executed had already expired on 14 February 1985 and 5 March 1985 respectively.

Report on recovery of the short levied amount and the finalisation of provisional assessment has not been received (December 1987).

The Ministry of Finance stated (July 1988) that the rate of duty was determined under Section 15 of Customs Act, 1962 and that application of Section 7 of Customs Act, 1962 or violation of the condition of said section did not have any relevance so far as determination of rate of duty was concerned. The Ministry added that since the vessel entered Karwar port before it was declared as a customs port, there was only violation of technical nature having no effect on rate of duty.

The Ministry's reply is not acceptable because 'date of entry inwards' is the crucial date for determining rate of duty under Section 15 of Customs Act, 1962. The 'date of entry inwards' in this case did not me a physical entry of the vessel in port but it is the permissio to unload the imported goods in customs area. Obviously, entry inwards could not have been granted before declaring Karwar as a customs port for import of ships for breaking. It is, therefore, evident that the rate of duty prevalent on or after 1 March 1984 i.e. after declaration of Karwar as customs port, would be correctly applicable.

(*iii*) On a consignment of 'ball-pen tip manufacturing machine, imported on 21 September 1987, auxiliary duty was levied at the rate of 40 per cent ad valorem in force on the date of presentation of the bill of entry viz., 9 September 1987 instead of at the rate of 45 per cent ad valorem applicable on the date of entry inwards. (21 September 1987) of the vessel. This resulted in duty being levied short by Rs. 1,41,371.

This was pointed out in audit to the department in March 1988 and to the Ministry of Finance in July 1988.

The Ministry of Finance have confirmed the facts.

2.51 Diversion of imported picture tubes by an actual user for sale in the domestic market—loss of revenue on account of customs duty

Colour T.V. Picture tubes with or without deflection yoke are classifiable under Chapter 85 of the Customs Tariff Act, 1975, and are assessable to basic customs duty at the rate of 100 per cent ad valorem, auxiliary duty at the rate of 40 percent ad valorem and additional duty at the rate of Rs. 600 per colour picture tube. However, as per notification No. 232-Cus dated 18 August 1983, the said colour picture tubes imported by an actual industrial user, if certified by any of the Government Officers specified in this behalf therein, were assessable to the basic customs duty at the concessional rate of 50 per cent ad valorem and were also wholly exempt from the additional duty. In terms of another notification dated 1 March 1986, they were chargeable to auxiliary duty at the reduced rate of 25 per cent ad valorem.

An importer engaged in the manufacture of T.V. receiver sets, imported colour T.V. picture tubes in August 1985 and warehoused them by executing a bond. On production of the actual industrial user's certificate by the importer, the department allowed clearances of 848 colour picture tubes valued at Rs. 7,35,981 during the period 7 August 1986 to 25 November 1986, on payment of customs duties at the aforesaid concessional rates.

Subsequent to clearances of the colour picture tubes from the warehouse, the importer sold 200 picture tubes to another person/manufacturer out of the aforesaid 848 tubes which was shown in the Raw material Consumption Return (R.T. 5) filed with the Central Excise Collectorate under whose jurisdiction the T.V. receiver sets were being manufactured. As the picture tubes which had been cleared on actual industrial user's certificate, were sold without being put to industrial use, it constituted violation of the specific condition of the exemption notification in regard to their use by an actual user.

On this being pointed out in audit (February and March 1988), the department contended (April 1988) that it could not go beyond the actual user's certificate as the aforesaid notification dated 18 August 1983 did not envisage or prescribe that the department should ensure the proper utilisation of the goods after their clearance from the warehouse. The fact, however,

remains that the importer had misused the duty concession by diverting the imported goods for sale in the domestic market. The non fulfilment by the importer of the conditions attached to grant of duty concessions as prescribed in the notification resulted in loss of revenue of Rs. 2,49,841. The Ministry of Finance stated (October 1988) that the consignment of colour T.V. picture tubes was allowed for home consumption as the importers were actual users at the time of import and had produced the necessary certificate under the notification. The Ministry added that the notification did not lay down any post importation restriction/condition such as actual use of the goods by the importer in his own factory, prohibition on sale by him subsequent to import/clearance. The Ministry, therefore, contended that sale of imported goods subsequent to clearance did not contravene the conditions of the aforesaid notification.

The Ministry's reply is not acceptable because the concessional rate was conditional upon the actual use and production of 'Actual user' certificate by the importer. The very purpose of exemption would be defeated if the importers (Actual user) were not to utilise the goods for the purpose for which the goods were imported and if they were to sell the goods in the domestic market.

2.52 **Loss of revenue due to wrong closure of Internal Audit objections and delay in issue of demands**

(i) As per section 28 of the Customs Act, 1962 notice for payment of duties not levied or short levied should be issued within six months from the date on which the proper officer made an order for the clearance of the goods or the date of payment of duty, as the case may be.

In order to ensure that non-levy/short levy of duties detected in audit are not barred by limitation, Government issued (February 1975) instructions fixing the time limit for forwarding the bills of entry to the Statutory Audit within a maximum period of 120 days from the date of payment of duty/date of order of the proper officer for the clearance of goods. As per these instructions, audit of the documents is required to be completed by the Internal Audit well in advance of the stipulated period of 120 days.

An assessee imported, through a Customs and Central Excise Collectorate, sub-assembly electronics for colour monitors alongwith the main PCB units and EHT transformers under bills of entry of January 1984. The goods were, however, cleared on payment of customs duty at concessional rate as per notification 232/83-Cus-dated 18 August 1983 instead of at the tariff rate of customs duty in terms of Rule 2(e) of the General Rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975. The mistake was pointed out by Internal Audit in July 1984, but no demand was raised by the department under Section 28(1) of the Customs Act, 1962. However, Internal Audit settled the objection in December 1984 without assigning any reasons. On a subsequent clarification sought (December 1985) by the aforesaid Collectorate from another Collectorate, the latter informed (March 1986) that sub-assembly electronics were chargeable to customs duty at the tariff rate of 100 per cent ad valorem plus auxiliary duty at 40 per cent plus additional duty at 30 per cent.

On the basis of the said clarification , a demand for Rs. 1,81,405 was raised in May 1986 against the importer after the expiry of the time limit of six months. Subsequently, the demand had to be withdrawn as it was not in accordance with the provisions of Section 28. Because of the wrong closure of the objection by Internal Audit and the failure of the department to issue a demand under Section 28 of the Customs Act, 1962 soon after the detection of the mistake by Internal Audit (5 July 1984 to 9 July 1984), revenue amounting to Rs. 1,90,440 was lost. There was also delay in conducting internal audit (i.e.155 days after the payment of duty), which too contributed to the loss of revenue.

On the loss of revenue being pointed out by Audit (June 1987), the department stated (September 1987) that Internal Audit pointed out the objection after the expiry period of six months.

The Ministry of Finance, while admitting the inordinate delay on the part of the I.A.D. stated that the objection, based on the application of Interpretative Rule 2(a) was dropped by IAD. The Ministry contended that regarding the admissibility of the concessional rate under exemption notification No. 232/83-Cus. dated 18 August 1983 to the subject goods, the department was satisfied that the concessional rate had correctly been extended to the relevant imported goods, after examining the relevant papers.

The Ministry's reply is not acceptable because the demand was raised by the department after obtaining the clarification from Delhi Collectorate that sub-assembly electronics was chargeable to the basic customs duty at the tariff rate of 100 per cent ad valorem plus appropriate rates of auxiliary and additional duties.

The Ministry's reply indicates that there was divergence of practice in regard to assessment of sub-assembly electronics in the collectorates of Delhi and Chandigarh and the past assessments of sub-assembly electronics in the collectorate of Chandigarh did not appear to be free from doubt in so far as extending of the concessional rate of duty in terms of notification 232/83-Cus. dated 18 August 1983 was concerned.

(ii) According to notification 155-Cus dated 1 March 1986, parts falling within chapters 84 or 85 of the Customs Tariff Act, 1975 required for the purpose of initial setting up, or for the assembly or manufacture, of any article specified in the table annexed to that notification, are assessable to duty at the appropriate rates applicable to the said articles reduced by 15 per cent ad valorem. This notification was amended by the issue of another notification on 20 June 1986, omitting the Chapters 84 or 85 from the notification dated 1 March 1986, which resulted in the coverage of parts of goods falling under all the headings in the Customs Tariff for the purposes of extension of concessional rate of duty under the said notification.

A consignment of "components of boilers-B.W. fittings, Tees, Reducers and flanges" imported in March 1986 through a major Custom House, was assessed to duty under the sub-heading 7307.23 read with sub-heading 8402-20 at the concessional rate of duty at 35 per cent ad valorem (25 per cent ad valorem as auxiliary duty) under the aforesaid notification dated 1 March 1986. Internal Audit department of the Custom House pointed out in September 1986 that the goods were not eligible for the concessional rate of duty under the notification 155/86-Cus dated 1 March 1986 as the goods assessed under the sub-heading 7307.23 were not covered by the said notification prior to 20 June 1986. However, the objection raised by the Internal Audit was closed in August 1987 on the ground that these were "component parts of boilers" classifiable under the heading 84.02 ibid. It was pointed out (January 1988) in audit that the goods being "pipe fittings" would be correctly classifiable under the heading 73.07 only and not as "*parts of boilers*" under the heading 84.02. Accordingly, these "pipe fittings" would be correctly assessable to duty under the heading 73.07 at the effective rate of 70 per cent ad valorem (40 per cent ad valorem as auxiliary duty).

The Custom House admitted the objection in April 1988 and stated that the short collection of duty of Rs. 91,971 had been recovered in March 1988.

The Ministry of Finance have confirmed the facts.

2.53. Duty not realised on uncleared goods

Section 48 of the Customs Act, 1962 requires the disposal of goods imported but not cleared within stipulated period. Accordingly, goods for home consumption or transhipment may be sold by the person having custody thereof after taking permission from customs authorities and giving due notice to the importers. In respect of goods imported by sea and lying uncleared, the Port Trusts have been appointed as the custodian. They are also responsible for periodical auctioning of the imported goods lying uncleared and abandoned in the sea port.

As per the provisions of Section 150 of the Customs Act, 1962, the sale proceeds of the goods sold by the person having custody thereof are to be appropriated towards customs duty after meeting the expenses of sale and freight and other charges payable to carrier. Payment of charges due to custodian and Government have precedence and only thereafter the balance, if any, is payable to the owner of the goods.

The auction sale lists with relevant records in respect of imported goods lying uncleared and abandoned in a major sea port for the period from 1982-83 onwards were not forthcoming from the department for audit. A review of the Demand Register and Allocation Sheets of the Port Trust Sale transactions for the period 1983-84 to 1986-87 revealed that the Port Trust made ad hoc payments of Rs. 15 crores during the year 1985-86 to 1987-88 against the pending customs dues (including ITC fines) of Rs. 29.99 crores for the years 1983-84 to 1986-87. As those ad hoc payments have not so far bee by the Custom House, the year-wise analy unrealised amount of Rs. 14.99 crores could r made.

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The matter was brought to the notice of Custom House by Audit in March 1988.

The Ministry of Finance stated (November 1988) that, as against the amount of customs duty due from the Port Trust on account of auction sales for the period 1983-84 to 1986-87 viz. Rs. 19.11 crores, the Port Trust had already paid Rs. 17 crores on ad-hoc basis and that there remained a balance of Rs. 2.11 crores to be collected. The Ministry have added that as regards the ITC fine of Rs. 10.88 crores, shown as due for the aforesaid period from the Port Trust, they had intimated that the total amount available for allocation towards ITC fine was only Rs. 4.21 crores after apportionment of the sale proceeds.

The Ministry have promised to realise the balance amount.

2.54 Loss of revenue due to delay in disposal of uncleared warehoused goods.

In terms of Section 72 of the Customs Act, 1962, where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under Section 61 to remain in the warehouse, the proper officer may demand and the owner of such goods shall fortwith pay the full amount of duty chargeable on account of such goods together with all penalties, rent interest and other charges payable in respect of such goods. If the owner fails to pay the amount demanded, the warehoused goods may be detained and sold by the proper officer.

Two consignments of amoxycilline trihydrate BP, an antibiotic imported in April 1983 were warehoused for one year under Section 61 of the Act. The assessable value of the goods and customs duty on the same were Rs. 1,93,086 and Rs.1,83,431 respectively. The date of expiry of the medicine was February 1986 as indicated in the invoice. As the goods were not cleared after the expiry of warehousing period (April 1984) the department issued demand notices in January 1985 for an amount twice the duty in terms of the warehousing bond executed by the importer. The importer failed to pay the amount demanded.

The sample of the goods were sent to the Drug Controller for examination and opinion in September 1986.

The goods were reported to be unfit for human consumption by the Drug Controller in October 1986. The collector of Customs issued orders for destruction of the goods in November 1986. This resulted in the loss of revenue of Rs.1,83,431 being the duty of customs on the uncleared goods and a potential loss of atleast 1·93 lakhs being the estimated value of the goods exclusive of duty of customs.

The matter was reported to the department in May 1988.

The Ministry of Finance confirmed the facts and stated that demand notices had been issued under section 72 of the Customs Act, 1962 and recovery was being pursued.

2.55 Loss of revenue due to delay in disposal of seized and confiscated goods

As per executive instructions contained in central Board of Excise and Customs letter of 25 July 1968 the officers carrying out half yearly stock verification of the seized goods are required to examine whether they show any signs of deterioration. In case deterioration is noticed in the goods awaiting adjudication, the matter should be brought to the notice of proper authority immediately so that prior attention is given to the disposal of the relevant case. Even where the goods are involved in court proceedings, it will be necessary to bring the matter to the notice of the court and ask permision for the disposal of the goods pending finalisation of the proceedings of the court.

A vessel approximately valued at Rs.2 lakhs seized in October 1981 and absolutely confiscated in October 1982 was disposed of in public auction in November 1986 for Rs. 30,000 after the appeal of the concerned party in 1983 was rejected by the Appellate Tribunal in June 1985.

It was pointed out in audit that deterioration of the vessel was due to the failure of department to take adequate action for keeping the vessel in working condition from the date of seizure to the date of disposal, which resulted in realisation of lower value than the value of the vessel at the time of seizure.

The department stated (February 1988) that the delay in disposal of the vessel was due to pendency of appeal.

Considering the report of the officer, who inspected the vessel at the time of seizure, that the vessel was in good working condition and even could be appropriated for departmental use, it is obvious that the deterioration took place when the vessel was in department's custody and no action as contemplated in the aforesaid instructions of the C.B.E.C. issued in July 1968 was initiated by the department.

The Ministry of Finance stated (December 1988) that the vessel under reference was inspected by the Joint Director, Marine immediately after seizure and his inspection report indicated that although the general condition of the vessel was satisfactory, it needed major repairs and replacement of parts, the cost of which was estimated at Rs.87,000 approximately. The Ministry contended that while the appeal in respect of the craft was pending before the Appellate Tribunal, the department would not have been justified in spending a huge amount on its repair and maintenance as, in the event of the tribunal deciding in favour of the party, the craft would have had to be delivered to him notwithstanding the expenses incurred on its repair and maintenance. The Ministry revealed that the Joint Director, Marine who inspected the craft again on 4 April 1983 after confiscation and much before the decision of the tribunal in appeal, had opined that the craft was beyond economical repairs and should be disposed of. The Ministry therefore argued that the craft was not in very good condition even at the time of its seizure and in the natural course, deterioration and corrosion of parts had set in which necessitated overhauling.

The fact remains that the department failed to follow the instructions of the Central Board of Excise and Customs contained in its letter dated 25 July 1968 resulting in avoidable loss of revenue. It would have been a different matter if the Appellate Tribunal had not conceded the department's plea for permission to dispose of the vessel. Non-observance of the Board's instructions obviously resulted in prolonged delay leading to deterioration in the condition of the vessel, without even putting vessel to departmental use, as suggested by the Inspecting officer, Marine.

2.56 Loss of revenue due to non-acceptance of highest bid in auction and consequent delay in disposal of relinquished goods

As per Section 48 read with Section 150 of the Customs Act, 1962 where any goods, not being confiscated goods, are to be sold under any provisions of the Act, they shall, after notice to the owner thereof, be sold by public auction or by tender or with the consent of the owner in any other manner.

One lot of nylon filament yarn weighing 8000 kilograms relinquished by two importers in January 1985 and two lots of polyester filament yarn weighing 3780 kilograms and 850 kilograms relingquished by two importers in December 1983 and March 1984 respectively and lying in a customs godown were put to auction in December 1985. The highest bids offered at Rs.213 per kilogram, Rs. 211 per kilogram and Rs. 171 per kilogram respectively were rejected on the ground that the auctions were not held under the supervision of Deputy Collector. Thereafter, it was decided to dispose of the goods by inviting tenders. The tenders were invited in February 1987 and highest officers of only Rs. 132 per kilogram for nylon lot and Rs. 140 per kilogram and Rs. 121 per kilogram respectively for polyester lots were accepted and goods cleared in May 1987 and September 1987 onwards respectively.

Non-acceptance of the highest bids of Rs. 213 Rs. 211 and Rs. 171 on the first occasion of auction resulted in :

(i) Postponement of realisation of Government dues by 17 months in the first case and by 20 months in second case; and

(ii) loss of Rs.9.60 lakhs being the difference between the amount that could have been realised if the highest bids in the auctions held in the first instance were accepted and the amount actually realised.

The fact was brought to the notice of the department in August 1987 and January 1988. The department

stated (January 1988 and May 1988) that approval of the highest bids on the first auction was not accepted because :

(i) the auction was not supervised by the Deputy Collector as already directed;

(ii) list of participants in the auction was not furnished:

(iii) no details such as whether the participants were actual users, weavers, cooperatives etc. were furnished;

(iv) details of earnest money furnished by the participants were not furnished; and

(v) there was no actual loss but it was only assumed loss. The department added that efforts were made to dispose of the goods as early as possible after following the prescribed procedure and due to the nature of the commodity and heavy fluctuation in the market trend, rise and fall in price could not be anticipated. The goods fetched lower price which was circumstantial and not intentional.

The reasons for non-acceptance of the first bid are not acceptable because it is not mandatory for a Deputy Collector to supervise the auction. Further instructions to Assistant Collector for holding the auction did not require him to furnish list of participants, details regarding actual users etc. The Assistant Collector, while recommending the highest bidder, had confirmed his having deposited the earnest money in first case.

As the department was aware of the heavy fluctuation in the market trend and as it has obtained a good price in the auction, the decision of the department to reject the auction bid led to loss of Rs.9.60 lakhs besides postponement in realisation of Government dues by 17 months in first case and by 20 months in second case.

The Ministry of Finance stated (December 1988 that the bids were not accepted by the Collector as the auction was not conducted under the prescribed procedure and , later, goods were disposed of on tender after giving wide publicity. The Ministry of Finance added that just because the amount realised was less than the earlier bid, the decision of the Collector could not be regarded as resulting in real loss of revenue. The Ministry agrued that it was the best decision at that point of time and the loss was only notional.

The Ministry's reply is not acceptable because it was not mandatory for a Deputy Collector to supervise auction and the highest bids accepted by the Assistant Collector were duly communicated to Additional Collecter of Customs Vadodara who should have communicated his acceptance in this regard. There was no justifiable reason for ignoring the recommendation of Assistant Collector who had also stated about the depositing of the earnest money by the highest bidder.

2.57 Irregularities in the observance of baggage rules

The rates at which duties of customs shall be levied under the Customs Act 1962 are specified in the schedules to the Customs Tariff Act, 1975. All dutiable aritcles except motor vehicles and alcoholic drinks imported by a passenger or a member of a crew as baggage, even if specified elsewhere, were assessable under heading 100.01 of the first schedule and duty leviable at the concessional rates specified in notification 58/83-Cus dated 1 March 1983 as amended.

It was noticed that in respect of baggage declarations relating to 1984 and 1985 certain dutiable articles imported by passengers as baggage were assessed on merits under different tariff headings and duty levied at the rate applicable under such headings as the imports of the items were treated as unauthorised in contravention of the Import Policy. Thirty such cases involving short levy of duty amounting to Rs.1,10,892 were pointed out by Audit in March, May and June 1986. The Custom House admitted the objection (April 1988). An amount of Rs. 3,770 was recovered in respect of two cases and requests for voluntary payment were made in remaining cases.

The Ministry of Finance stated (November 1988) that the passengers in remaining twenty eight cases had not responded to the requests for voluntary payment.

2.58 Non observance of TBRE Procedure

'Tourist' has been defined in Tourist Baggage Rules, 1978, as any person not normally resident in India, who enters India for a stay of not more than six months period for legitimate non-immigrant purposes. Under rule 7 ibid such persons are allowed to import articles of high value free of duty on furnishing an undertaking in writing that they will re-export them out of India at the time of their departure for a foreign destination. On their failure to re-export they are to pay the duty leviable thereon. Such articles are entered in a Tourist baggage re-export form (TBRE), a copty of which is given to the tourist to be surrendered by him at the port or air port of departure from India. The re-export forms collected from the tourists at the time of their departure from India are sent after suitable endorsement to the port or airport of issue of the TBRE Form for matching. This ensures that such articles of high value have been re-exported and have not been disposed of by the tourist within the country unauthorisedly.

A scrutiny of the TBRE Forms and Registers made available to audit from 1978 to 1987 maintained in a

Customs Collectorate revealed that a large number of TBRE Forms remain unmatched for a long period of time. The position of unmatched TBRE cases and duty involved was as detailed below:

Year	TBRE issued	TBRE unmatched	Percentage of an unmatched TBRE	Duty involved (Rs.)
1978	1,493	163	10.91	11,82,768
1979	956	184	19.24	24,28,305
1980	2,729	348	12.75	53,06,046
1981	3,566	1,168	32.75	88,08,352
1982	1,926	430	22.32	63,20,467
1983	1,934	614	31.74	1,00,31,718
1984	2,200	451	20.50	68,59,777
1985	1,400	431	30.78	1,33,68,271
1986	764	336	43.97	1,78,63,577
1987	1,336	142 (upto June 1987)		1,21,27,205
	18,304	4,267		8,42,96,486

It would appear from the aforesaid table that the percentage of unmatched TBRE Forms has steadily increased over the years rising from 10.91 per cent in 1978 to 44 per cent in 1986. This indicates that the system of matching TBRE to safeguard revenue is not working efficiently.

Duty involved in 4,267 cases comes to Rs. 8.43 crores. In so far as the transmission of TBRE Forms surrendered at the port of exit to the originating port is concerned no details are maintained.

In para 1.7 of their Seventh Report (1985-86) (action taken on 200th Report), the P.A.C. while examining the effectiveness of TBRE procedure, expressed their deep concern over the perturbing position arising out of unpaired TBRE Forms as follows :

"....The Ministry have stated that since passengers often left from ports other than the ports of entry and in view of the large increase in passengers traffic some TBRE forms remain unmatched. The Committee are constrained to observe that the reply is indicative of the casual approach of the Ministry to a serious issue. They regret to point out that no mention has been made in the reply by the Ministry of the action taken by them to ascertain the correct position in respect of the matching of TBRE Forms from all the Customs Houses, the reasons for the non-availability of the relevant records in certain Custom Houses, the reasons for high import of jewellery through TBRE forms at Bombay and other important points raised by the committee in their Report. No attempt appears to have been made by the Ministry to analyse the reasons for the failure of the department in implementing the prescribed procedure and initiating necessary corrective action. The Committee cannot but express their displeasure and dissatisfaction over this. They wonder why TBRE procedure had then been evolved at all, if it is not to be followed upto its logical conclusion. They desire that the Ministry of Finance should thoroughly look into all the aspects of the TBRE procedures and ensure that they are complied with strictly and without any further delay. There is a clear loophole and it must be plugged."

Inspite of the aforesaid observations of P.A.C., it is seen that the TBRE procedure in its present form has not achieved its purpose and the loophole has not been plugged, with the rising number of unmatched TBRE Forms.

The matter was brought to the notice of the department in September 1986.

The Ministry of Finace stated (November 1988) that the unpairing of TBRE forms did not indicate that the goods had not been re-exported. The Ministry added that, due to inadequate communication facilities, the TBRE forms remained unmatched and this procedure had been adopted to maintain control on temporary importation by tourists. The Ministry felt that the TBRE system, not with standing practical limitations, injected a certain amount of control over the temporary importation of personal articles and further check was imposed by Customs officers insisting on a bank-guarantee for temporary imports of goods valued at Rs. 50,000 or more. The Ministry admitted the points raised in audit and stated that field officers were being instructed to make earnest efforts to match the TBRE form.

2.59 Re-export of goods temporarily detained under Section 80 of Customs Act, 1962.

Under Section 80 of the Customs Act, 1962 where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under Section 77, the proper officer may at the request

of the passenger, detain such article for the purpose of being returned to him on his leaving India. According to Board's instructions issued on 24 May 1984 the use of the expression "passenger" and the mandate contained in Section 80 that goods may be detained for the purpose of their turn to him on his leaving India, clearly indicates that such goods can be returned only to the passenger when he is leaving India. They cannot be re-exported through a person other than the passenger as an agent cannot be called the passenger.

A test check of records at the major ports and airports revealed the following :

(a) At Bombay (Air Customs), relating to the period April 1986 to September 1987 in 22 cases, re-export of goods valued at Rs. 4,19,300 (Approximately) temporarily detained under Section 80 of Customs Act 1962 was allowed through persons other than the passengers.

(b) At Calcutta, in respect of 26 cases of goods of various categories detailed between February 1985 and December 1987, re-exports were allowed through persons other than the passengers. It was seen that in respect of 16 cases,value of the re-export goods was not indicated in the records. The value of goods in the remaining 10 cases aggregated to Rs. 87,472.

(c) At Madras Custom House, in respect of 83 cases of gold jewellery detained during the period April 1985 to October 1987, re-exports were allowed through persons other than passengers.

(d) In Trivandrum (Air Customs), in 43 cases of gold jewellery valued at Rs. 3,05,618 and 6 cases of other goods valuing 30,020 pertaining to the period 1 January 1986 to 31 December 1986, were re-exported through persons other than passengers who brought them.

It was pointed out in audit (June 1988, February 1988, January 1988, December 1987, October 1987) that as the conditions of re-export of the detained goods by passengers was not satisfied in the aforesaid cases and as the re-export of the goods was clearly contrary to the aforesaid instructions of the Board, the goods were liable for confiscation in terms of sub-sections (c) and (d) of Section 111 of the Customs Act, 1962.

It was added that if the passengers themselves were unable to re-export the detained goods, they would forfeit the benefits available under Section 80 of Customs Act 1962. It was, therefore, held in audit that re-export of goods by persons other than the passengers who brought them, was violative of the mandatory provisions of Section 80 of Customs Act 1962.

In respect of Bombay Custom House, the Ministry of Finance stated (November 1988) that, out of the 22 cases referred to in the above audit para, in 10 cases goods were subjected to adjudication proceedings and were allowed to be re-exported on payment of redemption fines; in one case the goods were temporarily imported free of duty under rule 3 of the Tourist Baggage Rules, 1978. The Ministry therefore contended that 11 cases fell beyond the scope of Section 80 of the Customs Act, 1962.

The Ministry admitted that in 11 cases goods had been detained under section 80 ibid but were allowed to be re-exported by a person other than the passenger detaining the goods. The Ministry pointed out that strict adherence to the instruction would have entailed a heavy burden of warehousing charges on the passengers in question. They added that in the matter of passengers' baggage, the problems have to be reviewed in a human way and not in a rigidly legal way. Since the goods had gone out of the country and substantively the provisions of Section 80 of the Customs Act had been put into effect, the purposes of those provisions had been realized.

The Ministry of Finance stated that, in Calcutta Custom House, a majority of the cases pertained to proceedings of adjudication, where the appropriate adjudicating officer had passed an order allowing the re-export of the goods which were imported for home consumption and in a few of the cases the goods had been imported for transhipment through Calcutta or had landed in Calcutta due to airline mishandling. The Ministry therefore pointed out that such goods were not covered under the scope of Section 80 of the Customs Act, 1962.

The Ministry however admitted that, in 2 cases out of the 26 cited in the audit para, passengers other than those whose goods had been temporarily detained under section 80 of the Customs Act, 1962 were found to have signed the receipt passed for receiving the goods and in these cases the passengers had signed in the wrong column of the detention register. In two cases either the signature of the passengers was illegible or the passenger had forgotten to sign. In one case two passengers were travelling together but one passenger received the goods on behalf of his companion and in all probability both travelled abroad together. The Ministry therefore contended that, since the passengers, whose goods were detained had actually taken delivery of these goods for re-exportation even though due to the rush which is common at the time of boarding an aircraft, the signatures in the receipt register were either not duly recorded or the friends or companions of the passengers endorsed the register, the provisions of section 80 of the Customs Act had not been violated in any of the cases.

In respect of the Madras Custom House, the Ministry of Finance stated (November 1988) that since the persons detaining the goods could not effect their re-export, the goods were subjected to adjudication proceedings and were ordered to be re-exported on payment of redemption fine through third persons, these were not covered under Section 80 ibid.

In respect of Trivandrum (Air customs), the Ministry stated that, out of aforesaid 43 cases, 16 cases fell beyond the scope of section 80 of the Customs Act, 1962. In the remaining 27 cases, the Ministry admitted that goods had been detained under Section 80 ibid but were allowed to be re-exported by a person other than the passenger detaining the goods.

2.60 Delay in realisation of personal penalties imposed under section 112 of Customs Act, 1962.

Section 112 of the Customs Act, 1962 provides for levy of penalties for improper importation of goods and other specified offences. If the penalties imposed are not paid, different measures for their realisation including certificate action are prescribed under Section 142 ibid.

The position of personal penalties imposed, realised and pending in 3 Custom Houses and 3 Collectorates in-charge of land custom stations in respect of the period ended on 31 December 1987 is given below :—

	No.	Amount (Lakhs of rupees)
Penalties imposed . .	16,739	2,254.42
Penalties realised . .	11,691	307.17
Penalties pending realisation	5,048	1,947.25

The year-wise analysis of the penalties cases pending realisation in respect of Bombay, Calcutta and Madras Custom Houses and Chandigarh and Jaipur Collectorates was as under. The yearwise analysis in respect of cases outstanding in Patna Collectorate was not available.

Year	No.	Amount (Rs. in lakhs)
Upto 1983	1,545	188.41
1984	645	246.28
1985	652	181.78
1986	1,399	1,097.80
1987	120	5.62

The Custom House/Collectorwise and year-wise details of the penalties imposed, realised and pending in respect of the above period are given in annexures 2.8 to 2.10 respectively.

Action taken by the Custom Houses/Collectorates under Section 142 of the Customs Act for recovering the penalties was as under :

Bombay (Sea) .	Action taken has not been communicated.
(Air) .	In two cases, detention notices were issued. One case is subjudice. In respect of other case, action taken was not known.
Calcutta	Records did not indicate whether any action was taken.
Madras	Records did not indicate whether any actiou was initiated in respect of 1,704 cases which included 153 cases pertaining to the period 1970–1979.
	However, action had been initiated in respect of 405 cases with penalties amounting to Rs. 35.18 lakhs pertaining to the period 1980 to 1986.
Jaipur	In 523 cases no action was initiated. In the remaining six cases involving an amount of Rs. 0.12 lakh, action had been initiated.
Chandigarh	In 217 cases, no action was initiated. In the remaining 14 cases involving an amount of Rs. 0.78 lakh action was initiated.
Patna	Action was stated to have been initiated for realisation of outstanding penalties.

The matter was brought to the notice of respective collectorates by Audit from April 1988 to July 1988.

The Ministry of Finance stated (November 1988) that recovery of penalties had to be enforced, as a last resort, in the manner provided under Section 142 of the Customs Act, 1962. The Ministry have added that the Collectors were being directed to initiate action under Section 142 immediately wherever this had not already been done though warranted.

ANNEXURE-2.1

(referred to in para 2.03)

Value of Imports—Commodity-wise

The value of imports during the years 1985-86, 1986-87 and 1987-88 according to major sectional headings in the Indian Trade Classification (Revised) are given below. The figures compiled by the Director General of Intelligence and Statistics and given out by the Ministry of Commerce have been indicated. The figures within brackets are in respect of some of the goods included in the respective sectional headings.

(In crores of Rupees)

S. No.	Commodities	1985-86	1986-87	1987-88
1	2	3	4	5
1	**Food and live animals chiefly for food including**	**613**	**385**	**380**
	(a) Cereals and cereal preparations	(110)	(47)	(33)
	(b) Milk and cream	(32)	(8)	(50)
	(c) Cashew nuts	(25)	(66)	(64)
	(d) Fruits and nuts excluding Cashew nuts	(38)	(59)	(59)
	(e) Sugar	(408)	(205)	(174)
2	**Crude materials inedible except fuel**	**1,109**	**889**	**1,013**
	(a) Crude rubber (including Synthetic and reclaimed)	(101)	(81)	(107)
	(b) Raw cotton	(13)	(0.13)	(N.A.)
	(c) Synthetic and regenerated fibres	(69)	(44)	(28)
	(d) Raw wool	(97)	(56)	(79)
	(e) Crude fertilizer	(162)	(129)	(138)
	(f) Sulphur and unroasted iron pyrites	(220)	(147)	(176)
	(g) Metalliferrous ores and metal scrap	(363)	(368)	(418)
	(h) Other crude minerals	(84)	(64)	(67)
3	**Mineral Fuels, lubricants and related materials**	**4,989**	**2,893**	**4,083**
4	**Chemicals and related products not elsewhere specified**	**2,697**	**2,197**	**1,982**
	(a) Organic chemicals	(519)	(504)	(652)
	(b) Inorganic chemicals	(570)	(531)	(394)
	(c) Dyeing and tanning subtances	(56)	(73)	(79)
	(d) Medicinal & Pharmaceutical products	(177)	(158)	(137)
	(e) Fertilizers, manufactured	(1,053)	(495)	(172)
	(f) Artificial resins, plastic materials	(322)	(436)	(548)
5	**Manufactured goods**	**3,860**	**4,085**	**4,569**
	(a) Pulp, paper, paper board & manufactures thereof	(471)	(403)	(485)
	(b) Textile yarn fabrics and made up articles	(151)	(123)	(187)
	(c) Pearls, precious stones & semi-precious stones	(1,100)	(1,495)	(1,994)
	(d) Iron and Steel	(1,395)	(1,450)	(1,182)
	(e) Non-ferrous metals	(542)	(415)	(576)
	(f) Manufactures of metals	(201)	(199)	(145)
6	**Machinery and Transport equipment**	**4,084**	**5,268**	**4,537**
	(a) Machinery other than electric	(2,849)	(3,714)	(2,706)
	(b) Electrical machinery	(666)	(877)	(1,108)
	(c) Transport equipments	(569)	(677)	(723)
7	**Professional, Scientific controlling instrnments etc.**	**379**	**456**	**488**
	GRAND TOTAL (including others)	**19,658**	**20,084**	**22,343**

Figures are provisional (1986-87 and 1987-88).
N.A. : Not available.

ANNEXURE-2.2

(referred to in para 2.03)

Value of Exports—Commodity-wise

The value of exports during the years 1985-86, 1986-87 and 1987-88 according to major sectional headings in the Indian Trade Classification (Revised) are given below. The figures compiled by the Director General, Commercial Intelligence and Statistics and given out by the Ministry of Commerce have been indicated. The figures within brackets are in respect of some of the goods included in the respective sectional headings.

(in crores of rupees)

S. No.	Commodities	1985-86	1986-87	1987-88
1	2	3	4	5
1	**Food items**	**2,472**	**2,592**	**2,834**
	(a) Meat and meat preparation	(74)	(76)	(86)
	(b) Marine Products	(409)	(479)	(525)
	(c) Cashew Kernels	(225)	(321)	(307)
	(d) Fruits and Vegetables	(121)	(147)	(151)
	(e) Processed fruits and Juices and other items	(82)	(56)	(66)
	(f) Sugar and sugar preparation (including mollasses)	(16)	(0.87)	(0.76)
	(g) Coffee	(265)	(306)	(263)
	(h) Tea	(626)	(550)	(592)
	(i) Spices	(278)	(269)	(309)
	(j) Oil meals	(134)	(187)	(173)
	(k) Cereals	(242)	(199)	(363)
2	**Beverages and Tobacco**	**170**	**174**	**135**
	(a) Tobacco Unmanufactured, tobacco refuse	(137)	(140)	(109)
3	**Crude materials inedible except fuels**	**923**	**892**	**826**
	(a) Mica including splittings and mica waste	(21)	(18)	(23)
	(b) Raw-cotton	(68)	(182)	(95)
	(c) Sesame & Niger seeds	(13)	(6)	(4)
	(d) H.P.S. Groundnut	(7)	(5)	(5)
	(e) Castor oil including derivatives	(16)	(1)	(6)
	(f) Shallac	(34)	(23)	(14)
	(g) Iron Ore	(579)	(543)	(543)
	(h) Ores & Minerals other than iron ore and mica	(185)	(114)	(136)
4	**Minerals, Fuels, Lubricants and related materials**	**655**	**419**	**633**
5	**Chemicals and related Products**	**497**	**475**	**823**
6	**Manufactured goods classified according to materials except pearls, precious, semi precious stones and carpet, handmade, leather and leather Manufactures incl. readymade garments and clothing accessories**	**2,048**	**2,221**	**3,381**
	(a) Cotton, yarn, fabrics, etc.	(574)	(562)	(1062)
	(b) Man-made Textiles	(31)	(40)	(102)
	(c) Woollen fabrics	(8)	(5)	(7)
	(d) Readymade garments and clothing accessories	(1,067)	(1,218)	(1,791)
	(e) Coir manufactures	(34)	(32)	(29)
	(f) Jute manufactures incl. twist and yarn	(262)	(265)	(243)
	(g) Natural silk textiles	(72)	(74)	(124)
	(h) Mill made carpets	—	(25)	(23)
7	**Engineering Goods**	**954**	**932**	**1,432**
8	**Miscellaneous Manufactured articles including handicrafts and Gems and Jewellery**	**2,311**	**2,846**	**4,401**
	(a) Gems & Jewellery	(1,503)	(2,069)	(2,614)
	(b) Handicrafts	(146)	(145)	(248)
	(c) Carpets handmade	(233)	(287)	(3,911)
	(d) Leather and leather manufactures	(770)	(787)	(1,148)
	(e) Sports goods	(24)	(17)	(37)
	TOTAL OF EXPORTS AND RE-EXPORTS INCLUDING OTHER ITEMS	**10,895**	**12,567**	**15,719**

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ANNEXURE-2.3

(referred to in para 2.03)

Import duty collections classified according to Budget heads

The import duty collected for the years 1985-86 and 1986-87 is given below classified according to budget heads.

The import duty collection for the year 1987-88 under the budget heads is also given.

(Rs. in crores)

S. No.	Commodities/budget heads	1985-86	1986-87	1987-88
1	2	3	4	5
1	Fruits, dried and fresh	47	67	63
2	Animal or vegetable fats and oil and their cleavage products' prepared edible fats, animal or vegetable fats	49	271	619
3	Petroleum oil and oils obtained from bituminous minerals, crude	—	857	1,862
4	Petroleum Oils and oils obtained from bituminous mineral other than crude	—	218	274
5	Other mineral fuels, oils, waxes and bituminous substances	—	56	84
6	Inorganic chemicals	—	171	162
7	Organic chemicals	—	756	825
8	Pharmaceutical products	92	6	8
9	Dyes, colours, paints and varnishes	59	99	91
10	Plastic and articles thereof	480	597	703
11	Rubber and articles thereof	114	165	149
12	Pulp, paper, paper board and articles thereo	139	136	106
13	Silk	153	14	16
14	Man made filaments	138	126	153
15	Man made staple fibres	138	126	46
16	Primary materials of iron and steel	—	125	137
17	Iron and non-alloy steel	—	648	677
18	Stainless steel	—	70	90
19	Other alloy steel, hollow drill bars and rods	—	120	172
20	Articles of Iron and Steel	998	220	264
21	Copper	319	238	401
22	Nickel	41	37	64
23	Aluminium	42	62	56
24	Lead	27	33	30

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ANNEXURE 2.4

Export duty and Cess

(referred to in para 2.03)

The collections of export-duty and cess are given below; classified under budget heads.

(in crores of rupees)

Budget heads	Export duty			Export cess		
	1985-86	1986-87	1987-88	1985-86	1986-87	1987-88
1	2	3	4	5	6	7
1. Coffee	40.87	56	18	1.17	1	1
2. De-oiled groundnut meal	Nil	Nil	Nil	Nil	Nil	Nil
3. Tobacco (unmanufactured)	4.91	Nil	Nil	1.09	1	1
4. Marine Products	Nil	Nil	Nil	2.93	4	4
5. Cardamom	Nil	Nil	Nil	1.13	1	Nil
6. Mica	5.40	5	2	0.98	1	1
7. Hides, skins and leathers	7.52	7	10	Nil	Nil	Nil
8. Lumpy iron ore	0.01	Nil	Nil	Nil	Nil	Nil
9. Iron ore fines (including blue dust)	Nil	Nil	Nil	1.57	2	2
10. Chrome concentrate	Nil	Nil	Nil	Nil	Nil	Nil
11. Other articles	0.21	Nil	Nil	0.34	1	7
12. Other agricultural produce under A.P. Cess Act, 1940	Nil	Nil	Nil	0.55	4	5
13. Under other Budget heads	11.37	15	19	5.48	2	4
TOTAL	70.29	83	49	15.24	17	25

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ANNEXURE 2.5

Searches and Seizures

(referred to in para 2.05)

Searches and Seizures	1984-85		1985-86		1986-87		1987-88	
	Coastal	Town	Coastal	Town	Coastal	Town	Coastal	Town
A. Total No. of searches & seizures								
Bombay	Nil	2,407	193	50	11	14	12	95
Delhi	Nil	951	..	N.A.	—	629	283*	504
Madras	1,142	Nil	1,166	Nil	110	683	820**	—
Calcutta	Nil	2,524	343	1,192	96	49	96	10
Ahmedabad	551	Nil	Nil	Nil	Nil	Nil	Nil	Nil
Cochin	680	253	NA	—	1,044	133	1,172	50
Total	2,373	6,135	1,702	1,242	1,261	1,508	2,383	659
B. Value of goods seized (Rs. lakhs)								
Bombay	Nil	3,242.50	339.32	7.53	151.30	19.57	178.00	0.54
Delhi	Nil	564.62	—	NA	—	1,370.83	795.62*	192.00
Madras	546.48	Nil	946.51	Nil	123.76	111.36	471.29**	—
Calcutta	Nil	364.44	2,772.82	NA	1,033.00	Nil	513.46	129.10
Cochin	96.99	148	NA	NA	84.00	62.00	401.00	60.00
Ahmedabad	2,155	Nil	Nil	Nil	Nil	Nil	Nil	Nil
Total	2,798.47	4,319.56	4,058.65	7.53	1,392.06	1,563.76	2,359.37	381.64
C. Number of seizure cases adjudicated upon and resulting in levy of duty and penalty of imprisonment								
Bombay	Nil	772	14	2	10	3	4	Nil
Delhi	Nil	215	—	NA	—	273	31*	Nil
Madras	443	Nil	828	—	71	536	142***	13
Calcutta	Nil	1	6	1	7	Nil	14	6
Ahmedabad	557	Nil	—	Nil	Nil	Nil	Nil	Nil
Cochin	613	278	NA	NA	1137	NA	644	34
Total	1,613	1,266	848	3	1,225	812	835	53

*Airports.

**Including Town, Airport and Harbour.

***Includes 141 cases of Airport.

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ANNEXURE 2.6

Confiscations

(*Referred to in para* 2.05)

(Value in Rs. lakhs)

	Bombay		Delhi		Madras		Calcutta		Cochin		Total	
	No.	Value	No.	Value	No.	Value	No.	Value	No.	Value	No.	Value
A. Motor Vehicles												
(*i*) Confiscated but pending disposal on 31 March 1987	—	3.65	Nil	Nil	Nil	Nil	2	2.00	2	1.00	4	6.65
(*ii*) Confiscated during during 1987-88	—	12.15	Nil	Nil	Nil	Nil	Nil	Nil	12	8.00	12	20.15
(*iii*) Cleared during 1987-88	—	7.44	Nil	Nil	Nil	Nil	Nil	Nil	12	8.25	12	15.69
(*iv*) Balance on 31 March 1988	—	8.36	Nil	Nil	Nil	Nil	2	2.00	2	0.75	4	11.11

B. Trade goods (Value)	*Bombay*	*Delhi*	*Madras*	*Calcutta*	*Cochin*	*Total*
(*i*) Confiscated but pending disposal on 31 March, 1987	540.33	187.28	929.00	Nil	13.50	1670.11
(*ii*) Confiscated during the year 1987-88	898.44	199.36	563.61	43.60	162.00	1867.01
(*iii*) Cleared during 1987-88	1138.67	108.77	499.43	Nil	77.60	1824.47
(*iv*) Balance on 31 March 1988	300.10	277.87	993.18	43.60	97.90	1712.65

CUSTOMS

ANNEXURE 2.7

(referred to in para 2.07)

Exemption from duty subject to end use verification

(In crores of rupees)

	1984-85	1985-86	1986-87	1987-88
1	2	3	4	5
(a) Value of goods imported on which duty exempted				
Bombay	209.50	548.17	496.77	148.64
Delhi	0.16	N.A.	16.80	28.89
Madras	159.27	128.9	265.27	168.43
Calcutta	43.16	48.81	75.72	35.43
Ahmedabad	0.96	0.39	0.57	0.80
Cochin	60.40	N.A.	1.80	2.50
Total	473.45	726.27	856.93	384.69
(b) Amount of duty forgone				
Bombay	286.52	188.78	540.64	247.61
Delhi	0.38	N.A.	37.20	31.61
Madras	174.66	192.50	248.18	146.51
Calcutta	39.65	32.34	64.87	49.64
Ahmedabad	0.48	0.31	0.84	1.30
Cochin	Nil	N.A.	2.70	1.77
Total	501.69	413.93	894.43	478.44
(c) Value for which bond taken by Custom House				
Bombay	278.04	323.53	139.68	248.52
Delhi	18.48	N.A.	37.20	21.21
Madras	206.20	194.7	248.18	146.56
Calcutta	42.37	32.34	64.87	49.64
Ahmedabad	0.48	0.35	1.10	1.30
Cochin	60.40	N.A.	1.80	111.00
Total	605.97	550.92	492.83	578.23
(d) Number of bonds in respect of which end use condition verified during the year				
Bombay	N.A.	1,758	N.A.	1575
Delhi	N.A.	N.A.	153	381
Madras	797	2,902	7,180	4420
Calcutta	784	N.A.	959	564
Ahmedabad	33	79	14	19
Cochin	35	N.A.	102	54
Total	1,649	4,739	8,408	7,013

ANNEXURE 2.7—*contd.*

1	2	3	4	5
(e) Value of bonds brought forward from previous year for verification of end use condition				
Bombay	211.96	268.96	38.03	83.70
Delhi	1.12	N.A.	28.00	46.99
Madras	60.25	178.0	282.69	271.85
Calcutta	48.65	48.50	44.81	26.47
Ahmedabad	0.11	0.12	0.08	0.70
Cochin	10.20	N.A.	15.00	1.27
Total	332.29	495.58	408.61	430.98
(f) Value of end use bonds carried forward to next year for verification of end use condition				
Bombay	254.87	3,391.26	67.19	156.41
Delhi	1.25	N.A.	356.00	42.87
Madras	169.63	267.90	304.88	86.89
Calcutta	58.29	44.25	26.47	34.75
Ahmedabad	0.26	0.17	0.70	0.64
Cochin	35.45	N.A.	5.50	1.00
Total	519.75	3,703.58	760.74	322.56
(g) Number of end use bonds pending cancellation				
Bombay	5,292	3,567	980	1596
Delhi	894	N.A.	2,668	3197
Madras	4,122	6,699	5,003	2334
Calcutta	685	867	361	365
Ahmedabad	73	24	11	Nil
Cochin	262	N.A.	63	57
Total	11,328	11,157	9,086	7,549
(i) Of above number pending for adjudication or appeal				
Bombay	Nil	5	66	Nil
Delhi	Nil	N.A.	Nil	Nil
Madras	Nil	1	1	Nil
Calcutta	26	1	16	Nil
Ahmedabad	Nil	N.A.	Nil	Nil
Cochin	Nil	N.A.	Nil	Nil
Total	26	7	83	Nil
(ii) Of above number pending decision in High Court				
Bombay	6	5	Nil	Nil
Delhi	Nil	N.A.	Nil	Nil
Madras	9	29	27	56
Calcutta	6	10	10	Nil
Ahmedabad	Nil	Nil	—	Nil
Cochin	Nil	N.A.	7	4
Total	21	44	44	60

N.A.—Not available.

ANNEXURE 2.8

(Referred to in para 2.60)

Personal Penalties Imposed

(Rupees in lakhs)

Sl. No.	Customs House/ Collectorate	Upto 1983		1984		1985		1986		1987		Total	
		No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
1	Bombay												
	(a) Sea	589	173.35	732	257.03	724	142.57	730	1,021.59	—	—	2,775	1,594.54
	(b) Air (From 1983 onwards only).	11	0.18	17	2.08	30	5.99	46	27.81	—	—	104	36.06
2	Calcutta	608	17.91	170	4.32	161	50.61	285	14.12	115	5.37	1,339	92.33
3	Madras	5,876	111.67	623	31.54	738	41.80	1,033	69.49	—	—	8,270	254.50
4	Jaipur	774	4.73	232	1.23	191	1.28	200	1.29	—	—	1,397	8.53
5	Chandigarh	492	11.89	116	2.62	602	12.25	172	8.35	573	3.35	1,955	38.46
6	Patna	——— Yearwise break up not available ———										899	230.00
	TOTAL	8,350	319.73	1,890	298.82	2,446	254.50	2,466	1,142.65	688	8.72	16,739	2,254.42

ANNEXURE 2.9

(*Referred to in para* 2.60)

Personal Penalties realised

(In lakhs of Rupees)

Sl. No.	Customs House/ Collectorate	Upto 1983		1984		1985		1986		1987		Total	
		No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
1	Bombay												
	(a) Sea .	560	24.44	568	29.65	617	41.38	430	25.01	—	—	2,175	120.48
	(b) Air .	11	0.18	17	2.08	19	5.88	43	6.30	—	—	90	14.44
	(From 1983 onwards only)												
2	Calcutta .	256	2.67	44	0.59	50	1.08	87	1.82	24	0.24	461	6.40
3	Madras .	4,958	92.47	364	18.37	465	13.43	374	5.85	—	—	6,161	130.12
4	Jaipur .	555	2.05	144	0.81	105	0.49	64	0.62	—	—	868	3.97
5	Chandigarh .	465	9.51	108	1.04	538	10.46	69	5.25	544	2.86	1,724	29.12
6	Patna .	——— Yearwise break-up not available ———										212	2.64
	TOTAL .	6,805	131.32	1,245	52.54	1,794	72.72	1,067	44.85	568	3.10	11,691	307.17

ANNEXURE 2.10

(*Referred to in para* 2.60)

Personal penalties pending realisation

(Rupees in Lakhs)

Sl.	Name of Custom House/Collectorate	Upto 1983		1984		1985		1986		1987		Total	
		No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
1	Bombay												
	(a) Sea	29	148.91	164	227.38	107	101.19	300	996.58	—	—	600	1474.06
	(b) Air	Nil	Nil	Nil	Nil	11	0.11	3	21.51	—	—	14	21.62
	(Pending as on 30-6-1988)												
2	Calcutta (Pending as on (30-4-1988)	352	15.24	126	3.73	111	49.53	198	12.30	91	5.13	878	85.93
3	Madras (Pending as on 31 March, 1988)	918	19.20	259	13.17	273	28.37	659	63.64	—	—	2109	124.38
4	Jaipur (Pending as on 31 March, 1988)	219	2.68	88	0.42	86	0.79	136	0.67	—	—	529	4.56
5	Chandigarh (Pending as on 30 April, 1988)	27	2.38	8	1.58	64	1.79	103	3.10	29	0.49	231	9.34
6	Patna (Pending as on 31 March, 1988)	———			Year wise break up not available						———	687	227.36
	TOTAL	1545	188.41	645	246.28	652	181.78	1399	1097.80	120	5.62	5048	1947.25

CHAPTER 3

UNION EXCISE DUTIES

3.01 Trend of receipts

During the year 1987-88 total receipts from Union Excise duties amounted to Rs. 16,345.34* crores. The receipts during the year 1987-88 from levy of basic excise duty and from other duties levied as excise duties are given below alongside the corresponding figures for the preceding year :—

	Receipts from Union Excise duties	
	1986-87*	1987-88*
	Rs.	Rs.
A. Shareable duties :		
Basic excise duties	1,19,52,43,70,076	1,28,92,98,81,000
Auxiliary duties of excise	7,49,366	1,82,000
Special excise duties	10,37,15,534	73,81,11,000
Additional excise duties on mineral products	3,30,840	1,000
Total (A)	1,19,62,91,65,816	1,29,66,81,75,000
B. Duties assigned to states :		
Additional excise duties in lieu of sales tax	11,56,06,16,458	12,10,26,05,000
Excise duties on generation of power	1,50,85,784	—
Total (B)	11,57,57,02,242	12,10,26,05,000
C. Non-shareable duties :		
Regulatory excise duties	—	—
Special excise duties	1,77,19,629	11,26,35,000
Additional excise duties on textiles and textile articles	1,76,87,50,244	2,01,27,61,000
Additional excise duties on T.V. sets	24,59,92,416	37,63,62,000
Other duties	(—)45,20,020	1,29,000
Auxiliary duties	35,90,685	(—)1,37,000
Total (C)	2,03,15,32,954	2,50,17,50,000
D. Cess on commodities	10,20,00,43,586	19,05,00,76,000
E. Other receipts	43,39,41,769	13,07,63,000
Total	1,43,87,03,86,367	1,63,45,33,69,000

*Figures furnished by the Ministry of Finance in December 1988.

(*ii*) The trend of receipts in the last five years and the number of tariff items and sub-items (each with a separate rate against it under which the commodities were classified for purposes of levy of duty) are given below :—

Year	Receipts from union excise duties (Rs. in crores)	Number of tariff items/ chapters	Number of tariff sub items/ headings	Number of factories paying excise duties
1983-84	10,221.74	136	333	59,427
1984-85	11,150.84	137	370	61,501
1985-86	12,871.08	134	416	51,824
1986-87	14,387.04	92	711	53,060
1987-88	16,345.34	92	811	60,822

(*iii*) The number of commodities each of which yielded excise duties in excess of Rs. 100 crores during the year 1987-88, the number of commodities which yielded receipts between Rs. 10 crores and Rs. 100 crores and the number which yielded less than Rs. 10 crores per year, alongside corresponding figures for the preceding four years are given below (figures in bracket give percentage to total receipts) :—

Year	Number of commodities each yielding receipts		
	above Rs. 100 crores	between Rs. 10 crores and 100 crores	below Rs. 10 crores
1983-84	21 (80)	52 (18)	63 (2)
1984-85	21 (80)	96 (19)	25 (1)
1985-86	24 (82)	95 (17)	15 (1)
1986-87	20 (58)	130 (35)	561 (7)
1987-88	19 (57)	142 (35)	660 (8)

(*iv*) The commodities which yielded duty amounting to more than Rs. 100 crores during 1986-87 and 1987-88 as under :

Sr No.	Commodities	Tariff heading	Amount (in Rs. Crores) 1986-87	1987-88
1	Petroleum oil: motor spirit, aviation turbine fuel etc.	27.10	1,905.60	2,055.34
2	Cigarettes	24.03	1,344.79	1,510.45
3	Synthetic filament yarn & sewing thread-not textured	54.02	794.16	963.03
4	Cement	25.02	823.61	864.69
5	Tyres	40.11	396.64	498.14
6	Sugar	17.01	400.94	474.25
7	Motor vehicles	87.03	136.13	234.36
8	Synthetic staple fibre	55.01	124.54	203.16
9	Fabrics of man-made filament yarn	54.09	200.16	192.85
10	Patent or proprietary medicaments	30.03	168.68	177.80
11	Tobacco manufactures (other than cigarettes)	24.04	211.87	175.20
12	Wire & cables	85.44	51.17	143.81
13	Parts and accessories of motor vehicles	87.08	125.67	138.67
14	Cotton yarn	52.03	156.55	130.37
15	Soap	34.01	75.95	119.61
16	Oxygen	28.04	71.47	116.00
17	Uncoated paper and paper board	48.02	118.77	113.18
18	Motor cycles (including scooters and mopeds)	87.11	94.61	109.93
19	Television receiving sets	85.28	138.45	103.82
20	Synthetic filament yarn textured	54.03	121.38	95.84*
21	Fabrics of man-made staple fibre	55.08	116.00	99.50*
22	Inner tubes for tyres	40.13	115.50	54.26*
23	Steam or other vapour generating boilers	84.02	104.17	87.94*
24	Cotton fabrics	52.06	104.08	92.54*

*Revenue has gone down in the year 1987-88.

(*v*) Cess is levied and collected by department of central excise on tea, coffee, tobacco, beedi, onion, copra, oil and oil seeds, salt, rubber, jute, cotton fabrics, rayon and artificial silk fabrics, woollen fabrics, man-made fabrics, paper, iron ore, coal and coke, limestone and dolomite and crude oil under various Acts of Parliament in order to provide for development of respective industries and to meet organisational expenditure on welfare of workers in the respective industries. The yield from levy of cess in the last five years and the names of commodities each of which yielded revenue of more than rupees one crores are given below :—

Sr No.	Commodity	Receipts from cess during 1983-84	1984-85	1985-86	1986-87	1987-88
				(In crores of rupees)		
1	Crude oil	838.80	843.53	872.92	979.81	1,772.10
2	Coal & coke	55.97	N.A.	N.A.	N.A.	N.A.
3	Rubber	6.82	N.A.	N.A.	N.A.	N.A.
4	Handloom cess on cotton fabrics	5.19	4.62	4.68	6.24	12.20
5	Tea	4.86	4.52	5.73	6.38	9.82
6	Handloom cess on rayon artificial silk fabrics	1.20	3.49	N.A.	N.A.	N.A.
7	Handloom cess on man-made fabrics	1.93	—	4.10	2.25	N.A.
8	Salt	1.36	N.A.	N.A.	N.A.	N.A.
9	Oil and oil seeds	1.45	3.67	0.04	0.47	0.29
10	Paper	1.28	2.79	2.12	2.23	7.30
11	Other commodities	115.20	112.29	276.67	465.02	137.87
	Total receipts from cess	1,034.06	974.91	1,166.26	1,462.40	1,339.58

3.02 Variations between the budget estimates and actual receipts

The budget estimates vis-a-vis actual receipts during the year 1987-88 alongside the corresponding figures for preceding three years are given below :—

Year	Budget estimates	Actual receipts
	(in crores of rupees)	
1984-85	10,889.95	10,916.56
1985-86	12,226.69	12,871.08
1986-87	14,066.81	14,387.04
1987-88	16,580.12	16,345.34

3.03 Cost of Collection

The expenditure incurred during the year 1987-88 in collecting Union Excise duties are given below alongside the corresponding figures for the preceding three years :—

Year	Receipts from excise duties	Expenditure on collection	Cost of collection as percentage of receipts
	(in crores of rupees)		
1984-85 . .	11,165.00	72.55	0.64
1985-86 . .	12,871.08	80.85	0.62
1986-87 . .	14,387.04	107.40	0.76
1987-88 . .	16,345.34	112.14	0.69

3.04 Exemptions, rebates and refunds

(*i*) *Exemptions*

In the Central Excise Tariff, the number of sub-headings (each with a rate against it) under which the excisable commodities are required to be classified was 1,441 during the year 1986-87 and 1,227 during the year 1987-88. The number of exemption notifications in force during the years 1986-87 and 1987-88 numbered 358 and 468 respectively. Because exemption notifications are issued under the various sub headings, the rates of basic excise duty in force during the years 1986-87 and 1987-88 were 1,160 and 1,267 respectively. The largest number of exemption notifications were in force in respect of the following commodities :—

Sl. No.	Chapter	Description	Number of exemption notifications in force during 1986-87	1987-88
1	28	Inorganic chemicals . .	16	28
2	40	Rubber and articles thereof	15	24
3	54	Man-made filaments . .	15	22
4	27	Mineral fuels . . .	17	21
5	48	Paper	17	16
6	84	Machinery and mechanical appliances . . .	10	16
7	85	Electrical machinery and equipment . . .	11	16
8	32	Dyes, colours, paints, and varnishes . . .	13	15
9	39	Plastics and articles thereof	12	14
10	55	Man-made staple fibres .	8	14
11	87	Motor vehicles and parts thereof	6	14

The amount of revenue foregone by grant of exemptions through issue of notifications by the Ministry of Finance under sub rules (1) and (2) of Rule 8 of the Central Excise Rules 1944, for the year 1987-88 was as under :

Under Rule 8(1)	*Rs. 8,317.36 crores
Under Rule 8(2)	*Rs. 0.18 crores

(*ii*) *Rebate*

Under the Central Excise Rules the amount** of rebates on excise duty paid on goods exported as also excise duty not levied on goods exported, in recent years is given below :

	1985-86**	1986-87**	1987-88
	(In crores of rupees)		
(a) Rebate under Rule 12 .	25.75	94.85	24.34
(b) Rebate under Rule 12A .	23.26	4.29	6.25
(c) Duty not levied under Rule 13-Revenue foregone as a result of export under bond	695.57	867.11	940.58
(d) Differential duty recovered on unrebated amount of goods exported under bond	2.21	3.53	7.91

(*iii*) *Refunds*

The amount of duty refunded by the department in recent years because of excess collection is given below :

	1985-86	1986-87	1987-88
Number of cases . . .	8,547	7,787	10,243
Amount of refunds (In crores of rupees) . . .	48.74	55.24	85.35

*Figures furnished by the Ministry of Finance in December 1988 cover 22 Collectorates out of 32 Collectorates.

**Figures furnished by the Ministry of Finance cover only 31 collectorates out of 32 collectorates.

3.05 Outstanding demands

The number* of demands for excise duty outstanding for collection and the amount of duty involved as on 31 March 1988 are given below :—

	Relating to					
	1985-86 and earlier years		1986-87		1987-88	
	Number of cases	Amount (in crores of rupees)	Number of cases	Amount (in crores of rupees)	Number of cases	Amount (in crores of rupees)
(a) Pending with Adjudicating Officers	6,461	518.01	4,703	859.63	5,104	464.57
(b) Pending before Appellate Collectors	617	13.88	421	19.71	483	34.62
(c) Pending before Board	46	10.71	20	1.66	14	0.64
(d) Pending before Government	137	4.53	14	1.87	22	0.61
(e) Pending before Tribunals	706	29.52	320	29.04	619	56.97
(f) Pending before High Courts	1,286	119.40	368	32.23	656	45.32
(g) Pending before Supreme Court	448	63.27	136	35.02	217	28.60
(h) Pending for coercive recovery	33,796	41.62	760	22.99	11,136	30.03
Total	43,497	800.94	6,742	1,002.15	18,251	661.36

*Figures furnished by the Ministry of Finance in December 1988 cover 31 collectorates out of 32 collectorates.

3.06 Provisional assessments

The assessments to excise duties which have been done provisionally for various reasons, and the amount of estimated revenue involved are indicated below :—

	Relating to					
	*1985-86 and earlier years		**1986-87		**1987-88	
	Number of cases	Duty involved (in crores of rupees)	Number of cases	Duty involved (in crores of rupees)	Number of cases	Duty involved (in crores of rupees)
(a) Pending decision by Courts of Law	1156	310.29	648	111.34	617	138.66
(b) Pending decision by Govt. of India or Central Board of Excise & Customs	310	9.82	49	5.73	11	3.61
(c) Pending adjudication by the department	139	11.41	215	23.80	155	60.59
(d) Pending finalisation of classification lists	372	14.69	2139	30.69	2041	83.10
(e) Pending finalisation of price lists	2235	545.43	1975	219.34	1822	217.81
(f) Other reasons	7 08	49.54	633	47.99	781	64.21
Total	4920	941.18	5659	438.89	5427	567.98

*Figures furnished by the Ministry of Finance in December 1988 cover 30 collectorates out of 32 collectorates.

**Figures furnished by the Ministry of Finance in December 1988 cover 31 collectorates out of 32 collectorates.

3.07 Failure to demand duty before limitations and revenue remitted or abandoned

(*i*) *Revenue not demanded before limitation*

The total amount* of demands for duty barred by limitation and not realisable owing to demands not having been raised in time during the last three years was Rs. 345.35 lakhs as detailed below :—

Year	Number of cases	Amount (in lakhs of rupees)
1985-86	28	210.29
1986-87	29	78.10
1987-88	41	56.96

(ii) Revenue remitted or abandoned

The amount* of revenue remitted, abandoned or written off during the last three years are given below:—

	1985-86		1986-87		1987-88	
	Number of cases	Amount (in lakhs of rupees)	Number of cases	Amount (in lakhs of rupees)	Number of cases	Amount (in lakhs of rupees)
1	2	3	4	5	6	7
Remitted due to						
(a) Fire . . .	36	89.31	71	32.11	83	25.67
(b) Flood . . .	373	1.08	8	16.18	3	0.05
(c) Theft . . .	5	0.48	—	—	1	0.01
(d) Other reasons . . .	608	23.33	269	27.96	136	204.17
Total .	1022	114.20	348	76.25	223	229.90
Abandoned or Written off due to :						
(a) Assessee died leaving behind no assets . . .	217	3.53	64	21.87	33	2.52
(b) Assessee untraceable . .	418	12.06	270	2.78	1502	12.33
(c) Assessee left India . . .	2	0.02	200	0.12	6	0.06
(d) Assessee incapable of payment of duty . . .	1118	3.65	831	3.26	579	5.69
(e) Other reasons . . .	611	2.86	269	10.14	28	254.63
Total .	2366	22.12	1634	38.17	2148	275.23

*Figures furnished by the Ministry of Finance in December 1988 cover 31 collectorates out of 32 collectorates.

3.08. Writs and Appeals

(i) Writ petitions pending in courts

Number*of writ petitions involving excise duties which were pending in courts as on 31 March 1988 are given below :—

	In Supreme Court	In High Courts
Pending for over 5 years . . .	1,088	1,832
Pending for 3 to 5 years . . .	551	895
Pending for 1 to 3 years . . .	433	936
Pending for not more than 1 year . .	233	647
Total .	2,305	4,310

(ii) Appeals pending with others

The number* of appeals and petitions pending with Collectors/Board/Government as on 31 March 1988 are given below:—

	With Collectors	With Tribunal	With Board	With Govt.
(a) Number of appeals instituted during 1987-88	3,828	1,409	18	86
(b) Pending as on 31 March 88 (out of (a) above) .	3,168	1,037	4	28
(c) Number of appeals/ petitions instituted in earlier years and pending on 31 March 1987.	750	3,009	17	46
(d) Pending as on 31 March 1988 (out of(c) above) .	461	2,354	14	32

*Figures furnished by the Ministry of Finance in December 1988 cover 31 collectorates out of 32 collectorates.

(iii) Details of appeals/references disposed of

The number* of appeals and references filed before Collectors (Appeals), the Tribunals and the High Courts and Supreme Court are given below :—

1	2	Relating to 1986-87 and earlier years	Relating to 1987-88
1	(a) Number of appeals filed before Collectors (Appeals).	2,827	1,800
	(b) Number of appeals disposed of during 1987-88 out of (a) above	2,073	1,263
2	(a) Number of appeals filed before the Tribunal by the assessees during 1987-88	1,171	1,309
	(b) Number of appeals decided during 1987-88 in favour of the assessees	915	562
3	(a) Number of appeals filed before the Tribunals by the department during 1987-88	134	285
	(b) Number of appeals decided in favour of the department during 1987-88	99	81
4	(a) Number of appeals filed in the High Courts by the assessees during 1987-88	117	161
	(b) Number of appeals disposed of in favour of the assessees during 1987-88	43	26
5	(a) Number of appeals filed by the department before the High Courts during 1987-88	13	19
	(b) Number of appeals decided in favour of the department during 1987-88 (including appeals filed by assessees)	19	29
6	(a) Number of appeals filed in the Supreme Court by assessees during 1987-88	137	60
	(b) Number of appeals decided in favour of the assessees during 1987-88	144	84
7	(a) Number of appeals filed in Supreme Court by the department during 1987-88	4	7
	(b) Number of appeals decided in favour of the department during 1987-88	4	3

*Figures furnished by the Ministry of Finance in December 1988 cover 30 collectorates out of 32 collectorates.

3.09. Seizures, confiscation and prosecution

The number* of cases of seizures, confiscation and prosecution relating to the excise duties are given below :

	1985-86 Number	1985-86 Amount (in lakhs of rupees)	1986-87 Number	1986-87 Amount (in lakhs of rupees)	1987-88 Number	1987-88 Amount (in lakhs of rupees)
(i) Seizure cases	3,327	4,181.13	3,694	25,237.91	2,278	5,747.64
(ii) Goods seized	3,578	2,395.34	1,710	14,538.82	1,162	1,664.26
(iii) Goods confiscated :						
(a) in seizure cases	1,133	1,040.93	2,017	1,282.08	946	1,208.06
(b) in non-seizure cases	251	1,096.59	312	10,720.21	312	369.06
(iv) Number of offences prosecuted						
(a) arising from seizure	110	78.80	64	1,083.02	74	16.65
(b) arising otherwise	134	143.98	176	160.02	69	94.97
(v) Duty assessed in respect of goods seized or confiscated	1,301	1,174.76	1,549	2,578.48	1,445	1,719.98
(vi) Fines levied :						
(a) on seizure and in confiscation cases	960	154.69	898	68.32	921	54.74
(b) in other cases	160	1.63	168	70.91	150	52.71
(vii) Penalties levied	2,270	404.61	2,194	132.27	2,606	1,039.46
(viii) Goods destroyed after confiscation	16	0.55	9	0.13	19	0.08
(ix) Goods sold after confiscation	33	1.84	67	1.82	46	2.97
(x) Prosecution resulting in conviction	14	12.15	19	2.84	6	1.40
Total	13,287	10,687.00	12,877	55,876.83	10,034	11,971.98

*Figures furnished by the Ministry of Finance in December 1988 cover 31 collectorates out of 32 collectorates.

3.10 Outstanding audit objections

The number of objections raised in audit upto 31 March 1987 in 32 collectorates and which were pending settlement as on 30 September 1987 was 6,055. The duty involved in the objections amounted to Rs. 357.53 crores. Details are given in Annexure 3.1 to this chapter.

The outstanding objections broadly fall under the following categories :

Sr. No.	Nature of objection	Amount (in crores of rupees)
1.	Non-levy of duty	101.62
2.	Short levy of duty due to undervaluation	39.80
3.	Short levy of duty due to misclassification	28.33
4.	Short levy of duty due to incorrect grant of exemption	42.17
5.	Exemption to small scale manufacturers	0.81
6.	Irregular grant of credit for duty paid on inputs and irregular utilisation of such credit	16.26
7.	Demands for duty not raised	3.21
8.	Irregular rebates and refunds	2.19
9.	Cess	14.27
10.	Others	108.81
11.	Internal Audit	0.06
	Total	357.53

The Ministry of Finance have stated (November 1988) that from the monthly statement of disposal of CERA objections for the month of September 1988 furnished by the Collectors of Central Excise, it is observed that 2,034 CERA objections involving duty of Rs. 150.81 crores were still pending settlement for more than one year.

The collecterwise details of such cases have not been furnished by the Ministry (December 1988).

3.11 Results of audit

Test check of records in audit in the various Central Excise Collectorates including check of excise records of licensees manufacturing excisable commodities revealed under assessment of duty and losses of revenue amounting to Rs. 132.06 crores.

The irregularities noticed broadly fall under the following categories :

(*a*) Non levy of duty

(*b*) Short levy of duty due to misclassification

(*c*) Short levy of duty due to undervaluation

(*d*) Short levy of duty due to incorrect grant of exemption

(*e*) Irregular grant of credit for duty paid on raw materials and components (inputs) and irregular utilisation of such credit towards payment of duty on finished goods (outputs)

(f) Non levy/Short levy of cess

(g) Irregular exemption to small scale manufacturers

(h) Demands for duty not raised

(i) Irregular grant of refunds and rebates

(j) Procedural delays and irregularities with revenue implications

(k) Other irregularities

Some of the important cases are mentioned in the succeeding paragraphs :—

NON LEVY OF DUTY

Under Rule 9 read with Rule 173G of the Central Excise Rules, 1944 no excisable goods should be removed from any place where they are produced, manufactured or cured whether for consumption, export or manufacture of any other commodity, in or outside such place unless the excise duty leviable has been paid.

Some of the important cases of non levy of duty noticed in audit are given below :

3.12 Non-levy of duty on goods consumed captively

Section 3 of the Central Excises and Salt Act, 1944, requires levy of excise duty on all excisable goods other than salt, which are produced or manufactured. Section 2(d) defines "excisable goods" to mean goods specified in the first schedule as being subject to a duty of excise (and includes salt). Section 2(f) defines "manufacture" to include any process incidental or ancillary to the completion of a manufactured product. Rules 9,49 and 173 G of the Central Excise Rules, 1944 provide that duty shall be paid on excisable goods before their removal from any place where they are produced, cured or manufactured or any premises appurtenant thereto, whether for consumption, export or manufacture of any other commodity in or outside such place. Further as per explanation below Rules 9 and 49, excisable goods produced and consumed or utilised as such or after subjection of any process or for the manufacture of any other commodity whether in a continuous process or otherwise shall be deemed to have been removed immediately before such consumption or utilisation.

It has also been confirmed by the Supreme Court (J.K. Spinning and Weaving Mills Ltd. *vs.* Union of India and others—1987(32) ELT 234 (SC)) that in view of the provisions under the explanation to Rules 9 and 49, although the goods which were produced or manufactured in an intermediate stage and then consumed or utilised in the integrated process for the manufacture of another commodity were not actually removed but shall be construed and regarded as removed. In an integrated factory, duty, therefore, becomes leviable at each stage of manufacture save when excisable goods produced at any stage are specifically exempted from duty or rules specifically exempted them from duty or provide for deferment of duty or for set-off against duty already paid on raw materials or components.

(*i*) *Chemicals*

(*a*) *Alkali cellulose—a chemical derivative*

A manufacturer of "viscose (cellulosic) filament yarn", also produced alkali cellulose, a chemical derivative of cellulose in primary form , and used the same, within the factory of production, in the ultimate manufacture of 'viscose filament yarn'. However, no statutory records were maintained to quantify its production and no duty was realised on such "alkali cellulose" even if it was an excisable item and was not exempted from payment of duty by issue of notification. This resulted in non levy of duty amounting to Rs. 12.96 crores (approximately) on captive production and removal made during 1984-85, 1985-86 and 1986-87.

On the irregularity being pointed out (September 1987) in audit, the department admitted (March 1988) that alkali cellulose, a chemical derivative of cellulose in primary form, came into existence at an identifiable intermediate stage, yet it was not dutiable since it was not capable of being bought and sold in the market. In support of this argument the department cited two judgments delivered by the Supreme Court in 1973 and 1986. The department added that 'alkali cellulose' was an intermediate product produced earlier to the main intermediate product 'cellulose xanthate' which is exempted by a notification. The contention of the department was not acceptable in audit since only the rules govern the levy of duty and as already pointed out, the aforesaid rules (read with the Supreme Court judgment—*ibid*) required that in an integrated factory duty is leviable at each stage of manufacture save where such goods produced at any stage are specifically exempted from payment of duty. In the instant case although rule had specifically provided for exemption of duty on one intermediate product *viz.* 'cellulose xanthate' it had not provided for such exemption on the other intermediate excisable product 'alkali cellulose'. Further, the department's claim that the product was not excisable on the ground of its non-marketability, was not valid in the light of CEGAT's decision in a similar case (1987 (12) ECR 461). In its judgment the CEGAT had observed that such product had to be held as 'goods' excisable under relevant tariff item irrespective of whether it was marketable or not or sold or not, duty liability being attracted on manufacture and not on sale. While giving their decision the CEGAT had also considered the Supreme Court judgment (1986 (7) ECR 217 (SC)) as cited by the department and observed that the same would not be helpful in such cases.

The Ministry of Finance did not accept the objection and stated (November 1988) that the product "alkali cellulose" like "cellulose xanthate" is unstable, has no shelf life and is reported to be not capable of being bought and sold. They added that in view of Supreme Court judgment in the case of M/s Union Carbide India Ltd. & others (1986 (24) ELT 1689) the product does not qualify to be considered as goods for the purpose of levy of duty.

The fact, however, remains that so long as the subject goods find place in the Tariff, its duty liability can only be exempted under a legal notification as was done in respect of "cellulose xanthate". The Ministry's reply is not sustainable.

(*b*) *Sodium rosinate*

A paper manufacturer produced 'sodium rosinate' by the reaction of soda-ash and rosin and used it without payment of duty for captive consumption in the manufacture of paper. This resulted in non-levy of duty of Rs. 3.29 lakhs during the period from 1 March 1986 to 28 February 1987.

On the mistake being pointed out in audit (December 1987), the department accepted (May 1988) the objection. The report on the recovery of the amount has not been received (May 1988).

The Ministry of Finance have accepted the under-assessment (November 1988).

(*ii*) *Mineral substances*

Raw feed or slurry manufactured by grinding of mineral substances namely limestone, clay, slag and pozzolonic material was classifiable under the erstwhile tariff item 68 upto 27 February 1986 and was exempt from the whole of the duty of excise leviable thereon under a notification dated 30 April 1975 if used captively within the factory of production. The aforesaid notification dated 30 April 1975 was rescinded on 1 March 1986 and the raw feed or slurry became classifiable under heading 25.05 of the Central Excise Tariff Act 1985 from that date attracting duty at 12 percent ad valorem. Those goods were again exempted from the whole of the duty of excise leviable thereon by issue of a notification on 13 November 1986.

(*a*) Twenty four cement manufacturers in six collectorates, interalia, manufactured limestone powder from the limestone brought from quarries for use in the manufacture of cement clinkers and cement but did not pay duty amounting to Rs. 3.15 crores on the limestone powder manufactured and consumed captively during the period from 28 February 1986 to 12 November 1986.

The irrregularity was brought to the notice of the department during the period June 1986 to January 1988.

The Ministry of Finance have admitted the objection and have since issued exemption order invoking provisions of Section 11 C for the period 28 February 1986 to 12 November 1986.

(*b*) An assessee obtained duty free limestone and crushed, ground and powdered a part of the same in his sinter plant to produce lime fine. He used the lime fine internally in the manufacture of 'sinter' (a product dutiable under Chapter 28) without payment of duty. Non-levy of duty on captive consumption of such 'lime-fine' resulted in duty of Rs. 1.27 crores not being realised during 28 February 1986 to 28 February 1987.

On the omission being pointed out in audit in February 1988, the department did not accept the objection and stated (May 1988) that the processes involved in converting limestone to 'limefine' *viz.*, crushing, grinding, powdering etc are not manufacturing processes and the 'limefine' is not a manufactured product.

The contention of the department is not acceptable since crushed, ground and powdered 'limefine' stands identified as a product under heading 25.05 chargeable to duty at 12 per cent ad valorem as per note 2 of chapter 25.

The Ministry of Finance have admitted the objection (November 1988).

(*iii*) *Blended tea*

Under sub-headings 0902.11, 0902.12 and 0902.13 of the schedule to the Central Excise Tariff Act, 1985 tea packed in unit containers are chargeable to duty at the rates of Re. 0.44 per kg, Rs. 1.10 per kg., and 11 per cent ad valorem respectively plus the duty for the time being leviable under sub-heading 0902.19.

As per a notification dated 11 March 1986 packed tea falling under sub-headings 0902.11 and 0902.12 chargeable to duty at the rates of Re. 0.44 and Rs. 1.10 per kilogram respectively if the duty payable on tea falling under sub-heading 0902.19 and used in the manufacture of such goods has already been paid. Thus concessional rates of duty of Re. 0.44 and Rs. 1.10 per kilogram were applicable only when duty payable under sub-heading 0902.19 had been paid which included duty on loose tea produced in tea gardens and duty on blended tea at packer's premises since under note 2 of chapter 9 blending of tea amounts to manufacture. Although tea packed in 'tea bags' classifiable under sub-heading 0902.13 and cleared as such is exempt from duty as per notification dated 14 May 1986 but duty is payable on 'blended tea' under sub-heading 0902.19 from which such tea bags are manufactured.

Eight manufacturers of packed tea brought duty paid loose tea from different tea gardens, blended and used such blended tea within the factory, without payment of duty for manufacturing packed tea/tea bags. Since Central Excise Tariff introduced from 28 February 1986 defined blending as manufacture, blending at packer's premises is manufacturing and attracts levy of duty on such blended tea. Non-levy of duty on such blended tea amounted to Rs. 1.71 crores during the period from 1 March 1986 to 28 February 1987 (no modvat credit or exemption under notification dated 2 April 1986 was available during this period).

The irregularity was pointed out in audit in June 1987 and January 1988.

The Ministry of Finance have admitted the objection (August 1988 and october 1988).

(*iv*) *Iron and steel products*

Section 3 of the Central Excises and Salt Act, 1944 requires levy of duty of excise on all excisable goods manufactured or produced in India. Section 2(d) of the Act defined excisable goods as the goods specified in the first schedule to that Act. As per Rule 49 (3) of the Central Excise Rules, 1944, excisable goods captively consumed or utilised for manufacture of any other commodity are deemed to have been removed for the purpose of levy of duty thereon. However, no duty on such captively consumed goods was leviable if the outputs were specified under Rule 56-A; the inputs and the outputs fell under the same tariff item; and the output goods were not exempted from the whole of duty leviable thereon or chargeable to nil rate of duty.

(a) Pig iron/molten iron manufactured in an integrated factory, was consumed captively for manufacture of ingot moulds and bottom stools (erstwhile tariff item 25(16)(i). Though such moulds and stools were exempted from duty under a notification issued on 1 August 1983, yet the duty leviable on pig iron/molteniron utilised in the manufacture of said moulds and stools was not paid by the manufacturer. This resulted in non-levy of duty of Rs. 45.37 lakhs on 58,929 tonnes of pig iron/molten iron consumed captively during the period from 1 November 1983 to 30 September 1984.

On the non-levy of duty being pointed out in audit (November 1984, January 1985 and March 1986), the department raised four demands for Rs. 1.43 crores covering the period from 1 August 1983 to 30 April 1986. The department further intimated in December 1987 that a demand for Rs. 13,34,944 covering the period from 1 January 1986 to 31 March 1986 was confirmed. Report on recovery of duty of the confirmed demand and action taken to adjudicate the remaining demands has not been received (March 1988).

The Ministry of Finance have admitted the objection (August 1988).

(b) A Public Sector undertaking manufacturing iron and steel products, machines, equipments and structurals etc; was clearing iron castings, steel castings and steel forgings (erstwhile tariff item 25) without payment of duty for further manufacture of machines, machinery equipments and structurals (erstwhile tariff item 68). Since the finished goods and the raw materials captively consumed fell under different tariff items as it existed immediately before the commencement of the Central Excise Traiff Act, 1985 the second condition (clause (ii) of the proviso to Rule 9 was not fulfilled. Duty amounting to Rs. 4,38,158 was, therefore, leviable on iron casting, steel casting and steel forging cleared in March 1986 and April 1986.

The omission was pointed out to the department in September 1987.

The Ministry of Finance have stated (November 1988) that the matter is under examination.

(v) *Cotton yarn*

Section 3 of the Central Excises and Salt Act, 1944 requires that excise duty should be levied on all excisable goods manufactured in India. Note 1 to Chapter 52 of the Central Excise Tariff Act, 1985 defines 'manufacture' in relation to cotton yarn of heading 52.03 and 52.04 to include sizing, beaming, wraping, winding or reeling, or any one or more of these processes, or the conversion of any form of the said products into another form of such products. Rules 9, 49 and 173-G of the Central Excise Rules, 1944, require that duty shall be paid on excisable goods before their removal from any place where they are produced or manufactured or any premises appurtenant thereto, whether for consumption, export or manufacture of any other commodity in or outside such place. However, such goods may be removed without payment of duty if the final product is neither exempt from the whole of the duty of excise leviable thereon nor is chargeable to nil rate of duty.

(a) In eight textile mills, cotton yarn on cops which was produced at the spindle stage (ring frame) was used captively for conversion into yarn in plain (straight) reel hanks and was cleared without payment of duty. As yarn in plain (straight) reel hanks was chargeable to duty at nil rate and there was no notification granting exemption to cotton yarn on cops captively used, it resulted in non-levy of duty of Rs. 46,27,857 during the period from April 1985 to July 1987.

On the irregularities being pointed out in audit (June, August and October 1987), the department, in one case, admitted the objection to the extent of Rs. 2,16,974 relatable to the period 1 January 1986 to 27 February 1986 and issued a show cause-cum demand notice. As regards the objection relating to the clearances from 28 February 1986 the department contended that cotton yarn in cops, was not specifically mentioned in the Tariff Act, 1985 and hence no duty was leviable from that date on cotton yarn in cops consumed for manufacture of cotton yarn in plain (straight) reel hanks. In three other cases the department issued show cause-cum demand notices.

The department did not accept the objection in the remaining four cases.

The Ministry of Law have agreed with the views of Audit. However, the Ministry of Finance have stated (July 1988) that they are seeking the opinion of the Attorney General.

(b) It has been judicially held that the taxable event in respect of yarn is the manufacture of yarn and not the use of yarn at any subsequent stage (1983 E.L.T. 326 (Guj)) and also that as the manufacture of yarn is complete at spindle stage when it emerges from ring frame, its dutiability should be determined at that stage (1982 E.L.T. 636 (G.O.I.)).

Cotton yarn in all forms, including cones, cheese and bobbins was classifiable under tariff item 18A till 27 February 1986 and under heading 52.03 thereafter. As per two notifications issued on 13 November 1982 and 17 March 1985 single or multiple fold yarn in plain (straight) reel hanks is exempt from the whole of duty leviable thereon.

Eight textile mills and a yarn mill manufactured cotton yarn in the form of cheese and bobbins and used it captively for conversion into doubled yarn. As per the aforesaid notifications, the manufacturers were allowed to clear doubled yarn in straight reel hanks without payment of duty. As yarn in plain (straight) reel hanks was exempt from duty and there was no notification granting exemption to cotton yarn in the form of cheese or bobbins, its removal for captive consumption attracted duty. Failure to levy duty on cotton yarn (cheese) resulted in non-realisation of duty of Rs. 25,94,521 during the periods from September1983 to July 1987.

On the omissions being pointed out in audit (between December 1985 to March 1988), the department did not accept the objections and contended in one case that as per Appellate Tribunal New Delhi's order dated 10 April 1985 (1985 E.C.R. 2031—CEGAT) in the case of Orissa Weavers Co-operative Spinning Mills Ltd, conversion of yarn from cones to plain reel hanks is permissible and no duty is involved. In other cases it was stated (between July 1987 and May 1988) that cheese winding is an intermediate process and duty would be payable on the particular form of cotton yarn in which such yarn was removed from the factory.

The replies are not correct because as per explanation below erstwhile tariff item 18A, cotton yarn in the form of bobbins, cheese etc. finds a distinct mention in the tariff description itself as an excisable commodity and is chargeable to duty under the said tariff item. The contention of the department is also contrary to the provisions of Rules 9 and 49 which do not allow removal of exisable goods free of duty even for captive consumption when the final product is wholly exempt from Auty. The Supreme Court has also upheld the views of Audit in its judgment in the case of M/s J. K. Spinning and Weaving Mills Ltd Vs. Union of India (1987 (32) E.L.T. 234(S.C.)).

The Ministry of Law have agreed with the views of Audit. However, the Ministry of Finance have stated (July 1988) that they are seeking the opinion of the Attorney General.

(c) Rule 49A of the Central Excise Rules, 1944, provides for deferment of payment of duty in respect of cotton yarn and cellulosic spun yarn till the stage of clearance of fabrics, in the manufacture of which such yarn is used.

A composite mill working under Rule 49A cleared cotton yarn in bobbins for internal consumption to the weaving section and paid duty on such cotton yarn at the time of clearance of fabrics made from such yarn. A certain quantity of such yarn remaining unutilised was removed from the weaving section, without payment

of duty, for further conversion into plain (straight reel) hank within the same factory. The yarn in hank was then cleared from the factory without payment of duty in terms of a notification issued on 13 November 1982. Thus, the cotton yarn (erstwhile tariff item 18A) removed from the spinning section under Rule 49A and left unutilised in the weaving section escaped the levy of yarn stage duty though the aforesaid rule contemplated only deferment of duty and not exemption. Non levy of duty on this account amounted to Rs. 2.50 lakhs during the period from 1 December 1982 to 31 December 1985.

On the mistake being pointed out in audit (December 1983), the department stated (May 1985) that the unutilised yarn arose between spindle stage and weaving stage as ramnants, from which yarns in straight reel hanks were recovered and cleared without payment of duty, being an exempted product.

The department's contention is not acceptable in audit because as per explanation below erstwhile tariff item 18A, 'cotton yarn in bobbin' was specifically mentioned as an excisable commodity and, therefore, the yarn cleared in bobbins was liable to duty; and the CEGAT while deciding a similar issue, in the case of M/S Jiyajee Rao Cotton Mills (1987(13) ECR—748) held in August 1987 that Rule 49A of the Central Excise Rules was no authority for non-levy of duty on the yarn which was left unutilised at the weaving stage and subsequently converted into plain (straight) reel hanks. It further held that the duty liability, postponed under the aforesaid rule, was of the full amount of duty payable on the yarn which would otherwise have been payable at the time of removal of such yarn for manufacture of fabrics.

The Ministry of Law have agreed with the views of Audit. However, the Ministry of Finance have stated (July 1988) that they are seeking the opinion of the Attorney General.

(*vi*) *Rubber and rubber products*

Compounded rubber, unvulcanised, in primary form which includes solution by virtue of note 2 of Chapter 40 is classifiable under heading 40.05 of the schedule to the Central Excise Tariff Act, 1985 and is chargeable to duty at the rate of forty percent ad valorem. By issue of a notiffcation dated 29 July 1986 the rate of duty was reduced to fifteen percent ad valorem.

(*a*) A footwear manufacturer produced 'rubber solution' out of natural/synthetic rubber, chemicals and solvent oil and used it internally for applying on the textile fabrics required for footwear and rainwear. Duty on such rubber solution was not levied by the department. This resulted in non-levy of duty of Rs. 24.40 lakhs for the period from March 1986 to February 1987.

On the omission being pointed out in audit (November 1987), the department did not admit the objection and stated (April 1988) that the rubber solution cannot be called a product but is an intermediate stage and, therefore, this activity does not amount to manufacture. In support of their contention the department cited the Central Board of Excise and Customs letter dated 20 January 1988 in respect of 'Magnesium chloride'.

(i) The contention of the department is not acceptable as the example of magnesium chloride is not comparable since the tariff item covered only magnesium chloride and there was no tariff item which covered an intermediate stage or process. Because the tariff specifically covers compounded rubber in solution form under heading 40.05 made from rubber falling under headings 40.01 and 40.02, the process amounts to manufacture; and

(ii) the Board has decided in a letter issued on 8 February 1988 that rubber solution manufactured by disolving duty paid rubber in an organic solvent is appropriately classifiable under heading 40.05.

In a similar case reported in para 4.12(v) of Audit Report for the year ended 31 March 1987 the Ministry of Finance had accepted the objection.

The Ministry of Finance have stated (October 1988) that the matter is under examination.

(b) A manufacturer of synthetic rubber (erstwhile tariff item 16AA) obtained benzene (erstwhile tariff item 6) from two sources viz. refinery and non-refinery units for use in the manufacture of synthetic rubber. The manufacturer obtained benzene duty free from the refinery for use in the manufacture of synthetic rubber in terms of a notification dated 21 December 1967. He also obtained benzene from non-refinery units after discharging duty at the concessional rate of Rs. 472.50 per kilolitre in terms of another notification dated 1 March 1984 permitting its use for chemical conversion into synthetic rubber or for intermediates therefor. The benzene obtained from both the sources was used for production of ethyl benzene (erstwhile tariff item 6) by reaction with ethane. Ethyl benzene so produced was vaporised and mixed with steam to produce styrene monomer (erstwhile tariff item 68) which was finaly used for the production of styrene butadiene rubber i.e., synthetic rubber. Styrene monomer falling under erstwhile tariff item 68 being consumed captively for the manufacture of synthetic rubber, was exempt from the whole of duty as per a notification issued on 30 April 1975.

Ethyl benzene manufactured from duty paid benzene obtained from non-refinery unit and used for chemical conversion into synthetic rubbers and intermediates therefor would be eligible for exemption from the whole of duty in terms of notification dated 1 March 1984. This exemption would, however, not be available in respect of ethyl benzene manufactured from benezene obtained from the refinery as the input goods in question were cleared duty free in terms of notification dated 21 December 1967 for use in the manufacture of synthetic rubber and not for the manufacture of intermediates therefor. Therefore, in terms of Rules 9 and 49 of the Central Excise Rules, 1944, ethyl benzene manufactured from benzene obtained from refinery and used in the manufacture of intermediate products like styrene monomer would attract duty at Rs. 472.50 per kilolitre as the input goods (ethyl benzene) and final products viz.

synthetic rubber did not fall under the same tariff item. However, no duty was levied thereon. This resulted in duty being levied short by Rs. 15,16,816 (approximately) on such ethyl benzene captively consumed during the period from January 1985 to December 1985 alone. Short levy of duty for the period prior to January 1985 and after December 1985 was to be worked out by the department.

On the irregularity being pointed out in audit (February 1986) the department did not admit the objection and stated (May 1986 and February 1988) that synthetic rubber cannot be manufactured directly from benzene. Some intermediate products like ethyl benzene, styrene monomer will definitely emerge which will be captively consumed for producing synthetic rubber. The reply of the department is not acceptable as duty is leviable in terms of Rules 9 and 49 ibid on ethyl benzene manufactured from benzene obtained from refinery sources and consumed captively for the manufacture of styrene monomer.

The Ministry of Finance have stated (November 1988) that the matter is under examination.

(c) A manufacturer produced 'compounded rubber' in pasty form (sub heading 4005.00) and used it internally in the manufacture of rubberised cotton fabrics (Chapter59) without payment of duty. This resulted in non levy of duty of Rs. 1.95 lakhs for the period from March 1986 to December 1986 after allowing set off of duty paid on inputs (ie. rubber and chemicals).

On the omission being pointed out in audit in September 1987, the department did not admit the audit objection and stated (March 1988) that compounded rubber manufactured and used internally was exempt from payment of duty under a notification dated 1 April 1968 and that notification also covered compounded rubber in primary form.

The stand of the department is not tenable as the exemption notification is applicable to compounded rubber in the form of plates, sheets and strips only and not to compounded rubber in the form of paste.

Similar audit objection raised in para 4.12(v) of the Audit Report for the year ended 31 March 1987 has already been accepted by the Ministry.

The Ministry of Finance have stated (November 1988) that the matter is under examination.

(vii) Other manufactured products

As per a notification issued on 2 April 1986, specified excisable goods manufactured in a factory and used as inputs within the factory of production in or in relation to the manufacture of specified final products were exempt from the whole of the duty of excise leviable thereon. An explanation below the notification stipulated that excisable goods manufactured in the factory which are in the nature of machines, machinery, plant, equipment, apparatus, tools or appliances used for producing or processing of any goods or bringing about any change in any substance in or in relation to the manufacture of the final products shall not be regarded as inputs, and consequently goods which are appliances, if manufactured and used within the factory were leviable to duty.

(a) An assessee manufacturing lignite coke obtained dephenolised oil classifiable under sub-heading 2710.39 (tariff item 68 prior to 28 February 1986) as a by-product. While a portion of the by-product was sold on payment of duty, major quantity was captively consumed as fuel in the steam plant without payment of duty. As the benefit of a notification dated 30 April 1975 for captive use of tariff item 68 goods was not available with effect from 1 March 1986 and as Chapter 27 was not covered by the notification issued on 2 April 1986 which exempted inputs used within the factory of production, the clearance for captive consumption without payment of duty was not in order. The provisions of amended Rules 9 and 49 of the Central Excise Rules, 1944 for captive use were also not applicable as the by-product was not used either as raw material or component part in the manufacture of steam and the final product (steam) was also cleared for captive use without payment of duty. The duty omitted to be levied on the clearances from March 1986 to January 1988 amounted to Rs. 13,43,115.

This was pointed out to the department in audit in March 1988 and to the Ministry of Finance in August 1988. The Ministry of Finance admitted the misclassification and stated (November 1988) that on the basis of Chemical Examiner's report the product would merit classification under sub-heading 2707.90 attracting duty @ Rs. 2750 per kilolitre. They added that the assessee has contested the issue and retest of the product is under examination. The Ministry further stated in response of the stand taken by the Audit that the product attracted duty @ Rs. 450 per tonne under sub-heading 2710.39, duty amount of Rs. 6.23 lakhs was demanded and the same was paid by the assessee under protest.

(*b*) Three assessees manufacturing tyres (sub heading 4011.00) interalia manufactured air curing bags and diaphragm bags (which are used for causing the green tyres to assume a toroidal shape) and removed them for manufacture of tyres (including cycle/rickshaw tyres), without payment of duty, under the above notification dated 2 April 1986. One of the assessees also bought curing bags and diaphragm bags from outside and availed the credit of duty paid on them as per Rule 57A of the Central Excise Rules, 1944.

As the aircuring bags and diaphragm bags were used for causing the green tyres to assume a shape and were condemned after repeated use, they could be considered only as tools or appliances used in the manufacture of tyres. The duty omitted to be levied on aircuring bags and diaphragm bags worked out to Rs. 7,39,743 during the period from March 1986 to September 1987.

On the omissions being pointed out in audit (March 1987, April & May 1988) the department reported (April 1987 and June 1988) issue of show cause notices in two

cases. In third case, however, the department did not accept the objection and stated (May 1988) that no duty is leviable on cycle tyres under sub heading 4011.20 and as such, the inputs of cycle tyres are also not liable to duty and added that rubber products used in the manufacture of new tyres are exempt from duty under a notification issued on 1 April 1967 as amended. The reply of the department is not acceptable as the air bags meant for giving shape and size to the tyre emerging in the mould, are scrapped finally after being used repeatedly and hence cannot be regarded as inputs in the manufacture of tyres but can only be regarded as an appliance used for manufacturing tyres. The exemption notification issued on 1 April 1967 was also not relevant to the case. Besides, it is not necessary that inputs used in a duty free final product should also not be liable to duty.

The Ministry of Finance admitted the objection in two cases (October 1988). The third case was stated (November 1988) to be under examination.

3.13. Goods cleared as non-excisable or without obtaining Central Excise Licence

(i) Ship breaking activity

Under Section 3 of the Central Excises and Salt Act, 1944 all excisable goods produced or manufactured in India are liable to duty of excise at the prescribed rates. In December 1984, the Government clarified that ship-breaking activity amounted to 'manufacture' and accordingly scrap arising out of such activity would have to discharge duty at appropriate rates. The Government further stated that the units engaged in ship breaking activity would be required to take Central Excise licence.

Being aggrieved by the orders of the Government, the ship-breakers of a Collectorate moved a High Court which directed (December 1985) that pending final disposal of the petitions, the ship breakers would apply for licence under the Central Excises and Salt Act, 1944 and that they would clear the goods obtained by breaking up of ships on payment of duty to the extent of 25 per cent of the amount otherwise chargeable, in addition to execution of personal bonds for the remaining amount. Subsequently, the petitions were withdrawn by the ship-breakers based on consent terms, under which the Government agreed :

(*i*) not to enforce personal bonds in respect of 75 percent excise liability;

(*ii*) to consider an appropriate reduction in excise duty; and

(*iii*) to evolve a suitable mechanism to ensure waiver of the arrears of duty for the past period.

On 20 August 1986, Government issued a notification exempting iron and steel products obtained by breaking up of ships and other floating structures from the whole of the central excise duty subject to certain conditions.

No action was, however, taken by the department to realise duty of Rs. 7,41,15,585 representing 75 per cent of central excise duty liability relating to 53 ship breakers for the period November 1985 to August 1986.

When the delay in realisation of duty was pointed out (September 1987) in audit, the department replied (December 1987) that the recovery could not be enforced in view of the aforesaid consent terms and that the proposals for waiving the recovery were pending with the Ministry.

The Ministry of Finance have stated (November 1988) that the issue of waiving arrears of duty for the past period is under examination.

(ii) Ocean going vessels—barges

Prior to 28 February 1986, cruise ships, excursion boats, ferry boats, cargo ships, barges and other similar vessels for the transport of persons or goods were classifiable under erstwhile tariff item 68 with rate of duty at 12 per cent ad valorem. From 28 February 1986 they are classifiable under sub-heading 8901.00 of the schedule to the Central Excise Tariff Act, 1985 with rate of duty at 15 per cent ad valorem.

As per a notification issued on 1 November 1982 and another on 10 February 1986 (effective from 28 February 1986) "ocean going vessels" were exempted from payment of central excise duty.

The term 'ocean going vessels' has not been defined in the Central Excise Tariff. However, as per a clarification given by the captain of ports, Panaji, Goa on 4 November 1987, the barges manufactured in Goa are not 'ocean going vessels' as they were not built and registered under the Merchant Shipping Act, 1958 and were registered under the Inland Vessels Act, 1917. Barges are, therefore, not covered under the aforesaid notifications of 1 November 1982 and 10 February 1986.

All the barge units in Goa collectorate, were clearing the barges on payment of duty under erstwhile tariff item 68. Based on the Central Board of Excise and Customs clarification issued on 14 February 1984, extending the scope of the word 'ocean going vessels' given in a customs notification dated 23 July 1983 to the central excise notification dated 1 November 1982, and after the Bombay High Court's judgment (Panaji Bench) dated 15 July 1985 in the case of M/s. G. R. Engg. Co. Panaji, all the barge units in Goa were delicensed by the Central Excise department. It was observed during audit that the barge units did not have the capacity, technical know-how or expertise or qualified marine engineering staff to design and build ocean going vessels as per international standards. As such ratio of the judgment delivered in the case of M/s. Vipul Shipyard, Bombay *Vs.* Collector of Central Excise Bombay (1984 ECR 1445) was not applicable to all motor boats/barges/motorised country crafts building units. Since these vessels were mainly suitable for river/ferry/coastal service, they did not qualify for the grant

of licence under Section 406 of the Merchant Shipping Act, 1958. Denovo examination of all the barge units delicensed by the department was, therefore, necessary to ensure their eligibility for exemption on merit of each case.

On the matter being pointed out in audit (November 1985) the department stated (April 1987) that as these barges were vessels for transport of iron ore they were covered by the definition of 'ocean going vessels' as clarified by the Board on 14 February 1984.

The reply of the department was not accepted because (*i*) the aforesaid letter dated 14 February 1984 clarified that the vessels carrying ore into deep ocean only and not those plying around the shores were exempted from duty; (*ii*) the said clarification dated 14 February 1984 gave an inclusive definition only and had to be applied on merits; (*iii*) the clarification given by the Captain of the Ports corroborated audit view and (*iv*) the Government had expressly exempted various types of vessels including barges from the payment of excise duty under another notification issued on 24 September 1987.

On verification of records it was noticed in audit that three units manufactured and cleared one barge each during the period from April 1986 to March 1987 involving excise duty amounting to Rs. 38.10 lakhs. The department did not indicate whether it had taken any action to recover the said duty. The department however, issued show cause notice for Rs. 7.20 lakhs in respect of a fourth barge manufactured and clared during the period from April 1987 to December 1987.

The Ministry of Finance did not admit the objection and stated (November 1988) that whether a vessel completes one voyage or more voyages, the vessel continues to be an "ocean going vessel".

The Ministry's comments are not sustainable inas much as they have expressly exempted various types of vessels including barges from the payment of excise duty by issue of a notification on 24 September 1987.

(*iii*) *Chemical mixtures*

Chemical mixtures for the use of match heads and for painting the sides of the match boxes are liable to duty at 15 per cent ad valorem under heading 38.23.

An assessee manufacturing 'matches' falling under chapter 36 inter alia, manufactured, using powder, 'match head composition' and the mixture required for painting the sides of the match boxes, out of the raw materials purchased from outside. As these mixtures were excisable goods used in the manufacture of matches and as the notification issued on 2 April 1986 specifically excludes "matches" from the purview of the exemption notification for captive consumption of certain excisable inputs, the omission to classify the two products under the Central Excise Tariff Act with effect from 1 March 1986 and to levy duty due thereon was not in order. The duty omitted to be levied on the aforesaid chemical mixtures used captively in the production of matches from March 1986 to July 1987 amounted to Rs. 32,69,350 (approx.).

On the mistake being pointed out in audit in September 1987, the department justified (October 1987), the non-levy of duty on the ground that the said mixture was neither a chemical manufactured in a chemical or allied industry nor a pyrotechnic article and that they were not known as 'goods' which could be bought and sold (since it would be violation of the Arms Act). The department further argued that 'match' under the Central Excise Tariff would include the composition for side painting of the match boxes as well. The contention of the department is not acceptable since the mixture by itself is a fully manufactured excisable product classifiable under the Central Excise Tariff Act, 1985. The chemical examiner, to whom the matter was referred in March 1988 at the instance of audit, confirmed (April 1988) that the products are preparation based on fixed proportions of various chemical compounds and binding matter and hence classifiable under sub-heading 3823.00 as 'preparations of the chemical and allied industries not elsewhere specified'. Report on the action taken to classify and levy duty on the match head composition and the mixture used for painting the sides of the match boxes based on the chemical examiner's opinion, has not been received from the department (May 1988).

The Ministry of Finance did not accept the objection and stated (October 1988) that 'composition for match heads' and 'side painting liquid' are not goods for the purpose of charging excise duty. The Ministry's reply is not correct as the chemical examiner has already confirmed (April 1988) that the product are rightly classifiable under sub-heading 3823.00 as "preparations of the chemical and allied industries not elsewhere specified". Besides Rule 58 of the Central Excise Rules, 1944 recognises the composition of match heads as excisable goods.

3.14. **Duty not levied on transit, storage losses or wastes**

(*i*) *Transit loss*

Rule 156A read with Rule 173 N of the Central Excise Rules, 1944, provides for the removal of excisable goods in bond from a factory or a warehouse to another warehouse subject to observance of the procedure laid down therein. On arrival of the goods at the warehouse of the destination, the departmental officer-in-charge of that warehouse is required to record rewarehousing certificates and send copies to officer in-charge of the warehouse of removal and to the consingee for transmission to the consignor.

Rule 156 B enables the Range Superintendent of the consignor's factory to demand duty from the consignor, if the rewarehousing certificate is not received by him within 90 days of the removal of goods or such extended period as the Collector may allow or if received, it shows a shortage not explained to his proper satisfcation.

A Public Sector oil refinery cleared in bond raw naphtha (Heading 27.10) to a licensee under the jurisdiction of another collectorate. In 14 cases, where raw

naphtha was cleared under bond for rewarehousirg during the period from 28 July 1983 to 12 August 1986; 540.968 kilolitres of raw naphtha was received short at the destination as some tank wagons were missirg and had not reached the destination. However, duty amounting to Rs. 12,19,277 was not demanded by the department even after the period of ninety days.

The irregularity was pointed out in audit to the department in January 1987 and to the Ministry of Finance in May 1988.

The Ministry of finance have admitted the objection (July 1988)

(*ii*) *Storage losses*

According to Rule 47 of the Central Excise Rules, 1944 a manufacturer shall provide a store room or other place of storage at his premises for depositing goods made on the same premises without payment of duty, unless he undertakes to pay duty on all such goods and clears them immediately on completion of manufacture. Such store room or other place of storage declared by the manufacturer is required to be approved by the department. These requirements with regard to storage of non-duty paid excisable goods are mandatory. Rule 49 stipulates that the duty on these excisable goods shall be payable when they are about to be removed from the store room or other place of storage and the manufacturer's liability to pay duty on the goods in the store room is not diminished even if they are lost, or destroyed unless it is shown to the satisfaction of the proper officer that such loss or destruction is due to natural causes or due to unavoidable accident during handling or storage in such room or other approved premises.

An assessee engaged in the manufacture of cement showed a shortage of 7098.40 tonnes of cement clinker in the balance sheet for the year 1985-86. There was no proof available with the assessee to show that such loss was due to natural cause or due to unavoidable accident during handling or storage. No action was taken by the department to recover duty amounting to Rs. 4,22,224 due thereon.

On the omission to levy duty being pointed out in audit (November 1986), the department stated (November 1987) that a demand for Rs. 4,22,224 was raised.

The Ministry of Finance have stated (September 1988) that an appeal against the orders of Assistant Collector dropping the proceedings for recovery of demand of Rs. 4,22,224 from the assessee, has been filed with the Collector (Appeals).

(*iii*) *Waste—scraps of rubber*

Waste, parings and scrap of rubber (other than hardened rubber) are classifiable under sub-heading, 4004.00 of the schedule to the Central Excise Tariff Act, 1985 and are chargeable to duty at the rate of 15 per cent ad valorem.

A tyre manufacturer produced rubber air bags and used them internally for manufacture of tyres. He was allowed to clear these air bags after use without payment of duty although the goods were appropriately scraps of rubber and were thus classifiable under sub-heading 4004.00 attracting duty at the rate of 15 per cent ad valorem. This resulted in non-levy of duty of Rs. 2.77 lakhs (approximately) on the clearances made during the period from April 1986 to December 1987.

On this being pointed out in audit (January 1988), the department stated (May 1988) that two show cause-cum demand notices for Rs. 3,11,813 covering the period from March 1986 to February 1988 had been issued.

Further developments have not been intimated (June 1988).

The Ministry of Finance have accepted the under-assessment (November 1988).

3.15. **Irregular clearance allowed without levying duty**

(*i*) *Cotton yarn*

Rules 9, 49 and 173G of the Central Excise Rules, 1944 require that duty shall be paid on excisable goods before their removal from any place where they are produced, cured or manufactured or any premises, appurtenant thereto, whether for consumption, export or manufacture of any other commodity in or outside such place.

A manufacturer of cotton yarn was permitted by the department to remove cotton yarn in cops without payment of duty under Rule 56B to outside premises for processing into plain reel hanks. The yarn received back after processing was cleared without payment of duty. As Rule 56B permitted only removal of excisable goods in the nature of semi-finished goods without payment of duty and since yarn in cops is a fully manufactured product attracting duty under heading 52.03 of the Central Excise Tariff Act, 1985, the permission given by the department for removal of yarn in cops without payment of duty was not in order. The duty not levied on yarn in cops during the period from April 1986 to November 1987 worked out to Rs. 18.88 lakhs (approximately).

The irregularity was pointed out in audit to the department in December 1987 and to the Ministry of Finance in August 1988.

The Ministry of Finance have admitted the objection (November 1988).

(*ii*) *Made up articles—towels, bed-sheets etc.*

As per a clarification issued by the Ministry of Finance in July 1987 bed sheets and pillow covers manufactured from duty paid bleached/dyed/printed cotton fabrics in running length, would attract duty at the fabric stage as well as the bed sheet/pillow cover stage.

An assessee manufacturing inter alia, made up articles such as terry/jacquard towels, bed sheets etc. falling under heading 63.01 manufactured base fabrics in running length in roll forms, which were subjected to various

processes like bleaching, dyeing, printing, etc. and then cut to required size and hemmed, before being cleared as made up articles. Though duty was paid on made up articles, no duty was paid on the base fabrics. As the base fabrics arising at the intermediate stage were manufactured from dyed yarn/processed from grey fabrics, they conform to the description of terry towelling or processed cotton fabrics, as the case may be, falling under sub-heading 5802.12 or heading 52.06. The duty omitted to be collected in respect of terry towelling cloth above worked out to Rs. 14.93 lakhs (approximately) during the period from April 1986 to September 1987. The duty due on jacquard towelling fabric and bed sheet fabric remains to be ascertained.

On this being pointed out in audit (December 1987), the department contended (April 1988) that the terry towels, etc. were manufactured as identifiable articles at the loom stage itself and that the emergence of base fabrics did not arise. This reply is not acceptable as what appears at the loom stage is only fabrics in running length. Only when the fabric is cut and hemmed at the edges, it becomes a made up textile article as per Note 5(c) under Section XI of the Tariff.

The Ministry of Finance have stated (November 1988) that the matter is under examination.

(*iii*) *Jute bags*

(a) As per Rule 9 read with Rule 173-G of the Central Excise Rules, 1944, no excisable goods shall be removed from any place where they are produced, manufactured or cured whether for consumption, export or manufacture of any other commodity until the excise duty leviable thereon has been paid.

Two units having a central excise licence for manufacture of new cement jute bags [tariff item 22-A(2)] cleared the jute bags without observing the excise formalities. They had cleared a total quantity of 1456.456 tonne of new jute bags during the period from 22 July 1982 to 25 July 1984 on which duty amounting to Rs. 9.71 lakhs was not paid.

On this irregularity being pointed out in audit (August 1984) the department accepted the objection and raised (July 1985) demands for Rs. 11.72 lakhs covering period from 11 December 1981 to 16 April 1985 in one case and from from 7 August 1982 to 25 October 1983 in another case. Only a sum of Rs. 29,606 was confirmed leaving a balance of Rs. 11.43 lakhs as time barred.

The Ministry of Finance have confirmed the facts as substantially correct (October 1988).

(b) Fabrics and bags of jute are classifiable under sub-heading No. 5306.00 and 6301.00 of the schedule to the Central Excise Tariff Act, 1985 respectively which came into effect from 28 February 1986. As per a notification issued on 24 April 1986, jute bags manufactured from duty paid jute fabrics are fully exempt from duty. Jute bags manufactured from duty paid jute fabrics and cleared during the period from 28 February 1986 to 23 April 1986 are not, therefore, covered under the aforesaid notification.

A manufacturer cleared sacking cloth, yarn and twist on payment of duty for the manufacture of jute bags by the agents appointed by him for the purpose. The jute bags so manufactured by those agents outside the factory were returned to the factory and cleared by the manufacturer after baling without payment of duty. Such duty free clearance of jute bags during the period from 28 February 1986 to 23 April 1986 was therefore, irregular and this had resulted in non-levy of duty to the extent of Rs. 5.76 lakhs.

On the mistake being pointed out in audit (May 1987) the department accepted (January 1988) on the grounds that in similar objection reported earlier in para 4.14(ii) of the Audit Report for the period ended 31 March 1987 had already been accepted by the Central Board of Excise and Customs and stated that necessary action was being taken to safeguard Government revenue.

The Ministry of Finance have accepted the under assessment (November 1988).

(*iv*) *Parts of domestic electric appliances*

Domestic electric appliances and parts thereof are liable to duty under chapter 85.

A manufacturer of domestic electric appliances (mixer-heading 85.09) got manufactured certain parts like stainless steel jars, plastic domes, dome stoppers and measuring cups, through job workers to whom the raw materials (stainless steel sheets/poly carbonate granules) were supplied under sub-rule 2 of Rule 57-F and notification dated 25 March 1986.

A portion of the parts received from the job workers was captively consumed in the manufacture of mixer without payment of duty and a few stainless steel fitted with blades, bushes and springs were cleared on payment of duty. But other stainless steel jars, domes, dome stoppers, lid/lid stoppers and measuring cups were however, cleared as free replacements without payment of duty.

On the non-levy of duty being pointed out in audit (February 1988), the department accepted (May 1988) the objection and reported that the assessee had paid Rs. 4,89,950 for the parts cleared without payment of duty, during the period from March 1986 to January 1988.

The Ministry of Finance have accepted the under-assessment (November 1988).

(*v*) *Steam*

Under a notification issued on 30 April 1975 as amended exemption was granted to goods falling under erstwhile tariff item 68 manufactured in a factory and intended for use in the factory in which they were manufactured or in any other factory of the same manufacturer, from whole of the duty of excise leviable thereon subject to the observance of the procedure set ont in Chapter X of the Central Excise Rules, 1944.

An assessee engaged in the processing of woollen fabrics cleared steam to outside parties on cash payment. The steam so cleared was neither included in any classification list for the relevant periods nor was any duty paid for the clearances upto February 1986 even though the conditions prescribed in the notification were not fulfilled. This resulted in non-levy of duty amounting to Rs. 1,57,190 during the period from May 1984 to February 1986. Details of clearances made prior to May 1984 could not be ascertained.

The omission was pointed out to the department in March 1988 and to the Ministry of Finance in July 1988.

The Ministry of Finance have admitted the objection (November 1988).

3.16 **Duty not levied on production suppressed or not accounted for**

As per Rule 53 of the Central Excise Rules, 1944 every manufacturer is required to maintain account of stock in prescribed form (RG. I) wherein he is required to enter, inter alia, the (*a*) quantity of goods manufactured (*b*) quantity of goods removed on payment of duty and (*c*) quantity delivered from the factory without payment of duty for export or other purposes. Rules 9 and 49 of said Rules further provide that excisable goods shall not be removed from the place of manufacture or storage unless the duty leviable thereon had been paid.

In terms of Rules 173 D and 173 E read with Rule 55 of the Central Excise Rules, 1944, every manufacturer has to furnish information regarding the principal raw materials and the quantity of such raw material required for the manufacture of unit quantity of finished excisable goods and should file periodical returns to the proper officer indicating the quantity of raw materials used in the manufacture of the excisable goods and the quantity of finished goods produced.

(*i*) *Aluminium products*

An assessee manufacturing goods falling under chapter 76 of the Central Excise Tariff Act, 1985 and availing input credit under Rule 57A on aluminium rods used in the manufacture of the final product, showed nil balance in the raw material account as on 31 March 1987, though the balance of stock should have been actually 152.532 tonne.

On the incorrect maintenance of raw material account and non-filing of periodical returns being pointed out in audit (May 1987), the department reported (April 1988) recovery of an amount of Rs. 5,42,896.

The Ministry of Finance have accepted the under-assessment (November 1988).

(*ii*) *Machinery*

An assessee manufacturing structural components boiler components, etc. falling under chapters 73 and 84 also manufactured machinery items like cranes, winches, trolley etc. during the period from April 1986 to March 1987 and used them within the factory as part of plant and machinery. These machineries were neither accounted for in the production register nor was duty paid thereon.

On this being pointed out in audit (30 December 1987), the department accepted the objection and reported (March 1988) recovery of an amount of Rs. 4,81,238 (February 1988).

The Ministry of Finance have accepted the under-assessment (November 1988).

(*iii*) *Clinkers*

Rule 196 lays down that duty will be required to be paid on excisable goods obtained under Chapter X procedure if the same are not duly accounted for as having been used for the intended purpose or are not shown to have been lost or destroyed by natural causes or by unavoidable accident during transit or handling and storage in the premises of L6 licensees.

A licensee obtained 'clinker' from their another unit for manufacture of cement after observance of Chapter X procedure without payment of duty but failed to account for 3,000 tonnes of such goods as having been used for the manufacture of cement. The assesse straightway deducted the aforesaid quantity from stock register without assigning any valid reason. The irregularity resulted in non-levy of duty of Rs. 56,010.

On the mistake being pointed out in audit (June 1987) the department accepted the objection and intimated (November 1987) that a show cause-cum demand notice had been issued in September 1987 asking them to pay Rs. 2,58,238 under Rule 196 of the Rules *ibid.*

The Ministry of Finance have accepted the under assessment (November 1988).

3.17. **Incorrect application of rates of duty**

With effect from 28 February 1986 certain machineries, mechanical appliances and parts thereof, classifiable under different headings and sub-headings of Chapter 84 of the schedule to the Central Excise Tariff Act, 1985, and chargeable to duty at 15 per cent ad valoreme. Prior to that date they were all classifiable under erstwhile tariff item 68 attracting duty at 12 per cent ad valorem.

An assessee cleared such machineries on different dates during the month of March 1986, on payment of duty at 12 percent ad valorem instead of 15 percent ad valorem. This resulted in short levy of duty of Rs. 4.75 lakhs during March 1986.

On the mistake being pointed out in audit (December 1987), the department accepted the mistake and stated (June 1988) that the amount of differential duty had been recovered on 31 March 1988.

The Ministry of Finance have accepted the under-assessment (November 1988).

SHORT LEVY OF DUTY DUE TO MISCLASSIFICATION

The rates of applicable duty relating to a product is indicated under various headings of the schedule to Central Excise Tariff Act. Wrong classification of a product under a different heading results in incorrect levy of duty. Some of the more important cases of misclassification leading to non/short levy of duty, as found by Audit are given below :—

3.18 **Petroleum products**

(*i*) *S.R. Naphtha*

Any mineral oil (excluding crude mineral oil) was classifiable under the erstwhile tariff item 6 provided two conditions were fulfilled. One of the conditions was that the mineral oil should be suitable, either by itself or in admixture with any other substance, for use as fuel for internal combustion engine. Where this condition is not fulfilled, such mineral oil was to be classified under erstwhile tariff item 11A (4) and not under erstwhile tariff item 6.

A Public Sector oil refinery, cleared S.R. Naphtha for manufacture of fertilisers on payment of duty at concessional rate of Rs. 4.40 per kilolitre at 15° centigrade under a notification issued on 1 March 1984 by classifying the product under tariff item 6.

The octane number of the S.R. Naphtha produced by the refinery ranged between 50 to 60 and it was not suitable either by itself or in admixture with any other substance for use as fuel for internal combustion engines. As the octane number of S.R. Naphtha was very low when compared to the octane number 87 of motor spirit, the product was correctly classifiable under tariff item 11A (4) attracting duty at 20 per cent ad valorem plus Rs. 190 per tonne. This resulted in short recovery of duty of Rs. 13.31 crores on 1,88,693 tonnes of S.R. Naphtha cleared during the period from April 1985 to February 1986.

On this being pointed out in audit (March 1987), the department justified (April/July 1987 and April 1988) the classification under tariff item 6 on the ground that :

(*i*) S.R. Naphtha could be used as fuel in I.C. Engines though it would adversely affect the efficiency of the engine;

(*ii*) S.R. Naphtha could be converted into motor spirit by a process known as 'reforming', which facility the refinery possessed;

(*iii*) by adding tetra ethyl lead (T.E.L.) also, the octane number of S.R. Naphtha could be increased for use as fuel in I.C. Engines; and

(*iv*) the refinery was actually converting cracked gasoline of octane number 90 into motor spirit with octane content 87 by adding certain quantity of raw naphtha.

The contention of the department is not acceptable for the following reasons :

(*i*) As per opinion given by the Indian Institute of Petroleum, Dehradun and Central Fuel Research Institute Dhanbad (7 February 1985), S.R. Naphtha with octane number of 50—58 cannot be used in internal combustion engine of spark ignition type such use will result in severe knocking, improper pick up and fuel wastage.

(*ii*) According to the opinion of the Indian Institute of Petroleum (7 February 1985) the octane number of S.R. Naphtha cannot be boosted to a value of 87 rate of octane number by addition of T.E.L. alone. They further opined that the maximum amount of lead permissible as per the I.S. specification for motor gasoline is only 0.66 gram lead content per litre of gasoline.

(*iii*) The process of "reforming" is a chemical reaction involving expansive catelytic process, and certainly not a process amounting to admixture with any other substance to qualify for classification under tariff item 6.

(*iv*) Raw naphtha added by the refinery to the gasoline is to reduce the octane number of gasoline from 90 RON to 87 RON. This does not mean that the octane number of raw naphtha is increased to 87 RON by this process. Further according to the Indian Institute of Petroleum admixture of S.R. Naphtha with another substance to make it suitable for use as fuel in I.C. Engines would need a very large quantity of such a substance of very high initial octane number and it is not technically or economically feasible.

The Ministry of Finance have stated that the matter has been referred to Chief Chemist for his opinion (November 1988).

(*ii*) *Speciality oils*

(*a*) Sub-heading 2710.50 of the schedule to the Central Excise Tariff Act, 1985 covers furnace oil, that is to say any hydrocarbon oil which is ordinarily used as furnace fuel and not suitable for use in spark ignition engines and satisfying four other requirements contained in the erstwhile tariff item 10. Any mineral oil which does not satisfy any of the above conditions is not classifiable under the sub-heading 2710.50 as furnace oil, and comes under the residuary sub-heading 2710.99 attracting excise duty at the rate of 20 per cent ad valorem plus Rs. 250 per tonne.

A lube blending unit of a Public Sector undertaking manufacturing various grades of speciality oil and marketing them as process oils, classified the products under sub-heading 2710.50 as furnace oil. However, as these products were used only for processing of rubber by tyre industry and not used as fuel, classification under sub-heading 2710.50 was not correct. The incorrect classification resulted in short levy of duty of Rs. 25,77,953 for the period from 1 April 1986 to 31 March 1987.

On this being pointed out in audit (October 1987), the department justified (December 1987) the asessment under sub-heading 2710.50 on the ground that the products satisfied the four characteristics given in the erstwhile tariff item 10 and that the sub-heading would also cover oils used for purposes other than as furnace fuel, as indicated by the usage of the words "ordinarily used" in the sub-heading.

The department also referred to lower effective rates of duty prescribed by Government for furnace oils used for other specified purposes in terms of a notification issued on 1 March 1984 as amended. The contention of the department is not acceptable, because the classification of a product is to be determined with reference to the terms of the tariff heading/sub-headings and not with reference to an exemption notification. Further, as the process oils are not used as furnace fuel, they would not fall within the scope of sub-heading 2710.50.

The Ministry of Finance admitted the misclassification and stated (September 1988) that the product was rightly classifiable under sub-heading 2713.39 between 1 March 1986 to 29 February 1988 and under sub-heading 2713.30 from 1 March 1988. They added that Collector of Central Excise has been directed to take steps to recover the duty short levied.

On further verification the short levy of duty as a result of reclassification of the pocessed oils under sub-heading 2713.39 (upto February 1988) and under sub-heading 2713.30 (from March 1988) as accepted by the Ministry of Finance worked out to Rs.51.88 lakhs on clearances during the period from March 1986 to February 1988. There was no short levy from March 1988.

(*b*) The Central Board of Excise and Customs by issuing a circular on 23 August 1975 took speciality oils out of the purview of the erstwhile tariff item 11B on the ground that they are generally treated as non-lubricants. The speciality oils would, therefore, merit classification under erstwhile tariff item 68 from 1 March 1975.

A Public Sector undertaking manufactured inter alia, four varieties of blended or compounded mineral oils under different brand names whose primary function, as pointed out in audit, was other than lubrication. The assessee was allowed to clear these products without payment of duty in terms of a notification issued on 16 March 1976. The assessee did not specifically include them in the classification list submitted for approval of the department. In terms of Board's aforesaid circular dated 23 August 1975 the products were appropriately classifiable under tariff item 68 attracting levy of duty at 10 per cent ad valorem. Incorrect classification of the products resulted in duty to the extent of Rs. 15.18 lakhs not being levied during the period from 1 July 1983 to 30 November 1983.

On this being pointed to in audit (May 1984), the department stated (December 1987) that a demand of Rs. 18.94 lakhs was raised (July 1985) in respect of five varieties (including the four pointed out in audit) for the period from 1 July 1983 to 30 September 1983. It added that the Collector adjudicated the case in March 1987 and decided that only one variety *i.e.* servo transmission oil (one of the items pointed out in audit) was a speciality oil and the assessee in pursuance of the order paid Rs. 6.58 lakhs out of the total demand of Rs. 18.94 lakhs.

The Ministry of Finance have accepted the under-assessment (November 1988).

(*c*) From 28 February 1986 'speciality oil' falling under the sub-heading 2710.99 is chargeable to duty at the rate of 12 per cent ad valorem in terms of a notification dated 11 May 1984 as amended; tariff rate of duty of the products under sub-heading 2710.99 being 20 per cent ad valorem plus Rs. 250 per tonne. 'Speciality oil' has been defined in the notification as 'any preparation made by blending or compounding of mineral oils (Chapter 27) with other oils or any other substance and of which the lubricating function, if any, is only secondary in nature'. Such mineral oil preparation, not ordinarily used for lubrication, manufactured from single base mineral oil (Chapter 27) (by changing its viscosity etc.) without blending or compounding with other oil or any other ingredient does not satisfy aforesaid definition of 'speciality oil' (not being blended or compounded) and as such cannot be allowed the benefit of duty concession admissible in the said notification. Such preparations are, therefore, chargeable to tariff rate of duty applicable to sub-heading 2710.99.

An assessee manufactured one such mineral oil (sub-heading 2710.99) under a brand name, from duty paid 'single base mineral oil' (sub-heading 2710.95), without blending or comopunding it with other oil or any other ingrendient. The product was, therefore, correctly chargeable to duty at 20 per cent ad valorem plus Rs. 250 per tonne. It was, however, cleared from the factory as 'speciality oil' on payment of duty at the rate of 12 per cent ad valorem under the said notification of 11 May 1984. This resulted in short levy of duty of Rs. 1,46,539 during the period from 1 April 1986 to 31 March 1987.

The mistake was pointed out in audit to the department in May 1987 and to the Ministry of Finance in August 1988.

The Ministry of Finance have admitted the objection (November 1988).

(*iii*) *Lubricating oil*

Lubricating oil that is oil, ordinarily used for lubrication, is classifiable under sub-heading 2710.60 chargeable to duty at Rs. 3675 per tonne. Blended or compounded lubricating oils (2710.60), that is to say, lubricating oil obtained by straight blending of mineral oils or by blending or compounding with other ingredients are exempted from excise duty, in full, as per notification dated 11 May 1984, as amended.

An assessee manufactured three lubricating oils (under three different brand names) all from duty paid single 'base mineral oil' (sub-heading 2710.95) (by changing its viscosity etc.) without blending with other mineral oil or without blending or compounding with other ingredients. The products are ordinarily

used for lubrication and are, therefore, classifiable under sub-heading 2710.60. Moreover as these are not 'blended or compounded' they do not attract exemption notification dated 11 May 1984. The products were, however, cleared (under brand names) as 'blended or compounded lubricating oil' without payment of duty. This resulted in non-levy of duty to the extent of Rs. 4,53,873 during 1 March 1986 to 31 March 1987.

The mistake was pointed out in audit to the department in May 1987 and to the Ministry of Finance in August 1988.

The Ministry of finance have admitted the objection (November 1988).

3.19 Man-made fibres and filament yarn

(i) Cellulosic spun yarn

As per the description of erstwhile tariff item 18 III, cellulosic spun yarn is defined as a yarn in which man-made fibres of cellulosic origin predominates in weight. Accordingly, blended cellulosic spun yarn not containing man-made fibres of non-cellulosic origin was classifiable under the sub-item (*i*) and blended yarn containing man-made fibres of non-cellulosic origin was classifiable under sub-item (*ii*) upto 27 February 1986 and thereafter they are classifiable under headings 55.05 and 55.06 respectively. The duty leviable on yarn falling under sub-item (*ii*) was higher than the duty leviable on yarn falling under sub-item (*i*).

An assessee was manufacturing blended yarn composed of fibres of cellulosic origin which predominated in weight and wastes of non-cellulosic fibres. Due to presence of the fibres of non-cellulosic origin, the yarn merited classification under sub-item (*ii*) of erstwhile tariff item 18 III attracting duty at the higher rate. The department had, however, classified it under sub-item (*i*) and had initiated-proceedings in October 1983 to reclassify the goods under sub-item (*ii*), but the adjudicating authority had in December 1983 confirmed the classification under sub-item (*i*). Even though the blended yarn contained waste fibres, so long as the origin of such waste fibres remained non-cellulosic, it fell under sub-item (*ii*) by statutory definition of the item, and the decision of the adjudicating authority did not appear to be legal within the meaning of Section 35 E (2) of the Act. The continued misclassification of the goods under sub-item (*i*) resulted in short levy of duty of Rs. 1,49,06,823 on the clearances during the period from 1 August 1985 to 31 January 1988.

The short levy of duty for the period ended July 1986 was pointed out in audit to the department in December 1986 and to the Ministry of Finance in March 1988. The short levy of the duty for the subsequent period ending January 1988 was also brought to the notice of the Ministry in August 1988.

The Ministry of Finance have admitted the objection (April and August 1988).

(ii) Polyester fibre

As per explanation below erstwhile tariff item 18 'sub-item IV, non-cellulosic wastes, all sorts' includes only wastes arising in or in relation to the manufacture of man-made fibres and man-made filament yarn. The wastes obtained at the subsequent stages of drawing and cutting of the fibre will obviously not be classifiable under sub-item IV. Non-cellulosic waste as defined for the purpose of concessional rate of duty under a notification issued on 17 March 1972 means a tangled mass of short lengths not capable of being disentangled without considerable labour.

An assessee engaged in the manufacture of polyester fibre (erstwhile tariff item 18 and heading 55.01) and cutting staple fibre therefrom had obtained cut fibre and processed waste in the course of cutting long filament fibre into staple fibre. This waste was classified by the assessee and approved by the department as 'waste' under tariff item 18 IV from 3 March 1982 although prior to this the same was classified by the department as sub-standard fibre under tariff item 18—I with duty liability as fibre. Therefore, the classification of cut and processed waste as 'waste' under tariff item 18 IV with total duty liability of Rs. 9 per kilogram under notification issued on 17 March 1972 instead of as fibre under tariff item 18 I with duty liability of Rs. 45 per kilogram was irregular. This resulted in short levy of duty of Rs. 1.19 crores on 3,53,247.5 kilogram of cut fibre and processed waste cleared during May 1982 to March 1984 alone.

On the irregularity being pointed out in audit (August 1984), the department accepted (February 1988) the audit objection and raised (March 1985 onwards) four demands of differential duty aggregating to Rs. 2.61 crores for the period from May 1982 to from May 1985 out of which two demands for Rs. 1.79 crores have since been confirmed and an amount of Rs. 10,69,323 realised.

The Ministry of Finance have repeated (November 1988) the same reply as was given by the department.

(iii) Waste of rayon yarn

As per notification issued on 17 March 1972 as amended from time to time 'man-made fibres and filament yarn waste' of different descriptions and falling under erstwhile tariff item 18 was exempted from payment of duty of excise in excess of Re. 1 per kilogram; 'godet waste' being described as one kind of such waste. It was, however, held by CEGAT (12 September 1986) in the case of Collector of Central Excise, Rajkot versus Indian Rayon Co-operative Limited [1987(28)ELT-161 (Tribunal)] that in the course of manufacture of rayon filament yarn (man-made cellulosic filament yarn) the waste collected at the lower as well as upper godets could not be considered as rayon waste since it did not have any stretch and twist and such stretch and twist only developed inside the spinning pots afterwards. Hence such waste could not fall under tariff item 18. It was

decided further that waste of cellulosic origin had not been specified in any sub item under tariff item-18 and the subject waste would fall under residuary tariff item 68.

A manufacturer of 'rayon yarn' collected such waste at the lower as well as upper godets. Duty was levied at the rate of Re. 1 per kilogram on clearance of such wastes classifying them under erstwhile tariff item 18 although duty was chargeable at higher rate (namely at the rate of 10 per cent to 12 per cent ad valorem) depending upon the period of clearnace since the products were legally classifiable under residuary tariff item 68. This resulted in short-levy of duty of Rs. 2,22,700 during the period from 1 April 1984 to 28 February 1986.

On the irregularity being pointed out in audit (September 1987) the department did not accept the audit objection and stated (March 1988) that 'godet waste' of rayon yarn had specifically been classified all along under tariff item 18 in all notifications issued from time to time. It could not by any means be taken out of that item and put under residuary heading (*i.e.* tariff item 68). The department's contention was, however, not acceptable in audit since such 'godet waste' stand identified as an item classifiable under tariff item 68 by virtue of CEGAT decision of September 1986 as already referred to.

The Ministry of Finance repeated (October 1988) the reply of the department without answering the point raised in audit.

3.20 Mineral products

(*i*) *Dead burnt magnesite and calcined magnesite*

As per note 2 under Chapter 25 of the Schedule to the Central Excise Tariff Act, 1985, headings 25.01, 25.03 and 25.05 do not cover products that have been roasted, calcined or obtained by mixing.

Two assessees manufacturing dead burnt magnesite (DBM) and calcined magnesite (CM) by using ore mined from quarries or obtained by firing raw magnesite or magnesium carbonates in vertical shaft kiln, at a temperature of about 1800° C or 1600° C using furnace oil, classified the product under sub heading 2505.00. The products were not classifiable under heading 25.05 in view of the aforesaid chapter note, instead they were correctly classifiable under sub-heading 3801.90. The misclassification of the products resulted in short levy of duty of Rs. 45.69 lakhs during the period from March 1986 to September 1987.

On the misclassifiation and consequent short levy of duty being pointed out in audit (December 1986 and December 1987) the department justified (January 1987, December 1987 and March 1988) the assessment on the basis of the instructions issued by the Board on 24 March 1986, according to which calcined products are classifiable under heading 25.19 of the Customs Tariff Act. These instructions would not apply for classification of the products on the Central Excise side in view of the specific provision excluding calcined product from the purview of Chapter 25.

The Ministry of Finance stated (September 1987) that note 1(*b*) under Chapter 26 mentions that calcined magnesite would be covered under Chapter 25 and if note 2 under Chapter 25 appears to be not consistent with note 1(*b*) of Chapter 26, then the conflict has to be resolved by referring to the relevant chapter notes under H.S.N.

The reply of the Ministry is not acceptable because :

(*i*) the Central Excise Tariff Act, 1985 has not adopted the heading of Chapter 25 of H.S.N. in toto;

(*ii*) Note 1 of Chapter 25 in H.S.N. which corresponds to note 2 in the Chapter 25 of the Central Excise Tariff excludes products which have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading. A few headings in the H.S.N. cover calcined products but such provision is not available in the Central Excise Tariff as the chapter note excludes all calcined products from the purview of headings 25.01, 25.03 and 25.05. Recourse to H.S.N. is, therefore, not correct; and

(*iii*) classification under Chapter 26 is also ruled out in view of note 1(*b*) under Chapter 26. The mention of Chapter 25 in note 1(*b*) of Chapter 26 is apparantly not correct as Chapter 25 does not cover calcined products of magnesite.

Hence as per the existing provision of the Central Excise Tariff Act, 1985 dead burnt magnesite is correctly classifiable under Chapter 38 only.

(*ii*) *Lime*

Lime is classifiable under heading 25.05 of the Schedule to the Central Excise Tariff Act, 1985.

A manufacturer produced lime (called lump lime) by calcining lime stone and consumed it for manufacture of calcium carbide. Lime so produced was classified under 'heading 28.06' as inorganic chemical and allowed exemption under a notification issued on 2 April 1986. The product is properly classifiable under heading 25.05 as this heading specifically covers 'lime'. The misclassification resulted in short-levy of duty of Rs. 17.74 lakhs during the period from March 1986 to February 1987.

The mistake was pointed out in audit to the department in August 1987 and to the Ministry of Finance in August 1988.

The Ministry of Finance have admitted the objection (November 1988).

3.21 Plastics and articles thereof

(*i*) *Laminated sheets*

As per a notification dated 1 March 1986 paper reinforced laminated sheets of plastics (other than of polymers of vinyl chloride and regenerated cellulose) are chargeable to central excise duty under sub-heading 3920.31 of the Central Excise Tariff Act, 1985 at the

rate of 35 per cent ad valorem. Glass fabric laminated sheets are chargeable to duty under sub-heading 7014.00 at the rate of 30 per cent ad valorem.

A manufacturer of various types of laminated sheets, cleared paper laminates and glass fabric laminates from 1 March 1986 on payment of duty at 15 per cent ad valorem leviable on electrical insulators under sub-heading 8546.00 as per classification list approved by the department.

On the misclassification being pointed out in audit (May-June 1986) the department corrected the classification in May 1987. Thereupon the manufacturer started paying duty correctly from 19 May 1987 under protest. A demand for Rs. 10,82,699 on account of short levy of duty for the period from 1 March 1986 to 22 August 1986 was confirmed on 19 May 1987 by the jurisdictional Assistant Collector and the manufacturer was also asked to pay the amount of short levy of Rs. 23,62,439 for the period from 23 August 1986 to 18 May 1987. Further progress has not been intimated (August 1988).

The Ministry of Finance have accepted the under-assessment (November 1988).

(ii) *Thermolloyd*

According to note 10 of Chapter 39 the expression 'plates, sheets, film, foil and strip' occuring in headings 39.20 and 39.21 applies only to plates, sheets, film, foil and strip and to blocks of regular geometric shape, whether or not printed or otherwise surface worked, uncut or cut into rectangles or squares but not further worked (even if when so cut, they become articles ready for use). The expression in parenthesis means that even when the blocks, plates, sheets etc., are cut and thereby become articles ready for use, they should be classified under headings 39.20 or 39.21 only as plates, sheets etc. and not as articles of plastics.

An assessee manufacturing, *inter alia* a product called 'thermolloyd' by feeding the raw material 'polystyrene' into pre-foamer and then moulding the expanded materials into blocks of size 1m × 1m×1/2m which were cut into sheets/plates of different thickness ranging from 10mm to 100mm according to the requirements of the customers for use mainly as thermal insulators or for packaging sophisticated electronic equipments. The item was classified under sub-heading 3922.90 (3926.90 with affect from 10 February 1987) as 'other articles of plastics' and cleared at 'nil rate' of duty in terms of a notification issued on 1 March 1986. As the product is in the form of blocks of rectangular geometric shape, cut into rectangular or square sheets/plates, but not further worked, thereby answering to the provisions of note 10 of Chapter 39, the product is correctly classifiable under the heading 39.20 or 39.21 as plates, sheets etc., of plastics. The incorrect classification of the product as an article of plastics and the consequent availing of the benefit of the notification dated 1 March 1986, resulted in short-levy of duty of Rs. 4,80,567 on the clearances during the period from March 1986 to December 1986.

The mistake was pointed out in audit to the department in November 1987 and to the Ministry of Finance in June 1988.

The Ministry of Finance have admitted the objection (September 1988).

3.22 **Rubber products**

(i) *Tyres and tubes*

Tyres and tubes of power tillers which are designed for off-road use (on agricultural land) are classifiable under sub-heading 4011.91 and 4013.91 respectively.

An assessee manufactured tyres and tubes for power tillers and was allowed to clear them on payment of duty at the rate of 28 per cent ad valorem for tyres and at Rs. 32 per tube by classifying the items under the subheading 4011.99 and 4013.99 respectively.

Since the items are of a kind used on equipments designed for use off the road, these are classifiable under sub-headings 4011.91 and 4013.91 chargeable to duty at the rate of 66 per cent ad valorem (tyre) and Rs. 400 per tube. As a result there was short levy of Rs. 13.33 lakhs on the clearances made during March 1986 to December 1987.

On the mistake being pointed out in audit (February 1988) the department stated (April 1988) that a show cause-cum demand notice for payment of differential duty for the period from March 1986 to March 1988 has been issued. Further developments have not been intimated.

The Ministry of Finance have admitted the objection (November 1988).

(ii) *Moulded sponge rubber products*

Mattress supports, articles of bedding and similar furnishing (for example mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellulur rubber or plastics, whether or not covered are liable to duty under heading 94.04.

A manufacturer of moulded rubber products, namely-foam mattresses, chair cushions, car seats etc. classified the goods under heading 94.04 when they were covered with a protection cloth and under sub-heading 4008.11 when not so covered, as plates and blocks of cellulur rubber. These moulded sponge rubber products had a plain surface on one side and a number of square or circular hollow sections on the other side.

The assessee was availing the benefit of an exemption notification dated 1 March 1986 and did not pay duty on the first clearance of goods valued at Rs. 30 lakhs (Rs. 15 lakhs separately for heading 40.08 and 94.04). As the product without cover was also classifiable under heading 94.04, the assessee was eligible to clear without payment of duty on the first clearance of goods valued Rs. 15 lakhs only. The incorrect classification of uncovered articles resulted in short levy of Rs. 13.12 lakhs (approximately) for the period from April 1986 to September 1987.

The irregularity was pointed out in audit to the department in November 1987 and to the Ministry of Finance in June 1988.

The Ministry of Finance have admitted the facts as substantially correct. (November 1988).

(iii) *Battery separators*

As per note 1(a) of Section XVI of the Central Excise Tariff Act, 1985, articles of unhardened vulcanised rubber of a kind used in machinery or mechanical or electrical appliances fall outside the purview of Chapter 84-Machinery and Chapter-85—Electrical machinery, as the case may be, and therefore they would be classifiable as rubber products under Chapter 40.

An assessee engaged in the manufacture of electric storage batteries also manufactured separators made of unhardened vulcanised rubber which were correctly classifiable under Chapter 40 and used these separators within the factory in the manufacture of stationary batteries. The department misclassified the separators under Chapter 85 which resulted in short levy of duty of Rs. 10,27,028 on goods valued at Rs. 17,11,715 cleared for captive use during the period from March 1986 to November 1987.

On the irregularity being pointed out in audit (February 1988), the department did not admit the objection and stated (May 1988) that as per note 2(*a*) of Section XVI *ibid*, the separators were classifiable under Chapter 85 as it is found mention in heading 85.07. The reply of the department is not acceptable because Section note 2(*a*) is subject to note 1(*a*) which excludes the classification of the above goods under Chapter 85.

The Ministry of Finance did not accept the objection and stated (October 1988) that the battery separators in the instant case are made of hardened vulcanised rubber and articles of hardened vulcanised rubber are not excluded under note 1(*a*) of Section XVI.

The fact however, remains that the Deputy Collector of Central Excise vide his letter dated 9 May 1988 has already confirmed that the said products are strips of unhardened rubber.

3.23 Machinery and mechanical appliances

(i) *Cranes and parts thereof*

"Cranes" are classifiable under heading 84.26 of the schedule to the Central Excise Tariff Act, 1985 and chargeable to duty at the rate of 15 per cent ad valorem while the parts of "cranes" are classifiable under heading 84.31 of the said schedule attracting duty at the rate of 20 per cent ad valorem.

(a) A Public Sector undertaking was awarded turnkey contracts by different parties for designing, manufacturing and commissioning of cranes. The assessee manufactured some of the parts of the cranes and purchased he rest from outside. All the parts were despatched in t separate consignments over a period of over one year to the sites for erection and commissioning. The parts manufactured by the assessee were classified under heading 84.26 as "crane" and duty on the same was paid at 15 at per cent ad valorem. Since the assessee manufactured and cleared only some parts which did not in themselves constitute whole cranes, these parts were correctly classifiable as part of cranes under heading 84.31 attracting duty at 20 per cent ad valorem. The misclassification of the products resulted in short levy of duty to the tune of Rs.24.60 lakhs during the period from April 1986 to February 1987.

On the mistake being pointed out in audit in March 1987, the department did not admit the objection and stated (September 1987), inter alia, that the cranes were supplied in knocked down condition and accordingly it was correctly classified under heading 84.26. It was also stated that "spare parts" of the cranes if supplied subsequently were to be charged to duty under heading 84.31.

The department's contention is not tenable because the assessee cleared only some parts of cranes manufactured in its own factory leaving the rest of the parts of the cranes to be supplied by others directly at site and the assessee could not , therefore, have been assessed on complete cranes in knocked down condition as stated. Further, the parts cleared by the assessee were assessable as parts of the cranes in accordance with orders issued by the Central Board of Excise and Customs in February 1981 as those parts were cleared as parts and not as the whole cranes for the purpose of assessment.

The Ministry of Finance have stated (October 1988) that the matter is under examination.

(*b*) Another assessee was awarded turnkey contracts by different parties for designing, manufacturing and commissioning of cranes. The assessee manufactured some of the parts of the cranes and purchased the rest from outside. All the parts were despatched in separate consignments over a period of about one year to the sites for erection and commissioning. The parts manufactured by the assessee were classified under heading 84.26 as 'crane' and duty on the same was paid at 15 per cent ad valorem. Since the assessee manufactured and cleared only some parts which did not in themselves constitute whole crane, these parts were classifiable as parts of cranes under heading 84.31 attracting duty at 20 per cent ad valorem. The misclassification of the product resulted in short levy of duty of Rs. 2.10 lakhs during the period from 25 May 1986 to 8 March 1988.

On the mistake being pointed out in audit (March1988), the department did not admit the objection and stated (May 1988) that parts are cleared at site in knocked down condition where the 'cranes' are produced after assembly of such parts and accordingly it was correctly classified under heading 84.26. It also added that duty should be charged on the whole and not the parts of the crane.

The department's contention is not tenable in view of the fact that the assessee cleared only some parts of the cranes manufactured in his own factory leaving the rest of the parts of the cranes to be supplied by others directly at site and, therefore, the assessee could not have been assessed on complete cranes in knocked down condition as stated. Further, the, parts cleared by the assessee were assessable as parts of the cranes in accordance with orders issued by the Central Board of Excise and Customs in February 1981 as these parts were cleared as parts and not as whole cranes for the purpose of assessment.

The Ministry of Finance have stated (November 1988) that the matter is under examination.

(ii) *Flexible shaft machines*

A manufacturer of 'flexible shaft machines', consisting of an electric motor, a flexible shaft and inter changeable tool-holders, classified the product under heading 84.60 as a machine tool for deburring, sharpening, grinding etc.. The tools to be fitted to the machine for doing the above mentioned functions were required to be purchased by the buyers from the market.

The correctness of the classification of the goods under heading 84.60 was taken up with the department (February 1987). After receipt of its reply in May 1987, the matter was further examined and it was found that the explanatory notes under heading 85.08 of the H.S.N. specifically excluded from that heading, sets consisting of a tool holder with one or more tools and an electric motor with a flexible shaft. According to the H.S.N. notes, the tool holder is classifiable under heading 84.66, the electric motor with the flexible shaft under heading 85.01 and the tools under their own appropriate headings.

When revised classification was pointed out (July 1987) in audit, the department argued (September/ December 1987/March 1988/June 1988) that as per note 4 to Section XVI of the Tariff Schedule, when machines consist of individual components intended to contribute together a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole item would be classified under the heading appropriate to that function and hence the machine was correctly classifiable under heading 84.60 as it was a combination of machines consisting of individual components intended to contribute to a clearly defined function.

The departments's reply is not acceptable because :

(*i*) note 4 of Section XVI does not refer to interchangeable components of a machine, but only to functional units consisting of components which are intended to contribute together to a clearly defined function. The examples given in the H.S.N. at page 1133-1134 also do not include a machine having interchangeable components. The machines as cleared from the factory are without tools and hence these machines do not contribute to notes under heading; explanatory any definite function.

(ii) according to explanatory notes under heading 84.60 , the machine tools falling under the heading are usually designed to be mounted on the floor, bench or a wall, and are provided with a base plate, mounting frame, stand etc. The motor of the flexible shaft machine is merely placed on the floor, bench etc. and need not be mounted; and

(iii) explanatory notes in H.S.N. under heading 85.08 specifically mention the classification of such machines consisting of interchangeable parts under heading 85.01 and 84.66 as mentioned above.

The short levy of duty for the period from April 1986 to May 1988 worked out to Rs.5,37,491.

The Ministry of Finance have stated (November 1988) that the matter is under examination.

(iii) *Conveyor system and parts thereof*

While heading 84.28 covers only complete machinery, parts suitable for use solely or principally with that machinery are correctly classifiable under heading 84.31 attracting duty at 20 per cent ad valorem, in terms of note 2(a) of Section XVI.

An assessee manufacturing certain parts of conveyor system such as pulleys, idlers sets with frames, stringers etc. classified them under heading 84.28 as 'conveyor machinery' attracting duty at 15 per cent ad valorem.

The conveyor system would be complete only after erecting at site with other bought out parts. As only certain parts of conveyor system were manufactured and cleared by the assessee, the classification of these parts under heading 84.28 instead of under heading 84.31 (except pulleys which are classifiable under heading 84.83 attracting duty at 20 per cent ad valorem) was not corrrect. The incorrect classification of the parts resulted in short levy of duty of Rs.2.26 lakhs on the goods cleared from April 1986 to December 1987.

This was pointed out in audit in February 1988 and May 1988, but the reply from the department has not yet been received (June 1988).

The Ministry of Finance have stated (October 1988) that the matter is under examination.

(*iv*) *Gears and gearing fly wheels*

Gears and gearing fly wheels and pulleys and certain other specified articles are classifiable under heading 84.83 of the schedule to the Central Excise Tariff Act, 1985.

A manufacturer of machines and machine parts was allowed to clear certain machine parts on payment of duty at the rate of 15 per cent ad valorem by classifying them under the heading 84.79 which actually relates to machines and mechnical appliances having individual function, not specified or included elsewhere in Chapter 84 of the Tariff. Since the products in question are specified under the heading 84.83 of the schedule for charging duty at 20 per cent ad valorem, the classification

was incorrect. The incorrect classification resulted in short levy of duty of Rs.1.84 lakhs during the period from April 1986 to May 1987.

On the mistake being pointed out in audit (June 1987) the department stated (February 1988) that a draft show cause-cum demand notice for Rs.1.84 lakhs was being sent to the Collector for consideration.

The Ministry of Finance have admitted the objection (July 1988).

3.24 Fabrics

(i) *Man made fabrics*

As per heading 55.12 of the schedule to the Central Excise Tariff Act, 1985 fabrics of man-made staple fibres shall contain (i) cotton (ii) polyester staple fibre (iii) ramie or any one or more of artificial staple fibres (not containing any other textile material). The description of the heading was, however, amended from 13 May 1986 to read "fabrics containing (i) polyester staple fibre and (ii) anyone or more of the following fibres, namely, cotton, ramie and artificial staple fibres." Thus, although cotton is not an essential constituent of fabrics falling under heading 55.12 from 13 May 1986, yet the same was a necessary ingredient during the period from 1 March 1986 to 12 May 1986.

An assessee cleared fabrics of man-made staple fibres containing poleyster and viscose only during 1 March 1986 to 12 May 1986 classifying then under heading 55.12 and availing concessional rate of duty provided in a notification of 1 March 1986 for fabrics falling under that heading, whereas these fabrics were classifiable under heading 55.08 (fabrics of man-made staple fibres excluding fabrics not covered under heading 55.12). The incorrect classification resulted in short levy of duty amonting to Rs.14 lakhs.

On the omission being pointed out in audit (May 1987), the department did not accept the objection and stated (September 1987) that the constituent fibres were to be polyester fibre and anyone or more of the staple fibres. But the fact remains that the heading 55.12, as stood on 1 March 1986, clearly describes that the cotton and poleyster staple fibres are two necessary constituents, whereas the third may be either ramie or any one or more of artificial staple fibres. The contention of the department is, thus, not tenable.

The Ministry of Finance have admitted the objection (November 1988).

(ii) *Cotton fabrics*

Cotton fabrics, not subjected to any process, ware classifiable under tariff item 19I (a) while cotton fabrics subjected to the process of bleaching, mercerising, dyeing, printing, water proofing, rubberising, shrink-proofing, organdie processing or any other process were classifiable under tariff item 19I (b).

A manufacturer of turkish towels and cotton blankets classified the goods as unprocessed cotton fabrics falling under tariff item 19I(a) and cleared them without payment of duty of excise by virtue of an exemption notification issued on 17 March 1985.

It was pointed out (January 1986 and May 1987) that as turkish towels and cotton blankets, after weaving on looms in running lengths, were subjected to finishing processes like cutting them into required sizes and stitching, the goods were classifiable as processed cotton fabrics under tariff item 19I(b) and the exemption from payment of duty availed of by the manufacturer was not in order.

Misclassification of processed fabrics as fabrics not subjected to any process resulted in short levy of duty amounting to Rs.8,35,414 during March 1985 to November 1985.

The case was reported to the Ministry of Finance in August 1988.

The Ministry of Finance have admitted the objection (November 1988).

(iii) *Filter fabrics*

Filter fabrics are classifiable under sub-heading 5909.00 of the Schedule to the Central Excise Tariff Act, 1985.

An assessee manufacturing various kinds of industrial fabrics, also manufactured filter fabrics of cotton yarn nylon filament yarn, spun yarn of polyester and polypropylene staple fibre. These filter fabrics were supplied to various industrial consumers as well as to dealers for being used as filters in oil and chemical industries. These fabrics were classified as unprocessed fabrics under Chapters 52,54 or 55 and cleared at nil rate of duty.

Filter fabrics were correctly classifiable under sub-heading 5909.00, as the heading covers 'straining cloth' and as per HSN explanatory notes under the corresponding heading 59.11 (P.823) 'straining cloth' includes woven filter fabrics whether or not impregnated, of a kind for oil presses or similar filtering purposes. Moreover, sub-heading 5909.00 gives a more specific description of the product than the general description given in Chapters 52,54 or 55 and the specific description is to be referred, with reference to Rule 3 (a) of the Rules for the interpretation of the Tariff Schedule.

The duty short levied due to the misclassification worked out to Rs. 4,85713 in respect of synthetic filter fabrics cleared during the period from January 1987 to August 1987 and Rs.41,027 in respect of filter cotton canvas cleared during June 1987 alone.

On the incorrect classification being pointed out in audit (October 1987), the department did not accept the objection and stated (October 1987) that the said fabrics being woven on ordinary looms and not being cut to length or to any shape, would not fall under sub-heading 5909.00 in view of note 6 to Chapter 59. The department's view is not acceptable since note 6(a) to Chapter 59 also includes taxtile products.

The incorrect classification was pointed out in audit to the department in October 1987 and to the Ministry of Finance in August 1988.

The Ministry of Finance have admitted the objection (November 1988).

3.25 Iron and steel products

(i) *Cell cover tops and bottoms*

Articles of steel are generally classifiable under Chapter 73 of the Schedule to the Central Excise Tariff Act, 1985. But by virtue of provision made in note (f) of Section XV, this Section does not cover articles of Chapter 84 and 85 (Section XVI) which deals with machinery, mechanical appliances and electrical goods parts of primary cells and batteries even though made of steel are properly classifiable under sub-heading 8506.00 with duty at the rate of 30 per cent ad valorem upto February 1987 and 35 per cent ad valorem from March onwards. They are not classifiable as other articles of steel under sub-heading 7308.90 with duty at the rate of 15 per cent ad valorem.

An assessee manufacturing "steel cell cover tops and bottoms" of primary cells was allowed to clear the product after classifying them under sub-heading 7308.90. Incorrect classification resulted in short levy of duty of Rs.15.22 lakhs for the period form April 1986 to May 1987.

On the irregularity being pointed out in audit (June 1987), the department intimated (February 1988) that factory was closed since December 1987 and attempts were being made to raise demands on the basis of available records.

The Ministry of Finance have admitted the objection (August 1988).

(ii) *Sheet cuttings*

As per note (xviii) in Chapter 72 "sheet" means a hot or cold rolled flat product rolled on rectangular section of thickness below 5 milimetres and supplied in straight lengths the width of which is at least a hundred times the thickness and the edges are either milled, trimmed, sheared or flame cut and includes a corrugated sheet. This definition is wide enough to cover even "cuttings and shearings of cold rolled sheets" if their thickness is below 5 mm and width at least a hundred times the thickness.

'Cuttings and shearings' of cold rolled sheets generated during the manufacture of steel galvanised cold rolled sheets were classified by the department under sub-heading 7203.20 as waste and scrap of steel and were accordingly cleared by the unit on payment of duty at Rs. 365 per tonne.

These shearings and cuttings of cold rolled sheets, being considerably large in size and having a potential use as steel sheets for the purpose of manufacture of articles such as containers or boxes, merited classification under sub-headings 7212.50 as cold rolled sheets attracting duty at Rs.715 per tonne instead of under sub-heading 7203.20 as waste and scrap which was fit only for the recovery of metal or for use in the manufacture of chemicals.

On this being pointed out in audit (September 1987), the department intimated (April 1988) that differential duty of Rs. 2.58 lakhs on sheet cuttings cleared upto December 1987 has been realised from the assessee (January and February 1988).

The Ministry of Finance have accepted the underassessment (November 1988).

(iii) *Rima profile wires*

Iron and steel falls under Chapter 72 whereas articles made out of iron and steel are under Chapter 73 of the Central Excise Tariff Act, 1985.

An assessee engaged in the manufacture of rima profile wires out of cold drawn wires was allowed to classify the product under heading 72.13 and cleared them at nil rate of duty under a notification dated 1 August 1983 on the gound that the same were made from duty paid material.

The cold drawn wire was passed through rima machine in which loops were formed by turning the wire around a pin and then the wire was pressed in desired profile alone with the loops. Thus the product which came out from the rima machine was different from wire in as-much as it had distinct shape and function. The product was correctly classifiable under sub-heading 7308.90 and was liable to duty at 15 per cent ad valorem. Short levy of duty on the product for the period from 1 March 1986 to 20 July 1987 amounted to Rs. 2,51,645.

On the irregularity being pointed out in audit (May 1987), the department revised the classification list approving the classification of the product under sub-heading 7308.90 and raised (November 1987) the demand for Rs.2,51,645. Report on recovery of duty has not been received (March 1988).

The Ministry of Finance have accepted the under-assessment (November 1988).

(iv) *Tyre bead wire rings*

Prior to 1 March 1988 heading 73.08 of the Schedule to the Central Excise Tariff Act, 1985 covered other articles of steel. Tyre bead wire rings manufactured by tyre factories from steel wire coated with rubber were, therefore, classifiable under sub-heading 7308.90 attracting duty at the rate of 15 per cent ad valorem. The aforementioned classification was confirmed by the Central Board of Excise and Customs in its letter dated 9 February 1988.

A tyre manufacturer manufactured tyre bead wire rings and used them for captive consumption in the manufacture of tyres both dutiable and exempted,

The assessee did not declare the fact of the manufacture of the product in the classification lists even though a notification dated 2 April 1986 which granted full exemption from duty to the input for internal consumption was not applicable because certain tyres (finished product) in which the inputs were used were exempted from whole of the duty. This resulted in short levy of duty of Rs.2.37 lakhs (after allowing credit of duty paid on input) on the product cleared for use in the manufacture of exempted tyres during the period from March 1986 to December 1987.

On the mistake being pointed out in audit (February 1988), the department stated (May 1988) that a show cause-cum demand notice had been issued to the assessee.

The Ministry of Finance have accepted the under-assessment (November 1988).

3.26 Miscellaneous manufactured goods

(i) *Aluminium goods*

'Aluminium blanks' in the shape of circles having thickness of and above 0.56 mm but not above 2mm are classifiable under the sub-heading 7605.10 and chargeable to duty at the rate of 13 per cent ad valorem. Aluminium blanks' in all other shapes are classifiable under the sub-heading 7605.90 and chargeable to duty at the rate of 25 per cent ad valorem.

A manufacturer of aluminium goods manufactured 'aluminium ovals' (blanks in oval shape) having 2 mm thickness and cleared the product, on payment of duty at 13 per cent ad valorem, by classifying it under sub-heading 7605.10 as aluminium blanks in the shape of circles. This was incorrect as 'aluminium oval' was not 'aluminium circle'. The item was thus correctly classifiable as 'aluminium blanks of a shape other than circles' under the sub-heading 7605.90. The mis-classification resulted in a short levy of duty of Rs. 6.87 lakhs for the period from 1 March 1986 to 29 February 1988.

On the irregularity being pointed out in audit (March 1988), the department did not accept the audit objection and stated (July 1988) that the assessment was made on the basis of clarification given by the Ministry /Board in their letter dated 19 December 1967 which clarifies that in the commercial sense circle includes 'oval'.

The contention of the department was, however, not acceptable since in the aforementioned letter the Ministry, in consultation with the Director General of Technical Development, had clarified that the 'oval' shapes of aluminium having thickness of and above 0.559 mm but not above 1.219 mm might only be treated to be included in the 'circle '. In the instant case since the 'aluminium oval' was of thickness 2 mm it could not be treated as a circle even within the scope of the clarification.

The Ministry of Finance did not accept (November 1988) on the grounds that an oval is a circle. The reply of the Ministry is not acceptable because oval is not a circle, on the other hand a circle is a specific type of oval.

(*ii*) *Design printing screen*

As per a notification issued on 1 March 1986, the 'design printing screen' is liable to duty at 15 per cent ad valorem under sub-heading 8442.00 as 'other printing components'.

An assessee engaged in bleaching, dyeing, and printing of fabrics (Chapters 54 and 55) manufactured 'design printing screen' and used them captively for printing. However, the assessee had neither filed any classification list for the same nor had paid any duty thereon. The assessee had manufactured 5977 such screens during the period from March 1986 to August 1987. Omission to classify these goods under sub-heading 8442.00 and non-payment of duty on them has resulted in short levy of duty of Rs. 3.59 lakhs (approximately) for the said period.

On the mistake being pointed out in audit (December 1987), the department stated (May 1988) that a show cause notice for Rs. 20,638 covering the period from 1 August 1987 to 2 September 1987 was issued to the assessee and that demand for the earlier period from 1 March 1986 to 31 July 1987 was being issued.

The Ministry of Finance have stated (November 1988) that the matter is under examination.

(*iii*) *Carbon blocks*

As per the Central Excise Tariff Act, 1985 preparations based on graphite or other carbon in the form of pastes, blocks, plates etc., are classifiable under heading 38.01 and attract duty at 15 per cent ad valorem, whereas articles of graphite or other carbon of a kind used for electrical purposes are classifiable under heading 85.45 attracting duty at 20 per cent ad valorem.

A primary producer of aluminium also manufactured carbon blocks and classified them under heading 38.01. The carbon blocks were manufactured from electrically calcined coal, coal tar pitch and other ingredients and the process principally consisted of converting and giving shape to the ingredients by extrusion or moulding and baking it in an oven and cutting the baked material into blocks of required shape and size and surface worked and surface finished for being used as anode and cathode in electric furnaces and smelters. These salient features of the manufacturing process and end use of the product indicated that the carbon blocks manufactured by the assessee merited classification under heading 85.45 attracting duty at 20 per cent ad valorem instead of 15 per cent under heading 38.01. The misclassification of the carbon blocks resulted in short levy of duty of Rs. 3,17,616 during the period from March 1986 to May 1987.

On the short levy being pointed out in audit (August 1987), the department stated (October 1987) that the carbon blocks were reclassified under heading 85.45 from October 1987 for which the assessee too had agreed. Report on further development in the case has not been received (February 1988).

The Ministry of Finance have admitted the objection (November 1988).

(iv) *Phenyle*

The Central Board of Excise and Customs clarified on 10 November 1985 that 'phenyle' is a preparation and is a disinfectant and accordingly would be classifiable under sub-heading 3801.90. Sub-heading 3801.90 has been changed to 3808.90 in the Tariff with effect from 1 March 1987.

A small scale unit manufacturing germicide disinfectant fluid (liquid phenyle) since April 1986 was clearing the product under sub-heading 3801.20 attracting 'nil' rate of duty. Since 'phenyle' is a disinfectant fluid classifiable under sub-heading 3801.90 and attracts duty at 15 per cent ad valorem, the clearances during April 1986 to March 1987 resulted in short levy of duty of Rs. 1.84 lakhs.

On the irregularity being pointed out in audit (November 1987), the department stated that a show cause notice in respect of clearances made from 1 April 1987 to 31 October 1987 was issued on 30 November 1987 and the case adjudicated in April 1988 classifying phenyle under sub-heading 3808.90 attracting duty at 15 per cent ad valorem. As regards the period from 1 May 1986 to 31 March 1987 a draft demand-cum show cause notice for an amount of Rs. 1.84 lakhs was forwarded to the Collector of Central Excise on 19 May 1988. The recovery of Rs. 1.84 lakhs has not been intimated (July 1988).

The Ministry of Finance have confirmed the facts as substantially correct (November 1988).

(v) *Office machines*

Office machines and apparatus including inter alia, intercom devices (but excluding telephones) were classifiable under tariff item 33D of the Central Excise Tariff. As per explanation below the aforesaid tariff item, the term "Office machines and apparatus" shall be construed so as to include all machines and apparatus used in offices, shops, factories, workshops, educational institutions, railway stations, hotels and restaurants for doing office work, for data processing and for transmission and reception of messages.

The High Court of Karnataka in their judgment dated 6 November 1984 in the case of Associated Electronics and Electrical Industries also held that an "intercom" or an internal telephone communication system can not be treated or equated to a "telephone" that is generally and popularly associated with the public telephone maintained by the Posts and Telegraphs Department of Government. Hence the "intercom" was liable to duty under tariff item 33D [1985 (22) E.L.T. 368 (Karnataka)].

A Public Sector undertaking manufactured P.A.X. (Private Automatic Exchange) and P.A.B.X. (Private Automatic Branch Exchange) and classified them under tariff item 68 treating them as telephone and paid excise duty accordingly. Since P.A.X. and P.A.B.X. perform the functions of an internal communication system or an office equipment for transmission and reception of message exclusively in an office, these were correctly classifiable as "intercom devices" under tariff item 33-D instead of tariff item 68. The misclassification of the product resulted in short levy of duty of Rs. 1,71,880 on clearances of the aforesaid goods during the period from January 1985 to September 1985 alone.

On the mistake being pointed out in audit (October 1985), the department issued show cause-cum demand notice (December 1985) for a sum of Rs. 2,15,010 which included the short levy noticed in audit. Report on confirmation of demand and recovery has not been received (May 1988).

The Ministry of Finance have admitted the objection (November 1988).

SHORT LEVY DUE TO UNDERVALUATION

As per the provisions of Section 4 of the Central Excises and Salt Act, 1944, where the goods are assessable to duty ad valorem, the normal price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, would be the assessable value provided the price is the sole consideration for sale.

3.27 Price not the sole consideration for sale

Where price is not the sole consideration for sale, as per provisions of the Rule 5 of the Central Excise (Valuation) Rules, 1975, the assessable value of the goods shall be based on the aggregate of such price and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.

(i) *After sale service and other post manufacturing expenses*

The Supreme Court in their judgment dated 7 October 1983 in the case of M/s. Bombay Tyre International Ltd. have held that the charges for other services after delivery to the buyer, *viz.* after sales service, sales promotion expenses, are to be included in the assessable value.

(a) An assessee engaged in the manufacture of motor vehicles (chapter 87) sold vehicles to the buyers through the dealers at fixed prices for which a commission ranging from Rs. 1500 per three wheeler and Rs. 3000 per four wheeler, depending upon the type of vehicle sold was being paid to the dealer. The same was, however, not being included in assessable value. As per the agreement entered into between the assessee and the dealer, it was the responsibility of the dealer to maintain a show-room, and sales office at his address, to advertise in local papers, to display hoarding, slides etc., to maintain a workshop and also to get their men trained in the assessee's service training course. Such expenses towards promotion of sales and after sales services included in the dealer's commission actually promote the marketability of the assessee's product and as such

form part of the assessable value. Non-inclusion of the portion of dealer's margin which represented such expenses resulted in underassessment of duty, the exact amount of which could not be worked out for want of details with the assessee. However, the short payment of duty was estimated at Rs. 52.05 lakhs for the years 1984-85, 1985-86 and 1986-87.

On the mistake being pointed out in audit (September 1987), the department did not accept the objection (March 1988) and referred to the Supreme Court's judgment in the case of M/s. Moped (I) Ltd. *Vs.* Assistant Collector of Central Excise, Nellore wherein it has been held that the dealers commission was only a trade discount and as such deductible from the assessable value.

The department's reply is not relevant as the expenses incurred by the dealers on behalf of the assessee out of the commission promote the marketability of the product should be included in the assessable value as the same is not trade discount. In a similar case reported in para 4.18(i) of the Audit Report for the year ended 31 March 1987, the department and the Ministry of Finance had agreed with the Audit view.

The Ministry of Finance have admitted the objection (November 1988).

(b) A unit manufacturing vegetable products (vanaspati) recovered, from the dealers, distribution charges at Rs. 9.60 per bulk tin and Rs. 700 per tonne on small packs. These charges were, however, not included while working out the assessable value prior to 8 October 1985. The distribution charges recovered during the period 1 April 1985 to 7 October 1985 amounted to Rs. 2,56,46,315. This resulted in duty being realised short by Rs. 25.65 lakhs.

The mistake was pointed out in audit to the department in July 1987 and to the Ministry of Finance in August 1988.

The Ministry of Finance have admitted the objection (November 1988).

(c) A manufacturer of agricultural tractors (heading 87.01) sold them mainly through dealers, at a price not higher than the maximum retail price fixed by the assessee. As per the agreement entered into between the assessee and the dealers, the dealer's commission included, *inter-alia*, a sum of Rs. 400 as after sales service charges for four free services during warranty period. The expenses towards after sales services amounting to Rs. 21.70 lakhs on the sale of 5425 tractors during 1986-87 were includible in assessable value on which duty amounting to Rs. 3,25,500 was not paid.

On the mistake being pointed out in audit (November 1987), the department did not accept the objection and stated (February 1988) that the assessee had nothing to do with the dealer's commission which is charged by the dealer himself and that the assessee is not showing any deduction on account of dealer's commission in the price list submitted to the department. But the fact remains that the after sale service charges are prepaid to the dealers, and in case the service department of the assessee does not receive the free services coupons from the dealers within fifteen days from the date of rendering the free services, or wherever it is felt that the dealer had not rendered free services the assessee had the option to debit the amount to the dealers account. Thus, the assessee had complete control over the free services rendered by the dealers to the customers on behalf of the manufacturer during warranty period to keep the product in satisfactory running condition even after their sale, which promote the marketability of the tractors and maintain their reliability in the market. The after sale service charges, therefore, form part of the assessable value.

The Ministry of Finance have stated (November 1988) that the matter is under examination.

(d) A manufacturer of oxygen gas sold his goods during April 1983 to March 1985 in wholesale trade to buyers and industrial consumers at a negotiated price, by issuing an invoice and a debit note simultaneously for each consignment. The manufacturer had been charging at the rate of Re. 1 per cubic metre of the gas through invoices and the balance negotiated amount in the shape of rentals and service charges of cylinders through debit notes which was three to four times of the amount (assessable value) of the invoices. The additional amount recovered through debit notes was not taken into account for arriving at the assessable value. By adopting this practice the manufacturer remained within exemption limit and cleared the goods at nil rate of duty by availing the small scale benefits under a notification dated 1 March 1983. The irregularity resulted in short payment of duty during the period April 1983 to March 1985.

On the short levy being pointed out in audit (July—November 1985), the department conducted (September 1986) the preventive checks and issued (December 1986) a show cause-cum demand notice for additional considerations received through debit notes. The case was decided in adjudication in March 1988 by the department and the demand for Rs. 4,65,345 was confirmed. Besides, a penalty of Rs. 1 lakh was also imposed.

The Ministry of Finance stated (October 1988) that the order confirming the demand was set aside by CEGAT and de novo proceedings were in progress.

(e) A licensee manufacturing tractors (tariff item 34 upto 27 February 1986 and heading 87.01 with effect from 28 February 1986) incurred expenditure on advertisements, a part of which was passed on to the wholesale buyers by raising debit notes and net expenditure was taken to the financial accounts. The expenditure incurred on advertisement material, being a part of manufacturing activities for promoting the marketability of the articles, was includible in the assessable value. Non-inclusion of these expenses in the assessable value resulted in duty amounting to Rs. 2.21 lakhs being realised short between 1 December 1985 to 31 August 1987.

The omission was pointed out in audit in November 1987; the reply of the department has not been received (February 1988).

The Ministry of Finance have admitted the objection (July 1988).

(*ii*) *Transit insurance*

An assessee engaged in the manufacture of motor vehicles (Chapter 87) attracting duty at 25 per cent ad valorem dispensed with the transit insurance cover from the insurance company in respect of clearance of vehicles from the factory gate with effect from 1 June 1986. Simultaneously the assessee adopted an insurance scheme of his own (called self insurance) to cover insurance relating to transit of vehicles from the factory to various stock yards/stock dealers. As per the annual report of the company for the year 1986-87 the amount of transit insurance recovered in excess of actual expenses was Rs. 1,04,46,503 which was not included in the assessable value of the vehicles resulting in short levy of duty amounting to Rs. 26,11,625.

When the short levy was pointed out in audit in January 1988, the department did not accept the objection and stated that the dealers price at the factory gate is available and that the expenditure incurred from the factory gate to the dealer's premises are not relevant for the determination of assessable value under Section 4.

The fact, however, remains that;

(i) the assessee recovered more than what was actually spent by him in moving the vehicles from factory to various stock yards/dealers and the difference would, therefore, form part of the assessable value as was held by Supreme Court in Bombay Tyres International case;

(ii) after the nationalisation of insurance no body can do insurance business except the companies appointed by the government in this behalf.

The Ministry of Finance have admitted the objection (November 1988).

(*iii*) *Escalation charges*

Where an agreement for sale of goods entered into by a manufacturer included conditions regarding escalation charges in the prices of the raw material labour etc., the final value for the purpose of assessment would be inclusive of such assessable value.

A public sector undertaking engaged in the manufacture of different machineries and spares for steel plants realised escalation charges amounting to Rs. 57.94 lakhs from the customers during the period 1 June 1985 to 30 June 1985. But duty amounting to Rs. 8.10 lakhs on such escalation charges was not paid. The department also failed to raise a demand. This resulted in the short levy of duty amounting to Rs.8.10 lakhs.

On the mistake being pointed out in audit (October 1987) the department accepted the mistake.

Report on the recovery of short levied amount of duty has not been received (May 1988).

The Ministry of Finance have accepted the under-assessment (November 1988).

3.28 **Excisable goods not fully valued**

Under the provisions of Section 4 of the Central Excises and Salt Act, 1944, where duty of excise is charged on any excisable goods with reference to value, such value shall be deemed to be the normal price thereof at which such goods are sold by the assessee to a buyer in the course of wholesale trade.

The Supreme Court in the case of M/s. Bombay Tyres International and others V/s. Union of India has also held on 7 October 1983 that the expenses incurred upto the date of sale i.e. the date of delivery on account of several factors which have enriched its value and given to the article its marketability are liable to be included in the value of the article.

(*i*) *Glass ware*

A manufacturer of glass-ware falling under tariff item 23A(4) was inter-alia clearing decorated glass-ware after paying duty on its assessable value at the time of removal from the factory. From June 1983, however, the manufacturer started paying duty at the time of transfer of plain glass-ware to its decoration unit, based on assessable value relevant to the glass-ware in plain condition. Duty at the final stage, after ancillary processes of decoration were completed, was not levied by the department on the ground that duty was not chargeable on decorated glass-ware as per tariff advice issued by Central Board of Excise and Customs on 4 January 1980.

The Tariff Advice envisages that decorated glass-ware would not be again chargeable to duty under tariff item 23A (4), once duty on plain glass-ware had been paid and the decoration was done in a different factory, other than the factory where plain glass-ware was manufactured. It was pointed out in audit (February 1984 and March 1988) that the tariff advice did not apply in the instant case because the production of plain glass-ware and subsequent decoration thereof was done by one and the same factory. Accordingly duty was chargeable on decorated glass-ware calculated on assessable value relevant to decorated glass-ware and not on lower value relevant to plain glass-ware.

Thereupon, the department issued show cause notices for differential duty of Rs. 71,45,973, for clearances effected during June 1983 to August 1985 and also accepted the audit objection (July 1988).

The Ministry of Finance stated (November 1988) that a high court had granted stay and therefore recovery could not be effected. The Ministry's reply is silent about the steps taken to get the stay order vacated.

(*ii*) *Mobile drilling rigs*

The Ministry of Finance in their circular dated 16 November 1987 clarified that for assessment of drilling rigs the cost of all components including that of truck

chassis attached to drilling rig are includible in the assessable value irrespective of the fact whether they belong to the customer or manufacturer.

A manufacturer of mobile drilling rigs paid duty during 1985 and 1986 on the value excluding the value of 60 truck chassis supplied after drilling rigs on which the same were mounted. Separate invoices were raised for value of chassis. The resultant under assessment worked out to Rs. 22.69 lakhs.

On the under assessment being pointed out in audit (March 1986), the department stated (April 1987) that in a similar case the Collector (Appeals) held that the cost of chassis and other attachments were not includible in the assessable value of rigs. The department further stated (January 1988) that the cost of chassis is being included in the assessable value on instructions from the Board in November 1987 and no show cause notice was issued for earlier period.

The Ministry of Finance have admitted the objection (October 1988).

(*iii*) *Tractors*

(*a*) A manufacturer cleared 'tractors alongwith accessories' on prices approved, at the factory gate, for 'tractors' only. While approving the price lists, the value of accessories namely "mudguard seat, roof, canopy, draw bar long, coupling mouth, coupling bolt and rear towing hook" was not taken into account on the plea that these were not integral parts of the tractors.

It was repeatedly pointed out (September 1981 to February 1986) in audit that as all these accessories were integral parts of the tractors so their value was to be included in terms of the provisions of Section 4 of the Central Excises and Salt Act, 1944, read with the Supreme Court's judgment in the Bombay Tyres International case. As a result the department issued (November 1985) a show cause-cum demand notice demanding duty amounting to Rs. 4,16,519 on clearances made in respect of accessories alongwith tractors during July 1982 and April 1985, which is pending adjudication (June 1988). This was in addition to five show cause-cum demand notices issued (between August 1982 and June 1984) for Rs. 6,51,640 at the instance of audit; out of which three demands (duty Rs. 5,76,979) has since been confirmed and recovered. Two show cause-cum demand notices issued in August 1982 (duty Rs. 72,447) and in November 1982 (duty Rs. 2,214) were pending adjudication (June 1988).

While not admitting the audit objections, the department contended (June 1988) that these three show cause-cum demand notices of August 1982, November 1982 and November 1985 were issued as a precautionary measure. It was added that linkage draw bar long and rear towing hook were weight lifting equipment and not liable to be included under a notification dated 1 November 1982.

The reply of the department is not correct as the issue was earlier decided (July 1984—December 1984) by the jurisdictional Assistant Collector where demands in respect of all these accessories were confirmed and realised from the assessee. The demand amounting to Rs. 4,16,519 has been realised (November 1985) for the uncovered period. As far as eligibility of draw bar long and rear towing hook under notification dated 1 November 1982 is concerned no technical evidence in support of their contention was given. Reasons for exclusion of remaining four accessories were, also, not given.

The Ministry of Finance have stated (November 1988) that the matter is under examination.

(*b*) Another assessee cleared 5,389 tractors (above 25 Horse Power) fitted with linkage draw bar and trailer hook for which he charged Rs. 190 and Rs. 280 each respectively from the customers. The price of the said equipments was not included in the assessable value although these were attached to all the tractors and were not sold at the option of the customers. This resulted in short payment of duty amounting to Rs. 3,08,889 for clearances made between April 1985 and March 1986.

On the mistake being pointed out (April 1987) in audit the department stated (September 1987) that a show cause notice demanding duty of Rs. 8,01,713 for the period from April 1983 to March 1986 was pending issue with the Collector. The department in reply to the statement of facts issued in January 1988 stated (February 1988) that under the provisions of notification dated 1 November 1982, the value of any weight lifting or other specialised material handling equipment which may be mounted, fitted or fixed to the tractors, had been excluded from the assessable value and that the show cause-cum demand notice could not be issued as the same was not sustainable. The contention of the department is not correct as linkage draw bar and trailer hook fitted to the tractor cannot be considered to be such an equipment as no mechanism is involved which can be said to be aiding material handling.

The Ministry of Finance have stated (November 1988) that the matter is under examination.

(*iv*) *Diesel electric locomotives*

A factory belonging to Central Government was engaged, inter-alia, in the manufacture of 'diesel electric locomotives' (erstwhile tariff item 68 and new heading 86.02) since March 1975 and sold some of them to public sector undertakings. No duty was, however, levied on 'diesel electric locomotives' manufactured and cleared from the factory to public sector undertakings till December 1985. On clearances made from July 1986, duty was levied and demands were also raised in respect of earlier clearances.

It was, however, noticed in audit (March 1987) that the assessable value of locomotives was worked out without including the element of excise duty on internal combustion engines (tariff item 29) used in the manufacture of locomotives although no abatement of excise

duty paid was to be allowed while determining the assessable value of the finished product. This resulted in undervaluation of diesel electric locomoives and consequent short levy of duty amounting to about Rs. 9,57,101 on clearances of 70 locomotives from April 1982 to January 1987 alone. The short levy in remaining cases was to be worked out by the department.

The short levy was pointed out in audit in March 1987. Reply from the department has not been received (April 1988).

The Ministry of Finance stated (November 1988) that the show cause notice demanding duty of Rs. 9.57 lakhs had since been issued.

(v) *Railway sleepers*

An assessee engaged in the manufacture of monoblock concrete railway sleepers for which he got malleable cast iron inserts from the Railways, free of cost, was clearing the product on payment of duty on the value of sleepers excluding the cost of such cast iron inserts supplied free of cost by the Railways.

Non inclusion of the value of inserts in the assessable value of sleepers resulted in underassessment of duty estimated at Rs. 8,29,105 (on the basis of approved price lists effective from 1 September 1982) in respect of clearances of 84,444 sleepers during the period from June 1985 to May 1986.

On this being pointed out in audit (July 1986), the department while not admitting the objection stated (September 1987 and December 1987) that the assessments were made provisionally and while finalising the assessments on completion of individual contract cost of inserts is being included for arriving at the assessable value of sleepers.

The department further stated (February 1988) that the assessments for the period from May 1981 to February 1986 have been finalised and four demands amounting to Rs. 26,22,534 have been confirmed.

The department's action in resorting to provisional assessment without calling for the value of iron insert from Railways and including the same while determinings the assessable value is not apt.

The Ministry of Finance have accepted the underassessment (Novmeber 1988).

(vi) *Motor vehicle parts*

A manufacturer of motor vehicles parts (heading 87.08) inter alia manufactured tools, dies etc. falling under heading 82.02 for use in his factory and was availing exemption from duty on such tools, dies etc. with reference to a notification dated 10 February 1986. The assessee was also manufacturing certain unspecified motor vehicle parts on job work basis, on behalf of other manufacturers of motor vehicles/motor vehicle parts. For doing these job works the assessee manufactured certain costly tools (heading 82.02), the cost of which was recovered from the cusomers on whose behalf the job work was undertaken. No duty was, however, paid on these tools on the ground that they were used in the factory itself with reference to the above mentioned notification.

As the tools consumed in the manufacture of any goods will go into the cost structure of the goods, the cost of tools which was recovered from the customers should also be included in the cost of motor vehicle parts manufactured on job work basis. Omission to include the cost of tools in the value of motor vehicle parts resulted in short levy of duty of Rs. 1,11,440 during the period from February 1987 to October 1987. The underassessment for the earlier periods remains to be ascertained.

On this being pointed out in audit (February 1988), the department accepted the objection (June 1988) in principle but stated that certain tools valued at Rs. 5,91,400 were cleared under Rule 57 F(2) on which no duty could be demanded and that a show cause notice, was under issue, involving the extended period under Section 11 A, which included the other periods pointed out in audit. The exclusion of a portion of the value recovered from the customers is not justifiable because the amount goes to increase the cost of motor vehicle parts sold to the customers. Further the tools manufactured by the assessee were not actually removed, though the cost of the tools was recovered from the customers. Moreover under Rule 57 F(2), inputs, on which credit under Rule 57 A, was taken alone could be removed. As per explanation under Rule 57 A, inputs do not include inter alia tools. Hence the department's argument that duty on tools removed under Rule 57 F(2) s not recoverable is not tenable.

Details of duty demanded under Section 11 A and confirmation of demand have not been received (June 1988).

The Ministry of Finance have stated (December 1988) that the matter is under examination.

3.29 Valuation of goods consumed captively

As per Section 4 (1) (b) of the Central Excises and Salt Act, 1944, read with the Central Excise (Valuation) Rules, 1975, where excisable goods are wholly consumed within the factory of production, the assessable value is to be determined on the basis of value of comparable goods or cost of production including a reasonable margin of profit, if the value of comparable goods is not ascertainable. The Central Board of Excise and Customs issued instructions in Decembr 1980 that the data for determining the value on cost basis should be based on the cost data relating to the period of manufacture and if such data is not available at the time of assessment duty should be levied provisionally and finalised when data for relevant period becomes available. The Board also issued instructions that assessable value determined on the basis of cost of production should be revised at least once a year and that too even if the revision is not necessitated earlier due to variation in the cost of raw material and other elements of cost.

(*i*) *Internal combustion engines*

A factory belonging to the Central Government manufactured internal combustion engines and used them captively in the manufacture of diesel electric locomotives. The assessable value of I.C. engines was worked out on the basis of cost of production. It was observed in audit (March 1987) that the assessable value on which duty was paid during the years 1985-86 and 1986-87 was based on the cost data for the year 1984-85, assessable value on which duty was paid during 1984-85 was based on cost data for the year 1983-84 and that on which duty was paid during the years 1981-82, 1982-83 and 1983-84 was based on cost data for the year 1980-81. Even the differential duty amounting to Rs. 54.26 lakhs for the years 1983-84 and 1984-85 based on the assessable value as worked out subsequently with reference to the cost data for those years had not been demanded and assessable values for the years 1981-82, 1982-83, 1985-86 and onwards were not revised on finalisation of cost data for relevant years. This resulted in short levy of duty amounting to Rs. 93.65 lakhs (approximately) for the period from March 1983 to January 1987. The department was also requested to workout actual short levy after revision of prices on the basis of actual cost data for each year right from the year 1981-82.

The department stated (November 1987) that prices are approved provisionally on the basis of the cost data of the previous year and final cost data is required to be furnished at the end of the financial year. The reply of the department is not correct because revision was not done every year and even where the price was revised the differential duty had not been demanded. The department also intimated that the assessee had been asked to submit revised price lists with cost data for the years 1985-86 and 1986-87 and furnish revised prices for earlier years and that differential duty would be demanded and realised on finalisation of assessable value. The department added that a show cause-cum demand notice for Rs. 93.65 lakhs as pointed out by Audit had been issued to safeguard Government revenue. Further developments have not been intimated (February 1988).

The Ministry of Finance have admitted the objection (July 1988).

(*ii*) *Electronic components*

An assessee engaged in the manufacture of colour television sets and other goods was also manufacturing the electronic components, namely, populated printed circuit boards required for the colour television sets. The department determined the assessable value (August 1984) of the populated printed circuit boards cleared otherwise than by way of sale as Rs. 1,775 per main printed circuit board and Rs. 220 per turner P.C.B. on the basis of the cost of production plus profit thereon. It was noticed in audit that a part of these populated printed circuit boards were sold by the assessee during the period April to July 1985 at the rate of Rs. 2,350 per main P.C.B. and Rs. 290 per turner P.C.B. in respect of which the department had duly approved the price list. The value of comparable goods being known the same value was applicable to the goods which were cleared otherwise than on sale. As the department continued to apply the values determined on cost basis from April 1985 it resulted in undervaluation of goods by Rs. 575 per main P.C.B. and Rs. 70 per turner P.C.B and consequent short levy of duty of Rs. 59.59 lakhs on 65,787 main P.C.Bs. and 61,393 turner P.C.Bs. cleared during the period from April 1985 to July 1987.

This was pointed out to the department in November 1987 and to the Ministry of Finance in May 1988.

The Ministry of Finance have admitted the objection (July 1988).

(*iii*) *Metalised polyester film*

A manufacturer of electronic capacitors produced metalised polyester film from polyester film and used the product in the manufacture of capacitors without payment of duty. A demand of Rs. 2,33,125 covering the clearance of metalised polyester film from 28 February 1982 to 31 October 1982 was raised (December 1982) by the department which was based on the value determined on the basis of the cost of production without including the profit which worked out to 19.68 per cent on the basis of the cost and other records. Moreover no demand was raised for post 31 October 1982 period.

On the non-inclusion of profit element and non-raising the demand beyond 31 October 1982 being pointed out in audit (June 1984 and August 1985), the department stated (November 1986 and November 1987) that a revised demand for Rs. 26,27, 293 for the period from March 1982 to August 1986 was raised in February 1987. A demand of Rs. 20,02,431 for the period 28 February 1982 to 19 October 1984 was confirmed and a penalty of Rs. 4 lakhs was imposed. The goods were fully exempted from duty from 20 October 1984. Report on recovery of duty has not been received (December 1987).

The Ministry of Finance have accepted the under-assesment (November 1988).

(*iv*) *Metal containers*

A manufacturer of vanaspati also manufactured metal containers for captive use. He filed four revised price lists pertaining to the period January 1986 to March 1987 for higher sale prices. Pending approval of the revised price lists by the proper officer, the assessee cleared 7,46,800 tins of 15 kilograms and 28,850 tins of 16.5 kilograms for captive consumption during the period April 1986 to March 1987 paying duty on the basis of the old price list(s). This resulted in short payment of duty amounting to Rs. 3.28 lakhs.

On the omission being pointed out in audit (July 1987), the department recovered the whole amount from the assessee (April 1988).

The Ministry of Finance have accepted the under-assessment (November 1988).

3.30 Sale through related persons or through sales depots

Section 4 of Central Excises and Salt Act, 1944, provides that where the duty of excise is chargeable with reference to value, such value shall be deemed to be normal price at which excisable goods are ordinarily sold to a buyer in the course of whole-sale trade where buyer is not a related person and price is the sole consideration for sale. If the assessee arranges sale of goods in the course of wholesale trade to or through a related person, (which includes a subsidiary company) the normal price of such goods sold through related person shall be deemed to be the price at which these are ordinarily sold by the later in the whole-sale trade to independent buyers.

(i) A unit manufacturing scooters and mopeds chargeable to duty with reference to value transferred the products to its subsidiary company on a price, which was approved by the department for sale to independent buyers and paid the duty on such value. The subsidiary company, however, charged higher price than that approved by the department while selling the goods to independent buyers. The actual price charged from independent buyers ought to have been the value as per Section 4 ibid and duty should have been paid accordingly.

On the mistake being pointed out in audit (October 1985), the department worked out the short levy of duty of Rs. 17,13,516 for the clearances made between April 1982 to November 1986 and issued show cause notice in March 1987. It added (June 1987) that an offence case had been booked against the unit. Further progress of the case has not been intimated (April 1988).

The Ministry of Finance stated (August 1988) that the department was seized of the matter and it was under active consideration before it was pointed out by Statutory Audit. The reply of the Ministry is not acceptable as the audit of the unit was conducted from 13 August 1985 to 20 September 1985 and the report was seen by the Range Superintendent on 20 Septembr 1985. No remarks to this effect was given by him. Moreover, the Assistant Collector finally approved the lower assessable value prior to the visit of Statutory Audit. In case the matter was under examination by the department, the assessable value should not have been approved finally by him.

(*ii*) An assessee engaged in the manufacture of "RICO mixers" cleared the products through his sister concern and also through Canteen Stores Depot. Though the assessee claimed 22.5 per cent deduction on account of trade discount in the price list filed by him for sale of such goods through his sister concern, a scrutiny of the sales invoices of the sister concern, revealed that the trade discount was not being passed on to the buyers in full. Only Rs. 50 per piece to distributers and 2 per cent cash dicount to dealers was being allowed. The price for the mixer model. "New Negi Grinder Mixer" was Rs. 771.07 to the distributor (sister concern) whereas price to the dealer was Rs. 931.95. It was noticed in audit that the raw material (inventory accounts of the manufacturing company, selling company and another unit of the same manufacturer were all combined. Since the sales made through the sister concern were through a releated person the assessee should have filed price list in part IV and excise duty should have been paid on the price charged by the sister concern to the dealers/consumers. This resulted in short levy of duty to the extent of Rs. 3.72 lakhs (approximately) on the clearances made during theperiod from1 April 1984 to 21 March 1985.

The irregularity was pointed out in audit in March 1985. Subsequently, the departmet was also apprised of the observations of the Government, at the time of deciding the revision application filed by the assessee, that both assessee and his sister concern were related persons and that the transactions between them are not to be considered at arm's length. There upon it investigated the matter and stated (March 1988) that prima facie there existed mutual interest in the business of each other and as such the jurisdictional Assistant Collector was directed to examine and take appropriate steps to recover the duty.

The Ministry of Finance stated (August 1988) that an amount of Rs. 4,56,530 for the period from December 1984 to February 1986 was demanded, but the assessee filed a writ petition in a High Court who had directed the Assistant Collector concerned to decide the case afresh by following the principles of natural justice.

(*iii*) The Supreme Court held in the case of Bombay Tyre International Ltd. (1983 14 ELT 1986 SC) that where the sale of the goods in the course of wholesale trade is affected by the assessee through its sales organisation at a place or places other than the factory gate, the price at which excisable articles is sold at such place or places is to be taken as the value of the excisable article after deducting only the cost of transportation including the transit insurance of the excisable article from the factory gate to the place or places where it is sold but without any deduction in repsect of advertisement or publicity expenses, cost of storage of the excisable article at the place or places where it is sold as also the expenses of the sales organisation and any other expenses incurred by the assessee upto the date of delivery.

An assessee engaged in the manufacture of plywood, block board (including flush door) and wood veneer was selling them partly at the factory and partly through his own sales depots located in different parts of the country sales through which constituted the major part of the total sales. The goods were cleared from the factory to the sales depots on stock transfer invoices on payment of duty on the declared sales prices. A review of the sales invoices of the sales depots revealed that the goods were sold at prices much higher than the declared sales prices plus the duty, local taxes and the cost of its transportation to the sales depot. The additional recovery effected by the assessee constituted additional consideration and was includible in the assessable value of the goods and was leviable with duty. The goods cleared during the year 1986-87 were undervalued

(computed on adhoc basis to the extent of Rs. 15,37,436) involving short levy of duty of Rs. 4,61,000. The short levy of duty for the previous year 1985-86 amounted to Rs. 9,17,000. The total short levy for the years 1985-86 and 1986-87 worked out to Rs. 13.78 lakhs.

On the short levy being pointed out in audit (September 1987), the department stated (January 1988) that the matter is under examination.

The Ministry of Finance have admitted the objection (November 1988).

3.31 Discount

As per Section 4(4) (d) (ii) of the Central Excises and Salt Act, 1944, value in relation to any excisable goods does not include the amount of the duty of excise, sales tax and other taxes, if any, payable on such goods and trade discount (such discount not being refundable on any account whatsoever) allowed in accordance with the normal practice of the wholesale trade at the time of removal in respect of such goods sold or contracted for sale. Following the Supreme Court decision in the case of Madras Rubber Factory (1987 (10) ECR 625), the CEGAT held in the case of M/s. R.R. Paints Vs. Collector of Central Excise (1987 (11) ECR 684) that annual turnover discount was not a permissible deduction under Section 4(4) (d) (ii) as it could only be computed at the end of the year i.e. much after the removal of goods or raising of the invoice.

(i) A paper mill was allowed inadmissible cash discount as a deduction from the wholesale price of paper in respect of their clearances to sales depots as well as gate sales both on cash and credit basis.

On the omissin being pointed out in audit (July 1986), the Assistant Collector intimated that the Anti-evasion wing of the Collectorate probed the matter and issued show cause notice demanding duty of Rs. 19,86,408 for the period from August 1985 to February 1987.

Results of adjudication and confirmation of demand have not been received (April 1988).

The Ministry of Finance have stated (November 1988) that the adjudication proceedings are yet to be completed and that in the meantime the assessee has already paid Rs. 12 lakhs.

(*ii*) A manufacturer of various articles such as carbon paper, stencil paper, typewriter ribbons, sensitised paper, printing ink etc. filed price lists for his products in Parts I and II claiming deduction on account of annual turnover discount of 2.1624 per cent of the declared prices. The deduction is first allowed on provisional basis and later on actual basis when completed accounts for the year are submitted. As this discount can only be computed at the end of the year i.e. much after the removal of the goods or raising of the invoice, it is not a permissible deduction under Section 4(4) (d) (ii). The incorrect allowance of deduction resulted in short levy of duty of Rs. 7.72 lakhs (approximately) on clearances of carbon paper alone during the period from April 1986 to March 1987.

The irregularity was pointed out in audit to the department in August 1987 and to the Ministry of Finance in August 1988.

The Ministry of Finance have admitted the objection (November 1988).

3.32 Value of packing

(*i*) As per Section 4(4) (d) (i) of the Central Excises and Salt Act, 1944, value in relation to any excisable goods where such goods are delivered at the time of removal in a packed codition includes the cost of such packing except the cost of the packing which is of a durable nature and is returnable by the buyer to the assessee. The Central Board of Excise and Customs clarified in March 1976 that where durable containers are supplied by the buyers to the manufacturer who clears the excisable goods therein for supply to the buyer, the cost of such durable containers should be included in the assessable value.

The Supereme Court in its judgment dated 9 May-1983 in the case of Bombay Tyres International has ruled that cost of packing whether primary or secondary is to be included in the assessable value. Only the cost of special packing at the instance of the wholesale buyer which is not generally provided as a normal feature of wholesale trade is to be excluded.

(*a*) A manufacturer of electric tubes and bulbs, was allowed to exclude from the assessable value the cost of cartons containing 100 bulbs/25 tubes which are sold in such condition to the wholesale dealers. The cost of such cartons was recovered from customers separately through invoices in addition to rates approved by the department. Non-inclusion of the cost of cartons in the assessable value of the excisable goods resulted in short levy of duty amounting to Rs. 7,55,493 for the period 14 August 1985 to 30 November 1986.

On the mistake being pointed out in audit (April 1987), the department did not accept the objection and stated (July 1987) that bulbs and tubes are firstly packed/wrapped in corrugated paper and when the goods so packed are not in standard size card boxes which is secondary outer packing and in this outer packing the goods are sold and delivered to the buyer at the factory gate, this outer packing is done for the safe transportation of goods and its cost is not includible in the assessable value. But the fact remains that in view of the Supreme Court's judgment, the cost of such cartons is includible in the assessable value of tubes and bulbs as the goods are ordinarily sold in the course of wholesale trade to the wholesale buyer in such packing.

The Ministry of Finance have stated (November 1988) that the matter is under examination.

(*b*) Another manufacturer of petroleum products inter-alia, manufactured a product known as 'Raitex 250' declared the price of the product as Rs. 9.86 per litre for bulk clearance. He did not declare any separate price for clearances made in containers. A scrutiny of sales invoices, however, revealed that the assessee had recovered the cost of the product at Rs. 11.50 per litre when cleared in drums, from their customers as against Rs. 9.86 per litre (the price declared by him). The excess amount recovered by the assessee represented the cost of packing in drums which was includible in the assessable value. Non inclusion of such cost of packing in the assessable value resulted in short recovery of duty of Rs. 1,34,973 for the period from April 1987 to September 1987 subject to a review of such cases for the other periods.

On the irregularity being pointed out in audit (January 1988), the Assistant Collector intimated (June 1988) that differential duty amounting to Rs. 12.82 lakhs for the period from April 1986 to March 1988 was paid by the assessee on14 June 1988.

The Ministry of Finance stated (November 1988) that the classification under sub heading 2701.99 claimed by the assessee was approved provisionally because the department contended the classification of the product under sub heading 2710.60 which was chargeable to specific rate of duty and hence the question of realisation of packing charges would not have arisen.

(ii) As per a notification issued in November 1977 as amended, the Government of India allowed the exclusion of the cost of durable containers supplied by the buyers to the assessee from computation of assessable value of certain commodities specified therein. Acetoacetic methyl ester and acetic anhydride being goods not specifid thereunder, the cost of packing in which such goods are delivered are not to be excluded from the assessable value.

An assessee manufactured acetoacetic methyl ester and acetic anhydride and cleared them partly in his own containers and partly in the containers supplied by the buyers. When these products were cleared in the containers supplied by the buyers, the price was reduced by Rs. 2.50 per kilogram as compared to the normal price, on account of the cost of packing. Since these organic chemicals have not been specified under the notification issued in November 1977, non-inclusion of cost of containers supplied by the buyers in the assessable value resulted in short payment of duty of Rs. 1.92 lakhs on clearances made during the period from April 1986 to March 1987.

On the mistake being pointed out in audit (November 1987) the department did not accept the objection and stated (May 1988) that as per Section 4(4)(d)(i) of the Central Excises and Salt Act, 1944, the cost of durable and returnable containers is excludible from the assessable value of the product. Moreover the act of supply of containers by the buyer cannot be termed as an integral process of manufacture which enhances the marketability of the products.

The reply of the department is not acceptable as cost of packing is not to be excluded from the value in respect of goods delivered even in durable containers which are supplied by the customers. The fact also remains that the notification issued in Novembr 1977 (as amended) which allows exemption to cost of packing in respect of certain goods, also does not include acetoacetic methyl ester or acetic anhydride.

The Ministry of Finance have admitted the objection (November 1988).

3.33 Under valuation of output goods to the extent of duty element on inputs

(*i*) Where excisable goods, are wholly consumed within the factory of production, the assessable value under Section 4(1)(b) read with the Central Excise (Valuation) Rules, 1975 is to be determined on the basis of value of comparable goods or cost of production if the value of comparable goods is not ascertainable. The Board also issued instructions in December 1980 that the data for determining the value on cost basis should be based on the cost data relating to the period of manufacture. The Attorney General of India opined on 3 October 1985 that the raw material/component parts continued to retain their duty paid character even after duty paid thereon is taken as credit in proforma account. It, therefore, follows that the element of duty paid on inputs goods is to be incuded in the cost of the output goods.

Two assessees manufacturing stators and rotors with boughtout duty paid electrical stampings and laminations, were using them captively in the manufacture of electrical motors and monoblock pumps. Duty liability on stators and rotors, under the erstwhile tariff item 30-D was paid on the basis of value determined on cost accounting principles as required under Rule 6(b) of the Central Excise (Valuation) Rules, 1975. However, the duty paid on the stampings and laminations was not taken into account in working out the cost of stators and rotors.

On the incorrect valuation being pointed out in audit (August 1985/January 1987), the department justified (April 1986/December 1986, January 1987/ October 1987) the exclusion of the duty paid on stampings and laminations from the assessable value of stators and rotors that the same was in accordance with the instructions issued by the Board in September 1976, and that the basic intention underlying the introduction of 'proforma credit, set off or MODVAT credit' was to eliminate the cascading effect of the excise duty levied at various stages of the manufacture on the cost structure of the final product. The exclusion of duty paid on stampings and laminations for working out the assessable value of stators and rotors was against the opinion dated 3 October 1985 of the Attorney general to the effect that the raw material/component parts continued to retain their duty paid character even after duty paid thereon is taken as credit in proforma account and resulted in short levy of duty amounting to Rs. 5.90 lakhs during the period from April 1983 to February 1986. Moreover, the Board's clarification dated 25 September 1976 is not valid after the Attorney General's opinion given in October 1985.

The Ministry of Finance stated (April 1988) that the matter was being further examined in consultation with Law Ministry.

(*ii*) According to its judgment in Bombay Tyre Internatinal case, as reitrated in the case of Madras Rubber Factory, the Supreme Court held that expenses incurred on account of several factors which have contributed to its value upto the date of sale which apparently would be the date of delivery, are liable to be included.

A manufacturer of agricultural tractors (tariff item 34) was allowed to deduct a sum of Rs. 520 per tractor from the assessable value sold through sale depots situated outside the state on account of the sales tax (as purchase tax) paid on the purchase of input materials and component parts used in the manufacture of tractors. Amount of sales tax paid on input material and component parts being part of its purchase price was not an admissible deduction from the assessable value of the tractors thus sold. Short levy of duty on account of incorrect deduction on the sale of 3964 tractors and cleared during the year 1984-85 worked out to Rs. 1,95,868.

On the mistake being pointed out in audit (August 1985), the department did not accept the objection and stated (November 1987) that the deduction of purchase tax from the assessable value on sale of tractors outside the state represents the purchase tax on raw materials but is recovered as purchase tax on tractors at the time of sale. The fact, however, remains that the tax incurred on the purchase of inputs used in the manufacture of tractors are includible in the assessable value, and no deduction on this account is admissible.

The Ministry of Finance have admitted the objection (November 1988).

3.34 Mistake in computing costed value

Where the excisable goods are partly sold to outsiders and partly consumed captively within the factory of manufacture, the normal price determined under Section 4(1)(a) of the Central Excises and Salt Act, 1944 is taken to be the assessable value both in respect of goods sold as well as in respect of goods captively consumed.

Where excisable goods are wholly consumed within the factory of production, the assessable value under Section 4(1)(b) read with the Central Excise (Valuation) Rules, 1975 is to be determined on the basis of value of comparable goods or cost of production including a reasonable margin of profit, if the value of comparable goods is not ascertainable.

The Central Board of Excise and Customs also issued instructions in December 1980 that the data for determining the value on cost basis should be based on cost data relating to the period of manufacture and if such data is not available at the time of assessment, duty should be levied provisionally and finalised when data for the relevant period becomes available. The costed value should hold good only for one year and even then only if there be no major fluctuation in the price of raw material or margin of profit.

(i) A manufacturer, *inter-alia*, cleared to his branch office 1,36,136 kilograms of semi-finished taper roller of type No. 32211 falling under heading 84.82 and paid duty thereon, based on assessable value of Rs. 30 per kilogram. Cost data available with the manufacturer indicated that the cost of finished product was Rs. 76.79 per kilogram comprising of Rs. 30.33 as cost of raw materials and Rs. 46.46 as manufacturing expenses. Considering that 50 per cent of manufacturing expenses were incurred upto semi-finished stage, the value of semi-finished taper rollers would workout to Rs. 53.56 per kilogram as against Rs. 30 per kilogram. This led to undervaluation of the product by Rs. 32,07,379 and consequent short levy of duty of Rs. 6,41,475 during April 1986 to December 1987.

Besides semi-finished taper rollers of type No. 32211, the manufacturer also cleared to his branch office taper rollers of other types, for which assessable value was taken as Rs. 30 per kilogram without regard to the manufacturing cost.

On this mistake being pointed out in audit (February 1988) the department accepted objection (May 1988). Report showing total amount of short-levy and action taken for its realisation has not been received (June 1988).

The Ministry of Finance have accepted the under assessment (November 1988).

(ii) As per Board's instructions dated 14 August 1984 and 23 July 1986, percentage of gross profit earned by the assessee in the previous year has to be taken in such cases for provisional assessment to be finalised after the data for the material period becomes known.

A manufacturer of prepared or preserved foods cleared the food items in bulk containers to their packing unit, on payment of duty at appropiate rates. A notional profit of 10 per cent was adopted on the cost price of Rs. 13.07 per kilogram and its value was arrived at as Rs. 14.38 per kilogram. This was approved, instead of taking the gross profit of 19.27 per cent of the previous year as per balance sheet for the year ending 30 April 1986. The adoption of lower element of profit in computing the assessable value resulted in duty being realised short by Rs. 2,36,780 during the period from 20 March 1987 to 30 April 1987.

On this being pointed out in audit (May 1987), the department stated (March 1988) that the price was finally approved at Rs. 16.40 per kilogram adopting profit at 17.95 per cent on the cost price of Rs. 13.90 per kilogram based on the relevant annual accounts. The differential duty of Rs. 3,95,286 has been recovered on 29 February 1988.

The Ministry of Finance have stated (November 1988) that the price list has been finally approved at Rs. 16.14 per kilogram and differential duty recovered from the assessee.

(iii) The Government of India in their review order of June 1977, held that the notional margin of profit is also required to be added to the cost of raw materials supplied by the customers.

Two job workers did not include the notional profit on the cost of raw material supplied by the customers. This resulted in short levy of duty amounting to Rs. 1.75 lakhs during the period between July 1982 and March 1986.

On the irregularities being pointed out in audit (August 1985 and April 1986) the department did not accept the objection and stated (February 1987/April 1987) that the element of profit of the job worker had already been included in the job charges.

The matter was also referred to the Ministry who did not accept the objection and referred to the Supreme Court's judgment in the case of M/s. Cibatul Inds. Ltd. [1985 (22) ELT 302 (SC)] and also stated that the job workers had paid the duty on the price representing the raw material cost plus job charges and the job charges obviously included the profit element also. The Ministry's reply is not correct as the audit objection is not on the issue that the job charges did not include, in the assessable value, the element of profit of the job worker. The audit thrust is that such element of notional profit on the total cost of raw material supplied by the customers plus the cost of the job work was not taken into consideration while determining the assessable value.

The case law referred to by the Ministry is not relevant to the present case as in the said case the issue decided was whether the brand name owner could be construed as the manufacturer. In the instant case, the fact remains that the notional profit as would have been earned by the principal manufacturer who had supplied the raw material was required to be added in the assessable value (Shree Agencies case refers). The non inclusion of the notional profit on the cost of raw material resulted in short levy of duty of Rs. 1.75 lakhs.

The Ministry of Finance did not admit the objection and repeated (November 1988) the reply given by the department. The same is not acceptable as already stated.

3.35 Restamping the cigarettes with lower price

As per a notification issued on 2 September 1985, duty on cigarettes was enhanced. The Central Board of Excise and Customs issued a telex message on 24 September 1985 and informed all the Collectors of central excise that the cigarette manufacturers could be permitted to clear the cigarettes in stock on 1 September 1985 and those manufactured thereafter at the new selling prices which were higher and actually reflected higher duty incidence.

A cigarette manufacturer cleared cigarettes of a particular brand in stock on 1 September 1985 (the adjusted sale price of which was Rs. 190 per thousand) and paid duty at the rate of Rs. 142 per thousand cigarettes prior to 2 Septembrer 1985. The revised rate of duty for this brand of cigarette was Rs. 225 per thousand from 2 September 1985. The manufacturer sought permission of the department on 9 September 1985 to lower the adjusted sale price of these cigarettes from Rs. 190 per thousand to Rs. 170 per thousand in respect of stock held on 1 September 1985 and that manufactured thereafter. The department allowed the manufacturer on 13 September 1985 to clear these cigarettes at lower price as applied for.

The manufacturer cleared 588 lakh cigarettes of the above brand (including 519.60 lakh cigarettes manufactured after 2 September 1985) with restamped lower price on the packs on 13 September 1985 and 14 September 1985 at the lower price and paid duty at Rs. 125 per thousand. The grant of permission to restamp the cigarettes with lower price resulted in loss of revenue amounting to Rs. 58.80 lakhs.

On the irregularity being pointed out in audit (December 1986) the department did not accept the objection and stated (January 1988) that clearances were allowed in terms of the aforesaid notification on the price declared by the assessee on 9 September 1985, prior to the issue of instructions by the Board. The reply of the department is not acceptable as it goes counter to the intention of Government with regard to new selling prices and higher duty incidence thereon after issue of the notification dated 2 September 1985 as subsequently brought out in the telex message dated 24 September 1985.

The Ministry of Finance have confirmed the facts as substantially correct (November 1988).

3.36 Valuation of goods assembled at site

Section 2(f) of the Central Excises and Salt Act, 1944, defines manufacture to include any process incidental or ancillary to the completion of a manufactured product. In the case of Daya Ram Metal Works Pvt. Ltd. *Vs.* Collector of Central Excise [1985 (20) ELT 392] the CEGAT relying on the Calcutta and Madras High Court's decisions dated 12 April 1982 and 16 August 1982 respectively had observed that once completely manufactured goods are supplied to the customer, the simple fact that some part by way of raw materials were supplied even by the customers or where the manufactured articles were supplied not after assembly, but in CKD condition, would not have made any difference to the question and that the value of entire raw material, or all parts which go into the making of manufactured article, shall have to be taken into account.

An assessee entered into contracts with parties, *inter-alia*, for supply of various machineries such as dairy, sugar plant, fertiliser etc. together with parts thereof. The contracts were generally for the project as a whole negotiated as per the requirements of the customers which included design, manufacture inspection, testing at manufacturer's works, packing, forwarding and the delivery to project site. The items to be supplied were those manufactured at the assessee's main plant, bought

out/fabricated items, imported items and items manufactured at their other plants depending upon the contract. Though the assessee charged the full value of the contract in the invoices, he paid the duty only on the items manufactured in the factory without considering the value of the bought out items, imported goods etc. Non inclusion of the cost of other items that go into the making of the entire machinery in the assessable value for paying duty resulted in short levy of duty to the tune of Rs. 49.59 lakhs in respect of two contracts alone.

On the irregularity being pointed out in audit (August 1987), the department stated (June 1988) that before 1 March 1986 the practice followed was as per the Board's instructions of 28 February 1986, and after introduction of the Central Excise Tariff Act, 1985 the matter has been re-examined and a reference has been made to the Board in February 1987. The fact, however, remains that the final decision in the matter has not been taken (July 1988).

The Ministry of Finance have stated (November 1988) that the matter is under examination.

3.37 Valuation at invoice price

As per a notification issued on 30 April 1975, goods falling under tariff items 68 cleared from the factory of a manufacturer on sale, were exempt (at the option of the assessee) from so much of the duty leviable thereon as was in excess of the duty calculated on the price shown in the invoice of the manufacturer. The concession was *inter-alia* subject to the condition that such price was the sole consideration for the sale and was not influenced by any commercial, financial or other relationship whether by contract or otherwise, between the manufacturer and the buyer.

A unit manufacturing paper grade pulp and rayon grade pulp (erstwhile tariff item 68) opted for valuation based on invoice price. The most of the production was sold to a paper mill at the price of Rs. 5500 per tonne instead Rs. 6000 per tonne charged from other customers. Duty was also paid on the lower price of Rs. 5500 per tonne. The 10th Annual Report of the manufacturer disclosed that the unit was amalgamated with that paper mill from 1 July 1984. The unit had raised loans from the paper mills to the tune of Rs. 6.09 crores during 1984-85 and Rs. 4.63 crores during 1983-84. As such sales made to the paper mill was influenced by commercial and financial considerations, the benefit of notification of 30 April 1975 was not applicable. Short levy during January 1983 to February 1986 worked out to Rs. 13,85,011.

On this being pointed out in audit (October 1986), the Assistant Collector informed that show cause notice demanding duty of Rs. 13,85,011 was issued by the Collector in December 1987 and is pending adjudication (June 1988).

The Ministry of Finance have admitted the objection (November 1988).

SHORT LEVY DUE TO INCORRECT GRANT OF EXEMPTION

As per Rule 8(1) of the Central Excise Rules 1944, Government is empowered to exempt excisable goods from the whole or any part of the duty leviable thereon conditionally or unconditionally. Some of the important cases of short levy of duties due to incorrect grant of exemption, noticed in audit, are given in the succeeding paragraphs :—

3.38 Chemicals and pharmaceutical products

(*i*) *Spent liquor*

As per a notification dated 13 March 1986, as amended on 29 July 1986, black liquor falling under chapter 28 or 38 is exempt from whole of the duty leviable thereon.

A leading manufacturer of wood pulp (heading 40.01) used 'sulphite' process in the extraction of pulp from wood. In this process, woodchips were cooked with calcium bi-sulphide solution at a suitable temperature and pressure. After the cooking was over, the pulp was separated and the 'spent liquor' evaporated to suitable concentration and was mainly used as fuel for the boilers in the factory.

Prior to 28 February 1986 the spent liquor was classifiable under tariff item 68 and was exempt from duty, if consumed within the factory of production. In the classification list (April 1986) the assessee classified the 'spent liquor' under sub-heading 3801.90 as "black liquor" and subsequently claimed exemption with reference to a notification dated 29 July 1986.

The classification of the spent liquor as "black liquor" is not correct because— (a) prior to April 1936, the spent liquor was referred to as "spent calcium-disulphite liquor" in the excise records of the assessee;

(b) McGraw Hill Dictionary of Scientific and Technical Terms refer to "black liquor" as the liquid material remaining from pulpwood cooking in the soda or sulphate process; and

(c) A notification dated 9 November 1968 exempted caustic soda recovered from spent lye or black liquor. However, no caustic soda was recoverable from spent calcium bi-sulphite solution.

The exemption available for black liquor as per notification dated 29 July 1986 was, therefore, not applicable in respect of the spent liquor manufactured by the assessee. Due to the incorrect application of the notification, duty of about Rs. 131.36 lakhs was omitted to be levied on the spent liquor manufactured and consumed captively during the period from 29 July 1986 to 31 March 1987.

On the irregularity being pointed out in audit (June 1987) the department stated (August 1987), that the residual lye in the manufacture of wood pulp was known as "black liquor" by whatever method (sulphate/sulphite/soda) the wood pulp was extracted. To support its view, the department quoted extracts from published works on the subject.

The matter was also referred (October 1987) to the Director General of Technical Development, Regional Office, Madras, for clarification. According to the clarification given (November 1987) by him

(a) Constituents of the waste liquor depends upon the process as well as the type of wood used;

(b) in the sulphite process there is possible recovery of alcohol through conversion of the hexose sugars into ethyl alcohol by fermentation with yeast, and;

(c) the term "black liquor" is given to the waste liquor obtained from 'sulphate process' and not from 'sulphite process'.

It, therefore, follows that department's contention is not correct. This was again pointed out to the department in February 1988.

The Ministry of Finance have stated (November 1988) that the aforesaid matter is under examination.

(*ii*) *Patent or proprietary medicines containing specified ingredients*

(a) As per a notification issued on 19 June 1980, duty leviable on any patent or proprietary medicine (erstwhile tariff item 14E) containing one or more of the ingredients specified in the schedule to the said notification was wholly exempted on clearances made after 18 June 1980. From 1 March 1986 those ingredients were included in sub-heading 3003.11 assessable to 'nil' rate of duty subject to the same provisions as mentioned in note 6 of Chapter 30. The grant of the exemption was subject to the condition that if the medicine, in addition, contained any ingredient not specified in the said schedule such ingredient should be a pharmaceutical necessity; otherwise the exemption will not be available. But even if an ingredient, not specified in the schedule, was a pharmaceutical necessity, it must be therapeutically inert and should not interfere, with therapeutic, or prophylactic activity of the ingredient or ingredients specified in the schedule.

A manufacturer of 'dembutol' and 'entromycetin capsules 500' was allowed to avail of the aforesaid exemption although the product contained erythrosin colour as ingredient which was not specified in the schedule. The said ingredient was also not therapeutically inert as per a standard American formulary. Incorrect grant of exemption resulted in duty being levied short by Rs. 33.59 lakhs during the period from January 1985 to November 1986.

On the mistake being pointed out in audit (February 1987) the department stated (July 1987) that 'erythrosin' is listed as one of the permitted colours to be used in drugs under Drugs and Cosmetics Rules. They further observed that contention of Audit does not represent the accepted official opinion and, therefore, has no legal backing. The reply of the department is not tenable because as per the American formulary—Erythrosin used to colour capsule shells pink contained sufficient 'iodine' to raise the protein bourd iodine to hyperthyroid value and depress iodine intake in a patient taking lithium carbonate. Therefore, it cannot be termed as therapeutically intert.

Use of erythrosin may be permissible under Drugs and Cosmetics Rules but on that ground a drug containing it as an ingredient cannot be allowed the benefit of the concession in contravention of conditions specified in the notifiaotion.

The Ministry of Finance did not admit the objection and stated (November 1988) that erythrosin is a permitted colour for foods and medicines in U.S.A., Great Britain and also under the Indian Drugs and Cosmetics Rules, 1945 which show that the colourant is therapeutically inert. The Ministry added that the use of erythrosin in the preparations under reference does not disentitle the medicinal preparations from levy of nil rate of duty.

The Ministry's reply is contrary to the express provisions of the notification. Although use of erythrosin is permissible under Drugs and Cosmetics Rules but as already stated above, a drug containing erythrosin as an ingredient is not entitled to the exemption in contravention of the specified conditions.

(b) Under a notification dated 1 March 1986, life saving medicaments containing one or more of the ingredients specified in the annexure to the notification are exempted from the whole of the duty of excise leviable thereon. The exemption is subject to the conditions that if the medicine contains any ingredient not specified in the said annexure and the ingredient is not a pharmaceutical necessity the exemption will not apply. But even if the ingredient is a pharmaceutical necessity, it must be therapeutically inert and should not interfere with the therapeutic or prophylactic activity of the ingredient or ingredients specified in the annexure to notification.

A manufacturer cleared two medicines, 'klassak capsules' and 'klassak suspension' which contained 'loperamide hydrochloride and streptomycin sulphate' as ingredients which were not specified in the aforesaid annexure. However, the manufacturer was allowed to avail of the exemption in the aforesaid notification resulting in duty being levied short by Rs. 4.03 lakhs on the clearances made during the period from 1 March 1986 to 31 March 1987.

On the irregularity being pointed out in audit (May, June and November 1987), the department accepted the objection and intimated (Februray 1988) that an amount of Rs. 14,950 was recovered from the assessee and a demand for remaining amount of Rs. 3.88 lakhs was issued on 8 October 1987.

Further developments in respect of adjudication of demand have not been received (March 1988).

The Ministry of Finance have accepted the under assessment (November 1988).

(*iii*) *Bulk drugs*

(a) As per a notification issued on 3 April 1986, bulk drugs falling under chapter 28 or 29 of the schedule to the Central Excise Tariff Act, 1985 are exempt from the whole of the duty of excise leviable thereon provided

that the manufacturer furnishes to the proper officer a certificate from the Drug Controller to the effect that the drugs or chemicals which are claimed for exemption are chemical or biological or plant products, conforming to pharmacopoeial standards, normally used for the diagnosis, treatment, mitigation or prevention of diseases in human beings or animals and used as such or as ingredient in any formulation.

Based on the certificate issued by the Drugs Controller on 15 May 1986, a manufacturer of ascorbic acid I.P. (vitamin C) cleared the product as bulk drug without payment of duty between April 1986 and June 1987. The gate passes, however, revealed that the clearances were made to breweries, food product companies, ceramic units and general merchants, in addition to pharmaceutical concerns.

As the clearances to buyers other than pharmaceutical concerns could not be said to have been used for diagnosis, treatment, mitigation or prevention of diseases, grant of exemption from duty in such cases was incorrect.

On this being pointed out in audit (September 1987), the department accepted the objection (March 1988) and stated that a show cause-cum demand notice for Rs. 22,27,679 for the period from May 1987 to September 1987 was issued in October 1987 while second show cause-cum demand notice for the period from March 1986 to April 1987 was under process. Further developments have not been received (May 1988).

The Ministry of Finance have accepted the under assessment (November 1988).

(b) Under a notification dated 1 November 1982, as amended, all bulk drugs and medicines not elsewhere specified falling under erstwhile tariff item 68, were exempt from the whole of the duty of excise leviable thereon. According to an explanation below the notification, 'bulk drugs' means any chemicals or biological or plant product, conforming to pharmacopoeial standards used for the diagnosis, treatment, mitigation or prevention of diseases in human beings or animals and used as such or as an ingredient in any formulation.

A manufacturer of sorbitol solution U.S.P. Cholin CHL-PR and increcel solution cleared 50 consignments of these products during April 1985 to November 1985 as 'bulk drugs' without payment of duty. The gate-pass, however, revealed that the clearances were made to tobacco manufacturers, rubber industries, and other buyers who were not drug manufacturers. As the clearances to buyers other than pharmaceutical concerns could not be said to have been used for diagnosis, treatment, mitigation or prevention of diseases, irregular grant of exemption resulted in non-levy of duty of Rs. 4,47,228 for the aforesaid period.

On this being pointed out in audit (November 1987) the department accepted the objection (May 1988). Report of action taken for realisation of the dues has not been received (May 1988).

The Ministry of Finance have accepted the under-assessment (November 1988).

3.39 Petroleum products

(*i*) *Motor spirit*

As per a notification issued on 1 March 1984, as amended, motor spirit known as benzene, toluene etc. are chargeable to duty at the concessional rate of Rs. 472.50 per kilolitre at 15° C if the same are intended for use as solvent or diluents or thinners for the manufacture of paints, varnishes etc. Where such use is elsewhere than the factory of production, the concession is available on the said motor spirits if they are used for the purpose specified in the notification subject to observance of Chapter X procedures. The CEGAT held (January 1984) in the case of M/s Arti Paints and Chemicals Vrs. Collector of Central Excise, Bombay that the use of toluene in the manufacture of thinner (subsequently cleared outside) was a misuse of L-6 licence. It was also clarified by the Ministry of Finance on 5 January 1985 that a manufacturer who uses toluene to make thinners and sells them would not be eligible to the benefit of the notification issued on 1 March 1984.

The Ministry of Law have also since clarified on 8 January 1988 that in view of the language used in the proviso to the notification dated 1 March 1984 the end use verification of the goods exempted under the notification appear to be obligatory.

Five L-6 licensees manufacturing paints etc. obtained toluene at concessional rate of duty as per the notification dated 1 March 1984 and used it in the manufacture of thinners. Instead of using the thinner in the manufacture of paints, varnishes etc. as required under the notification, all the manufacturers sold most of thinner to outside parties. The assessees were, therefore, not entitled to the concessional rate of duty for the toluene used in the manufacture of thinner which was not subsequently used in the manufacture of paints. This resulted in short levy of duty of Rs. 51.68 lakhs on misuse of notification during the various periods between January 1985 to December 1987.

On the irregularities being pointed out in audit (December 1987 to April 1988) the department did not accept the objection and stated (January 1988 to June 1988) that the end use verification of thinner manufactured from benzene, toluene procured at concessional rate was not necessary as per the instructions of the Central Board of Excise and Customs issued on 19 August 1980 and confirmed by telex on 26 April 1985.

The Ministry of Finance have admitted (July and October 1988) the objections in four cases in view of the Central Board of Excise and Customs instructions dated 11 February 1988. As regards the fifth case the Ministry did not give any comments.

(*ii*) *Coal tar distillate*

Tar distilled from coal or lignite and other mineral tars including partially distilled tars and blends of pitch with creosote oil or with other coal tar distillation products were covered under erstwhile tariff item (115) with duty at the rate of Rs. 100 per tonne. By issue

of a notification on 13 June 1962, tar falling under the aforementioned tariff item was exempted from the whole of the duty.

A Public Sector undertaking manufacturing 'pitch oil mixture' by blending pitch with anthracene oil (a coal tar distillation product) was allowed to clear it without payment of duty by applying the notification dated 13 June 1962. It was pointed out in audit (January 1984 and December 1987) that the notification being applicable to tar only it would not apply to pitch oil mixture which was distinctly different from tar. The incorrect grant of exemption, therefore, resulted in short levy of duty of Rs. 8.57 lakhs during the period from September 1982 to April 1987. In a similar case (Audit Report Para 4.36 (*i*) of 1986—87) the department issued show cause-cum demand notices in the year 1983 and onwards. Some of those notices were confirmed by the Collector in May 1986.

The irregularity was pointed out in audit to the department in February 1988 and to the Ministry of Finance in August 1988.

The Ministry of Finance have stated (October 1988) that the matter is under examination.

(*iii*) *Lubricating oils*

As per a notification dated 11 May 1984 as amended lubricating oils and greases obtained by straight blending of mineral oils or by blending or compounding of mineral oils with any other ingredients are wholly exempt from excise duty.

A unit of a public sector corporation manufacturing inter alia, 'gear compound' a lubricating preparation (heading 34.03) cleared the product without payment of duty claiming exemption under the above notification. As exemption is available only for lubricating oils and greases obtained by straight blending of mineral oils and not for lubricating preparations, the clearances of the product without payment of duty was not in order.

On this being pointed out in audit (October 1986), the department accepted the objection and reported (March 1987) that a demand for Rs. 2.31 lakhs being the duty payable on 84.705 tonne of gear compound cleared from March 1986 to February 1988 was raised. Particulars of recovery have not been communicated (June 1988).

The Ministry of Finance have stated (November 1988) that the matter is under examination.

3.40 Glass and glass wares

Flat glass sheets

As per a notification dated 28 Feburary 1982, different kinds of flat glass were allowed partial exemption based on ad valorem-cum specific rates. The specific element of duty was linked to the thickness of the flat glass.

An assessee, interalia, manufacturing flat glass sheet (tariff item 23 A) filed a classification list stating that the amount of duty would be calculated on the basis of lowest thickness. Since the effective rate of duty changed with thickness, the desirability of prescribing a suitable procedure for measuring thickness and fixing tolerance limits was stressed (September 1982) in audit. No documentary evidence was available (July 1983) indicating whether the measurements were actually checked at any time by the department to ensure correctness of duty paid by the assessee.

In reply, the department stated (November 1987) that following the suggestions made by Audit, the Central Board of Excise and Customs issued instructions in January 1985 for measuring the thickness of glass sheets in accordance with Indian Standard specification IS : 2835—1977, based on thickness of glass sheets at four points. The department added that as a result of checks carried out by the preventive staff on 27 August 1983, a demand of Rs. 61,92,910 was raised against the assessee for not declaring correct thickness of glass sheets between March 1982 and August 1983, whereas another demand of Rs. 8,68,899 for the period from September 1983 to September 1985 was under process.

The department, however, stated that audit had not pointed out any short levy specifically and that checks by the preventive staff and issue of demands were independent of audit objection. The fact, however, remains that (*i*) checks carried out by the preventive staff were after the point was raised by Audit (September 1982/July 1983) and (*ii*) the thickness of the consignments cleared was not checked by the department till October 1983 although specific rates of duty were introduced in March 1982. The adjudication of demand of Rs. 61,92,910 was pending (March 1988).

The Ministry of Finance have confirmed the facts as substantially correct (November 1988).

3.41 Dental equipments

Apparatus based on the use of X-rays, X-ray tubes and other X-ray generators are classifiable under Chapter 90 and attracts duty at 15 per cent ad valorem. As per a notification dated 17 March 1985, among other things, electronic valves and tubes falling under any of the Chapters, namely Chapter 38, 71, 84, 85 or 90 were exempt from the whole of the duty of excise leviable thereon.

An assessee in the Public Sector engaged in the manufacture of electronics based goods, also manufactured and cleared dental X-ray tubes, rotating anode X-ray tubes and stationary anode X-ray tubes without payment of duty on the ground that those X-ray tubes were electronic tubes and were, therefore, covered by the said exemption notification dated 17 March 1985.

This was not correct as the expression 'electronic valve and tube' is a general and generic term whereas

the term 'X-ray tube' finds specific mention under heading 90.22. The exemption granted to electronic valves and tubes cannot be regarded as an exemption applicable to X-ray tubes which is not specifically mentioned in the exemption notification. The mistake in application of the exemption notification resulted in non-levy of duty of Rs. 44,89,090 on X-rays tubes valued at Rs. 2.99 crores cleared during the period from August 1986 to September 1987.

On the short levy being pointed out in audit (March 1988) the department stated (March 1988) that a demand notice for Rs. 17,51,181 was issued in March 1988 relating to the clearances during the period October 1987 to February 1988 and that action for issue of another demand notice for Rs. 49,68,615 relating to the clearances during the extended period, namely, March 1986 to September 1987 in terms of the proviso to Section 11A of the Central Excises and Salt Act, 1944 was under examination.

The Ministry of Finance did not accept the objection and stated (September 1988) that department was seized of the issue prior to receipt of local audit report from Audit on 11 March 1988 and had issued a show cause notice for Rs. 17.51 lakhs for the period from 1 October 1987 to 29 February 1988 on 28 March 1988 and for earlier period from 1 March 1986 to 30 September 1987 on 20 April 1988.

The fact, however, remains that supplementary audit note no. 1 on the subject was sent to the Superintendent, HBN Range, Bangalore Collectorate on 27 January 1988 and local audit report on 7 March 1988

Even department's initial reply dated 28 March 1988 did not claims that it was already seized of the matter.

3.42 Textile and textile articles

(*i*) *Fabrics*

(*a*) *Glass fabrics impregnated*

As per a notification issued on 10 February 1986 as amended, glass fabrics falling under heading 70.14 other than fabrics impregnated, coated, covered or laminated with plastics or varnish were chargeable to 'nil' rate of duty, and all goods other than glass fabrics impregnated, cotaed etc. with plastics or varnish attracted duty at 20 per cent ad valoerm. As no such exemption was available for glass fabrics impregnated, coated, etc. with plastics or varnish, they would attract duty at the tariff rate of 30 per cent (35 per cent from 1 March 1988) ad valorem.

An assessee manufacturing, inter alia, glass fibre mats impregnated with plastics claimed the concessional rate of 20 per cent ad valorem under the aforesaid notification on the ground that the product was not glass fabrics, impregnated with plastics. As glass fibremats are glass fabrics only, the goods attracted duty at the tariff rate; no exemption was available for glass fabrics impregnated with plastics.

On this being pointed out in audit (September 1987), the department contended (December 1987/January 1988) that the raw material obtained by the assessee was glass fibres only, on which duty had been paid by the supplier of raw material, and not glass fabrics which was fully exempt from duty. Based on the reply, the objection was settled (February 1988) subject to verification of facts during subsequent audit.

During the subsequent audit of the unit in July 1988 it was noticed that the supplier of fibre glass mats had been paying duty under protest till March 1988 and that no duty was being paid from April 1988. Further, the Central Board of Excise and Customs clarified (February 1988) that chopped strand mats or glass fibres are non-woven fabrics entitled to full exemption under the aforesaid notification.

In view of this, the department's reply is not acceptable and the product manufactured by the assessee fell under the category of glass fabrics impregnated with plastics. The differential duty recoverable on such impregnated fibre glass mats cleared during the period from March 1986 to June 1988 was Rs. 26.73 lakhs approximately. This was again pointed out to the department (July 1988).

The Ministry of Finance admitted the objection in respect of pre-impregnated glass fibre chopped standard mat. (November 1988).

(*b*) *Embroidered fabrics*

As per notifications issued on 11 October 1982 and 8 November, 1982, concessional rates of duty of 5 and 7 per cent ad valorem were respectively leviable on man-made fabrics and cotton fabrics respectively provided duty of excise leviable on the base fabrics had already been paid and no credit under Rule 56A was availed of.

An assessee brought embroidered fabrics in grey form under Rule 96D without payment of duty under bond from two units situated under the jurisdiction of two different Collectorates and cleared them after processing, such as bleaching, stentering etc. by paying concessional rate of duty of 7 per cent ad valorem from April 1985 to February 1986 and 8 per cent ad valorem in March 1986 on cotton fabrics and 5 per cent ad valorem on man-made fabrics. The concessional rate of duty was not admissible as no duty on base fabrics was paid. This resulted in duty being paid short by Rs. 3,82,194 during the year 1985-86.

On the irregularity being pointed out in audit (May 1986), the department stated (December 1986) that the demand was under the process of issue, though the objection was subsequently contested in January 1988 stating that the embroidered fabrics supposed to be duty paid were coming under Rule 96D and subsequently cleared after processing on payment of duty.

The reply of the department is not acceptable as the suppliers of the grey fabrics also could not show (August 1988) any proof of payment of duty. As no duty

on base fabrics was paid, one of the conditions of the notification was not fulfilled and, therefore, the concession under the notifications was not admissible to the assessee.

The Ministry of Finance have stated (November 1988.) that the matter is under examination.

(*c*) *Substandard textile fabrics*

As per notifications issued on 22 August 1986 and on 1 March 1987, damaged or substandard textile fabrics, impregnated, coated, covered or laminated with plastics, are assessable to duty at concessional rates subject to the condition that the aggregate quantity of clearances of such damaged or substandard fabrics, from any factory, for home consumption, in any month, do not exceed 5 per cent of the total quantity of the clearances of textile fabrics falling under heading 59.03 during the immediately preceding month.

A manufacturer of textile fabrics, falling under heading 59.03, inter-alia, cleared, between November 1986 and November 1987, damaged and substandard textile fabrics aggregating to 139835 square metres on payment of duty at concessional rates, although 5 per cent of the total quantity of clearances during the immediately preceding months worked out to 99,831 square metres. The clearances of excess quantity of damaged and substandard fabrics at concessional rates of duty resulted in a short levy of duty of Rs. 2,02,244.

On this being pointed out in audit (March 1988), the department accepted the objection (May 1988).

The Ministry of Finance admitted the objection and intimated (November 1988) that an amount of Rs. 37,710 has since been recovered.

(*ii*) *Yarn and staple fibre*

(*a*) *Doubled yarn*

As per a notification issued on 22 May 1986, doubled or multifold yarn falling under Chapter 54 or 55 of the schedule to the Central Excise Tariff Act, 1985 was exempt from the whole of the duty, provided such doubled or multifold yarn was manufactured out of yarn falling under Chapter 54 or 55 on which appropriate duty had been paid. This notification was amended by another notification issued on 6 October 1986 to extend the benefit of exemption to such doubled or multifold yarn manufactured out of cotton yarn falling under Chapter 52 also.

An assessee engaged in the manufacture of doubled yarn out of man-made filament yarn and cotton yarn, initially classified the goods under Chapter 56 and paid duty at 12 per cent ad valorem. Subsequently, on receipt of Ministry's telex message of 2 May 1986 he reclassified the doubled yarn under Chapter 54 due to predominance of filament yarn content in them and claimed exemption under the aforesaid notification dated 22 May 1986. This claim was, however, rejected by the department on the grounds that Chapter 52 (under which the cotton yarn was classifiable) was not referred to in the notification dated 22 May 1986 till its amendment on 6 October 1986. A show cause-cum demand notice for recovery of duty payable on doubled yarn for the period from 6 June 1986 to 5 October 1986 was issued by the department.

No demand for short recovery of duty amounting to Rs. 4.30 lakhs (net) was made in respect of 6268 Kilograms of doubled yarn cleared during the period from 1 March 1986 to 5 June 1986 due to time bar. The department did not also include Rs. 0.28 lakh representing the additional duty payable by the unit in their demand raised for the period from 6 June 1986 to 5 October 1986.

The Ministry's clarification contained in the telex regarding classification and dutiability of doubled yarn was issued on 2 May 1986. Had timely action been taken to issue demand notice duty amounting to Rs. 4.30 lakhs for the period from 1 March 1986 to 5 June 1986 would not have become time barred.

On this being pointed out in audit (July, September and December 1987) the department stated (February 1988) that though steps were taken to issue demands for the period from 6 June 1986 to 5 October 1986, demands for the earlier period from 1 March 1986 to 5 June 1986 could not be raised as it was already barred by time. Similarly, additional duty leviable on the product for the period from 6 June 1986 to 5 October 1986 was also erroneousy left out from the amount demanded from the unit. The fact remains that there was delay in taking departmental action soon after the receipt of telex message of 2 May 1986, resulting in avoidable loss of revenue of Rs. 4.58 lakhs.

The Ministry of Finance did not accept the objection and stated (June 1988) that the department was seized of the matter and remedial action had been initiated before the objection was pointed out by CERA.

The Ministry's reply is neither specific nor is based on facts. The fact, however, remains that audit memo was issued on 29 July 1987 followed by local audit report on 8 September 1987 and statement of facts on 15 December 1987. No actior was taken by the department till date and even in its reply dated 8 February 1988 the department did not claim of its being seized of the matter.

(*b*) *Polyster staple fibre*

As per a notification issued on 28 August 1985, synthetic staple fibres classifiable under sub-heading 5501.20 of the Central Excise Tariff Act, 1985, was exempted from the whole of the duty of excise leviable thereon if such fibres are intended for the manufacture of low priced blended fabrics under a programme duly approved by the Textile Commissioner and the Ministry of Supply and Textiles. The notification stipulated that the exemption is also applicable to the synthetic staple fibres contained in the fents, rags and chindies of the fabrics, only upto an aggregate quantity not exceeding eight per cent of the total quantity of clearances of the "sound" fabrics. As the manufacture of the synthetic fibres were different

from the manufacture of the fabrics, and as the exemption of the synthetic fibres was subject to certain quantitative limits, ascertainable only after the manufacture of the fabrics, the department was required to keep a watch over the production of fents, rags and chindies by the manufacturer of the fabrics and to initiate action for recovery of duty either from the manufacturer of the synthetic fibres or from the manufacturer of the low priced fabrics wherever warranted.

A Public Sector composite textile mill obtained polyester staple fibres from several manufacturers of staple fibre for the manufacture of low priced blended fabrics under a programme approved by the Textile Commissioner. During the period September 1986 to September 1987, the assessee produced and cleared 23,72,962 linear meters of "sound" blended fabrics containing 1,15,182 kilograms of the polyseter staple fibres. During the same period, the assessee had also produced fents, rags and chindies of the blended fabrics which contained 11,087 kilograms of the polyseter staple fibres. As per the aforesaid notification, the quantity of the polyester staple fibres contained in the fents, rags and chindies of the blended fabrics covered by the exemption was only 9,214 kilograms and therefore, the balance quantity of 8,873 kilograms of the polyester staple fibres had escaped levy of duty amounting to Rs. 2,21,232.

On the irregularity being pointed out in audit (January 1988) the department stated (February 1988) that a show cause-cum demand notice would be issued to the assessee.

The Ministry of Finance have admitted the objection (July 1988).

3.43 Plastics

(i) *Polyamide chips*

As per a notification issued on 1 March 1986 polyamide chips falling under sub-heading 3908.00 is wholly exempted from duty if used in the manufacture of nylon yarn (falling under Chapter 54). By an amendment issued on 28 April 1987 to the above notification, the concession was extended to polyamide chips used in the manufacture of nylon monofilament yarn also. As synthetic yarn and synthetic monifilament are not the same, the duty free concession was not admissible for polyamide chips used in the manufacture of monofilaments upto 27 April 1987.

An assessee manufacturing polyamide (nylon) monofilament of 60 deniers or more falling under sub-heading 5406.19 incorrectly availed duty concession under Chapter X procedure for the use of polyamide chips in the final product, in terms of the above notification, during the period from 1 March 1986 to 27 April 1987. The duty leviable, but omitted to be collected amounted to Rs. 13,65,382.

On this being pointed out in audit (November 1987) though the department accepted (January 1988) the audit view, that monofilament yarn of 60 deniers or more was not 'yarn' under the new Central Excise Tariff yet it justified the availing of the concession by the assessee on the ground that the exemption notification need not be read in terms of the tariff heading, as monofilment is also 'yarn' as is commonly and scientifically known.

The contention of the department is not acceptable because a notification issued under Rule 8 (1) of Central Excise Rules, 1944 exempt only 'excisable goods' as defined in Section 2(d) of Central Excise Act. As monofilament of 60 deniers or more is not 'yarn' according to the tariff, exemption was not admissible for polyamide chips used in the manufacture of such monofilament during the period from 1 March 1986 to 27 April 1987. Further, if the term 'nylon yarn' used in notification dated 1 March 1986 covered monofilaments also (as contended by the department), there was no necessity to issue another notification on 28 April 1987 to cover monofilament yarn under the notification.

The Ministry of Finance have stated (November 1988) that the matter is under examination.

(ii) *Plastic pouches*

Articles of plastics were classifiable under sub-heading 3922.90 upto 9 February 1987 and thereafter under sub-heading 3923.90 of the Central Excise Tariff Act, 1985

As per a notification dated 1 March 1986 as amended, those articles were assessable to duty at the rate of 15 percent ad valorem. However, if they are made out of duty paid plastics falling under heading 39.01 to 39.15, they were exempt from the whole of the duty of excise leviable thereon.

A manufacturer brought in duty paid plastic sheets or films falling under heading 39.20 and manufactured plastics pouches therefrom in two of his factories. The manufacturing process involved is laminating the plastic sheet with aluminium foil or paper and cutting and folding the laminated sheets in order to produce the plastic pouches. These plastic pouches, not having been manufactured from plastics in primary forms attracted duty at the rate of 15 percent ad valorem, which was not collected by the department. This resulted in non-levy of duty due to erraneous grant of exemption amounting to Rs. 8,95,357 on the goods cleared during the period 1 April 1986 to 31 May 1987.

On the irregularities being pointed out in audit (August 1987), the department did not admit the objection and contended (September and November 1987) that on the analogy of a clarification issued on 25 June 1987 by the Central Board of Excise and Customs in relation to laminated plastic sheets made from plain plastic sheets, the plastic pouches could be considered to have been manufactured from duty paid plastics in primary forms if the plastic films from which those pouches are made could be proved to have been made from duty paid plastics in primary forms. The department also stated that as a precautionary measure show cause notices were being issued,

The reply of the department is not acceptable because it has been judicially held that all exemptions must be strictly construed according to the words of the notification and must not be extended beyond the express requirement of the language used. A provision in an exemption must be interpreted in its ordinary and natural sense and to enlarge the scope of the exemption to categories of goods not expressly covered therein is not admissible in law. Therefore, if a notification exempts plastic articles manufactured from plastic granules or powders from levy of duty, then the notification cannot be extended to plastic articles manufactured from plastic sheets. Details of demands raised and their collection were not received (January 1988).

The Ministry of Finance have stated (November 1988) that the matter is under examination.

(iii) *Nitro cellulose lacquer*

Nitro-Cellulose lacquer solution is composed of solute (solid nitro-cellulose) and solvent (liquid mineral oil). In the process of coating cellophane with nitro-cellulose lacquer entire solute and a part of solvent is used up and only a portion of the solvent is left over as residue.

As per a notification issued on 16 October 1976 duty on that portion of nitro-cellulose lacquer is leviable which actually goes into the coating of cellophane to make it moisture proof; what does not go into coating (that is residue in the form of solvent) is exempted from duty subject to the condition that it is recycled for the manufacture of nitro-cellulose lacquer.

An assessee manufactured nitro-cellulose lacquer for captive use in the coating of cellophane by employing the batching process. Residue of each batch was used for the manufacture of nitro-cellulose lacquer of the succeeding batch. The assessee, however, paid duty on the assumption that the residue was also solution and not solvent and to that extent it contained a proportionate part of the solute. This resulted in reducing the quantity of dutiable solute to the extent of the proportion hypothetically reckoned as part of the residue.

Thus during the year 1984-85 although 86,813.8 kgs. of solute (i.e. solid nitro-cellulose lacquer) was consumed by the assessee in coating cellophane for making it moisture proof, duty was paid only on 18,785.5 kgs. and duty exemption was incorrectly availed of on 68,027.3 kgs. of solute (86,813.8 kgs.— 18,785.5 kgs.) hypothetically reckoning that aforesaid 68,027.3 kgs. of solute was present in the left over residue and was not consumed in the coating process. This resulted in escapement of Central Excise duty of Rs. 6.87 lakhs during 1 April 1984 to 31 March 1985.

On the irregularity being pointed out in audit (September 1986), the department did not accept the objection and stated (January 1987) that the expressions 'solvent' and 'residue' occuring in the notification are intended to specify the quantum of exemption to be granted, whereas the quantum of duty exemption is to be determined at the same rate of duty as on nitro-cellulose lacquer and on the same value treating the residue as solution.

The contention of the department is not acceptable because :

(i) the chemical process is such that the residue which is only a portion of the solvent (the solute having been used up wholly in the coating) cannot be identified in any manner as solution; and

(ii) the chemical nature of the solvent cannot be hypothetically altered to suit the convenience of the assessee nor is it the intention of the notification to grant this exemption to the portion of the solute which is actually consumed in the coating process, but to the solvent only which is left out as residue.

The Ministry of Finance have stated (November 1988) that the matter is under examination.

3.44 **Iron and steel products**

(i) *Steel products*

As per a notification issued on 1 August 1983, iron and steel products classifiable under sub-headings 7209.20, 7209.90 and 7210.10 were exempt from payment of duty, if they were manufactured from duty paid inputs falling under sub-headings 7206.20, 7206.90, 7207.20, 7208.00, 7209.90, 7210.10 ,7215.00 and 7309.00.

(a) A rolling mill cleared flats, bars and angles of steel falling under headings 7209.20, 7209.90 and 7210.10 without payment of duty although these were manufactured from 'mild steel flats' falling under sub-headings 7209.10 and 7209.20. 'Mild steel flats' being non-specified inputs, no exemption to final products produced out of these was admissible. Incorrect grant of exemption resulted in short-realisation of duty of Rs. 13.22 lakhs on clearances of 3621.536 tonnes of flats, bars and angles during the period from August 1986 to February 1987.

On this being pointed out in audit (September 1987), the department issued (January 1988) a show cause notice for Rs. 11.80 lakhs but did not accept (April 1988) the objection on the plea that the material purchased was defective flats and as such did not fit into the definition of 'flats' given in the tariff and hence were classifiable under sub-heading 7210.10.

The contention of the department is not acceptable since the description recorded in purchase bills was a clear indication of the fact that the inputs were 'mild steel flats' which was a non-specified input. Further, the CEGAT New Delhi in its order dated 18 May 1987 in the case of M/s Tata Iron Steel Co. Ltd. Vs. Collector of Central Excise Patna (1987(10) ETR 277) have held that a cut piece from rail or a sheared portion of a plate, axle and channel would still remain a rail, plate, axle and channel though of inferior standard. In the light of this decision, the mild steel flats of second

grade would continue to remain as flats and hence classifiable accordingly. It cannot be treated as different material falling under different tariff sub-heading.

Further progress in the matter has not been received (May 1988).

The Ministry of Finance have stated (November 1988) that the matter is under examination.

(b) Three re-rolling mills cleared flats, bars and angles of steel without payment of duty although these were manufactured from duty paid 'mild steel flats' (tariff item 25(9)(i)/sub-heading 7209.20) and "plate shearings" (tariff item 25(13)/heading 72.12). As 'mild steel flats' and 'plate shearings' are not specified inputs, no exemption to final products produced out of these was admissible. Incorrect grant of exemption on clearance of 2138.099 tonnes of flats, bars and angles manufactured out of non-specified inputs during the period March 1986 to July 1987 resulted in short realisation of duty of Rs. 7.80 lakhs.

On this being pointed out in audit (September 1986, March 1987 and October 1987), the department did not accept the objection and stated that 'flats' and 'plate shearings' were defective material which according to a clarification issued by Government in September 1983 were correctly classifiable under sub-item (ii) (sub-heading 7210.10) which were specified inputs.

The contention of the department is not correct since the plate shearings are being classified under tariff item 25(13) (heading 72.12) at the time of clearance from Bhilai long after the issue of Government classification of September 1983.

Further, (i) classification approved by the proper officer with jurisdiction over the factory of production cannot be changed or revised by the excise authority with jurisdiction elsewhere and (ii) a sheared portion of plate, axle or channel would still remain a plate axle or channel though of an inferior standard as decided by the CEGAT on 18 May 1987 and 1 January 1988.

The Ministry of Finance have stated (November 1988) that the matter is under examination.

(ii) *Iron castings*

Castings of iron not elsewhere specified are to be classified under the sub-heading 7307.10 (Section XV) of the schedule to the Central Excise Tariff, Act 1985. According to note 1 to Section XV, goods of Section XVI (Machinery, mechanical appliances and electrical goods) were excluded from being classified under the heading of Section XV. Thus classification of parts of machines under Section XVI (Chapter 84 or 85) will prevail over classification as castings under Chapter 73 of said schedule.

Central Excise duty leviable on iron castings (sub-heading 7307.10) was exempted under a notification issued on 1 August 1983.

A manufacturer of plate coolers classified the products as iron castings (7307.10) and cleared the same without payment of duty claiming exemption under the aforesaid notification. These items were being manufactured according to drawings and specifications given by the customers. From the specifications given it was seen that plate coolers were a part of machinery and hence are liable to be classified under the sub-heading 8485.90 on which Central Excise duty was leviable at 15 percent ad valorem. Incorrect classification of goods and consequent incorrect grant of exemption resulted in non-levy of duty of Rs. 1,93,570 on goods valued at Rs. 12,90,468 cleared between 9 May 1986 to 7 August 1986.

The irregularity was pointed out in audit to department in December 1987, February 1988 and April 1988.

The Ministry of Finance have admitted the objection (October 1988).

3.45 Brass, copper and articles thereof

(i) *Wire rods of brass*

Wrought bars, rods including wire rods of brass are classifiable under sub-heading 7403.11. The effective rate of duty leviable on brass bars and rods was Rs. 3,300 per tonne from 1 March 1986. As per an exemption notification issued on 1 March 1986 brass bars and rods were exempt from the whole of the duty of excise leviable thereon, if it was made from copper and articles thereof falling under the heading 74.01 to 74.10. As per another notification issued on 25 March 1986, specified excisable goods including goods classifiable under Chapter 74 manufactured by a job worker for returning to the person who supplied the raw materials and semi-finished goods from which the goods were manufactured by the job worker, were exempt from the whole of the duty of excise leviable thereon provided that the supplier of the raw materials etc., undertook the responsibilities of discharging the liabilities in respect of central excise duty leviable on the finished products by giving an undertaking to that effect to the Assistant Collector of Central Excise having jurisdiction over the factory of the job worker. In view of the fact that there was movement of raw materials and non-duty paid semi-finished goods or finished goods, as the case may be from one factory to another, the Ministry of Finance in their instruction dated 20 June 1986 had prescribed the maintenance of an account by the job worker showing the goods received and the goods manufactured therefrom and returned by him and had prescribed challans to accompany the goods during its to and fro movement in order to ensure that goods leviable with duty do not inadvertently or otherwise escape the levy.

An assessee engaged in the manufacture of copper rods on his own account as well as on behalf of others received waste and scrap of copper from others and manufactured round, square and hexagonal brass-rods therefrom and returned it to them without payment of duty. As there was no evidence to show that the waste and scrap of copper received by the assessee from others were duty paid or recognisable as duty

paid, the brass rods were not eligible for exemption from duty under the aforesaid notification dated 1 March 1986. As the assessee had also not maintained the account prescribed nor had the inward and outward movement of the goods been accompanied by the challans prescribed in this behalf, the brass rods manufactured by the assessee were not eligible for exemption from duty even under the latter notification dated 25 March 1986. As the department erroneously regarded the goods to be exempt, it resulted in non-levy of duty on brass rods cleared during the period commencing from December 1986.

On the irregularity being pointed out in audit (March 1987), the department did not admit the objection and contended (September 1987) that the scrap obtained by the assessee through others were from stock available in the market which were deemed to have suffered duty. The department added that in order to safeguard revenues, the question of issue of a show cause notice involing Section 11 A of the Act as a measure of caution was under examination. In the subsequent cycle of audit (April 1988) it was pointed out that the non-levy of duty was Rs. 17,94,042 on 543.649 tonnes of brass rods cleared during the period December 1986 to October 1987.

The Ministry of Finance admitted the objection (November 1988) in respect of the copper rods manufactured from waste and scraps obtained from the manufacturers without duty paying documents but did not admit it in respect of copper rods manufactured from waste and scraps obtained from the market claiming exemption under notification dated 1 March 1986.

The Ministry's reply is not acceptable because the assessee was not maintaining separate accounts of raw material procured from the manufacturers without duty paying documents and those procured from the market. He was, therefore, not entitled to exemption treating the entire raw materials as duty paid in as much as they were not clearly recognisable as duty paid.

(ii) *Copper and articles thereof*

As per a notification dated 1 August 1984, as amended, the duty of excise leviable on wrought plates, sheets, blanks (including circles) and strips of copper (tariff item 26A/Chapter 74) is leviable at the rate of Rs. 4,500 per tonne. However, duty is chargeable at a concessional rate of Rs. 700 per tonne provided that these goods are made from copper or products of copper falling under the tariff item 26A or heading 74.01 to 74.10 on which the duty of excise has already been paid. From 1 March 1986, the concessional rate of duty was raised to Rs. 1,200 per tonne.

(a) A manufacturer was bringing in copper scrap, purchased from the market, which mainly consisted of old and used winding wires of copper (tariff item 33B/heading 85.44) besides old and used copper utensils (tariff item 68/heading 74.13) and was manufacturing copper circles therefrom. These copper circles were leviable to duty at the rate of Rs. 3,700 per tonne upto 28 February 1986 and at the rate of Rs. 4,500 per tonne thereafter. The department, however, collected duty at the rate of Rs. 700 per tonne upto 28 February 1986 and at the rate of Rs. 1,200 per tonne thereafter. The erroneous grant of exemption resulted in short levy of duty of Rs. 2,91,005 on 88.183 tonnes of copper circles cleared during the period from October 1985 to May 1987.

On the short levy being pointed out in audit (September 1987), the department did not admit the objection and contended (September and October 1987) that old and used winding wires and utensils of copper are known as scraps of copper in commercial parlance and that they conform to the connotation of the term waste and scrap as they are fit only for the recovery of metal by remelting and that these scraps were clearly recognisable as old and duty paid stock. The reply is not acceptable for the reason that the scrap of copper obtained by the assessee in the form of old and used copper winding wires or copper utensils fell outside the scope of heading 74.01 to 74.10 and, thus, did not satisfy the condition for eligibility for levy of duty at the concessional rate. Final reply has not been received (February 1988).

The Ministry of Finance did not accept the objection and stated (July 1988) that old and used winding wires of copper are eligible for exemption; similarly old and used copper utensils are nothing but waste and scrap. But the fact remains that old and used copper winding wires or copper utensils are not classifiable under heading 7401 to 7410 and, therefore, are not eligible for exemption under the notification.

(b) A manufacturer was bringing in old and used electric winding wires of copper classifiable under tariff item 33B upto 28 February 1986 and thereafter under heading 85.44 for manufacturing copper circles. These copper circles were leviable to duty at the rate of Rs. 3700 per tonne upto 28 February 1986 and at the rate of Rs. 4500 per tonne thereafter. The department, however, collected duty at the rate of Rs. 700 per tonne upto 28 February 1986 and at the rate of Rs. 1,200 per tonne thereafter. The erroneous grant of exemption resulted in short levy of duty of Rs. 1,94,700 on 59 tonnes of the circles cleared during the period from April 1985 to October 1986.

On this being pointed out in audit (September 1987), the department did not admit the objection and contended (November 1987) that, since the copper circles were manufactured from small scrapped pieces of wires which cannot be used for winding purposes and, thus, fit only for melting and recovery of metal, the duty on the copper circles had been collected correctly. The reply is not acceptable as the condition for levy of duty at the concessional rate prescribed in the notification was not satisfied.

The Ministry of Finance did not accept the objection and stated (April 1988) that unusable meltings/unusable winding wires which are nothing but wastes and scraps are eligible for exemption under the notification.

The Ministry's reply is not acceptable because the unused copper winding wires fali outside the scope of heading 74.01 to 74.10 and are, the refore, not eligible for exempion under the notification.

(c) A manufacturer was bringing in waste and scrap of copper from bazar and was manufacturing copper circles, plates and sheets therefrom. These goods were leviable to duty at the rate of Rs. 4,500 per tonne as there was nothing on record to show that duty had been paid on these inputs. The department, however, collected duty at the rate of Rs. 1,200 per tonne. The erroneous grant of exemption resulted in short levy of duty of Rs. 1,05,105 on 31.850 tonnes of copper circles and sheets/plates cleared during the period 16 December 1986 to 31 January 1988.

On the irregularity being pointed out in audit (March 1988), the department stated that the matter had been taken up for examination. Final reply has not been received (May 1988).

The Ministry of Finance did not accept the objection and stated (October 1988) that Audit has not provided any evidence to prove that inputs used in this case were not duty paid.

The fact, however, remains that in order to claim exemption of inputs being duty paid, the assessees have to furnish duty paying documents.

3.46 Vegetable products

As per a notification dated 1 March 1987 issued under Rule 57K of the Central Excise Rules, 1944, credit of duty was allowed on specified fixed vegetable oils for use in the manufacture of final product namely "vegetable product" falling under sub-heading 1504.00 subject to the condition that this credit has to be utilised for payment of duty on the said final product.

Three manufacturers in two Collectorates produced certain batches of vegetable products which did not contain any of the specified fixed vegetable oils. They however, availed set off of the duty payable on such vegetable product at the rate of Rs. 1000 per tonne from the credit account where surplus credit was available. This resulted in the availment of inadmissible credit and thereby loss of revenue of Rs. 22.91 lakhs during the period from April 1987 to September 1987.

On the irregularity being pointed out in audit (October to December 1987), the department admitted the irregularity in one case and confirmed that demand for the entire period from April 1987 to March 1988 aggregating to Rs. 36.16 lakhs (including Rs. 14.58 lakhs for the period upto September 1987 as pointed out in audit) had been raised. In two other cases, however, department did not admit the objection and stated (December 1987 and April 1988) that no correlation of specified oils used in the final product for availing credit was necessary and clearance of the final product could also not be limited to the quantity of specified oils brought and for which credit was taken. The contention of the deaprtment is not acceptable as in-terms of Rule 57-K read with notification dated 1 March 1987 it is necessary that the money credit could only be utilised for payment of duty on clearance of such vegetable products in which the specified olls were actually used as per the declaration and the conditions specified in the said notification.

The Ministry of Finance did not accept the objection and stated (October 1988) that the credit taken under Rule 57-K can be utilised for payment of duty on the final product specified under Rule 57-K even if the particular batch of the goods being cleared does not contain the specified goods.

The Ministry's reply is contrary to the express provisions of the rules and notification issued in this regard as already explained above.

3.47 Goods used in the manufacture of other goods

(*i*) *Mono-ethylene glycol*

As per notification dated 4 June 1979 as amended, all excisable goods on which the duty of excise is leviable and in the manufacture of which any goods falling under erstwhile tariff item 68 had been used as raw materials or component parts were exempt from so much of duty of excise leviable thereon as was equivalent to the duty of excise already paid on the inputs. This benefit was not admissible if the finished goods were exempt from the whole of the duty or chargeable to nil rate of duty.

A manufacturer of polyester fibre/tow (tariff item 18) was availing exemption under the above notification in respect of duty paid on mono-ethylene glycol falling under erstwhile tariff item 68. In the process of manufacture of above goods, polyester chips (tariff item 15-A) also came into existance which were partly consumed captively for manufacture of fibre and partly cleared outside the factory for home consumption at nil rate of duty under a notification dated 1 March 1984. The credit of duty paid on mono-ethylene glycol was, therefore, to be reversed proportionately on the basis of its use in polyester chips cleared for home consumption at nil rate of duty. A sum of Rs. 5,23,877 representing proportionate amount of closing balance as on 31 March 1985 in RG 23 was reversed. But no action was taken by the department for the reversal of credit of duty already utilised by the unit from 1 April 1984 to 31 March 1985. This resulted in short reversal of credit of Rs. 4,93,743 for the period 1 April 1984 to 31 March 1985.

On the omission being pointed out in audit (May 1987), the department stated (November 1987) that a show cause-cum demand notice had been sent to the Collector (August 1987) for its execution. Reply to the statement of facts issued in April 1988 and further developments have not been received (May 1988).

The Ministry of Finance have admitted the objection (November 1988).

(ii) *Raw material for soap*

As per notification issued on 4 June 1979, excisable goods on which the duty of excise was leviable and in

the manufacture of which any goods falling under tariff item 68 were used as inputs, were exempt from duty of excise as was equivalent to that already paid on such inputs. This notification was rescinded on 1 March 1986. Set off of duty paid on inputs became inadmissible from that date and credit for duty paid on inputs lying unutilised on 28 February 1986 was inadmissible. Set off of duty paid on the inputs namely china clay, alum, resin and guar gum for use in the final products of paper or paper board (Chapter 48) became permissible under a notification issued on 3 April 1986 and on soap stone powder, sodium, sulphate, sodium hexamate-phosphate and manganese sulphate under notification of 24 April 1986.

A manufacturer of excisable goods, falling under Chapter 48, was availing set off under the above notification of 4 June 1979. On 1 March 1986 the said notification was rescinded and the assessee availed set off of duty amounting to Rs. 3,25,592 paid on china clay, alum, resin, quar gum (from 1 March 1986 to 2 April 1986), soapstone powder, sodium sulphate, sodium hexamates-phosphate (from 4 March 1986 to 21 April 1986) and glyoxal 40 percent (from 2 June 1986 to February 1987) which was allowed by the department.

On the irregularity being pointed out in audit (March 1988), the department intimated (April 1988) that duty of Rs. 3,25,592 had been realised.

The Ministry of Finance have accepted the under-assessment (November 1988).

(*iiii*) *Parts of transformers*

The exemption dated 4 June 1979 was subject to credit being allowed for duty paid on inputs and utilisation of such credit for payment of duty on output goods subject to the procedure similar to that set out in Rule 56-A being followed.

A manufacturer of transformers and parts thereof (tariff item 68/heading 8504) used material worth Rs.9,67,327 including the parts of transformers manufactured by the same assessee and other materials and components in the repair jobs and also against free replacements during 1985-86, without payment of duty, though the set off of duty paid on the raw materials and the components had been availed of. This resulted in duty amounting to Rs. 1,93,465 not being paid.

On the omission being pointed out in audit (September 1987), the department issued show cause-cum demand notice in November 1987. Results of adjudication have not been received (June 1988).

The Ministry of Finance have admitted the objection (November 1988).

(*iv*) *Rice bran oil*

As per a notification issued on 1 March 1987 credit of duty at the rate of Rs. 320 per tonne was allowable on use of rice bran oil (a fixed vegetable oil) in the manufacture of soap. By another notification issued on 12 August 1987 in supersession of earlier notification credit is allowable on hydrogenated rice bran oil received from outside subject to certain conditions. Thus, prior to 12 August 1987 there was no provision for granting credit on rice bran oil hardened/hydrogenated outside the factory of manufacture of soap.

Two soap manufacturers were allowed to take credit on hardened rice bran oil received from outside prior to 12 August 1987 and used in the manufacture of soap although the notification dated 1 March 1987 in force during the material period did not provide credit on that oil. The irregularity resulted in incorrect grant of duty credit to the extent of Rs. 1.03 lakhs during the period from 1 March 1987 to 11 August 1987.

On the mistake being pointed out in audit (September 1987 and December 1987) the department did not accept the audit objection and stated (March 1988) that rice bran oil in liquid state cannot be used for manufacture of soap and process of hydrolysis or saponification which are necessary for hardening of oil having been allowed in the notification, the hardened oil would get the benefit of credit. The stand of the department is not correct because :—

(*i*) hydrolysis and saponification are not necessary for hardening of oil. The process employed for hardening of oil is hydrogenation which is an entirely different process from hydrolysis and saponification; and

(*ii*) hardening of oil was achieved outside the factory of manufacture of soap and no credit was admissible on such hardened oil under the notification of 1 March 1987 which was superceded by a notification granting such credit with effect from 12 August 1987.

The Ministry of Finance have stated (November 1988) that the matter is under examination.

(*v*) *Organic compounds*

As per a notificotion issued on 1 March 1983 as amended, first clearances of excisable goods falling under tariff item 68 other than sandalwood oil, for home consumption upto a value not exceeding 30 lakhs in any financial year were exempt from whole of duty of excise leviable thereon, subject to prescribed conditions.

A manufacturer of organic compounds (tariff item 68), who was eligible to exemption from whole of duty of excise under the aforesaid notification, cleared his goods on payment of duty amounting to Rs. 78,509 during the financial year 1984-85. He also availed of a credit of Rs. 38,766 on inputs used in the manufacture of organic compounds, as per another notification issued on 4 June 1979. The manufacturer was not entitled to avail of the credit of Rs. 38,766 on inputs, because the concessional under the notification dated 4 June 1979 was not admissible to the finished goods which were exempt from the whole of the duty of excise. Moreover, the incorrect procedure followed by the manufacturer enabled the consignees of organic compounds to claim credit of Rs. 78,509 under notification dated 4 June 1979.

On the irregularity being pointed out in audit (April 1987) the department did not accept the objection (July 1987) and stated that there was no provision in Central Excise Law which would compel the manufacturer to avail of an exemption granted under any notification. The department also added that as long as the manufacturer paid duty on finished goods he was entitled to avail of credit of duty paid on inputs. Similarly, the consignees of the finished goods would also be eligible to take credit of duty, if otherwise eligible under notification dated 4 June 1979.

The contention of the department is not correct because any payment made by the manufacturer, which is not due as duty under Central Excises and Salt Act, 1944, is a mere deposit and not a payment of duty.

The Ministry of Finance did not accept the objection and stated (August 1988) that there is no legal compulsion for an assessee to claim exemption under a particular notification, when the money has been paid as duty, it is duty and not a deposit.

The fact remains that it has been judicially pronounced that duty paid where not due is not duty but a deposit.

3.48 I.C. engines

As per a notification issued on 1 May 1977 (as amended) goods other than cigarettes supplied as stores for consumption on board a vessel of Indian Navy are exempt from payment of the whole of the duty of excise leviable thereon.

An assessee engaged, interalia in the manufacture of I.C. engines falling under Chapter 84 of the schedule to the Central Excise Tariff Act, 1985 was allowed to clear 5 I.C. engines of various types valued at Rs. 34.42 lakhs during the period from March 1987 to September 1987 for supply to the Eastern Naval Command, without payment of duty under the aforesaid notification. The notification *ibid* exempts goods supplied as stores for consumption on board a vessel and it cannot be said to cover engineering goods which are not consumped as stores on board a vessel but used only for running the vessel. The grant of exemption in respect of 5 I.C. engines was, therefore, not in order and resulted in non levy of duty of Rs. 3.42 lakhs.

The irregularity was brought to the notice of the department in January 1988; its reply has not been received (July 1988).

The Ministry of Finance have stated (November 1988) that the matter is under examination.

3.49 Other miscellaneous manufactured goods

(i) Refrigerating and airconditioning appliances and parts thereof

As per a notification of 24 April 1962, all parts of refrigerating and airconditioning appliances falling under erstwhile tariff item 29A of Central Excise Tariff (except those listed therein such as compressor) are exempt from levy of duty. As per another notification issued on 1 March 1983, such appliances and machinery all sorts and parts thereof cleared from a factory upto an aggregate value of 2.5 lakhs in a financial year are exempted from levy of duty of excise.

As per a tariff advice dated 3 March 1976, the value of accessories of compressors like fly wheel and suction stop valve as are very essential for the working of the compressors rather than the system as a whole, value of such accessories should be included for the purpose of assessment.

A manufacturer of compressors and fly wheels was availing exemption from payment of duty under aforesaid notifications of 24 April 1962 and 1 March 1983. The aggregate value of clearances of compressors during the year 1984-85, as per the records of the manufacturers, amounted to Rs. 2,29,145 only and, therefore, duty was not levied on such clearances. The manufacturer sold the entire goods through a related person (branch office). According to a declaration made on the price lists, freight and handling charges were being recovered extra from customers. The scrutiny of sale invoices revealed that manufacturer had maintained two separate sets of invoices bearing identical serial number. The first set meant for issue to customers was being issued for sale of compressors, fly wheel and stat valves and for recovery of forwarding charges from customers and the second set were meant only for asessee's own records for sale of compressors. The method adopted by the manufaturer led to the concealment of the sale of fly wheel and stat valves with sale of each compressor. The fact of recovery of huge amounts from customers as forwarding charges was also concealed.

There was not even a single case where the sale of compressor was not accompanied by the sale of fly wheel and stat valves. Cost of fly wheel and a set of stat valves recovered from the customers, during the year 1984-85, ranged between Rs. 550 to Rs. 1,550 depending upon the size of compressor. Further, against the amount of Rs. 1,21,500 recovered from customers on that account an amount of Rs. 6,887 only was actually incurred on freight during 1984 and 1985. The practice adopted by the manufacturer *i.e.* to sell a compressor with fly wheel and stat valves goes to show that these were very essential parts for the working of the compressor and hence the value of fly wheel and stat valves will form parts of assessable value of compressor. Also amounts recovered in excess as forwarding charges should have been included in assessable value. Total value of clearances during the year 1984-1985 thereby amounted to Rs. 7,45,245 and, hence, the assessee was not entitled for exemption under the notification of 1 March 1983. Incorrect grant of exemption resulted in non levy of central excise duty of Rs. 3,13,003 on the compressors cleared during the year 1984-85.

On the non levy of duty being pointed out in audit (August 1985 and October 1985) the department stated (April 1986, June 1986, July 1986 and August 1986)

that as per Board's tariff advice of 3 March 1976, fly wheel and valves were accessories and their value would not form a part of value of compressors. As regards forwarding charges it was intimated that these where charged on the lubricating oil, stat valves and fly wheel and also included octroi and guarantee charges in respect of stat valves.

Reply furnished by the department is not acceptable in view of the normal trade practice adopted by the manufacturer in selling fly wheel and stat valves alongwith compressor and, therefore, the value of these items are to be included in the assessable value of the compressor. As regards forwarding charges, reply furnished by the department is in contravention of the declaration made by the assessee on price lists. The department added (May 1988) that issue of a demand notice was under consideration. Further reply has not been received (June 1988).

The Ministry of Finance did not accept the objection and stated (November 1988) that the stop valves and lubricating oil had not been manufactured by the assessee, as such, their value was not includible in the assessable value. Fly wheel is not an integral part of the compressor as the same can work without fly wheel its value was also not, therefore, includible.

The Ministry's reply is not acceptable as the same is contrary to the Ministry's clarification dated 3 November 1976.

(*ii*) *Rubber strips*

As per a notification dated 1 April 1968, rubber products in the form of plates, sheets and strips unhardened whether vulcanised or not and falling under heading 4005 were exempt from the whole of the duty of excise leviable thereon. Pursuant to issue of a notification dated 19 July 1986 this exemption is admissible only if no credit of duty paid on the inputs used in the manufacture of said goods had been availed under Rule 56 A or 57A of Central Excise Rules, 1944. As per another notification issued on 29 July 1986 the aforesaid goods are assessable to duty at concessional rate of 15 per cent ad valorem.

A manufacturer of tyres and tubes also manufactured unhardened rubber strips (unvulcanised) and continued to avail of the above exemption even after amendment of the above notification on 29 July 1986 notwithstanding the fact that he had been availing of the credit of duty paid on inputs used in the manufacture of said goods under Rule 57A with effect from 1 March 1986. However, the assessee started paying duty from 15 October 1986. Duty short levied on 52,075 kilograms of rubber strips cleared during the period from 29 July 1986 to 14 October 1986 amounted to Rs. 2,21,475.

The irregularity was pointed out in audit to the department in April 1987 and to the Ministry of Finance in August 1988.

The Ministry of Finance have admitted the objection (October 1988).

(*iii*) *Power driven pumps*

As per a notification dated 1 March 1978, power driven pumps primarily designed for handling water (tariff item 30 A) were exempt from the whole of the duty of excise leviable thereon. In the case of M/s. Jyoti Ltd. versus Union of India (1979 ELT (J546)-Guj) it was held by Gujrat High Court that in such types of pumps the 'bowl assembly' would constitute a power driven pump classifiable under tariff item 30 A but the 'column assembly' and the 'discharge head assembly' and other constitutents were only accessories. On such accessories duty was leviable under tariff item 68.

An assessee engaged in the manufacture of deep tube-well turbine pumps was allowed to avail of exemption from duty under the aforesaid notification. But on accessories viz. 'column assembly' and 'discharge head assembly' which were not part of the pump, no duty was levied, the exact amount of which could not be worked out for want of details. The mistake, however, resulted in an estimated amount of duty of Rs. 2,13, 664 not being realised on the clearances of accessories made with pumps during the period from April 1983 to December 1985.

On the mistake being pointed out in audit (February 1986), the department stated (January 1987) that the ratio of Gujrat High Court's judgement would not be applicable to other units as the department had always considered the assembly of all the said components known in the trade in its form as pump. The reply is not acceptable as the decision of the High Court are binding on the revenue authorities even though it may be by a High Court outside the territorial jurisdiction of the authorities unless it is reversed in appeal (J.K. Synthetics Ltd. Vs. Collector) [1985 (21) ELT 410 (Delhi)]. Therefore, in the absence of a contrary judgement of another High Court or law laid down by the Supreme Court in the matter, the ratio of judgement of Gujrat High Court would also be applicable in the instant case. Further, the Government have already accepted a similar objection raised in para 2.34 (*i*) of Audit Report 1985-86.

The Ministry of Finance have admitted the objection (November 1988).

(iv) *Footwear*

As per a notification issued on 1 March 1987, footwear classifiable under sub-heading 6401.11 is chargeable to concessional rate of duty at the rate of 15 percent ad valorem. This concessional rate is, however, not applicable to footwear with outer soles or upper or both of plastics which includes any material visibly coated or covered externally with plastics.

As assessee manufactured two varieties of footwear visibly coated with a glazing solution of plastic (polyurethane and alkyd resins dissolved in a volatile solvents). The products were incorrectly allowed to be cleared on payment of concessional rate of duty under the aforesaid notification. As a result there was short levy of duty of Rs. 1.92 lakhs on the clearances made duting the period from March 1987 to October 1987.

On the omission being pointed out in audit (November 1987) the department did not accept the audit objection and stated (April 1988) that solution prepared for coating can hardly be treated as plastics and contended that the solution did not conform to plastics. The contention of the department is however, not, tenable as the polyurethane and alkyed resins are both capable of being formed into shapes under external influence and in the instant case such shapes were indeed formed in plastic films on the shoes with the evaporation of the volatile solvent. The extent of use of plastic is not the point, the point is use of plastic in any form as a visible coating.

The Ministry of Finance have stated (November 1988) that the matter is under examination.

(v) *Soap*

Under a notification issued on 1 March 1986 soap falling under heading 34.01 is exempt from so much of duty as is equivalent to the amount calculated at specified rate for use of indigenous rice bran oil. The aforementioned concession at the prescribed rate is not therefore, applicable if hardened rice bran oil is used in the manufacture of soap.

A factory manufactured soap out of hardened rice bran oil (bought out) and other oils and was allowed to avail himself of the concession treating the rice bran oil and hardened rice bran oil at par. This resulted in irregular grant of concession of duty of Rs.1.20 lakhs for the period from 1 March 1986 to 28 February 1987.

On the irregularity being pointed out in audit (December 1987), the department did not admit the objection and stated (April 1988) that unqualified use of the word "indigeneous rice bran oil" leaves scope for interpretation that indigeneous rice bran oil includes hardened oil.

The stand of the department is not correct as :

(1) rice bran oil and hardened rice bran oil are not one and the same. The former is classifiable under heading 15.02 and the latter under 15.04 of the Central Excise Tariff Act, 1985.

(2) In similar case the CEGAT while upholding the decision of the Collector (Appeals), CE New Delhi held on 7 January 1987 (E.C.R. page 594—7 November 1987 issue) that concession is not admissible for use of hardened oil received from outside.

The Ministry of Finance have stated (November 1988) that the matter is under examination.

IRREGULAR GRANT OF CREDIT FOR DUTY PAID ON RAW MATERIALS AND COMPONENTS (INPUTS) AND IRREGULAR UTILISATION OF SUCH CREDIT TOWARDS PAYMENT OF DUTY ON FINISHED GOODS (OUTPUTS)

As per Rule 56 A of the Central Excise Rules, 1944 credit for the duty on raw materials and components is allowed to be utilised towards payment of duty on finished products in the manufacture of which the raw material and copmponents are utilised subject to fulfilment of conditions specified in that rule.

3.50 Irregular grant or utilisation of credit of duty paid on input goods

As per proviso to Rule 56 A (2) no credit of countervailing duty paid on raw materials or component parts falling under erstwhile tariff item 68 shall be allowed.

A manufacturer of photostat machines (erstwhile tariff item 33) was permitted by the department on 18 March 1985 to avail of the credit of countervailing duty paid on imported components (erstwhile tariff item 68) to be used in the manufacture of final product. Accordingly, he utilised credit of countervailing duty amounting to Rs.72,33,392 paid on imported components during the period from 26 March 1985 to 9 February 1986. Since the grant of said permission was irregular, the department revoked the permission on 10 February 1986. Even after revocation of permission the assessee utilised credit of Rs.8,20,000 towards clearance of photocopying machines during the period from 18 Fabruary 1986 to 20 February 1986. The total credit irregularly utilised worked out to Rs.80,53,392 but no action was taken by the department to recover the same. On the mistake being pointed out in audit (February 1987), the department stated (July 1987) that the assessee has been directed to deposit the aforesaid amount.

The Ministry of Finance stated (October 1988) that a show cause notice for Rs.80.53 lakhs has been issued on 21 July 1988. Further developments have not been received (November 1988).

3.51 Utilisation of credit other than in prescribed manner

As per Rule 56 A (3) (vi) (a) of the Central Excise Rules 1944, the credit of duty allowed in respect of any material or component parts may be utilised towards payments of duty on any finished excisable goods for the manufacture of which such material or component parts were permitted to be brought into the factory.

By a notification issued in September 1984, ferro alloys used in the manufacture of dutiable iron and steel products were exempt from duty subject to the following of procedure set out in Chapter X of the Central Excise Rules, 1944.

A manufacturer of iron and steel products (erstwhile tariff item 25) was bringing in duty paid ferro alloys as inputs for the maufacture of these products and availing credit of duty paid thereon under Rule 56A. From 1 October 1984 he also started bringing in those very input simultaneously under Chapter X procedure without payment of duty for manufacture of the iron and steel products. The final products manufactured out of non-duty paid inputs brought under Chapter X procedure were, however, cleared irregularly by utilising the credit available to him under Rule 56A. This resulted in irregular utilisation of credit of Rs.46.70 lakhs during the period from 1 October 1984 to 31 December 1985. On the irregularity being pointed out

in audit (February 1986) the department accepted the objection and reported that the demands for Rs.88,31,598 covering the period from 1 October 1984 to 30 June 1987 have been confirmed (February 1988). Particulars of recovery have not been intimated.

The Ministry of Finance have stated (October 1988) that the matter is under examination.

3.52 Delay in adjustment and recovery of credit availed in excess

As per proviso to Rule 56A(2) if the duty paid on raw materials or component parts is varied subsequently due to refund to or recovery from the manufacturer, credit on account of such duty allowed shall also be varied subsequently.

A manufacturer of electric motors paid Central Excise duty on stampings and laminations on the basis of assessable value approved provisionally. He availed credit for the duty paid on stampings and laminations and utilised it towards payment of duty leviable on electric motors under a notification dated 1 March 1983 subject to observance of Rule 56A procedure. Assessable value of stampings and laminations approved finally in April 1984 was lower than the provisionally approved assessable value on the basis of which duty was initially paid by the manufacturer. Consequently due to variation in the quantum of duty leviable on stampings and laminations as a result of lowering of the assessable value, credit availed of by the assessee on them was required to be varied necessitating recovery of Rs.20.74 lakhs from the manufacturer in respect of credit availed by him from 24 July 1980 to 31 March 1983.

On the omission being pointed out in audit (January 1985, May 1985 and June 1987), the department adjusted the amount of excess credit against a refund claim sanctioned to the manufacturer in August 1987.

The Ministry of Finance have accepted the under-assessment (November 1988).

3.53 Surplus credit not expunged or lapsed

(i) Sub Rule 3(iii) of Rule 56A of the Central Excise Rules, 1944 provides that any material or component parts in respect of which credit has been allowed may be removed for export without payment of duty under bond or on payment of duty, or be removed on payment of duty for home consumption.

An assessee manufacturing steel flats, angles, etc. by hot rolling process and availing proforma credit facility under Rule 56A of the Central Excise Rules, 1944, on duty paid steel billets, blooms and mild steel rerollable scrap, cleared the scrap as such without subjecting them to any process. Though duty was expunged on such clearances upto November 1986 as per sub-rule 3 (iii) of Rule 56A ibid, but was omitted to be expunged from December 1986 onwards. This resulted in escapement of duty amounting to Rs.3,57,497 for the period from December 1986 to June 1987.

On this being pointed out in audit (August 1987), the department accepted the objection and reported (December 1987) realisation of duty on scrap.

The Ministry of Finance have admitted the objection. (June 1988).

(ii) Rule 56A of the Central Excise Rules, 1944, envisages a scheme for allowing credit on account of duty paid on materials or component parts for utilisation for payment of duty on the finished goods for the maufacture of which such materials were permitted to be brought into the factory. This makes it imperative that the credit should not be utilised for clearing products in which the inputs on which such credit was taken were not used. Where a unit manufactures several finished products the proforma account for this purpose may have to be maintained finished product wise, to ensure that the credit on account of inputs under use in any product is not wrongly utilised for other.

In case of iron and steel products hot rolled strips attract duty at Rs.500 per tonne while the hot rolled angles, shapes etc. are leviable to duty at the rate of Rs. 365 per tonne as there is usually some loss in processing (approximately 10 per cent). Credits to the extent of Rs.171.50 per tonne of the products must accumulate and cannot be utilised for clearing any other goods. In a similar situation under MODVAT scheme, the Board have issued instructions that such accumulation should lapse.

A steel rolling mill, took an excess credit of Rs. 1,86,912 in respect of the angles, shapes etc. cleared during the period from April 1985 to February 1986 alone and wrongly utilised the same in clearing other products where differential duty was payable due to higher rate of duty incidence on the final products. This surplus credit was required to be expunged or recovered in cash.

On this being pointed out (November 1986) in audit, the department contended that the final product is not exempted and availment of credit need not be restricted on the ground that the quantum of duty on final product is less than the amount of credit on input. But this argument is contrary to the spirit of the Rule 56A that the finished goods can use only the credit of duty paid on raw materials or component parts utilised in the manufacture of these finished goods.

The Ministry of Finance did not accept the objection and stated (November 1988) that under provisions of Rule 56A(3) (vi) (a) the credit of duty allowed in respect of any material or component parts can be utilised towards payment of duty on any finished excisable goods for the manufacture of which such material or component parts were permitted to be brought into the factory. In the instant case the finished excisable goods for which the hot rolled strips were permitted to be brought into the factory were both cold rolled strips and sections and shapes. As such, the utilisation of the credit for payment of duty on cold rolled strips is correct.

The Ministry 's reply is contrary to the spirit of Rule 56A.

3.54 Incorrect grant of deemed credit

Under Rules 56A and 57A of the Central Excise Rules, 1944 credit of duty actually paid on raw material, as shown in the duty paying documents is allowed for utilisation towards payment of duty on finished product. However, as per proviso to Rule 56A (3) (ii) (b) and Rule 57G ibid deemed credit without production of documents evidencing payment of duty can be allowed but no such credit is admissible if the raw materials are clearly identifiable as non-duty paid.

The facility of allowing deemed credit in respect of waste and scrap of iron as well as steel was withdrawn vide an order dated 29 August 1986 on the grounds that such wastes and scraps were exempt from the whole of Central Excise duty as per notifications dated 1 August 1983 and 10 February 1986 respectively (and are therefore, clearly recognisable as being non-duty paid or chargeable to nil rate of duty). Since the aforementioned "exemptions" were admissible even before 1 March 1986, the facility of allowing deemed credit should not have at all been extended to wastes and scraps of iron or steel.

A public sector electric arc furnace unit was allowed to take deemed credit on waste and scrap of steel received from its sister unit though such goods were cleared as fully exempted in terms of aforesaid notifications dated 1 August 1983 and 10 February 1986 as they arose from duty paid block forged products (tariff item 25/ chatper 72) issued for manufacture of finished product (tariff item 68/chapter 86). The mistake resulted in incorrect grant of credit of Rs.2,73,951 during the period from 10 February 1986 to 1 April 1986.

On this being pointed out in audit (March 1987) the department did not accept the objection and stated (July and October 1987) that a portion of forged products was converted into waste and scrap in the course of manufacture of wheels and axles. Following 'the later the better' principle, duty on that part of the forged product converted into waste and scrap was payable at the scrap stage and therefore the payment of duty on the forged products (portion converted into scrap) constituted the payment of duty at the scrap stage.

The contention of the department is not acceptable in view of the position explained above.

The Ministry of Finance have stated (July 1988) that the matter is under examination.

3.55 Irregular grant or utilisation of proforma credit other than in prescribed manner

As per clause (v) under sub-rule (3) of Rule 56A if any material or component parts, in respect of which credit has been allowed are not duly accounted for as having been disposed of in the prescribed manner, the manufacturer shall, upon a written demand being made by the proper officer, pay the duty leviable on such goods within ten days of the notice of demand.

A manufacturer of P.V.C. films (erstwhile tariff item 15A), received 55,000 kilogrammes of duty paid P.V.C. resin during the period from June 1985 to February 1986 and took credit of duty of Rs.2,40,004 paid thereon. However, he manufactured 9829.20 kilogrammes of P.V.C. films only during the aforesaid period. As per norms of production declared by the manufacturer, 6062.87 kilogrammes of P.V.C. resin was required for the manufacture of 9829.20 kilogrammes of P.V.C. films. Thus, the balance of 48, 937. 13 kilogrammes of P.V.C. films resulted in irregular utilisation of credit of Rs. 2,12,634.

On the irregularity being pointed out in audit (December 1986). the department accepted the objection and stated (September 1987) that a demand of Rs. 2.12.634 had since been raised. Report of recovery has not been recieved (February 1988).

The Ministry of Finance have accepted the under assessment (November 1988).

3.56 Irregular utilisation of credit of duty paid on input goods used in the manufacture of exempted out put goods

According to the proviso (i) to sub-rule (2) of Rule 56A of the Central Excise Rules, 1944 no credit of duty shall be allowed in respect of any material or component parts used in the manufacture of excisable goods if such goods are exempted from the whole of the duty of excise leviable thereon or are chargeable to 'nil ' rate of duty.

As per a notification dated 29 May 1971 as amended, articles of polyurethane foam other than sheets & sheetings, mattresses and the like, quilts and the like, pillows, cushions and mats [erstwhile tariff item 15A(4)] were exempted from the payment of excise duty, if produced out of polyurethane foam falling under erstwhile tariff item 15A(3) on which the duty of excise or the additional duty as the case may be, had already been paid.

A unit manufacturing articles out of polyurethane foam availed of proforma credit of the duty paid on polyurethane foam used in the manufacture of these articles. These articles were classified under tariff item 15A(4) as 'sheets & sheetings, skins, patties, shreddings and cut pieces' and exemption was claimed as per the notification of 29 May 1971 ibid in respect of articles other than sheets & sheetings. As the articles except sheets & sheetings, were cleared without payment of duty, the proforma credit of the duty paid on the polyurethane foam used in the manufacture of the exempted articles was not admissible. About 73.25 per cent of the foam was used for the manufacture of 'sheets and sheetings' and the balance 26.75 per cent went into the manufacture of other articles. The proforma credit irregularly allowed during the period from January 1985 to December 1985 worked out to Rs.2.07 lakhs.

On this being pointed out in audit (March 1986), the department did not accept the objection (July 1986). The Ministry of Finance also stated (December 1986) that as per explanation given in Rule 56A(2), credit of duty allowed in respect of inputs would not be varied or denied for the reason that part of such inputs were

contained in any waste, refuse or by-product arising during the manufacture of the finished goods irrespective of whether the wastes, refuse or by-product was exempt from the whole of the duty of excise leviable thereon. The Ministry's reply is not acceptable, since the so-called secondary articles obtained in the manufacture of sheets and sheetings are known distinctly in the market and the assessee had also classified such articles as skins, shreddings, patties and cut pieces and not as waste or scrap, and exemption was claimed under the notification of May 1971 ibid. It was further verified in audit (July 1987) that the sale price of such secondary articles ranged between Rs. 8 and Rs. 15 per kilogramme where as the cost of polyurethane foam from which such articles were made was costing about Rs. 12.50 per kilogramme. Thus, when the assessee had claimed exemption from duty for such commercially valuable items as articles of polyurethane foam under the notification of 29 May 1971 ibid, the proforma credit in respect of the inputs will not be admissible as per proviso (i) to Rule 56A (2) of the Central Excise Rules, 1944.

The Ministry of Finance did not accept the objection and have repeated (November 1988) the reply given in December 1986, without replying to the Audit's further views. As such Ministry's reply is not acceptable.

NON LEVY/SHORT LEVY OF CESS

3.57 Non-levy of cess

(*i*) *Tea*

Tea is liable to a levy of cess under the Tea Act, 1953. As per sub-section (3) of Section 25 of the Tea Act the provisions of the Central Excises and Salt Act, 1944, and the Rules made thereunder are applicable to the levy and collection of cess.

Under Rule 191-B of the Central Excise Rules, 1944, excisable goods can be removed without payment of duty for manufacture in bond of articles, subject to such conditions as may be laid down by Government by issue of notification. Clearance of tea waste without payment of excise duty for manufacture of instant tea was permitted by a notification issued on 9 March 1976.

No cess was levied on tea waste obtained by a manufacturer of instant tea under Rule 191-B on the plea that Rule 191-B was applicable in respect of cess also and that no cess was to be collected if the tea was not subjected to duty of excise. The Central Excise Laws (Amendment and Validation) Act, 1982 contemplates issue of exemption under relevant Acts when duties under various Acts are leviable on any product. As no notification was issued by Government under the provisions of the Tea Act extending the concession under Rule 191-B to cess leviable under the Tea Act, non-levy of cess on the tea waste was irregular. The resultant loss of revenue worked out to Rs. 11.81 lakhs for the period from January 1979 to December 1987.

On the irregularity being pointed out in audit (January 1988), the department stated (January 1988) that the matter was under examination.

The Ministry of Finance have stated (November 1988) that the matter is under examination.

(*ii*) *Vegetable oils*

As per Section 3(1) of the Vegetable Oils Cess Act, 1983 read with the notification dated 8 December 1983 and with Section 13 of the Cotton, Copra and Vegetable Oil Cess (Abolition) Act, 1987, cess at the rate of Rs. 5 per quintal of vegetable oil produced in any mill in India was leviable during the period from 1 January 1984 to 20 March 1987.

(a) On a writ petition filed by a manufacturer of vegetable oils, recovery of oil cess leviable was stayed by the Supreme Court vide orders dated 9 May 1985 subject to the manufacturer furnishing a bank guarantee for two-third of the amount leviable as cess and paying the balance one-third of the said amount in cash. In compliance of this stay orders the manufacturer paid an amount of Rs. 1,34,708 in cash, and furnished a bank guarantee for Rs. 2,69,000 on account of cess leviable from him on 8074.165 tonnes of vegetable oil produced during 1 January 1984 to 31 December 1985. In addition to this, an amount of Rs. 1,99,929 was also leviable from the manufacturer on 3998.580 tonnes of oil produced between 1 January 1986 to 20 March 1987. Though this amount was also recoverable in accordance with the stay granted by Supreme Court, no action was initiated by the department for the recovery. This resulted in non-realisation of Rs. 1,99,929 leviable as oil cess.

Non realisation was pointed out by Audit in January 1988 and April 1988. Reply has not been received (May 1988).

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

(*b*) Another assessee manufactured vegetable oil (caster oil) and cleared them without payment of cess amounting to Rs. 1,50,382 from 1 March 1986 to 31 July 1986.

On this being pointed out in audit (July 1986), the department stated (May 1987) that the licensee had paid the cess amounting to Rs. 1,50,382 for the period from 1 March 1986 to 31 July 1986 under protest and that the adjudication of the demand of Rs. 1,74,616 for the subsequent period from 1 August 1986 to 31 January 1987 was pending.

The Ministry of Finance have confirmed the facts (October 1988). They added that collection of demand for the period from August 1986 and onwards had been stayed by the Court on an appeal filed by the assessee.

(*iii*) *Jute bags*

Under the Jute Manufactures Cess Act, 1983, there shall be levied and collected by way of cess on every article of jute manufactures specified in the schedule a duty of excise at the rates specified in the corresponding entries thereof. Sacks and bags of jute having

not been specifically included in the schedule they are chargeable to cess at the rate of Rs. 61.35 per tonne under the residuary item of the schedule as "Any other article of jute manufactures". Further under Rule 3 of the Jute Manufactures Cess Rules, 1984, cess shall be payable on finished jute manufactures removed for sale/subsequent sale by the producer for consumption within the country.

In the absence of any notification exempting levy of cess on final goods in the manufacture of which goods so used has already suffered cess, or granting set off of cess already paid towards the amount of cess payable at the final stage, cess has to be levied, again on the goods in the form they are cleared from the factory.

A factory manufactured jute bags (heading 63.01) from jute fabrics (heading 53.06) obtained from a jute mill on payment of basic excise duty and cess at appropriate rate. The jute bags were cleared for sale without payment of basic excise duty under an exemption notification dated 24 April 1986 but no cess was levied by the department even though there was no exemption notification. This resulted in non-levy of cess amounting to Rs. 1.22 lakhs during the period from June 1986 to August 1987.

On the irregularity being pointed out in audit (September 1987), the department did not accept the objection and stated (February 1988) that as per Board's clarification issued on 30 January 1986 the cess is to be collected only once and not at different stages of the production.

The Ministry of Finance did not admit the objection and stated (October 1988) that the Jute Manufactures Cess Act, 1983 did not provide for collection of cess at multiple points and that a clarification on this point had been issued on 9 August 1988 in consultation with the administratve Ministry.

The contention of the Ministry is not tenable even within the meaning of the clarification referred to as it provides for the avoidance of multiple-stage levy of cess on items manufactured only for captive use and categorically stipulates that cess is to be determined only on the final product sought to be cleared from the manufacturer's premises. The manufacturer in the present case had purchased (cess paid) jute from outside and had cleared jute bags only from his premises. Therefore, cess was leviable on the jute bags on clearance, irrespective of the cess-paid character of the raw material used.

3.58 Short levy of cess

Section 9(1) of the Industries (Development and Regulation) Act, 1951, requires that cess shall be levied and collected on all specified goods manufactured or produced. As per an explanation in the Section, the expression 'Value' is the wholesale cash price for which such goods of the like kind and quality are sold or are capable of being sold for delivery at the place of manufacture and at the time of removal there from, without any abatement or deduction whatsoever except trade discount and the amount of duty then payable.

(i) Automobiles

As per a notification issued on 28 December 1983 cess at the rate of 1/8 percent ad valorem became payable on motor vehicles with effect from 1 January 1984.

As per the Central Excise Laws (Amendment and Validation) Act, 1982 effective retrospectively where a notification or order fixing any rate of duty leviable under a central law providing for levy and collection of any duty of excise, it shall expressly refer to the provision of the Central Law and it shall not have effect unless it fixed the rate of duty under the said Central Law in the preamble.

(a) Cess on motor vehicle was realised from five manufacturers of motor vehicles in Delhi Collectorate, on a value exclusive of excise duty leviable under the Central Excises and Salt Act, 1944, and the special excise duty under the Finance Act. The exclusion of the excise duties (basic and special) was not correct since they were not duties leviable under the Industries (Development and Regulation) Act, 1951. This resulted in short levy of cess amounting to Rs. 19,63,578 during the period from May 1985 to September 1987.

On the irregularities being pointed out in audit (October 1987, November 1987 and January 1988), the department did not accept the objection and stated that the cess is to be collected on the value to be determined under Section 4 of the Central Excises and Salt Act, 1944 and all taxes payable at the time of clearance of the goods had to be deducted from the gross wholesale price to arrive at a net whole sale price. This view is against the advice of the Ministry of Law tendered in February 1985.

(*b*) Cess on automobiles was realised from two manufacturers of automobiles in Chandigarh Collectorate, on the value after excluding the excise duty (basic and special) leviable under the Central Excises and Salt Act, 1944 and the sale tax leviable under the State Sales Tax Act. The exclusion of the excise duties (basic and special) and the sales tax was not correct as these were not duties leviable under the Industries (Development and Regulation) Act, 1951. Only the cess leviable and the trade discount allowable was to be excluded. The mistake resulted in short levy of cess amounting to Rs. 1,29,227 durig the years 1984-85 to 1986-87.

On the irregularities being pointed out in audit (March and July 1987), the department while not admitting the audit objection stated (September 1987) in one case (reply has not been received in the other case) that cess was payable at the same value on which excise duty became payable. However, demand amounting to Rs. 60,453 for 1986-87 was raised as a precautionary measure, for the remaining amount of Rs. 68,774 demand was not raised. The stand taken by the department is not correct as only the cess leviable and trade discount allowable were to be excluded for determining the value under the provisions of the Industries (Development and Regulation) Act, 1951 and there were no provisions in the Act to exclude Central Excise duties and Sales Tax.

(*c*) Cess on motor cycles was realised from another manufacturer in Bangalore Collectorate on the value arrived at by excluding the sum of Rs. 8,36,39,263 being the aggregate of the Central Excise duty under the Central Excise Act and the special duty of excise levied under the Finance Act. The exclusion of these duties of excise from the value for the purpose of levy of cess on automobile was not correct since they were not duties leviable under the Industries (Development and Regulation) Act and what was permissible to be excluded from the cash price was the trade discount and the cess itself as provided in the Act. The mistake resulted in undervaluation of goods by Rs. 8,36,39,263 and consequent short levy of cess amounting to Rs. 1,03,310 on the clearances during the period October 1985 to September 1987.

On the mistake being pointed out in audit (December 1987), the department did not admit the objection and contended (February 1988) that as per Rule 3 of the Automobile Cess Rules, 1984, the provisions of the Central Excises and Salt Act, 1944, and the Rules made thereunder were applicable to the levy and collection of cess as they apply to the levy and collection of excise duty under the Central Excise Act. The department subsequently (March 1988) stated that demand notices were, however, issued in view of the instructions dated 15 January1988 of the Central Board of Excise and Customs which had indicated that the Government was preferring an appeal against the order dated 4 June 1987 of the CEGAT which had held in another case that the assessable value for the purposes of levy of cess on automobiles shall be as per Section 4 of the Central Excises and Salt Act, 1944. This view is against the advice of the Ministry of Law tendered in February 1985.

The Ministry of Finance stated (November 1988) that the final reply from the Ministry of Industry on the issue raised in the aforesaid paras, has not been received.

(*ii*) *Paper*

As per a notification dated 27 October 1980, Cess at the rate of 1/8 per cent ad valorem became leviable on paper with effect from 1 November 1980.

(*a*) Cess on paper was realised from a manufacturer in Nagpur Collectorate, on paper on the value arrived at after excluding excise duty leviable under Central Excises and Salt Act, 1944. The exclusion of excise duty from the value for the purpose of cess was not correct since it was not duty leviable under the Industries (Development and Regulation) Act and thus resulted in short-levy of cess amounting to Rs. 4,60,250 during 1986-87 and 1987-88. Short levy prior to 1986-87 was to be worked out by the department.

On this being pointed out in audit (April 1988 to May 1988), the department did not accept the objection. It was stated (July 1988) that cess being a duty of excise, all provisions of Central Excise Act were applicable for its levy and collection and accordingly cess was being collected on the value, as per section 4 of the Central Excises and Salt Act, 1944. Further though as per the Board's instructions dated 15 January 1988, demand for Rs. 69,688 for the period from November 1987 to March 1988 had been issued on 10 May 1988, the application of proviso to Section 11A for issue of the demand for the extended period did not arise as the cess was then being collected as per the established practice.

(*b*) Cess on paper was realised from four paper mills in Bhubaneshwar Collectorate, on the value arrived at after excluding the duties of excise and sales tax. The exclusion of these duties of excise and sales tax from the value for the purpose of cess was irregular since they were not duties leviable under the Industries (Development and Regulation) Act, 1951. This resulted in short levy of cess amounting to Rs. 3.64 lakhs during the period April 1986 to January 1988 in respect of four units. This was pointed out to the department. In two cases the department replied that show cause-cum demand notice has been issued and the cases are under the process of adjudication. In the other two cases reply from the department has not been received.

(*c*) An assessee in Hyderabad Collectorate, arrived at assessable value for the purpose of levying cess by excluding excise duty, special excise duty and sales tax paid on paper and paper boards. This undervaluation resulted in short realisation of cess during July 1985 to June 1986 by Rs. 1,15,455.

On this being pointed out in audit (July 1986), the department confirmed the demand for Rs. 1,55,264. for the period from June 1985 to June 1987, party has gone in appeal without paying the cess demanded.

The Ministry of Finance stated (July 1988) that a final reply on the issue of defining the value in relation to levy of cess, was still awaited from the Ministry of Industry.

(*iii*) *Bidis*

As per Ministry of Labour notification dated 27 February 1987 circulated by Central Board of Excise & Customs through a letter dated 9 March 1987 cess is to be levied and collected for the purpose of Bidi Workers Welfare Fund Act, 1976 (62 of 1976) at the rate of 30 paise per thousand of manufactured bidis with effect from 1 March 1987.

Different bidi producers in Bolpur Collectorate, were allowed to clear branded bidis on payment of cess at the old rate 10 paise per thousand even though cess had to be levied and collected at enhanced rate under the notification ibid. The irregularity resulted in short levy of cess of Rs. 13.31 lakhs on the clearances of 6,65,68,71,594 bidis between 1 March 1987 and 30 June 1987.

On the mistake being pointed out in audit (July and August 1987), the department admitted the objection and stated that cess at enhanced rate was being realised.

The Ministry of Finance have admitted the objection (November 1988).

IRREGULAR EXEMPTION TO SMALL SCALE MANUFACTURERS

There are many duty reliefs, exemption and special facilities available to small scale manufacturers of specified excisable goods. These concessions can be availed of subject to fulfilling the conditions given in the various related notifications. In the following illustrative cases the concessions have been availed of, even though the conditions governing the same have not been fulfilled.

3.59 Loss of revenue due to legal avoidance of duty liability

(*i*) As per a notification issued on 25 March 1981 as amended musical systems (erstwhile tariff item 33 F) were chargeable to concessional rates of duty (25 percent ad valorem upto 17 August 1983 and 10 per cent ad valorem thereafter) provided the aggregate value of clearances of all excisable goods for home consumption by or on behalf of a manufacturer from one or more industrial units during the preceding financial year did not exceed Rs. 2 crores. Similar concession was allowed to record players (erstwhile tariff item 37A(*i*)) and tape recorders (erstwhile tariff item 37A).

A manufacturer of musical systems, tape recorders and record players was allowed to avail of the aforesaid concessional rates of duty on the clearances from his unit manufacturing these items, even though the clearance value of all excisable goods manufactured by the same manufacturer in two of his units (including the unit manufacturing musical system etc.) exceeded Rs. 2 crores in the previous financial year. This resulted in the short levy of duty for Rs. 20.36 lakhs for the period from April 1983 to November 1985.

On this being pointed out in audit (February 1986) the department did not accept the audit objection and stated (June 1988) that—

(*i*) both the companies are "Limited" in status and possess separate entities distinct from share holders comprising it;

(*ii*) Directors are nothing but the administrators of a company for the smooth working of a company and are paid for their work; and

(*iii*) goodwill of a product is reflected by brand name which helps to capture the market and the company who owns the brand name is being paid royalty for use of the brand name by other company.

The contention of the department is not acceptable as :

(*a*) the two units were separate legal entities, but the Directors had absolute proprietory interest in both;

(*b*) the rationale of grant of concession depended on the assessee being a small scale manufacturer and if the assessee cleared more than Rs. 2 crores worth of goods for all the units under his proprietory control then the rationale was lost considering the assessee as not a small scale manufacturer any more. In the instant case the separate legal identity of the two units under the same proprietory interest of and control amounted to fragmentation of units to circumvent the bars to concession;

(*c*) use of the same brand name and logo for different products manufactured by the two units under the same proprietorship establishes the nexus conclusively.

In a similar case commented upon in para 2·51 (*iii*) of Audit Report 1983-84 the Ministry of Finance had stated as far back as June 1986 that the suggestion of Audit had been noted for consideration. Not withstanding this the Ministry of Finance have not taken any corrective action (November 1988).

(*ii*) As per a notification dated 19 June 1980 (as amended), manufacturers of specified excisable goods were entitled to exemption from full duty on the first slab clearance upto a value of Rs.7.5 lakhs . On the subsequent value of clearance upto a value of Rs.7.5 lakhs, only 75 per cent of duty otherwise leviable was to be charged. The exemption allowed was subject to the condition that the value of clearances of all excisable goods during the preceding year did not exceed Rs.20 lakhs which was raised to Rs.25 lakhs from 1 March 1983. The Central Board of Excise & Customs in its letter dated 6 February 1985 clarified that carbon dioxide gas fell under erstwhile tariff item 14H and hence chargeable to duty.

A sugar factory owned by a State Government manufactured carbon dioxide gas and cleared the products on payment of central excise duty upto 6 March 1978. Thereafter the plant and machinery of the carbon dioxide unit was leased out to some other company. The carbon dioxide produced by the assessee was supplied to the lessee through pipe line for compression/purification/ bottling and sale. The lessee was required to pay lease charges of 2.25 lakhs per annum in fixed instalments besides meeting salaries of personnel employed by the assessee. The lessee was also required to reimburse all charges towards water steam and electricity supplied as well as maintenance and repair charges of carbon dioxide plant on actuals. Further hire charges of the cylinder lent was also payable by the lessee. By leasing out its plant & machinery to some other company would not effect the status of the assessee as being primary manufacturer of the carbon dioxide gas and the concession of duty exemption claimed & allowed to the lessee was not admissible. Due to availment of inadmissible concession, the underassessment of Central Excise duty worked out to Rs.4,78,318 on the clearances affected in 1982-83 & 1983-84.

On this being pointed out in audit (December 1984), the jurisdictional Assistant Collector stated that the lessee company actually processing the impure carbon dioxide supplied through pipe line and bottling, and was eligible for the exemption. It was further stated that a show cause notice demanding duty of Rs.10,11,636 was

issued by the Collector of Central Excise covering the period 1982-83 to 1986-87. In reply to factual note the Deputy Collector (Audit) stated that adjudication proceeding were still pending.

The Ministry of Finance have admitted the objection and stated (November 1988) that the adjudication proceedings are not yet complete.

(*iii*) As per two notifications issued on 1 March 1983 evaporative type coolers' falling under erstwhile tariff item 29A, if manufactured and cleared by small scale units, were either exempt upto an aggregate value of clearances of Rs.2.5 lakhs in a financial year or charged at concessional rate of duty at fifty percent of the effective rate of duty in respect of first clearances upto an aggregate value not exceeding Rs.15 lakhs in a financial year subject to the condition specified therein.

By a notification issued on 1 March 1986 the effective rate of duty of 35 percent ad valorem was prescribed for evaporative type coolers falling under heading 84.15.

The benefit of general small scale exemption available under another notification dated 1 March 1986 was later made applicable to E.T. coolers from 24 April 1986 as per an amending notification issued on 24 April 1986, without withdrawing the earlier small scale exemption notifications issued in March 1983. This resulted in availability of two small scale exemption benefits simultaneously for clearances of E.T. coolers under notifications issued in March 1983 and March 1986.

A manufacturer of E.T. coolers paid duty at 7.5 percent (17.5 percent minus 10 per cent) ad valorem, claiming the concessional rate of 50 per cent of duty as effective rate of duty and further exemption of 10 per cent reduction in duty as per the general small scale exemption notification dated 1 March 1986. The assessee cannot avail of the concession of the two notifications simultaneously inasmuch as both the notifications were based on value of clearances in the financial year. Taking into account the effective rate of 35 per cent ad valorem as per notification dated 1 March 1986 availing of the duty concessions under the small scale exemption notification of 1 March 1983 and general small scale exemption notification of 1 March 1986 simultaneously by the assessee resulted in short payment of duty of Rs.1.64 lakhs during the period from 24 April 1986 to 31 March 1987.

On this being pointed out in audit (June 1987), the Assistant Collector, did not accept the objection and stated (July 1987) that both the notifications dated 1 March 1983 and 1 March 1986 being in force simultaneously, concessions thereunder could not be denied to the assessee. The contention of the department is not acceptable in view of the position explained above.

The Ministry of Finance did not admit the objection and stated (October 1988) that there is nothing in either of these two notifications which can prevent a manufacturer to avail of the exemption under both the notifications provided that the conditions prescribed in both the notifications are satisfied. The Ministry's stand is not acceptable. The issue of simultaneous availment of exemption available under two notifications came before the combined meeting of the Central Excise Regional Advisory Committee (organised sector and small scale sector) of the Central Excise Collectorate, New Delhi held on 12 July 1988 wherein (point No. 17 of the minutes) it has been viewed that it is open to a manufacturer to avail of either of the parallel notifications subject to fulfilment of all the conditions prescribed therein. The assessee in the instant case has availed both the notifications whereas he could avail of either of the two.

3.60 Short levy of duty due to incorrect grant of exemption available to small scale manufacturers

As per a notification issued on 1 March 1986, the specified goods upto an aggregate value of Rs. 75 lakhs cleared for home consumption during a financial year by a manufacturer availing of the credit of duty paid on inputs used in the manufacture of such specified goods under modvat scheme are exempted from so much of the duty of excise thereon as is equivalent to amount calculated at ten per cent ad valorem provided that the amount of duty of excise payable on such specified goods shall not be less than the amount calculated at 5 per cent ad valorem.

However, specified excisable goods are entitled to exemption from full duty on the first clearances upto a value of Rs.15/30 lakhs and on subsequent clearances upto a value of Rs. 75 lakhs at concessional rate provided inter alia that the manufacturer does not avail of the credit of duty paid on inputs under the modvat scheme.

This exemption is, however, not available to the manufacturers who had cleared excisable goods worth more than Rs.1.50 crores during the preceding financial year.

(*i*) A manufacturer of 'glass bottles' (specified goods) falling under Chapter 70 was allowed the concession admissible to small units under notification dated 1 March 1986 with effect from 1 April 1986 although the total value of the excisable goods cleared by him during the preceding financial year 1985-86 had exceeded Rs. 1.50 crores. In fact the assessee declared such value as Rs.1.28 crores whereas as per his Balance Sheet the sale value during the accounting year July 1984 to June 1985 and July 1985 to June 1986 (Rs.1.74 crores and Rs.2.39 crores respectively) had already exceeded the prescribed maximum limit of Rs.1.50 crores. Since total clearances during the finacial year 1985-86 had already exceeded Rs.1.50 crores the assessee was not eligible for exemption. The incorrect grant of exemption resulted in non-levy of duty of Rs.13.73 lakhs during 1986-87.

On this mistake being pointed out (September 1987) in audit, the department stated (February 1988) that the records of the assessee were under scrutiny by the Director of Revenue Intelligence and action could be taken only after the facts were verified.

The Ministry of Finance stated (October 1988) that show cause notice demanding duty of Rs.22.83 lakhs had been issued and the assessee has gone in appeal before the Calcutta High Court and got the stay.

(*ii*) A manufacturer of specified excisable goods submitted classification list (effective from 2 April 1986) for availing total exemption in respect of first clearance of Rs. 30 lakhs, and did not opt for the modvat credit. After clearing goods worth Rs.55,800 without payment of duty availing exemption till 31 May 1986 the manufacturer continued to clear excisable goods on payment of conscessional rates of duty (availing concession from duty at the rate of 10 percent ad valorem from the normal duty payable) under the said notification. This was incorrect since assessee did not opt for the concessional rate of duty (admissible alongwith the availment of credit under the modvat scheme) but had opted for the full exemption upto Rs.15.30 lakhs.

Since the assessee could not clear the goods in accordance with the classification list, concessional rate of duty was not admissible to him. Duty was, therefore, leviable at full tariff rate. This resulted in short levy of duty of Rs.2,94,420 in respect of first clearance of specified goods during the period from June 1986 to October 1986.

On the short levy being pointed out in audit (September 1987 and November 1987), the department did not accept the objection and stated (January 1988) that pending approval of classification list assessments were provisional. The department added that the assessee was entitled to refund of duty which was duly filed by the assessee in December 1987.

The reply of the department is not correct as the clearances at concessional rate appear to have deliberately been made by the manufacturer to facilitate the consignee to avail credit at the higher rate under Rules 57A and 57B of the Central Excise Rules, 1944. Payment of duty at conscessional rates had benefitted the consignee to the extent of Rs. 2,94,420.

The Ministry of Finance did not accept the objection and stated (November 1988) that the assessee had wrongly paid the duty at concessional rate, as such he was entitled to refund of the same. Since the refund claim had not been settled because the modvat credit taken by the buyer was not got reversed which was being done. The Ministry added that the assessee is not required to pay duty at all.

The Ministry's reply is not acceptable as the assessee did not opt for the concessional rate of duty but had opted for the full concession (which he did not avail), he was required to pay duty subject, however, to the adjustment of refunds, if any otherwise due.

(iii) As per notification issued on 1 March 1986 a revised scheme for duty exemption to small scale industries was introduced. "Refrigerating and air-conditioning appliances and machinery and parts and accessories thereof" were, however, excluded from the purview of this scheme for which a separate scheme was made applicable.

A manufacturer of cocks and valves, pulley, belt guard, damper, receiver and M.A. saddle and similar other parts, was allowed to avail of the duty exemption benefits under the revised scheme in terms of the aforesaid notification dated 1 March 1986. As per clarification issued by the Central Board of Excise and Customs on 25 September 1986 such goods are actually "parts and accessories of air conditioning machinery or appliances". As such the duty exemption benefit of small scale industries was not applicable to them. The incorrect grant of exemption resulted in short levy of duty of Rs. 2.53 lakhs during 1 March 1986 to 31 May 1987.

On the mistake being pointed out in audit (June 1987), the department stated (February 1988) that a draft show cause-cum demand notice for Rs.1.66 lakhs covering the period from 1 March 1986 to 31 December 1986 had been sent to the Collector for his consideration. On verification by Audit (February 1988) it was also seen that show cause-cum demand notice for Rs.0.87 lakh covering the subsequent period from 1 January 1987 to 31 May 1987 had also been issued.

The Ministry of Finance have admitted the objection (August 1988).

3.61 Irregular grant of exemption on clearance of specified goods in excess of the exemption limit

As per a notification issued on 1 March 1986 as amended by a notification issued on 2 April 1986, first clearances of all excisable goods for home consumption on or after the 1st day of April in any financial year upto a value not exceeding Rs.15/30 lakhs are fully exempt and further upto a value not exceeding Rs. 75 lakhs are exempt to the extent of ten per cent ad valorem subject to a minimum duty of five percent ad valorem, in cases where manufacturers avail of the credit of duty paid on inputs under Rule 57A of the Central Excise Rules, 1944.

The aggregate value of clearances of specified goods is to be computed taking into account all clearances made from all factories of the same manufacturer or made by a manufacturer from one or more factories.

(i) A small scale unit manufacturing zinc oxide classifiable under three different sub-headings viz. 2804.30, 3206.19 and 3801.30 depending upon their end use) cleared the goods on full payment of duty and simultaneously availed of credit of duty paid on inputs under the provisions of Rule 57A of the Central Excise Rules, 1944. The unit had reached the limit of aggregate value of all clearances of Rs.75 lakhs (the limit upto which goods could be cleared at the conscessional rate of duty of 5 percent *i.e.* 15 percent as reduced by ten percentage point) by August 1986. The assessee, however, started payment of duty at concessional rate of 5 per cent ad valorem in respect of zine oxide (rubber accelerator) falling under sub-heading 3801.30 cleared from 1 December 1986 in terms of notification ibid and the same was allowed by the department upto February 1987. This was not in order as the assessee had already crossed the exemption limit of Rs.75 lakhs in August 1986 and resulted in short levy of duty of Rs. 4.05 lakhs on clearances during the period from December 1986 to February 1987.

On the irregularity being pointed out (October 1987) in audit the, department admitted (May 1988) the irregularity but stated that there was no loss of revenue as the assessee had paid more duty during the period of eligibility of exemption than the amount of concession in duty availed of by him during the non-eligibility period and could have claimed refund of excess duty paid.

The reply of the department is not specific. The audit objection is that the assessee availed of the concessional rate of duty during the period when he had crossed the first clearance of Rs.75 lakhs in value of the goods. The point of refund of excise duty paid in excess is a separate issue which is to be decided under section 11 B of the Central Excises and Salt Act, 1944.

The Ministry of Finance have accepted the under-assessment (November 1988).

(ii) An assessee engaged in the manufacture of blister packing machines (heading 84.22), cleared them on payment of duty at concessional rate upto the first clearance value of Rs.75 lakhs under the aforesaid notification dated 1 March 1986. It was, however, seen from the Balance Sheet of the assessee company that the assessee was having one more wholly owned subsidiary company with the same name situated elsewhere, manufacturing excisable goods falling under Chapters 74 and 76. For computing the value of the first clearances of Rs.75 lakhs, clearances of the specified goods from all the factories of a manufacturer are to be taken into account. Non-inclusion of the value of specified goods cleared from the subsidiary company for arriving at the aggregate value of clearances of Rs. 75 lakhs resulted in under-valuation of clearances by Rs. 15 lakhs (approximately) during 1986-87 with consequential short payment of duty of Rs.2.25 lakhs.

On this being pointed out in audit (December 1986) the department accepted the objection and stated (January 1988) that the assessee had while filing the classification list suppressed the fact that he had a wholly owned subsidiary company situated elsewhere and manufacturing excisable goods. The department has however issued show cause-cum demand notice for Rs.3.25 lakhs for the years 1982-83 and 1986-87 in July 1987. For the years 1983-84, 1984-85 and 1985-86 it was stated that no such demand would arise as the assessee had paid duty at full rates. It added that action was being taken by the Collector concerned to recover the duty short paid by the assessee.

The Ministry of Finance have accepted the underassessment (November 1988).

(iii) As per a notification issued on 1 March 1983 as amended, first clearances of refrigerating and air-conditioning appliances and machinery, all sorts falling under Chapter 84 upto a value of Rs.15 lakhs in a financial year were exempt from so much of duty leviable thereon as was in excess of fifty percent of such duty. Where a manufacturer had made clearances for the first time on or after the 1st day of August in the preceding financial year, the exemption contained in the notification was not applicable if the aggregate value of clearances of the said goods during the relevant financial year exceeded Rs.15 lakhs.

A manufacturer of evaporative type of coolers falling under heading 84.15 obtained Central Excise licence on 18 February 1986. There was no clearance of the said goods prior to August 1985. He availed the aforesaid concession during the financial year 1986-87 upto 23 April 1986. The value of clearances of the said goods upto that date was Rs. 9.30 lakhs. Thereafter he started availing exemption in terms of general small scale exemption notification dated 1 March 1986 as amended by notification issued on 24 April 1986. The value of clearances of the said goods during the financial year 1986-87 aggregated to Rs. 29,97,470. As the limit of Rs. 15 lakhs was exceeded in 1986-87 the grant of exemption from 1 April 1986 to 23 April 1986 was irregular and resulted in short levy of duty of Rs. 1.63 lakhs.

The Ministry of Finance have admitted the objection (October 1988).

(iv) As per a notification issued on 17 March 1985 duty on specified excisable goods cleared for home consumption by a manufacturer during the financial year 1985-86 were eligible for certain concessional rate (including nil rate) subject to the condition that the aggregate value of all excisable goods (other than exempted category thereof) cleared for home consumption during the preceding financial year did not exceed Rs. 75 lakhs.

According to another notification issued on 3 May 1969, patent or proprietary medicine (tariff item 14E) specified ingredients one of which was "metronidazole" was fully exempt from duty.

A manufacturer of patent or proprietary medicine was availing of the benefit of exemption granted under notificaton dated 17 March 1985 as the aggregate value of clearance during the preceding financial year (1984-85) did not exceed Rs. 75 lakhs. He also manufactured a variety of medicine known as 'metrosan paediatric suspension' and cleared it for home consumption without payment of duty in terms of notification dated 3 May 1969 as the product was stated to contain "metronidazole" as the active ingredient. But the said product contained "metronidazole benzoyle oxylate" as the active ingredient which was not "metronidazole" and accordingly the benefit of exemption was not admissible. The value of the said product cleared during the preceding financial year was includible in the aggregate value of all excisable goods cleared by the manufacturer, and rendered the manufacturer ineligible for the benefit of exemption granted under notification dated 17 March 1985 as it exceeded the ceiling of Rs. 75 lakhs. This resulted in short levy of duty to the tune of Rs. 2,84, 375 during 1985-86. There was also a non-levy of duty on the product ie. "metrosan paediatric suspension" cleared during the period April 1983 to November 1984 to the extent of Rs. 43,082.

The irregularity was pointed out to the department in July 1986 and to the Minstry of Finance in June 1987.

The Ministry of Finance have admitted the objection (March 1988).

3.62 Irregular grant of exemption on clearance of erstwhile tariff item 68 goods in excess of the limit applicable to small scale units

As per notification issued on 17 March 1985, as amended , goods, other than sandal-wood oil, falling under tariff item 68, cleared for home consumption on or after 1st day of April in any financial year were wholly exempt from payment of duty upto value not exceeding Rs. 20 lakhs while only 25 percent of duty otherwise leviable was to be charged on subsequent clearances of Rs. 10 lakhs and 75 percent of duty otherwise leviable was to be charged on next clearances of Rs. 10 lakhs. No exemption was admissible in respect of clearances beyond Rs. 40 lakhs.

(a) A manufacturer cleared phenyl ethyle alcohol valued at Rs. 45,50,344 without payment of duty during the period from April 1985 and February 1986 on which duty of Rs. 1,86,041 was chargeable under the aforesaid notification.

On the omission being pointed out (May 1986), the department raised a demand of Rs. 1,86,041 in October 1986 and accepted audit objection as correct (May 1988).

The Ministry of Finance have accepted the under-assessment (November 1988).

(b) A unit engaged in the manufacture of motor vehicle parts (i.e. rider seat of two wheeler) falling under the erstwhile tariff item 68, cleared his goods valuing Rs. 44.43 lakhs during the period April 1985 to February 1986. While availing exemption from payment of duty on first clearances of Rs. 20 lakhs the clearances made from April 1985 to June 1985 valuing Rs. 13.75 lakhs were omitted to be included in the first clearances of Rs. 20 lakhs. The omission to include clearances made from April 1985 to 30 June 1985 resulted in short levy of duty amounting to Rs. 1.33 lakhs.

The short levy was pointed out in audit in March-April 1988. The reply of the department has not been received (July 1988).

The Ministry of Finance have admitted the objection (November 1988).

DEMANDS FOR DUTY NOT RAISED

3.63 Failure to raise demand of duty

Section 11-A of the Central Excises and Salt Act, 1944 requires that where any duty of excise has been short levied or short paid, a demand-cum-show cause notice may be issued within six months from the relevant date, to the person chargeable with the duty requiring him to show cause why he should not pay the amount specified in the notice. The Central Board of Excise and Customs in a circular letter issued on 11 November 1986 have also stressed the need for issue of demand notices within the prescribed time limit so that there is no loss of revenue on account of operation of time bar. Departmental Officers were also cautioned against issue of ordinary demand letters instead of issuing a formal demand notice.

(i) Food colours and food colour preparations being in the nature of synthetic organic colouring matter classifiable under sub-heading 3201.90 were leviable to duty at the rate of 35 per cent ad valorem from 1 March 1986 to 21 August 1986. The rate of duty was reduced to 20 per cent ad valorem from 22 August 1986 by issue of a notification.

A small scale manufacturer was engaged in the manufacture of food colour preparations and the department had initially misclassified (March 1986) the goods under sub-heading 2107.91 applicable to edible preparations and had accordingly collected duty at the rate of 15 percent ad valorem on the clearances from 1 March 1986. On receipt of the aforesaid notification in August 1986 indicating that food colours and food colour preparations were classifiable under Chapter 32, he got the goods reclassified under Chapter 32 and paid duty at the rate of 20 percent ad valorem on the clearances from 22 August 1986.

However, the department failed to set right the misclassification of the goods valued Rs. 54,41,959 cleared during the period from 1 March 1986 to 21 August 1986 and to issue show cause-cum demand notice for the short levied duty, resulting in loss of revenue amounting to Rs. 10,88,372.

This was pointed out in audit in January 1988; the reply of the department has not been received (April 1988).

The Ministry of Finance have admitted the objection (September 1988).

(ii) As per classification list approved by the department some of the goods manufactured in a factory were classifiable under sub-heading 3801.90 of the Central Excise Tariff Act, 1985 and assessable to duty at 15 per cent ad valorem. However, these goods were cleared from the factory after paying duty at the rate of 12 per cent ad valorem under heading 69.01 during the period from 1 March 1986 to 4 May 1986. This resulted in short realisation of duty amounting to Rs. 4,62,034. The Range Officer issued an ordinary letter on 15 December 1986 asking the assessee to pay the aforesaid amount of Rs. 4,62,034 instead of issuing a show cause-cum demand notice. The said ordinary letter was not honoured by the assessee, as a result of which the demand became time barred causing loss of revenue of Rs. 4,62,034.

On this being pointed out in audit (August 1987 and September 1987), the Assistant Collector stated (February 1988) that a show cause-cum demand notice was issued and that party's reply thereto was under investigation.

The Ministry of Finance have admitted the audit objection (November 1988).

(iii) As per note 2 of Chapter 25 of the Central Excise Tariff Act, 1985, materials like salt, asbestos and mineral substances like stone, lime etc., would be classifiable under that Chapter, if they have been washed, crushed, ground, powdered etc., but not products that have been roasted, calcined or obtained by mixing. As per a tariff advice dated 3 September 1986 burnt lime was appropriately classifiable under heading 25.05, and attracted duty at the rate of 12 per cent ad valorem.

An integrated steel plant engaged in the manufacture of iron, steel and articles thereof, was captively using burnt lime manufactured by it as a flux in the manufacture of special steel.

The burnt lime was classified from 1 March 1986 under Chapter 25. Subsequently, on receipt of a notification dated 2 April 1986 which provided for exemption to specified goods including inorganic chemicals manufactured in a factory and used as inputs in the manufacture of specified final products including iron and steel and articles thereof, the assessee reclassified the burnt lime under Chapter 28 treating it as an inorganic chemical and claimed exemption from duty under that notification. This was accepted by the department and no duty was levied on burnt lime used as input with effect from 2 April 1986. However, in September 1986 the Central Board of Excise and Customs clarified that burnt lime should appropriately be classifiable under heading 2505. Accordingly the department should have initiated action not only to reclassify the burnt lime under Chapter 25, but also to collect duty from 2 April 1986.

The department, however, reclassified the goods under Chapter 25 from 1 March 1987 and issued on 4 June 1987 a show cause cum-demand notice relating to the period December 1986 to 28 February 1987, but failed to raise demand for the period 2 April to 30 November 1986 during which the assessee had manufactured and captively used 3,559.990 tonnes of burnt lime valued Rs. 32,33,991 on which a duty of Rs. 3,84,479 was leviable.

The mistake was pointed out in audit to the department in October 1987 and to the Ministry of Finance in July 1988.

The Ministry of Finance admitted the objection and stated (October 1988) that the demand had become time barred.

(iv) As per a notification issued on 28 August 1985, synthetic staple fibres classifiable under sub-heading 5501.20 was exempted from the whole of the duty of excise leviable thereon, if such fibres are intended for the manufacture of low priced blended "sound" fabrics under a programme duly approved by the Textile Commissioner and the Ministry of Supply and Textiles. The notification stipulated that the exemption is also applicable to the synthetic staple fibres contained in the fents, rags and chindies of the fabrics, only upto an aggregate quantity not exceeding eight per cent of the total quantity of clearances of the "sound" fabrics. As the manufacturer of the synthetic fibres was different from the manufacturer of the fabrics, and as the exemption to the synthetic fibres was subject to certain quantitative limits, ascertainable only after the manufacture of the fabrics, the department was to keep a watch over the production of fents, rags and chindies by the manufacturer of fabrics in order to ensure that there was no escapement of duty due on the fibres and to initiate action for recovery of duty either from the manufacturer of the synthetic fibres by duly informing the respective Excise Officers having jurisdiction over their factories or from the manufacturer of the low priced blended fabrics as may be warranted.

A composite textile mill in the public sector, obtained polyester staple fibres exempted from duty as aforesaid from several manufacturers of staple fibres for the manufacture of low priced blended fabrics under a programme approved by the Textile Commissioner. During the period from January 1987 to June 1987 the mill had cleared 5,23,269 linear metre, of "sound" blended fabrics containing 39,406 kilograms of the polyester staple fibres. During the same period, the mill had also produced fents, rags and chindies of the blended fabrics which contained 8,488 kilograms of the polyester staple fibres. As per the aforesaid notification, the quantity of the polyester staple fibres containd in the fents, rags and chindies of the blended fabrics covered by the exemption was only 3,251 kilograms and therefore the balance quantity of 5,237 kilograms of the polyester staple fibres had escaped levy of duty amounting to Rs. 1,33,429.

This was pointed out in audit to the department in January 1988 and to the Ministry of Finance in July 1988.

The Ministry of Finance have admitted the objection (October 1988).

3.64 Demands barred by limitation

Section 4 of the Central Excises and Salt Act, 1944 allows of deduction of duty payable from the price of the manufactured product to arrive at the assessable value. But if the assessee collects more duty than the duty paid to Government the assessable value is required to be redetermined after adding such excess to the original assessable value. An amendment to the Section 4 ibid under Section 47 of the Finance Act, 1982 with retrospective effect from 1 October 1975 made the aforementioned position clear. The Ministry in their letter dated 14 May 1982 clarified that if the duty leviable in terms of the amended Section 4 has not been collected the same would now be recoverable with effect from 1 October 1975 and the demands in such circumstances for recovery of duty would have to be issued under sub-section 2(d) of the Section 47 of the Finance Act, 1982 and not under Section 11-A of the Act ibid.

A manufacturer of kraft paper (erstwhile tariff item 17) paid duty at concessional rate under a notification issued on 18 June 1977 but realised full duty from customers. Since this practice of collection of more duty than that paid to Government required redetermination of assessable value and the department did not issue any show cause-cum demand notice for short levy of duty, an audit objection was raised on this issue on 5 April 1981. The department in its reply dated 9 June 1982 intimated that show cause-cum demand notices were being issued to the assessee from time to time.

During subsequent audit (March 1987) it was noticed that the department issued ten show cause notices under Section 11-A ibid between November 1982 and 28 July 1983 for the differential duty of Rs. 9.18 lakhs for the period from July 1979 to September 1980. While adjudicating the show cause notices, the Assistant Collector held (31 July 1985 and 27 September 1985) all the demands as time-barred on the grounds that neither the demands were issued in time nor the amount of bond of provisional assessment was sufficient. The adjudication orders were not sent for examination by the Collector (Appeals) under Section 35E(2) of the Act.

Thus even after enactment of Section 47 of the Finance Act, 1982 and clear instructions from the Ministry to issue such demand notices under sub-section 2(d) of Section 47, the department issued show cause-cum demand notice under Section 11-A. This technical flaw of not issuing proper show cause-cum demand notices escaped the notice of the department. Moreover all along the department claimed awareness of short payment of duty but no precautionary measures like executing bond of provisional assessment for sufficient amount was taken to safeguard revenue resulting in loss of Rs. 9.18 lakhs.

On this being pointed out in audit (March 1987), the department stated (April 1988) that —(i) there is no record to show that the assessee was requested to enhance the amount of bond for provisional assessment; (ii) the reason for non-issue of the show cause notices under Section 47 of the Finance Act 1982 could not be stated at this stage; and (iii) even if review by the Collector was resorted to under Section 35E(2) the time barred aspect could not have been overcome because the amendment brought out by Section 47 of the Finance Act 1982 did not provide for immunity from the operation of time bar under Section 11-A of the Act.

The contention of the department regarding time bar is not acceptable as under sub-section 2(d) of Section 47 of the Finance Act, 1982 recovery shall be made of all such duties which have not been collected. Moreover the Ministry's instructions dated 14 May 1982 are very clear on this subject.

Thus, the department failed to take timely action resulting in loss of revenue for Rs. 9.18 lakhs.

The Ministry of Finance have admitted the objection (November 1988).

3.65. Non-recovery of Central Excise dues and vacation of stay orders from Courts

The Public Accounts Committee (Seventh Lok Sabha) in para 1.37 of their 170th Report recommended that there should be a separate Directorate in the Central Board of Excise and Customs as also suitable cells in all the major Collectorates to pursue and keep a watch on all cases of litigation relating to excise and customs and to ensure that the departmental cases are not allowed to fall through because of default or inadequate presentation. In para 1.40 of the above report the Committee recommended to examine the feasibility of making a povision in the excise legislation for depositing with the court for credit to the Public Account of India, all amounts of tax collected by the assessee from his customers or the admitted amount of tax whichever is higher as a condition precedent to the court entertaining the suit or appeal or petition. While examining the action taken by the Government on the recommendation of the Public Accounts Committee in the above report, the Committee's attention was also drawn to the judgment of the Supreme Court pronounced on 30 November 1984 in the case of Assistant Collector of Central Excise, West Bengal vs. Dunlop India and others regarding stay of excise dues to Government. The Supreme Court in that judgment observed that the practice of passing of interim orders would be an exception and not a rule. The Court added that where duty had been collected by the assessee from the customer, there was no case for granting stay by the High Court from payment of duty. The Court further observed that no Government business can be carried on merely on bank guarantees and liquid cash is necessary for running of Government. Accordingly, the Committee in para 1.9 of their 9th Report (Eighth Lok Sahba) desired that the Government should review all cases pending in the Courts in the light of the aforesaid judgment and to take all steps to get the stay orders vacated and the dues collected immediately. Some cases of delay in obtaining vacation of stay orders from the Court involving heavy amount of duty and non recovery of central excise dues are given below.

(1) *Non-compliance with the package deal terms by the textile mills and consequent non-recovery of central excise dues*

(*i*) Some textile mills in Gujarat had filed petitions in the Courts mainly on issues regarding :—

(*a*) legality of levy of duty on captive consumption of yarn;

(*b*) duties leviable under the Acts other than Central Excise Act *viz.* additional duties of excise and special excise duty;

(*c*) duty on the sized weight of the yarn;

(*d*) duty on the blended yarn prior to 16 March 1972; and

(*e*) inclusion of yarn duty (compounded levy) in the assessable value of fabrics :

and had obtained stay from the various Courts.

(*ii*) Regarding levy of duty on captive consumption, Rules 9 and 49 of the Central Excise Rules, 1944, were retrospectively amended in February 1982 and the retrospective amendment was upheld by the Supreme Court in the case of J.K. Spinning & Weaving Mills Ltd. and another vs. Union of India in October 1987. As regards the levy of duty under other Acts, the issue was settled in the case of Modi Rubber Industries in August 1986. Regarding levy of duty on the sized weight of yarn, the Supreme Court had given its verdict in the above case of J.K. Spinning & Weaving Mills Ltd.

(*iii*) Though interim stay on various terms had been obtained by the mills from the courts, pending their final decision the Government of India offered a package deal in April 1985 for the outstanding arrears to be recovered from fifteen textile mills in two Collectorates in Gujarat.

(*iv*) The terms of the package deal consisted of the following :—

(*a*) The mills have to withdraw all the cases pending in the courts immediately. If the decision of the court in similar matter goes against the Government, the benefit of such adverse decision would be available to them irrespective of the fact that the cases had been withdrawn by them;

(*b*) The bank guarantees executed by the mills would continue to remain operative and, as and when the instalments are paid, the bank guarantee would be reduced by an equal amount;

(*c*) Where bank guarantees have not been executed as required under the orders of the court, the instalments paid would not effect the existing bank guarantees till due unguaranteed portion of the arrears are paid by instalments;

(*d*) The payments would be made in monthly instalments and in case of default in any month, the excise authorities would take coercive action of attachment of the goods for realisation of arrears; and

(*e*) No interest would be chargeable.

(*v*) Though, the Government had entered into a package deal for realisation of arrears amounting to R. 20 crores it was noticed that in most of the cases the terms of package deal were not honoured and recovery of arrears had not been effected. Only 2 out of 15 mills withdrew all the court cases. Two other mills paid the outstanding amount in full though the number of instalments had varied. Realisation of arrears by encashment of bank guarantees was not done on account of the following :—

(*a*) Some bank guarantees had expired, while some others were not renewed due to the closure of the mills.

(*b*) The bank were reluctant to honour the guarantees on various grounds. The State Bank of India took the plea that they were not party to the package deal between the Government and the mills, implying thereby that the guarantees given in the context of a stay by a court could be invoked only in terms of the decision of the court.

(*c*) In some cases, the mills had been declared as a relief undertaking under the Bombay Relief undertaking (special provision) Act, 1958 by which all liabilities occurred or incurred before the notification declaring the unit as a relief undertaking stood suspended.

Against Rs. 20 crores recoverable as per package deal only Rs. 10.07 crores were recovered.

The Ministry of Finance have given (November 1988) the position of the 15 cases as under :—

1. Out of Rs. 87 lakhs, Rs. 7.29 lakhs has been paid by the party. Since they did not honour the terms of agreement, goods worth Rs. 81,11,152 were detained by the department on 5 September 1986. The Mill approached the High Court and as per their order the goods (fabrics) have been disposed of and net sale proceeds have been deposited in bank. The claims of employees, Bank and the Central Excise department will be settled by the Court.

2. Out of the total amount of Rs. 62.54 lakhs at the time of package deal, Rs. 33.86 lakhs were paid by the assessee. They furnished the bank guarantee for balance of Rs. 28.68 lakhs out of which Rs. 6.22 lakhs have been recovered by invoking bank guarantee. For the remaining amount the bank has not honoured the guarantee. As per orders of the High Court, fabrics lying in stock have been disposed of and sale proceeds have been deposited in a bank. The claims of employees, Banks and Central Excise department will be settled by the Court.

3. Out of the total amount of Rs. 52.92 lakhs, Rs. 25.05 lakhs were recovered upto June 1986. For outstanding amount of Rs. 27.86 lakhs, bank guarantee was invoked for Rs. 5.50 lakhs. Guarantees for Rs. 15.50 lakhs have lapsed. For the balance amount the matter has been taken up with the bank authority.

4. Out of the total amount of Rs. 2,99,43,045 outstanding at the time of package deal, Rs. 1,09,22,355 have been paid by the Mill in monthly instalments. For the balance amount, bank guarantee of Rs. 96 lakhs was invoked, but the bank has not honoured it. Thus to recover the amount Assistant Collector had ordered attachment & detention of the goods including machinery totally valued around Rs. 1,90,20,690 under Rule 230 of Central Excise Rules, 1944 on 8April 1987. Meanwhile Gujarat High Court has appointed an official liquidator of the Mills on 23 April 1987 and the department have preferred claims before him.

5. At the package deal Rs. 178.95 lakhs were outstanding against the Mill. Out of this Rs. 144.89 lakhs

were on account of captive consumption of yarn and balance amount of Rs. 34.06 lakhs arose on account of sizing material. Unit has paid Rs. 14.64 lakhs. The Bank guarantee for Rs. 78.45 lakhs have been invoked but the bank has yet to make payment. The Mill is, closed since 24 July 1987. The goods were attached on 31 March 1987 and 26 May 1987 under Rule 230 and auction was fixed for 29 July 1987. However labour court has sealed the Mill on 23/24 July 1987. The demand of Rs. 34.06 lakhs on account of duty on weight of size yarn is not enforceable in view of Supreme Court judgment in case of M/s. J.K. Cotton, Spinning & Weaving Mills.

6. Out of Rs. 41 lakhs due at the time of package deal, Rs. 3,67,986 are on account of duty on weight of size yarn and are not enforceable now in view of Supreme Court judgment. The fabrics and machinery valued at around Rs. 42.79 lakhs were attached under Rule 230 on 17 October 1986. Out of this fabrics worth Rs. 15 lakhs were released on 23 October 1986 as per High Court's order.

7. Out of Rs. 187.52 lakhs outstanding at the time of package deal, Rs. 8 lakhs have been paid by the party. Bank guarantee worth Rs. 26 lakhs has expired. Bank guarantee for Rs. 46 lakhs were invoked but have not been honoured so far. The mill is closed since 18 November 1986.

8. Out of Rs. 260.53 lakhs outstanding against the Mill at the time of package deal, Rs. 54.46 lakhs has been paid by the Mill. For Rs. 147 lakhs, the bank guarantee was invoked. Bank guarantee for Rs. 12 lakhs has lapsed. To recover balance outstanding of Rs. 47.07 lakhs goods worth Rs. 21,07,546 were attached under Rule 230 on 2 August 1985. The goods could not be auctioned as Mill had been declared a relief undertaking on 14 August 1985.

9. Out of total amount of Rs. 37.82 lakhs outstanding at the time of package deal, Rs. 14,100 have been paid by the assessee and Rs. 7,07,962 is not enforceable as it is on account of duty on size yarn. The bank guarantee of Rs. 9.42 lakhs has been lapsed and for remaining guarantee of Rs. 4.90 lakhs, the matter has been taken with the bank. The department had attached the plant and mahinery of the unit on 5 January 1987 under Rule 230 although the Mill was declared a Relief Undertaking upto February 1987.

10. Out of Rs. 26,85,352, Rs. 24,20,512 has been paid by the Mil lfor the balance amount, goods worth Rs. 2.75 lakhs were attached, but could not be disposed of for want of bidder. Now the Labour Court has attached entire property of the Mill.

11. Out of Rs. 60.80 lakhs outstanding at the time of packages, Rs. 46,61,656, are due on account of duty on weight of sized yarn which is not recoverable in view of Supreme Court's judgment. The bank guarantees furnished by the party are alive but have not been invoked. The Mill is working.

12. Mill had paid the amount in full.

13. Amount has been paid in full by the Mill.

14. There are four cases of the Mill involving Rs. 190.95 lakhs. In one case involving Rs. 1,23,60,297 the Supreme Court has decided the case vide their judgment in case of M/s. J. K. Cotton Spinning and Weaving Mills. However individual case has not been taken till date. In another case, involving duty of Rs. 19,58,983 relating to issue of sized yarn the duty is not recoverable in view of the Supreme Court's judgment. In third case involving duty of Rs. 11,041 and relating to classification of particular variety, the appeal filed by the department against CEGAT's order ispending in Supreme Court. In the fourth case appeal filed by the party is pending before Supreme Court. The amount involving which is Rs. 47,15,731 has been deposited on 17 November 1979 in the civil court. However, the Supreme Court has restrained the department from recovering this amount.

15. The amount involved is Rs. 54,126. The Collector (Appeal) has decided in favour of the party and no amount is recoverable now.

2. *Non-recovery of central excise dues from a mill not covered by package deal*

A textile mill which was not a party to the package deal, obtained stay from the Supreme Court against the recovery of duty on yarn used for captive consumption, duty payable under the additional duties of excise (Textile and Textile Articles) Act, 1978 and special excise duty payable under the Finance Acts of relevant years. The total duty involved amounted to Rs. 106.83 lakhs against which the bank guarantees furnished by the mill amounted to Rs. 66.70 lakhs. The issues were decided by the Supreme Court in favour of the department as mentioned in para 1(ii). Moreover, the bank guarantees executed by the Company had lapsed and could not be renewed due to the closure of the mills in June 1984. The mill had since been nationalised under the Gujarat Closed Textile Undertaking (Nationalisation) Act, 1986 and under Section 5(1) of that Act every liability of the owner of the specified textile undertaking in respect of any period prior to the appointed day would be the liability of that owner and shall be enforceable against him and not against the State Government. When the department initiated action by order of detention under Rule 230 of Central Excise Rules, the Gujarat State Textile Corporation obtained interim relief from the High Court on the grounds that the corporation was not liable. When the department based on the judgment of the Supreme Court regarding levy of duty on the yarn captively consumed, lodged its claim with the Commissioner of Payments appointed under the above Act, it was stated that the question of payment did not arise for want of funds. Thus arrears of excise duty could not be recovered from the assessee.

The Ministry of Finance have confirmed the facts as substantially correct (November 1988).

3. *Declaration of the unit as a relief undertaking by the State Government and consequent non-enforcement of the central excise dues.*

A manufacturer of glass and glassware challenged the review order passed by the Government of India regarding inclusion of packing charges in the assessable value of goods for the purpose of excise duty. The Gujarat High Court granted a stay on 28 January 1980 against the enforçement of demand till the final disposal of civil appeal. The duty amount involved was Rs. 18.15 lakhs for the period from August 1974 to September 1975. The same manufacturer filed another civil appeal in the same High Court against the inclusion of packing and other miscellaneous charges and disallowance of discount in respect of goods despatched to their branch offices and obtained a stay order on 11 December 1979 against the enforcement of the demand. The duty involved was Rs. 10.51 crores for the period from June 1978 to February 1985. On 9 October 1984, the Collector of Central Excise requested the senior standing counsel to get both stay orders vacated in view of the judgment of the Supreme Court on 7 October 1983, in the case of Union of India and others *Vs.* Bombay Tyre International etc. regarding post manufacturing expenses (1983 ECR 1627-D).

It was noticed that the above assessee was declared by the State Government as a relief undertaking under the Bombay Relief Undertaking (Specal Provision) Act, 1958, by issue of notification on 18 December 1984 for a period of one year, which was extended from time to time, the latest notification having been issued on 9 June 1987 for a period of six months. On account of the declaration of the unit as a relief undertaking, liabilities including central excise liabilities occurred or incurred before such declaration stood suspended and the hearing in Gujarat High Court stands adjourned till the expiry of the date of notification. In another Collectorate, the issue whether the recovery under the Central Excises and Salt Act, 1944, could be postponed on account of the declaration of a unit as a relief undertaking under a State Act, has been taken to the Supreme Court by the department. Since the Government of Gujarat's latest notification dated 9 June 1987 declaring the unit as a relief undertaking for a period of six months from that date, expired on 9 December 1987, the department could move the High Court for vacation of the stay granted earlier. Meanwhile, the unit was declared a sick industrial company, under the Sick Industrial Companies (Special Provisions) Act, 1985, on 27 August 1987. The details of any scheme framed under Section 18 of that Act for the company or any order issued in pursuance of that Act or further action taken by the department in the light of the Supreme Court decision in the case Union of India and others *Vs.* Tyre Bomaby International, have not been reviewed.

The Ministry of Finace have confirmed the facts as substantially correct (November 1988).

IRREGULAR GRANT FO REFUNDS AND BATES

3.66 Incorrect grant of refund

As per Section 4 (d) (ii) of the Central Excises and Salt Act, 1944, assessable value does not include among others, trade discount allowed in accordance with the normal practice of the wholesale trade at the time of removal of excisable goods. In the case of Bombay Tyre International, the Supreme Court [1984(17) ELT 329 (SC)] held that trade discounts known prior to the removal of goods, but payable subsequently are permissible deductions. While elaborating the above judgment in the case of M/s. Madras Rubber Factory, the Supreme Court observed [1987 (27) ELT 553 (SC)] that the quantum of discount should be ascertainable at the time of clearance of the goods. It, therefore, follows that any discount which is not quantifiable at the time of clearance of goods is not an admissible deduction under Section 4 of the said Act.

(*i*) A manufacturer of cutting tools (heading 82.02) was selling his goods through independent dealers. One of the discounts allowed to the dealers as per the terms of the contract, was 'annual turnover discount. This discount was allowed as a percentage of the total turnover for the year, the percentage varying according to the total value of clearance. The quantum of discount was decided after ascertaining the actual clearances from various depots of the assessee after the year was over. As the quantum of discount remained unascertainable at the time of individual clearances, it is not a permissible deduction from value. However, the jurisdictional Assistant Collector allowed (October 1986) refund of Rs. 10.69 lakhs claimed by the assessee towards turnover discount allowed for the period from April 1985 to December 1985. Also a sum of Rs. 11.34 lakhs was allowed as refund (September 1987) on account of the turn over discount claimed by the assessee, covering the period from January 1986 to March 1986.

The irregular refund was pointed out in audit to the department in June 1987 and to the Ministry of Finance in August 1988.

The Ministry of Finance have stated (November 1988) that the matter is under examination.

(*ii*) As per a notification dated 1 March 1987, cement falling under sub-heading 2502.20 produced in a factory which has commenced production on or after 1 April 1986 is exempt in excess of the amount calculated at Rs. 175 per tonne provided that such cement is manufactured in a factory where production in respect of such cement in any financial year is not less than thirty per cent of the annual licenced capacity of the factory.

A unit having an annual licensed capacity of 66,000 tonne started production of the ordinary portland cement from 16 September 1986 and produced 8923.18 tonnes of cement during 1986-87. It cleared 2551 tonnes cement during March 1987 by paying duty at Rs. 225 per tonne

and claimed exemption under the said notification of 1 March 1987. The department finalised the assessment in September 1987 and allowed refund of Rs. 1,27,550 being the differential duty on 2551 tonnes of cement @ Rs. 50 per tonne. As the unit had not fulfilled the condition of production of not less than 30 per cent of the licensed capacity refund of duty was irregular.

The mistake was pointed out in audit to the department in June 1988 and to the Ministry of Finance in August 1988.

The Ministry of Finance have admitted the objection (November 1988).

3.67 Irregular grant of rebate

By a notification issued under Rule 12 of the Central Excise Rules, 1944, Central Government have permitted grant of rebate of duty paid on excisable goods if exported outside India to such extent and subject to such conditions as may be prescribed. Further, Rule 13 ibid provides that excisable goods may be exported in like manner without payment of duty after executing a bond.

As per a circular issued on 9 March 1988 the Central Board of Excise and Customs reiterated that Ministry's instructions dated 22 July 1978, wherein it was clarified in consultation with the Ministry of Law that the practice of recovering the payment of unrebated duty under Rule 12 in respect of goods cleared under Rule 13 (under Bond) so as to maintain parity in respect of ultimate and net incidence of duty covered under the two rules was correct.

The duty chargeable on package tea containing more than 25 grams but not more than 1 kilogram of tea was Rs. 1.10 per kilogram under the Central Excise Tariff Act, 1985 but the rate of rebate on that tea was Re. 1.00 per kilogram in terms of a notification issued on 17 November 1962 as amended. The rate of rebate was, however, raised to Rs. 1.10 per kilogram under a notification issued on 9 September 1986.

Twelve units exported package tea packed in containers containing more than 25 grams but not more than 1 kilogram under bond without payment of duty. The department did not realise the differential duty at the rate of 10 paise per kilogram. The irregularity resulted in non-recovery of unrebated amount of duty of Rs. 3,41,862 during the period from 1 March 1986 to 8 September 1986.

The irregularities were pointed out in audit to the department in June, November 1987 and June 1988 and to the Ministry of Finance in March and August 1988.

The Ministry of Finance have admitted the objection (June 1988 and November 1988).

PROCEDURAL DELAYS AND IRREGULARITIES WITH REVENUE IMPLICATIONS

3.68. Non levy of duty on goods not rewarehoused

As per Rules 156A and 156B of the Central Excise Rules, 1944 where goods are removed under bond without payment of duty from one warehouse X to another warehouse Y, the departmental officer in charge of warehouse Y should record warehousing certificate in respect of such goods on their arrival at warehousing Y and send copies of the certificate to the officer-in-charge of the warehouse and consignee for transmission to the consignor. The consignor should present it to the officer incharge of the warehouse within ninety days of the issue of transport permit allowing the removal. If the certifiate of rewarehousing is not received back within ninety days of the removal of goods or such extended period as the Collector may allow, the consignor shall pay the duty leviable on the consignments.

(*i*) A Public Sector oil refinery cleared petroleum oils (under Self Removal Procedure) without payment of duty under bond. In 117 cases pertaining to the year 1984 onwards the rewarehousing certificates were not received back by the department. It was, therefore, not known to the proper officer at the consignors end whether the goods were actually received at the destination. Duty ought to have been demanded by the department when the rewarehousing certificates were not produced within the stipulated time. Failure to comply with the provisions of the rules resulted in non-levy of duty for Rs. 60.58 crores on goods cleared from 1 April 1984 to 31 May 1987.

On the omission being pointed out in audit (August 1987) the department stated (February 1988) that demands for Rs. 71 crores were issued for non-receipt of rewarehousing certificates. Out of 500 show cause-cum demand notices 76 were adjudicated and proceedings were in progress in the remaining cases (November 1988).

The Ministry of Finance have admitted the facts (November 1988).

(*ii*) Re-warehousing certificates in respect of 41 consignments of mineral oils removed from an oil installation without payment of duty between October 1986 and March 1987, were not on record. This included 28 consignments involving duty of Rs. 15,10,833 removed prior to January 1987. Although prescribed period of 90 days had elapsed from the date of removal of 28 consignments, neither did the consignor pay duty of Rs. 15.11 lakhs nor was any notice demanding the payment of duty issued by the department.

On the irregularity being pointed out in audit (22 April 1987) the assessee paid duty of Rs. 24.75 lakhs in respect of all the 41 consignments on 24 April 1987.

The Ministry of Finance have confirmed the facts (October 1988).

(*iii*) A manufacturer of industrial valves and tools, supplied the products without payment of duty under bond to specified consignees. However, in respect of 26 clearances made during fthe period from September 1986 to August 1987, the re-warehousing certificates were not received by the assessee, even after the expiry of the time limit prescribed under the rules. The duty involved in respect of these cases alone amounted to Rs. 2,49,417.

On this being pointed out in audit in January 1988, the department realised Rs. 2,56,061 on 9 February 1988.

The Ministry of Finance have accepted the under-assessment (November 1988).

(*iv*) A manufacturer of thin walled bearings for motor vehicles, partly cleared his products without payment of duty under bond to original equipment manufacturers as per notifications issued in November 1982 and February 1986. It was noticed (December 1986) in audit that in many cases pertaining to the period from May 1985 to August 1986, the rewarehousing certificates were not received even after the expiry of the period of ninety days and no demand for the recovery of central excise duty on goods not acknowledged by the consignee, was raised by the department. This resulted in non-recovery of excise duty of Rs. 1.12 lakhs relating to the period from May 1985 to August 1986.

On the omission being pointed out in audit (December 1986), the department stated (May 1988) that the Assistant Collector confirmed demand of Rs. 1.12 lakhs and imposed penalty of Rs. 1,000 in April 1988. Thereupon the assessee paid 0.45 lakh. The jurisdictional Assistant Collector directed (May 1988) the assessee to pay the balance of Rs. 0.67 lakh immediately.

The Ministry Finance have accepted the under-assessment (November 1988).

3.69. Delay in adjustment of excess credit of duty availed

As per notifications issued on 18 June 1977 and 4 June 1979 excisable goods on which duty of excise was leviable and in the manufacture of which any goods falling under erstwhile tariff item 68 were used as inputs, were exempt from duty of excise as was equivalent to that already paid on such inputs. Availment of exemption was subject to observance of procedure set out in appendix to aforesaid notifications. According to the procedure prescribed, a manufacturer was allowed to take credit of duty already paid on inputs and to utilise it towards payment of duty of excise leviable on the goods for the manufacture of which such inputs were brought into the factory. If the duty paid on such inputs was varied subsequently for any reason, resulting in refund to the manufacturer of inputs, the credit of duty already availed of was required to be adjusted or refunded in cash by the manufacturer of final products.

Tyre cord fabrics manufactured by a unit were cleared to tyre manufacturing units on payment of duty under erstwhile tariff item 68 from June 1978 to September 1980, and the tyre manufacturing units availed of the credit of duty paid on tyre cord fabrics under tariff item 68 (inputs) for utilisation towards payment of duty on tyres (final product). As per Supreme Court judgement in the case of Delhi Cloth & General Mills Co. Ltd. dated 8 May 1980, tyre cord fabrics manufactured by the unit were chargeable to duty as fabrics under erstwhile tariff item 22. Accordingly the unit claimed refund of Rs. 1,57,13,240 which was sanctioned and paid on 17 June 1985 (Rs. 1,44, 63,667 in cash on account of duty paid on unprocessed tyre cord fabrics and Rs. 12,49,573 by adjustment towards duty payable on processed tyre cord fabrics) without ensuring the recovery/adjustment of credit of duty already availed of by the tyre manufacturer.

Against Rs. 1.57 crores, recovery/adjustment of Rs. 46 lakhs could only be made from the tyre manufacturer till March 1986. On further verification in January 1988 it was found that the recovery/adjustment of Rs. 68.59 lakhs was still pending even after a lapse of more than two years and six months.

The Ministry of Finace have admitted the objection (November 1988) and have stated that an amount of Rs. 88.54 lakhs has been recovered so far.

3.70 Non Levy of interest on arrears of excise duty

The Central Board of Excise and Customs issued instructions to the Collectors on 20 April 1985 that whenever facility of paying arrears of Central excise dues had been accorded interest at the rate of 12 per cent per annum (17.5 per cent per annum from 20 April 1985) would be chargeable on monthly basis. The Board withdrew the power to allow payment of government dues in instalments from the Collectors on 5 August 1985. Subsequently the Board clarified on 1 October 1985 that interest should be charged in all cases of deferment of duty from the date of initial confirmation of demand.

The Ministry of Finance reiterated on 16 June 1986 that the instructions dated 20 April 1985 and 1 October 1985 had been issued in the context of cases where payment of central excise dues in instalment had been allowed. They added that since the power of the Collectors for extending the instalment facility stand withdrawn with effect from 5 August 1985 any request for the concession in payment of Government dues in instalments which would have been granted by the Collectors under the earlier orders should be referred to the Ministry with a clear recommendation. Further, mention of the rates of interest should be made only in the Collector's orders in pursuance of the Board's decision to extend instalment facility in specified cases. The law Ministry also confirmed the legality of the action taken by the central excise department in this regard.

Two manufacturers were allowed to pay duty provisionally on values arrived at after deduction of certain post manufacturing expenses from the sale price of the products. After the Supreme Court judgement in Bombay Tyres International case, post-manufacturing

expenses under different heads which were previously excluded by the assessees for determination of assessable value were taken into account for computing the assessable value and the total demand of Rs. 1.58 crores was confirmed by he department against these two manufacturers. Out of this amount, Rs. 1.47 crores were paid in instalmets during the period from March 1985 to March 1987. However, the interest of Rs. 26.24 lakhs due thereon was neither paid by the assessees nor demanded by the department.

On the irregularity being pointed out in audit (April 1987) the department stated (October 1987 and February 1988) that (i) the department adopted the course of pursuasive action in the case of both the assessees and they were allowed to pay the arrears in instalments without paying interest; and (ii) in the case of one of the two assessees such a course of action became warranted as the assessee had already challenged part of the assessment (Rs. 11 lakhs) and the department wished to avoid further litigation in respect of the part of the assessed dues agreed to be paid by the assessee even without paying interest falling due.

Action of the department in realising the duty amount in instalments without charging interest was in contravention of the Board's instructions referred to above. The case was also not referred to Board in terms of Ministry's clarification dated 5 August 1985 and the whole matter appeared to have been decided at Collector's level.

The Ministry of Finance did not admit the objection and stated (November 1988) that the department did not allow the payments in instalents and there was no written agreement between the department and assessee allowing the instalments. They added that the amounts were realised under pursuasive action, as such, there was no question of collection of interest.

The fact, however, remain that Ministry's instructions dated 5 August 1985 were not followed and the whole matter was decided at Collector's level without referring it to the Board.

3.71 Delay in finalisation of provisional assessment

As per a notification issued on 1 December 1967 as amended, footwear or parts of footwear made out of duty paid artificial or synthetic resins or plastic materials were exempted from duty provided that the aforesaid material should not be less than fifty per cent of the weight of such foot wear or part thereof.

A manufacturer of footwear was provisionally allowed to avail of the exemption on footwear in which soles (entirely made out of plastic materials) obtained from another manufacturer were used. Subsequent verification revealed that a sister unit of the assessee got the soles manufactured by a small scale unit by supplying raw materials on payment of job charges. The small scale unit being under small scale exemption limit did not pay any duty. The sister unit also cleared them to the assessee without payment of duty. Since neither the assessee used duty paid materials himself in the manufacture of footwear nor had the plastic soles used in their manufacture suffered any duty, the exemption allowed was irregular and resulted in non levy of duty amounting to Rs. 13,06,723 during the period from December 1984 to July 1985.

On the irregularity being pointed out in audit (September 1985), the department admitted the facts as correct and stated (June 1988) that since it is a case of exemption the burden is on the assessee to establish that he comes within the ambit of exemption. It added that issue of a show cause notice was under consideration.

The fact remains that the classification list effective from 17 December 1984 allowing the exemption was provisionally approved on 13 June 1985 pending completion of the enquiry and the provisional assessment could not be finalised even after a period of over three years. The Central Board of Excise and Customs issued instructions in March 1976 that provisional assessment cases should normally be finalised within a period of three months and in any case not later than six months. These orders were reiterated in October 1980. Keeping the assessment provisional for such a long period resulted in blocking of revenue of Rs. 13,06,723.

The Ministry of Finance have stated (November 1988) that the matter is under examination.

3.72 Issue of wrong certificate by the department

Heading 46.01 of the schedule to the Central Excise Tariff Act, 1985 covers manufactures of a straw, of esparto or of other plaiting materials; basketware and wicker work. Chapter Note 1 of Chapter 46 defines plaiting materials as materials in a state or form suitable for plaiting, interlacing or similar processes and includes 'monofilament and strip and the like of plastics'. With effect from 1 March 1986 plastic mats, are, therefore, classifiable under heading 46.01 attracting duty at 12 per cent ad valorem.

A manufacturer of plastic mats commenced production in June 1984, made declaration in July 1984, for the manufacture of which the licence was issued in February 1987. In June 1986, however, a certificate was issued by the department stating that plastic mats would fall under sub-heading 3922.90 and were liable to nil rate of duty in terms of a notification issued in March 1986. Subsequently, in August 1987, the department changed the classification of the product from sub-heading 3922.90 to heading 46.01 and issued a show cause-cum demand notice for payment of duty of Rs. 7 lakhs in respect of the goods cleared during the period from January 1987 to March 1987. Incorrect advice by the department regarding classification of the product resulted in non recovery of duty of Rs. 12 lakhs for the period from March 1986 to December 1986 and consequent loss of revenue.

On this being pointed out in audit (December 1987) the department stated (February 1988) that no action could be taken beyond the period of six months as per

the instructions of the adjudicating branch and the Range Superintendent was aware of the products and had issued the certificate to the assessee.

Due to issue of a wrong certificate misclassifying the plastic mat as articles of plastics without proper enquiry and without resorting to the procedure prescribed under Rule 9-B of the Central Excise Rules, 1944, the department could not invoke the provisions of Section 11-A of the Central Excises and Salt Act, 1944 resulting in loss of Government revenue.

The Ministry of Finance have admitted the objection (November 1988).

3.73 Non-receipt of certificate for use of cars as taxis

As per a notification dated 1 March 1986, Saloon cars falling under heading 87.03 of the schedule to the Central Excise Tariff Act, 1985 are chargeable to duty at 30 per cent advalorem provided these cars are required for use solely as taxis and the manufacturer furnished a taxi registeration certficate from the competent authority within three months of the date of their clearances, or such extended period as may be allowed by the Assistant Collector. Such cars are chargeable to duty at 35 per cent advalorem in terms of the aforesaid notification if those are used otherwise than as taxis. The Board clarified in January 1976 that the department should insist on the manufacturers to pay differential duty on such motor cars which were originally cleared for use as taxis, but subsequently diverted for other purposes, within 15 days of such diversion without waiting for the period as prescribed in the notification.

A motor car manufacurer, used to clear motor cars for use solely as taxis on payment of duty at 30 per cent advalorem although he collected from each purchaser duty at 35 per cent advalorem applicable to non-taxi saloon car. He did not pay the differential duty in respect of those cars which were used otherwise than as taxis even after three months from the date of their clearances. The delayed payment of differential duty for Rs. 1.41 crores after a lapse of 4 to 6 months, therefore, resulted in gratuitous benefit by way of interest of Rs. 2.55 lakhs calculated at the rate of 17.5 per cent in respect of clearances of cars during November 1985 to April 1988 in view of the fact that the assessee realised the differential duty in the form of advances from the purchasers at the time of clearance.

The issue was also highlighted in para 2.69(iii) of the Audit Report 1983-84 and the Ministry stated that the matter was under examination in consultation with the concerned Collector. But no concrete steps even after expiry of four years had been taken by the department to prevent the gratuitous benefit derived by the assessee.

On this being pointed out in audit (November 1987 the department intimated (May 1988) that nothing can be done at this stage until and unless any specific orders were received from the Ministry.

The Ministry of Finance did not admit (November 1988) the objection on the grounds that there is no provision in the Central Excise Law to collect interest on account of delayed payment of appropriate amount of excise duty. The Ministry's reply is, however, silent as to whether they have so far issued any specific orders as sought by the Collector.

3.74 Short levy due to incorrect grant of exemption

As per a notification issued on 8 September 1986, goods being systems and sub-systems of launch vehicle and systems and sub-systems of satellite projects are exempt from the whole of the duty of excise leviable thereon, if such goods are meant for use in a launch vehicle project for a satellite project of a named space research orgnisation or named department of the Central Government subject to the condition that where such use of goods is elsewhere than the factory of production, the procedure set out in Chapter X is followed.

A Public Sector undertaking engaged in the manufacture, repair and overhaul of civilian and military aircrafts and helicopters, fabricated certain sub-systems for satellite projects and cleared them without payment of duty. As the procedure prescribed in Chapter X was not observed duty amounting to Rs. 1,09,560 became leviable on the goods valued at Rs. 7,30,398 (Chapter 88) cleared on 30 September 1987. The duty was however, neither demanded nor collected by the department.

On this being pointed out in audit (February 1988) the department stated (May 1988) that a notice of demand for Rs. 1,09,560 was issued in April 1988.

The Ministry of Finance have admitted the objection (November 1988) and stated that the amount of Rs. 1,09,560 has been paid by the party.

OTHER IRREGULARITIES

3.75 Settlement of court cases and compounding of offences under the Amnesty Scheme

The Finance Ministry announced in the Parliament on 1 August 1986 a scheme of compounding of offences and settlement of court cases relating to Customs and Central Excise duties.

The scheme applies to those manufacturers or importers who have paid lower amount of duty in respect of excise clearances or on import of cargo upto 31 December 1984 consequent to declaration of incorrect assessable value or wrong classification under the Tariff where the transactions have beer fully reflected in the accounts and Balance Sheets, if any, of the assessees. In such cases the assessees should make a declaration on or before 31 December 1986 before the Collector giving a written declaration owning the liability on their part and indicating the amount short paid by them. The declaration should be got varified and a demand in law issued asking the assessee to pay the amount alongwith the interest at 6 per cent per annum.

On depositing the amount, an order may be passed by the Collector compounding the offence and deciding not to proceed against the party both departmentally and in the Court of Law. Where the amount involved is large the facility for payment of the amount in instalments can also be considered.

The scheme does not cover :

(*i*) cases of suppression of production of excisable goods and clandestine removal thereof;

(*ii*) cases of smuggling;

(*iii*) cases of evasion of duty either by mis-declaration of value or wrong classification of goods under the tariff, where the transactions have not been fully recorded in the accounts and Balance Sheets.

As regards the P.M.E. cases, the assessee should give a declaration to abide by the decision of the Collector of Central Excise who would work out the liability in terms of principles already laid down by the Supreme Court. On payment of the amount of dues worked out by the Collector, the cases will be settled and cases, if any, filed by the department may be withdrawn.

In Central Excise cases other than those relating to P.M.E. and in Customs cases pending in courts, where the assessees expressed their willingness to make payment of amount due from the party as already assessed by the appropriate Assessing or Appellate Authority, the cases may be considered for settlement on payment of the amount.

As per the clarification issued by the C.B.E.C. this scheme will not apply to cases which have already been detected by the department. In other words, cases which are under the process of investigation or adjudication would not be covered by this scheme.

Also, if any particular case goes beyond 31 December 1984 then the case can be broken up into two periods, one relating to the period up to 31 December 1984 and the other for the remaining period. The scheme will apply to the first portion only and the second portion would be decided as per the normal provision of Excise Law.

It has further been clarified that in case of unconfirmed demands where only show cause notices have been issued, the parties may be contacted and matter discussed with them and issues identified for decision. Where the department's decision are acceptable to the assessees, the extra duty involved should be quantified and recovered from the assessees through confirmed demands.

Bolts and nuts, threaded or tapped, of base metals or alloys thereof, in relation to the manufacture of which any process is ordinarily carried on with the aid of power were classifiable under erstwhile tariff item 52 with rate of duty at the rate of 15 per cent ad valorem. By issue of a tariff advice dated 7 March 1981 it was decided that bolts and nuts used in the motor vehicle as fastners were classifiable under tariff item 52 since that tariff item covered all types of bolts and nuts. Further the CEGAT in their orders dated 28 November 1984 (ECR 1119 June 1985) decided that hub bolts used in motor vehicles were classifiable under tariff item 52 and not as motor vehicle parts as it is a basic principle of classification that where two items are possible the specific item will prevail over the residuary item.

A motor vehicle manufacturerer inter-alia manufactured different varieties of bolts and nuts like U-bolt, eye bolt nuts and put them to captive use for fitment in motor vehicles manufactured without payment of duty after classifying them under tariff item 68 and availed of exemption allowed under a notification issued on 30 April 1975. The department, however, issued a number of show cause-cum demand notices for different period from April 1980 to February 1986 for total amount of duty of Rs. 31.55 lakhs under tariff item 52 but not a single show cause notice was adjudicated. Subsequently the department intimated the assessee (27 March 1987); that the products had been decided to fall under tariff item 68 and all the show cause notices stood withdrawn. Since the products were classifiable under tariff item 52 in view of aforesaid tariff advice and CEGAT's orders, the incorrect classification resulted in loss of revenue of Rs. 31.55 lakhs.

On the facts being pointed out in audit (July 1987) the department intimated (January 1988) that the show cause notices were withdrawn in pursuance of the policy in the context of one time settlement of outstanding dues on the basis of prayer of the assessee to the Board. The department, however, offered no comments on the point of misclassification.

The withdrawal of show cause notices in the context of the policy of one time settlement of outstanding dues on the basis of the prayer of the assessee to the Board is not in line with the guidelines issued in this regard.

The scheme envisages amnesty in the case of evasions of Central Excise duty by wrong classification of goods under the Central Excise Tariff to avail of the duty concession.

The Ministry of Finance have stated (November 1988) that the matter is under examination.

3.76 Non furnishing of Bank Guarantee

As per Section 4 of the Central Excises and Salt Act, 1944 where excisable goods are assessable to duty advalorem, the normal price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade, would be the assessable value.

A processor of man made fabrics (Chapter 54) obtained stay from the Supreme Court (August 1987) on recovery of duty on the differential amount between the price charged from the customers and the value of processing work done, subject to the condition that the processor

would furnish bank guarantee for the aforesaid differential amount, within four weeks of the clearance or demand, as the case may be.

In respect of clearances made between July 1987 and October 1987, the processor furnished four guarantees after the expiry of prescribed period of 4 weeks, the delay ranging between 6 to 33 days. In respect of clearances made between 1 November 1987 and 21 November 1987 bank guarantees were not at all furnished even though period of 4 weeks had elapsed. As the licensee failed to fulfil the condition prescribed in the stay order, he was not entitled to avail the facility of furnishing bank guarantee and the duty amounting to Rs. 14,81,201 was payable in cash for the aforesaid period.

When the omission was pointed out (December 1987) the department accepted the objection (June 1988). A report regarding realisation of duty has not been received (June 1988).

The Ministry of Finance have admitted the objection (October 1988).

3.77 **Mistakes in computation of additional duty of Excise**

Section 3(1) of the Additional Duties of Excise (Textiles and Textile Articles) Act, read with notification dated 10 February 1986, provides for levy of additional duty on specified goods at the rate of 13.64 per cent of excise duty chargeable under the Central Excises and Salt Act, 1944. This levy is in addition to excise duty and it is calculated on the amount of excise duty chargeable before availing of any credit under an exemption notification in respect of duty already paid on raw materials used in the manufacture of excisable goods.

A manufacturer of polyester filament yarn, (subheading 5402.20) started paying additional duty from 4 December 1986 on the basis of the amount of excise duty chargeable after availing of credit in respect of duty already paid on mono-ethylene glycol contained in the polyester filament yarn. The mistake in computation of additional duty resulted in a short-levy of Rs. 6,02,182 for the period from 4 December 1986 to 31 July 1987.

On the irregularity being pointed out in audit (September 1987) the department accepted the mistake. Report on action taken for recovery of the short-levy has not been received (February 1988).

The Ministry of Finance have accepted the underassessment (November 1988).

3.78 **Incorrect determination of weight of wrapping paper for levying duty**

As per Rule 56 A of the Central Exicse Rules, 1944 credit of duty paid on paper falling under erstwhile tariff item 17 (now Chapter 48) was admissible for utilisation towards payment of duty on the finished product falling under the same tariff item. The input could also be cleared for captive consumption without payment of duty under the provisions of Rule 9 and 49 of the aforementioned rules., Where any assessee permitted to work under Rule 56-A in respect of wrapping paper, did not pay duty at the time of clearance of inputs for captive consumption he had to pay duty on the total weight of the finished product inclusive of the weight of the wrapping paper if both input and output were chargeable to specific rate of duty.

An assessee engaged in the manufacture of wrapping paper (chargeable to specific rate of duty) was allowed to avail of proforma credit of duty paid on wrappers from July 1985 to June 1986 and the benefit of duty free clearance from July 1986 onwards but the weight of the wrapping paper was not included in the total weight of other paper cleared on payment of duty at specific rate. This resulted in short levy of duty amounting to Rs. 3.01 lakhs during the period from July 1985 to November 1987.

On the omission (covering the period July 1985 to September 1986) being pointed out in audit (October 1986), the Ministry did not accept the audit objection and stated (December 1987) that according to the ISI formula the weight of the wrapping paper had been included in the ream weight as shown in the production records.

The reply of the Ministry is not factually correct. In one of the concrete instances noticed by Audit (calculated as per ISI formula) it was observed that for a paper of 60 GSM of size 76 X 102 cm contained in a ream of 500 sheets with the weight of wrapping as 0.3 kilogram the ream weight worked out to 23.6 kilogram. Against this, the ream weight recorded in the production record was 23.3 kilogram. The discrepency of 0.3 kilogram is, therefore, accountable by way of exclusion of the weight of wrapping paper.

The Ministry of Finance have stated (November 1988) that the concerned Assistant Collector has been directed to verify the actual weight in all the cases.

ANNEXURE 3.1

Number of outstanding objections and amount involved

(in crores of rupees)

(See para 3.10 of this report)

Sl. No.	Collectorate	Raised upto 1983-84 including the year 1983-84		Raised in the year 1984-85		Raised in the year 1985-86		Raised in the year 1986-87		Total	
		No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
1	2	3	4	5	6	7	8	9	10	11	12
1	Hyderabad	238	0.53	141	0.01	238	0.79	410	2.42	1027	3.75
2	Guntur	13	0.04	17	*	31	*	58	0.78	119	0.82
3	Shillong	4	0.64	2	0.02	8	0.05	14	0.61	28	1.32
4	Patna	50	7.69	1	0.09	17	0.57	8	0.08	76	8.43
5	Bombay-I	35	0.23	19	0.28	10	0.17	45	0.59	109	2.27
6	Bombay-II	23	2.95	19	0.24	14	0.85	36	0.39	92	4.43
7	Bombay-III	50	0.16	62	1.29	42	0.55	98	0.66	252	2.66
8	Pune	12	0.37	7	0.27	10	0.34	35	1.42	64	2.40
9	Aurangabad	2	0.16	9	0.25	8	0.16	19	0.13	38	0.70
10	Goa	—	—	3	0.04	3	0.05	3	0.01	9	0.10
11	Calcutta-I	139	11.48	129	18.65	70	11.83	100	7.80	438	49.76
12	Calcutta-II	188	31.55	160	27.08	132	37.90	179	19.03	659	115.56
13	Bolpur	44	4.01	43	2.07	64	6.72	53	33.51	204	46.41
14	Chandigarh	20	0.91	10	0.06	65	1.39	77	27.66	172	30.02
15	Ahmedabad	21	0.51	5	0.06	13	0.86	38	0.32	77	1.75
16	Baroda	21	2.61	15	0.89	27	0.55	101	1.18	164	5.23
17	Rajkot	5	0.03	3	0.01	5	9.08	8	0.08	21	9.20
18	Delhi	127	2.18	27	1.24	42	1.59	100	1.49	296	6.50
19	Bangalore	5	0.08	12	1.31	26	0.98	11	0.39	54	2.76
20	Belgaum	1	0.02	6	0.85	8	2.33	17	1.78	32	4.98
21	Cochin	—	—	—	—	1	0.02	2	0.03	3	0.05
22	Indore	81	4.54	52	1.37	145	2.01	233	5.81	511	13.73
23	Nagpur	3	0.04	3	0.05	8	0.08	15	0.35	29	0.52
24	Bhubaneswar	20	0.68	2	0.11	21	13.44	—	—	43	14.23
25	Jaipur	14	0.08	23	0.68	19	0.06	31	0.67	87	1.49
26	Coimbatore	—	—	3	0.02	23	0.39	143	2.51	169	2.92
27	Madras	4	0.02	6	0.06	42	0.67	225	4.01	277	4.76
28	Madurai	—	—	2	*	3	0.02	29	1.80	34	1.82
29	Trichy	—	—	—	—	1	*	18	0.96	19	0.96
30	Allahabad	114	1.58	48	0.30	65	0.79	55	3.03	282	5.70
31	Kanpur	28	0.74	18	0.06	45	0.47	89	1.09	180	2.36
32	Meerut	168	4.64	89	2.51	131	1.55	102	1.24	490	9.94
	Total	1,430	78.47	936	59.97	1,337	96.26	2,352	122.83	6,055	357.53

*Not available.

CHAPTER—4
RECEIPTS OF THE UNION TERRITORIES WITHOUT LEGISLATURES

4.01. Tax and non-tax receipts of Union Territories without legislatures

The trend of tax and non-tax revenue receipts of the Union Territories which do not have a legislature, is indicated below :–

		Delhi	Chandigarh	Dadra and Nagar Haveli	Andamans and Nicobar Islands	Minicoy and Laksh-dweep	Daman and Diu	Total
		1	2	3	4	5	6	7
A. Tax Revenue				(In crores of Rupees)				
Sales tax	1985-86	325.53	18.26	0.35	Nil	Neg.	N.A.	344.14
	1986-87	379.16	21.93	0.30	Nil	Neg.	N.A.	401.39
	1987-88	431.82	29.29	0.46	Nil	Neg.	0.77	462.34
State excise	1985-86	99.33	11.29	0.08	1.29	Nil	N.A.	111.99
	1986-87	113.30	13.48	0.08	1.90	Nil	N.A.	128.76
	1987-88	131.43	14.03	0.08	1.81	Nil	Nil	147.35
Taxes on goods and passengers	1985-86	26.50**	0.65	Nil	Nil	Nil	N.A.	27.15
	1986-87	30.34**	0.75	Nil	Nil	Nil	N.A.	31.09
	1987-88	33.26**	0.80	Nil	Nil	Nil	Nil	34.06
Stamp duty and registration fees	1985-86	16.45	3.60	0.03	0.08	0.02	N.A.	20.18
	1986-87	20.17	3.97	0.05	0.08	0.02	N.A.	24.29
	1987-88	24.73	4.96	0.06	0.10	0.02	Nil	29.87
Taxes on motor vehicles	1985-86	12.38	0.52	0.13	0.02	Nil	N.A.	13.05
	1986-87	13.94	0.63	0.18	0.03	Nil	N.A.	14.78
	1987-88	18.58	1.02	0.21	0.03	Nil	Nil	19.84
Land revenue	1985-86	0.15	Neg.	0.02	0.05	(—)0.02	N.A.	0.20
	1986-87	0.03	Neg.	0.02	0.04	(—)0.01	N.A.	0.08
	1987-88	0.01	Neg.	0.14	0.05	0.01	Nil	0.21
Other taxes and duties on commodities and services	1985-86	11.51	0.84	Nil	0.03	Nil	N.A.	12.38
	1986-87	12.73	0.85	Nil	0.04	Nil	N.A.	13.62
	1987-88	13.45	0.83	Nil	0.04	Nil	Nil	14.32
Total—A. Tax Revenue	1985-86	491.85	36.22@	0.61	1.47	Nil	N.A.	530.15
	1986-78	569.67	43.24@@	0.63	2.09	0.01	N.A.	615.64
	1987-88*	653.28	52.74@@@	0.95	2.03	0.03	0.77	709.80
Total—B. Non-tax Revenue	1985-86	23.77	28.08	1.83	14.36	1.30	N.A.	69.34
	1986-87	25.62	33.19	3.54	18.74	1.41	N.A.	82.50
	1987-88*	23.91	39.42	6.17	19.18	1.81	Neg.	90.49
Total—Tax and Non-tax Revenue	1985-86	515.62	64.30	2.44	15.83	1.30	N.A.	599.49
	1986-87	595.29	76.43	4.17	20.83	1.42	N.A.	698.14
	1987-88*	677.19	92.16	7.12	21.21	1.84	0.77	800.29

N.A.—Not applicable as the U.T. was formed on separation from Goa w.e.f. 30-5-1987.

Neg. Negligible receipts.

*Information furnished by the Controller General of Accounts.

**Levied and collected by the Municipal Corporation of Delhi as agent of Delhi Administration as per provisions of Section 178 of the Delhi Municipal Corporation Act, 1957.

@Includes Rs. 1.06 crores on account of Taxes and Duties on Electricity relating to Chandigarh Union Territory.

@@Includes Rs. 1.63 crores on account of Taxes and Duties on Electricity relating to Chandigarh Union Territory.

@@@Includes Rs. 1.81 crores on account of Taxes and Duties on Electricity relating to Chandigarh Union Territory.

Results of test check of the records of the revenue department of the Union Territory of Delhi conducted during the year 1987-88 are included in the Report of the Comptroller and Auditor General of India; No. 8 of 1989 for the year ended 31st March 1988—Union Government (Delhi Administration). Some of the important cases noticed as a result of test check of the records of revenue department of the other Union Territories without legislatures are mentioned in the succeeding paragraphs.

SECTION A : UNION TERRITORY OF CHANDIGARH

STAMP DUTY AND REGISTRATION FEE

4.02 Non-levy of stamp duty and Registration fee

Under the Indian Stamp Act, 1899 as applicable to Union Territory, Chandigarh, on instrument of lease where by such lease the rent is fixed and no premium is paid or delivered and it purports to be for a term of not less than one year, but not more than five years, Stamp Duty is chargeable at one and half per cent for the amount or value of the average annual rent reserved. In addition, Registration Fee at the rate of one per cent subject to a maximum of Rs. 1,000 is chargeable under the Indian Registration Act, 1908.

On two lease deeds executed on 11th October 1985 for a period of five years with annual rent reserved for Rs. 5,06,844 and Rs. 5,16,684 respectively, Stamp Duty amounting to Rs. 15,360 and Registration Fee of Rs. 2,000 was chargeable but was not charged.

On the omission being pointed out (July 1986) in audit, the department issued (September 1987) recovery certificates. Report on recovery has not been received (December 1988).

The case was reported to the Ministry of Home Affairs in October 1988; their reply has not been received (December 1988).

SECTION B:UNION TERRITORY OF DADRA AND NAGAR HAVELI

FOREST RECEIPTS

4.03 Short levy/non-levy of interest on late payment of royalty

According to an agreement effective from 1st September 1982, entered into by the Forest Department of the Union Territory of Dadra and Nagar Haveli, Silvassa, with Firm 'S' for payment of royalty for sale of Khair trees, the agreed amounts were to be paid in three instalments on due dates as prescribed in the agreement. In the event of delay in payment of instalments on due dates, the party was liable to pay interest at the rate of 14 per cent per annum for the period of delay.

During the course of local audit (March 1985 and July 1986) it was noticed that the department had short-levied the interest by Rs. 6,116 for the belated payment of instalments for the year 1983-84 and did not levy interest for the late payment of instalments for the years 1984-85 and 1985-86 ,which worked out to Rs. 21,210 and Rs. 6,378 respectively.

On these omissions being pointed out in audit (June 1985 and November 1986), the department recovered the total amount of Rs. 33,704 (between August 1985 and April 1988).

The case was reported to the Administrator of the Union Territory and Ministry of Home Affairs in July 1988; their replies have not been received (December 1988).

SECTION C : UNION TERRITORY OF DAMAN AND DIU

ENTERTAINMENT TAX

4.04 Non-levy of surcharge on entertainment tax

Under the Goa, Daman and Diu Entertainment Tax (Amendment) Act, 1986, effective from 23rd September 1986, there shall be levied and paid to the Government on every payment for admission to an entertainment, a surcharge on entertainment tax which shall be calculated at the rate of ten per cent on the entertainment tax payable.

During audit (March 1988) it was noticed that surcharge on entertainment tax in respect of two cinema theatres and two video centres in Daman was neither levied nor paid by the theatre owners. The surcharge leviable for the period from 23rd September 1986 to 31st December 1987 worked out to Rs. 0.66 lakh.

On this being pointed out in audit (March 1988), the department stated (June 1988) that recovery of part amount (Rs. 4,100) had been made from two video centres. Report of final recovery from cinema theatres has not been received (December 1988).

The matter was reported to the Ministry of Home Affairs in October 1988; their reply has not been received (December 1988).

NEW DELHI
The 13 APR 1989

(R. RAMANATHAN)
Director of Receipt Audit (INDT)

Countersigned

NEW DELHI
The 13 APR 1989

(T. N. CHATURVEDI)
Comptroller and Auditor General of India

ERRATA

Page	Para Number	Column Number	Line Number	For	Read
i	Table of contents		Para 2.05 18 from bottom	33	32
ix	IV	2	12 from bottom	accountably	accountal by
x	VII	2	4 from bottom	sub-headnigs	sub-headings
xii	XIII (heading)	1	26 from bottom	exemption	exemption
xv	XX(C)	1	3 from bottom	X rays Xray tubes	X ray tubes
xvi	XXIII	1	13 from bottom	One is	Two are
18	1.01	Annexure 1.1 (analysis)	Column 4 (Madras)	702	Nil
				—	702
18	do.	do.	Foot note	umber	* number
18	do.	do.	Column 5 (Cochin)	128*	28*
19	1.01	Annexure 1.2	Column 9 (Chandigarh) (ii) 1986 (iii) 1986	Nil Nil	1 1
21	1.01	Annexure 1.4	Column 2 (Bombay)	6.47*	6.47**
22	1.01	Annexure 1.5	Column 7 (Gujarat) (against pendig numbers)	A-Nil + R-315	A-315 + R-Nil
23	1.02	Annexure 1.6	Column 4 do. Column 6 do.	23 1362 289 4152	655 1994 921 4784
32	2.09	2	16 from bottom	in Custom Houses	in nine Custom Houses
35	2.15	1	22 from bottom	8430.40	8483.40
35	2.15	2	21 from top	8463.90	8483.90
37	2.20	2	13 from top	2,70,640	2,07,640
37	2.20	2	17 from top	2,70 640	2,07,640
40	2.24	1	18 from top	auxillary rate	auxiliary duty
40	2.24	1	13 from bottom	shotry	short
41	Page heading	2	1 from top	PARA 2.2	PARA 2.27
44	2.32	1	12 from bottom	1986	1987
52	2.47	2	14 from bottom	160/65	163/65
52	2.47	2	27 from bottom	manufctured	manufactured
54	2.50	1	10 from bottom	mea	mean
54	2.50	1	9 from bottom	permissio	permission
56	Page heading	2	1 from top	PARA 2.56	PARA 2.54
58	Page heading	1	1 from top	ARA 56	PARA 2.56
58	2.56	1	20 from bottom	198	1988
60	2.59	1	20 from top	detailed	detained
73	3.01(ii)	2	4 from top	Unon	Union
74	3.01(iv)	2	1 from top	as under	are as under
74	3.01(v)	1	1 from bottom	1339.58	1939.58
80	3.12(ii)	2	24-25 from top	1 March 1986	28 February 1986
82	3.12(v)(b)	2	20 from bottom	Auty	duty
87	3.14(i)	1	1 from top	rewarehousirg	rewarehousing
87	do.	1	4 from top	missirg	missing
88	3.15(v)	2	2 from bottom	ont	out
93	3.21	2	heading-top	3.20	3.21
96	3.23(ii)	1	1-2 from bottom	do not contribute to notes under heading; explanatory any definite function.	do not contribute any definite function.
96	3.23(ii)	2	2 from top	84:60	84.60
97	3.24(i)	1	27 from top	then	them
97	3.24(ii)	1	8 from bottom	ware	were
97	3.24(iii)	2	8 from bottom	Or the	On the
98	3.25(i)	1	12 from top	ana	and
99	3.26(iii)	2	1 from bottom	(November 1988)	(June 1988)

ERRATA—concld.

Page	Para Number	Column Number	Line Number	For	Read
102	3.27(iii)	2	2 from top	(November 1988)	(December 1988)
104	3.28(v)	1	12 from bottom	(November 1988)	(December 1988)
106	3.30(ii)	1	2 from bottom	raw material (inventory	raw material/inventory
106	3.30(ii)	2	11 from top	departmet	department
111	3.38(i)	2	7 from bottom	poirted out in audit	pointed out in audit
111	3.38(ii)	2	6 from bottom	thaf	that
112	3.38(ii)	1	4 from bottom	bourd	bound
112	3.38(ii)	1	1 from bottom	intert	inert
113	3.38(iii)	1	2 from top	Drug	Drugs
113	3.38(iii)	1	18 from top	concerrs	concerns
113	3.38(iii)	1	18 from bottom	olution	solution
113	3.39(i)	2	14 from bottom	isused	issued
113	3.39(ii)	2	2 from bottom	item (115)	item 11(5)
113	3.39(ii)	2	1 from bottom	rate o	rate of
115	3.41	1	24 from bottom	did not claims	did not claim
115	3.42(i)	1	14 from bottom	cotoed	coated
115	3.42(i)	1	13 from bottom	ad valoerm	ad valorem
115	3.42(i)	2	27 from top	standard	stranded
116	3.42(ii)	2	28 from top	erroneousy	erroneously
116	3.42(ii)(a)	2	19 from bottom	actior	action
116	3.42(ii)	2	1 from bottom	were	was
117	3.42 (ii)	1	16 from top	meters	metres
117	3.42(ii)	1	20 from top	11,087	18,087
117	3.43(i)	1	5 from bottom	beirg	being
117	3.43 (ii)	2	17 from bottom	erraneous	erroneous
119	3.44(i)	1	25.26 from top	sub item (ii)	sub item (11)
119	3.45(i)	2	20 from bottom	Exicse	Excise
119	3.45(i)	2	9 from bottom	inadvertently	inadvertantly
120	3.45(i)	1	20 from top	involing	invoking
120	3.45(ii)	1	5 from bottom	market.	market,
121	3.46	2	6 from top	olls	oils
122	3.47(ii)	1	20 from top	quar gum	guar gum
122	3.47(v)	2	7 from bottom	concessional	concession
123	3.48	1	16 from bottom	consumped	consumed
123	3.49 (i)	2	12 from bottom	parts	part
124	3.49(ii)	1	23 from bottom	19 July	29 July
124	3.49 (iii)	2	29 from top	are	is
124	3.49(iv)	2	2 from bottom	duting	during
125	3.50	2	20 from top	Fabruary	February
127	3.55	2	16 from top	Rs. 2.12.634	Rs. 2,12,634
128	3.57	1	24 from bottom	Certral	Central
129	3.58(i)(b)	2	16 from bottom	durig	during
129	3.58(i)(b)	2	2 from botom	provisiors	provisions
130	3.58(ii)(c)	2	27 from top	Rs. 1,55,264.	Rs. 1,55,264
130	3.58(i)(c)	1	25 from top	demard	demand
133	3.60(ii)	1	14 from top	15.30	15/30
138	3.65	1	11 from bottom	R 20	Rs. 20
138	3.65(v)	2	18 from bottom	Rs 27.86 lakhs	Rs. 27.87 lakhs
140	heading	1	First from top	FO	OF
140	heading	1	2 from top	BATES	REBATES
142	3.68	1	4 from top	if the	the
142	3.68	1	26 from bottom	0.45 lakh	Rs. 0.45 lakh
143	3.70	1	5 from top	he	the
143	3.70	1	7 from top	instalmets	instalments
143	3.70	1	21 from bottom	remain	remains
144	3.75	2	11 from bottom	beer	been
148	4.01	Foot Note 3	7 from bottom	In this foot note, the following may be added :— "The figures are provisional. In respect of Daman and Diu, the figures relate to the period from 30-5-1987 to 31-3-1988".	