REPORT OF THE

COMPTROLLER AND AUDITOR GENERAL OF INDIA

FOR

THE YEAR 1982-83

UNION GOVERNMENT (CIVIL)
REVENUE RECEIPTS
VOLUME I
INDIRECT TAXES

ERRATA

Page	Para No.	Line	For	Read
(VIII)	PREFATORY REMARKS	8th from top	Short levels	Short levies
(VIII)	-do-	13th from top	Audi	Audit
7.	1.05(iv)	13th from top (Sl. No. 1 in the table)	Smudged portion	690.102
10.	1.10	9th from bottom (Against 1981-82 in the table)	33.69	33.66
16.	1.15	11th from bottom	Chasis	Chassis
25	1.22	3rd from bottom	Agents	Agent
26.	1.22	11th from bottom	if	it
27.	1.23(i)	21st from bottom	56	45
33.	1.25	11th from bottom	11.25	1 25
39.	1.27(ii)	15th from top	October 1983	October 1982
44.	1.29	16th from top	Smudged portion	revenue amounting
53.	1.39	19th from top	73.01/05	73 03/05
61.	APPENDIX I	1st from bottom (3rd column)	87.00	86.00
62.	-do-	Sl. No. 7(b) Column 5	240.00	241.00
67.	APPENDIX III	Sl. No. 1 Section II (Column 4)	56.00	55.00
74.	APPENDIX VI	Total against A (Column 4)	17 nos	18 nos
75.	APPENDIX VI(C)	2nd line from top	Confiscated	Confiscated goods
85.	2.01(iii)	19th from top	20(75) 55(21)	20(76) 55(22)
85.	2.01(iv)	6th from bottom under column 6 of the table	blank	97
94.	2.08(ii)	4th from top	8.126	8,126
106.	2.09(viii)(e)	13th from top	1,784	1.784
109.	2.11(i)	4th from bottom	such	each
115.	2.12(ii)(b)	8th from bottom	d mand	demand
120.	2.14(iii)	12th from top	low	law
122	2.16(ii)	10th from bottom	Rs. 18.251	Rs. 18,251
139	2.21(vii)	20th from top	active	captive
140	2.21(ix)	17th from top	6,78,436	6,78,436

Page	Para No.	Line	*For*	*Read*
144	2.24(i)	6th from top	item 7 from 28 February 1982. The scope	item 7. From 28 February 1982, the scope
145	2.24(i)(c)	11th from top	Rs. 73,63,710	Rs. 73,64,526
145	2.44(i)(c)	16th from top	confirmed	conformed
147	2.26(i)	6th from top	(accelerator). He manu-factured both	(accelerator), manufactured both
148	2.26(ii)	5th from top	sadow plain,	shadow plain,
149	2.27(i)	4, 5 & 6th from bottom	craft	kraft
151	2.28(ii)	3rd from top	acvrylic	acrylic
155	2.30(ii)	14th ,,	fitting	fittings
156	2.30(ii)	15/16th line from top	manufacturer	manufacturer and
178	2.38(v)	18th ,,	in scrap	in soap scrap
180	2.40(i)	18th ,,	levied only	levied at only
192	2.46(i)	12th from bottom	aluminimum	aluminium
201	2.48(vii)	11th line from top	or	on
243	2.60(iii)	1st from bottom	(April 1982)	(August 1982).
252	2.67(i)	14th from top	manufacturers	manufactures
256	3.02	18th from top	(+) 12	(+) 72
256	3.02	20th from top	(—) 72	(—) 2
258	3.04	16th from top	70,561	76,561
266	3.07(i)	3rd from top	for raw	for use as raw
267	3.07(iii)(b)	21st from top	Res	Rs.
270	3.09(i)(b)	6th from bottom	was pointed out in audit in August, 1979;	resulted in tax being realised short short by
271.	3.9(iii)	12th from bottom	moor	motor
272.	3.09(iv)	12th from top	240600	240,000
273.	3.11(i)	7th from bottom	levied	levied.
274.	3.11(ii)	13th from top	(November 1983).	(December 1983).
282.	3.15(v)	16th from top	culd	could.
284.	7th from bottom	7th from bottom	Director of Receipt of Audit-II	Director of Receipt Audi-II

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INDIRECT TAXES

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CHAPTER 1—CUSTOMS RECEIPTS

PREFATORY REMARKS

The Audit Report on Revenue Receipts (Civil) of the Union Government for the year 1982-83 is presented in two volumes, one relating to Indirect Taxes and the other relating to Direct Taxes.

In this volume the results of audit of Indirect Taxes are set out. The report is arranged in the following order.

Chapter I—Refers to trends in customs revenue receipts, short levels of Customs duties and other points of interest noticed in audit.

Chapter II—Iikewise refers to revenue trends in respect of Union Excise duties and results of audit of such receipts.

Chapter III—Refers to receipts of Union Territories of Delhi and Chandigarh and results of audi' of Sales Tax, Excise duty and Motor Vehicles Tax receipts.

The points brought out in this report came to notice during test check in audit of the records in the various departmental offices. They are not intended to convey or to be understood as conveying any general reflection on the working of the departments concerned.

VOLUME I

CHAPTER 1

CUSTOMS RECEIPTS

1.01 The net receipts from Customs duty during the year 1982-83, after deducting refunds and drawback paid, alongside the budget estimates and figures for the preceding year 1981-82 are given below :—

Customs receipts from	Receipts in 1981-82	Receipts in 1982-83	Budget Estimates for 1982-83	Revised Estimates for 1982-83
	(In crores of rupees)			
Imports*	4395.98	5204.42	5093.60	5078.05
Exports	50.71	57.63	53.00	63.75
Cess on Exports . . .	12.05	11.55	12.85	12.87
Other goods and services .	39.34	45.40	35.00	43.00
Gross receipts . . .	4498.08	5319.00	5194.45	5197.67
Deduct refunds . . .	86.97	87.40	65.85	72.67
Deduct Drawback** . .	110.75	112.19	132.00	135.00
Net Receipts	4300.36	5119.41	4996.00	4990.00

The buoyancy in import duty collections was attributed to increase in imports of machinery, mechanical appliances, electrical equipment, iron and steel, chemicals other than pharmaceuticals and miscellaneous chemicals, copper, artificial resins and plastic materials and articles thereof.

The receipts from export duties at Rs. 57.63 crores fell short of the revised estimates at Rs. 63.75 crores for the year 1982-83. The increase in receipts over budget estimate of Rs. 53 crores for the year 1982-83 was accounted for by duties on export of Coffee.

1.02 *Port wise collections*

(i) Import duty collected during the year 1982-83 and the two preceding years are given below port wise as per information furnished by the Ministry of Finance.

*This amount includes countervailing duty (additional duty) leviable under section 3(1) of Customs Tariff Act 1975, and auxiliary duty leviable under section 44 of Finance Act, 1982.

**This amount does not include drawback allocated towards excise duty.

Port of Entry	Bills of entry (in hundreds)			Value of imports (in crores of Rs.)			Import duty (in crores of Rs.)		
	1980-81	1981-82	1982-83	1980-81	1981-82	1982-83*	1980-81	1981-82	1982-83
1. Bombay . .	2,457	2,463	N.A.	N.A.	N.A.	2,057	1,720	2,230	2,610
2. Calcutta . .	624	688	N.A.	N.A.	N.A.	655	54	701	767
3. Madras . .	635	705	N.A.	N.A.	N.A.	626	545	665	875
4. Cochin . .	50	87	N.A.	N.A.	N.A.	120	32	54	57
5. Goa . . .	19	19	N.A.	N.A.	N.A.	17	N.A.	N.A.	N.A.
6. Kandla . .	23	26	N.A.	N.A.	N.A.	110	89	99	110
7. Visakhapatnam .	35	N.A.	N.A.	N.A.	N.A.	74	N.A.	N.A.	N.A.
8. Delhi (Air) .	N.A.	N.A.	N.A.	N.A.	N.A.	27	N.A.	N.A.	N.A.
9. Others ports .	677	680	N.A.	N.A.	N.A.	272	789	355	510
TOTAL . .	4,520	4,668	N.A.	N.A.	N.A.	3,958*	3,229 (a)	4,104 (b)	4,929 (c)

N.A.—Not available.

*The figures inserted in this column are for the period April to September 1982 only. Figures for the whole year 1982-83 are awaited.

(a) differs from the accounts figure of Rs. 3413.02 crores.

(b) differs from the accounts figure of Rs. 4395.98 crores.

(c) differs from the accounts figure of Rs. 5204.42 crores.

(ii) The value of exports and export duty collected during the year 1982-83 and the two preceding years are given portwise as per information furnished by the Ministry of Finance.

Port of export	Number of Shipping Bills presented (in hundreds)			Value of exports (In crores of rupees)			Export duty collected			Amount of drawback paid		
	1980-81	1981-82	1982-83	1980-81	1981-82	1982-83	1980-81	1981-82	1982-83	1980-81	1981-82	1982-83
1	2	3	4	5	6	7	8	9	10	11	12	13
1. Bombay	3,511	3,398	N.A.	N.A.	N.A.	1172.29 (Sea) 269.56 (Air)	12.15	2.89	3.30	N.A.	N.A.	N.A
2. Calcutta	958	619	N.A.	N.A.	N.A.	372.42 (Sea) 35.72 (Air)	20.22	7.15	5.09	N.A.	N.A.	N.A
3. Madras	654	805	N.A.	N.A.	N.A.	240.27 (Sea) 114.52 (Air)	39.24*	22.34*	28.90*	N.A.	N.A.	N.A
4. Cochin	297	291	N.A.	N.A.	N.A.	373.11 (Sea) 0.51 (Air)	6.81	2.67	9.47	N.A.	N.A.	N.A

1	2	3	4	5	6	7	8	9	10	11	12	13
5. Goa . .	20	17	N.A.	N.A.	N.A.	74.67	N.A.	N.A.	N.A.	N.A.	N.A.	N.A
6. Kandla . .	16	24	N.A.	N.A.	N.A.	127.18	3.59	N.A.	negligible	N.A.	N.A.	N.A
7. Visakhapatnam	36	N.A.	N.A.	N.A.	N.A.	75.11	included in Sl. No. 3	included in Sl. No. 3	included in Sl. No. 3	N.A.	N.A.	N.A
8. Delhi .	N.A.	N.A.	N.A.	N.A.	N.A.	169.88	N.A.	N.A.	N.A.	N.A.	N.A.	N.A
9. Other Ports .	2,031	1,710	N.A.	N.A.	N.A.	461.59	25.46	14.00	9.50	N.A.	N.A.	N.A
TOTAL .	7,523	6,864	N.A.	N.A.	N.A.	3486.83**	107.47 (a)	49.05 (b)	56.26 (c)	N.A.	N.A.	N.A.

*Includes figures for export through Visakhapatnam and Bangalore.

**The figures in this column are for the period April 1982 to September 1982. Figures for the whole year 1982-83 are awaited.

(a) differs from accounts figure of Rs. 110.24.

(b) differs from accounts figure of Rs 50.71.

(c) differs from accounts figure of Rs. 57.63

1.03 *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 Appendices I to IV.

(i) Generally, the import duty collections have been registering annual increases during the years 1980-81 to 1982-83 under most of the statistical headings, even though value of imports have been decreasing under many of the corresponding statistical heads (the corresponding statistical heads do not lend themselves to correlation easily).

(ii) The collections from duty on imported passenger baggage has gone up from Rs. 171 crores in 1980-81 to Rs. 281 crores in 1982-83.

(iii) Imports of non ferrous metals have decreased but the import duty collections only on aluminium and articles thereof have decreased.

1.04 *Cost of collection*

The expenditure incurred in collection of Customs duties during the year 1982-83 alongside figures for the preceding year are given below :—

Cost of collection on	1981-82	1982-83
	(In crores of rupees)	
Import, Export and trade control functions .	6.86	8.03
Preventive and other functions	26.34	33.52
Total	33.20	41.55
Cost of collection as percentage of gross receipts .	0.74	0.78

1.05 *Searches, Seizures, Confiscation and personal penalties*

(i) The Customs Act 1962 empowers customs authorities to search any person, who has secreted about his person any goods liable to be confiscated under the Act or any other documents relating thereto and who has landed from or is about to board

or is on board any vessel within the Indian customs waters, a foreign going aircraft or is in a customs area. The customs officer may also seize goods liable to confiscation. The seized goods may be confiscated absolutely and disposed of to the benefit of Government revenue or they may be released after realising duty and redemption fine imposed in lieu of confiscation. The act also provides for levy of penalty or detention and for criminal prosecution. Further, personal penalties may be imposed on any person who, in relation to any goods, does or omits to do any act, which act or omission would render such goods liable to confiscation or who abets the doing or omission of such an act or is involved in relation to goods liable to confiscation.

(ii) *Search and Seizure*

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 port wise in Appendix V.

Collectorate of Ahmedabad has conducted a large number of searches and effected substantial seizures. Number of searches and seizures under Collectorate of Bombay were much less, but under Collectorates of Madras, Cochin and Calcutta the numbers were negligibly small. No searches have been conducted at all by Collectorate of Delhi.

(iii) *Confiscations*

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

The value of trade goods confiscated in recent years, was highest under Madras Collectorate and the figures in respect of Bombay Collectorate were comparable. The value of confiscation under Collectorates of Delhi, Calcutta, Ahmedabad and Cochin were hardly comparable to figures in respect of Madras and Bombay Collectorates.

(iv) *Disposal of confiscated goods and adjudication of seized goods*

As per instructions issued by the Central Board of Excise and Customs in July 1968, goods seized or confiscated by the department should be examined periodically and when any deterioration is noticed in respect of goods awaiting adjudication the matter should be brought to the notice of the adjudicating Officer for an expeditious decision. Confiscated goods are to be disposed of without delay.

In the port of Calcutta, the number and value of goods which were seized but had not been adjudicated for 5 to 10 years and goods confiscated which were not disposed of for 5 to 10 years (as seen in audit) are given below :

	No. of cases	Value (in lakhs of Rupees)
1. Confiscated goods outstanding for disposal as per warehouse register	690	102. 0
2. Confiscated goods pending disposal for more than 5 years.	157	6.58
3. Confiscated goods pending disposal for over 10 years	95	3.15
4. Seized goods pending adjudication . . .	298	27.00
5. Seized goods pending adjudication for more than 5 years	66	N.A
6. Seized goods pending adjudication for more than 10 years	11	N.A

(N.A.—Not available).

In paragraphs 2.38 and 2.39 of their 44th Report (VIIth Lok Sabha) 1980-81, the Public Accounts Committee had expressed serious concern at the large value of goods awaiting disposal and recommended for expediting adjudication of seized goods. Intimating action taken, the Ministry of Finance had assured the Committee that suitable administrative measures would be taken to expedite disposals, adjudications, appeals and revisions.

(iv) *Personal Penalties*

Details of personal penalties imposed in seven Custom Houses, and one land Customs Collectorate, received from the Ministry of Finance are given in Appendix VII.

The number of cases in which personal penalties were imposed was highest in Madras and Cochin Collectorates. The number was not insignificant in Calcutta, Delhi and Ahmedabad Collectorates. But the amount of penalties imposed was heavy in Ahmedabad Collectorate and not insignificant in Bombay, Cochin, Madras and Delhi Collectorates. But in so far as recovery of personal penalty was concerned, recovery was substantial only in Madras Collectorate and was reasonably good in Cochin Collectorate. In other Collectorates the recovery of penalty was significantly low or insignificant.

The personal penalty when not recovered remains only a penalty on paper and loses its deterrent effect very considerably. The non recovery could not at all be accounted for to any significant extent by pendency of appeals.

The Ministry of Finance have stated (December 1983) that no specific reason can be given for the variation in the collection of personal penalties. The carriers do not quite often have the means to pay penalty when contraband goods are seized from them. Some recovery is effected through the confiscation of goods but often the persons do not have the capacity to pay any further amount. There is no provision in the Customs Act for attachment of the property of a defaulter.

1.06 *Ad hoc exemptions*

Under Section 25(2) of the Customs Act 1962, the Central Government may, if it is satisfied that it is necessary 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 1982-83 and the preceding three years are given below :—

	1979-80	1980-81	1981-82	1982-83
(i) Number of exemptions issued and availed of .	97	68	63	115

	1979-80	1980-81	1981-82	1982-83
(ii) Total duty involved (in crores of rupees) . .	204.54	274.77	438.055	539.09
(iii) Number of cases each having a duty effect above Rs. 10.000 . . .	75	61	59	114
(iv) Duty involved in the cases at (iii) above (in crores of rupees)	204.53	274.76	438.054	539.09

1.07 *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, it 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 fulfillment of end use condition was verified during the last four years, as furnished by the Ministry of Finance are given in Appendix VIII.

The value of goods exempted from duty (subject to end use conditions) in a year, increased from Rs. 276 crores to Rs. 777 crores during the last four years. The amount of import duty foregone every year on goods exempted from duty (subject to end use verification) went up from Rs. 206 crores in 1978-79 to Rs. 680 crores in 1981-82. In 1981-82 bonds for duty foregone were taken in Custom Houses only in respect of import duty amounting to Rs. 2,298 crores.

1.08 *Arrears of Customs duty*

The amount of customs duty assessed upto 31 March, 1983 which was still to be realised on 31 October, 1983 was Rs. 690.56 lakhs (of this Rs. 618.90 lakhs was outstanding for more than a year). The corresponding amount as on 31 October, 1982 was Rs. 1,749.61 lakhs.

1.09 *Time barred demands*

Of the demands raised by the department upto 31 March, 1983 which were pending realisation as on 31 October, 1983, recovery of demands amounting to Rs. 342.92 lakhs relating to nine Custom Houses and Collectorates were barred by limitation.

1.10 *Write off of duty*

Customs duties written off, penalties abandoned and exgratia payments made during the year 1982-83 and the preceding three years are given below :—

Year	Amount of duty written off
	(in lakhs of rupees)
1982-83	6.80
1981-82	33.69
1980-81	44.39
1979-80	3.73

1.11 *Pendency of Audit Objections*

The number of audit objections raised upto 31 March, 1983 was 1614 involving revenue amounting to Rs. 676.85 lakhs. Of these 936 objections involving revenue amounting to Rs. 533.95 lakhs were pending settlement for more than 3 years. Details of pending objections are given below Collectoratewise.

Yearwise statement of Outstanding objections issued upto 31 March, 1982 but not settled till 31 March, 1983

Collectorate	Upto 1977-78		1978-79		1979-80		1980-81		1981 82	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
1. Cochin .	1	4,419.60	Nil	Nil	1	4,243.60	3	36,298.54	5	3,959.35
2. Bangalore	Nil	Nil	1	221.49	1	25,578.78	Nil	Nil	5	698.83
3. Ahmedabad Baroda and Rajkot .	Nil	Nil	1	14,63,965	..	..	..	..	4	3,06,101
4. Madras Visakhapatnam and Madurai .	134	17,09,367	94	15,53,916	96	7,51,537	143	37,33,231	247	48,36,170
5. Meerut .	1	858	3	12,725	1	50,183	1	3,388	..	..
6. Bombay and Goa	120	12,51,288	53	4,04,803	270	N.A.	Nil	Nil	71	. N.A.
7. Jaipur .	Nil	Nil	Nil	Nil	5	54,205	7	2,32,566	7	1,12,232
8. Chandigarh	6	78,187	..	..	..	..	..	..	..	..
9. Delhi .	36	76,169	26	1,41,325	41	10,32,023	38	6,90,525	34	31,21,220
10. Calcutta .	12	4,71,032	8	4,35,44,490	25	9,82,728	26	14,96,718	87	25,10,770
	310	35,71,310	186	4,71,21,455.49	440	27,02,498.38	218	61,92,726.54	460	80,97,149

1.12 *Results of audit*

Test check of the records in Custom Houses and Collectorates, conducted in audit during the year 1982-83 revealed cases of short levies of duties and cess, as also payments and refunds in excess and losses of revenues amounting to Rs. 3.26 crores in the aggregate. Excess levy of duties and payments due but not made amounting to Rs. 5.19 lakhs were also noticed in audit.

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

(a) Non levy of duties.
(b) Mistakes in valuation.
(c) Short levy of duty due to misclassification
(d) Incorrect grant of exemptions.
(e) Other mistakes.
(f) Export duties.
(g) Refunds of duty.
(h) Drawback payments.
(i) Internal Audit.
(j) Other topics of interest.

NON LEVY OF DUTIES

1.13 *Duty on ship's stores not assessed or collected*

When a foreign going vessel reverts to coastal trade, an inventory of stores is taken indicating the description of the goods and quantity. This inventory is sent to the preventive Customs Officer and a duplicate is handed over to the steamer agent. When the vessel completes discharge of foreign cargo at the first Indian Port of call, a copy of the inventory of stores is sent through the Master of the vessel himself to successive ports of call in India, so as to have a record of stores consumed while ship is on coastal trade i.e., it is not a foreign going vessel. No deposit towards duty is taken on reversion to coastal trade. When the vessel becomes a foreign going vessel again, at the request of the steamer agent, a preventive officer in the last port of call in India, prepares a similar inventory in duplicate. Duty on the stores consumed while the ship was not a foreign going vessel is demanded when the ship again becomes a foreign going vessel.

As on 1 May 1982 duty demanded on ship's stores consumed while ships were on coastal run prior to 1975 but on which duty remained unrealised amounted to Rs. 8,11,003 in one Custom House. The estimate of demands still to be raised in other cases which had arisen prior to 1975 and in cases arising after 1975 was not made available to audit.

In respect of a shipping line, demand for duty in 14 cases amounted to around Rs. two lakhs against which security deposit of Rs. 88,000 was withheld in 1966. The cases have still not been finalised. The files and papers were asked for scrutiny in audit in 1976 and have not so far been made available to audit despite reminders being sent periodically to the Custom House.

On the reasons for delays being enquired in audit (August 1982) the Custom House stated that a good number of months elapse before a foreign going vessel which had reverted to coastal trade, reverts back again as a foreign going vessel. Also there was delay in the receipt of inventory of stores on second reversion at the last port of call in India and in check of the inventory involved check of items declared in bills of entry, engine log books and purchase vouchers which were not readily made available by the shippers. All the shippers were not prompt in making payments even after the issue of show cause cum demand notices.

While commenting on the delay in assessment and collection of customs duty on ship's stores from the steamer Agents, the Public Accounts Committee in paragraph 29 of their 27th Report (Third Lok Sabha 1964-65) had desired that (a) action should be taken forthwith if it had not already been done, against the defaulting steamer agents (b) effective steps should be taken to ensure that duty on ship's stores is levied in all cases promptly and properly (c) the feasibility of raising the demand on the basis of the stores list furnished with the export manifest should be examined and (d) an effective system should be devised whereby Collectors of Customs and the Central Board of Excise and Customs would automatically come to know of such delayed cases.

The system would appear to have become no more effective even after two decades.

Reply of Ministry for Finance is awaited.

1.14 *Duty not realised on uncleared goods*

As per provisions of Sections 48 and 150 of the Customs Act, 1962, imported goods not cleared within two months after unloading, may, after notice to the importer, be sold by the person having custody thereof. The sale proceeds are to be appropriated towards customs duty after meeting the expenses of sale and freight and other charges payable to the carrier. Payment of charges due to the custodian and Government have precedence and only thereafter the balance if any, is payable to the owner of the goods.

The Customs Act, 1962 also provides for disposal of goods imported but not cleared within two months. 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 air and lying uncleared, the International Airport Authority of India have been appointed as the custodian. They are also responsible for periodical auctioning of the imported goods lying uncleared and abandoned in the Airport.

(i) In two consignments containing 16 cases each, 24,000 sets of piston ring of foreign origin were imported in April 1975. Pending clearance, they were permitted by the Custom House, to be stored in a public warehouse. Their value was declared at Rs. 2,20,118 and duty amounting to Rs. 3,60,993 was leviable thereon. In May 1977, the department started prosecution proceedings against the importers for under invoicing the goods, but the proceedings were dropped in April 1978. In June 1978, the importers relinquished their title to the imported consignments because the piston rings were heavy and not in a fit condition to be removed. An inventory taken in June 1979, disclosed a shortage of 273 sets and some of the cases, which were found broken and damaged, were repaired after the inventory was taken and all the cases were sealed by the customs department.

In July 1981, it was pointed out in audit that the goods were still lying with the public warehouse and that the department was liable for warehousing charges. Thereupon, the piston rings were removed to the departmental warehouse of customs in November 1981, when a further shortage of 742 sets was noticed. On 24 April 1981, 1000 sets were sold by auction at Rs. 5 per set against a price of Rs. 7.20 fixed by the pricing committee and against the landed cost of Rs. 24.21 per set. On 21 May and

3 August 1981, a further quantity of 14,250 sets was sold at Rs. 12 per set without holding auction. The buyer forfeited his deposit of Rs. 5,000 on failing to clear the balance quantity of 7,135 sets which also he had agreed to buy. On 25 March 1983, sale of 3,000 more sets was made to another buyer without holding auction and at the rate of Rs. 7.50 per set. This buyer also deposited Rs. 5,000 agreeing to buy the balance quantity of 4,735 sets but has not cleared them so far (June 1983). The efforts to sell in auctions held on 22 November 1982 and 31 January 1983 had not succeeded.

On enquiry in audit for the reasons for disposal of the goods at such low price, the department stated (April 1983) that the cases containing the rings were damaged and rings had deteriorated due to exposure to atmosphere. As against the landed value of Rs. 5,81,111 (including duty of Rs. 3,60,993) the department realised only Rs. 1,98,500 because of delay in disposal of goods.

The Ministry of Finance have confirmed the facts and stated that the procedure adopted by the Custom House was in order and that the tariff conference of Collectors of Customs held in September 1983 had recommended that disposal of confiscated goods should be speeded up on certain lines, on which approval of Government is pending.

(ii) A consignment of Antazoline Hydrochloride B.P.|U.S.P. used as antihistamine and valuing Rs. 4,13,793 was imported in July 1978. The Airport Authority with whom the drug lay had them tested and found that the drug though manufactured in March 1977 was in good condition in January 1980 when it was tested. It has not however been sold so far (July 1983) nor customs duty amounting to Rs. 3.10 lakhs realised.

The failure of the Custom House to demand duty from custodian and make him take action as per aforesaid provisions of the Customs Act, 1962 was pointed out in audit in August 1982. The reply of the Custom House is awaited.

While confirming the facts the Ministry of Finance have stated that the Customs have no authority under law to claim duty from the custodian till the goods are disposed of by him and the goods could not be put to auction by the custodian till July 1983, because he was unable to trace the name and address of the consignee in the absence of such details.

The reply does not refer to legal and administrative powers available with the Customs Officers to levy and collect duty chargeable under Section 12 of the Act if custodians of goods will not clear or dispose of the goods for unduly long periods.

1.15 *Duty not levied on Cars*

Under a notification issued by Government on 22 June 1935 (and amended from time to time) Motor Cars, Motor Cycles etc., are allowed to be imported by Members of an Automobile Club or Associaton belonging to the Federation of alliance *Internationale* De Tourisme under an international pass (Triptyque) or customs permit (Carnets de passages endoua ne) issued by such association and the vehicles are exempt from payment of customs duty, provided the pass or permit is guaranteed by the Western India Automobile Association. Such vehicles have to be re-exported out of India within six months from the date of import.

Two vehicles were allowed to be imported by two passengers, without payment of duty, through a land customs station, on 5 January 1978 and 18 December 1979 under customs permits valid upto 20 November 1978 and 5 November 1980 respectively. As export of these vehicles was not established, two demand notices for customs duty amounting to Rs. 1,40,977 and Rs. 61,900 were issued in May 1979 and 19 April 1981 respectively, to the Western India Automobile Association. The Association refused to honour the demands on the ground that the permits under which the vehicles were imported were forged ones. The department traced one of the passengers who sought to leave the country through Bombay on health grounds after depositing a vehicle (September 1980). But the vehicle was not the one which was actually imported. The engine and chasis numbers did not tally, and it became known that the passenger had sold the original vehicle in Goa to parties whose name and address she gave. On compassionate grounds, she was allowed to leave the country on payment of penalty of Rs. 1,000. The department has not so far (April 1983) taken a decision on the surrendered vehicle nor intimated whether any action had been taken against buyer of the car in Goa. Where abouts of the other passenger are stated to be not known. In the result, because of having allowed entry of the vehicles on forged permits customs revenue amounting to Rs. 2.03 lakhs was not levied and has been lost by Government.

In paragraph 1.13 (i) of the Audit Report for the year 1981-82 loss of revenue on cars brought but not reexported was pointed out. There, guarantee of Automobile Association was not on record unlike in this case where the document was a forged one. The system of triptyque as administered by the department does not provide for verification of duty paying capacity of importers and there is no real guarantee that duty would be paid under the triptyque system by anyone in India if the car is not exported.

The cases were referred (November 1979) to the Government;

The Ministry of Finance have confirmed the facts. (November, 1983).

1.16 *Countervailing duty not levied*

Under Section 3(1) of the Customs Tariff Act, 1975 in addition to basic customs duty, leviable on imported goods, an additional duty (called countervailing 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) Fourway valves and solenoid valves described as spares for urea instrument, ammonia cooling tower turbine, and ammonia refrigerating compressors were imported by a joint sector undertaking in India and the goods were assessed to duty as parts of machinery. But no countervailing duty was levied in the Custom House. Additional duty not levied (at 100 per cent *ad valorem* under item 29A of Central Excise Tariff and notifications issued in April 1963 and March 1976) amounted to Rs. 43,336.

On the omission being pointed out in audit (June 1978) the Custom House admitted the objection (June 1983) and stated that action has since been taken for recovering the amount.

The Ministry of Finance have confirmed the facts.

(ii) Man made fabrics subjected to the process of bleaching dyeing, printing, shrink proofing, stentering, heat setting, crease resisting processing or any other process or any two or more of these processes, are classifiable under item 22(1)(b) of Central Excise Tariff, while those not subjected to any processes are classifiable under item 22(1) (a). The fabrics whether processed or

unprocessed are exempt from the basic excise duty. On the processed fabrics falling under item 22(1)(b) of Central Excise Tariff, additional duty of excise is leviable under the Additional Duty of Excise (Goods of Special Importance) Act, 1957.

On two consignments of heat set poly propylene liner cloth, imported in March 1982 and April 1982 countervailing duty corresponding to additional duty of excise and amounting to Rs. 33,631 was not levied. On the omission being pointed out in audit (November 1982 and December 1982), the Custom House admitted the short levy. The Ministry of Finance, while confirming the facts, have stated (November 1983) that the amount short levied has since been recovered.

(iii) Countervailing duty at 8 per cent *ad valorem* leviable on goods classifiable under item 68 of the Central Excise Tariff was not levied in a Custom House on a consignment of "cylinder liners and gears" (Parts of industrial engines) imported in February 1980. Further, additional duty on imported "Internal Combusion Engines" was charged at 8 per cent *ad-valorem* by classifying it under item 68 of the Central Excise Tariff instead of at 10 per cent by classifying it under tariff item 29(1). The omission and mistake resulted in duty being levied short by Rs. 25,673 (November 1980).

On the mistake being pointed out in audit (November 1980) the Custom House admitted the mistake and stated that recovery was barred by limitation, but the importers were being asked to make voluntary payment of duty.

The Ministry of Finance have confirmed the facts.

(iv) On 'resin impregnated polyester tape and polyester film' which was imported by a State Government undertaking in September 1981, countervailing duty (corresponding to basic excise duty and special excise duty leviable under tariff item 22(3) of the Central Excise Tariff) was not levied in a Custom House. The omission resulted in short realisation of duty by Rs. 42,563.

On the mistake being pointed out in audit (March 1982), the Custom House accepted the objection in October 1982 and decided to raise demand for the amount. Report on recovery is awaited (May 1983).

The Ministry of Finance have confirmed the facts.

MISTAKES IN VALUATION

1.17 *Short levy of duty due to undervaluation*

(i) A consignment (42 cases) of turbogenerator components with accessories falling under tariff heading 84,66(i) which was imported in July 1981, through Bombay, was received in a customs bonded warehouse in the interior of India. The consignments were cleared in instalments between November 1981 and February 1982 from the bonded warehouse and duty amounting to Rs. 1,17,02,666 was paid on a value of Rs. 2,60,05,924. However, the documents received from Bombay indicated the value as Rs. 2,68,87,626 on which duty of Rs. 1,20,99,432 was leviable. The mistake resulted in short levy of duty by Rs. 3,96,766.

On the mistake being pointed out in audit (May 1982) the department recovered the amount of duty short levied (January 1983).

The Ministry of Finance have confirmed the facts.

(ii) As per provisions of the Customs Act, 1962, the value of goods for purposes of levy of import duty of customs is to be determined as to reflect the value or price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale. Where such a price is not ascertainable, the nearest ascertainable equivalent thereof is determined in accordance with the rules made under the Act.

On goods imported by a person having special relationship with two foreign suppliers, as a result of examination of the books of the buyer, the invoice value was being increased by 18 per cent and 5 per cent respectively depending on the supplier. However, in 19 cases of imports made during the year 1979-80 such adjustment of the invoice value was omitted to be done resulting in import duty being realised short by Rs. 61,338.

On the omission being pointed out in audit (October 1982), the Custom House admitted (February 1983) the omission and stated that action to recover the amount was being taken.

Reply of Ministry of Finance is awaited (November 1983).

1.18 *Short levy of duty due to application of incorrect rate of exchange.*

In an Air Customs Collectorate in converting value in Deutsche Marks shown in an invoice relating to a computer system imported in December 1981, the rate of exchange was wrongly applied at DM 2504 for Rs. 100 instead of the correct rate of DM 25.04 for Rs. 100. On the mistake being pointed out in audit (July 1982), the department admitted the objection and recovered the short levy amounting to Rs. 1,29,469.

The Ministry of Finance have confirmed the facts.

SHORT LEVY OF DUTY DUE TO MISCLASSIFICATION

1.19 *Stainless Steel items*

(i) With effect from 15 April 1982, on import of "Tube and Pipe Fittings of Stainless Steel" classifiable under sub heading (2) of tariff heading 73.20, customs duty became leviable at 300 per cent *ad valorem*. The tariff conference of Collectors of Customs recommended in December 1981 that Incoloy Steel plates, sheets, rods etc. are stainless steel items.

On a consignment of "Incoloy 800 H Weldolets (pipe fitings) imported in June 1982 by a Public Sector Undertaking, customs duty was levied at the rate of 60 per cent *ad valorem*, applicable to "pipe fittings of iron or steel not elsewhere specified" under tariff heading 73.20(1). However, they were correctly classifiable under sub heading 4(2) of tariff heading 73.20 and customs duty was leviable at 300 per cent *ad valorem*. The mistake, resulted in duty being realised short by Rs. 4,34,946.

On the mistake being pointed out in audit (December 1982), the Custom House stated (June 1983) that at the time of assessment in June 1982 they were not aware of the recommendations made in December 1983. The amount of Rs. 4,34,946 was recovered in June 1983.

The Ministry of Finance have confirmed the facts.

(ii) On imports of stainless steel tubes and pipes, customs duty is leviable under tariff heading 73.17|19(2) at 300 per cent *ad valorem* and auxiliary duty at 30 per cent *ad valorem* as also countervailing duty at Rs. 175 per tonne under Central Excise Tariff (item 26AA).

On two consignments of stainless steel tubes and pipes cleared from bond on 24 April 1982, customs duty was assessed at only 60 per cent *ad valorem* and auxiliary duty at 25 per cent *ad valorem* under tariff heading 73.17|19(1)(i) applicable to pipes and tubes made of iron or steel (other than stainless steel). The misclassification resulted in duty being levied short by Rs. 2,50,519.

On the mistake being pointed out in audit (November 1982), the department raised demand for the amount of Rs. 2,50,519 (December 1982). Report on recovery is awaited (April 1983). The Ministry of Finance have confirmed the facts.

(iii) As per note 3(a) below Section XV of the Customs Tariff Act, 1975, an alloy of base metal is to be classified as an alloy of the metal which predominates by weight over each of the other metals in the alloy.

Incoloy steel sheets were imported in March 1979 with content of chromium 19.65 per cent and nickel 30.6 per cent, but content of iron which was 47.769 per cent predominated over content of chromium and nickel.

However, the alloy was classified under tariff heading 75.03 as nickel alloy sheets and customs duty was levied at 75 per cent *ad valorem* and no countervailing duty was levied. The goods were classifiable as steel sheets and because the Chromium content was more than 11 per cent, the goods were further classifiable as stainless steel or alloy steel under tariff heading 73.15. Misclassification by Custom House resulted in duty being realised short by Rs. 24,043.

On the mistake being pointed out in audit (July 1979), the Custom House accepted (April 1980) that the goods were alloy steel but did not agree to levy of duty as on stainless steel. The Conference of Collectors of Customs had held in December 1981 that incoloy plates, sheets, etc., are "Stainless Steel" if they contained more than 11 per cent Chromium. The Custom House expressed (June 1983) its unwillingness to revise the assessment

and indicated that future imports would be classified accordingly. In the result, the department suffered loss of recoverable revenue amounting to Rs. 24,043 on the consignments imported in March 1979.

The Ministry of Finance have stated (November 1983) that as per practice, Incoloy steel was being classified as alloy of steel other than stainless steel till December 1981 when it was decided to classify it as stainless steel and therefore, it would not be necessary to reopen the cases assessed to duty till December 1981. Under section 28-A of the Customs Act 1962, authorised practice is what is notified by Central Government under that section. No such notification has been issued in respect of Incoloy steel. Generally established practice having force of law is seldom admitted unless there has been uniformity or near uniformity in practice, in area and in time. If conflicting practices are in existence or the practice has not been in force for 20 to 30 years, authorised practice cannot be admitted.

1.20 *Glass and instruments*

(i) "Photo Lithographic Equipment" are classifiable under tariff heading 90.10 and on their import, customs duty is leviable at 100 per cent *ad valorem* as also auxiliary duty at 20 per cent *ad valorem.*

On import of a consignment of "Mark Aligner" (which is a precision instrument of the type of photo lithographic equipment and used in manufacture of silicon semiconductor devices using photo lithographic process) in February 1979, it was classified in a Custom House under tariff heading 85.18|27 and customs duty was levied at 60 per cent *ad valorem* as also auxiliary duty at 15 per cent *ad valorem.* The misclassification resulted in duty being realised short by Rs. 1,50,586.

On the mistake being pointed out in audit (August 1979), the department stated (January 1983) that the relevant file in the Custom House was not readily traceable and a reply would be given after reconstruction of the records. The acceptance of the audit objection is awaited.

(ii) Instruments and apparatus used for measuring, checking or automatically controlling temperature, flow, depth, pressure e.g. pressure gauges, level gauges and flow meters, are classifiable under Customs Tariff heading 90.24. However, electrical

instruments and apparatus used for measuring, checking or automatically controlling and of which instruments the non electrical counterpart falling under heading 90.24, are classifiable under tariff heading 90.28(4). Parts and accessories of instruments of both types are classifiable under heading 90.29(1).

A consignment of components and sub-assemblies of "Transmitters" imported by an Instrumentation Company during the year 1981-82 were classified under heading 90.28(4), though they were not complete instruments. As per invoices, the components were solely designed for use in the range of Electrical instruments used for measurement of pressure, level, flow etc. They were accordingly classifiable under tariff heading 90.29(1). Failure to classify the goods correctly resulted in duty being levied short by Rs. 99,233.

On the mistake being pointed out in audit (March 1983) the department admitted the objection and stated that a demand of Rs. 99,233 had since been raised (May 1983).

The Ministry of Finance have confirmed the facts.

(iii) A postal consignment of 20 quartz magnifying glasses imported from U.S.A. was classified under tariff heading 84.17(1) which covers machinery, plant and similar laboratory equipment. Customs duty was levied at 40 per cent *ad valorem* and countervailing duty under item 68 of Central Excise Tariff at 8 per cent *ad valorem*. However, the goods were classifiable under tariff heading 70.21 covering "glass and glassware other articles of glass" and countervailing duty was chargeable under item 23A of Central Excise Tariff. The misclassification resulted in duty being realised short by Rs. 11,322.

The mistake was pointed out in audit (October 1982) to the department; their reply is awaited (June 1983).

Reply of Ministry of Finance is awaited in respect of the cases mentioned in sub paragraphs (i) and (iii) (December 1983).

1.21 *Oils and man-made fibres*

(i) On certain imports of Aviation Turbine Fuel made during the period July 1980 to February 1981 in addition to customs duty, countervailing duty was levied after classifying it as Kerosene under item 7 of Central Excise Tariff. As per the tariff, products classifiable under tariff item 7 should have a flame height 18 m.m.

or more and should ordinarily be used as an illuminant in oil burning lamps. The Aviation Turbine Fuel is exclusively used as fuel in jet propelled aircrafts and is never used as illuminant in oil burning lamps. So the conditions were not fulfilled and the fuel was classifiable as "Petroleum products not otherwise specified" under tariff item 11A(5) and therefore duty was leviable at a higher rate. Failure to levy the higher rate of duty resulted in duty being realised short by Rs. 34.82 lakhs.

On the mistake being pointed out in audit (May 1981) the Custom House did not accept the audit objection. The Deputy Chief Chemist of Custom House stated that it was not possible to indicate whether the fuel would satisfy the definition of Kerosene with reference to flame height. No reply was given about its non use as illuminant in oil burning lamps.

The Ministry of Finance have stated (November 1983) that it is not necessary for the fuel in question to be solely used as an illuminant in oil burning lamps and the fuel has all along been classified as kerosene. The tariff does not allow of such an interpretation prior to its amendment on 1 March 1982 so as to include the said fuel under tariff item 7.

(ii) On imports of petroleum oils and oils obtained from bituminous minerals and preparations containing not less than 70 per cent by weight of petroleum oils or oils obtained from bituminous minerals (these oils being the basic constituents of the preparations), duty is leviable under tariff heading 27.10. If the weight of the petroleum oils or of oils obtained from bituminous minerals contained in the preparations is less than 70 per cent by weight, duty is leviable on the preparations under tariff heading 34.01|07(2).

The test report in respect of a consignment of Synthetic Lubricating Oil, imported by a Public Sector Undertaking, indicated that it was a yellow liquid free from mineral oil. Prior to clearance from warehouse in July 1979, duty was levied at 40 per cent *ad valorem* under heading 27.10(8) classifying the oil as Lubricating oil, eventhough the oil had no mineral oil content. Duty was leviable on the goods under tariff heading 34.01|07(2) at 75 per cent *ad valorem* and additional duty at 8 per cent *ad valorem* under tariff item 68 of the Central Excise Tariff. Failure to levy duty so resulted in duty being realised short by Rs. 1,05,017.

On the mistake being pointed out in audit (March 1981), the Custom House admitted the mistake (March 1983) and realised the short collection of duty amounting to Rs. 1,05,017 in March 1983.

The Ministry of Finance have confirmed the facts.

(iii) On import of a product described as mineral oil countervailing duty was levied after classifying it under item 10 of Central Excise Tariff as furnace oil (low sulphur fuel oil). However the product was a special chemical preparation containing mineral oil and also non-mineral ingredients. It was a specially prepared product to be used for specific purposes and not as furnace oil. The value of the product was also much higher than furnace oil. Non levy of countervailing duty under item 68 of Central Excise Tariff resulted in duty being realised short by Rs. 97,358.

On the mistake being pointed out in audit (March 1981) the Custom House admitted the mistake. Report on raising of demand and recovery is awaited.

The Ministry of Finance have stated (November 1983) that irrespective of how the product was produced or used, so long as the imported products conformed to the technical specifications mentioned in item 10 of Central Excise Tariff covering furnace oil, it would merit classification thereunder and the products in question were classified accordingly. But the definition of furnace oil given in item 10 of Central Excise Tariff covers only mineral oil which is defined in the tariff as oil consisting of a single liquid hydrocarbon or a liquid mixture of hydrocarbons, whereas the product in question contained non-mineral ingredients also.

1.22 *Chemicals*

(i) On imports of organic surface active agents, (other than soap) in addition to customs duty, countervailing duty is leviable under item 15AA of the Central Excise Tariff. The tariff description makes no distinction between synthetic and naturally occurring organic surface active agents.

On "Saponin powder", an organic surface active agents, imported during the period from February 1980 to December 1982, countervailing duty was levied under item 68 of Central

Excise Tariff instead of under item 15AA resulting in short realisation of duty by Rs. 2.31 lakhs. In the same Custom House, on four consignments imported during the months of January 1982, March 1982 and June 1982 countervailing duty had been charged correctly under item 15AA of Central Excise Tariff.

On the mistake being pointed out in audit (June 1980), the Custom House stated (March 1983) that according to a clarification given by the Government of India in March 1966, natural products are excluded from the scope of item 15AA of Central Excise Tariff. Saponin is a plant glucoside (having property of frothing with water) found in soap bark, soapnut and other plants when separated out. It is a white amorphous powder, finding application in washing compounds, industrial scouring compounds, soapless shampoos and emulsifying agents. Under the Customs Co-operation Council Nomenclature, saponin is classifiable in chapter 29 as "organic chemicals". But soap, organic surface active agents and washing and scouring preparations are classifiable under chapter 34. The plea of the department that saponin was not intended to be covered under tariff item 15AA is not borne out by the tariff description. Advice of Ministry of law on legal interpretation has also not been advanced in favour of the view of the department.

The Ministry of Finance have confirmed the facts and stated (November 1983) that prior to April 1982 the view taken was that the tariff item should be read in the light of the Brussels Tariff-Nomenclature but thereafter it was decided that the tariff must be read by itself.

(ii) While various compounds of antimony are used as pigments and dyes, antimony oxide is a powerful reducing agent and on if duty is leviable at 8 per cent *ad valorem* under tariff item 68 and not 5 per cent as on pigments and colours under tariff item 14. of Central Excise Tariff.

On two consignments of antimony oxide imported in October 1979 and November 1979 by a manufacturer of Titanium products for use as settling agent (and not as pigment) countervailing duty was levied at 5 per cent under tariff item 14 instead of at 8 per cent under tariff item 68. The misclassification resulted in duty being realised short by Rs. 21,043.

The mistake was pointed out in audit in February 1980 and May 1980; Reply of the Custom House is awaited (June 1983).

The Ministry of Finance have stated (November 1983) that the point would be discussed in the tariff conference of Collectors.

1.23 *Other products*

(i) On imports of ships, boats and floating structures customs duty is leviable under Chapter 89 of the Customs Tariff Act, 1975, at the rate of 40 per cent *ad valorem*. However, as per an explanatory note in that Chapter, parts and accessories of vessels or floating structures, other than hulls, are not to be classified under Chapter 89. Such parts and accessories (other than hulls) imported separately are to be classified by viewing them as separate complete goods under other appropriate Chapters of the Schedule to the Customs Tariff Act. This was also clarified in the Handbook on "Salient features of the new Indian Customs Tariff" issued by the Ministry of Finance.

In a major Custom House, two pieces of jet nozzle Drag Head (used in a dredger) which were imported separately by a Government of India undertaking in November 1979, were classified as part of a dredger and assessed to duty at 56 per cent *ad valorem* as also to countervailing duty at 8 per cent *ad valorem* under item 68 of Central Excise Tariff. However, the jet nozzle was to be classified under heading 84.59(1) as part of a separate mechanical appliance viz., 'Drag Head' and having individual function. Accordingly duty was to be levied at 75 per cent *ad valorem* and countervailing duty at 8 per cent *ad valorem*. Failure to so levy duty resulted in duty being short levied by Rs. 2,55,340.

On the short collection being pointed out in audit in March 1980, the department stated, in April 1982, that the assessment was justified on the ground that jet nozzle Drag Head was not specifically covered by any other heading of Tariff, but was to fall under Chapter 89 and that the Drag Head was not also a machine by itself but was used in conjunction with dredger and was, therefore, an identifiable part of dredger. As per scheme of Customs Tariff Act 1975, and explanatory note under Chapter 89, the contention of the Custom House is not correct and parts of a dredger machinery, which is only fitted into a hull (where the dredger is a floating dredger and not a land based dredger) are required to be classified under heading 84.59. Only

hulls are allowed to be classified under Chapter 89 and all other parts going into the hull are classifiable under appropriate other Chapters of the tariff.

The Ministry of Finance have confirmed the facts.

(ii) Fuel, Oil or Water pumps for internal combustion piston engines (including fuel injection pumps) are classifiable under tariff heading 84.10(3) and duty is leviable at 100 per cent *ad valorem*. Part of machinery used solely and principally with a particular kind of machine is also classifiable under the same tariff heading as that machine. Certain Machinery parts not falling within any other heading are classifiable under tariff heading 84.65 and duty is leviable at 60 per cent.

On spare parts for Sofag oil pump, valuing Rs. 63,118, imported by post parcel, duty was levied at 60 per cent as also auxiliary duty and countervailing duty, after classifying the goods under tariff heading 84.65. However, the goods were classifiable under heading 84.10(3) and duty was leviable at 100 per cent as also auxiliary duty and countervailing duty. Failure to classify correctly resulted in duty being realised short by Rs. 30,674.

On the mistake being pointed out in audit (April 1982) the department accepted the mistake and recovered the short levy (May 1982).

The Ministry of Finance have confirmed the facts.

INCORRECT GRANT OF EXEMPTIONS

1.24 *Short levy due to non-verification of end use where exemption from duty was conditional.*

As per a Central Excise Notification issued on 1 March, 1975 all drugs, medicines, pharmaceuticals, and drug intermediates not elsewhere specified, which are classifiable under item 68 are exempt from the levy of excise duty. The exemption in respect of 'pharmaceuticals' was withdrawn from 22 June, 1982.

In deciding upon a proposal for review of two orders in appeal relating to levy of countervailing duty on imports of Sorbitol USP and propylene glycol USP, the Government of India,

took the view in March 1981 and May 1981 that countervailing duty leviable on chemicals of "pharmaceutical grade" was exempt. However, in adjudicating the levy of duty on the chemical 'methyl aceto acetate', the Government of India in its capacity as quasi-judicial appellate authority held in September 1981 and September 1982 that duty leviable on such chemicals would be exempt to the extent they are used in the manufacture of drugs because the notification implies end use condition on all chemicals which are exempted from duty after the adjudicating officer takes a view that such chemicals are to be used in drug industry.

(i) On imports of 'Propylene Glycol' BP|USP, in addition to customs duty and auxiliary duty, countervailing duty is also leviable under item 68 of the Central Excise Tariff.

On consignments of Propylene Glycol BP|USP which were imported, exemption from countervailing duty was allowed in a Custom House in terms of aforesaid notification covering "all drugs, medicines, pharmaceuticals and drug intermediates not elsewhere specified." Propylene Glycol has various industrial uses and is used as non-toxic antifreeze in breweries and dairy establishments, as solvent, humectant and plasticizer and is also used in manufacture of synthetic resins. Therefore, it is chemical and was not covered by the aforesaid notification. The incorrect grant of exemption resulted in duty being realised short by Rs. 2.29 lakhs.

On the mistake being pointed out in audit (between August 1982 and January 1983) the Custom House stated that the goods were considered to be "pharmaceuticals" which were covered by the notification upto June 1982. It also stated that the exemption notification did not stipulate end use verification by the Custom House.

However, the assessment documents revealed that the goods were mainly imported by Export Houses who sold the goods to the actual users. There was no declaration by the actual users that the goods were required by them for manufacturing drugs or medicines. In fact, on some of the bills of entry, there was an indication that the goods were required by the actual users for non medical purposes. The goods being general chemical having various uses, it was not covered by the exemption notification contrary to the view held by the Custom House. Subsequent to receipt of the audit objection, on three consignments imported

after 22 June 1982 demands amounting to Rs. 33,750 were raised by the Custom House in January 1983. The Ministry of Finance have stated (November 1983) that the department would take decision on the question of short-levy after verifying the use of goods by the importers.

(ii) In a Custom House on imports of chemicals of pharmaceutical grade, countervailing duty was being levied under item 68, on the ground that the chemicals have several uses including uses outside the pharmaceutical industry. The practice was changed in March 1982 in the light of the aforesaid decisions of the Government of India.

On Propylene Glycol USP imported in April 1982 for use in the manufacture of flavouring essences, countervailing duty amounting to Rs. 39,240 was not levied, though it was leviable because general purpose chemicals are not mentioned in the exemption notification. Six more cases of non levy of additional duty amounting to Rs. 1,57,280 on imports of Propylene glycol USP during the months of May and June 1982 were also noticed in audit in the same Custom House.

On the omission being pointed cut in audit (July 1982 the Custom House stated that countervailing duty was not levied in terms of the decision of the Government of India referred to above. But chemicals known as 'pharmaceuticals' or 'drug intermediates' have very many other uses than use in the drug industry. Also the condition of end use was implied in the quasi-judicial orders of the Government of India even if end use verification was not made mandatory by amending the notification of 1 March 1975. In the result, loss of revenue had occurred because of the ambiguity introduced in the notification by use of words 'drug intermediates' (and by the word 'pharmaceutical' which was deleted on 22 June 1982) instead of using the word "chemicals used in drug industry subject to verification of end use." As the notification of 1 March 1975 reads, only such general purpose chemicals as are used predominantly in the drug industry would merit description as 'pharmaceuticals' or 'drug intermediates'.

The Ministry of Finance have confirmed the facts.

(iii) Aceto Acetic Ester (Ethyl or Methyl) specially finds mention as dye intermediate under Customs Tariff heading 29.01|45. It is nowhere mentioned as a drug intermediate. It

is used as an agent in chemical synthesis of many hetro cyclic ring systems which form the basis for further conversion into dyes, drugs, aromatic chemicals etc. It is used in preparation of drug intermediate but is itself not a drug intermediate.

On eight consignments of Aceto Acetic Ester (Ethyl or Methyl) imported during the period from June 1980 to May 1982, customs duty was levied by classifying them under tariff heading 29.01|45 and for purpose of levying countervailing duty, the ester was viewed as a drug intermediate falling under Central Excise Tariff item 68. As per aforesaid notification, drug intermediate was exempted from the levy of countervailing duty. The mistake in viewing the goods as drug intermediate resulted in countervailing duty amounting to Rs. 2,01,177 not being realised.

On the mistakes being pointed out in audit (January 1981), the department did not accept the mistakes.

The Ministry of Finance have stated (August 1983) that the ester in question is not a pharmaceutical, but is a drug intermediate and when imported for manufacture of analgin would be eligible for concessional assessment. However, as stated above the ester is a dye intermediate and is used in the manufacture of drug intermediate.

(iv) On fourteen consignments of "para phenetidine USP" imported during the months of January 1982 to June 1982, by five importers, in addition to customs duty, countervailing duty at 8 per cent *ad valorem* was levied under item 68 of Central Excise Tariff. A drug house claimed (May 1982) refund of countervailing duty in respect of all the fourteen consignments on the ground that the imported goods were allegedly sold to them on high seas and they were the actual users of the goods. It claimed that the goods were drug intermediates which were to be exempted from countervailing duty under the aforesaid notification issued in March 1975.

Refund of countervailing duty amounting to Rs. 1,30,595 was made by Custom House to the importers during December 1982, though no refund claim had been lodged by the importers The refund applications had only carried in each case a declaration from the importers on a stamped paper that any refunds of import duty were payable to the Drug House as they had paid the import duty and clearing charges, and to whom the goods were sold on "high seas basis".

The importers had not declared that the imported goods had been sold on high seas to a Drug House for their use. Such a declaration was necessary in terms of a Public Notice issued by the Custom House, in June 1982 which was designed to ensure that such goods are in fact used as drug intermediate by the importers. Declaration was also necessary because the imported goods have uses in production of rubber as anti oxidants and in certain synthetic dye-stuffs, as per the report given by the chemical examiner of the Custom House. Since at the time of import or clearance of the goods, the fact of sale of goods on high seas to a Drug House was not declared, the Custom House did not satisfy itself that the goods were to be used as drug intermediates and not for other purposes. Therefore, the sale to Drug House after the import could not have given rise to refund claim. The plea of sale on high seas (so very necessary to claim the refund which was admissible only to importers who use it in drug industry) would, therefore, appear to have become necessary.

On the highly questionable nature of the refund being pointed out in audit (April 1983), the Custom House issued demand for Rs. 1,30.595 in June 1983. Report on recovery is awaited (August 1983).

Ministry of Finance have not accepted the objections and have stated that the 14 refund orders in question were sanctioned on the basis of the principles laid down by the Government of India in their orders in review of 9 March 1981 and 29 May 1981. "Para-phenetidine USP" was correctly considered to be covered by expression 'Pharmaceutical'. Government of India's orders did not specify any condition as to end-use nor as to what type of importer could import the item. The Drug House which paid the duty was in any case able to establish actual use and as such they were rightly entitled to the refund. In only 4 cases, the refund was allowed incorrectly as the item was imported after the term 'pharmaceutical' was deleted on 22 June 1982 from the exemption notification. In these 4 cases demands have been issued for duty amounting to Rs. 46,187.87, and recovery action is being pursued.

(v) On a consignment of "Acetonitrile pure" valuing Rs. 4,57,228 imported in April 1982, only customs duty was levied and countervailing duty was exempted under the aforesaid notification. But the importer had given a declaration in April 1982 that the imported goods were to be used for manufacturing sulpha drug intermediates. The declaration clearly

indicated that the imported items were only chemicals and not drug intermediates and no exemption from countervailing duty was available. Irregular grant of exemption resulted in duty being realised short by Rs. 45,723.

On the mistake being pointed out in audit (October 1982), the Custom House raised (October 1982) a demand for Rs. 45,723.

The Ministry of Finance have stated (November 1983) that the point would be discussed in the tariff conference of Collectors.

(vi) On a consignment of "Tartaric Acid BP" valuing Rs. 73,883 imported and cleared from bonded warehouse in February 1982, countervailing duty amounting to Rs. 12,893 was leviable under item 68 of Central Excise Tariff, but the same was not levied by reference to the aforesaid notification of 1 March 1975. On another consignment of the same commodity, imported in February 1982, duty amounting to Rs. 10,639 was not similarly levied. The objection raised by the internal audit was overruled by the Custom House.

Tartaric acid is a chemical compound having varied industrial uses e.g. use in confectionery products, bakery products, photography and tanning. The grant of exemption was irregular and resulted in duty amounting to Rs. 23,532 not being realised.

The irregularity was pointed out in audit (May 1983); the reply of the department is awaited.

The Ministry of Finance, while confirming the facts, have stated (November 1983) that in view of the importers' declaration that the goods were imported for non-medical use, the Custom House was being asked to recover the short-levy.

11.25 *Short levy due to incorrect grant of exceptions*

(i) On import of printing machinery and machinery for use as ancillary to printing, customs duty (including auxiliary duty) is leviable at 45 per cent *ad valorem* and countervailing duty at 8 per cent *ad valorem*. On such machinery having output of 30,000 or more copies per hour, customs duty is leviable at a concessional rate of 30 per cent *ad valorem* and no countervailing duty is leviable as per notification issued in June 1980.

On a consignment of "offset rotary press with accessories" concessional rate of duty as aforesaid was levied in a Custom House, even though the essential condition of output of 30,000

copies per hour was not fulfilled. This resulted in duty being realised short by Rs. 17,40,413.

On the mistake being pointed out in audit (May 1983), the Custom House stated that the cylinder speed was only 20,000 revolutions per hour, but double production output of more than 30,000 copies per hour was achieved.

The Ministry of Finance have stated (October 1983) that the machine can give 40,000 copies of four pages of standard size (578 × 482mm) per hour per web and the machinery had four webs. The dimension of the printing cylinder is 1156 × 956 mm which is double the size of standard newspaper. The printing matter is repeated on each half of the cylinder to give double the number of standard newspaper size copies. The notification does not refer to any size or to any newspaper size but refers only to output of 30,000 or more print copies per hour irrespective of the size of cylinder and not to increasing the number of copies by cutting them after printing. The grant of exemption was, therefore, irregular by reference to the language of the exemption notification and duty was realised short by Rs. 17,40,413.

(ii) On glass shells, classifiable under tariff heading 70.01.16, import duty is leviable at 100 per cent *ad valorem* and auxiliary duty at 30 per cent *ad valorem*. As per a notification issued in April 1982 on glass shells of sizes 25 mm and 35 mm, imported for manufacture of electric lamps, import duty was leviable at 10 per cent *ad valorem* and no auxiliary duty was leviable where import took place, between 1 April 1982 and 30 September 1982.

On a consignment of glass shells of sizes 25 mm and 35 mm imported during October 1982, import duty was levied at only 10 per cent *ad valorem*, even though for aforesaid notification was not in force beyond 30 September 1982. The mistake resulted in duty being realised short by Rs. 1,05,316.

On the mistake being pointed out in audit (April 1983), the department issued a demand for Rs. 1,05,316 in April 1983.

The Ministry of Finance have confirmed the facts.

(iii) As per a notification issued in August 1977, on computers and such machines customs duty in excess of 60 per cent

ad valorem was exempted but on imports of electronic calculating machines, electronic accounting machines and electronic cash registers exemption was not to be allowed and duty was to be levied at 100 per cent *ad valorem.*

On a consignment of electronic accounting machines imported in March 1982, customs duty was wrongly assessed at 60 per cent *ad valorem* instead of at 100 per cent. The misclassification resulted in duty being realised short by Rs. 90,225. On the mistake being pointed out in audit (August 1982), the department accepted the objection and raised demand for recovery of Rs. 90,225.

The Ministry of Finance, while confirming the facts, have stated (November 1983) that the amount short levied has since been recovered.

(iv) On iron or steel castings and forgings falling under tariff heading 73.33|40 duty is leviable at a concessional rate of 60 per cent *ad valorem* and auxiliary duty at 15 per cent *ad valorem* in terms of a notification issued in August 1976, provided the castings and forgings require further processing for being made into fully finished components.

On steel forgings stated to be unmachined and imported February 1981) for manufacture of adding machine and its components, duty was levied at the concessional rate mentioned above even though they were in fact manufactures of steel. The mistake resulted in duty being levied short by Rs. 52,717.

On the mistake being pointed out in audit in May 1981, the Custom House disallowed the concessional rate and demanded duty at 100 per cent and auxiliary duty at 20 per cent ad *valorem* as also additional duty at 8 per cent *ad valorem* under item 68 of Central Excise Tariff and recovered the short collection of Rs. 52,717 (December 1982).

Reply of Ministry of Finance is awaited.

(v) When Alloy Steel in certain forms is imported, duty is leviable under tariff heading 73.15(1) at 35 per cent *ad valorem* and auxiliary duty at 15 per cent *ad valorem* in terms of a notification dated 16 April 1982. But on "Alloy Steel"

not in the forms specified, duty is leviable at 60 per cent *ad valorem* and auxiliary duty at 25 per cent *ad valorem* in terms of another notification also dated 16 April 1982.

On a consignment of Sealing Strips and Caulking wire imported in May 1982, duty was wrongly levied at the lower rates though they were not specified forms. In the result duty was levied short by Rs. 46,476.

On the mistake being pointed out in audit (November 1982), the department admitted the objection.

The Ministry of Finance have stated (November 1983) that the amount of short-levy has since been realised.

(vi) On import of paper and paperboard all sorts countervailing duty is leviable under the Central Excise Tariff at 40 per cent *ad valorem*. As per a notification issued in January 1978 on paper and paper boards other than paper commonly known as Kraft paper if made of a substance equal to or exceeding 65 grams per square metre countervailing duty is leviable at a concessional rate of 30 per cent *ad valorem*.

On consignment of paper described as "abrasive base paper unglazed pure kraft of 150 grams per square metre" imported in April 1979 and on another consignment of abrasive base paper of 120 grams per square metre received from the same foreign supplier in July 1979, countervailing duty was levied at the concessional rate of 30 per cent *ad valorem*, even though the description indicated that the paper was kraft paper and countervailing duty was to be levied at full rate of 40 per cent and not at concessional rate of 30 per cent. The mistakes resulted in duty being realised short by Rs. 39,687.

The mistakes were pointed out in audit (November 1979) and the Custom House examined whether the goods were in fact, kraft paper. On the bill of entry, the report of the chemical examiner only stated that the sample was found to be in the form of brown coloured sheet of paper made of chemical pulp.

The Custom House stated in May 1983 that the analytical records of the samples tested showed the presence of kraft pulp when it was examined microscopically and there is scope to consider the two consignments of paper as kraft paper. But,

they also stated that they preferred to give benefit of doubt to the importers. The reason for any doubt when there is *prima facie* evidence of the goods being kraft paper is not clear. Also further tests could be done to get confirmation. Also, the chemical examiner could be asked for second advice based on microscopic examination which will help appraisers to decide on classification conclusively.

The Ministry of Finance have confirmed the facts.

1.26 *Concessional rates of duty on imports from specified countries.*

(i) On cloves imported into India, Customs duty is leviable at the rate of Rs. 60 per Kg. However, if the imports be from countries declared by Government to be "other preferential areas", the goods are assessable at a concessional rate of Rs. 60 per Kg. less 7.5 per cent.

Eleven consignments of cloves, from 'Zanzibar' were imported in April 1982 and May 1982. On their clearance from the warehouse in June 1982 and July 1982, duty was levied at the concessional rate even though the country of origin was not declared by Government to be "other preferential areas". The mistake resulted in duty being levied short by Rs. 63,000 on eleven consignments.

The mistake was pointed out in audit in January 1983.

The Ministry of Finance have confirmed the facts.

(ii) As per a note in Chapter 73 of the Customs Tariff rolled products of Iron and Steel of any thickness but width exceeding 500 mm are plates. As per a notification issued in August 1976, on tin coated steel plates imported from certain specified countries, customs duty was leviable at 50 per cent of standard rate of duty.

On consignments of tin coated steel plates imported from a specified country in March 1981 and January 1982 duty was levied at 20 per cent *ad valorem* which was half the standard rate of 40 per cent. But the so called plates were of width less than 500 mm and on them duty should have been levied as on tin coated steel strips at 30 per cent *ad valorem*. The mistake resulted in duty being realised short by Rs. 51,197.

On the mistake being pointed out in audit (between December 1981 and February 1982) the Custom House accepted the objection (May 1983) and stated that demands have since been raised and an amount of Rs. 18,197 recovered. Report on recovery of balance is awaited.

The Ministry of Finance have confirmed the facts.

(iii) The duty leviable on Copra(dried coconut) is 60 per cent *ad valorem,* when imported into India. But if imported from countries declared by the Government to be "other preferential areas" in terms of notification issued under Section 4(3) of Customs Tariff Act 1975, import duty is leviable at the concessional rate of 50 per cent *ad valorem.*

On a consignment of copra, imported from Malaysia in September, 1982 duty was leviable at the normal rate, since the country of origin of the produce did not fall within the list of countries notified as other preferential areas. But duty was levied at the concessional rate resulting in short levy of duty by Rs. 29,369.

On the mistake being pointed out in audit (February 1983) the Custom House issued a demand for the said amount. Report on recovery is awaited (March 1983).

Reply of Ministry of Finance is awaited.

OTHER MISTAKES

1.27 *Application of incorrect rates*

(i) As per a notification issued on 14 August 1981, newsprint imported from a neighbouring country was exempted from levy of customs duty. However, simultaneously the auxiliary duty leviable was restored from 5 percent concessional rate to 10 percent normal rate.

In a land custom station, newsprint imported from a neighbouring country was exempted from basic customs duty and only auxiliary duty at 5 per cent *ad valorem* was levied. Since the concessional rate of auxiliary duty of 5 per cent was not admissible, duty at 10 per cent *ad valorem* was leviable on the goods. The mistakes resulted in auxiliary duty amounting to Rs. 10,00,308 (including cess in the nature of countervailing duty) being realised short.

On the mistake being pointed out in audit (March 1982), the department raised demand for recovery of the duty short levied.

The Ministry of Finance have confirmed the facts and stated that duty amounting to Rs. 10,00,308 has since been recovered.

(ii) As per a notification issued on 28 February 1982, an exemption was granted on Poly Vinyl Chloride (P. V. C.) and duty became leviable at a rate of 100 per cent *ad valorem*. But from November 1982, the exemption was withdrawn and duty became leviable at 150 per cent *ad valorem*. However, on such goods of Yugoslavian origin, duty was leviable at only half the standard rate of duty of 150 per cent *ad valorem*.

On a consignment of P. V. C. Resins imported from Yugoslavia, bill of entry was presented on 16 October 1983 and customs duty was levied at only 50 per cent *ad valorem* i. e. at half of 100 per cent *ad valorem*. The Internal Audit of the Custom House pointed out (February 1983) that entry inwards was given to the vessel (carrying the consignments) only on 4 November 1982 and duty was leviable at the rate which had come into force on that day i.e. at 75 per cent *ad valorem* (half of 150 per cent). The mistake resulted in short levy of customs duty and countervailing duty of Rs. 80,483. The Internal Audit had earlier pointed out the short levy of customs duty of Rs. 58.854. On the total short levy of Rs. 80,483 being pointed out in statutory audit in March 1983, the entire amount was recovered by the Custom House.

The Ministry of Finance have confirmed the facts.

(iii) The rate of customs duty on cork and articles of cork classifiable under tariff heading 45.01|04 was increased from 40 per cent *ad valorem* to 60 per cent *ad valorem* as per provisions of Finance Act 1982.

On a consignment of "granulated cork" valued at Rs. 1,47,864 which was imported in April 1982, customs duty was levied at 40 per cent *ad valorem* and auxiliary duty at 15 per cent, instead of at at 60 per cent *ad valorem* and 25 per cent respectively. The application of incorrect rates resulted in duty being realised short by Rs. 47,907.

On the mistake being pointed out in audit (November 1982), the Custom House raised demand for the said amount. Report on recovery is awaited (April 1983).

The Ministry of Finance have confirmed the facts.

(iv) With effect from 1 March 1981, "Plain Shaft bearing with or without bearing housing" are classifiable under Customs Tariff heading 84.63 and duty is leviable at the rate of 100 per cent *ad valorem* and auxiliary duty at 25 per cent *ad valorem*.

Bill of entry relating to import of a consignment of "Engine Main and connecting rod bearings (thin walled bearings)", was filed in February 1981, but entry inwards for the vessel (determining effective date of import) was granted only on 5 March 1981. Accordingly, customs duty at 100 per cent *ad valorem* and auxiliary duty at 25 per cent *ad valorem* was leviable. But duty was levied at old rate of 60 per cent, auxiliary duty at 15 per cent, additional duty at 20 per cent and special excise duty at 5 per cent. Because the consignment was imported after 1 March 1981, levy of duty at old incorrect rate resulted in duty being realised short by Rs. 42,489. The Internal Audit which had examined the case had not pointed out the above mistakes though it had held that duty was levied short by Rs. 4,721.

On the mistake being pointed out in Statutory audit (August 1981), the Custom House admitted (August 1982) the short levy of Rs. 42,489. Report on recovery is awaited (June 1983).

The Ministry of Finance have confirmed the facts and stated that both the short levies pointed out amounting to Rs. 47,210 have been realised on 29 July, 1982.

(v) As per provisions of Section 15(1)(c) and 65 of the Customs Act 1962, where manufacturing activity is carried on in a warehouse under a Customs bond and any waste or refuse arising in the course of manufacturing operations is cleared, customs duty is leviable if such waste is cleared not for export but for home consumption. Further, duty is leviable at the rate and valuation prevailing on the date duty is paid.

Scrap arising during the manufacture of ship (in bond) was cleared prior to 1 March 1981 (when duty was leviable at 35 per cent *ad valorem* inclusive of auxiliary duty) but duty

was actually paid only after 1 March 1981 on which date duty had been raised to 40 per cent *ad valorem* inclusive of auxiliary duty. Still duty was realised only at 35 per cent instead of at 40 per cent resulting in short realisation of duty by Rs. 45,791.

One consignment of scrap was removed in April 1979 while the bill of entry was filed in April 1981 and duty was paid in June 1981. In respect of another consignment a bill of entry was presented in December 1980 and the goods were allowed to be cleared in January, February and March 1981 but duty was paid only after 1 March 1981.

The department stated that the scrap was physically removed from the warehouse prior to 1 March 1981 and therefore duty was leviable at rates prevailing on the date of removal from the warehouse. This provision covers only clearance of imported goods from warehouse under section 68 and not manufacturing waste cleared under section 65. The department also stated that a procedural mistake in allowing clearance of the goods without payment of duty cannot increase the amount of duty payable.

The Ministry of Finance have stated (January 1984) that under section 65 (2) of Customs Act 1962, the clearance from warehouse was for home consumption and therefore duty was leviable as if the goods cleared had been imported and cleared from a warehouse for home consumption under section 68 of Customs Act 1962. In such a case duty was to be levied at the rate applicable on the date of actual removal of the goods from the warehouse. Therefore the Ministry have stated that assessment was in order. However, Section 68 lays down many conditions before its provisions can be invoked and on compliance with such statutory conditions in this case did not entitle the goods being considered as cleared under section 68. It is not possible to argue that statutory conditions can be waived in the way procedural irregularities can be waived. Because the conditions precedent in section 68 are not fulfilled, the case will fall to be considered under Section 15(1) (c) and not under Section 15 (1) (b).

(vi) Customs duty leviable on imported goods was enhanced by 5 per cent *ad valorem* from 28 February, 1982. Under Section 15 (1) (b) and section 68 of the Customs Act 1962 the rate of duty applicable to goods cleared from a warehouse is the rate in force on the date on which the goods are actually removed from the warehouse.

On a consignment of Hot Rolled Steel sheet in coils, warehoused in November 1981 and cleared from the warehouse on 2 April 1982, auxiliary duty was levied at 10 per cent *ad valorem*. Since clearance was made after the auxiliary duty was raised to 15 per cent on 28 February 1982 the mistake resulted in duty being realised short by Rs. 15,577.

On this mistake being pointed out by Audit (September 1982) the department accepted the objection and recovered Rs. 15,577.

The Ministry of Finance have confirmed the facts.

(vii) On imported goods, an auxiliary duty of Customs is levied in addition to Customs duty at rates varying from 5 per cent *ad valorem* to 20 per cent *ad valorem*, depending upon the rates of customs duty.

On a consignment of "profile gas cutting machine" valued at Rs. 7,46,560 imported in February 1982, customs duty at 40 per cent *ad valorem* was charged (tariff heading 84.50) but auxiliary duty was charged only at 5 per cent instead of at 10 per cent. This resulted in duty being levied short by Rs. 40,314.

On the mistake being pointed out in audit (August 1982), the Custom House accepted the objection and recovered the amount of Rs. 40,314 (January 1983) towards the differential auxiliary duty and consequent increase in additional (countervailing) duty.

The Ministry of Finance have confirmed the facts.

(viii) On imported goods chargeable to basic customs duty at rates 60 per cent *ad valorem* or more auxiliary duty was increased from 25 per cent to 30 per cent with effect from 8 December 1982.

On a consignment of Isoptin Hydrochloride imported by air through a major Custom House in December 1982, chargeable to basic customs duty of 60 per cent *ad valorem* under heading 29.01|45(1), auxiliary duty was levied at 25 per cent instead of 30 per cent *ad valorem*. The short levy amounting to Rs. 14,299 was pointed out by Audit in July 1983.

The Ministry of Finance have confirmed the facts.

1.28 *Short levy due to mistakes in calculations.*

On import of "Spares for air conditioning plant filtering media" duty was realised in a Custom House in November 1979 after classifying the goods under tariff heading 84.18(1). In August 1980, the Internal Audit pointed out that the goods were correctly classifiable under heading 84.18(2) and duty had been realised short by Rs. 3,56,389. The Custom House recovered the short levy in April 1981. However, the short realisation was worked out wrongly as Rs. 3,56,389 instead of Rs. 4,36,456, which resulted in short levy of duty by Rs. 80,067 remaining unrealised even after reclassification of goods.

On the mistake being pointed out in audit (August 1981) the Custom House admitted the mistake and stated (February 1983) that the importer had since voluntarily paid (January 1983) the amount of Rs. 80,067.

The Ministry of Finance have confirmed the facts.

EXPORT DUTIES

1.29 *Non-levy of export duty on ore fines concentrate.*

On exports of 'iron ore fines' which are classifiable under heading 11 of the Second Schedule to the Customs Tariff Act 1975, duty is leviable at the rate of Rs. 4 per tonne if the iron content is not less than 62 per cent.

On five consignments of 'iron ore fines concentrate' having iron ore content exceeding 62 per cent, which were exported in December 1981 and January 1982, export duty was not levied in a Custom House. The duty not levied amounted to Rs. 6,12,982.

On the non levy of duty being pointed out in audit (June 1982), the Custom House stated that the Ministry of Finance had in a letter dated 15 October 1981, held that iron ore concentrates were not classifiable under the aforesaid heading 11, covering "Iron Ore" nor under its two sub-heads (a) Lumpy iron ore, and (b) Iron Ore Fines (including blue dust). In other words export duty is not leviable on ore concentrate, ore slurry, ore pellets, etc., since they do not fall under the two sub heads of iron ore described in the tariff.

Iron ore is generally concentrated using its property of higher density, its magnetic susceptibility, its electrical conductivity or its surface quality (which prefers to mix with water in a foam than with air). The Ministry of Finance have, in their notification issued on 2 August 1976, sub-classified the description of the sub-head "iron ore fines" into (i) those with iron content less than 62 per cent (ii) those with iron content not less than 62 per cent. The latter category will clearly cover iron ore concentrate which is only iron ore in which the iron content has been raised to level of 62 per cent or above. World over after concentration content of iron in iron ore ranges between 50 to 69 per cent and iron ore containing 71 per cent iron is referred to as super concentrate. The view of the Ministry which excludes iron ore described as iron ore concentrate from the liability to duty under the export tariff has resulted in loss of [illegible] to Rs. 6,12,982. It could lead to further loss of revenue by exporters resorting to the device of mere change of description from "iron ore" into "iron ore concentrates" to describe all ores with iron content of more than 50 per cent. Most of the iron ore exported is rich in iron content to be so described. The annual export of iron ore from Indian averages 22 million tonnes valuing Rs. 300 crores and yields revenue around Rs. 15 crores per year. The revenue arising from exports are described as from "Iron ore and concentrates" in the Economic Survey published by the Government of India and in the statistical tables of Director General of Commercial Intelligence and Statistics.

The Ministry of Finance have stated (December 1983) that the concentrate would not be covered under heading 11 of the Export Tariff.

1.30 *Short levy of export duty on chromium ore.*

For purposes of levy of export duty, classification of chromite ore and concentrate is decided on the basis of the percentage of chromic oxide content. On "Medium grade Chrome Ore Friable and Fines" exported through a major port in August 1979, export duty at Rs. 150 per tonne was realised after classifying it on the basis of a test report given by a private laboratory. The said ores and fines were analysed by the Chief chemist of the Central Revenue Laboratory at New Delhi, in February 1980, and found to contain 50.4 per cent of chromic oxide and accordingly they should have been classified for levy of export duty at Rs. 200 per tonne. Failure to do so resulted in export duty being realised short by Rs. 1,65,000.

On the mistake being pointed out in audit (July 1980) the Custom House admitted the objection and stated that a demand for Rs. 1,65,000 was raised in November 1982.

The Ministry of Finance have confirmed the facts and stated that the demand is barred by limitation.

REFUND OF DUTY

1.31 *Irregular refund of duty due to incorrect valuation*

Steel Valve Castings (boiler components) imported by a Public Sector. Undertaking in August 1978 were assessed to customs duty after including in the value the pattern charges invoiced by the supplier. On appeal by the importer, the Appellate Collector excluded the pattern charges amounting to Japanese Yen 8,64,510.29 from the assessable value, on the ground that no patterns were imported. The department did not appeal against the Appellate orders and the duty amounting to Rs. 31.927 was refunded in January 1982.

It was pointed out in audit (June 1982 and October 1982) that the cost of the imported item included the element of cost involved in pattern making which was necessary for the foreign manufacturer to fabricate the part and the non import of the pattern was not material. The cost of pattern making rightly stood included in the invoice price of the imported goods and formed part of its value. The Conference of Collectors of Customs also decided in March 1982 that cost of moulds, dies, etc. though they may not be imported were part of the value of castings, dies, etc., and stood included in the CIF cost of the product imported. The failure to prefer an appeal and incorrect valuation of the product on the part of the department resulted in duty amounting to Rs. 31,927 being incorrectly refunded because of mistake in valuation of the imported product. The department has not so far accepted the mistake (January 1983).

The Ministry of Finance have confirmed the facts and stated (December 1983), that a proposal of the Collector for review of the adjudication of duty was not agreed to by government.

1.32 *Refund made though barred by limitation*

A Public Sector Undertaking of Government of India paid customs duty on 12 October 1977 and preferred a claim for refund of Rs. 32,466, which was sent on 27 March 1978 by

registered post and was received in the Custom House on 13 April 1978. The claim was on the ground that the duty was paid in excess in respect of this consignment on 23 November 1982. Since the claim was not received in the Custom House within the six months specified in the Act, it was not admissible. As per the instructions issued by Government as early as October 1929, the date on which the refund application is received in the Custom House is the date on which the claim has been made for the purposes of the Act. The claim was, however, allowed and refund made. The irregular grant of refund was pointed out in audit to the department in June 1983.

The Ministry of Finance have confirmed the facts and stated that the party has been requested (October 1983) to make voluntary payment.

1.33 *Irregular refund of duty not refundable*

A consignment of "rings" which were component parts of textile dyeing machines, and "expansion loops" was imported. While the rings were assessed to customs duty (under tariff heading 84.65) at 60 per cent *ad valorem* and 15 per cent auxiliary duty as also countervailing duty at 8 per cent *ad valorem*, the "expansion loops" were assessed under tariff heading 84.17 (1) at only 40 per cent *ad valorem* and countervailing duty at 8 per cent *ad valorem*. On receipt of a refund claim for Rs. 3,804.19 from the importers on the ground that the rings and loops were assessable under tariff heading 84.40(1) at 40 per cent *ad valorem* and countervailing duty at 8 per cent *ad valorem*, the claim was admitted. Though no refund was payable on "expansion loops" even after reclassification, the Custom House refunded in July 1982, the whole of the duty of Rs. 18,446.85 collected instead of refunding only Rs. 3,804.19 being the differential duty on "rings" consequent on reclassification. The mistake resulted in excess refund of Rs. 14,642.66.

On the excess refund being pointed out in audit (October 1982) the department requested the importer to make voluntary payment of the amount (February 1983). Report on recovery is awaited.

The Ministry of Finance have confirmed the facts and stated (October 1983) that the amount has since been recovered.

DRAWBACK PAYMENTS

Under the Rules, the rates of drawback (All Industry rates) 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 produced or manufactured in India. The class or description of exported goods are identified by the Ministry of Finance (and modified over the years) 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 average aforesaid, is mentioned against each class or description in the table.

Under the Rules, every exporter can apply for fixation of a brand rate or amount of drawback to cover only his exports if the amount of drawback based on All Industry rates is less than three-fourths of the duties paid on the materials or components used in the production or manufacture of his goods.

1.34 *Irregular payment of drawback*

(i) As per brand rates fixed in respect of truck chassis and synchromesh gear box exported by a manufacturer, drawback payable on chassis and a gear box was Rs. 10,190.60 and Rs. 7,675.58 respectively.

On export of 54 chassis in completely knocked down condition but with Synchromesh gear box, drawback was paid at Rs. 10,190.60 per chassis and in addition, drawback at Rs. 7,675.58 per synchromesh gear box was also paid. The "Synchromesh gear box" was exported in lieu of a L.P. type gear box which was standard fitment in the chassis and the element of duty incidence on the L.P. type gear box already included in the rate of drawback fixed for the chassis was not deducted while allowing the drawback on synchromesh gear box exported in lieu of L.P. type gear box. The mistake in making drawback payment on a component part of the chassis viz synchromesh gear box, resulted in drawback being paid in excess by Rs. 1,28,520.

On the mistake being pointed out in audit (May 1980), the Custom House accepted the objection and recovered excess payment of drawback amounting to Rs. 1,28,520 in May 1983.

The Ministry of Finance have confirmed the facts

(ii) As per provisions of the drawback Rules 1971 and the Customs Act 1962, the All Industry rate at which drawback is payable on goods exported by air, is the rate in force on the date of presentation of the shipping bill.

On two consignments of ampoules of "Lasix" each valuing Rs. 4,72,242 F.O.B., which were exported by air, the shipping bills were presented to the Custom House on 16 May 1981. The exporters claimed drawback at 5 per cent of the value which was the rate effective on that date, but were allowed drawback at a higher rate of 12.5 per cent which came into force only on 1 June 1981. The mistake resulted in overpayment of drawback by Rs. 70,836.

On the overpayments being pointed out in audit (August 1982), the department recovered (November 1982) the amount over paid.

The Ministry of Finance have confirmed the facts.

1.35 *Inadmissible payment of drawback on baggage*

Section 74 of the Customs Act 1962 provides that where goods imported into India are exported, ninety eight per cent of duty paid on the goods on their import shall be repaid as drawback if (a) the goods are identified to the satisfaction of the Assistant Collector of Customs as the goods which were imported and (b) the goods are entered for export within two years from the date of payment of duty on the importation thereof. The Ministry of Law have advised that baggage being a category of goods which "cannot be entered for export" in the light of provisions in section 2(16), 2(37), 50, 44 of the Act, duty paid on import of baggage cannot be repaid as drawback on export of baggage.

On re-export of baggage which included articles like video cassette-recorder, colour video camera, colour T.V. set, recorded video cassettes etc. which had been imported as passenger baggage duty amounting to Rs. 2,82,336 was repaid as drawback in a major Custom House. The payment of drawback was irregular in view of the legal position stated above.

The mistake was pointed out in audit (September 1982) to the department; their reply is awaited.

The reply of Ministry of Finance is awaited.

1.36 *Payment of drawback in excess due to mistake in classification*

(i) On export of readymade garments stitched mainly from cotton fabrics including handloom, powerloom and millmade fabrics drawback is payable at 5 per cent of F.O.B. value in respect of trousers and at 6 per cent of F.O.B. value in respect of garments other than trousers.

On seven consignments of "Ladies shorts" drawback was paid at the rate of 6 per cent of F.O.B. value by viewing the shorts as other than trousers because in commercial understanding shorts are not trousers.

The basis for fixation of drawback rates is the duty element in the fabrics and the fabric used in shorts is the same as in trousers and as per dictionary meaning 'shorts' is an expression to describe 'short trousers'. The misclassification which arose because of absence of rules for classification under the All Industry drawback schedule, resulted in drawback being paid in excess by Rs. 17,885.

On the mistake being pointed out in audit (May and September 1982) the Custom House did not accept the objection.

Reply of Ministry of Finance is awaited.

(ii) On a consignment of galvanised transmission line towers exported in knocked down condition through a major port, drawback was paid at Rs. 594.80 per tonne under sub-serial No. 3606 read with No. 3622 of the drawback schedule which deal with "Articles made of Steel, angles and channels-galvanised".

"Galvanised transmission line towers" is a specific item under sub-serial No. 4605 of the drawback schedule and drawback should have been paid at the rate of Rs. 538 per tonne under this sub-serial number. Failure to do so resulted in drawback being paid in excess by Rs. 41,076.

On the mistake being pointed out in audit (January 1982), the Custom House admitted the objection and stated that the excess payment of Rs. 41,076 would be recovered.

Ministry of Finance have confirmed the facts.

(iii) A consignment of aluminium wire weighing 16.493 tonnes was exported through a major port and the drawback claimed was allowed at the rate of Rs. 4 per kg. of the exported goods after classifying them as articles made of aluminium falling under sub-serial number 3803(iii) of the drawback schedule. However, the exported goods were described (in the relevant application for removal of excisable goods for export) as Aluminium Electric

Wires and Cables. Aluminium conductors are classifiable for purposes of payment of drawback under sub serial 4610(ii) as "All types of cables and conductors insulated or otherwise not elsewhere specified", and drawback is to be allowed at Rs. 2.25 per kg. on aluminium content in the exported product. The misclassification resulted in drawback being paid in excess by Rs. 28,862.

On the mistake being pointed out in audit (July 1982), the Custom House admitted the objection and recovered the amount paid in excess.

The Ministry of Finance have confirmed the facts.

(iv) On exports of aluminium conductors drawback was payable at Rs. 2.75 per kg. as per the schedule of All Industry rates. From 1 June 1980, the rate was fixed at Rs. 2.25 per kg. of aluminium content of cables and conductors.

On two consignments of aluminium conductors exported on 7 March 1980 and 24 June 1980, the drawback was paid at Rs. 4 per kg. which was the rate applicable to exported aluminium articles. The mistake occurred in the Custom House even though the exporter had declared the goods to be aluminium grounding wire and aluminium tie wire and the Export Inspection Agency had certified the goods as electric cables and conductors. The mistake resulted in excess payment of drawback by Rs. 15,760.

On the mistake being pointed out in audit in August 1981 and September 1981, the Custom House accepted the same (June 1983).

The Ministry of Finance have confirmed the facts and stated that amount of Rs. 15,760 has been recovered from the exporter.

1.37 *Mistake in computation of drawback*

(i) Under sub-serial No. 102 of the Drawback Schedule, drawback is payable on export of tea bags filled with tea, at the rate of Rs. 64 per kg. of the weight of the bag.

On export of two cases of tea bags each containing 2 grams of tea net, drawback was paid (November and December 1982) on the bags by taking the weight of 100 empty bags as 19 grams and 34 grams in the two consignments respectively. The value of 1000 pieces of tea bag paper was, however, declared by the exporter as Rs. 24.66 in respect of both the consignments and the weight of the bags in both the consignments was 570 kgs. for 30 lakh bags. The weight of 100 empty bags should therefore have been only 19 grams, in respect of both the consignments.

The mistake in computing weight of bag in respect of one consignment resulted in drawback being paid in excess by Rs. 29,568.

On the mistake being pointed out in audit (April 1982) the Custom House accepted the objection (January 1983) and stated that demand for Rs. 29,568 has since been raised and the party had agreed to adjust the amount against their admissible claims pending with the department.

The Ministry of Finance have confirmed the facts.

(ii) On export of tiles, manufactured by a Company, between April 1981 and May 1982 drawback was paid at brand rates fixed in respect of such tiles. In computing the amount payable due to incorrect conversion of square cms. into square inches, payment was made in excess by Rs. 25,705.

The excess payment was pointed out in audit in February 1983, less charge demand has been issued on 7 October 1983.

The Ministry of Finance have confirmed the facts.

(iii) On Cotton Hand Printed Lungies (wraparound skirts) drawback at All Industry rate is payable at 6 per cent of F.O.B. value in respect of exports made between June 1981 and May 1982.

On export of such lungies made in March 1982, with F.O.B. value of Rs. 24,600, by mistake 6 per cent was calculated on Rs. 2,46,000 resulting in excess payment of drawback by Rs. 13,284.

The mistake was pointed out in audit (April 1983); reply of the department is awaited (June 1983).

The Ministry of Finance have stated (November 1983) that the amount has since been realised.

INTERNAL AUDIT

1.38 *Delay in attending to objections raised in Internal Audit*

(i) Documents like Bills of Entry, Shipping Bills etc. are post audited by Internal Audit Department (IAD) in Custom House, before they are made available for scrutiny in statutory audit. Objections raised by Internal Audit Department are required to be sent to the concerned department of the Custom House for remedial action.

In a major Custom House the number of audit objections raised by I.A.D. in the last 3 years were 18,548 (1980-81), 17,779 (1981-82) and 26,937 (1982-83). The number of outstanding

objections as on 31 March 1983 was 69,339 of which 46,069 were outstanding for more than a year.

As per Section 28 of Customs Act, 1962, department should issue a demand notice to recover any portion of customs duty, which has escaped assessment either by way of non levy or short levy, within 6 months from the date of payment of duty. If demands required to be raised consequent to such objections are not raised within the time-limit of 6 months loss of revenue is likely to result.

Reply of Ministry of Finance is awaited.

(ii) On import of a consignment of P.V.C. resin (suspension grade) valued at Rs. 3.22 lakhs, on 16 October 1980 duty amounting to Rs. 1.76 lakhs was levied and collected in a Custom House on 17 October 1980.

On 18 March 1981, the Internal Audit Department of Custom House pointed out that duty leviable on the imported goods had been raised by a notification issued on 16 October 1980. The demand notice for additional duty amounting to Rs. 1,89,894 was required to be issued on or before 16 April 1981. Though the concerned group in the Custom House received the objection on 25 March 1981, demand notice was issued to the importers only on 7 April 1983, which was rejected by the importer as barred by limitation.

On reasons for the delay being enquired in statutory audit (June 1983) the department stated June 1983) that the demand notice was not issued in time through oversight.

The Ministry of Finance have confirmed the facts and stated that efforts are being made to recover the the amount.

(iii) On a consignment of Copper Scrap Berry valued at Rs. 2.56 lakhs imported during September 1981 customs duty was levied and realised. The Internal Audit of the Custom House raised an objection on 11 May 1982 about non levy of countervailing duty amounting to Rs. 50,966. Though objection was sent by Internal Audit on 21 May 1982 it was stated to have been received on 13 April 1983 when demand was barred by limitation.

The loss of revenue amounting to Rs. 50,966 due to adequate importance not being given to internal audit objection was pointed out in statutory audit (July 1983); reply of the Custom House is awaited.

Reply of Ministry of Finance is awaited.

(iv) On a consignment of naphthalene which was cleared from a bonded warehouse in April 1981, the assessable value was computed incorrectly because exchange rate of D.M. 25.92 for Rs. 100 was adopted instead of correct rate of D.M. 25.02 for Rs. 100. The Internal Audit in Custom House pointed out the short levy of duty amounting to Rs. 21,997 in August 1981 and the objection was received in Appraising group in September 1981. But demand to recover short levy was not raised before it was barred by limitation on 8 October 1981.

The loss of revenue amounting to Rs. 21,997 due to adequate importance not being given to internal audit objection was pointed out in statutory audit (August 1983); reply of the Custom House is awaited.

The Ministry of Finance have confirmed the facts.

OTHER TOPICS OF INTEREST

1.39 *Avoidable loss of revenue on import of Stainless Steel Melting Scrap*

Stainless Steel melting scrap is classifiable under tariff heading 73.01|05 of Customs Tariff Act 1975. With effect from 28 July 1982, on imports of such scrap customs duty was leviable at 60 per cent *ad valorem*. As per notifications issued on 1 January 1979 and 11 May 1982 such scrap was exempt from levy of auxiliary duty at 25 per cent *ad valorem* and countervailing duty at Rs. 330 per tonne. Under another notification issued on 2 November 1982, stainless steel scrap imported upto 31 October 1983 by a small scale manufacturer was exempted from levy of customs duty provided the proper officer was satisfied that such scrap was intended for use in an electric induction furnace or furnaces, in a small scale unit having capacity not exceeding 500 kgs. In the explanatory memorandum to the notification issued on 2 November 1982 it was stated that the exemption notification was issued with a view to making scrap available to industry at reasonable prices, and the notification would be valid upto 31 October 1983. The revenue foregone per annum was estimated at Rs. 2.03 crores. On 17 December 1982 the exemption notification issued on 2 November 1982 was withdrawn. Import of Stainless Steel melting scrap was canalised through Metal Scrap Trading Corporation which sold consignments "on high seas sale basis" to importers in India.

There was no import of scrap through ports in Gujarat, Andhra Pradesh, Kerala or through Calcutta, to which benefit of exemption from duty under notification of 2 November 1982 was extended. On 37 consignments imported by 17 importers in Delhi, Uttar Pradesh, Punjab, Haryana, Gujarat, Himachal Pradesh and Chandigarh, benefit of the above exemption notification was extended which resulted in avoidable loss of duty to Government amounting to Rs. 75.13 lakhs. The avoidable loss of duty was pointed out in audit (October 1983).

The Ministry of Finance have stated (December 1983) that a quantity of 1269 tonnes of stainless steel melting scrap in 37 consignments valued at Rs. 1.19 crores was allowed to be cleared duty free under the notification of 2 November 1982 to actual users on high sea sales basis.

The decision to exempt the imported stainless steel melting scrap under notification issued on 2 November, 1982 was taken in the public interest. Even though the exemption was intended to be valid till 31 October, 1983, the exemption was withdrawn on 17 December, 1982 on the ground that the concession to a particular sector of the industry was distorting the market position. The matter was later re-examined and the concession was extended to all actual users of steel melting scrap with effect from 25 August, 1983.

1.40 *Import of Colour T.V. sets upto* 4 *December* 1982

(i) Colour Television Sets are classifiable under heading 85.15(2) of Customs Tariff and under item 37 BB of Central Excise Tariff. On their import, customs duty is leviable at 190.375 per cent *ad valorem*. If such sets were brought as baggage item, customs duty was leviable at 330 per cent *ad valorem* (upto February 1983) under heading 100.01 of the Customs Tariff Act 1975. Under a notification issued on 11 October 1982 on colour Television Sets, imported as baggage by sea or by air or by post upto 4 December 1982, duty became leviable at 190.375 per cent *ad valorem* subject to the conditions that :

(a) the import shall be by way of gift to the importer from a friend or relative living abroad;

(b) no remittance from India in any form was to be involved in the transaction;

(c) the price of the imported set was not less than Rs. 3,600 excluding the price of the connected accessories and spares; and

(d) only one television set was to be imported for personal use and was not to be sold or disposed of for 2 years from the date of import.

(ii) The details of import of colour T.V. sets through Bombay are given below :

Sl. No.	Details	As accompanied baggage by air			As unaccompanied baggage by air cleared on bills of entry			As baggage by air			As gifts by sea cleared on bills of entry		
		No. of sets	C.I.F. value (Rs. in lakhs)	Duty	No. of sets	C.I.F. value (Rs. in lakhs)	Duty	No. of sets	C.I.F. value (Rs. in lakhs)	Duty	No. of Sets	C.I.F. value (Rs. in lakhs)	Duty
1.	sets imported upto 4 December 1982 .	4867	204.41	389.20	33856	1,722.18	3,278.60	141	5.76	10.97	81	4.59	8.73
2.	sets cleared upto 4 December 1982 . .	4847	203.57	387.60	13618	692.72	1,318.76	141	5.76	10.97	81	4.59	8.73
3.	sets cleared from from 1 December 1982 to 4 December 1982	1037	43.55	82.92	3959	201.38	383.37	7	0.18	0.35	14	0.84	1.50
4.	sets cleared from 5 December 1982 to 31 March 1983	6	0.25	0.48	19943	1,014.46	1,931.28	Nil	Nil	Nil	Nil	Nil	Nil
5.	sets pending clearance as on 1 April 1983 .	14	0.59	1.12	295	15.00	28.56	Nil	Nil	Nil	Nil	Nil	Nil

NOTE : Only one set was received by post which was cleared after 5 December 1982.

(iii) Most of the Colour Television sets received in Bombay were imported from U.A.E., Singapore, Hong Kong, Saudi Arabia, Oman, Beirut, Sri Lanka, U.S.A., West Germany, Japan and U.K. Information on the number of sets imported from each country and C.I.F. price of the television sets quoted by the exporters from these countries was not available with the Custom House. The amount of duties collected at the concessional rate was also not available in respect of imports by air country wise. Price of Rs. 4,200 C.I.F. per set was adopted by Custom House in valuing all sets coming in as accompanied baggage and duty was realised at 190.375 per cent *ad-valorem*. A price of Rs. 5,086.80 per set was adopted in respect of all sets coming in as unaccompanied baggage and duty of Rs. 9,684 per set was levied thereon.

(iv) The following points were noticed in audit:

(a) 12 sets imported on concessional duty were imported by persons in Bulsar, Nasik, Udipi, Madurai, Thanjavur and such other places which received no TV transmission, since there was nothing in notification which prohibited persons residing in such areas to receive colour T.V. sets as gifts. The notification only imposed the condition of personal use of such sets by the importers.

(b) The Air Customs in Bombay had assessed the price for Sony CKV 3760 PSE-Colour—27 inch Model at Rs. 7,300. However, duty was levied on a value of Rs. 7,000 in 90 cases and in two such cases, value of Rs. 6,000 and Rs. 6,800 was adopted. Similarly, the price of Sony KV 2032 ME-Colour—20 inch with remote control was assessed at Rs. 4,200 but in 13 cases value of Rs. 4,000 was adopted.

(c) The price of Sony KV 2024 E-Colour—20 inches was Rs. 3,500 whereas, as per notification, the price of any imported Colour T.V. Set was not to be less than Rs. 3,600. Such sets were assessed at values ranging from Rs. 3,600 to Rs. 4,000 and concessional rate of duty should not have been allowed on such sets. 4 sets of Sony and National make of size 19 and 20 inches were assessed on values of Rs. 2,600 to Rs. 3,500 and still concessional rate of duty was allowed.

(d) Colour T.V. sets Sony CKV 2760-PSE-27 inches was valued in one case at Rs. 4,200, though the correct price of Rs. 7000 was adopted in another case.

(e) Sony (Colour) 2212-20 inches was priced at Rs. 4,700 but for levy of duty value was assessed at Rs. 4,200.

(f) The duty short realised because of the above mistakes amounted to Rs. 1 lakh.

The mistakes were pointed out in audit (February to June 1983) and the reply of the department is awaited.

Reply of Ministry of Finance is awaited.

1.41 *Non-recovery of transhipment fee at revised rates*

Towards service rendered by customs officers in respect of goods carried by airlines which get transhipped with approval of customs officer, a transhipment fee is realised at the rate of 50 paise per consignment irrespective of the size, value, weight or content of the package. The fee was revised with effect from 30 July 1977 to rupee one per bale or package irrespective of size, value, weight or content thereof but subject to minimum fee of Rs. 10 and maximum fee of Rs. 300 on each application for transhipment of goods.

Due to failure to collect fee at revised rates during the period from July 1977 to March 1983 fee was realised short by Rs. 39.15 lakhs in one Custom House even though demands were raised by the Customs House at the revised rates.

The reasons for inability of the Custom House to impose the new rates were enquired in audit (March 1983); the reply of the department is awaited.

The Ministry of Finance have confirmed the facts and stated that enforcement of pending demands will be made.

1.42 *Goods in custody of customs for seven years not accounted for*

Section 23 of the Customs Act, 1962 provides that customs duty on any imported goods lost or destroyed can be remitted by the appropriate Customs Authority.

Three consignments containing 20,650 kgs. of drug "Niacinamide B.P." were imported in 1972 but were cleared in 1979. The bill of entry in respect of one consignment was dated 8 July 1979

and showed a clearance of 1500 kgs. while the invoice was for a quantity of 2000 kgs. The department could not offer any comment on the shortfall of 500 kgs. because records of the year 1972-73 had been destroyed. The duty leviable on 500 kgs. was Rs. 16,833. Two other bills of entries dated 8 February 1979 and 9 February 1979 covered goods weighing 3,000 kgs. A consignment containing 7,650 kgs. was destroyed in fire and duty amounting to Rs. 2.57 lakhs payable would appear to have been remitted by Customs. Bill of entry for a consignment weighing 8,000 kgs. involving duty of Rs. 2.69 lakhs was not on record.

The delay in clearance was because the import of the drug was banned. The importer presented bills of entry for clearance in June 1973 along with import licence issued in December, 1971. It was decided in December, 1972 that the goods whose import was banned should be sent to a Public Sector Drug Company. The importers filed a writ petition in a High Court and the Custom House was restrained from taking any action in pursuance of the directive issued by the import licensing authorities. After a compromise agreement arrived at in November 1976, the Court directed the importers (February 1977) to deliver the goods to the Public Sector Drug Company.

Since no information was available on record and the quantity delivered to Public Sector Company was also not on record, it was enquired in audit as to what was the quantity of drug cleared by the importer in 1979 and the quantity on which duty was realised. It was also enquired how duty amounting to Rs. 5.43 lakhs was validly foregone on 16,150 kgs. of the drug under provisions of Section 23.

Reply of the department and reply of the Ministry are awaited.

1.43 *Re-export of detained Gold Jewellery*

Section 80 of the Customs Act 1962 permits temporary detention of the baggage of a passenger if it 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, for the purposes of the baggage or the article being returned to him when he leaves India.

Gold jewellery was detained in September 1975 as aforesaid, in a Custom House, but, it was re exported by a person other than the passenger who imported it. Section 80 requires the

passenger importing the article to leave India along with the detained article. Delivery of the detained goods can be taken by an agent acting on behalf of the owner, importer or exporter under Section 147 of the Customs Act 1962, but the Act does not visualise the agent leaving India on behalf of his principal. The Ministry of Law had also advised in June 1974 that the goods had to be re-exported only by the passenger who brought it. On passenger baggage drawback of duty is also not admissible under the Act.

In such cases, the goods are liable to confiscation, under the provisions of the Customs Act though redemption fine in lieu of confiscation could be recovered in deserving cases. In addition, the duty and the penalty leviable under Section 112 of the Act are recoverable. Failure to take such action resulted in loss of revenue amounting to Rs. 3 lakhs on re export of gold jewellery valued at Rs. 2,97,606 in 43 cases, by persons other than the passengers who brought in the jewellery during the years 1975 to 1982.

The loss of revenue was pointed out in audit during the period September 1975 to July 1983; the reply of the department is awaited.

The Ministry of Finance have stated in reply (December 1983) that normally it is only passengers of Indian origin resident abroad (who bring in execess jewellery) that make use of provisions of sections 77 and 80 in order to take back the excess jewellery detained by customs. In the view of the Ministry, Section 147 allows the importing passenger to authorise any other person to take the goods back from Customs and re-export them and therefore such re-export should be deemed to have been effected by the passenger himself. However, Section 80 allows return of goods only to the importing passenger on his leaving India. It is difficult to interpret Section 147 to mean that it also allows a person authorised by the importing passenger to leave India on behalf of the importing passenger. Importing passenger having to leave India is a condition precedent to avoid payment of duty on the detained goods.

The Ministry have also advanced the view that baggage imported by one person and detained by Customs can be exported by him with another person authorised by him and that this view is paralleled on transhipment facilities permitted

under Customs Act 1962. But though Section 81 of the Customs Act provides for making of regulations by the Board to provide for transit or transhipment of baggage from a customs station to a place outside India, no such provision in any regulation has been pointed out by the Ministry, which allows a passenger to send his baggage (necessarily unaccompanied) with any carrier (on passenger's behalf) without the passenger himself preceding, accompanying or following the baggage within a reasonable time. In the handbook of Import and export procedures of the Ministry of Commerce, such reasonable time fixed is 4 months, which may at the discretion of the Collector of Customs be extended to one year. There is no provision in Customs Act for exemption from duty which has already attached itself in law to the detained baggage as in the above case or for granting express or implied drawback from such duty if the importing passenger does not so precede or follow his baggage out of India within the reasnonable period.

APPENDIX 1

VALUE OF IMPORTS—COMMODITY WISE

The value of imports made during the years 1980-81, 1981-82 and 1982-83 according to major sectional headings in the Indian Trade classification (Revised) are given below (where imports value more than Rs. 50 lakhs). The information was received from Ministry of Finance and where information was not available, the figures compiled by the Director General of Commercial intelligence and statistics given out by the Ministry of Commerce have been indicated. The figures within bracket are in respect of some of the goods included in the respective sectional headings.

Value of Imports (in crores of Rupees)

	1980-81	1981-82	1982-83
1 2	3	4	5
1. Food and live animals chiefly for food including . . .	380.00	N.A.	N.A.
(a) Cereals and Cereal preparations	(101.00)	(264.00)	(242.00)
(b) Milk and Cream . .	(41.00)	(63.00)	(60.00)
(c) Cashew Nuts . . .	(9.00)	(19.00)	(Negligible)
(d) Fruits and nuts excluding cashew nut . . .	(25.00)	(17.00)	(23.00)
2. Crude materials inedible, except fuel	565.00	N.A.	N.A
(a) Crude rubber (including synthetic and reclaimed) . .	(31.00)	(66.00)	(53.00)
(b) Raw Cotton . . .	(Negligible)	(9.00)	(N.A.)
(c) Synthetic and re-generated fibre	(97.00)	(165.00)	(125.00)
(d) Raw wool	(43.00)	(30.00)	(39.00)
(e) Crude Fertilizer . . .	(79.00)	(81.00)	(50.00)
(f) Sulphur and unroasted iron Pyrites	(87.00)	(79.00)	(69.00)

1	2	3	4	5
	(g) Metalliferous ores and metal scrap	(116.00)	(174.00)	(150.00)
	(h) Other crude minerals . .	(41.00)	(44.00)	(30.00)
3.	Mineral Fuels, lubricants and related materials . . .	5263.00	5189.00	5571.00
4.	Animals and vegetable oils fats and waxes	683.00	378.00	208.00
5.	Chemicals and related products not elsewhere specified . .	1325.00	1031.00	373.00
	(a) Organic chemicals . .	(202.00)	(206.00)	(236.00)
	(b) Inorganic chemicals . .	(156.00)	(182.00)	(146.00)
	(c) Dyeing and tanning substances	(21.00)	(18.00)	(22.00)
	(d) Medicinal & pharmaceutical products	(85.00)	(71.00)	(80.00)
	(e) Fertilizer, manufactured .	(652.00)	(389.00)	(136.00)
	Artificial resins, plastic materials etc.	(121.00)	106.00)	(125.00)
6.	Manufactured goods chiefly by materials	2099.00	2225.00	1247.00
	(a) Pulp, Paper, Paper board & manufactures thereof . .	(187.00)	(240.00)	(146.00)
	(b) Textile yarn, fabrics and made up articles	(59.00)	(86.00)	(112.00)
	(c) Pearls, Precious Stones & semi-precious stones . .	(417.00)	(346.00)	(677.00)
	(d) Iron and steel . . .	(852.00)	(1136.00)	(1123.00)
	(e) Non-ferrous metals . .	(477.00)	(302.00)	(277.00)
	(f) Manufactures of metal .	(89.00)	(91.00)	(135.00)
7.	Machinery and transport equipment	1821.00	1654.00	N.A.
	(a) Machinery other than Electrical . . .	(1115.00)	(1182.00)	(1335.00)
	(b) Electrical machinery . .	(234.00)	(214.00)	(240.00)
	(c) Transport equipment . .	(472.00)	(258.00)	(597.00)

1	2	3	4	5
	(*d*) Professional, scientific controlling instruments etc. .	(176.00)	(155.00)	(185.00)
	(*e*) Miscellaneous manufactured articles and commodities and transactions not classified elsewhere	(210.00)	(N.A.)	(N.A.)
TOTAL (INCLUDING OTHER ITEMS)		12560.00	13589.00	14054.00

NOTE : Figures have been rounded off.

*Figures are provisional.

APPENDIX—II

VALUE OF EXPORTS—COMMODITY WISE

The valueof exports made during the years 1980-81, 1981-82 and 1982-83 according to the major sectional headings in the Indian Trade Classification (Revised) are given below. The information has been received from Ministry of Finance. Where information was not available, the figures compiled by the Director General, Commercial Intelligence and Statistics 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.

Value of Export	(in crore of rupees)		
	1980-81	1981-82	1982-83
1 2	3	4	5
1. Food and live animals chiefly for food	1705.00	N.A.	(N.A.)
(*a*) Live animals chiefly for food	(9.00)	(9.00)	(17.00)
(*b*) Meat and Meat preparations	(56.00)	(77.00)	(80.00)
(*c*) Fish crustaceous Molluscs & preparations thereof .	(213.00)	(274.00)	(349.00)
(*d*) Cereal and Cereal preparations for flour or starch of fruits or vegetables . .	(7.00)	(8.00)	(9.00)
(*e*) Cashew kernels . .	(140.00)	(169.00)	(134.00)
(*f*) Other fruits . . .	(80.00)	(102.00)	(153.00)
(*g*) Sugar and Sugar preparations	(41.00)	(40.00)	(56.00)
(*h*) Coffee and coffee substitutes	(214.00)	(132.00)	(184.00)
(*i*) Tea and mate . . .	(426.00)	(373.00)	(365.00)
(*j*) Spices	(111.00)	(113.00)	(86.00)
2. Beverages and tobacco . .	141.00	228.00	N.A.
(*a*) Tobacco unmanufactured and tobacco refuse . .	(124.00)	(197.00)	(203.00)

1	2	3	4	5
3.	Crude materials inedible except fuels	N.A.	N.A.	N.A
	(*a*) Mica	(18.00)	(28.00)	(18.00)
	(*b*) Raw cotton	(165.00)	(35.00)	(101.00)
	(*c*) Jute Raw	(5.00)	(15.00)	(9.00)
	(*d*) Crude vegetable materials	(93.00)	(149.00)	(80.00)
	(*e*) Oil seeds and oleoginous fruits	(60.00)	(31.00)	(19.00)
	(*f*) Oil cakes	(125.00)	(139.00)	(149.00)
	(*g*) Hides and skins (except for raw skins)	(1.00)	(Negligible)	(N.A.)
	(*h*) Footwear	(40.00)	(40.00)	(25.00)
	(*i*) Leather and leather manufactures (except footwear)	(337.00)	(374.00)	(339.00)
	(*j*) Iron ore	(303.00)	(343.00)	(374.00)
	(*k*) Ores, minerals other than iron ore and Mica	(51.00)	(46.00)	(32.00)
4.	Minerals fuels, lubricants & related materials	28.00	24.00	71.00
5.	Vegetable non-essential oils, fats and waxes	15.00	16.00	23.00
6.	Chemicals and related products	225.00	347.00	306.00
7.	Manufactured goods classified according to materials	N.A.	N.A.	N.A.
	(*a*) Cotton fabrics	(276.00)	(272.00)	(264.00)
	(*b*) Fabrics made of man made fibres	(35.00)	(34.00)	(21.00)
	(*c*) Woollen fabrics	(3.00)	(5.00)	(4.00)
	(*d*) Made-up articles wholly or chiefly of cotton	(88.00)	(104.00)	(96.00)
	(*e*) Ready made garments	(515.00)	(548.00)	(483.00)
	(*f*) Coir manufactures	(26.00)	(26.00)	(25.00)
	(*g*) Jute manufactures including twist & yarn	(330.00)	(250.00)	(200.00)
	(*h*) Metal manufactures excluding iron and steel	(201.00)	(202.00)	(204.00)
	(*i*) Iron and Steel	(70.00)	(70.00)	(56.00)

1 2	3	4	5
8. Machinery and transport equipment	526.00	616.00	582.00
9. Miscellaneous manufactured articles including Handicrafts .	N.A.	N.A.	N.A.
(*a*) Pearls, Precious stones & semi-precious stones . . .	(602.00)	(680.00)	(768.00)
(*b*) Works of Art . . .	(112.00)	(141.00)	(108.00)
(*c*) Carpets handmade . .	(164.00)	(173.00)	(166.00)
(*d*) Jewellery	(16.00)	(40.00)	(66.00)
10. Commodities and transactions not elsewhere covered . .	N.A.	N.A.	N.A.
TOTAL : (including other items and articles under reference	6711.00	7796.00	8638.00

Note:—Figures have been rounded off.

*Figures are provisional.

APPENDIX III

IMPORT DUTY COLLECTION CLASSIFIED ACCORDING TO BUDGET AND TARIFF HEADS

The import duty collected is given below classified according to budget heads. The corresponding tariff heads or sections are shown within brackets.

Sl. No.	Description of goods	1980-81	1981-82	1982-83
		(in crores of rupees)		
1	2	3	4	5
1.	Fruits dried and fresh . .	32.00	33.00	49.00
	(Chapter 8 of tariff covering edible fruits & nuts) . .	(30.00)	(33.00)	(40.00)
	(Section II of tariff covering vegetable products) . .	(48.00)	(56.00)	(61.00)
2.	Vegetable Non-essential oils, fluid or solid, crudes, refined or purified	43.00	50.00	27.00
	(heading 15.07 of tariff covering vegetable oils) . . .	(43.00)	(50.00)	(27.00)
	(Section III of the tariff covering animal and vegetable fats).	(64.00)	(76.00)	(34.00)
3.	Kerosene	83.00	57.00	79.00
	(heading 27.10(3) of tariff covering Kerosene) . . .	(85.00)	(86.00)	(75.00)
4.	High Speed Diesel oil and vaporising oil	127.00	76.00	99.00
	(heading 27.10(5) of tariff covering high speed diesel oil) .	(134.00)	(76.00)	(102.00)
5.	Motor spirit	8.00	N.A.	6.00
	(heading 27.10(2) of tariff covering Motor spirit) . .	(8.00)	(11.00)	(6.00)

1	2	3	4	5
6.	Lubricating oils . . . (heading 27.10(8) of tariff covering lubricating oil) . .	55.00 (67.00)	66.00 (65.00)	31.00 (31.00)
7.	Other petroleum products .	49.00	26.00	24.00
8.	Chemicals other than pharmaceuticals . . . . . (heading 28 of tariff covering Inorganic chemicals) . .	252.00 (211.00)	343.00 (269.00)	368.00 (342.00)
9.	Pharmaceutical chemicals and products . . . . (heading 29 and 30 of the tariff covering organic chemicals and pharmaceutical products) .	42.00 (N.A.)	54.00 (N.A.)	60.00 (N.A.)
10.	Dyes, colours, paints & Varnishes (chapter heading 32 of the Tariff covering Tanning and Dyeing Extracts etc.) . .	23.00 (23.00)	25.00 (28.00)	(32.00 (32.00)
11.	Artificial resins, plastic materials, articles thereof . . (heading 39 of tariff covering Artificial resins and plastic materials etc.) . . .	142.00 (143.00)	178.00 (189.00)	226.00 (227.00)
12.	Rubber and Articles thereof . (heading 40 of tariff covering Rubber, Synthetic rubber etc.)	34.00 (34.00)	59.00 (58.00)	74.00 (74.00)
13.	Pulp, Paper, Paper board & articles thereof . . . (heading 47 & 48 covering Paper making material, Paper, Paper Board & Articles thereof)	45.00 (44.00)	73.00 (74.00)	76.00 (63.00)
14.	Yarn of manmade fibres . . (heading 50 of tariff covering Silk and waste silk) . .	160.00 (174.00)	217.00 (227.00)	246.00 (245.00)
15.	Man made fibres and filament tow . . . . . (heading 56 of tariff covering man made fibres) . . .	92.00 (77.00)	103.00 (86.00)	146.00 140.00

1	2	3	4	5
16.	Iron and Steel & Articles thereof	399.00	608.00	594.00
	(heading 73 of tariff covering Iron and Steel) . . .	(393.00)	(606.00)	(572.00)
17.	Copper & articles thereof . (heading 74 of tariff covering Copper and its aritcles) . .	150.00 (150.00)	169.00 (169.00)	169.00 (169.00)
18.	Nickel & articles thereof . . (heading 75 of tariff covering Nickel and its articles) . .	20.00 (20.00)	34.00 (N.A.)	36.00 (34.00)
19.	Aluminium & Articles thereof . (heading 76 of tariff covering Aluminium and its articles) .	N.A. (53.00)	N.A. (12.00)	N.A. (19.00)
20.	Lead & Articles thereof . . (heading 78 of tariff covering lead and its articles) . .	N.A. (18.00)	N.A. (19.00)	N.A. (26.00)
21.	Zinc & its articles . . . (heading 79 of tariff covering Zinc and its articles) . .	45.00 (45.00)	62.00 (62.00)	82.00 (83.00)
22.	Tin . . . . . (heading 80 of tariff covering tin and its articles) . . .	13.00 (13.00)	N.A. (19.00)	14.00 (14.00)
23.	Tools, implements etc. . . (heading 82 of tariff covering Tools, implements, Cutlery, spoons & Forks) . . .	22.00 (22.00)	33.00 (29.00)	41.00 (39.00)
24.	Machinery, mechanical appliances & electrical equipments. (Section XVI of tariff chapter 84 & 85 covering Boilers, machinery and Mechanical Appliances Electrical machinery equipment . . .	790.00 797.00	1095.00 1111.00	1497.00 1157.00

1	2	3	4	5
25.	Railway Locomotives & materials . . . . . (heading 86 of tariff covering Railway and Tram way Locomotives, rolling stock, Railway Track Fixtures, Traffic signalling equipments) . . .	24.00 (23.00)	34.00 (34.00)	47.00 (47.00)
26.	Motor Vehicles & Parts thereof . . . . . (heading 87 of tariff covering Tractors, Motor vehicles, Motor lorries, & Vans, Works Trucks Tanks & other armoured vehicles)	53.00 (54.00)	80.00 (79.00)	104.00 (104.00)
27.	Optical, photographic Cinematographic measuring, medical and Surgical instruments . (heading 90 of tariff covering Optical Surgical etc. instruments)	59.00 (66.00)	85.00 (103.00)	107.00 (106.00)
28.	All other articles . . . (Passenger baggage) . .	404.00 (171.00)	483.00 (248.00)	600.00 (281.00)
29.	Other budget heads . . (Other tariff heads) . . .	251.00 (434.00)	219.00 (502.00)	271.00 (317.00)
	TOTAL BUDGET HEADS . .	3417.00	4262.00	5106.00
	(TOTAL OF TARIFF HEADS) .	(3444.00)	(4376.00)	(4467.00)

APPENDIX-IV

EXPORT DUTY AND CESS—COMMODITY WISE

The collections of export duty and cess are given below classified under budget heads.

(in crores of rupees)

Commodities	Export Duty			Export Cess		
	1980-81	1981-82	1982-83	1980-81	1981-82	1982-83
1. Coffee	27.00	7.00	23.00	1.00	1.00	1.00
2. De-oiled ground nut meal	6.00	4.00	3.00	N.A.	N.A.	N.A
3. Tobacco (unmanufactured)	6.00	9.00	8.00	1.00	2.00	1.00
4. Marine products	—Not levied—			1.00	2.00	3.00
5. Cardamom	—Not levied—			1.00	1.00	1.0
6. Mica	5.00	6.00	5.00	1.00	1.00	1.00
7. Hides, skins and leather	9.00	5.00	4.00	a	a	a
8. Lumpy iron ore	12.00	8.00	7.00	1.00	1.00	1.00
9. Iron ore fines (including blue dust)	4.00	5.00	4.00	N.A.	N.A.	N.A
10. Chrome concentrate	2.00	2.00	1.00	Nil	Nil	Nil
11. Other articles	*	*	*	*	*	*
12. Other agricultural Produce under A.P. cess Act 1940.	—Not levied—			3.00	3.00	3.00
13. Under other budget heads	40.00	5.00	4.00	2.00	2.00	2.00
	111.00	51.00	59.00	11.00	13.00	13.0 0

*less than Rs. 50 lakhs.

a. Included in Sl. No. 13.

N.A.—Not available.

APPENDIX-V

SEARCHES AND SEIZURES

Seizures and Searches		1978-79		1979-80		1980-81		1981-82	
		Coastal Town		Coastal Town		Coastal Town		Coastal Town	
A Total number of searches and seizures	Bombay*	75		43		33		114	
	Delhi	Nil	Nil	Nil	Nil	Nil	Nil	Nil	N.A.
	Madras	10	N.A.	30	N.A.	12	N.A.	19	N.A.
	Calcutta	Nil	Nil	6	Nil	6	Nil	10	Nil
	Ahmedabad	161	122	124	191	101	260	176	34
	Cochin	8	40	6	82	5	67	1	13
Total		254	162	209	273	157	327	320	483
B. Value of goods seized (in Rs. lakhs)	Bombay*	60.80		278.43		68.53		791.92	
	Delhi	Nil	Nil	Nil	N.A.	Nil	N.A.	Nil	N.A
	Madras	N.A.	N.A.	0.12	N.A.	43.09	N.A.	0.65	N.A.
	Calcutta	Nil	Nil	Nil	Nil	Nil	Nil	3.26	N.A.
	Cochin	Nil	1.75	Nil	12.13	Nil	47.20	Nil	9.54
	Ahmedabad	90.59	10.64	10.85	11.03	478.99	28.05	676.11	73.73
Total		151.39	12.39	289.40	23.16	590.61	75.25	1471.94	83.27

C. Number of seizure cases adjudicated upon and resulting in levy of duty and penalty or imprisonment.	Bombay*	35		33		32		132	
	Delhi	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
	Madras	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
	Calcutta	Nil	Nil	Nil	Nil	2	Nil	Nil	Nil
	Ahmedabad**	119	108	122	109	108	169	93	190
	Cochin	Nil	29	Nil	37	Nil	41	Nil	80
Total . . .		154	137	155	146	142	210	225	270

*Note : Figures for Bombay cover coastal and town together.

**In respect of Ahmedabad Collectorate, the figures of seizures and searches include seizures relating to antismuggling cases also, while figures for Bombay, Madras, Calcutta and Cochin do not include such seizures.

APPENDIX-VI
CONFISCATION

		1978-79	1979-80	1980-81	1981-82
A. Number of Motor vehicles confiscated	Bombay	Nil	1	Nil	4
			(0.51)		(4.46)
	Delhi	4	6	Nil	Nil
(C. I. F. value in brackets in Rs. lakhs)		(0.02)	(1.55)		
	Madras	Nil	1	Nil	Nil
			(1.26)		
	Calcutta	Nil	2	1	9
			(0.60)	(1.55)	(9.00)
	Ahmedabad	10	4	5	2
		(41.34)	(1.10)	(10.90)	(0.57)
	Cochin	Nil	4	3	23
			(0.67)	(0.80)	(8.49)
	Total	14	17	9	38
		(41.36)	(5.69)	(13.25)	(22.52)
B. Trade goods confiscated (in Rs. lakhs)	Bombay	274.64	453.61	657.41	677.34
	Delhi	0.55	123.88	42.95	52.70
	Madras	45.21	266.76	942.58	989.82
	Calcutta	10.11	2.74	12.48	67.13
	Ahmedabad	41.56	1.18	46.37	71.52
	Cochin	19.41	221.33	287.93	70.78
	Total	391.48	10,69.50	1,989.72	1,929.29

C. Pending confiscation proceedings. Appeals, Revisions as on 31-3-82 in respect of confiscated.- -	Bombay	Nil	Nil	(0.64)	(1.79)
	Delhi	Nil	1 (0.18)	Nil	Nil
(a) Motor vehicles (value in brackets in Rs. lakhs)	Madras	Nil (1.26)	1	Nil	Nil
	Calcutta	Nil	2 (0.60)	1 (1.55)	12 (10.89)
	Ahmedabad	10 (3.42)	Nil	Nil	Nil
	Cochin	Nil	Nil	1 (0.60)	2 (1.20)
	Total	10 (4.86)	4 (0.78)	2 (2.79)	14 (13.88
(b) Trade goods (value in Rs. lakhs)	Bombay	84.71	98.41	63.29	66.60
	Delhi	Nil	0.23	Nil	0.05
	Madras	N.A.	N.A.	N.A.	N.A.
	Calcutta	2.57	22.09	8.99	106.59
	Ahmedabad	52.98	Nil	Nil	Nil
	Cochin	Nil	Nil	Nil	52.18
	Total	140.26	120.73	72.28	225.42

APPENDIX-VII

PERSONAL PENALTIES

(Amounts in lakhs of rupees)

		1978-79	1979-80	1980-81	1981-82	1982-83
(a) Number of cases in which presonal penalty levied.	Bombay	72	81	31	57	N.A
	Delhi	187	209	173	214	N.A.
	Madras	813	1,388	1,398	686	703
	Calcutta	210	404	357	402	N.A.
	Ahmedabad	229	137	237	285	323
	Cochin	356	458	537	792	235
	Amritsar	N.A.	N.A.	N.A.	N.A.	210
	Total	1867	2,677	2,733	2,436	1,471
(b) Amount of personal penalty imposed in cases at (a) above.	Bombay	19.06	27.99	9.74	15.02	125.78
	Delhi	7.17	12.64	53.81	8.14	N.A.
	Madras	10.37	32.05	29.04	16.16	8.99
	Calcutta	8.33	24.19	14.19	10.04	N.A.
	Ahmedabad	3.01	2.33	64.35	40.77	52.29
	Cochin	14.36	24.42	28.28	23.34	24.66
	Amritsar	N.A.	N.A.	N.A.	N.A	21.51
	Total	62.30	123.62	199.41	113.47	233.23

(c) Amount of personal penalties collected out of (b) above.	Bombay	1.06	7.15	0.60	2.45	20.43
	Delhi	1.16	2.89	6.95	3.75	N.A.
	Madras	7.54	25.63	23.25	11.81	7.73
	Calcutta	1.83	5.01	2.19	3.75	N.A
	Ahmedabad	2.95	2.21	69.23	3.69	2.70
	Cochin	4.50	16.96	16.36	18.47	1.63
	Amritsar	N.A.	N.A.	N.A.	N.A.	0.12
	Total	19.04	59.85	118.58	43.92	32.61
(d) Amount of unrealised personal penalties brought forward from previous years.	Bombay	1.16	13.74	3.90	0.60	192.13
	Delhi	1.01	1.98	4.48	11.12	—
	Madras	0.85	0.33	0.61	1.77	41.44
	Calcutta	N.A.	N.A.	N.A.	N.A.	N.A.
	Ahmedabad	572.17	466.12	477.12	420.03	447.15
	Cochin	9.91	2.87	11.87	21.31	15.23
	Amritsar	N.A.	N.A.	N.A.	N.A.	505.03
	Total	585.10	485.05	497.98	454.83	1200.98
(e) Amount out of (d) above which is unrealised pending decision (i) by high Courts	Bombay	Nil	Nil	Nil	Nil	N.A.
	Delhi	Nil	Nil	Nil	Nil	Nil
	Madras	Nil	Nil	Nil	0.96	N.A.
	Calcutta	1.91	5.78	0.28	0.37	N.A.
	Ahmedabad	Nil	Nil	Nil	Nil	Nil
	Cochin	Nil	Nil	Nil	Nil	Nil
	Total	1.91	5.78	0.28	1.33	N.A.

		1978-79	1979-80	1980-81	1981-82	1982-83
(ii) By Government in revision	Bombay	Nil	0.55	Nil	0.43	N.A.
	Delhi	Nil	Nil	Nil	Nil	N.A.
	Madras	Nil	Nil	Nil	Nil	N.A.
	Calcutta	0.48	4.74	8.81	1.03	N.A.
	Ahmedabad	1.23	0.50	Nil	Nil	N.A.
	Cochin	Nil	Nil	Nil	Nil	N.A.
	Total	1.71	5.79	8.81	1.46	
(iii) By other appellate authorities	Bombay	Nil	Nil	Nil	0.03	N.A.
	Delhi	Nil	Nil	Nil	Nil	N.A.
	Madras	Nil	Nil	Nil	0.05	N.A.
	Calcutta	0.15	Nil	0.10	2.69	N.A.
	Ahmedabad	20.44	20.45	33.29	58.31	N.A.
	Cochin	0.07	Nil	0.03	10.89	N.A.
	Total	20.66	20.45	33.42	71.97	N.A.
(iv) For other reasons	Bombay	Nil	0.07	0.60	Nil	N.A.
	Delhi	Nil	Nil	Nil	Nil	N.A.
	Madras	0.35	Nil	9.35	5.06	N.A.
	Calcutta	0.12	1.72	1.09	0.72	N.A.
	Ahmedabad	70.07	0.03	4.98	0.61	N.A.
	Cochin	0.08	0.04	0.46	2.10	N.A.
	Total	70.62	1.86	16.48	8.49	N.A.

APPENDIX-VIII

EXEMPTION FROM DUTY SUBJECT TO END USE VERIFICATION

(In crores of rupees)

		1978-79	1979-80	1980-81	1981-82
(a) Value of goods imported on which duty exempted	Bombay	0.12	40.57	87.57	119.72
	Delhi	86.71	4.70	7.76	17.81
	Madras	76.99	57.96	172.47	254.06
	Calcutta	8.06	11.00	25.65	124.29
	Ahmedabad	102.80	131.33	235.01	255.68
	Cochin	0.89	11.70	4.72	5.34
	Total	275.57	257.26	533.18	776.90
(b) Amount of duty forgone	Bombay	11.67	86.02	111.49	190.86
	Delhi	4.25	4.77	6.78	14.24
	Madras	73.77	56.76	163.85	233.01
	Calcutta	4.74	5.37	23.45	22.35
	Ahmedabad	111.97	130.87	206.44	220.01
	Cochin	N.A.	N.A.	N.A.	N.A.
	Total	206.40	283.79	512.01	680.47

		1978-79	1979-80	1980-81	1981-82
(c) Value for which bond taken by Custom Houses	Bombay	11.67	86.02	111.49	1798.62
	Delhi	4.02	3.37	4.20	13.29
	Madras	73.77	56.76	163.85	233.01
	Calcutta	4.74	5.37	23.45	22.35
	Ahmedabad	112.55	132.45	216.40	224.30
	Cochin	1.07	14.05	5.66	6.39
	Total	207.82	298.02	525.05	2297.96
(d) Value of bonds in respect of which end use condition verified during the year	Bombay	208	1576	1269	1328
	Delhi	64	128	168	193
	Madras	819	935	766	438
	Calcutta	325	375	458	674
	Ahmedabad	0.16	—	14.65	31.72
	Cochin	13	23	23	31
	Total	1429.16	3037	2698.65	2695.72
(e) Value of bonds brought forward from previous year for verification of end use condition	Bombay	Nil	20.70	24.58	90.59
	Delhi	1.99	5.62	8.54	11.01
	Madras	1.09	46.47	81.71	176.73
	Calcutta	16.65	21.25	17.62	36.86
	Ahmedabad	—	1.91	3.85	13.76
	Cochin	0.15	0.58	0.61	5.94
	Total	19.88	96.53	136.91	334.89

(f) Value of end-use bonds carried forward to next year for verification of end-use condition.	Bombay	—	20.41	23.91	78.22
	Delhi	1.26	0.91	1.52	0.79
	Madras	0.81	81.79	178.50	334.28
	Calcutta	21.25	17.62	36.86	58.28
	Ahmedabad	1.91	2.04	13.76	23.27
	Cochin	0.94	1.12	2.06	7.15
	Total	26.17	123.89	256.61	501.99
(g) Number of end-use bonds pending cancellation	Bombay	145	422	671	570
	Delhi	155	205	335	713
	Madras	—	—	—	—
	Calcutta	—	4	—	—
	Ahemdabad	—	—	—	—
	Cochin	—	—	—	—
	Total	300	631	1006	1283
(i) Of above number pending for adjudication or appeal	Bombay	—	—	—	—
	Delhi	—	—	—	—
	Madras	—	1	—	—
	Calcutta	—	—	—	—
	Ahemdabad	—	—	—	—
	Cochin	—	—	1	—
	Total	—	1	1	—

		1978-79	1979-80	1980-81	1981-82
(ii) Of above number pending decision in High Court	Bombay	—	—	—	—
	Delhi	—	—	—	—
	Madras	—	3	—	—
	Calcutta	—	—	—	—
	Ahmedabad	—	—	—	—
	Cochin	—	—	—	—
	Total	—	3	—	—

CHAPTER-2

UNION EXCISE DUTIES

2.01 *Trend of receipts*

During the year 1982-83 the total receipts from Union Excise duties amounted to Rs. 8,058.50 crores.* The receipts during the year 1982-83, 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	
	1981-82 Rs.	1982-83 Rs.
1	2	3
A—Shareable duties:—		
Basic excise duties	61,85,20,78,520	66,66,63,47,004
Auxiliary duties of excise	37,324	50,426
Special excise duties	3,36,16,66,475	3,18,17,33,910
Additional excise duties on mineral products	10,11,644	3,34,62,154
Total (A)	65,21,47,93,963	69,88,15,93,494
B—Duties assigned to States:—		
Additional excise duties in lieu of sales tax	4,94,58,49,505	5,00,51,54,347
Excise duties on generation of power	1,41,60,19,841	1,48,49,59,920
Total (B)	6,36,18,69,346	6,49,01,14,267

*Provisional figures received from the Controller General of Accounts.

1	2	3
C—Non-shareable duties:—		
Regulatory excise duties*	42,039	4,351
Auxiliary duties of excise	1,43,528	Nil
Special excise duties**	7,64,67,378	2,83,66,248
Additional excise duties on textiles and textile articles	83,45,47,790	75,06,76,886
Other duties***	39,16,349	(—)87,021
Total (C)	91,51,17,084	77,89,60,464
D—Cess on commodities	1,69,10,89,139	3,25,54,77,629
E—Other receipts	2,45,36,738	17,88,33,334
Total	74,20,74,06,270	80,58,49,79,188

(ii) The trend of receipts in the last five years and the number of tariff items and sub-items (each with a rate against it) under which the commodities were classified for purposes of levy of duty are given below:—

Year	Receipts from union excise duties (In Rs. crores)	Number of tariff items	Number of tariff sub-items	Total number of factories
1978-79	5,341.95	138	304	51,330
1979-80	6,011.09	139	307	60,629
1980-81	6,500.02	139	313	63,395
1981-82	7,420.74	140	322	52,859
1982-83	8,058.50	141	334	58,223

*Represents arrears received in respect of levies made when non-shareable auxiliary and regulatory duties were in force.

**Represents arrears received in respect of levies made upto 16 March 1972 when special excise duties were not shareable.

***Information on nature of these receipts and write back are awaited from the Ministry of Finance.

(iii) The number of commodities each of which yielded excise duties in excess of Rs. 100 crores during the year 1982-83, the number 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
1978-79 . .	18(71)	43(25)	78(4)
1979-80 . .	18(72)	47(24)	72(4)
1980-81 . .	21(75)	49(21)	67(4)
1981-82 . .	21(76)	52(21)	68(3)
1982-83 . .	20(75)	55(21)	66(2)

(iv) The commodities which have yielded duty amounting to more than Rs. 100 crores per year in recent years are given below:—

Sl. No.	Commodities each yielding more than Rs. 100 crores per year.*	Receipts from each commodity in			Number of factories (1981-82)
		1980-81	1981-82	1982-83	
1	2	3	4	5	6
		(In crores of rupees)			
1.	Cigarettes . . .	613.30	686.81	686.95	21
2.	All other goods not elsewhere specified . .	433.72	535.85	594.38	5749
3.	Man-made fibres & yarn .	464.98	526.88	579.18	769
4.	Motor spirit . . .	492.09	518.37	560.87	99
5.	Tyres and tubes . .	288.25	360.39	408.70	100
6.	Refined diesel oil and vaporising oil . . .	280.44	359.18	380.35	
7.	Iron or steel products .	275.63	346.63	338.42	1046
8.	Cement	136.74	169.52	336.78	91
9.	Motor vehicles . .	227.42	314.54	307.37	296

*Figures furnished by the Ministry of Finance.

1	2	3	4	5	6
10.	Sugar (including khandsari)	248.29	295.48	298.42	2502
11.	Petroleum products not otherwise specified	175.15	182.28	188.50	29
12.	Paper and paper board	174.46	169.35	176.39	824
13.	Kerosene	123.78	149.58	168.30	79
14.	Cotton fabrics	153.07	162.50	150.53	1165**
15.	Man-made fabrics	112.45	145.12	149.24	684
16.	Electricity	139.08	146.60	146.53	1157
17.	Plastics	123.49	138.03	141.78	477
18.	Biris	117.59	123.12	120.94	10520
19.	Patent or proprietary medicines	84.18	100.92	119.00	756
20.	Aluminium	111.51	141.81	111.55	261
21.	Cotton yarn, all sorts	108.59	103.58	Nil	930
22.	Electric wire and cables	102.01	Nil	Nil	500

(v) The Commodities which yielded less than Rs. 1 crore per year are given below*:—

Sl. No.	Commodities each yielding less than Rs. 1 crore per year	Receipts from each commodity in			Number of factories (1981-82)
		1980-81	1981-82	1982-83	
	2	3	4	5	6
1.	Camphor	0.73	0.94	0.97	4
2.	Cinematograph projectors	0.66	0.62	0.63	13
3.	Typewriter ribbons	0.53	0.49	0.50	9
4.	Playing cards	0.93	0.77	0.44	25
5.	Linoleum	0.66	0.42	0.40	1
6.	Flax fabrics and ramie fabrics	0.23	0.33	0.38	6
7.	Menthol	0.43	0.40	0.38	12
8.	Parts of wireless receiving sets	0.23	0.21	0.29	10
9.	Mechanical lighters	0.05	0.08	0.28	30
10.	Zip and slide fasteners	0.25	0.25	0.18	13
11.	Coated textiles	0.13	0.19	0.17	12
12.	Hookah tobacco	0.30	0.25	0.14	151

*Figures furnished by the Ministry of Finance.

**Excludes powerlooms

1	2	3	4	5	6
13.	Electric machines for games of skill etc.	Nil	Nil	0.13	6
14.	Television cameras . .	Nil	0.01	0.05	5
15.	Cigars and cheroots . .	0.02	0.01	Nil	428
16.	Polyester films . .	0.11	Nil	Nil	1
17.	Lead	0.82	0.92	Nil	4
18.	Petroleum gases . .	Nil	0.58	Nil	Nil
19.	Flax yarn and ramie yarn	Nil	0.03	Nil	2
20.	Television image and sound recorders . . .	Nil	0.32	Nil	11
21.	Vacuum flasks . . .	Nil	0.89	Nil	8
22.	Articles of a kind used for sound recording etc.	Nil	0.13	Nil	7 36
23.	Rubber processing chemicals	Nil	Nil	Nil	8
24.	Silk yarn	0.01	Negligible	Nil	3

(vi) The reasons for shortfall in collection of special excise duties in 1982-83 as compared to collections in the preceding year are awaited from the Ministry of Finance (November 1983).

(vii) The reasons for increase in collection in 1982-83 from additional excise duties on mineral products as compared to preceding year are awaited from Ministry of Finance (November 1983).

(viii) The reasons for short fall in the collections in the year 1982-83 from additional excise duties on textiles and textile articles as compared to preceding year are awaited from Ministry of Finance (November 1983).

(ix) Cess is levied and collected by the Department of Central Excise on tea, coffee, tobacco, beedi, onion, copra, oil and oil seeds, salt, rubber, jute, cotton, 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 organizational expenditure on welfare of

workers in the respective Industries. The yield from levy of cess in the last five years and the commodities each of which yielded revenue of more than rupees one crore are given below :—

Commodity	Receipts from Cess				
	1978-79	1979-80	1980-81	1981-82	1982-83*
			(In crores of rupees)		
1. Crude oil .	67.18	66.46	58.74	111.19	209.89
2. Coal & Coke .	22.68	24.50	21.86	31.01	34.17
3. Rubber . .	5.19	6.61	6.27	5.52	6.62
4. Handloom cess on cotton fabrics .	5.83	5.55	6.02	5.45	4.66
5. Tea . .	4.04	4.25	4.56	4.48	4.55
6. Handloom cess on rayon artificial silk fabrics. .	1.86	1.94	2.00	1.28	0.90
7. Salt . .	1.33	1.34	1.22	1.35	1.30
8. Oil and oil seeds	0.70	1.23	1.10	1.04	1.25
9. Paper . .	Nil	Nil	0.01	1.22	0.92
10. Handloom cess on man-made fabrics . .	Nil	Nil	Nil	1.14	1.41
11. Other commodities . . .	11.72	4.17	4.69	5.43	59.87
Total receipts from cess . .	120.53	116.05	106.47	169.11	325.54

2.02 *Variations between the budget estimates and actual receipts.*

The budget estimates *vis-a-vis* actual receipts during the year 1982-83 alongside the corresponding figures for the preceding three years are given below:—

Year	Budget estimates	Actual receipts
		(In crores of rupees)
1979-80	6008.00	6011.09
1980-81	6264.81	6500.02
1981-82	7116.90	7400.74
1982-83	8475.12	8058.50*

*Provisional figures furnished by the Controller General of Accounts.

In the budget for 1982-83, the estimates of collection to be made under the following new tariff items which were introduced are given below:—

Tariff item and commodity	Estimates of receipts	Actual receipts
	(in lakhs of rupees)	
11AA—Petroleum gases . . .	1806	1242
37BB—Television Image and Sound recorders & reproducers . . .	53	200
37CC—Television cameras (including video cameras)	9	5
47—Electronic machines for games of skill or chance	315	10
59—Sound and image recording articles .	131	188

2.03 *Cost of collection*

The expenditure incurred during the year 1982-83 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)		
1979-80	6011.09	35.39	0.58
1980-81	6500.02	38.42	0.59
1981-82	7420.74	44.03	0.59
1982-83	8058.50*	71.69**	0.90**

*Figures furnished by the Controller General of Accounts.

**Provisional figures furnished by the Ministry of Finance.

2.04 *Demands pending for collection*

(i) As per Rules 9 and 49 of the Central Excise Rules, 1944, no excisable goods shall be removed from any place where they are produced, cured or manufactured or from any premises appurtenant thereto until excise duty leviable thereon has been paid.

As on 31 March 1982, in 22 out of 25 Collectorates, duty amounting to Rs. 992.54 crores payable in 4455 cases was not collected from licensees because of stay granted by Courts of Law. Duty amounting to Rs. 167.45 crores (in 1187 cases) was secured by bank guarantees given by the licensees. Disputed demands amounting to Rs. 247.59 crores were not recovered by the department even though no stay had been granted by any court and the cases were not even before the courts.

(ii) The demand* for excise duties, other than disputed demands pending for collection as on 31 March 1983 was Rs. 113.69 crores**. Commodity-wise details are given below:—

Commodity	Amount of excise duty outstanding for recovery as on 31 March 1983
	(In crores of rupees)
1. Paper	12.07
2. Refrigerating and air-conditioning appliances and machinery	6.69
3. Iron and steel products	2.78
4. Cotton fabrics	2.28
5. Man-made fibres and yarn	1.61
6. Motor spirit including raw naphtha	0.32
7. Tin plates	0.15
8. Refined diesel oil	0.03
9. All other commodities	87.76
Total	113.69

*Figures furnished by the Ministry of Finance.

**Figures are provisional.

2.05 *Exemption notifications*

In the Central Excise Tariff, the number of sub-items (each having a rate specified against it) under which the excisable commodities are required to be classified was 322 during the year 1981-82 and 334 during the year 1982-83. The number of exemption notifications issued during the years 1981-82 and 1982-83 number 240 and 287 respectively. Because exemption notifications are issued under the various tariff items, the number of rates of basic excise duty, in force, during the years were 832 and 1,067 respectively. The largest number of exemption notifications were in force in respect of the following tariff items:—

Tariff item No.	Description	Number of exemption notifications in force during 1981-82	1982-83
15A	Plastics	34	41
68	All other goods not elsewhere specified	37	36
17	Paper and paper board and articles thereof	27	33
18	Man-made fibres, filament yarn and cellulosic spun yarn	32	31
14	Paints and varnishes	25	30
11A	Petroleum products not otherwise specified	21	27
26A	Copper	18	25
19	Cotton fabrics	26	23
27	Aluminium	31	22
6	Motor spirit	18	22
14E	Patent or proprietary medicines	18	20

2.06 *Outstanding audit objections*

Objections arising in audit during the test check of records in the various Central Excise Collectorates and the excise records maintained by the licensees under the Self Removal Procedure are communicated to the Assistant Collectors through test audit memos and Local Audit Reports. The more important irregularities are reported also to the Collectors of Central Excise. The Government have issued instructions that the first

replies to Local Audit Reports should be sent to Audit within six weeks of their receipt and the audit objections settled expeditiously.

As on 31 March 1983 the number of audit objections issued upto 31 March 1982 which were pending settlement was 9347 involving revenue of Rs. 328.78 crores. The yearwise details are given below:—

Year to which objection relates	Number of objections	Amount of revenue involved
	(In crores of rupees)	
upto 1977-78	2471	61.95
1978-79	1145	27.02
1979-80	1253	53.51
1980-81	1856	39.62
1981-82	2622	146.68
Total	9347	328.78

Out of 9347 objections, 4869 objections involving duty amounting to Rs. 142.48 crores were pending settlement for more than three years. Of the 25 collectorates the value of objections outstanding for more than 3 years in the Collectorates of West Bengal, Calcutta, Hyderabad, Patna, Bangalore, Baroda and Chandigarh involved revenue amounting to Rs. 42.73 crores, Rs. 24.64 crores, Rs. 7.38 crores, Rs. 7.22 crores, Rs. 6.12 crores, Rs. 5.88 crores and Rs. 5.74 crores respectively.

2.07 *Results of audit*

Test check of records in the various Central Excise Collectorates and excise records of licensees manufacturing excisable commodities revealed underassessment of duty and losses of revenue amounting to Rs. 81.91 crores.

The irregularities noticed broadly fall under the following categories:—

(a) Non levy of duty
(b) Short levy due to under-valuation
(c) Short levy due to misclassification

(d) Short levy due to incorrect grant of exemption
(e) Exemptions to small scale manufacturers
(f) 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)
(g) Demands for duty not raised
(h) Irregular rebates and refunds
(i) Cess
(j) Other topics of interest

Some of the important cases are mentioned in the following paragraphs.

NON LEVY OF DUTY

2.08 *Duty not levied on production suppressed or not accounted for*

(i) Under Rule 145 of Central Excise Rules, 1944 tobacco may be warehoused, without payment of duty for a period of three years. Extension may be given for a further period of two years, on genuine reasons given by the assessees and acceptable to the Collector. On expiry of period allowed for warehousing, demand for duty is to be raised and if duty is not paid it may be realised by auctioning the tobacco.

A licensee failed to clear tobacco from warehouse even after the expiry of the extended period. He had also applied for permission to destroy inferior tobacco without payment of duty. On enquiry in audit (March 1976) of the quality of the tobacco produced, warehoused and sought to be destroyed, the department intimated that good quality tobacco in the warehouse had been substituted by 72 lots of tobacco of inferior quality and duty amounting to Rs. 4,39,665 was payable on the good quality tobacco removed irregularly. The department also stated that demand had since been raised (May 1977) accordingly. Similarly another demand for Rs. 1,45,184 was raised in March 1982 and penalty of Rs. 200 imposed. The appeal and revision petitions filed by the assessee in the two cases are pending.

Report on recovery as a result of action taken by the department consequent to audit query is awaited (August 1983).

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(ii) A manufacturer of electronic calculators classifiable under tariff item 33D, cleared 8.126 calculators during the year 1978-79 after paying duty on the same. As per his stock account he utilised 9586 display counters which are used at the rate of one per electronic calculator. He stated that 813 display counters were issued to customers as replacements for defective parts. There was, however, no valid explanation on how he used balance quantity of 8773 display counters on production and clearance of duty on 8126 calculators as per accounts submitted by him to the department which were accepted by the department. On the 647 additional calculators apparently produced and cleared duty not realised amounted to Rs. 25,292.

On the possible suppression of production and evasion of duty being pointed out (October 1980) in audit, the department stated (December 1980) that a show cause notice had since been issued to the manufacturer in October 1980 demanding duty of Rs. 25,292. Report on adjudication of demand is awaited (July 1983).

The Ministry of Finance have confirmed the facts (December 1983).

(iii) With effect from 1 March 1978, a new tariff item 11D was introduced to cover "Coal (excluding lignite) and coke not elsewhere specified". The effective rate of duty leviable on Coal (other than coking coal) was Rs. 5 per tonne up to 17 July 1979 whereafter levy of duty on coal was exempted.

In a public sector undertaking stock verification done on 1 April 1979 revealed shortage of 2,41,884 tonnes of coal in 29 collieries belonging to the undertaking. Duty not realised amounted to Rs. 12,09,420.

On the reasons for the short realisation of duty being enquired in audit (between June 1980 and January 1981), the department stated (June 1981) that show cause-cum demand notices had since been issued to 3 collieries but only by way of abundant caution in relation to demand for Rs. 3,19,580. In respect of the remaining 26 collieries the department stated (February 1982) that the shortages were noticed during annual stock taking conducted by the undertaking and not by Excise

Officers and so no duty on the coal found short would be demanded. However, subsequently the department verified (July 1983) that the shortage amounted to 2,41,884 tonnes of coal in the 29 collieries which was attributed by the department to defective accounting (82,062 tonnes), defective grading (20,700 tonnes), loss in loading and unloading (28,632 tonnes) and pilferage by anti social elements (1,10,490 tonnes). Even though the shortage had since become a finding by the Excise Officers, the shortage was not viewed as cognizable by the department for purposes of levy of duty on coal produced but not accounted for. No demands have so far been raised for the recovery of duty from 26 collieries.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

2.09 *Excisable goods cleared as non-excisable*

(i) *Fabrics*

As per provisions of Section 2(f) of the Central Excises and Salt Act, 1944 any person who supplies yarn to powerloom units and gets cloth manufactured on his account by paying weaving charges is a manufacturer. If that person is also engaged in spinning of yarn the fabrics produced as above will be liable to duty in the same manner as fabrics produced in a composite mill.

In a powerloom, cotton fabrics were manufactured out of yarn produced by a spinning mill and supplied to the powerloom through a trading firm. The powerloom was allowed to clear the fabrics free of duty as per a notification issued on 15 July 1977 on the ground that the trading firm was the manufacturer and not the spinning mill. The powerloom was only paid weaving charges by the trading firm. The spinning mill and the trading firm were however same in that the sole proprietor of the mill was the "Karta" of the Hindu Undivided Family which owned the trading firm. The department was of the view that the fabrics were not products of a composite mill in that the fabric was got manufactured by the trading firm and not by the spinning mill.

The legal fiction of the same person acting as the sole proprietor and also being "Karta" of the Hindu Undivided Family trading firm enabled avoidance, if not, evasion of duty. Manufacturers of yarn can avoid classification as a composite mill by

interposing a dummy firm between spinning and weaving activities and thereby reduce the incidence of duty. On clearances made during the period from April 1979 to March 1980, the duty not levied amounted to Rs. 3,16,156.

The non levy of duty and the view taken by the department was objected to in audit (December 1980) on the ground that it was open to the department to view the firm as a dummy or an agent of the spinning mills and proceed to levy duty. The objection has not been accepted by the department.

The Ministry of Finance have stated (August 1983) that legal advice is being obtained on the issue involved.

(ii) *Motor vehicles*

On motor vehicles (whether with or without body) which are classifiable under tariff item 34 duty is leviable at rates fixed by reference to engine capacity. But where engine capacity does not exceed 2500 cubic centimetres rates of duty vary for vehicles with body and without body. The tariff defines motor vehicles to mean all mechanically propelled vehicles other than tractors designed for use upon roads. An explanation in the tariff clarifies that motor vehicle shall include a chassis. Another explanation clarifies that where a motor vehicle is mounted, fitted or fixed with any weight lifting or other specified material handling equipment then such equipment shall not be taken into account.

The practice in trade is that the chassis of vehicles are cleared by manufacturer on payment of duty and bus or lorry bodies are built thereon by body builders. The Finance Ministry clarified in February 1974 that once duty was paid on the chassis, there would be no need to recover duty again when the bodies were built by independent body builders and that duty had to be assessed in the form in which the vehicle was cleared (from the factory manufacturing chassis). After the introduction of the tariff item 68 on 1 March 1975, duty became leviable on all other goods not elsewhere specified and the Finance Ministry clarified (June 1975) that since the product (built vehicle) ultimately cleared was only a motor vehicle falling under tariff item 34 (under which duty had already been levied on the chassis) duty would not be leviable under tariff item 68.

As per the law laid down by the Supreme Court in the case of Union of India Vs. Delhi Cloth and General Mills Ltd. (AIR 1963 SC 791) the goods produced as a result of construction of a body on a chassis, is different from the chassis since it has a distinct name, character and use. It is also known differently in the market. The construction of a body on a chassis is manufacture and on the goods so manufactured duty is leviable again under tariff item 34 so long as the levy of such duty has not been exempted by issue of a notification. It is however open to the manufacturer to claim set off of duty paid on the chassis from the duty payable on the built motor vehicles as per provisions of Rule 56A of Central Excise Rules. In February 1983 Ministry of Finance clarified that where a motor vehicle chassis is cleared under bond for export and on such chassis a bus body is built in separate premises before the actual export, and such a motor vehicle is subsequently diverted for home consumption duty should be levied on the full value of the motor vehicle including the body.

(a) Duty is not being levied on motor vehicles after manufacture (as motor vehicle with built bodies) because of the incorrect clarification issued by the Ministry of Finance in 1974. Even after the introduction of tariff item 68, the ratio of the judgement of Supreme Court was not applied to remove the prevailing misconception that duty is not leviable on a new product which is manufactured from another product classifiable under the same tariff item as the new product. The mistakes have resulted in loss of revenue estimated at Rs. 1.63 crores in respect of motor vehicles cleared by one of the body building units during the three years 1980-81 to 1982-83 in the jurisdiction of one collectorate. The loss of revenue in two other collectorates was estimated at Rs. 1.96 crores during the year 1980-81 in respect of 7 units, and during the years 1979-80, 1981-82 and 1982-83 in respect of three other units.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(b) A manufacturer of motor vehicles without body, (with engine capacity not exceeding 2500 cubic centimetres) was allowed to clear them without payment of duty leviable at 30 per cent *ad valorem* though they were excisable products classifiable under tariff item 34 I(2) (ii). The vehicles were cleared under the provisions of Rule 56B of the Central Excise Rules for building body in another premises. Thereafter the motor vehicles

with body were cleared on payment of duty at 13 per cent *ad valorem*. Even under Rules 9 and 49 as amended on 9 July 1983 the duty leviable under tariff item 34 I(2)(ii) should have been realised at the time of final clearance (as motor vehicles with body) after allowing benefit admissible, if any, under Rule 56A. Even if set off under Rule 56A had been allowed additional duty amounting to Rs. 39 lakhs over and above duty at 13 per cent should have been recovered on the motor vehicles without body which were excisable products.

On the mistake (and short levy) being pointed out in audit (September 1982), department stated that motor vehicles could be viewed as manufactured only after road test, which in the instant case was done after fitting all the accessories and that manufacturer was eligible for benefit of set off under the said Rule 56A. This view of the department overlooks the introduction of a tariff sub item 'Motor vehicles without body' in March 1974 making them dutiable and the fact that even if the manufacturer was entitled to benefit under the provisions of Rule 56A differential duty amounting to Rs. 39 lakhs would still be recoverable on only the clearances made in August 1982 (which were test checked in audit).

The Ministry of Finance have stated (November 1983) that the matter is under examination.

(iii) *Methanol*

On all other goods not elsewhere specified in the Central Excise Tariff, but excluding "alcohol, all sorts, including alcoholic liquors for human consumption" excise duty is leviable under tariff item 68 with effect from 1 March 1975. The term 'alcohol' used in the tariff refers to products known in the market as alcohol and not what chemists may classify as belonging to the family of alcohols under the generic chemical nomenclature. In common parlance 'alcohol' refers to 'ethyl alcohol' used in the manufacture of, among other things, potable liquor, which alcohols are subject to control by the State Government.

Two units engaged in the manufacture of polyester staple fibre and polyester yarn obtained as a by-product 'methanol' which was cleared without payment of duty on the ground that it belonged to the family of alcohols (being methyl alcohol). As per the sales invoice this by-product was sold as methanol and

not as methyl alcohol, for use in paints and varnish industries as an industrial solvent. On classification under tariff item 68, the duty leviable thereon would have amounted to Rs. 12.06 lakhs on clearances made during the period from September 1979 to August 1982 from one unit and from January 1979 to July 1982 from another unit.

On enquiries made in audit (between August 1980 and October 1982) as to why duty was not levied under tariff item 68, the department stated that as per chemical composition methanol is methyl alcohol and as such it falls outside the scope of tariff item 68. State sales tax had been paid by the units at the lower rate of 8 per cent applicable to methanol and not at a much higher rate of 26 per cent applicable to items classified as alcohol by the State Government. No state excise duty had also been levied on the methanol nor was the distribution of the product subjected to control by the State Government as an alcoholic product.

The Ministry of Finance have stated (July 1983) that the matter is under examination.

(iv) *Steel products*

(a) As per a notification issued on 13 May 1980, on iron or steel products classified under tariff item 26AA and manufactured with the aid of electric furnace from any of the materials mentioned therein (which did not include steel ingots) duty leviable in excess of Rs. 200 per tonne was exempted. Where the aforesaid products were made from duty paid steel ingots such products were exempted from the whole of the duty of excise leviable thereon.

A manufacturer transferred steel ingots from the ingot mill to the rolling mill during the years 1980-81, 1981-82 and 1982-83 without paying duty on the ingots though duty was not exempted. On clearance of the iron or steel products manufactured out of the ingots, duty was paid at Rs. 200 per tonne on the products, as also duty on ingots equal to the weight of the products. On 9747 tonnes of ingots wasted in the process of manufacture duty amounting to Rs. 15,95,366 was not realised during the years 1980-81, 1981-82 and 1982-83.

On the short levy being pointed out in audit the department stated (April 1983) that duty had been paid in accordance with 'later the better principle' enunciated by the Ministry of

Finance in its letter of 2 April 1982. However, such a principle is contrary to Rules 9 and 49 of the Central Excise Rules and resulted in loss of revenue.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(b) As per a notification issued on 20 May 1967, steel wires falling under tariff item 26AA(ia) were exempted from levy of duty if the wires were made from rods on which the appropriate amount of duty of excise had already been paid. The notification dated 20 May 1967 was rescinded with effect from 1 August 1980 and another notification was issued on 7 April 1981, restoring the exemption. During the intervening period from 1 August 1980 to 6 April 1981 the wires were not covered by any exemption notification.

A manufacturer of steel wires produced them out of wire rods obtained from other factories on payment of appropriate duty leviable thereon. On 11377.274 tonnes of wires cleared during the period from 1 August 1980 to 6 April 1981 no duty was, however, levied though duty amounting to Rs. 41,29,950 was leviable.

On the non levy of duty being pointed out in audit (January 1983), the department stated (February 1983) that the audit point was technically correct.

The Ministry of Finance have stated that show cause-cum demand notice has been issued to the assessee for procedural lapse since assessee could have asked for set off on duty payable under Rule 56A to the extent of duty paid on wire rods. The fact is that he did not ask for set off and there was lapse on the part of the department to demand duty.

(v) *Copper products*

On copper cast plates duty of excise is leviable under tariff item 26A(ia) and as per a notification issued in November 1980, such goods are exempt from so much of the duty of excise leviable thereon as is in excess of three thousand rupees per tonne.

A manufacturer produced copper cast plates from copper alloys and from the plates he manufactured copper alloy strips and wires (classifiable under tariff item 68). On the cast plates duty amounting to Rs. 21.24 lakhs was not realised on clearances made during the year 1981-82.

On the omission being pointed out in audit (December 1982) the department stated (February 1983) that action to issue show cause-cum demand notice had since been initiated.

The Ministry of Finance have stated (November 1983) that it has been reported that duty has been exempted under another notification issued in July 1966. However, that notification does not cover cast plate produced from copper alloy strips and were classifiable under tariff item 68.

(vi) *Aluminium products*

(a) As per a notification issued in July 1964 on export under bond of certain specified goods including aluminium under the provision of Rule 13 of Central Excise Rules, 1944, clearance was allowed without payment of excise duty. As per another notification issued on 13 December 1980, this facility was withdrawn but was restored by issue of amending notification on 28 March 1981. In the result, export of aluminium under bond without payment of excise duty was not allowed during the period from 13 December 1980 to 27 March 1981. The excise duty payable was also not notified for purposes of rebate on export under Rule 12 of the said rules.

A manufacturer exported under bond (on 19 March 1981) aluminium although export of aluminium without payment of excise duty was not permitted on that day. In the result non-realisation of excise duty amounting to Rs. 1,30,416 was irregular.

The mistake was pointed out in audit to the department in July 1982.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(b) As per a notification issued on 9 May 1959, utensils and other articles of aluminium manufactured under bond for purposes of export are allowed to be exported without payment of excise duty as per provision of Rule 191B of Central Excise Rules provided the export was to a country or territory other than that having a common land frontier with India. By a notification issued on 12 April 1980, the duty free clearance was allowed in respect of a country having common land frontier with India.

A manufacturer of 'articles of aluminium' producing aluminium pipes for purposes of export after manufacture under bond was allowed to export them free of duty to a country even prior to 12 April 1980 though such duty free export was allowed only from 12 April 1980. The irregularity resulted in non levy of duty amounting to Rs. 1,40,851 in respect of clearances made during the period from 12 February 1980 to 1 April 1980.

The mistake was pointed out in audit to the department in July 1982.

The Ministry of Finance have stated (September 1983) that the matter is being examined.

(vii) *Paper and paper products*

(a) On "uncoated and coated printing and writing paper (other than poster papers)" duty is leviable under tariff item 17(1). The Central Board of Excise and Customs in its letter dated 18 April 1977 had informed the field offices that IBM machine rolls etc. (after being cut to size and or interleaved with carbon paper) are classifiable as printing paper under tariff item 17(1) and that no further excise duty would be attracted if they are made from printing and writing paper which has already borne duty under tariff item 17(1).

A manufacturer of continuous stationery and books for use in computer machines purchased duty paid base paper and performed the operation of printing, perforation, sprocket, punching, layering and sandwiching of carbon paper in between such papers. He was allowed to clear his products without payment of any further duty even though the operations performed by him amounted to manufacture of special form of paper with considerable value addition.

On a query made in audit in August 1980, the department received an advice from the Ministry of Finance that duty was required to be levied on the product by classifying it under tariff item 17(1). The department thereupon demanded duty on the product without allowing any set off towards duty already paid on the base paper or giving an opportunity to the manufacturer to claim set off. Against a demand for Rs. 63.14 lakhs raised (on clearances made from 1 June 1977 to 31 March 1980), the manufacturer moved the High Court and the demand has been stayed. In the result differential duty on the significant value addition on the manufacture of continuous stationery and books for use in computer machines estimated roughly at anywhere upto Rs. 9 lakhs has not been realised.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(b) In a letter issued on 29 November 1977 the Central Board of Excise and Customs clarified that in a paper mill manufacturing wrapping paper which is utilised for wrapping other paper and paper board cleared from the mill, credit for duty paid on the wrapping paper should not be allowed under Rule 56A of the Central Excise Rules. The classification was necessary since wrapping is considered to be a post manufacturing operation and duty is levied on paper and paper boards cleared in wrapping paper on their value exclusive of the value of the wrapping paper. Therefore wrapping paper is not subjected to duty after it has been used for wrapping.

On wrapping paper manufactured in a paper mill credit under Rule 56A was allowed in respect of duty paid on it resulting in duty being realised short by Rs. 9,89,779 on clearances made during the years 1980 and 1981. On appeal against a show cause notice for disallowing credit (as a result of an audit query raised in December 1980) the Appellate Collector decided in favour of the licensee and the department appealed to the Tribunal (February 1983).

After the loss of revenue because of allowing credit and not levying of duty on wrapping paper during final clearance was pointed out in audit in December 1980 the department froze the credit. In the light of a decision given by the Supreme Court on 9 May 1983, cost of packing is includible in wholesale cash price of excisable article if the packing is necessary for the purpose of putting the excisable article in condition in which it is

generally sold in the wholesale market at the factory gate. In the light of this ruling the letter issued on 29 November 1977 would need revision and duty will have to be realised on the wrapping paper when it is finally cleared wrapped around other paper and paper board. Credit for duty already paid on wrapping paper will also need to be allowed under Rule 56A.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(viii) *Other products*

(a) Tyres falling under tariff item 16 are chargeable to duty *ad valorem*.

As per a notification issued on 3 June 1972 on samples of tyres drawn for testing within the factory of production the whole of the duty of excise leviable is exempted, subject to the condition that proper accounts of the quantities of samples drawn, consumed in testing within the factory and despatched to another factory are maintained.

In respect of 11,904 number of tyres, drawn as samples during the period December 1979 to August 1981 by a leading manufacturer of tyres for testing within the factory, he did not maintain proper accounts as required in the aforementioned notification. The duty not levied on such tyres amounted to Rs. 16,11,572.

The irregularity was pointed out in audit (November 1981); reply of the department is awaited (March 1983).

Reply of the Ministry of Finance is awaited.

(b) Under tariff item 68 on 'all other goods not elsewhere specified' duty is leviable with effect from 1 March 1975.

A Public Sector Undertaking manufacturing 'Cranes' of various sizes cleared them without payment of duty even after 1 March 1975. This resulted in duty amounting to Rs. 14.82 lakhs not being levied on clearance of cranes made during the years 1976-77 to 1981-82.

The failure was pointed out in audit (March 1981 and June 1983) to the department which raised (February 1983) demand for Rs. 14,82,292.

The Ministry of Finance have confirmed the facts.

(c) On oxygen and acetylene gases classifiable under tariff item 14H duty is leviable at the rate of 15 per cent *ad valorem*.

A Board set up by Government was engaged in executing an irrigation and power project and it produced oxygen and acetylene gases in its gas plants at two locations. However, duty was not realised on gases manufactured at one location though it was realised at the other. Duty on gases manufactured at one place was incorrectly viewed as eligible for grant of exemption under a notification issued for the benefit of small scale manufacturers having clearance of goods not exceeding Rs. 15 lakhs in respect of certain specified goods.

On the omission being pointed out in audit (December 1980), the department raised a demand in December 1981 and realised duty amounting to Rs. 7.79 lakhs in February 1983.

The Ministry of Finance have confirmed the facts (November 1983).

(d) As per a notification issued on 1 March 1960 on parts of electric motors other than stators and rotors, levy of duty was wholly exempted.

On 'armature' manufactured and cleared from a Government factory levy of duty was exempted on the plea that the armature was not a rotor. However, the manufacturer had not declared the goods in the classification list of his products filed by him with the department and the department had not ascertained whether the armature was a rotor or not. On armatures cleared from another factory within the jurisdiction of another collector in the same State, duty was realised under tariff item 30D after classifying the armature to be a rotor. Failure to levy duty on the rotors described as armatures resulted in duty amounting to Rs. 6,85,230 on clearances made during the period from December 1981 and March 1982, not being realised.

On the mistake being pointed out (August 1982) in audit, the department did not admit the objection and stated (April 1983) that the 'armature' was not a rotor though it did rotate to produce the tractive force under the influence of the magnetic field produced by the stator. The distinction created artificially by describing the rotors as armatures and accepted by the department led to incorrect application of the exemption notification to the detriment of revenue.

The Ministry of Finance have accepted the audit objection (November 1983).

(e) On electricity generated excise duty is leviable under tariff item 11E.

A State Electricity Board did not pay duty on electricity produced in micro hydel power stations on the ground that the power stations were not connected to the common grid and were meant for feeding the main power stations in an emergency. But no exemption from duty was available on the electricity so generated on such a ground and duty was leviable thereon. Duty not paid amounted to Rs. 2,75,720 on 13.786 million units of electricity generated in the micro hydel power stations during the year 1978-79 and to Rs. 35,685 on 1,784 million units generated in three such stations during the period from January 1982 to March 1983.

The non levy of duty was pointed out in audit in July 1983.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(f) Under Section 3 of the Central Excises and Salt Act, 1944, duty of excise is leviable on all excisable goods produced or manufactured in India at the rates set forth in the First Schedule to the Act. Under Rules 9 and 49 the manufactured goods cannot be removed or cleared without payment of duty save to the extent provided for in the rules for purposes of storing etc.

During the period from January to July 1982 a manufacturer of cinematograph films was allowed to clear 1,03,894 metres, negatives of feature films and sound negatives consigned to various parties without payment of duty. This was allowed under the view that since the goods were not sold, duty was not payable. But levy of duty is not related to marketability, saleability, consumption or storage of the excisable goods since it is a duty on manufacture.

The irregularity resulted in duty amounting to Rs. 2.21 lakhs not being realised.

The irregularity was pointed out in audit to the department in September 1982.

The Ministry of Finance have stated (November 1983) that show cause-cum demand notice has since been issued and is pending adjudication.

(g) A manufacturer of prestressed concrete pipes and of specials or fittings which were technically known as prestressed concrete air valve, tee, bends etc. used steel blanks (made out of 10 millimetre thick steel plates) in their manufacture. The steel blanks were received after payment of appropriate duty payable under tariff item 68. High tensile wires of 4 millimetres were wound on the steel blanks manually at the assessee's factory and cement mortar was coated inside and outside (about one inch thickness) using diesel air compressor and guniting equipment run on power. No duty was paid on the concrete pipes. The duty not realised on clearances made during the period from August 1978 to October 1979 amounted to Rs. 59,824.

On the non levy of duty being pointed out in audit (November 1979), the department stated (January 1980) that only the differential duty on the increase in the value of concrete pipes over the steel blanks would be payable under tariff item 68. But subsequently, the department contended in May 1980, that coating of the steel blanks would not amount to manufacture as no new product had emerged having distinct character and use. But the characteristics and end use of the concrete pipes are distinct and different from those of mild steel blanks. The prestressed concrete pipe can resist corrosion, whereas the steel pipes cannot. In the market also they have distinct character and name and are traded in as different goods. Also the production involved a process of manufacture using power.

The Ministry of Finance have stated (December 1983) that the matter is being adjudicated by the Assistant Collector.

2.10 *Irregular clearances allowed without levying duty*

(i) Rule 56B of the Central Excise Rules, 1944 provides for the removal of excisable goods which are in the nature of semi-finished goods to another premises for carrying out certain manufacturing process provided a bond is furnished. Either the goods are returned to the factory after further processing or they are cleared after payment of duty from the other premises after completing the manufacturing process. There is, therefore, no provision for final clearance of the excisable goods without payment of duty from either premises.

A manufacturer while following the procedure prescribed in Rule 56B irregularly cleared for sale carbon dioxide classifiable under tariff item 14H without payment of duty. The department allowed the clearances in violation of the rules and duty amounting to Rs. 29,17,913 was not realised on clearances made during the period from April 1982 to October 1982.

The mistake was pointed out in audit in December 1982.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(ii) A manufacturer engaged mainly in ship building and repairing activities also manufactured spares for power driven pumps, classifiable under tariff item 68. He also purchased such spares but did not maintain any separate account of the purchases. After the imposition of duty, on all excisable goods not elsewhere specified from 1 March 1975, he cleared the spares without payment of duty as "pre-excise stocks". But there was no evidence on record as to what was manufactured prior to 1 March 1975 and what after that date. Eleven ships valuing Rs. 1638.75 lakhs were cleared during the years 1976-77 and 1977-78, and spares for power driven pumps valuing Rs. 33.23 lakhs manufactured after 1 March 1975 were cleared during the period from February 1976 to January 1980. No duty was realised on such clearances describing them as pre-excise stock. Duty not levied amounted to Rs. 21.37 lakhs.

On the omission being pointed out in audit (February 1980) the department stated (April 1982) that it was aware of the omission already. However, it issued show cause notice in June 1981 and adjudicated it in November 1981 demanding duty amounting to Rs. 21.37 lakhs and also levied penalty of Rs. 10 lakhs.

The Ministry of Finance have confirmed the facts (November 1983).

(iii) Section 3(1) of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 provides for the levy and collection of duty with effect from 4 October 1978 at the rate of 10 per cent of the total amount of duty chargeable under the Central Excises and Salt Act, 1944, on goods mentioned in the schedule to the Act. Since this levy was an addition to excise duty it was not related to the time of production or manufacture of goods, but was related to the point

of time when goods chargeable to central excise duty, are assessed to duty. Accordingly additional duty was leviable on the stock held on 4 October 1978.

A manufacturer was allowed to clear his stock of R.R.L. hose pipe held by him on 4 October 1978 without payment of additional duty leviable thereon.

The mistake resulted in duty being levied short by Rs. 66,747 on clearances made during the period from 4 October 1978 to 31 August 1979.

The mistake was pointed out in audit in February 1983; the reply of the department is awaited (July 1983).

Reply of the Ministry of Finance is awaited.

2.11 *Non levy of duty on goods consumed captively or recycled.*

(i) 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 including Salt). Section 2(f) defines manufacture to include any process incidental or ancillary to the completion of a manufactured product. Rules 9, 49 and 173G of 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.

In an integrated factory, duty therefore becomes leviable at such stage of manufacture save where excisable goods produced at any stage are specifically exempted from duty or rules specifically provide for deferment of duty or for set off against duty already paid on raw materials or components.

It has been judicially held* that any manufactured product capable of being removed would be excisable goods and not intermediate non-excisable product.

(a) A manufacturer of P.V.C. resins consumed the resins captively in the manufacture of rigid and flexible sheets. The resins and the sheets (flexible and rigid) are classifiable under tariff sub items 15A(1) and 15A(2) respectively and are also known in market as different commodities. Duty was payable on the resins which were manufactured and removed before they were used for the manufacture of flexible and rigid sheets. However, the manufacturer was allowed to pay duty only on such sheets (at concessional rate of 30 per cent *ad valorem*) and duty was not demanded on the resins. The duty not paid on resins amounted to Rs. 8.83 lakhs on clearances made during the period from April 1980 to March 1982. Duty at the concessional rate of 30 per cent *ad valorem* was chargeable on the P.V.C. flexible and rigid sheets subject to the condition that the procedure prescribed in Rule 56A of the Central Excise Rules was followed by the manufacturer. Since he did not pay duty on the resins consumed captively and also did not follow the prescribed procedure, duty was leviable at the rate of 50 per cent *ad valorem*. The duty levied short on this account amounted to Rs. 32.76 lakhs on clearances made during the period from August 1980 to March 1982.

The mistakes were pointed out in audit to the department in July 1982.

The Ministry of Finance have stated (December 1983) that demand for Rs. 9,82,600 has been raised in respect of resins captively consumed. On the incorrect grant of exemption the matter is under examination in the Ministry.

(b) A manufacturer of aluminium sheets and strips classifiable under tariff item 27(b) used them for captive consumption in the manufacture of aluminium utensils and was allowed to clear the sheets and strips for that purpose without payment of duty. The aluminium utensils classifiable under tariff item 68 are exempt from duty. The duty not realised on aluminium sheets cleared during the period from April 1981 to October 1982 amounted to Rs. 20.66 lakhs.

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*Collector of Central Excise *Vs.* J.K. Synthetics Ltd. [1981 ELT(5) Delhi]

The non levy of duty was pointed out in audit in February 1983.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(c) 1341 tonnes of pencil ingots were cleared within an integrated steel factory during the period from 1 January 1980 to 31 March 1981 and were used captively for forging within the factory. Duty payable on the ingots amounted to Rs. 4,77,769 but duty was not realised on the plea that as per the "Later the better principle", duty was to be realised only on the forged steel products. "Later the better principle" has no legal basis and only the provisions of Rules 9 and 49 aforesaid are to apply.

On the non levy of duty being pointed out in audit (June 1981) the department stated (January 1983) that duty amounting to Rs. 18,79,405 had since been recovered (January 1982) in respect of 5177 tonnes of steel ingots cleared during the period from April 1978 to June 1981, which could not be accounted for even as having been used for forgoing within the factory.

Reply of the Ministry of Finance is awaited.

(d) Aluminium sheets manufactured in a factory were captively used in the manufacture of aluminium circles of thickness 0.56 mm and above but not exceeding 2 mm. The manufacturer was allowed to clear the circles on payment of duty at 28 per cent *ad valorem*. No duty was realised on aluminium sheets manufactured prior to their use in the manufacture of aluminium circles. Though on circles manufactured in any manner duty was leviable at 28 per cent *ad valorem*, on circles manufactured from duty paid sheets no duty was leviable. However, duty leviable on sheets was 40 per cent *Ad valorem*, no exemption from duty had been allowed on aluminium sheets used in the manufacture of aluminium circles. Failure to levy duty on sheets deemed removed under Rules 9 and 49 aforesaid resulted in duty amounting to Rs. 3.08 lakhs not being realised on clearances made during the period from December 1980 to June 1981.

On the mistake being pointed out in audit (February 1981), the department stated that duty had been correctly realised only on circles (and not on sheets) in accordance with 'Later the better principle'. Such a principle has no authority in law and only the provisions of Rules 9 and 49 aforesaid are to apply.

Even under a notification issued on 9 July 1983 amending Rules 9 and 49, aluminium sheets cannot be removed for production of circles (which are exempted from duty) without duty being paid on aluminium sheets.

Reply of Ministry of Finance is awaited.

(ii) Rule 143A of the Central Excise Rules provides that prior to payment of duty on goods processed or manufactured and warehoused under bond in a refinery the owner may be allowed by the Excise Officer to blend or treat or make such alterations and conduct such manufacturing processes on the aforesaid goods in such manner and subject to such conditions specified by Government.

In a refinery motor spirit and raw naphtha (being goods processed or manufactured in the refinery) were used for flushing out pipe lines during the operation of product to product pumping operations for delivery of raw naphtha and motor spirit from the storage tanks of the refinery. The contaminated and flushed out raw naphtha and motor spirit arising during the flushing operations were flushed out from the pipeline into the crude oil tank and were thereby reprocessed in the refinery during the refining of crude oil. Duty was not paid on raw naphtha and motor spirit so sent back to the crude oil tank. The manufactured product warehoused on which duty had not been paid was thereby allowed to be cleared without payment of duty and also allowed to become another excisable product with different name, character and use viz. crude oil. On 2808 kilolitres of flushed out motor spirit and raw naphtha so sent back for reprocessing during the period from January 1980 to June 1981, duty amounting to Rs. 64.86 lakhs was realiseable in the absence of any notification exempting the manufactured raw naphtha and motor spirit from duty on account of their being used as a flushing liquid (which liquid got mixed with crude oil and was sent for reprocessing and regeneration). Also the flushing of pipe line was not a process to be carried out on warehoused product nor could that process defer payment of duty as permitted in Rule 143A aforesaid.

On the short realisation of duty being pointed out in audit (November 1981), the department stated (July 1982) that the matter had been referred to the Board of Central Excise and Customs.

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

(iii) On rubberised man-made fabrics additional duty of excise is leviable under Additional Duty of Excise (Goods of Special Importance) Act, 1957. In a tariff advice issued in September 1980 the Central Board of Excise and Customs clarified that "tyre cord warp sheets" being rubberised fabrics are classifiable as "cotton fabrics" or "Man-made fabrics" depending on the type of fibre or yarn (or both) if used in the manufacture of tyre cord warp sheets, as the case may be.

In a tyre manufacturing unit rayon and nylon tyre cord warp sheets were procured from outside and were subjected to a process of rubberisation for further use in the manufacture of tyres. However, duty on such rubberised tyre cord warp sheets under the aforementioned Act was not realised. The duty not realised amounted to Rs. 3,32,540 on clearances made during the period from April 1980 to September 1980.

On the mistake being pointed out in audit (October 1980), the department issued a show cause-cum demand notice (June 1981) for duty amounting to Rs. 8,15,851 in respect of clearances made during the period from April 1980 to February 1981. Report on recovery is awaited.

The Ministry of Finance have confirmed the facts (August 1983).

2.12 *Duty not levied on excisable goods wasted or cleared as scrap*

(i) In six non composite mills yarn was manufactured which was cleared after doubling the yarn. The manufacturers were allowed to pay duty on the yarn cleared excluding the yarn lost between the spindle stage to the final stage of clearance. The duty not realised on yarn manufactured but not cleared amounted to Rs. 3.56 lakhs in respect of clearances of doubled yarn made during the year 1980-81.

On the irregularity being pointed out in audit between April 1980 and January 1983, the department stated that the yarn was to be accounted for at the stage of clearance from the factory for sale and wastage in processes to which the yarn was subjected after its manufacture were not relevant. However, the doubling of yarn was a process prior to completion of manufacture and clearance.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(ii) Under Rule 49A of Central Excise Rules, 1944, where composite mills manufacture cotton yarn and consume it captively in weaving fabrics, the manufacturer is allowed an option to defer paying duty (on the cotton yarn so used) to the time of clearance of the cotton fabrics (along with the duty on cotton fabrics), subject to payment of interest at 1-1|2 per cent of the duty payable if the fabrics are cleared in grey (unprocessed) stage and at 3 per cent if cleared as processed fabrics.

(a) A manufacturer had opted to pay duty on cotton yarn of 10 to 40 counts (manufactured in a composite mill and consumed captively therein) at the time the fabrics were cleared. However he did not pay duty on yarn wasted during the process of weaving. This resulted in duty amounting to Rs. 1,16,414 not being realised on the yarn wasted during the process of weaving.

On the omission being pointed out (between 1981 to March 1982) in audit, the department accepted the objection and issued demands (February 1983) amounting to Rs. 1,86,940 (Rs. 1,16,414 on short wastes relating to production during the period from March 1980 to January 1982 and Rs. 70,526 on long wastes relating to production during the period from March 1980 to June 1981).

(b) On "cotton yarn all sorts" and on "cotton fabrics" duty is leviable under tariff items 18A and 19 respectively. As per a notification issued on 18 June 1977, on cotton yarn used for weaving in a composite mill duty was exempt but with effect from 15 July 1977 this exemption was withdrawn. But by issue of another notification on 15 July 1977, where cotton fabrics are produced in a composite mill and in its production cotton yarn on which no duty was paid prior to 15 July 1977, was used, in addition to the duty on such fabrics, the appropriate duty payable on the yarn was also to be levied. The Central Board of Excise and Customs in its letters issued on 2 February 1979 and 10 July 1981 stated that composite mills will be liable to pay duty on cotton yarn cleared for the manufacture of fabrics including yarn wasted during weaving.

In five composite mills duty was not paid on the quantity of cotton yarn wasted in the process of manufacture of cotton fabrics. The duty payable amounted to Rs. 85,608 on clearances made during the period from January 1978 to June 1981 in the first mill, Rs. 7,887 on clearances made from September 1980 to May 1981 in the second mill and Rs. 1,05,665 on clearances made from April 1980 to March 1981 in the third mill, Rs. 36,751 on clearances made from April 1978 to June 1980 in the fourth Mill and also Rs. 824 on clearances made from January 1978 to August 1980 in the fifth mill.

On the mistakes being pointed out in audit (July and November 1981) the department stated (September 1982) that demands for Rs. 4,08,604 on clearances made during the period upto June 1981 and for Rs. 8,927 on clearances made during the period from August 1978 to August 1981 had been raised against two mills and were under adjudication. In respect of the third mill the department contended that there was no authority to collect duty on cotton yarn which had gone waste while using in the manufacture of cotton fabrics and even wastes arising during manufacture of fabrics were exempt from duty. Exemption from duty leviable on fabrics waste is not relevant to duty leviable on yarn manufactured. In terms of Rule 9 of the Central Excise Rules, 1944, on cotton yarn duty is leviable before its removal for weaving into cotton fabrics. Even if Rule 49A provides for the facility of deferred payment of yarn stage duty as clarified by the Central Board of Excise and Customs in its letters of 2 February 1979 and 10 July 1981, the yarn stage duty is payable on wasted yarn also since there is no such exemption.

However, d mand raised in respect of fourth case has been adjudicated and fifth pending adjudication.

The Ministry of Finance have stated (December 1983) that clarification was issued by the Ministry on 16 July 1981 for collection of duty on wastages and Collectors were directed to levy the duty. The reply is silent on the plea of the Collector in one case that duty is not leviable and non-levy of duty subsequent to 16 July 1981 in another case even upto January 1982.

SHORT LEVY DUE TO UNDERVALUATION

2.13 *Price not the sole consideration for sale*

As per Section 4 of the Central Excises and Salt Act, 1944, where duty is chargeable on excisable goods with reference to their value, such value shall be the price at which such goods are ordinarily sold in the course of wholesale trade. Where such goods are sold, at different prices to different class of buyers (not being related persons), each such price shall be deemed to be the price charged in the course of wholesale trade. Where price is not the sole consideration, the value of 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 as per provisions of Rule 5 of the Central Excise (Valuation) Rules, 1975.

(i) A manufacturer of cigarettes recovered security deposits from wholesale buyers and allowed interest at six per cent per annum on the deposits. However, on his sales made to the wholesale buyers on credit, he was charging interest at eighteen per cent per annum. His financial accounts for the year 1979-80 revealed that the security deposits received by him amounted to Rs. 14.76 crores whereas the amount deposited by him with scheduled banks in fixed deposits amounted to only Rs. 1.05 crores. He, therefore, utilised Rs. 13.71 crores of deposits received as his working capital for his manufacturing and trading activity. At the differential interest rate of 12 per cent (18 minus 6), the manufacturer derived indirect additional consideration of Rs. 1.65 crores from the buyers during the year. Since deposit was a condition of sale and sale price was not the sole consideration, on the additional consideration of Rs. 1.65 crores also excise duty was leviable at the rates of duty leviable on value of cigarettes. The failure to add the additional consideration to the assessable value had resulted in duty being levied short by about Rs. 5 crores per year.

The short levy was pointed out in audit (September 1981) to the department which has stated (September 1982) that the matter is under examination.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(ii) A manufacturer of cigarettes recovered interest-free security deposits from wholesale buyers. His financial accounts for the year ending 31 December 1980 revealed interest-free security deposits received amounting to Rs. 12.72 crores from his customers in accordance with one of the conditions for the sale of cigarettes. The benefit which accrued to the company by way of interest on the deposits amounted to Rs. 1.52 crores per year computed at the normal rate of interest of 12 per cent per annum.

Since the sale price was not the sole consideration and the interest on the deposits was an additional consideration which flowed indirectly from the buyers to the manufacturer, the assessable value was not computed correctly by including this indirect consideration received. The mistake in computing the assessable value resulted in duty being realised short by Rs. 4.56 crores on clearances made during the year 1980.

On the short levy being pointed out in audit (May 1982) the department stated (November 1982) that security deposits are obtained from the buyers as an assurance towards taking delivery of goods for marketing and to save the company from any loss resulting by their not lifting the goods. But since the company utilised the interest-free deposits towards its working capital thereby depressing the price chargeable to its customers who had perforce to make the sizeable interest-free deposits, indirect consideration was received as per provisions of the Act.

The Ministry of Finance have stated (November 1983) that the matter is under examination.

(iii) The price of oxygen supplied in cylinders by a manufacturer to a buyer was lower than that charged from other buyers and the price was approved by the department by treating this buyer as being in a special class. But this buyer had provided the manufacturer with rent free accommodation for manufacture of the oxygen. Even if the buyer was treated as being in a special class, the additional consideration flowing indirectly on account of the rent free accommodation provided by the buyer to the manufacturer should have been taken into account and added to the price before approving the price as the assessable value. Failure to do so resulted in duty being realised short by Rs. 1,50,028 on clearances made during the period from April 1979 to January 1982.

On the mistake being pointed out in audit (April 1982), the department issued a notice in August 1982 to show cause why the approved price lists should not be revoked and stated (September 1982) that the case was under adjudication.

The Ministry of Finance have stated (November 1983) that the show cause notice has been withdrawn but the reasons for the withdrawal have not been stated.

2.14 *Product sold through related persons or sole selling agents*

As per provision of Section 4(1)(a)(iii) of the Central Excises and Salt Act, 1944, in respect of excisable goods sale of which is arranged through a related person the assessable value is to be determined on the basis of the price charged by such related person from his dealers.

(i) A manufacturer of refrigerators and air-conditioners sold his products through related persons but duty was assessed on the price charged by the manufacturer from the related person, instead of determining the assessable value on the higher price charged by the related person from his dealers. The mistake resulted in duty being realised short by Rs. 1,40,42,670 on clearances made during the period from 15 August 1974 to 30 June 1975 and October 1975 to February 1979.

On the objection being pointed out (August 1977) in audit the department raised a demand for Rs. 1,40,42,670 in September 1979 but the demand is still to be confirmed (August 1983).

The Ministry of Finance have stated (November 1983) that the demand is pending adjudication.

(ii) From 1 April 1979 slack wax was classifiable under tariff item 11A(2) and duty was leviable at 20 per cent *ad valorem* plus Rs. 400 per tonne. From 19 June 1980 duty was leviable at 20 per cent *ad valorem* plus Rs. 475 per tonne.

The entire production of slack wax manufactured in a refinery was marketed by a Public Sector Undertaking, which was therefore a sole selling agent. A marketing margin of Rs. 97.93 per tonne was allowed to the Public Sector Undertaking over and above ex-factory price of Rs. 701.50 fixed by the Government. In levying duty this margin was not included in the assessable value though it had been included in assessable value prior

to 1 April 1979. The selling price of slack wax to buyers was also fixed by the Ministry but was revised from time to time. The price was Rs. 1453.16 on 1 April 1979 and was raised to Rs. 5,942.52 per tonne from 1 January 1983. However, the assessable value was all along taken as ex-refinery price of Rs. 701.50 per tonne fixed with effect from 1 April 1979. Further while duty paid at the time of clearance from refinery was based on the assessable value of Rs. 701.50 per tonne the element of excise duty collected by the sole selling agent from his buyers was more. This resulted in the Public Sector Undertaking collecting from the buyers towards duty payable by it a sum which was more than what the refinery had actually paid to Government as duty.

The ex-factory price which was fixed very much lower than the price of the product charged by sole selling agents resulted in a highly reduced price of slack wax being taken as the assessable value for purposes of levy of duty. The consequential short levy of duty on clearances of 7,349 tonnes of slack wax made during the period from April 1979 to March 1983 was estimated at Rs. 25.56 lakhs.

On the short levy being pointed out in audit (April 1980) the department stated that ex-factory price fixed by Government had to be taken as the assessable value. However, there is no provision for any price fixed other than under a law for fixation of price being taken as assessable value. The law under which price of slack wax was fixed has not been indicated to Audit. On the contrary under the Central Excise Act, the real assessable value has to be fixed by the adjudicating officer as per Section 4 of the Central Excise Act and there is provision for enhancing assessable value where sale is through related persons.

The Ministry of Finance have stated (November 1983) that the matter is under examination.

(iii) A company manufacturing electric fans sold such fans to its holding company and on such sales trade discount at 9 per cent and cash discount at 2 per cent was allowed. The fans were sold by the customers at the list price exclusive of discount. Holding company is defined as a related person in Section 4 of the Central Excise Act and therefore the price inclusive of discount was the assessable value in respect of the sales made through a related person. The irregular approval of the assessable value exclusive of discount resulted in duty being realised short by Rs. 3.46 lakhs on clearances made during the period from July 1981 to June 1982.

The irregularity was pointed out in audit in January 1983.

The Ministry of Finance have stated (November 1983) that trade discount of 9 per cent is given in respect of direct sales to all distributors and as such there is no undervaluation. Factually, the trade discount is being allowed only in respect of sales in Maharashtra and not sales to persons outside Maharashtra. But in so far as sales to holding company is concerned, the discount even if allowed to other than related persons is irrelevant and the Act requires the assessable value to be determined on the basis of the price charged by the holding company from its buyers. (The holding company did not pass on the discount of 9 per cent to its buyers).

The low on this point has been settled in the judgement* of the Supreme Court delivered on 9 May 1983.

2.15 *Transfer price on clearance to own depot*

As per provisions of Section 4 of the Central Excise Act, the assessable value of any excisable goods is the normal price at which such goods are ordinarily sold by the assessee to the buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for sale. Where such goods are sold at different prices to different classes of buyers, not being related person, each such price shall be deemed to be the price charged in the course of wholesale trade.

(i) A manufacturer of plywood and black boards cleared part of his product to his own depots and for that purpose fixed an invoice price (transfer price) for removal of goods from the factory to the depots. The transfer price was approved as the assessable value by the department. However, at the factory gate the balance of the products was sold at much higher prices. Such higher prices were excluded by the department as being retail prices (i.e. not wholesale prices) or as being sale price to another class of buyers. The transfer price to depots was not viewed by the department, even as sale price to related person (since no real sale was involved) despite the fact that sales from the depots were effected at prices higher than the transfer price. This was explained as due to addition of transport cost and other expenses. As a result of allowing a fictitious or notional sale price to be approved as the assessable value, duty amounting to Rs. 15,44,370 was realised short on clearances made during the period from October 1975 to December 1982.

* Supreme Court's judgement of 9 May 1983 in the case of Union of India & Ors. etc. Vs Bombay Tyre International Ltd. etc. (1983 ECR 1627D (S.C.)

The short levy was pointed out in audit repeatedly between June 1976 and July 1982 urging that the notional price attaching to stock transfers was not a valid assessable value. Only after September 1981 the department issued show cause notices (on various dates between September 1981 to May 1983) to the manufacturer.

The Ministry of Finance have stated (November 1983) that the show cause notices are under adjudication except for the demand relating to period from June 1982 to December 1982 which has been confirmed.

(ii) A manufacturer of biscuits, submitted two price lists—one in respect of packed goods which are further packed in wooden cases, and the other, a lower price in respect of packed goods which were not further packed in wooden cases. A major portion of the goods cleared were of the second category. The lists were approved by the department. However, the higher price was realised even on the goods which were not packed in wooden cases and the duty was also realised based on the higher price. On transfers made to manufacturer's own sale depots, the lower price was taken as the basis for payment of duty on the second category of goods.

By declaring a dummy lower price at which no sales were made to wholesale dealers, the assessable value of goods transferred to manufacturer's own depots was undervalued, which was not objected to by the department.

The failure of the department resulted in duty being realised short by Rs. 1,22,295 on clearances to manufacturer's own depots made during the period from April 1981 to September 1981.

The failure was pointed out in audit in August 1982.

The Ministry of Finance have stated (November 1983) that the demand of Rs. 1,22,295 has been confirmed and the assessee has appealed to the Collector (Appeals) who has ordered *de-novo* enquiry into the case.

2.16 *Undervaluation through discounts*

As per provisions of Section 4 of the Central Excises and Salt Act, 1944, a trade discount which is given according to normal practice of wholesale trade is allowed to be deducted from the price in determining the assessable value for purpose of levy of excise duty *ad valorem*.

(i) A manufacturer of sheet glasses sold his entire production through his sale depots. In approving his price lists the department allowed the manufacturer's claim for deduction on account of trade discounts given uniformly to all, which ranged from Rs. 0.75 per square metre on glass of thickness of 2 mm to Rs. 13.74 per square metre on glass of thickness 5.5 mm. However, in practice the manufacturer did not allow discounts in more than 80 per cent of the sales made by him. In some cases discount allowed was less than what was indicated in the approved price list. This had resulted in short levy of duty by Rs. 3.27 lakhs, on clearances made during the period from April 1981 to June 1982.

On the mistake being pointed out in audit (October 1982), the department stated (May 1983) that an investigation has been ordered into the sale accounts of the manufacturer and show cause-cum-demand notice had been issued to him. The Ministry of Finance have stated (December 1983) that a show cause-cum-demand notice for Rs. 3.29 lakhs issued in this case is pending adjudication.

(ii) As per price lists filed by him with the department in November 1979 and approved by the department in August 1980, a manufacturer of electric fans was to allow trade discount of 27.8 per cent on the price of exhaust fans and 20 per cent on the price of air circulator fans cleared by him. However, he did not allow trade discount at such rates to all his customers and the trade discount allowed varied from 12.5 per cent to 27.8 per cent. Consequently assessable value was undervalued to the extent of discount not allowed, which resulted in duty being levied short by Rs. 18.251 on clearances made during the period from August 1980 to July 1981.

On the mistake being pointed out in audit (March 1982) the department stated that a show cause-cum-demand notice had been served on the assessee (July 1982) demanding duty amounting to Rs. 3,10,109 (including special excise duty) on clearances made during the period from April 1980 to March 1982. Report on adjudication and recovery is awaited.

The Ministry of Finance have confirmed the facts (September 1983).

2.17 *Value of packing*

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 condition, includes the cost of packing except where the packing is of durable nature and is returnable to the assessee. According to the explanation contained therein "packing" means the wrapper, container, bobbin, spool, reel or warp beem or any other thing in which or on which the excisable goods are wrapped, contained or wound.

Where durable containers are supplied by the buyer to the manufacturer and he clears excisable goods therein for supply to the buyer, the value of the durable packing is to be included in the assessable value for purposes of levy of excise duty. This was also clarified by the Central Board of Excise and Customs in March 1976.

The Central Board of Excise & Customs in their letter dated 2 November 1982 clarified that the cost of packing, whether it is initial or secondary packing, in which the excisable goods are packed at the time of removal will form part of assessable value. In a judgement delivered on 9 May 1983 the Supreme Court has ruled that cost of packing whether primary or secondary is to be included in the assessable value; only cost of special packing at the instance of wholesale buyer which is not generally provided as a normal feature of wholesale trade is to be excluded.

(i) A manufacturer of cigarettes packed his cigarettes initially in packets of 10 each. Fifty such packets were wrapped in bundle. Twenty such bundles were packed in carton made of card board which was cleared from the factory. The assessee excluded the cost of card board cartons from the assessable value of cigarettes on the basis of instructions issued by the Central Board of Excise and Customs in May 1976 and the valuation was approved by the department.

The Board, in consultation with the Ministry of Law issued further instructions on 2 November 1982 stating that the cost of packing whether it be initial or secondary packing will be includible in the assessable value.

The irregular computation of assessable value resulted in short levy of duty amounting to Rs. 52,58,840 on clearances made during the period from 1 April 1979 to 31 March 1980.

The irregularity was pointed out in audit in October 1980; the reply of the department and estimate of the loss of revenue from May 1976 to November 1982 are awaited.

The Ministry of Finance have stated (November 1983) that the point regarding secondary packing has now been settled by the decision of the Supreme Court. The Collector has been asked to move the High Court for vacating the injunction and recover duty on correct assessable value.

(ii) The Supreme Court had ruled on 9 May 1983 that so far as the cost of packing is concerned, no deduction is permissible in respect of such cost from the wholesale cash price of the excisable article at the factory gate, whether the packing be primary packing or secondary packing and whether its cost is shown separately or as included in the wholesale cash price. Whatever packing is necessary for the purpose of putting the excisable article in a condition in which it is generally sold in the wholesale market at the factory gate, the cost of such packing cannot be deducted from the wholesale cash price of the excisable article at the factory gate. If, however, any special secondary packing is provided by the assessee at the instance of a wholesale buyer which is not generally provided as a normal feature of wholesale trade, the cost of such packing shall be deducted from the wholesale cash price.

A manufacturer of gases supplied dissolved acetylene gas and the cylinders were received from the buyers and gas was delivered in them. The value of the cylinders received from the buyers was not included in the assessable value which resulted in duty amounting to Rs. 19,37,934 being realised short on gas supplied in cylinders during the period from 18 June 1977 to 27 March 1979.

On the mistake being pointed out in audit (November 1980) the department raised a demand of Rs. 19,37,934. The demand was set aside on 14 May 1982 by an appellate order on the ground that the durable packing were not returnable by the buyer. The fact that the durable containers were

supplied by the buyer was not considered. The department did not appeal against the appellate order and as a result revenue amounting to Rs. 19,37,934 was lost.

The Ministry of Finance have confirmed the facts and stated that the Appellate Collector's decision was based on an order of Government of India given in review in September 1981. Therefore, the Collector presumably did not consider that review of the Appellate Collector's order was called for in this case.

(iii) A manufacturer of cigarettes was charging from his buyers, the cost of outer packing at the rate of Re. 0.80 per thousand cigarettes upto 27 February 1981 and at Re. 1 thereafter. The packing charges were not included by the department in the assessable value while approving the price lists. This resulted in duty being levied short by Rs. 8,93,920 on clearances made from April 1980 to December 1981.

On the mistake being pointed out in audit (July 1982) the department stated that duty was not payable on the packing charges but, however, a show cause notice was being issued to the manufacturer.

The Ministry of Finance have stated (November 1983) that the matter is *sub judice*.

(iv) Glass bottles, classifiable under tariff item 23A were partly sold by a manufacturer to outside parties but a substantial part was supplied to his other units for captive consumption. The supplies to other units were packed in gunny bags. The cost of the packing was not included in the assessable value of the bottles prior to April 1979. This resulted in duty being levied short by Rs. 3.50 lakhs on clearances made during the period from April 1978 to March 1979.

On the omission being pointed out in audit, the department issued (October 1980) a show cause-cum-demand notice and thereafter stated (March 1983) that demand for entire amount had been confirmed.

The Ministry of Finance have confirmed the facts and stated (July 1983) that the assessee has gone in appeal against the order confirming the demand.

(v) A manufacturer of 'aluminium foils' cleared most of his products after packing them in wooden cases. However, the value of such wooden packing (which was realised from buyers) was not included in the assessable value of the foils. This resulted in duty being realised short by Rs. 1,25,472 on clearances made in March 1981.

On the mistake being pointed out in audit (August 1981), the department did not admit the mistake and stated (May 1983) that the packing will not, according to the aforementioned decision of the Supreme Court, be included in the assessable value. However, the wooden packing was not at the instance of any wholesale buyer and was done as general practice. Accordingly the pronouncement by the Supreme Court does not support the view of the department.

The Ministry of Finance have stated (November 1983) that the assessee has filed a writ petition in a High Court and interim injunction has been granted.

2.18 *Excisable goods not fully valued*

As per Section 4 of the Central Excises and Salt Act, 1944, where goods are assessable to duty *ad valorem* the normal price at which excisable goods are sold to a buyer in the course of wholesale trade for delivery at the time and place of removal would be the assessable value.

Section 4, however, allows deduction of the duty payable from the price of the manufactured product, for the purpose of arriving at the assessable value of the product. But if the assessee collects more excise duty than the duty paid to Government or any other sum indirectly as value for the goods, the assessable value is required to be redetermined after adding such excess to the original assessable value.

(i) A manufacturer of tyres and tubes (classifiable under tariff item 16) paid duty on his product valued as per his declaration which value did not include certain expenses claimed by him to be post manufacturing expenses. He had, however, realised amounts equal to the excise duty from his

customers as part of consideration for sale. Such amounts were arrived at on the basis of value inclusive of the said post manufacturing expenses. Since such amounts collected by way of excise duty were in excess of duty actually paid to Government, the excess amount was includible in assessable value, as part of the consideration for sale but was not so included. This resulted in duty being realised short by Rs. 3.76 crores on clearances made during the period from April 1981 to December 1982.

The mistake was pointed out in audit to the department in March 1983.

The Ministry of Finance have stated (November 1983) that the department had disallowed the deduction on account of post manufacturing expenses (claimed by the assessee) from the assessable value. The party moved the High Court and later the department moved the Supreme Court where its application is still pending.

The Supreme Court has in its judgement on 9 May 1983 and 7 October 1983 decided on many questions relating to post manufacturing expenses. The specific application in this case is now to be listed for appropriate orders.

(ii) As per a notification issued on 19 June 1980, on television sets classifiable under tariff item 33(A)(i) and of value not exceeding Rs. 1,800 per set duty was leviable at 10 per cent *ad valorem* instead of at 25 per cent *ad valorem*.

A manufacturer cleared television sets along with shutters but billed for the sets and shutters separately. He was allowed to pay duty on televisions at the rate of 10 per cent *ad valorem* on the ground that the value of the set alone did not exceed Rs. 1,800. But since the shutters are cleared alongwith the television, the value of the shutters was required to be included in the assessable value which thereby exceeded Rs. 1,800 per set and duty was payable at the rate of 25 per cent *ad valorem*. Failure to levy duty at higher rate resulted in duty being realised short by Rs. 68.48 lakhs on clearances made during the period from September 1981 to June 1983.

On the mistake being pointed out in audit (July 1982) the department stated that the matter would be examined.

The Ministry of Finance have stated (December 1983) that the demands for Rs. 80,95,920 for the period from October 1980 to March 1982 have been confirmed on account

of inclusion of after sale service charges and assessment at 25 per cent *ad valorem*. Another demand cum-show cause notice has been issued in respect of the period April 1982 to November 1982 for Rs. 31,15,460, on the same grounds. Similarly demands for Rs. 20,90,934 for the period from 1 September 1981 to 30 June 1983 have been issued on account of inclusion of the value of the shutters.

(iii) Paper and paper board classifiable under tariff item 17 and manufactured in a unit was allowed to be cleared after paying concessional rate of duty at 8 per cent or 10 per cent admissible under a notification issued on 18 June 1977. However, the manufacturer had realised from his customers excise duty at 20 per cent or 25 per cent *ad valorem*. The assessable value was not redetermined so as to include the excess duty recovered. This resulted in duty being levied short by Rs. 2,41,640 on clearances made during the period 10 September 1979 to 31 August 1980.

On the omission being pointed out in audit (October 1980), the department stated (November 1981 and June 1983) that show cause notices demanding Rs. 7,15,002 on clearances made during the period from September 1979 to February 1982 had since been issued.

The Ministry of Finance have stated (November 1983) that demands for Rs. 7,15,002 are pending adjudication.

(iv) On tape recorders classifiable under tariff item 37AA duty is leviable at 40 per cent *ad valorem*. As per a notification issued on 18 June 1977, tape recorders of value not exceeding Rs. 500 were exempted from duty in excess of 25 per cent *ad valorem*.

A manufacturer was allowed to value portable cassette tape players without speakers at Rs. 495 each but excluding the cost of headphone which was Rs. 205 each. In the record players the headphone was the speaker which was integral to the main unit functionally. The portable cassette players could not be used without headphone. Headphones had been sold to same customers to whom the units had been sold. In the result the undervaluation of the players below Rs. 500 and grant of exemption under aforesaid notification resulted in duty being realised short by Rs. 1,29,398 on 982 pieces cleared during the period from November 1981 to September 1982.

The short levy was pointed out in audit in May 1983. The department has not accepted the objection on the ground that without the speaker also the players were excisable products.

The Ministry of Finance have stated (November 1983) that the matter is under examination.

(v) A manufacturer of aerated water recovered, from his customers, the duty payable by him at 40 per cent *ad valorem* which he paid to Government. Since exemption from duty was available under a notification issued on 19 June 1980, as available for manufacture in a small scale unit, he claimed refund of the duty paid in excess.

The department allowed refunds amounting to Rs. 3.50 lakhs on clearances made from April 1981 to November 1981. But the manufacturer not having returned the excess duty to his customers, the refunds became part of the value of excisable goods realised by the manufacturer and duty was required to be redetermined on the enhanced assessable value. Failure to do so resulted in duty being realised short by Rs. 86,328.

The mistake was pointed out in audit (August 1982 and July 1983).

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(vi) As per a notification issued on 30 April 1975 where a manufacturer received material from his customer and manufactured out of it another product (classifiable under tariff item 68) which was given to the customer, duty will be leviable on the full assessable value of the excisable product including the cost of the materials received.

A manufacturer received pipe, ball bearing, etc. from a firm and delivered a new manufactured product to the firm. He paid duty only on the cost of labour incurred by him. In the result duty was realised short by Rs. 48,579 on the manufactured products cleared during the period from April 1978 to February 1979.

On the mistake being pointed out in audit (June 1981), the department stated that only labour was supplied by manufacturer to the firm. However, the facts on record clearly show that the firm was to pay labour charges per piece manufactured and it was not a case of manufacturer hiring out his labour.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

2.19 *Cost of assembly or erection*

According to the instructions issued by the Central Board of Excise and Customs in September 1977, when goods are cleared in knocked down condition to be assembled at site, the clearance being spread over a period of time against a particular contract, duty is to be assessed provisionally on individual clearances and on the value of the product in completely assembled condition duty should be levied at the time of final assessment.

A manufacturer of textile machinery and parts of such machines (falling under tariff item 68) entered into contracts for manufacture and supply of such machines. He cleared the machines in knocked down condition over a period of time paying duty on the invoice value on each clearance. However no final assessment on the value of the completed machinery assembled at site was done. This resulted in duty being levied short by Rs. 1,38,140 on clearances made during the period from March 1975 to September 1980.

On the omission being pointed out in audit (November 1980), the department raised (January 1983) demand for differential duty amounting to Rs. 1.44.940 on clearances made during the period from March 1975 to March 1981.

The Ministry of Finance have stated (August 1983) that the demand has been confirmed.

2.20 *Undervaluation of invoice price and escalation charges*

As per a notification issued on 30 April 1975, goods falling under tariff item 68 cleared from the factory of manufacture, on sale, are exempt (at the option of the assessee) from so much of the duty leviable thereon as is in excess of the duty calculated

on the price shown in the invoice of the manufacturer. The Ministry of Finance issued instructions on 10 December 1975 that the invoice price of such goods should be verified with reference to accounts of the manufacturer as certified by Auditors.

The concession is subject to the condition that such price is the sole consideration for the sale and is not influenced by any commercial, financial or other relationship, whether by contract or otherwise between the manufacturer and the buyer.

The grant of exemption is also subject to the condition that exemption is availed of uniformly in respect of all the goods sold by him, which fall under tariff item 68. The Central Board of Excise and Customs, in a circular letter issued on 11 June 1982, clarified in consultation with Ministry of Law that the aforesaid exemption can be availed of only when the entire production is cleared on sale, and cannot be availed of when production is partly cleared on sale, and partly transferred to branch offices or depots of manufacturer for subsequent sale, or free distribution or is partly consumed captively.

If the price charged by the manufacturer in the invoice for sale of goods is subject to specified conditions regarding escalation in the price of raw material, labour etc. the final valuation would be inclusive of the supplementary invoice for the escalation charges.

(i) A manufacturer of telecommunication equipment and telephone instruments, in the Public Sector opted for payment of duty on invoice price taken to be assessable value and duty in excess thereof, if payable on assessable value fixed under Section 4 of Central Excises and Salt Act, 1944 by exemption under a notification in respect of goods classifiable under tariff item 68.

The manufacturer failed to pay duty on the value included in supplementary invoices towards escalation in prices resulting in duty being realised short by Rs. 62.31 lakhs on clearances made during the period from 1 March 1975 to 31 March 1979. This was pointed out in audit in July 1979, the department raised demand in September 1980. But on appeal the demand was held to be barred by limitation. Similar failure on the part of the manufacturer again resulted in duty being realised short by Rs. 10,48,978 on clearances made during the period from April 1979 to March 1980 which had not also been detected by

the department. On the recurrence of failure being pointed out in audit (November 1982) the department stated (April 1983) that a notice was issued on 30 September 1981 asking manufacturer to show cause why duty should not be demanded on clearances right from 1975-76. Nothing was stated on what transpired between September 1981 and April 1983.

The Ministry of Finance have stated (December 1983) that Appellate Collector's order holding the demand to be time barred has been taken up for review with the Government of India and the latter have issued a show cause notice to the party which is pending decision. In respect of short levy during the year 1979-80 the Ministry have stated that amount of Rs. 10,79,620 was deposited by assessee on 15 October 1982 and a further amount of Rs. 7,94,325 was paid subsequently towards escalation charges.

(ii) A manufacturer contracted to supply asbestos cement products falling under tariff item 23C. In terms of the contract, the rates were to vary with the price of the cement and asbestos fibre. On the supplies made during the years 1976-77 to 1980-81 addition to price amounting to Rs. 23,47,486 including central excise duty of Rs. 3,11,790 was realised as escalation charges. However the duty was neither paid by the manufacturer nor demanded by the department.

On the failure being pointed out in audit (February 1982) the department stated (September 1982) that an amount of Rs. 20,13,023 on account of differential duty arising from escalation charges in respect of supplies made during the period from September 1978 to May 1983 has been realised.

The Ministry of Finance have confirmed the facts (November 1983).

(iii) A manufacturer of transmission equipments, telephone instruments and parts thereof (falling under tariff item 68) supplied his products to Posts and Telegraphs department under an agreement which provided for a price variation clause over and above the rate list in force on 1 April of every year. Accordingly he raised supplementary invoices against the Posts and Telegraphs department, but did not pay duty on the value represented by the supplementary invoice. The duty not levied on the supplementary invoice raised during the period from February 1980 to January 1981 amounted to Rs. 3,21,290.

On the omission being pointed out in audit (March 1981), the department issued show cause-cum demand notices and confirmed the demands for said amount (September|October 1982).

The Ministry of Finance have stated (July 1983) that against the demand for Rs. 3,46,012 the manufacturer has gone in appeal.

(iv) A Public Sector Undertaking manufacturing overhead travelling cranes classifiable under tariff item 68 exercised option under a notification issued on 30 April 1975 for paying duty on the basis of invoice price being taken as assessable value and claimed exemption from duty payable in excess thereof on the basis of assessable value determined under Section 4 of the Central Excises and Salt Act, 1944.

In respect of two contracts for design, engineering and manufacture of overhead travelling cranes, duty was not paid by the company on the value of engineering and knowhow, the cost of which were invoiced separately, though duty was leviable on the full value realised on all the invoices. In the result duty was realised short by Rs. 1,48,045.

The mistake was pointed out in audit in February 1983.

The Ministry of Finance have stated (November 1983) that the assessment of the goods in question has not yet been finalised and show cause notice issued to the party is pending adjudication.

(v) A manufacturer of electrical insulators made of porcelain, lightning arrestors etc. classifiable under tariff item 68 opted for paying duty on the basis of the invoice price as the assessable value. Under two contracts for making supplies to a State Electricity Board interest free advance of 20 per cent of the contract value was made by the Board and the manufacturer was required to give a rebate of 4 per cent of the contract price under one contract and 5 per cent in the other. Duty on the clearances made under the contracts was paid by the manufacturer on the basis of the net price charged in the invoices after allowing the rebate. The rebate as also the interest free advance being material consideration affecting the price of the goods; either the rebate should not have been excluded from the invoice price or the interest at market rates payable to a bank for an amount of

loan equal to the advance for the period the interest free advance was enjoyed should have been added to the net invoice price which was therefore not the sole consideration. The undervaluation resulted in duty being levied short by Rs. 91,430 on the clearances made under the two contracts. The under-assessment of duty involved in other similar contracts are still to be determined.

On the undervaluation being pointed out in audit (September 1981), the department stated (March 1983) that the receipts of interest free advance and the rebate allowed thereagainst was a common trade practice under large value contracts and advance was in the nature of security and not a consideration affecting price. However, a security quantifiable in financial terms does not cease to become a financial consideration by its being called a trade security.

The Ministry of Finance have stated (November 1983) that the matter is under examination.

(vi) Two manufacturers of goods classifiable under tariff item 68 cleared them partly on sale, and partly by transfer to their branches for subsequent sale. They irregularly availed of the aforementioned exemption from duty on their clearances. This resulted in duty being levied short by Rs. 63,399 on clearances made during the period from August 1977 to May 1978.

On the irregularity being pointed out (May 1979) in audit, the department did not accept the objection (March 1983) despite the clarification given by the Ministry.

The Ministry of Finance have stated (November 1983) that the matter is under examination.

(vii) A manufacturer of 'ring travellers' classifiable under tariff item 68, exercised the aforesaid option for valuation based on invoice price. However, he sold his entire production to a sole selling agent with whom his contract stipulated as follows:

(i) the prices charged to the sole selling agent were to be fixed by the assessee in consultation with the sole selling agent.

(ii) the prices charged to the sole selling agents were to be fixed taking into consideration the prevailing market conditions and the expenses of the sole selling agent to ensure a reasonable return to the latter.

(iii) the manufacturer was barred from selling the product to any one else directly.

(iv) the manufacturer had to share fifty per cent of the advertisement charges incurred by the sole selling agent in accordance with the predetermined budget.

The prices charged by the manufacturer to the sole selling agent were clearly influenced by financial, commercial and other relationship (by contract) between the seller and the buyer. The manufacturer was therefore not entitled to avail the said option and further duty should have been levied on assessable value calculated on the basis of the price charged by the sole selling agent to the retail dealers (as per provision governing sale to related persons). Mistake in valuation resulted in duty being realised short by Rs. 48,933 on clearances made during the period from April 1980 to September 1982.

The mistake was pointed out in audit in October and December 1982.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

2.21 *Products captively consumed*

Where 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. Where the value is not so determinable, as per Section 4(1)(b) of the Central Excise Act read with the Central Excise (Valuation) Rules, 1975 the assessable value of excisable goods wholly consumed within the factory of production is to be determined on the basis of value of comparable goods. Where the value of comparable goods cannot be ascertained the assessable value is to be determined on the basis of cost of production including a reasonable margin of profit.

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 Central Board of Excise and Customs issued instructions in December 1980 that the profit margin declared by licensee should be compared with the gross profit revealed in his financial accounts for the relevant period.

(i) A manufacturer of transformers used in their production electrical laminations also manufactured by him. The value of the laminations was determined on the basis of cost data and approved by the department. But the manufacturer was also purchasing such laminations and using them in the production of transformers. The value of such comparable laminations was higher than the assessable value approved by the department on the basis of cost data. Failure to determine the assessable value on the basis of comparable goods resulted in duty being realised short by Rs. 30.57 lakhs on clearances made during the period from April 1981 to September 1982.

On the mistake being pointed out in audit (January 1983), the department stated (March 1983) that the mistake has already been pointed out by their Director of Inspection in April 1980 and their internal audit in April 1982. But only on receipt of audit objection in January 1983 did the department state that show cause notice on a demand of Rs. 53.46 lakhs covering clearances from July 1980 to December 1982 was being raised. The reasons for not taking action earlier were not indicated nor on record.

The Ministry of Finance have stated that the demand is pending adjudication (November 1983).

(ii) A company manufacturing "aluminium alloy strips" used them captively in the manufacture of bearings. For purpose of levy of duty the value of the strips was determined on the basis of cost data. In determining the value on the basis of costing, the data for the relevant period was not taken into account. The cost of raw materials lost in burning was also excluded. These mistakes resulted in assessable value being underassessed and duty being realised short by Rs. 2.2 lakhs on clearances made during the period from April 1980 to June 1982.

On this mistake being pointed out in audit (September 1982) the department stated (May 1983) that two demands for Rs. 9,38,016 covering clearances made during the period from July 1980 to February 1983 had since been raised but the demand has been contested in Court.

The Ministry of Finance have stated (November 1983) that in pursuance of High Court's directive the demand raised cannot be enforced.

(iii) A manufacturer of "Diesel internal combustion engines" sold during the period from 1 November 1979 to 31 October 1981, two engines for Rs. 12 lakhs each and five others at the declared price of Rs. 8.90 lakhs. However, he paid duty on all the seven only on the basis of the said declared price. This was not objected to by the department resulting in duty being levied short by Rs. 37,943.

On the omission being pointed out in audit (September 1981) the department stated (April 1983) that short fall in duty amounting to Rs. 16,76,022 on clearances of engines made during the period from 1 November 1977 to 31 October 1980 has since been demanded (January 1983), on a price of Rs. 12 lakhs per engine.

The same manufacturer used 36 such engines captively in the manufacture of diesel shunters, without payment of duty, during the period from 1 November 1979 to 31 October 1980. On the basis of the valuation of Rs. 12 lakhs referred to above, the department should have raised demand for duty on all the thirty six diesel engines used captively. However, the department raised demand for only Rs. 17,23,400 on the engines captively used, based on prices varying between Rs. 8.90 lakhs and Rs. 10 lakhs each declared by the manufacturer. The mistake resulted in duty being levied short by Rs. 4,84,600.

On the short levy being pointed out in audit (September 1981), the department accepted the audit objection and stated (September 1982) that orders have since been issued for correct valuation of diesel engines used captively, at the price of the engines sold to outside parties.

Report on recovery in the above two cases is awaited.

The Ministry of Finance have confirmed the facts (August and November 1983).

(iv) A manufacturer of impregnated kraft paper used it in the manufacture of particle boards. The assessable value approved by the department was based on cost data but did not include any element of profit. In the report of the Directors of the Company and Balance Sheet for the year ended 30 June 1981, the rate of profit was given as 36 per cent. Mistake in computation of assessable value resulted in duty being realised short by Rs. 3,81,746 on clearances for captive consumption, made during the period from September 1981 to February 1982.

The mistake was pointed out in audit in February 1983.

The Ministry of Finance have stated (November 1983) that prices in this case were approved provisionally. They are still to be finalised.

(v) A manufacturer of Kraft paper (of weight above 65 g.s.m.) classifiable under tariff item 17 used his product partly for captive consumption and partly for sale. Price of Rs. 3.70 per kilogram was approved by the department as the assessable value in respect of all his said products with effect from 1 September 1979. This price remained unchanged even though in April 1981, he sold his said product to an outside party at a price of Rs. 5.30 per kilogram. Failure to revise the assessable value resulted in duty being realised short by Rs. 2,04,182 on clearances made during the period from 1 April 1981 to 31 March 1982.

On the short levy of duty being pointed out in audit (April 1983), the department issued a show cause-cum demand notice to the manufacturer.

The Ministry of Finance have confirmed the facts (November 1983).

(vi) A manufacturer of aluminium cans classifiable under tariff item 27(e) used them captively in the manufacture of torches. He was allowed to pay duty on aluminium cans on assessable values approved with effect from 1 May 1979 and ranging between Rs. 16,281 and Rs. 16,586 per tonne. The values were based on the cost data of the year 1978-79. The average cost of

raw material viz. aluminium slugs went up from Rs. 14,330 per tonne to Rs. 19,055 (excluding element of freight) during the year 1980-81 and further to Rs. 21,400 per tonne during the period May 1981 to August 1981. The assessable value was not recomputed nor action taken to recover duty based on actual cost data for the years 1980-81 and 1981-82. The failure resulted in duty being realised short by Rs. 2.35 lakhs on clearances made during the year 1980-81 and upto August in the year 1981-82.

On the failure being pointed out in audit (October 1981) the department revised the assessable values with effect from 26 December 1981 and issued a show cause-cum demand notice to the manufacturer (April 1983). In August 1979 non-recovery of differential duty on account of similar failure relating to the year 1978-79 had been pointed out to the department. A sum of Rs. 28,372 was recovered in March 1983 in respect of that year.

The Ministry of Finance have stated (November 1983) that against the confirmed demand for Rs. 2.35 lakhs appeal has been filed before the Collector (Appeals).

(vii) Packing and wrapping paper manufactured in a paper mill were used for active consumption in packing and wrapping other varieties of paper manufactured in the mill. Duty was paid on the assessable value determined on the basis of cost data, which, however, did not include normal profits. This resulted in undervaluation and consequent short levy of duty by Rs. 1,71,593 on clearances of paper and wrapping paper made during the years 1978-79 and 1979-80.

On the mistake being pointed out in audit (October 1980), the department raised demand for the said amount.

The Ministry of Finance have stated (August 1983) that the demands for Rs. 1,71,593 were confirmed, but the party has appealed against the orders.

(viii) A manufacturer produced machinery classifiable under tariff item 68 which he used within his own organisation. He was allowed to pay duty on it after computing assessable value on cost data. Such assessable value (Rs. 53,025) was very much lower than the price charged by him on export sales of such machinery (Rs. 10,03,365). In the result by approving the assessable value on the basis of cost data (without comparing it with

basis of pricing for export sales) the department realised duty short by Rs. 37,626 on 12 items of machinery cleared between April and December 1981.

The omission was pointed out in audit (January 1983).

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(ix) A manufacturer of dyed unprocessed cotton fabrics consumed them within the factory in the manufacture of impregnated cotton fabrics. The manufacturing cost of the dyed fabric comprised cost of grey cotton fabric, transportation cost and dyeing cost. The manufacturing profit at 5.64 per cent on the basis of accounts of the company was computed not on manufacturing cost but on dyeing cost only leading to wrong computation of assessable value.

The mistake resulted in duty being realised short by Rs. 37,240 on clearances made during the period from January 1982 to December 1982, on 6,78.436 linear metres of dyed cotton fabrics valuing Rs. 3,82,161.

The mistake was pointed out in audit to the department in April 1983.

The Ministry of Finance have stated (November 1983) that the general issue regarding levy of duty on "dyeing process" is before the Tribunal.

2.22 *Mistakes in computation of assessable value*

Section 4 of the Central Excises and Salt Act, 1944, allows excise duty payable on the excisable goods being excluded from the assessable value for purposes of levy of duty *ad valorem*. According to an explanation below the Section as amended by the Finance Act, 1982, only the effective duty i.e. duty payable on the excisable goods at the rate specified under the Act as reduced by exemptions, if any, notified is to be excluded. But where an exemption notification allows for giving credit with respect to or reduction of duty of excise equal to any duty of excise already paid on the raw materials or component parts used in the manufacture of the excisable goods, with a view to set off or exempt

duty payable on the excisable goods to the extent of the credit, the excise duty inclusive of such amount of set off or exemption will be excluded from the assessable value.

As per Central Excise Laws (Amendment and Validation) Act, 1982 an exemption notification has to expressly provide for exemption from countervailing duty and it cannot be deemed that countervailing duty is exempted where exemption is in respect of excise duty. Reference to duty of excise in any exemption notification shall not be construed as referring to countervailing duty leviable under the Customs Tariff Act and express reference to the law under which countervailing duty can be exempted is to be made in the notification.

(a) A manufacturer of refrigerating and air-conditioning appliances etc. used imported copper pipes and tubes and steel sheets and plates in the manufacture of air-conditioners. He was allowed to exclude the countervailing duty paid on the inputs in arriving at the assessable value of air-conditioners. But the explanation under Section 4 of Central Excise Act referred to above allows only the duty of excise already paid on the materials (inputs) to be excluded. It does not allow any amount of countervailing duty paid on the materials to be excluded. The incorrect deduction allowed from assessable value in violation of the explanation and Validation Act resulted in duty being realised short by Rs. 27 lakhs on clearances made during the period from April 1981 to March 1982.

On the mistake being pointed out in audit (May 1982) the department did not accept (February 1983) the objection.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(b) As per a notification issued on 1 March 1979 the excise duty payable on electrical stampings and laminations (classifiable under tariff item 28A) was exempted from so much of the duty of excise leviable thereon as was equivalent to the amount of countervailing duty already paid on steel sheets used in the manufacture of the stampings subject to the procedure in Rule 56A being followed in relation to such exemption.

Two manufacturers of electrical stampings and laminations used imported sheets in the manufacture of electrical stampings. They were allowed to exclude the countervailing duty paid on the sheets in arriving at the assessable value of the stampings. This incorrect deduction also resulted in duty being realised short by

Rs. 6.68 lakhs on clearances made during the period from April 1981 to May 1982.

On the mistake being pointed out in audit (August and October 1982), the department did not accept the objection.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(c) A manufacturer of motor vehicles (classifiable under tariff item 34) used imported component parts (classifiable under tariff item 34A) in the manufacture of the vehicles. As per an exemption notification issued on 23 June 1977, the excise duty payable on motor vehicles was exempted from so much of the duty of excise as was equivalent to the amount of countervailing duty already paid on component parts of the motor vehicles if they are used as original equipment parts in the manufacture of the said motor vehicles and subject to procedure in Rule 56A being followed. The manufacturer was, however, allowed to exclude the countervailing duty paid on the component parts in arriving at the assessable value. Irregular reduction from assessable value granted in violation of the explanation and the Validation Act resulted in duty being realised short by Rs. 3,67,726 on clearances made during the period from March 1981 to April 1982.

The short levy was pointed out in audit in March 1983.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(d) A manufacturer of rigid plastic sheets falling under tariff item 15A (2) used imported materials (paper, cotton fabrics etc. falling under various tariff items) in the manufacture of such sheets. As per an exemption notification issued on 29 May 1971 the duty of excise or the countervailing duty payable under the Customs Tariff Act, already paid on the materials used in the manufacture of such sheets shall be adjusted towards the duty payable on such rigid plastic sheets. The adjustment was to be subject to the procedure in Rule 56A being followed. The manufacturer was allowed to exclude the countervailing duty paid on the materials in arriving at the assessable value of the rigid plastic sheets. Irregular reduction allowed from assessable value in violation of the explanation and the Validation Act resulted in duty being realised short by Rs. 3 lakhs on clearances made during the period from August 1981 to March 1982.

On the mistakes being pointed out in audit, the department stated (October 1982) that under Rule 56A or Rule 8(1) there is no distinction between excise duty and countervailing duty. This view is not correct after enactment of the said Validation Act.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

SHORT LEVY DUE TO MISCLASSIFICATION

2.23 *Biris*

Biris in the manufacture of which any process has been conducted with the aid of machine operated with or without the aid of power are classifiable under tariff item 4 II (3)(i) and duty is leviable at Rs. 8 per thousand. Other biris are classifiable under tariff item 4 II(3)(ii) and duty is leviable at Rs. 3.60 per thousand.

A manufacturer of biris used an electrically operated machine for quick sieving of tobacco leaves to remove foreign material, small stones, mid-ribs and bits of stem still attached to the tobacco leaves. The resultant tobacco flakes (in the form of small bits) obtained from the machine were blended and issued for further manufacture of biris manually. The biris were classified under tariff item 4 II(3)(ii) and duty was levied at only Rs. 3.60 per thousand.

The incorrect classification resulted in duty being realised short by Rs. 10,80,543 on clearances made during the period from 1 April 1981 to 31 August 1982.

On the mistake being pointed out in audit (September 1982), the department stated (September 1982) that the use of power for the processing of tobacco would not amount to manufacture of biris with machines, since the tobacco even after processing by the machine continued to remain unmanufactured tobacco only and no machine was used in the manufacture of biris. Subsequently, the department stated (May 1983) that a show cause notice has been issued for the recovery of differential duty.

The Ministry of Finance have stated (November 1983) that the demand is pending adjudication.

2.24 *Petroleum products*

(i) Prior to 28 February 1982, only kerosene that is to say any mineral oil (excluding mineral colza oil and turpentine substitute) which has a flame height of eighteen millimetres or more and ordinarily used as illuminant in oil burning lamps was classifiable under tariff item 7 from 28 February 1982. The scope of tariff item 7 was enlarged to include aviation turbine fuel also. Prior to that date aviation turbine fuel was classifiable as petroleum products not otherwise specified under tariff item 11A(5).

(a) Three units manufactured "aviation turbine fuel" and classified it under tariff item 7 for purposes of paying duty although it is not ordinarily used as an illuminant in oil burning lamps and the product should have been classified under tariff item 11A as "petroleum products not otherwise specified." The misclassification resulted in duty being levied short by Rs. 3.79 crores in respect of the clearances of the fuel made during various periods from August 1980 to February 1982.

On the mistake being pointed out in audit (November 1981 and January 1982) the department did not accept the misclassification despite the acceptance implicit in amendment to tariff item 7 in the budget of 1982, subsequent to the audit objection. On similar objection reported in paragraph 2.18(i) of Audit Report for the year 1981-82, the Ministry of Finance had stated that the matter was under examination.

(b) In Kanpur, on aviation turbine fuel supplied to aircrafts during the period from October 1980 to November 1981 duty was levied short by Rs. 1.13 crores, by classifying it as kerosene instead of under tariff item 11A(5).

On the mistake being pointed out in audit (December 1981) the department stated that aviation turbine fuel was classifiable under tariff item 7 keeping in view its essential characteristic and use of kerosene as aviation turbine fuel was one of the recognised uses of kerosene. The department, however, overlooked the fact that the product was not ordinarily used as illuminant in oil burning lamps as required in the description under tariff item 7. However, in order to safeguard revenue, two show cause-cum demand notices for Rs. 1.41 crores in respect of clearances made during the period from October 1980 to February 1982 were issued by the department in March|April 1983.

(c) A manufacturer of petroleum products, started manufacture of aviation turbine fuel from 21 July 1978, for use as fuel for jet planes. The department classified the product under tariff item 7 as kerosene. Though it had a flame height of 18 mm, it was not ordinarily used as an illuminant in oil burning lamps. Therefore, it did not merit classification under tariff item 7 upto 28 February 1982. It was classifiable under tariff item 11A. On clearances made during the period from 21 July 1978 to 27 February 1982, on 60,263 Kilolitres of aviation turbine fuel because of incorrect classification duty was realised short by Rs. 73,63,710.

The mistake was pointed out in audit in April 1983.

In respect of the above three cases, the Ministry of Finance have stated that the department has been working on the assumption that specifications having been incorporated in tariff item 7, a product which confirmed to those specifications would, regardless of how it is marketed or used, qualify for classification under the tariff item 7. This is evidenced from the fact that in the past when an exemption from additional excise duty was to be granted to aviation turbine fuel, the notification referred to it as being classifiable under tariff item 7, and later in February 1982, when a separate sub item was carved out for aviation turbine fuel, this sub item was included under the tariff item 7 titled "Kerosene". The intention has always been to classify aviation turbine fuel under the same tariff item as applicable to kerosene. At the same time, it may be plausible to argue that where a tariff item (which incorporates the specification of a product) is further qualified by reference to its ordinary use to which the product is put, then a product which is not so used ordinarily will not be classifiable under that tariff item even if it satisfied the specifications incorporated therein. The amendment of tariff item 7 carried out in 1982 to specifically include aviation turbine fuel therein as a sub item was intended to place the matter beyond debate. As for the past, assessment prior to inclusion of aviation turbine fuel in tariff item 7 legal opinion is being solicited.

2.25 *Plastics*

As per Provisional Collection of Taxes Act, 1931, if a Finance Bill is introduced providing for imposition or increase of duty of excise or customs it will have effect from the date of the expiry of the day on which the bill containing the provision is introduced. In the Finance Bill, 1982, which was introduced in Parliament on 28 February 1982, declaration was made *inter*

alia that Section 49 of the bill amending the First Schedule to the Central Excises and Salt Act, 1944, would come under the scope of the Provisional Collection of Taxes Act, 1931. Therefore plastic articles which were hitherto classified under tariff item 15A(2) became classifiable under tariff item 68 from midnight of 28 February 1982. Plastic articles falling under tariff item 15A(2) were exempted from duty with effect from 22 April 1982 and those falling under tariff item 68 were exempted from duty as per a notification issued on 11 May 1982. Duty was, therefore, payable on such plastic articles, during the period from 1 March to 10 May 1982 under tariff item 68.

Three manufacturers of plastic moulded baggage and P.V.C. rigid pipes cleared their products without payment of duty on the basis of a notification issued on 22 April 1982 which exempted articles falling under tariff item 15A(2) from duty. As the said plastic articles were classifiable under tariff item 68 from the midnight of 28 February 1982 and such goods were exempted from payment of duty only from 11 May 1982, duty was leviable on the goods cleared during the period from 1 March 1982 to 10 May 1982 after classifying them under tariff item 68. The duty not levied in respect of the three manufacturers amounted to Rs. 5.08 lakhs on clearances during the period from 22 April 1982 to 10 May 1982.

On the mistakes being pointed out in audit (October, November and December 1982), the department stated that the procedure followed by it for the recovery of duty was in accordance with the notifications issued by Government in April 1982. But as per the legal position stated above duty was short levied.

The Ministry of Finance have stated (December 1983) that the matter will be examined in consultation with the Ministry of Law.

2.26 *Chemicals*

(i) The Central Board of Excise and Customs clarified in July 1975 that 'pthalogen brilliant blue' (base product) and 'copper complex' would both be classifiable under tariff item 14D, whether they were supplied in dual containers or not. It was further clarified in February 1981 that 'aluminium paint' (aluminium paste and liquid medium) and the 'epoxy based

paints' supplied in dual containers would be classifiable under tariff item 14 as paints as a composite product and should be assessed together.

A manufacturer of various types of paint (base paint), which could not be used as paint without mixing it with a solution (accelerator). He manufactured both the products in the same factory and cleared them in dual containers. The base paint and accelerator were complementary to each other and were required to be mixed just before use and application as paint. Duty was allowed to be paid on the base paint under tariff item 14, and accelerator was exempted from duty under tariff item 68. On similar product manufactured by another manufacturer under the jurisdiction of the same Collector, duty was correctly levied under tariff item 14 on the twin products.

The mistake in respect of the first manufacturer resulted in duty being realised short by Rs. 1,46,132 on clearances made during the period from 1 August 1979 to 30 September 1981.

On the mistake being pointed out in audit (November 1981) the department did not admit the mistake and stated (November 1981) that the duty was allowed to be paid provisionally and its finalisation was still pending. The reply did not state why the classification list filed by the manufacturer and containing the wrong classification according to which clearance was made was approved by the department finally. In paragraph 75 of the Report 1977-78 of the Comptroller and Auditor General of India Union Government (Civil)---Revenue Receipts Volume I Indirect Taxes, similar short levy of Rs. 2.12 lakhs on clearance of twin package epoxy resin paint was reported, on which the Ministry of Finance stated (February 1979) that the matter was under examination.

The Ministry of Finance have stated (December 1983) that a show cause-cum demand notice issued for Rs. 3,60,160 is pending adjudication.

(ii) As per the instructions issued by the Central Board of Excise and Customs in September 1981 all preparations which are in the nature of beautification aids would require to be classified under tariff item 14F for purposes of levy of excise duty. Eye-shadow four-in-one, hi-fi fluid liner, shadow play, erace

sparkling eyes, gardex (dry), gardex (wet), roll-on-deodorent and mascara were accordingly to be classified under tariff item 14 F.

A manufacturer of eye-liner, run-proof liquid mascara, matte sadow plain, matte shadow collection, matte shadow frosted, cake eye liner, pressed shadow, magic crayon and eye shadow collection frosted, was allowed to classify them under tariff item 68 as goods not elsewhere specified even after the issue of the instructions. Failure to classify them under tariff item 14F(i) resulted in duty being levied short by Rs. 55,439 on clearances made during the period September 1981 to March 1982.

On the mistake being pointed out in audit (July 1982) the department issued (August 1982) a show cause-cum demand notice for Rs. 55,439. Report on confirmation of demand and recovery is awaited (February 1983).

The Ministry of Finance have stated (September 1983) that a "preparation" specially mentioned under tariff item 14F by reason of such mention will undoubtedly get covered by the said tariff item regardless of whether it does, or does not, satisfy the broad description of the tariff item, namely for the care of the skin. But it is debatable whether a preparation (not specifically mentioned in the tariff item), which can not be said to be "for the care of the skin" will be covered by the said tariff item. However, a show cause-cum demand notice has been issued for Rs. 58,711 for the period from 3 September 1981 to 31 March 1982.

2.27 *Paper*

(i) With effect from 24 January 1978, the effective rate of duty leviable on all sorts of paper commonly known as kraft paper was raised from 30 per cent to 37.5 per cent *ad valorem*, and from 1 March 1979, the rate was further raised to 40 per cent *ad varolem*. However, the effective rate leviable on other varieties of paper falling under the same tariff sub-item described as 'Paper board and all other kinds of paper not elsewhere specified' remained at 30 per cent *ad valorem*. It was increased to 32.5 per cent only from 1 March 1982. The Central Board of Excise and Customs, in a circular letter dated 6 March 1979 stated that certain varieties of paper which were treated as kraft paper by the trade prior to issue of the notification of January

1978, were declared for assessment at the rate of 30 per cent *ad-valorem* instead of at 37.5 per cent *ad valorem*. In the aforementioned circular the incorrect rate adopted by the trade was brought to the notice of the field formation for necessary action to levy duty on such papers at the higher rate applicable to kraft paper.

A manufacturer of 'insulated paper' similar to kratt paper was allowed to clear it as paper other than kraft paper on payment of duty at 30 per cent and 32.5 per cent applicable to varieties of paper even after the rate of duty on kraft paper was increased to 37.5 per cent and 40 per cent. Failure to levy duty at the rate applicable to kraft paper resulted in duty being realised short by Rs. 6,49,017 on clearances made during the period from 24 January 1978 to 31 August 1978 and from 1 April 1979 to 28 February 1983.

On the short levy being pointed out (September 1978) in audit the department stated (February 1980) that the insulating paper was utilised for insulation of conductors and wrapping of cores of telecommunication, wires and cables, and was therefore classified as other than kraft paper. This is no reason for viewing the paper as other than kraft paper since in commercial parlance kraft paper is not linked to whether it is used as insulating paper or not. Kraft paper is distinguished by its characterstics and is generally paper made out by unbleached chemical wood pulp and the paper in question was also made out of such pulp. But what was more important was that prior to 24 January 1978 the practice was to classify the paper in question as kraft paper whether or not it was used all along as insulating paper, which practice was changed to the detriment of revenue after 24 January 1978. The department took no steps as required in circular of 6 March 1979 referred to above. Another such irregularity arising from this absence of precise objective and technical parameters to classify paper was pointed out in paragraph 2.20 of Audit Report for 1981-82.

The Ministry of Finance have stated (December 1983) that the insulating paper is costlier than craft paper and is not known in the trade as craft paper. The reply is silent on the fact that the insulating paper was known in the trade as craft paper and duty was levied accordingly by the department prior to 24 January 1978 when it was to the advantage of manufacturer to classify

the paper as kraft paper. The reply of the Ministry in respect of paragraph 2.20 of Audit Report 1981-82 is also silent on such change of classification of same paper in trade practice following changes in rates of duty because the classification is not linked to technical parameters but is linked to subjective trade practices.

(ii) In a tariff advice issued on 20 February 1981, the Central Board of Excise and Customs confirmed that laminated bags of rolls produced by using hessian cloth and bitumen as bonding agent were classifiable under tariff item 17(2). As per instructions contained in Board's letter dated 24 October 1979, past assessments were to be reviewed whenever tariff advices were received and differential duty demanded, where demands were not barred by limitation.

A manufacturer of bitumenised paper with hessian lining paid duty at 15 per cent *ad valorem* under tariff item 17(2), on clearances made during the period from 30 March 1980 to 12 August 1980. By extending the benefit of a notification issued on 20 March 1965, applicable to laminated jute products, the department reclassified the goods under tariff item 22A, and refunded an amount of Rs. 41,389 on 21 November 1980. After receipt of Board's Tariff advice in March 1981, the department did not review the refund granted though under Section 11A of the Central Excises and Salt Act, 1944 on erroneous refund made, duty could be demanded in respect of clearances made during the period from 13 August 1980 onwards which amounted to Rs. 41,389.

On clearances made during the period from 30 March 1980 to 12 August 1980 after classification under tariff item 17(2), the assessee was incorrectly allowed to avail of concessional rate of duty at 15 per cent *ad valorem* under a notification issued on 27 May 1976 which is applicable only to bitumenised water proof paper or paper board and not to hessian lined paper cleared by him. However, on the goods which were cleared, duty was leviable at 30 per cent *ad valorem* under a notification issued on 24 January 1978. The mistake resulted in duty being levied short by a further sum of Rs. 41,389.

These mistakes were pointed out in audit (November 1981 and June 1982).

The Ministry of Finance have stated (December 1983) that the matter is under examination.

2.28 *Textile fabrics and yarn*

(i) Under the Central Excise Act, duty is leviable on manufactured products. Such excisable goods which are not described anywhere else in the tariff are classiable under tariff item 68. Under tariff item 18 covering man-made fibres, filament yarns and cellulosic spun yarn, duty is leviable on "non-cellulosic wastes, all sorts."

A manufacturer of man-made fibres and filament yarns of nylon and polyester paid duty on waste obtained in the process of manufacture at the rate of Rs. 9 per kilogram under the tariff description "non-cellulosic wastes, all sorts". But on clearances of such wastes made from November 1981 to June 1982, he was allowed to pay duty at only 8 per cent after classifying such wastes under tariff item 68 and that too under protest when tariff item 18 specifically mentions such wastes, they cannot be classified under tariff item 68. The misclassification resulted in duty being realised short by Rs. 12,15,291.

The mistake was pointed out in audit (November 1982).

The Ministry of Finance have stated that the department was already seized of the matter. Demands for Rs. 15,89,389 for the periods from November 1981 to January 1983 have been issued. Enforcement of demand has been stayed by High Court. The show cause notice was issued on 15 January 1983 subsequent to audit in November 1982.

(ii) Tariff item 18 relating to man-made fibres was revised by Finance Act, 1975 so as to include textured synthetic yarn. The textured yarn includes bulked yarn and stretch yarn. As per a notification issued on 12 May 1975 duty leviable on textured yarn was the duty for the time being leviable on the base yarn, if not already paid plus Rs. 10 per kilogram.

The process of dyeing of acvrylic (synthetic) yarn involved steaming which bulked the yarn. As such after dyeing the acrylic yarn became textured yarn.

A manufacturer of dyed synthetic (acrylic) yarn declared in the classification list submitted by him to the department in March 1976 that the dyed yarn was textured yarn and was allowed to pay from April 1976 duty as payable on base yarn plus Rs. 10 per kilogram. He also manufactured in the same unit during the period from August 1975 to March 1976 dyed acrylic yarn and hand knitting acrylic yarn which were textured yarn and was allowed to clear them by paying duty at the rates applicable to base yarn only. Additional duty at the rate of Rs. 10 per kilogram was not realised. This resulted in duty being realised short by Rs. 5,46,529.

On the failure being pointed out in audit in May 1976, the department issued a show cause notice in August 1976 for Rs. 5,46,529.

The Ministry of Finance have stated (November 1983) that demand for Rs. 5,46,529 has since been confirmed.

(iii) Prior to amendment of Central Excise Tariff with effect from 18 June 1977 tepestry of furnishing cloth was classifiable under tariff item 19.1(1) and coarse cotton fabrics and other dress materials were classifiable under tariff item 19.1(2).

A manufacturer was allowed to classify bleached printed fabrics with a trade name of 'tapestry' under tariff item 19.1(1) upto February 1976 and thereafter under tariff item 19.1(2) whereby duty leviable became less. From July 1975 he had paid duty under tariff item 19.1(1) under protest and refund of such duty amounting to Rs. 1,07,518 was sanctioned on 15 September 1977. Refund of duty amounting to Rs. 4,26,047 covering claims from August 1974 to July 1975 was also sanctioned on 8 September 1978. However, the fabrics in question being commercially known as 'tapestry' or furnishing cloth were classifiable under tariff item 19.1(1). The misclassification resulted in duty being realised short by Rs. 5,33,565 on clearances made during the period from February and March 1976. The duty short realised on clearance made from April 1976 to June 1977 is still to be estimated.

On the mistake being pointed out in audit first in September 1976 (and thereafter in March 1979 and May 1980), the department stated (April 1977 and September 1977) that in view of the price and limited use of the fabrics they were classified under tariff item 19.1(2). But at the request of Audit

samples of the fabrics were sent to the Collector in December 1977. However, even pending decision refund amounting to Rs. 5,33,565 was sanctioned. At the request of Audit, the opinion of the Textile Commissioner was obtained and thereupon the Board of Central Excise and Customs on the recommendation of the tariff conference of Collectors held that the fabrics in question were not of wearable type but were usable for making mattresses, pillow covers and curtains and they were classifiable under tariff item 19.1(1). Thereupon the department stated (September 1982) that rectification and recovery was barred by limitation. In the result revenue estimated at about Rs. 10 lakhs was lost to Government

The Ministry of Finance have stated (December 1983) that the matter is under examination.

2.29 *Aluminium*

A manufacturer produced aluminium blanks from aluminium alloy bars or rods by heating and forging them. He paid duty on the blanks classifying them under tariff item 68 upto 17 December 1980. From 18 December 1980 onwards, he availed of the exemption in respect of clearances not exceeding Rs. 30 lakhs and cleared the blanks without paying duty. Aluminium alloy shapes and sections not otherwise specified are classifiable under tariff item 27(b) and the aluminium blanks were classifiable accordingly. The misclassification resulted in duty being realised short by Rs. 1.13 lakhs on clearances made during the period from 18 December 1980 to 31 December 1981.

On the mistake being pointed out in audit (June 1982) the department stated (October 1982) that show cause notice had been issued to the manufacturer.

The Ministry of Finance have stated (November 1983) that the show cause-cum demand notice is pending adjudication.

2.30 *Other manufactured goods*

(i) "Electric motors, all sorts", are classifiable under tariff item 30. A question which arose was whether motors coupled to a gear mechanism to effect reduction in speed would also come under the description "Electric motors all sorts". The

Central Board of Excise and Customs clarified in March 1976 that geared motors would also be classifiable under tariff item 30. The Board also clarified in May 1978 that on geared motors produced by assembly gear mechanism with duty paid electric motors procured from outside, duty will be leviable under tariff item 30. In August 1981, the Board modified its instructions issued in May 1978 holding that gears coupled to duty paid motors but not forming an integral geared motor will not be chargeable to duty again as "Electric motors all sorts" because no new product would have come into existence but only the original motor coupled to a gear. But in the Finance Act, 1982 provision was made to amend tariff item 30 by introducing an explanation thereunder to the effect that tariff item 30 included motors equipped with gears on gear boxes.

A manufacturer of variable speed motors assembled a mechanism for varying speed, called "Eddy current" clutch and coupled it to three phase induction motor (duty paid) procured from outside. The variable speed motors were allowed by the Department to be cleared without payment of duty. From 1 March 1975, when tariff item 68 was introduced levying duty on all other goods not elsewhere specified, duty was realised on the variable speed motors under tariff item 68. Failure to classify the goods under tariff item 30 resulted in duty amounting to Rs. 49,00,531 not being realised on clearances made during the period from February 1974 to March 1983.

On the mistake being pointed out in audit (October 1981) the department stated (January 1982) that the product was not a variable speed motor as it did not have a built in device to achieve different speeds but that a variable output was achieved with the help of the "Eddy current" clutch and only a name variable speed motor was given to the equipment. However, the goods cleared combined in a common frame a three phase induction motor and a self ventilated eddy currents clutch housed in a guarded enclosure. In commercial parlance the cleared goods were sold as "electric motors" having variable speed. The cleared goods viz. variable speed electric motors having been manufactured and being a different and distinct product from the induction motor which was used in the manufacture, duty was leviable on the manufactured product after classifying as a distinct product under tariff item 30.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(ii) Central Excise duty is leviable on "Electric lighting fittings, namely, switches, plugs and sockets, all kinds, chokes and starters for fluorescent tubes" falling under tariff item 61, with effect from 18 June 1977 at 10 per cent *ad valorem* (raised to 20 per cent from 1 March 1979). The Ministry of Finance clarified in September 1977 that lamp holders, adopters two way, three way etc. and switch socket combinations would fall under tariff item 61. However, in June 1978 the Central Board of Excise and Customs clarified that lamp holders which are not generally used as electric lighting fittings would fall outside the tariff item 61.

A leading manufacturer of electric lighting fitting was also manufacturing lamp holders for fluorescent tubes which he cleared on payment of duty under tariff item 68 "all other goods not else-where specified" instead of clearing them under tariff item 61. Thus misclassification which was accepted by the department resulted in duty being levied short by Rs. 5,69,192 on clearances made from July 1977 to July 1979.

On the short levy being pointed out in audit (October 1979), the department issued (July 1980) notice to the manufacturer, asking him to show cause why 'lamp holders' for fluorescent tubes should not be reclassified under tariff item 61, and duty levied accordingly from 18 June 1977. However, the show cause notice was stated (May 1982) to have been withdrawn in view of advice given by the National Test House to the leading manufacturer in January 1981 that all varieties of lamp holders could not be termed as switches, sockets or plugs as they do not conform to I.S.I. specification No. IS-1293 (containing 3 pin plug and socket to outlits).

The advice accepted by the department is not relevant since the expression "all kinds" used in the tariff item 61 has widened the scope of the tariff item so as to embrace all varieties of sockets and whether lamp holders conform to one of the many I.S.I. specifications is not material for the purpose of classifying said lamp holders under tariff item 61. Lamp holders are commercially known as bulb holders or sockets. Even bulb holders used in motor vehicles and torches and operating at voltage lower than the conventional domestic range of 230-250 volts, are according to a clarificatory tariff advice issued on 8 December 1981, to be classified under tariff item 61.

The Ministry of Finance have stated (August 1983) that the use of the expression 'all kinds' in tariff item 61 would appear to imply that all kinds of switches, plugs and sockets will be covered by the said tariff entry, but a product has to be either a switch, or a plug, or a socket for attracting duty under tariff item 61. The National Test House, which was consulted by the Collector has advised that a "plug" is a device intended for engagement with the corresponding contacts of the sockets and arranged for attachment to a flexible cable or cord. A "socket" is a device designed for engagement with the corresponding pins of the plug and arranged for connection to fixed wiring. According to the Test House, "Lamp holders" cannot be termed as switches or sockets or plugs. However, the technical opinion of the Director General National Test House given by him to the leading manufacturer accepted by the Ministry, goes contrary to the meaning of the term "socket" as it is generally understood. The Courts have held that general understanding or meanings in common parlance should be the basis for levy of duty. As per the Mcgraw Hill dictionary of scientific and technical terms socket (electrical) is a device designed to provide electrical connections and mechanical support for an electric or electronic component requiring convenient replacement. Accordingly the so called lamp holders will be classifiable as "sockets all sorts".

(iii) A manufacturer of 'Green baked pitch impregnated blanks' cleared them partly for home consumption after payment of duty by classifying them under tariff item 68, and partly for use in his other factory after classifying them under tariff item 67 as graphite electrodes and anodes. The department provisionally classified the goods under tariff item 68.

Only after Audit had raised an objection (August 1982) pointing out the misclassification and the inordinate delay in finalising the provisional classification, the goods were finally classified on 15 June 1982 under tariff item 67. During the period from September 1980 to December 1980 the manufacturer had cleared 5,63,887 kg. of the goods valuing Rs. 16,12,722 after payment of duty at 8 per cent *ad valorem*. The consequent short levy of duty amounted to Rs. 4,93,385.

The Ministry of Finance have stated (August 1983) that the assessee had been directed on 15 June 1982, in pursuance of Collector's orders to submit classification list showing classification under tariff item 67 and to pay duty accordingly. Also a demand for the differential duty of Rs. 8,96,726 has been raised for the period from 4 September 1980 to 28 July 1981.

(iv) Computers (including central processing units and peripheral devices), all sorts are classifiable under tariff item 33DD and are assessable to duty at twenty per cent *ad valorem* as per a notification issued on 19 June 1980.

A manufacturer of computers, produced special purpose computers called programmable logic controllers but classified them under tariff item 68 and was allowed to clear them accordingly. The electronic controllers can be programmed to control and activate or shut off automated machines and various parameters could be fed into the computer system as inputs and the computer is programmable. The product was therefore classifiable as computer under tariff item 33DD. The misclassification resulted in duty being realised short by Rs. 4,90,699 on clearances made from 23 July 1980 to 30 December 1982.

On the mistake being pointed out in audit; the department accepted the objection and stated that the manufacturer started clearing the goods by paying duty under tariff item 33DD under protest from 11 February 1983. An amount of Rs. 3,60,048 representing the differential duty on the clearances made from 20 November 1982 to 30 December 1982 was covered by bond.

The Ministry of Finance have stated (November 1983) that the Collector (Appeals) has directed *de-novo* proceedings.

(v) On "computers (including central processing units and peripheral devices), all sorts" classifiable under tariff item 33DD duty is leviable at 20 per cent *ad valorem*. Also on "office machines and apparatus" classifiable under tariff item 33DD duty is leviable at 20 per cent *ad valorem*. However, as per a notification issued in March 1970 levy of duty has been exempted on all goods classifiable under tariff item 33D

save thirty specified goods. "Data processing machines other than computers (including processing units and peripheral devices)" is one such specified item and duty is leviable thereon under tariff item 33D.

A manufacturer marked a "Key to floppy" data entry station designed to provide the most efficient means to transfer any data on to a floppy disk. It was particularly suited for use in printing industry using floppy disk for photo-type setting. The manufacturer was allowed to clear the product free of duty on the ground that it was not one of the thirty specified dutiable items classifiable under tariff item 33D. However, it was a "peripheral device for a computer" (classifiable under tariff item 33DD) even if it was not "a data processing machine" and therefore not classifiable under item 33D. As per Board's instructions of 1971 also, duty was leviable on it either as data processing machine or as peripheral device. Failure to levy duty under tariff item 33DD or 33D resulted in duty amounting to Rs. 2.35 lakhs not being realised on clearances made during the years 1980-81 to 1982-83.

On the mistake being pointed out in audit (April 1982), the department stated (April 1983) that the equipment appeared to satisfy the characteristic features of a computer and that the matter was being re-examined.

The Ministry of Finance have stated (November 1983) that the demand is pending adjudication.

(vi) A manufacturer of cockpit voice recorders was allowed to classify them under tariff 68 instead of under tariff item 37AA covering tape-recorders. The misclassification resulted in duty amounting to Rs. 2,97,270 not being realised during the years 1977-78 to 1981-82.

On the misclassification being pointed out in audit the department accepted the objection and correctly classified the goods under tariff item 37AA. The revision of classification at the instance of audit also yielded during the subsequent years additional revenue of Rs. 2,79,231 (upto June 1983).

The Ministry of Finance have stated (November 1983) that Collector (Appeals) has directed that cockpit voice recorders are not classifiable under tariff item 37AA covering

tape recorders and tape players. The Ministry have not stated the reasons for their acceptance of the view that the said voice recorder is not a tape recorder when the tariff description clearly cover the product.

2.31 *All other goods not elsewhere specified*

(i) Rolled or forged iron or steel products are classifiable under tariff item 26AA(ia). In tariff advices issued in September 1975 and June 1981 it was clarified that on forged or cast iron or steel product if grinding or machining with the aid of power is carried out the steel product so manufactured will be classifiable under tariff item 68.

In a Public Sector integrated steel factory a product called 'fish plate' was manufactured from 'rolled bar' which was called 'fish plate bar'. The bar was cut to size and holes were bored and it was machined with the aid of power. In the course of manufacture about ten per cent of the weight of the bar was lost. The department realised duty only on the fish plate under tariff item 26AA(ia). The misclassification resulted in duty being realised short by Rs. 15.85 lakhs on clearances made during the years 1979-80 and 1980-81.

On the mistake being pointed out in audit (February 1982) the department stated (March 1983) that no new product with distinct name, character or use had emerged from the bar by cutting it to sizes, boring holes and machining it. This is contrary to the tariff advice issued by the Board and even otherwise the fish plate was not a rolled or forged bar of steel.

The Ministry of Finance have stated (November 1983) that the matter is under examination.

(ii) A manufacturer of "internal combustion engines" classifiable under tariff item 29 used them captively in the manufacture of diesel generating sets. The diesel generating sets, on clearance were assessed to duty after classifying it under tariff item 29, even though tariff item 29 covers only internal combustion engines. Complete diesel generating sets are classifiable under tariff item 68, covering "all other goods not elsewhere specified".

Failure to pay duty on the internal combustion engines and thereafter on the diesel generating sets resulted in duty amounting to Rs. 5,89,768 not being realised on clearances made from August 1979 to February 1980.

On the mistake being pointed out in audit (January 1981) the department stated (April 1982) that the matter was under examination and further report would follow.

The Ministry of Finance have stated (August 1983) that the department had come to know of the mistake as early as in October 1980 through their internal audit. A demand was raised for Rs. 5,89,768 only on 18 October 1982.

(iii) "Dished ends" used in the manufacture of Railway tank wagons, pressure vessels etc. are classifiable under tariff item 68.

A manufacturer of 'dished ends' used them partly for captive consumption even prior to obtaining a licence for their manufacture which was issued on 11 November 1980. He cleared 'dished ends' from 13 September 1979 to 13 October 1980 without payment of duty, and from 14 October 1980 to 29 July 1981 he paid duty after classifying them under tariff item 26AA (ia). From 30 July 1981 he classified them under tariff item 68 and paid duty on the clearances. The misclassification allowed by the department resulted in duty amounting to Rs. 70,830 not being realised.

The mistake was pointed out in audit in August 1982 to the department.

The Ministry of Finance have stated (August 1983) that a show cause-cum demand notice was issued on 2 February 1982 demanding duty of Rs. 2,92,545 for the period from 16 August 1979 to July 1981 and the same is under adjudication.

SHORT LEVY DUE TO INCORRECT GRANT OF EXEMPTION

2.32 *Sugar*

(i) As per a notification issued on 21 April 1982, where sugar is produced in a factory during the period from 1 May 1982 to 30 September 1982 and the production is in excess of the average production of sugar in the corresponding periods in

the preceding three years viz. May to September of 1979, 1980 and 1981, exemption from duty at Rs. 40 per quintal was allowed on the quantity of free sale sugar cleared by the factory out of production in the period May to September 1982. Exemption at Rs. 24.50 per quintal was similarly allowed on the levy sugar cleared. In computing the average production of sugar during the periods May to September in the preceding three years the production record in excise from R.G.-1 was to be taken as the authentic basis for production in the said period.

If in any of the preceding three years there was no production during the period May to September, only the production in the corresponding periods in such of the three preceding years in which the factory had actually produced was to be taken into account. In other words the period or periods in which factory did not at all produce during any of the preceding three years was to be ignored in computing the average and average computed with reference to only remaining years. But where production during the said period May to September in all the three preceding years was nil, then on the entire production during period May to September 1982 exemption from duty was available at the said rates.

In a sugar factory, crushing had stopped in April 1981. Also 90 quintals of sugar was stated to have been produced in April 1981 as per records. But in the said excise record in form RG-1 production in May 1981 was shown as 90 quintals. The production in the factory in the said periods May to September was 1,06,138 quintals in 1978-79 and in 1979-80 it was nil. In 1980-81 it was taken as 90 quintals (so called production of May 1981) and average production in the three years 1978-79 to 1980-81 was computed as 53,114 quintals. If the production of 90 quintals had been shown in excise records as achieved in April 1981, the average production in the three years would have worked out to 1,06,138 quintals; consequenfly increase in production in 1981-82 over average production of past three years would have dropped and exemption availed of would have been reduced by Rs. 13,85,656. Therefore, there was incentive to show the production as achieved in May 1981 even if the sugar had been produced in April 1981. Exemption from duty amounting to Rs. 13,85,656 was at stake.

The exemption is as much related to production in 1981-82 as failure to produce in 1980-81. Even if one quintal of sugar could be shown to have been produced in 1979-80 the exemption in 1981-82 would have gone up further by a few lakhs of rupees. The ambiguity in the records is therefore encouraged by the fact that the notification does not provide for calculation of average by reference to average daily production in the months of May to September in each of the three preceding years and for multiplying such average by 150 days in order to arrive at the base figures. If the increase in production during current year over such base figure were to be basis for grant of exemption, the incentive for ambiguity in records will be reduced.

The structure of the notification together with the questionable entry in the excise record in form RG-1 in the above said case resulted in exemption from duty amounting to Rs. 13.86 lakhs being allowed in excess because of production of 90 quintals being shown in the month of May 1981 and not in April 1981 in the excise record in form RG 1.

On the irregularity being pointed out in audit the department stated (April 1983) that the notification required it to go by entries in form RG 1. The accuracy of the entry in form RG 1 was not commented upon in the reply of the department though it is within the powers of the department to rectify manipulation in records if any.

In paragraph 2.56 of Audit Report 1980-81 similar loss of duty amounting to Rs. 6.77 lakhs in three sugar factories was pointed out. There also instead of showing nil production in the period May to September in one of the three preceding years, normal production of 175 quintals, 1085 quintals and 17 quintals were shown in the 3 years so as to bring down the average of past three years and increase the exemption that could be claimed.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(ii) As per a notification issued on 29 August 1980, sugar produced in a factory during the period from 1 October 1980 to 30 November 1980 which was in excess of the production during the corresponding period of the preceding three sugar

years was exempted from duty by Rs. 43.60 per quintal if it was free sale sugar and by Rs. 18.50 per quintal if it was levy sugar. As per a similar notification issued on 28 October 1981 sugar produced in a factory during the period from 28 October 1981 to 30 November 1981 which was in excess of the production during the corresponding period of 1980-81 sugar year was exempted from duty by Rs. 23.55 per quintal if it was free sale sugar and by Rs. 15.30 per quintal if it was levy sugar. The notification defined levy sugar to mean sugar required to be sold under any order made under the Essential Commodities Act. Free sale sugar was defined to mean sugar other than levy sugar.

When a bag of sugar is produced it cannot be known whether it will be levy sugar or free sale sugar till such time as the bag of sugar is sold either under an order issued under the Essential Commodities Act or otherwise. Only the production in the specified period in the current year and in the previous year can be ascertained from the records of the sugar factory. Therefore, the excess production in the current year (in the specified period) as compared to the production in the preceding year (in the specified period) can be arrived at. But how much of the excess production was sold as levy sugar and how much as free sale sugar cannot be determined because no bag of sugar is labelled as the excess produce nor track kept of it till its sale as levy sugar or as free sale sugar. Only record of quantity of sugar cleared during any period is available to the Excise Authorities including how much was cleared as levy sugar and how much as free sale sugar.

The notifications grant exemption only on the excess production irrespective of when the excess production is cleared. The order under Essential Commodities Act stipulates that 65 per cent of all production will be cleared for sale as levy sugar and balance as free sale sugar. Therefore, clearance of excess production claimed to be free sale sugar has to be denied if it would result in free sale sugar clearances exceeding 35 per cent of total production. Also the exemption from duty cannot be allowed to exceed the actual duty paid or demanded on the sugar. Further, on the quantity of sugar required to be cleared as levy sugar under the statutory order but wrongly cleared as free sale sugar in excess of 35 per cent of production no exemption can be allowed as it is not sold as levy sugar though in law it can be cleared if at all only as levy sugar.

The claims of two manufacturers for exemption under the above exemption orders were allowed on excess production. In one case 14,147 quintals of sugar was cleared as levy sugar and 54,288 quintals as free sale sugar which was in excess of 35 per cent of total production allowed to be cleared. The exemption granted irregularly amounted to Rs. 4,46,469 on clearances made during the period from December 1981 to July 1982. In the other case, on clearances of excess production (made during the months of October and November 1980) which was not actually cleared as levy sugar or as free sugar. The exemption applicable to levy sugar and free sale sugar was given irregularly. The irregular grant of exemption amounted to Rs. 1,55,226.

The mistakes were pointed out in audit in January and February 1983. In the first case the department stated that the notification did not require that only 35 per cent of the total production should be deemed to have been cleared as free sale sugar. However this is required under the statutory orders issued under the Essential Commodities Act. Also the department did not indicate how the excess production was identified as having been included in any particular clearance of levy sugar or free sale sugar in both the cases and what was the basis for the *ad hoc* allocation of excess production as between levy sugar and free sale sugar if 65 to 35 per cent ratio is not to be applied on the total production.

The Ministry of Finance have stated (November & December 1983) that in one case demand for Rs. 1,63,715 had been raised and was pending adjudication; in another case the matter was under examination.

2.33 *Tea*

As per a notification issued on 1 March 1970 on tea manufactured by a 'bought leaf factory', as defined in the notification, duty became leviable at a concessional rate of 60 paise per kilogram as against the normal rate of Rs. 1.10 per kilogram in certain zone. 'Bought leaf factory' was defined as a tea factory, which has purchased not less than two third of its green leaf from outside sellers during the year 1963-64 and in the financial year immediately preceding that in which the duty is levied. As per definition of factory in the Central Excise Act, factory means any premises wherein excisable goods are manufactured.

A tea factory owned by an individual and enjoying the above concession was sold under the same name to a partnership firm in October 1978. In December 1979 the factory was sold by the firm to another partnership concern but the factory thereafter functioned under a new name though in the same premises. A fresh excise licence was issued in the new name of the factory. All along all the owners of the factory were allowed to enjoy the concessional rate of duty. In December 1980 the factroy was shifted to another place, and again a fresh central excise licence was issued and the duty concession continued to be extended in respect of the production in the factory without any break. After the change of premises it is not possible to hold that because the nature of manufacturing activity in the new premises is the same as in the old premises, the factory has retained continuity. The definition in the Central Excise Act having defined factory in terms of premises, activity in new premises even if of same nature will be manufacturing activity in new premises and the concessional rate could not be available in the new premises. The irregular grant of concession resulted in duty being realised short by Rs. 1,20,370 on clearances made during the period from 8 December 1980 to 28 February 1982.

On the irregularity being pointed out in audit in June 1982, the department stated (August 1982 and June 1983) that the factory retained its original identity in the new premises and in the new name and under the new ownership despite all the changes referred to above. It was stated that as per advice of the Ministry of Law, on shifting to a new premises, a new factory does not come into existence and that there is provision in Rule 178(6) for an excise licensee to get the change of premises noted in his licence without having to apply for a new licence. The provision in the rule is because of the liability of excise being on the licensee and not on the premises. The concession has been notified also by reference to the licensee. A new licence (being a new owner) working a factory under a new name in a new premises is not clearly to be allowed the concession by making a factory as defined in the Central Excise Act into a corporate entity with a continuity as if factory were a person or a licensee *per se*. The notification does not visualise any concession to a licensee who had not engaged in manufacturing activity in any said premises in the preceding year (relevant to year to which duty relates) and in the year 1963-64.

The Ministry of Finance have admitted the objection (December 1983).

2.34 *Petroleum products*

(i) As per a notification issued on 23 December 1961 raw naphtha (classifiable under tariff item 6) is exempted from the payment of so much of duty as is in excess of Rs. 4.40 per kilolitre, if the raw naphtha is used in the manufacture of fertiliser or in the manufacture of ammonia which is used in the manufacture of fertiliser.

As per norms fixed in a fertiliser plant 1.571 kilolitres of raw naphtha went into production of each tonne of ammonia. 2,14,365 kilolitres of raw naphtha (classifiable under tariff item 6) was used in the plant for the manufacture of fertiliser during the period from April 1981 to December 1982 and exemption as aforesaid was availed of.

The ammonia actually produced from the said quantity of raw naphtha was only 90,208 tonnes for which only 1,41,717 kilolitres of raw naphtha should have been consumed. On the balance quantity of 72,648 kilolitres of raw naphtha no exemption from duty should have been granted. Incorrect grant of exemption on the entire quantity of raw naphtha resulted in duty being realised short by Rs. 16.34 crores.

On the mistake being pointed out (February 1983) in audit, the department stated that the matter would be examined.

The Ministry of Finance have stated (December 1983) that the differential duty in respect of the period 1 April 1981 to March 1983 is Rs. 23,54,25,263 and two demands for Rs. 2,84,25,069 were raised for the period December 1981 to March 1983. On appeal the demands were remitted for *de novo* adjudication by Assistant Collector.

(ii) As per an exemption order issued on 13 June 1978 under Rule 8(2) of the Central Excise Rules, 1944, the Central Board of Excise and Customs exempted from levy of excise duty petroleum products falling under tariff items 6 to 11A received by Hindustan Petroleum Corporation from Bharat Petroleum Corporation or *vice versa*, but the exemption was to be allowed only if the said products were utilised as fuel for the production or manufacture of other finished petroleum products.

On waxing distilates classifiable under tariff item 11A supplied by Bharat Petroleum to Hindustan Petroleum duty was not levied even though other supplies were used for blending and processing into new petroleum products and were not consumed as fuel for manufacture of other finished petroleum products. The incorrect exemption allowed on 66.419 tonnes of waxing distilates supplied during the period from October 1981 to September 1982 to Hindustan Petroleum resulted in duty amounting to Rs. 2.01 crores not being realised.

The short levy was pointed out in audit in January 1983.

A similar short levy of duty was also pointed out in para 2.24(i) of Audit Report 1981-82. In reply to that para, the Ministry of Finance had stated that exemption could apply also to products which were not used as fuel. However, the wording of the exemption order, which is the only legal basis for the department to forego revenue, does not allow of such a view as taken by the Ministry of Finance. After further consideration the Ministry of Finance have stated (June 1983) that under Rule 140(2) and 143A of the Central Excise Rules, blending treatment or alteration of the goods, or further manufacture of the goods may be done in a refinery declared as ware-house. The goods could have also been sent under bond without payment of duty for further processing into petroleum products. The movement under bond for production in a warehouse does not allow of exemption from duty but deferment of duty on any excisable products that is produced. Consequent to the retrospective amendment of Rules 9 & 49 of the Central Excise Rules in 1982, without valid grant of exemption under Rule 8 or set off under Rule 56A, department cannot refrain from collecting the duty on any excisable goods that are produced. The goods not used as fuel in the above case were therefore subject to levy of duty.

(iii) Under sub rule (2) of Rule 140 of the Central Excise Rules, 1944, Government may, in the public interest, declare any premises to be a refinery in relation to goods processed or manufactured in such premises. As per a notification issued on 21 December 1967, excisable goods falling under tariff items 6 to 11A produced in such refinery and consumed internally for the manufacture of other goods were fully exempted from duty.

A manufacturer mainly engaged in the generation of "electricity" (tariff item 11E) was also producing wash oil classifiable under tariff item 11A (but duty paid under tariff item 9) which

he consumed captively in the manufacture of other goods. The Central Government by an order, issued in March 1971 declared his premises as 'refinery' in relation to excisable goods falling under tariff item 6 only. The department allowed exemption from duty on wash oil even though classifiable under tariff item 11A (and in fact classified under tariff item 9). The irregularity in classifying the wash oil under tariff item 6 and exempting it from duty resulted in duty amounting to Rs. 4.40 lakhs being not realised on clearances made during the period from March 1975 to March 1981.

On the mistake being pointed out in audit (December 1981) the department did not admit the objection (February 1983).

The Ministry of Finance have stated (December 1983) that the matter is being examined.

(iv) With effect from 1 March 1982 when tariff item 7 was restructured; 'aviation turbine fuel' became classifiable under sub item (1) of tariff item 7 and duty became leviable at Rs. 500 per kilolitre. As per a notification issued on 2 April 1982 duty in excess of Rs. 338.19 per kilolitre was exempted.

A Public Sector oil company was allowed to clear 1,711 kilolitres of 'Aviation turbine fuel' during the period from 1 March 1982 to 1 April 1982 on payment of duty at Rs. 338.19 per kilolitre. Failure to levy duty at the rate of Rs. 500 per kilolitre resulted in duty being realised short by Rs. 2,76,817.

On the omission being pointed out in audit (May 1983) the department confirmed the facts and raised a demand (May 1983) for Rs. 2,76,817.

The Ministry of Finance have stated (December 1983) that the matter is pending adjudication.

2.35 *Electricity*

(i) As per a notification issued on 27 April 1978, electricity classifiable under tariff item 11E was exempted wholly from duty if it was supplied at rates fixed by State Electricity Board or State Electricity Department for agricultural purpose and it is certified to the satisfaction of the Assistant Collector by the Board, department or assessee that electricity has been supplied for agricultural purpose.

In one State for measuring consumption of electricity for agricultural purposes no meters were installed and consumption per month was computed in accordance with a formula prescribed by the Board in 1978 for various categories of users. Exemptions from duty on electricity supplied for agricultural purposes was availed of by the Electricity Board on such basis and was allowed by the department. During 1981-82 the consumption of electricity on the basis of the above formula was 3040.717 million units. But when it was computed on the basis of sample metering done by the Electricity Board, the consumption amounted to only 2817.672 million units. Excess exemption availed on 223.045 million units was, therefore, irregular and resulted in duty being realised short by Rs. 44,60,900. No demands have been raised by the department for recovery of duty short realised.

The short levy of duty was pointed out in audit to the department in July 1983 and it was enquired how the Assistant Collector satisfied himself of the correctness of the exemption availed of and allowed.

In respect of electricity supplied for agricultural purposes, consumption figures do not become available within 7 days of the month following the one in which the electricity was consumed and therefore duty is not realised within 7 days of the following month. The duty is, therefore, paid on the basis of provisional estimates pending availability of consumption figures. In the process between Rs. 7 lakhs to Rs. 50 lakhs were retained by the Board for 3 to 9 months during the years 1982 and 1983 pending finalisation of duty payable.

The mistake was pointed out to the department in July 1983.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(ii) As per a notification issued on 1 March 1978, on electricity produced by generating stations and supplied to auxiliary plants of such stations for generation purposes levy of duty is exempt. Station transformers used for supply of electricity and not for generation are not auxiliary plants for purposes of aforesaid exemption. As per another notification issued in April 1978, electricity to the extent of ten per cent of generation is exempt.

(a) A State Electricity Board recorded wide variations between the quantity of electricity generated on which excise duty was paid and the quantity of electricity generation reported by the State Electricity Board in its administrative reports sent to the State Government. The differences represented the quantity of electricity generated in one generating station and used for running auxiliary plants in other generating stations when they were idle. Just because the State Electricity Board is a single licensee for the purpose of Central Excise Rules, the concession cannot be availed of by it because the notification of March 1978 allows exemption only where the electricity exempted from duty is used for generation of electricity. The irregular grant of exemption resulted in duty being realised short by Rs. 35.46 lakhs on electricity generated during the years 1978-79 and 1979-80.

The short levy was pointed out to the department by Audit in October 1981. The department has not accepted the objection.

The Ministry of Finance have stated (August 1983) that the matter is under examination.

(b) In a coal mine, electricity was generated for use in its industrial units. Exemption in respect of electricity supplied to auxiliary plants was allowed even though the coal mine was not a generating station supplying electricity to outsiders. The incorrect grant of exemption resulted in duty being realised short by Rs. 8,17,032 during the period from March 1978 to December 1981.

On the mistake being pointed out in audit the department issued a show cause-cum demand notice in August 1982. Report on recovery is awaited (September 1983).

The Ministry of Finance have stated (December 1983) that the matter will be examined.

(c) On 36,363 units of electricity consumed in transformers in two thermal stations during the year 1979-80, duty was not levied even though they were consumed in the supply transformers and not for purposes of generation. The mistake resulted in duty amounting to Rs. 7,27,260 not being realised in 1979 and 1980.

On the mistake being pointed out in audit (October 1980) the department stated (July 1982 and January 1983) that the amount has been demanded.

The Ministry of Finance have stated (November 1983) that the demand is pending adjudication.

(d) An Electricity Board was permitted to avail of the aforesaid exemption on electricity lost in transformation in 'step-up and step down' transformers. But transformers were not located in the generating station nor were they 'auxiliary plants' of the stations for purposes of generation of electricity. The energy was consumed at a post generation stage. The irregular grant of exemption resulted in duty amounting to Rs. 2,48,193 not being realised on electricity so lost during the period from 1 April 1980 to 31 January 1982.

On the irregularity being pointed out in audit (November 1981), the said amount was realised between January 1982 and March 1982.

The Ministry of Finance have confirmed the facts (November 1983).

(e) On a portion of the electricity generated in a major thermal power station and supplied for use in the construction works of another thermal power project of the same power station, exemption was allowed incorrectly under aforesaid notifications. This resulted in duty being realised short by Rs. 1,02,921 during the period from April 1979 to March 1982.

On the irregularity being pointed out (December 1981) in audit, the department stated (January 1982) that the construction project was an extention of the existing power station and so was covered by the notification issued on 1 March 1978. The term auxiliary plant cannot be taken to cover a new project and the exemption granted was not covered by the notification.

The Ministry of Finance have stated (November 1983) that the matter is under examination.

(f) In four generating stations duty was exempted on electricity drawn from general grid or from outside sources for

consumption in auxiliary plants by treating it as electricity generated in the generating stations. The irregular grant of exemption resulted in duty being realised short by Rs. 82,756 during the period from February 1979 to March 1983.

The mistake was pointed out in audit in July 1983. The Ministry of Finance have stated (December 1983) that the matter is under examination.

(g) In a power station transformation and bus-bar losses not occurring in auxiliary plants were excluded for purposes of levy of duty over and above exemption from duty to the extent of 10 per cent of generation in the generating station. Irregular grant of additional exemption on energy used as transformation or bus-bar losses was irregular and thus resulted in duty being realised short by Rs. 1,18,392 during the period from October 1981 to March 1983.

The mistake was pointed out in audit in July 1983. The Ministry of Finance have stated (December 1983) that the matter is under examination.

2.36 *Patent or proprietary medicines*

As per a notification issued on 3 May 1969, on patent or proprietary medicines containing one or more of the ingredients specified in the schedule to the notification, levy of duty in excess of 2.5 per cent *ad valorem* was exempted upto 18 June 1980 and wholly exempted thereafter. The exemption was subject to the condition that if the medicine contains any ingredient not specified in the said schedule 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 schedule, if the exemption is to be allowed.

(i) A manufacturer cleared two medicines 'Diodoquin' and 'Floraquin' which contained 'Sodium sulphate' and 'Boric acid' respectively as ingredients which were not specified in the aforesaid schedule. The ingredients were also not therapeutically inert. However, the manufacturer was allowed to avail of the exemption in the aforesaid notification resulting in duty being levied short by Rs. 1.9 lakhs on the clearances made during the period from January to December 1978.

On the mistake being pointed out (May 1979) in audit, the department stated (January 1982) that the concerned Food and Drug Administration department of the State Government had certified that the said ingredients used in the medicines were therapeutically inert in so far as these medicines were concerned and, therefore, the exemption was correctly allowed. However, reference to the pharmacopoeia indicates that the said ingredients have therapeutic property. As per wordings in the notifications it is therefore not therapeutically inert and the concession is not admissible. The wordings of the notification do not allow of a technical view that the inertness is to be judged in parts and in relation to any particular disease. Such disease-wise interpretation accepted by the department allows of ambiguous view on inertness which is not capable of resolution by reference to pharmacopoeia. The department has also not advanced the view of the Central Drug Controller or his advice on interpreting inertness of an ingredient any number of times in relation to any number of diseases.

The Ministry of Finance have stated (August 1983) that the matter is under examination with the Drug Controller of India.

(ii) As per a notification issued on 8 October 1966, medicines classifiable under tariff item 14E are exempt from so much of the duty of excise as is in excess of the duty calculated on the value arrived at after allowing a discount of 25 per cent on the price specified in the retail price list filed under Drugs (Price Control) Order 1979. An explanation in the notification clarifies that the element of excise duty, if any, added to the price shall be deducted before allowing the discount. The duty of excise referred to in the explanation in the said exemption notification issued under Rule 8(1) of the Central Excise Rules can refer only to excise duty leviable under the Central Excise Act in the light of the Central Excise (Amendment and Validation) Act, 1982.

In granting exemption as aforesaid to two manufacturers of medicines classifiable under tariff item 14E the element of excise duty including special excise duty leviable under a Central Act other than the Central Excise Act was deducted in allowing the discount. The deduction of the element of special excise duty from the retail price to arrive at the assessable value was contrary to law and resulted in a short realisation of duty by Rs. 1,32,087 on clearances made during the period from 1 April 1981 to 31 March 1982.

The mistake was pointed out in audit in March 1983.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

2.37 *Fertilizers*

As per a notification issued on 26 July 1971, ammonia classifiable under tariff item 14H(iii) if used in the manufacture of fertilizers classifiable under tariff 14HH was wholly exempted from duty.

(i) A manufacturer of ammonia (classifiable under tariff item 14H) used it for the manufacture of dilute nitric acid which was classifiable under tariff item 14G and excisable. The nitric acid was, thereafter, used for the manufacture of fertilizer. Notifications have been in force since 1964 exempting nitric acid from the whole of the duty of excise leviable thereon. However, the ammonia was not eligible for exemption since it was not used in the manufacture of fertilizer by an uninterrupted process, nor was nitric acid, an intermediate excisable product incapable of removal. As per criteria for excisability of intermediate product laid down by High Court of Delhi in the case of J.K. Cotton Spinning and Weaving Mills and another vs. Union of India and others (1983 ELT 239 (Del.), nitric acid which was capable of removal was not a non-excisable intermediate product. The irregular grant of exemption resulted in duty amounting to Rs. 3.06 crores payable on clearances made during the period from January 1981 to September 1982 not being realised.

The irregularity was pointed out in audit in December 1982 and April 1983.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(ii) A manufacturer of fertilizer utilised a portion of the ammonia gas produced by him directly in the manufacture of fertilizer and the balance of the gas in the manufacture of nitric acid classifiable under tariff item 14G. He was allowed to avail of the exemption on the entire quantity of ammonia gas under

the above said notification. On the quantity of ammonia used in the manufacture of nitric acid, the irregular grant of exemption resulted in duty being realised short by Rs. 3.25 crores on clearances made during the period from April 1981 to June 1982.

On the mistake being pointed out in audit (February 1983), the department stated (August 1983) that nitric acid was an intermediate product in the manufacture of fertilizer. Therefore no separate notification was needed for exempting from duty ammonia used in manufacture of nitric acid. The exemption notification cannot legally apply to nitric acid which is not an intermediate product but an excisable product entirely different from ammonia or fertilizer both of which are also separate and distinct excisable products.

The irregularities in grant of exemption arose from overlooking the fact of separation of manufactured products into distinct excisable goods as enumerated in the Tariff. There is no provision in the Act or the Rules thereunder to cover the view of the department leading to loss of revenue.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

2.38 *Other chemicals*

(i) As per a notification issued on 23 March 1975, sulphuric acid classifiable under tariff item 14G and intended for use in the manufacture of fertilizers is exempted from the whole of the duty of excise leviable thereon.

A manufacturer of sulphuric acid of strengths 98 per cent and 68 per cent, both classifiable under tariff item 14G used only acid of strength 68 per cent in the manufacture of fertilizers. The sulphuric acid of strength 98 per cent was used in the manufacture of concentrated nitric acid (classifiable under tariff item 14G) and phosphoric acid (classifiable under tariff item 68) and the latter two acids were in turn used in the manufacture of fertilizers. There was no notification exempting from duty sulphuric acid used in the manufacture of nitric or phosphoric acid. Therefore, the exemption from duty in respect of sulphuric acid used in the manufacture of two other distinct

excisable goods viz. nitric and phosphoric acid, was not in order and resulted in duty amounting to Rs. 1.88 crores not being realised on clearances made during the period from January 1981 to September 1982.

The mistake was pointed out in audit in December 1982.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(ii) As per a notification issued in November 1961, certain synthetic organic dye stuffs classifiable under item 14D were exempted from the whole of the duty of excise leviable thereon if, and only if, such dyes were manufactured from any other dye on which duty of excise or countervailing duty had already been paid.

A manufacturer of "Stabilized azoic dyes" classifiable under tariff item 14D produced out of other dyes was allowed exemption from duty in terms of the notification ibid. However, no proof of payment of excise duty or countervailing duty was available in respect of the raw materials used by him. As clarified by the Ministry of Law in November 1982, proof of payment of duty was necessary for allowing the exemption in this case and since it was not available the exemption was not admissible. This irregular grant of exemption resulted in duty being realised short by Rs. 10.25 lakhs on clearances made during the year 1981-82.

On the mistake being pointed out in audit (December 1982) the department stated (February 1983) that since the base material was purchased from local market it was not possible for the assessee to produce proof of payment of duty. The department also stated that the matter has been referred to the Government for reconsideration of the advice given by the Ministry of Law in November 1982 and accepted by the Ministry of Finance.

The Ministry of Finance have stated (November 1983) that the matter is under examination.

(iii) As per a notification issued in February 1980 'Urea formaldehyde moulding powder' classifiable under tariff item 15A(i), if manufactured from raw naphtha or any chemical derived therefrom, on which the appropriate amount of duty of excise has already been paid, is exempt from so much of the duty of excise as is in excess of 33 per cent *ad valorem*.

A manufacturer of "Urea formaldehyde moulding powder" produced it from "urea" which he received from another unit. He was allowed to avail of the exemption under the aforesaid notification. But the urea used in the manufacture of "Urea formaldehyde moulding powder" was not produced only from naphtha but also from petroleum gas. On so much of the urea as was not manufactured from raw naphtha or any chemical derived therefrom, grant of exemption was therefore irregular and resulted in duty being realised short by Rs. 5.75 lakhs on clearances made during the year 1980-81.

On the mistake being pointed out in audit (September 1981) the department stated (April 1982) that the use of gas and other chemicals in the manufacture of urea does not make the end product ineligible for exemption. But the words "manufactured from" appearing in the aforesaid notification do not bear out the view of the department. Nor have any technological necessities been advanced as the reason for use of the gas, which was the principal raw material and was not used, in addition, out of technological necessity.

The Ministry of Finance have stated (November 1983) that the matter is under examination.

(iv) As per a notification issued on 25 December 1971 "ceramic colour" falling under tariff item 14 dealing with paints and varnishes was exempted from duty. "Glass colour" which is different from "ceramic colour" was, however, not covered by the aforesaid exemption notification.

A manufacturer of "ceramic colour" and "glass colour" availed of the above concession on both the varieties of colours. Since the duty exemption was limited only to ceramic colour, the irregular grant of exemption in respect of "glass colour" resulted in duty being levied short by Rs. 3,54,220 on clearances made during the years 1978-79 to 1980-81.

The mistake was pointed out in audit (January 1982) to the department.

The Ministry of Finance have stated (August 1983) that show cause-cum demand notice has been issued for Rs. 3,38,283 for the period 1978-79 to 1982-83.

(v) As per a notification issued on 1 March 1975, soap classifiable under tariff item 15, if made from indigenous rice bran oil or from a mixture of such oil with any other oils, is exempt from so much of the duty of excise leviable thereon as is equivalent to the amount of duty calculated. The duty is to be calculated in respect of each tonne of such soap at the rate of three rupees and fifty paise for each additional percentage point of increase in the use of such rice bran oil over twenty five per cent of the total oils used in the manufacture of such soap. The expression 'total oil' is to include saponifiable materials and matters contained in soap stocks and soap scrap.

A manufacturer of laundry and toilet soaps used rice bran oil and availed of aforesaid exemption in payment of duty. He also used soap scrap, accumulated at various stages of production, for the purpose of regeneration of soap. In computing the percentage of rice bran oil in the total oils he did not include the saponifiable matters contained in the soap scrap. The exclusion of saponifiable matters contained in scrap resulted in percentage of rice bran oil being computed at a higher figure with consequent short levy of duty amounting to Rs. 1,69,175 on clearances made during the period from September 1975 to February 1979.

On the mistake being pointed out in audit (May 1978) the department issued two show cause notices in August 1979 for the amount of Rs. 1,69,175. But on appeals it was held that the demands were barred by limitation. In the result there was loss of revenue amounting to Rs. 1,69,175. Action taken to raise demands in respect of clearances made during the period beyond February 1979 is awaited (June 1983).

The Ministry of Finance have stated (November 1983) that appeal is being filed before the Tribunal against the orders of Collector (Appeals).

2.39 *Tyres*

As per a notification issued in January 1974 (as amended), on tyres classifiable under tariff item 16, duty was leviable at a concessional rate of 40 per cent *ad valorem* instead of 55 per cent *ad valorem* subject to the total clearances of tyres during the preceding financial year not exceeding two crores of rupees in value. While deciding a Revision Application in October 1979

Government of India clarified, that the concession was not available in respect of tyres cleared in the financial year in which production commences, since there would be no clearances made during the preceding financial year. However, as per a notification issued in March 1981 extending the aforesaid concession to new units even in their first year of production, the unit was required to file a declaration that the clearances were not likely to exceed Rs. 2 crores during the first year of production.

A manufacturer of tyre flaps commenced production in July 1977 and availed of the aforesaid concession in respect of 53,211 numbers of tyre flaps cleared during the year 1977-78. Since the concessional rate of duty was not available on clearances made in the first year of production prior to March 1981, on the clearances made during the year 1977-78 duty was levied short by Rs. 66,667.

On the mistake being pointed out in audit (May 1981), the department stated (February 1983) that a show cause notice demanding duty amounting to Rs. 66,667 had since been issued on 19 April 1982. But in April 1983 the department stated that the condition regarding clearances in the preceding financial year had no relevance and that the Government's intention was not to deny the concession in respect of the first year of production even prior to March 1981 and in any case the department had already initiated action on its own in October 1981 to recover the duty after orders of Government passed on the said Revision Application were received in August 1981. It is, therefore, not clear whether the department has accepted the audit objection of May 1981 that duty amounting to Rs. 66,667 is recoverable.

The Ministry of Finance have stated (August 1983) that the matter is under examination.

2.40 *Paper*

(i) All sorts of kraft paper (including impregnated kraft paper) were classifiable under tariff item 17(2) and duty thereon was leviable at 40 per cent *ad valorem*. As per a notification issued on 24 January 1978 on paper other than all sorts of paper commonly known as kraft paper, duty in excess of 30 per cent was exempted.

A manufacturer of decorative laminated particle boards (classifiable under tariff item 68) was allowed to bring in kraft paper on which duty had been paid at 40 per cent and produce resin impregnated kraft paper therefrom, which was further subjected to manufacture, to produce the laminated boards. On impregnated kraft paper, duty was paid at 30 per cent by viewing it as other than "all sorts of paper commonly known as kraft paper" instead of viewing it as another sort of kraft paper viz. impregnated kraft paper. The misclassification resulted in duty being realised short by Rs. 3,18,317 on clearances made from March 1979 to February 1982.

On the mistake being pointed out in audit (August 1981) the department did not accept the objection and stated (July 1982) that impregnated kraft paper was not kraft paper. It is inconceivable that intention behind the notification was to allow duty paid at 40 per cent on kraft paper to be set off under Rule 56A from duty payable on impregnated paper on which duty was to be levied only 30 per cent.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(ii) As per a notification issued on 18 June 1977, cream woven and coloured writing and printing paper was exempted from 60 per cent of the duty leviable if the installed annual capacity of the paper mill exceeded 2,000 tonnes but did not exceed 5,000 tonnes, and 50 per cent of the duty leviable if the installed annual capacity exceeded 5,000 tonnes but did not exceed 10,000 tonnes.

A manufacturer of aforesaid variety of paper, with installed annual capacity of 7,000 tonnes (as certified by the Ministry of Industries, Department of Industrial Development in December 1976) was allowed to avail of exemption from 60 per cent of the duty leviable based on production capacity of 3,000 tonnes per year as declared by the assessee. The misdeclaration accepted by the department resulted in duty being realised short by Rs. 1.24 lakhs on clearances made during the period from August 1980 to June 1982.

On the mistake being pointed out in audit in April 1982 the department raised demand for Rs. 1.24 lakhs.

The Ministry of Finance have stated (December 1983) that the concerned Collector is being directed to report the correct installed capacity in this case.

2.41 *Textile fabrics and yarn*

(i) As per a notification issued on 15 July 1977, duty leviable on controlled drill (being drill cloth defined for purpose of price control by Textile Commissioner) was exempted to the extent of 50 per cent. Prices of two varieties of drill were controlled till 1 November 1969, whereafter one variety ceased to be controlled drill as per notification of Textile Commissioner issued on 4 October 1979.

A manufacturer of textile fabrics was allowed to avail of 50 per cent exemption from duty on cotton drills which fabric ceased to be controlled drill after 1 November 1969 and upto 17 December 1979. The incorrect grant of exemption resulted in loss of revenue amounting to Rs. 51.56 lakhs on clearances made during the period from July 1977 to December 1978.

On the mistake being pointed out in audit (August 1980), the department stated (February 1981) that the fabric was controlled drill till 17 December 1979. But the Central Board of Excise and Customs had confirmed in September 1980 that Textile Commissioner's notification issued on 13 October 1964 defining 'drill' had not been rescinded while issuing another notification on 2 May 1968 which indicated what was controlled drill. But only the description of controlled drill as notified by Textile Commissioner on 2 May 1968 was relevant for purposes of exemption of duty. Accordingly, on the variety of drill not controlled after 1 November 1979 exemption was not available.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(ii) As per provisions in the Central Excise Rules, 1944, excisable goods produced or manufactured at any place and consumed or utilised as such, or after subjection to any process or processes or for the manufacture of any other commodity tantamounts to their removal from such place. Such removal cannot be effected either for consumption or for manufacture of any other commodity in or outside such place until excise duty leviable thereon has been paid.

in seven textile units under the jurisdiction of a Collector cellulosic and non-cellulosic spun yarns (classifiable under tariff item 18 and 18E) were manufactured. The single ply yarn, after winding it on cones was partly cleared by the manufacturers for sale on payment of duty and was partly removed for doubling the yarn but without payment of duty. Duty in the latter case was, paid at the time of removal of the doubled yarn but exclusive of weight of single yarn wasted in the products. Non payment of duty on the wasted single yarn resulted in duty amounting to Rs. 23.87 lakhs not being realised on 128 tonnes of yarn lost in the process of producing 297 tonnes of doubled yarn. Duty was also realised short by a further amount of Rs. 31.70 lakhs in respect of 291 tonnes of doubled yarn in stock on 28 February 1982 on which duty was paid at only Rs. 9 and Rs. 18 on yarns classified under tariff items 18 III (ii) and 18E respectively instead of Rs. 18 and Rs. 24 per kilogram that was payable on single ply yarn removed for doubling prior to 28 February 1982.

On the mistakes resulting in short realisation of duty amounting to Rs. 55.57 lakhs being pointed out in audit (between December 1977 and April 1983), the department raised demands for Rs. 36.07 lakhs out of which Rs. 0.35 lakh was recovered. These demands were later set aside on appeal or were barred by limitation (Rs. 1.22 lakhs) or are pending adjudication or decision on appeal.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(iii) Under a notification dated 12 August 1977, woollen yarn falling under tariff item 18B(ii), other than worsted woollen yarn and containing non-cellulosic fibre in the form of wastes or in the form of fibre produced out of such wastes, is exempt from the whole of duty of excise leviable thereon.

In a factory semi-worsted woollen yarn manufactured out of carded gilled slivers (containing 70.7 per cent wool and 29.3 per cent nylon waste), classifiable under tariff item 18B(ii), was allowed to be cleared without payment of duty under the said notification on the ground that semi-worsted woollen yarn was not worsted yarn. Also the yarn had not been produced from wool tops and it contained 6 to 8 per cent short fibre on which no combing of extra gilling had been done. However as was clarified by the Board in August 1973, worsted yarn could be manufactured from wool slivers, which were only carded and gilled but

not combed. Therefore, by describing what was cleared as semi-worsted, it did not cease to be worsted woollen yarn. The irregular clearances resulted in non payment of duty amounting to Rs. 5,26,295, on 24,236.5 kilograms of worsted woollen yarn cleared without payment of duty during the period from September 1980 to June 1981.

The mistake was pointed out in audit in August 1981. Subsequently in April 1982, the Chief Chemical Examiner, Central Excise Central Control Laboratory, New Delhi also confirmed that the yarn produced by the factory was worsted yarn and that semi-worsted system was only a modified form of worsted system. Thereupon the department issued show cause notice to manufacturer in February 1982.

The Ministry of Finance have stated (July 1983) that the demand has been confirmed on 18 December 1982.

(iv) As per a notification issued on 24 November 1979, unprocessed cotton fabrics are exempt from duty of excise as well as additional duties of excise if they are further manufactured within the factory in which they were manufactured into processed cotton fabrics.

(a) In a composite textile mill grey (unprocessed) cotton fabrics were produced and removed to another manufacturing unit managed by the same manufacturer for being further processed. The clearance was made during the period from November 1981 to November 1982 under bond without payment of duty even though further processing was not done within the same factory.

On the omission to levy duty being pointed out in audit (March 1983), the department raised a demand for Rs. 56,68,347 for the period from October 1981 to October 1982, because the exemption was allowed incorrectly. The department, however stated (March 1983) that under the Central Excise Rules (96-D) the manufacturer could have applied for clearance of the unprocessed fabric under bond without payment of duty from one licensed premises to another and the collection of duty on the fabrics would thereby have been deferred for payment at the point of its final clearance after the cloth is processed. However, on removal under bond the duty payable on unprocessed cloth would have only been deferred under the rules but would not have been exempted.

(b) From two composite textile mills grey unprocessed cotton fabrics were cleared and sent to independent processors outside for further processing and without payment of duty under the procedure prescribed in Central Excise Rules (96D). But duty amounting to Rs. 6.01 lakhs on clearances made during the period from May 1980 to August 1982 was not paid at the time of final clearance of the fabrics from the processing units.

On the omission being pointed out in audit (August 1981) the department stated (June 1982) that on clearance under bond without payment of duty from one licensed premises to another the collection of duty on the fabrics is deferred to the point of its clearance after processing of the cloth.

In respect of the above three cases the Ministry of Finance have stated (December 1983) that if removal is validly made under rules without payment of duty there will be no question of duty payment. The view of the Ministry that provision in rules for removal on deferment of duty should be taken as authority for exemption or set off from duty is not correct. Rules cannot by implication waive collection of duty levied under the Act. A valid notification for exemption from duty under Rule 8(1) or set off under Rule 56A of the Central Excise Rules is necessary before duty can be left uncollected.

2.42 *Cement*

On grey portland cement and certain other varieties of cement (whether produced in a large plant or in a mini plant) which were subject to price and distribution control by Government under the Cement Control Order, 1967, concessional rates of duty were allowed. But with effect from 28 July 1982, the effective rate of duty on portland cement was raised to Rs. 135 per tonne, and the concessional rate became applicable only to such cement as was produced in a mini plant. The concessional rate of duty was fixed at Rs. 100 per tonne. The concession was to be allowed on such cement, only if it continued to be subject to price control by Government. However, Government removed control on cement produced in mini cement plants also under a dual price policy effective from 28 July 1982. In the result on cement produced in a mini plant which was not under price control, concessional rate of duty was not to be allowed from that date.

On clearances of 6,618 tonnes of portland cement made from two mini cement plants during the period from 28 February 1982 to 30 June 1982, duty was levied only at Rs. 100 per tonne resulting in duty being levied short by Rs. 2,31,625.

On the mistake being pointed out (August 1982) in audit, the department stated that on portland cement produced in a mini plant concessional rate was to be allowed as per the Press Note issued on 27 February 1982 by the Ministry of Industry announcing its dual price policy. The reply does not explain how concession could be allowed when the condition in the statutory notification that the cement be not subject to price control had not been satisfied.

The Ministry of Finance have stated (August 1983) that the matter is under examination.

2.43 *Steel ingots and scrap*

(i) As per a notification issued on 18 June 1977, certain specified types of fresh unused steel melting scrap falling under tariff item 26 cleared directly from an integrated steel plant for use in the manufacture of steel ingots, semi-finished steel or steel castings, with the aid of electric furnace were allowed to be cleared without payment of duty. A manufacturer cleared steel ingots manufactured with the aid of electric furnace without payment of duty, on the plea that the above referred notification allowed it. The irregular clearances resulted in duty amounting to Rs. 20,21,106 not being realised on clearances made between February 1978 and January 1979.

On the mistake being pointed out in audit (February 1981), the department stated (December 1981 and September 1982) that a show cause-cum demand notice for Rs. 20,21,106 had since been issued in April 1981 and was under adjudication.

The Ministry of Finance have stated (August 1983) that the matter is under examination.

(ii) As per a notification issued on 29 January 1979, duty was exempted on skull scrap, runners and risers classifiable under tariff item 26 and arising in the course of manufacture of steel ingots using electric furnace. The exemption was subject to the condition that the scrap be used in the manufacture of

steel ingots in the factory of production. If used elsewhere than in the factory of production and in the manufacture of steel ingots using electric furnace, procedure prescribed in chapter X of Central Excise Rules was to be followed in order that exemption may be allowed. On 5 June 1981 the exemption was extended to skull scrap, runners and risers arising in the manufacture of steel castings also (using electric furnace) provided the scrap was in turn used in the manufacture of steel ingots or steel castings.

A manufacturer of motor vehicles was allowed to clear steel scrap in the form of 'runners and risers' arising in the course of manufacture of steel castings using electric furnace, and use them captively in the manufacture of steel ingots and steel castings. He was allowed exemption from duty on such clearances even prior to 5 June 1981. Duty not realised amounted to Rs. 6.81 lakhs on clearances of 1,675 tonnes of runners and risers during the period from April 1980 to May 1981.

The omission was pointed out in audit in November 1981.

The Ministry of Finance have stated (November 1983) that the show cause-cum demand notice has been issued which is under process of adjudication.

(iii) As per a notification issued in March 1983, on steel ingots classifiable under tariff item 26 which are manufactured from fresh unused steel melting scrap levy of duty was exempted provided the steel ingots were manufactured from fresh unused steel melting scrap on which the appropriate duty has already been paid.

A manufacturer of steel ingots was allowed to clear steel ingots without paying duty but without verifying that on fresh used steel melting scrap appropriate duty had been paid. In the result duty amounting to Rs. 21,19,313 on ingots cleared during the period September 1977 to March 1979 had not been realised.

On the omission being pointed out (October 1980) in audit, the department issued (May 1981) a demand notice for Rs. 21,19,313. It was also noticed in audit subsequently that further demand notices for duty amounting to Rs. 95,87,697 were raised (1982-83) in respect of clearances during the period from

April 1979 to March 1983. The confirmation of the demands and recovery of amount of Rs. 1,17,07,010 is awaited (August 1983).

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(iv) Steel melting scrap is an excisable product under tariff item 26 (from August 1983 waste and scrap of steel arising during manufacture is excisable under tariff item 25). As per a notification issued in March 1964 steel melting scrap is exempted from duty only if the appropriate amount of duty or countervailing duty has been paid on the steel sheets from which it arises. As per a clarification issued by the Ministry of Finance in November 1982 no presumption could be made about payment of appropriate duty.

A manufacturer of scooters did not produce proof of payment of duty on steel sheets purchased by him from the open market, but he was allowed to avail of exemption from duty on steel melting scrap arising during manufacture.

Irregular grant of exemption on clearances made during November 1982 amounted to Rs. 2.90 lakhs.

The irregularity was pointed out in audit in April 1983.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

2.44 *Iron and steel products*

As per a notification issued in November 1963, iron or steel products classifiable under tariff item 26 AA(ia) manufactured out of other iron or steel products also classifiable under tariff item 26 AA(ia) on which the appropriate amount of duty of excise has already been paid were exempted from the payment of the whole of duty of excise leviable thereon. As per the Central Excise (Amendment and Validation) Act, 1982, reference to duty of excise in such notifications does not cover countervailing duty.

(i) A manufacturer of iron wires used in its manufacture, imported material classifiable under the aforesaid sub item (ia) but was allowed to avail of the exemption from payment of duty under the aforesaid notification. Further only on a part of the imported input materials countervailing duty had been

paid and on the other part duty had not been paid. The irregular grant of exemption resulted in duty amounting to Rs. 14.50 lakhs not being realised on clearances made during the year 1981-82.

The mistake was pointed out in audit in January 1983.

The Ministry of Finance have stated (November 1983) that the party has approached the Appellate Tribunal, who have stayed the recovery.

(ii) A manufacturer of electrically welded wire nets classifiable under tariff item 68 produced from imported steel wire bars classifiable under tariff item 26AA(ia) and redrew the wires into wires of smaller dimension in the process of manufacture.

On the redrawn wires he was allowed exemption from duty though it was made out of imported wires. The irregular grant of exemption resulted in non levy of duty amounting to Rs. 3.96 lakhs on clearances made during the period from April 1980 to March 1982.

On the mistake being pointed out in audit (October 1982) the department did not accept the objection (March 1983). However, the department issued (December 1982) a show cause-cum demand notice to the manufacturer.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(iii) Another manufacturer of bolts, nuts and screws classifiable under tariff item 52 produced them from imported high tensile alloy steel rods classifiable under tariff item 26 AA (ia). He imported material, in the form of rods and converted them into wires and forged shapes by redrawing and forging which are processes of manufacture. Though duty was payable, under aforesaid notification of November 1963 it was exempted though imported raw materials were used for manufacture. This resulted in duty amounting to Rs. 8.83 lakhs not being realised on clearances made during the period from April 1981 to March 1982.

The irregularity was pointed out in audit in December 1982.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(iv) Another manufacturer producing steel balls of different sizes manufactured them out of imported as well as indigenous wire rods in coil form which were also classifiable under the said sub item (ia). These wire rods were redrawn first and forged into small pieces which were then used in the manufacture of steel balls. No evidence was on record that appropriate duty had been paid on the indigenous rods in coil form. Even though duty was payable on the finished steel balls, manufactured out of imported wire rods exemption under the aforesaid notification was allowed irregularly resulting in duty amounting to Rs. 1.45 lakhs not being realised on clearances made during the year 1982.

The mistake was pointed out in audit (February 1983).

The Ministry of Finance have stated (November 1983) that a show cause notice demanding an amount of Rs. 1,45,200 has been issued on 3 September 1983 and is pending adjudication.

(v) A manufacturer imported steel bars classifiable under tariff item 26AA(ia) and forged them without paying duty on the forged item on the strength of aforesaid notification. But the duty amounting to Rs. 1 lakh was payable on the forgings manufactured out of imported steel bars and cleared during the period from July 1982 to February 1983. However, the duty was not realised.

On the mistake being pointed out in audit (March 1983) the department stated (May 1983) that it does not appear to be the intention of the Government to levy duty on the forged product. This view is not in accordance with the provisions of law referred to above.

The Ministry of Finance have stated (November 1983) that the matter is under examination.

2.45 *Copper and copper alloys*

(i) As per a notification issued on 16 July 1966, on copper wire rods classifiable under tariff item 26 A(ia), if made from virgin copper in any crude form on which the prescribed amount of excise duty has already been paid, levy of duty is wholly exempt.

A manufacturer of copper wire rods made out of virgin copper drawn into wire bars was allowed to avail of the aforesaid

exemption from duty. However, there was no evidence on record to show that the wire bars which were supplied to the manufacturer by his customers had discharged the prescribed amount of duty payable on them. The exemption was, therefore, irregularly availed of and duty amounting to Rs. 5.52 crores on 18,407 tonnes of copper wire rods cleared during the period from April 1981 to March 1982 was not realised.

On the irregularity being pointed out (September 1982) in audit, the department stated (November 1982) that as per clause (iv) of the said notification levy of duty was wholly exempted also on copper and copper alloys falling under tariff item 26A(ia), if manufactured from copper and copper alloys in any crude form purchased from the market on or after 20 day of August 1966. However, no statement had been made that the said wire bars had been purchased from the market. In fact the cast copper wire bar was received from primary manufacturer on job work basis for being manufactured into hot rolled copper wire rod in coil form.

The Ministry of Finance have stated (November 1983) that the matter is under examination.

(ii) As per a notification issued on 28 December 1963 (which was amended on 19 June 1980 and superseded by another notification issued on 4 November 1981) duty payable on copper pipes and tubes was exempted from so much of the duty as is equivalent to the duty payable, on copper manufactures (from 4 November 1981, on copper in any crude form or waste and scrap of copper) used in the manufacture of pipes and tubes.

On copper sheets and strips used in the manufacture of brass barrels (copper tubes) used in fabrication of torch bodies, duty was paid only at the lower rate under an exemption notification issued on 24 April 1982. But while paying duty on the brass barrels duty equivalent to the gross duty payable on sheets and strips was exempted instead of duty at the lower rate which was payable (and also paid) on the sheets and strips used in the manufacture of brass barrels (after 4 November 1981 also exemption was allowed equivalent to gross duty payable on copper sheets or strips instead of that on copper in crude form). The mistakes resulted in duty being realised short by Rs. 26.99 lakhs on clearances made during the period from August 1980 to August 1982.

On the mistake being pointed out in audit (October 1981 and October 1982) the department did not agree and stated (May 1983) that the matter was under examination. However, two show cause notices demanding duty of Rs. 26.99 lakhs were issued by the department in March 1983 and May 1983.

The Ministry of Finance have stated (November 1983) that the matter is pending adjudication.

(iii) As per a notification issued in May 1965, the duty payable on copper strips and foils was to be limited to Rs. 700 per tonne, if they have been manufactured out of copper in any form and provided on the virgin copper or the copper content of the alloy where it is so used for manufacture, the prescribed amount of duty of excise or the countervailing duty has been paid or is deemed to have been paid.

A manufacturer of copper strips and foils produced them out of imported scrap (berry) and was allowed to avail of the concession under the aforesaid notification. But countervailing duty was not paid on the imported scrap which was a condition precedent to the availing of the concession. The irregularity resulted in duty being realised short by Rs. 15.77 lakhs in respect of the clearances made during the period from November 1981 to May 1982 alone.

The mistake was pointed out in audit in January 1983.

The Ministry of Finance have stated (December 1983) that the entire issue of levy of countervailing duty on imported scrap in this case is sub-judice before a High Court.

(iv) As per a notification dated 4 November 1981 issued in supersession of an earlier notification issued on 28 December 1963 pipes and tubes of copper, in the manufacture of which copper in crude form purchased from the market was used were exempted from so much of the duty of excise leviable thereon as was equivalent to the duty payable on copper in any crude form. Further under a notification issued on 19 June 1980, exemption to the extent of duty paid on zinc, aluminium and lead used as inputs in the manufacture of copper alloys was allowed in paying duty on the copper alloy. This exemption notification of 19 June 1980 was withdrawn by a notification issued on 28 August 1981.

As per the provisions of notification of 28 December 1963 aforesaid, on brass pipes and tubes produced by him, a manufacturer was allowed to avail of exemption from duty to the extent of duty paid on copper contained in the finished products. But from 4 November 1981, he was allowed to avail of exemption to the extent of duty paid on copper alloys i.e. duty paid on copper as well as other metals such as zinc etc. contained in the alloy. Because copper predominates in the copper alloy the whole material was viewed as copper and the exemption was deemed to include duty paid on metals other than copper alloys. The view is incorrect since it allows copper to mean zinc, etc., when as per tariff, the expression 'Copper' can only be read to mean copper alloy also. The incorrect view set at naught the withdrawal of exemption under notification issued on 19 June 1980, by the notification issued on 28 August 1981.

The action taken to the detriment of revenue resulted in duty being realised short by Rs. 46,778 on clearances of pipes and tubes during the period from January to March 1982.

The irregularity was pointed out in audit in July and August 1982.

The Ministry of Finance have stated (November 1983) that the matter is under examination.

2.46 *Aluminium*

(i) As per a notification issued on 1 March 1975, aluminium circles were exempted from duty if they were manufactured from aluminium sheets on which appropriate amount of duty or countervailing duty has already been paid.

A manufacturer of aluminimum circles produced them from aluminium sheets which he had first manufactured out of crude aluminium. On aluminium sheets which are also excisable goods no duty was realised, still exemption as aforesaid was allowed on the aluminium circles. The irregular grant of exemption or alternatively the non levy of duty on the sheets resulted in duty amounting to Rs. 3.09,870 not being realised on clearances made during the period from November 1981 to September 1982.

On the mistake being pointed out in audit (November 1982), the department stated (November 1982) that aluminium sheets were not excisable. However, there was no valid exemp-

tion from levy of duty on aluminium sheets.

On a similar short levy of duty amounting to Rs. 2,39,775 reported in paragraph 2.42 (ix) of Audit Report 1981-82, the Ministry of Finance had stated that circles, manufactured from aluminium scrap were exempted from duty because sheets in question were intermediate products on which duty was not leviable. But Rules 9 and 49 of Central Excise Rules do not allow excisable products to be cleared or deemed to be cleared without payment of duty by merely describing them as intermediate products. Even as per amendment to the said two rules notified on 9 July 1983, sheets cannot be cleared for manufacture into circles without payment of duty since the circles were wholly exempted from duty.

The Ministry of Finance have stated (November 1983) that the matter is under examination.

(ii) As per a notification issued in June 1972, aluminium foils coated or printed or backed with paper or other reinforcing material were exempt from the whole of the duty of excise leviable on them, if they had been produced out of aluminium foils on which the appropriate duty of excise or countervailing duty had been paid. Further, the total quantity of such foils taken for the process of manufacture in one or more of the factories of the same manufacturer in any financial year was not to exceed 5 tonnes.

A manufacturer of printed cartons and boxes undertook a job for laminating aluminium foils supplied by customer with polypaper cellophane foil and printing and slitting. Proof of payment of duty on the aluminium foils was not available on record. The manufacturer had received 68 tonnes of aluminium foils from various parties on job work basis during the period from April 1982 to December 1982 which was in excess of the limit of 5 tonnes. However, he was allowed to enjoy the benefit of the above exemption irregularly resulting in duty being realised short by Rs. 84,000 on clearances made during the period from April 1981 to December 1982.

The mistake was pointed out in audit in August 1981 and again in November 1982 by internal audit of the department.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

2.47 *Machinery and miscellaneous manufactured articles*

(i) As per a notification issued in June 1980, on multi-channel television sets (classifiable under tariff item 33A) which are priced at a value not exceeding Rs. 1,800 per set inclusive of charges for after sale service during the first year, duty in excess of 10 per cent *ad valorem* was exempted though the rate given in tariff was 25 per cent *ad valorem*.

A manufacturer of television sets, who was allowed to avail of the above exemption also recovered separately service charges from his buyers and the total price charged exceeded Rs. 1,800. Irregular grant of exemption resulted in duty being levied short by Rs. 3,94,553 on clearances made during the period from April 1981 to April 1982.

On the short levy being pointed out in audit (July 1982) the department accepted the mistake and stated (November 1982) that a show cause-cum demand notice had been issued. Report on recovery is awaited (May 1983).

The Ministry of Finance have stated (December 1983) that the matter is being examined by the Collector.

(ii) As per a notification issued in March 1972, on electric motors designed for use in circuits at a pressure exceeding 400 volts and with a rated capacity exceeding 10 horse power or 7.5 kilowatts duty was leviable at concessional rate of 7.5 per cent ad *valorem* instead of at the tariff rate of 20 per cent *ad valorem* prior to June 1977 and at 10 per cent *ad valorem*. Thereafter, the Central Board of Excise and Customs in a circular letter dated 5 May 1971 clarified (after consulting the Indian Standards Institution) that a variation of 5 per cent as stipulated in I.S.I. specification should apply on the normal voltage rating as the range of voltage within which the motor will function.

A manufacturer of three phase electric motors designed for use in circuits at a pressure 380 volts ± 8 per cent and with a rated capacity exceeding 10 horse power cleared such motors on payment of duty at concessional rate of 7.5 per cent *ad valorem*. Even arguing that ± 5 per cent variation would enable a motor rated at 380 volts to work satisfactorily from

361 volts upto 399 volts, the motor in question did not have a rating exceeding 400 volts and concessional rate of duty was not leviable on it. The incorrect grant of concessional rate resulted in duty being levied short by Rs. 2.50 lakhs on clearances made during the period from September 1974 to February 1979.

On the mistake being pointed out by Audit (January 1977) the department accepted the objection as substantially correct and stated (January 1983) that demand was being raised.

The Ministry of Finance have stated (August 1983) that the demand has been confirmed by the jurisdictional Assistant Collector on 16 June 1983.

(iii) As per a notification issued on 1 May 1979, on metal containers (classifiable under tariff item 46) in or in relation to the manufacture of which no process is ordinarily carried on with the aid of power, levy of duty is wholly exempt.

A manufacturer of metal containers (casks) made out of old tin sheets strengthened them by affixing wooden planks on top and bottom. The planks had been cut to shape and size with the aid of power. The wooden planks formed an essential part of the casks and therefore the casks had to be considered to have been manufactured with the aid of power. The unit was, therefore, not entitled to clear such casks without payment of duty. The duty not realised on clearances made during the period from April 1977 to 10 November 1982 amounted to Rs. 15,10,693.

On the mistake being pointed out in audit (October 1981), the department stated (April 1982) that the wooden planks were affixed to casks already manufactured without use of power and the shaping of wooden planks with use of power should not disentitle the licensee from availing of the exemption. The wooden planks formed an integral part of the casks and the notification left little room for interpretation where manufacture was done with the aid of power. Therefore duty was leviable.

The department subsequently issued show cause notices to the party demanding the duty not realised. Report on confirmation of the demand and recovery of duty is awaited.

The Ministry of Finance have stated (August 1983) that the matter is under examination.

2.48 *All other goods not elsewhere specified*

(i) As per a notification issued in June 1977 goods classifiable under tariff item 68 are exempt from levy of duty if in or in relation to the manufacture of goods no process is ordinarily carried on with the aid of power. Ministry of Law advised in June 1977 that the phrase 'in or in relation to the manufacture' used in a similar notification issued in March 1964 covers processes using power or steam in pumping raw materials like 'acid oil' from one section to another section of the factory for manufacture of soap, even though soap, as such is manufactured without the aid of power.

In two leading paint factories "thinners" classifiable under tariff item 68, were manufactured and in one the goods were cleared without payment of duty and of the other upto 7 March 1979 after payment of duty. The department issued a show cause-cum demand notice to the manufacturer in the former case but later on allowed him to make clearances without payment of duty. The manufacturer in the second case was permitted to follow suit from 7 March 1979. In both the factories raw materials, like mineral turpentine oil and solvents like benzene, toluene and xylene were electrically pumped from one section of the factory to another for the purpose of manufacture of thinners. Therefore, the exemption from duty was not available. Incorrect grant of exemption resulted in duty amounting to Rs. 17,42,315 not being realised from the two manufacturers on clearances made during the period from October 1979 to March 1983.

On the mistake being pointed out in audit in December 1979 and December 1982; the department stated (February 1980) that the use of power by the factories for pumping solvents for storage in tanks did not disqualify the manufacturer from getting the benefit of exemption, since power was used for pumping only to limited extent. But this is contrary to the instructions and clarification issued by the Central Board of Excise and Customs in consultation with the Ministry of Law which have not been amended or cancelled notwithstanding the fact that some of the High Courts have held that unless the manufacturing process using power brings about some change in output as

compared to the input in respect of the process, use of power is not in or in relation to manufacture.

The Ministry of Finance have stated (November 1983) that power is not used in the manufacture of thinner in either of the two factories. One of the factories is buying the thinner and repacking it and selling it. However the facts verified in audit were that solvents used in manufacture of thinners were pumped into overhead tanks from where they came down under gravity for purpose of manufacture of thinners even though the manufacture is done by mixing manually. In one case mineral turpentine oil was being repacked and reclassified as thinners under tariff item 68 using power in the process for pumping. The notification barring use of power does not allow of pumping up of raw material and so long as the notification is not amended it is being violated as clarified by the Ministry of Law.

(ii) As per a notification issued in March 1975 on all goods classifiable under tariff item 68 which are manufactured by the factories belonging to Government and intended for use by the department of the said Government, the whole of the duty of excise leviable is exempt.

A Public Sector undertaking was permitted to avail of the concession under the aforesaid notification though it was not a factory belonging to Government but a company independent of Government save that Government held the shares of the company. The factory, however, belonged to the company. The irregular grant of exemption under the aforesaid notification resulted in duty amounting to Rs. 85,998 not being levied on clearances made during the period from April 1981 to December 1982.

The mistake was pointed out in audit in May 1983.

The Ministry of Finance have stated (November 1983) that the said unit is exclusively owned by the Government of India and therefore exemption was correctly granted. The reply is incorrect in so far as exemption is available only in respect of manufacture in factories belonging to Government and not where a company owns a factory irrespective of who the shareholders of the Company are.

(iii) As per a notification issued on 30 April 1975 excisable goods classifiable under tariff item 68 produced in a factory but intended for use in the same factory or any other factory of the same manufacturer were exempted from the whole of the duty of excise leviable thereon provided the procedure set out in Chapter X of the Central Excise Rules is observed.

(a) From a factory of a manufacturing company "steam" produced therein was supplied to another factory owned by a subsidiary of the manufacturing company. The subsidiary was also a company and, therefore, a separate corporate person and not the same person as the manufacturing company. However, on supplies of steam (classifiable under tariff item 68) no duty was levied though the supplies were not covered by the aforesaid notification. The duty not realised amounted to Rs. 4,30,448 on supplies made during the period from May 1979 to July 1982.

The mistake was pointed out in audit in August 1982. A reference was also invited to a clarification issued by the Ministry on 14 September 1982 that the notification did not cover clearances of excisable goods from the factory of a manufacturer to "another factory" under his management but not ownership.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(b) A manufacturer of phosphorous and phosphoric acids classifiable under tariff item 68 used them in part of his production in the same premises for further manufacture and part in another factory belonging to him situated at a different place. He availed of the said exemption on all his clearances. In respect of the clearances effected to the other factory, the procedure set out in Chapter X of the Central Excise Rules, 1944, was however not followed and no exemption was therefore available on those clearances. Nevertheless the exemption was allowed by the department resulting in non recovery of duty amounting to Rs. 1,04,320 on clearances made during the period from March 1982 to June 1982.

On the mistake being pointed out (September 1982) in audit, the department stated (March 1983) that it was only procedural lapse on the part of the manufacturer in not following Chapter X procedure for which penal action had been taken by them. The Ministry of Finance have stated (August 1983)

that the adjudicating Assistant Collector closed the case on being satisfied about the consumption of the goods in the other factory of the manufacturer. The replies do not indicate how grant of exemption could become regular by satisfying post-facto a condition precedent prescribed in the notification.

(c) Under the Central Excise Act upto 28 February 1979 the term "factory" was assigned the meaning given in Section 2(m) of the Factories Act, 1948 in so far as it was relevant to goods falling under tariff item 68. But from 1 March 1979 the term "factory" was given meaning as in Section 2(e) of the Central Excises and Salt Act viz. any premises and precincts wherein or in any part of which excisable goods are manufactured or manufacturing processes connected with the production of excisable goods is being carried on or is ordinarily carried on.

From five sugar mills of various manufacturers, molasses (a by-product obtained during the manufacture of sugar) was cleared for home consumption after 28 February 1979 without payment of duty under the aforesaid notification of 30 April 1975. The molasses were consumed in the distillery belonging to the same manufacturers in the manufacture of spirit which is not excisable under the Central Excise Act. The distillery was therefore not a factory as per Section 2(e) of the Central Excises and Salt Act and therefore no exemption was available on molasses cleared between March 1979 and June 1980 from the sugar mill (a factory) to the distillery (not a factory) in terms of the notification of 30 April 1975. The irregular grant of exemption resulted in duty amounting to Rs. 1,35,584 not being realised.

On the mistake being pointed out in audit, the department initiated action to recover Rs. 1,35,584 and a sum of Rs. 1,437 was recovered (October 1980). Demands amounting to Rs. 61,065 were set aside on appeal. The reasons therefor and report on recovery is awaited (July 1983).

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(iv) As per a notification issued in April 1979 parts and accessories of motor vehicles and tractors, including trailors classifiable under tariff item 68 and intended for use in further manufacture of excisable goods are exempted from payment of the whole duty of excise leviable thereon.

A manufacturer of radiators was allowed to clear component parts of radiators which were supplied to a manufacturer of heat exchangers without payment of duty. There was nothing on record that the component parts were capable of use only in radiators going into motor vehicles or that the goods in question were so used. In the light of the available facts the irregular grant of exemption resulted in duty being realised short by Rs. 3,33,395 on clearances made during the period from January 1980 to December 1981.

The omission was pointed out in audit in March 1982.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(v) As per a notification issued on 2 February 1979 on generators of rating 100 volts and above classifiable under tariff item 68 duty in excess of 5 1|2 per cent *ad valorem* was exempted.

Out of generators purchased from the market, generator sets were produced. Such sets including accessories were cleared after availing of the aforesaid exemption which was available only in respect of generators and not in respect of generating sets or accessories. Irregular grant of exemption resulted in duty being realised short by Rs. 3,23,237 (even after allowing set off for duty paid on generators) on clearances valuing Rs. 1,29,29,681 made during the period from 28 August 1979 to 31 March 1980.

On the mistake being pointed out in audit (December 1980) the department raised (January 1981) a demand for Rs. 7,59,371 in respect of clearances made during the period from August 1979 to September 1980. Report on recovery is awaited (August 1983).

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(vi) As per a notification issued on 1 March 1975, drug intermediates classifiable under tariff item 68 were wholly exempted from duty.

A manufacturer of bulk chemicals was allowed to clear them as drug intermediates without paying duty. Some of the supplies were made to Electricity Board and some to synthetic fibre, paper,

steel and fertiliser industries. It was decided that on supplies to industries which do not use the chemicals as drug intermediates, payment of duty would be demanded. But the department did not take any action to demand duty on clearances made from 1 March 1978 to 27 October 1978.

On the omission being pointed out in audit in April 1979, a demand for Rs. 2,69,940 was raised in July 1980 but on appeal the Appellate Collector set aside the demand (4 October 1980) as barred by limitation.

The reply of Ministry of Finance is awaited.

(vii) As per a notification issued on 1 March 1975, on animal feed including compound livestock feed classifiable under tariff item 68 levy of duty is wholly exempt.

A manufacturer of 'animal feed including compound livestock feed' was allowed to clear his product without payment of duty in terms of the above notification. The product was, however, advertised as a vitamin 'B-12' feed supplement to be mixed with bulk feed for poultry and livestock. It was, therefore, not an animal or compound livestock feed by itself. The irregular grant of exemption resulted in duty amounting to Rs. 1,66,730 not being realised on clearances made during the period from January 1980 to February 1982.

On the mistake being pointed out (May 1982) in audit, the department accepted the objection and stated (March 1983) that show cause-cum demand notices demanding duty amounting to Rs. 4,33,368 on clearances made during the period from April 1977 to May 1982 had since been issued and the duty was being paid under protest on clearances being made from June 1982 (March 1983). Report on confirmation of demand and recovery is awaited.

The Ministry of Finance have confirmed the facts.

2.49 *All other goods not elsewhere specified when used in manufacture of any goods*

As per a notification issued on 4 June 1979, on all excisable goods (on which duty of excise is leviable) in the manufacture of which any goods falling under tariff item 68 are used as inputs levy of duty was exempt from so much of the duty

of excise leviable thereon as is equivalent to the duty already paid on the inputs. The exemption is to be allowed subject to the condition that the finished goods are not exempt from the whole of the duty leviable thereon or chargeable to nil rate of duty. Also the exemption was to be allowed subject to adoption by the manufacturer of a procedure (similar to that in Rule 56A) for allowance and utilisation of credit for duty paid on inputs and after he declares the input goods and output products to the department. The notification was amended on 28 February 1982 to say that the exemption would be available only if the inputs were specified to be raw materials or component parts.

(i) A manufacturer of paints and varnishes produced alkyd resins and was allowed exemption from duty to the extent of duty paid on goods classifiable under tariff item 68 and used in the manufacture of the alkyd resin. The alkyd resin was captively consumed in the manufacture of paints and varnishes and the manufacturer was in fact allowed the exemption to the extent of duty paid towards payment of duty on paints and varnishes. But, the alkyd resin was exempt from the whole of the duty of excise payable thereon in terms of a notification issued in August 1981. The exemption provided for in notification of 4 June 1979 was therefore not available to the manufacturer and duty amounting to Rs. 22.09 lakhs was irregularly foregone on clearances made during the period from January 1982 to December 1982.

The mistake was pointed out in audit to the department in February 1983.

The Ministry of Finance have stated (December 1983) that the matter will be re-examined.

(ii) A manufacturer used duty paid excisable goods classifiable under tariff item 68 in the production of "resins" which he further used in the manufacture of laminated sheets. He was allowed to use credit for duty paid on goods classifiable under tariff item 68 towards payment of duty on laminated sheets,even though the laminated sheets were exempt from duty. The incorrect grant of exemption resulted in duty being realised short by Rs. 12,50,160 on sheets cleared during the period from January 1982 to December 1982.

The short levy was pointed out in audit (February 1983).

The Ministry of Finance have stated (November 1983) that the mistake had already been pointed out by their internal audit in January 1983 just prior to scrutiny in statutory audit and a show cause notice was issued on 9 February 1983 for an amount of Rs. 12,50,561 in respect of clearances made during the period from January 1982 to December 1982. The reasons for delay in scrutiny in internal audit and not raising demand prior to statutory audit were not stated.

(iii) A manufacturer of caustic soda produced it by electrolysis of brine. He used barium carbonate (classifiable under tariff item 68) for purification of brine and was allowed exemption to the extent of duty paid on barium carbonate towards payment of duty on caustic soda. The department examined in May 1982 whether the barium carbonate was a raw material or component part used in the manufacture of caustic soda. It came to the conclusion that barium carbonate which helps to remove calcium and sulphate existing as impurities in lime, was an essential ingredient in the process of manufacture of caustic soda and was a raw material used in its manufacture. But a flux to remove impurities is not what is commonly referred to as raw material or component part. In the result duty amounting to Rs. 3,20,210 was realised short during the period from 26 June 1981 to 30 June 1983.

The short levy was pointed out in audit in March 1983.

The Ministry of Finance have stated (November 1983) that the matter is under examination.

(iv) A manufacturer of vegetable product was allowed exemption from duty as aforesaid on nickle catalyst (classifiable under tariff item 68) which was purchased from other manufacturers. As nickle catalyst is used in the manufacture of vegetable product as a catalyst and not as an input the exemption allowed was irregular and resulted in duty being levied short by Rs. 1,72,510 on clearances made during the period from 17 May 1980 to 13 May 1981.

On the mistake being pointed out (July 1981) in audit, the department issued a show cause-cum demand notice for Rs. 1,72,510 in December 1981. Report on recovery is awaited (August 1983).

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(v) A manufacturer of steel products was allowed to avail of the above exemption to the extent of duty paid on sponge iron, ferro manganese, etc. (classifiable under tariff item 68) used as inputs. However, the inputs were first used in the manufacture of steel products which were consumed captively in further manufacture but which products were cleared without payment of duty. As such the aforesaid exemption was not available. The irregular grant of exemption resulted in duty amounting to Rs. 1,13,969 not being realised on clearances made during the period from October 1980 to September 1981.

The mistake was pointed out in audit in February 1982.

The Ministry of Finance have stated (December 1983) that the matter will be re-examined.

(vi) A manufacturer of paints and varnishes used pthalic anhydride resin and penta erithrotol (classifiable under tariff item 68) in the manufacture of alkyd resin (classifiable under tariff item 15A) which is wholly exempted from duty under a notification issued on 29 August 1981. The manufacturer used the alkyd resin in the manufacture of paints and varnishes (classifiable under tariff item 14). Towards payment of duty on the paints and varnishes he was allowed exemption to the extent of duty paid on the anhydride resin and erithrotol which was irregular. This resulted in duty being realised short by Rs. 45,723 on clearances made during the period from February 1981 to February 1982.

On the mistake being pointed out in audit (March 1983), the department stated that the exemption was validly given. However, the notification does not allow of exemption in such cases.

The Ministry of Finance have stated (December 1983) that the matter will be re-examined.

(vii) (a) A manufacturer was allowed exemption to the extent of duty paid on mono-ethylene glycol (classifiable under tariff item (68) towards payment of duty on polyester yarn (falling under tariff item 18). Glycol was admixed with dimethyl terephthalate and used in the manufacture of polyester chips an

excisable product which was exempted from duty under a separate notification. The chips were used in the manufacture of polyester yarn in the same factory. The manufacturer also brought polyester chips from outside which also he used in the manufacture of polyester yarn. The polyester chips (classifiable under tariff item 15A) being exempt from duty, exemption under aforesaid notification was not available in respect of duty paid on glycol used in the manufacture of the chips. The irregular grant of the exemption resulted in duty being realised short by Rs. 1,83,162 on clearances made during the period from November 1980 to May 1981.

(b) Similarly a manufacturer was allowed exemption to the extent of duty paid on phthalic anhydride (classifiable under tariff item 68) towards payment of duty on paints and varnishes (falling under tariff item 14). The anhydride was used in the manufacture of alkyd resin (excisable goods which were exempted from duty under separate notification). The alkyd resin was used in the manufacture of paints and varnishes in the same factory. Similarly another manufacturer was allowed exemption to the extent of duty paid on inputs (falling under tariff item 68) towards payment of duty on paints and varnishes. The inputs were actually utilised in the manufacture of alkyd and maleic resins which were then used in the manufacture of paints and varnishes. The alkyd and maleic resins falling under tariff item 15A were exempted from duty under a separate notification. Therefore, the grant of exemption towards payment of duty on paints and varnishes was irregular. The irregular grant of exemption resulted in duty amounting to Rs. 52,020 and Rs. 33,382 being realised short on clearances made during the period from November 1980 to October 1981 and October 1979 to January 1982 respectively.

On the mistakes being pointed out in audit (November 1981) the department stated that according to a clarification issued in June 1980 by the Central Board of Excise and Customs, where an intermediate product which is fully exempted from duty comes into being during the process of manufacture of a specified finished product, utilisation of credit for duty paid on inputs used in the manufacture of intermediate product towards payment of duty on specified finished product was permissible if the intermediate product had been manufactured and consumed within the factory manufacturing finished product. However, this clarification cannot override the provisions of the aforesaid statutory

notification and provisions of rules, whereunder excisable goods produced or manufactured in any place and consumed or utilised for the manufacture of any commodity whether in a continuous process or otherwise should be deemed to have been removed immediately before consumption or utilisation. A High Court has held* that only if the product is not capable of being removed when produced in a continuous and uninterrupted process will it cease to be an excisable product. Only such products can be viewed as non excisable intermediate products and all other goods including so called intermediate products are excisable goods after the introduction of tariff item 68 to cover "all other goods not elsewhere specified".

(c) A manufacturer of alkyd resins (classifiable under tariff item 15A) which was wholly exempted from duty and in the manufacture of which he used phthalic anhydride (classifiable under tariff item 68) was allowed credit for duty paid on the anhydride which he used towards payment of duty on paints and varnishes. The irregular grant of credit by invoking the aforesaid exemption irregularly resulted in duty being realised short by Rs. 51,896 since the resins were cleared from the factory of the manufacturer during the period from November 1980 to May 1981.

On the mistake being pointed out in audit (December 1981) the department stated that it presumed that the resin was used in another factory for manufacture of paints and varnishes. The reply does not answer the above objection.

In the above three cases the Ministry of Finance have stated (December 1983) that the matter will be re-examined.

EXEMPTIONS TO SMALL SCALE MANUFACTURERS

2.50 *Irregular grant of exemption on production in small scale units for and on behalf of large scale units*

(i) As per notifications issued on 1 March 1979 and 19 June 1980 on clearance of goods (classifiable under tariff item 68) upto a value of rupees thirty lakhs in a financial year levy of duty on such goods was exempted in full or in part if

*1983—ELT 2939 (Del)

the goods were cleared for home consumption by or on behalf of a manufacturer from one or more factories provided the value of such goods cleared during the preceding financial year did not exceed rupees thirty lakhs.

A public limited company, which is a wholly owned subsidiary of another company manufactured voltage stabilisers, emergency lamps and pressure release valves, falling under tariff item 68 and cleared them without payment of duty by claiming exemption under the aforesaid notification. The subsidiary was using the brand name of the holding company and marketed its product through the holding company which was also manufacturing goods falling under tariff item 68, but the holding company was clearing them on payment of duty. Because of the use of the brand name the principal company became the manufacturer of the products cleared by the subsidiary company. On the clearances made by both the manufacturing units duty was leviable without exemption because the holding company as manufacturer was not eligible for the exemption. In the result exemption from duty amounting to Rs. 4.64 lakhs on clearances made by the subsidiary company during the years 1979-80 to 1981-82 was given irregularly.

On the mistake being pointed out in audit (July 1981 and December 1982) the department stated (March 1982) that the exemption was justified on the ground that each limited company being an independent legal entity was eligible to the exemption separately. Such justification goes counter to the instructions of the Ministry issued in its letter dated 14 May 1982 that when products are marketed by the holding company under its own brand name it would be deemed to be the manufacturer under Section 2(f) of the Central Excises and Salt Act, 1944.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(ii) As per a notification issued on 30 April 1975 duty on goods (classifiable under tariff item 68) manufactured in a factory on job work basis was to be restricted to the duty calculated with reference to the amount charged for doing such job work. The explanation appended to the said notification defined the term 'job work' as an item of work, where an article intended to undergo manufacturing process is supplied to the job worker and the article is returned by the job worker to the

supplier on charging usual job charges, after the article had undergone the intended manufacturing process. The Ministry of Law held in December 1976 that the said notification would not apply to cases, where the job worker got only the raw material and components for conversion into other products, since in such cases there would be no connection between the unprocessed article which was supplied for job work and the processed article returned after completing the job work.

(a) A company was manufacturing 'dyed blended tops' containing wool less than 50 per cent of the total fibre content. The raw wool and synthetic fibre were supplied by the customers of the company and the blended tops were cleared after payment of duty in terms of notification dated 30 April 1975. But the processes of manufacture were not covered by definition of the term 'job work' as envisaged in the said notification. Raw materials supplied by customers to the company underwent transformation and a new product with distinct and identifiable characteristics different from the inputs came into existence. The assessee company was therefore liable to pay duty on the full value of blended wool tops instead of only on the conversion charges. The mistake has resulted in duty being realised short by Rs. 14,30,383 in respect of clearances made during the period from March 1975 to October 1979.

On the mistake being pointed out in audit (May 1978) the department raised additional demand for Rs. 14,30,383 (July 1982). On appeal by the company the recovery was stayed (February 1983) by the Appellate Collector.

The Ministry of Finance have stated (November 1983) that demand of Rs. 14,30,383 was confirmed on 15 July 1982. However, on appeal the Collector (Appeals) directed the Assistant Collector to re-examine the case with the help of technical experts. The Assistant Collector in *de-novo* proceedings after consulting two experts held that blending of different kinds of tops was not a process of manufacture and accordingly he vacated the demand. Appeals have since been filed against the orders of Collector (Appeals) and Assistant Collector before the Tribunal and Collector (Appeals).

(b) A manufacturer of street light fittings and indoor tube light fittings produced them on behalf of a reputed company to the latter's specifications and drawings, the brand name of the latter was also affixed. Component parts required for the assembly such as chokes, starters, condensers, etc., were also supplied free

of cost by the latter though some components were manufactured or bought by the said manufacturer. Certain tools and jigs procured by the manufacturer for the purpose of assembly or manufacture were charged to the work and became the property of the company as per agreement between the manufacturer and the company. The manufacturer availed of exemption under a notification issued on 30 April 1975 and paid duty on the basis of invoice price covering what he charged to the company and not on the full value of the manufactured goods even though the goods manufactured did not satisfy the definition of job work contained in the aforesaid notification. Exemption under notifications issued on 18 June 1977, 1 March 1979 and 19 June 1980 was also not available since the value of clearances in a year exceeded rupees 30 lakhs. In the result duty was realised short by Rs. 4.99 lakhs during the years 1977-78 to 1979-80.

On the mistake being pointed out in audit (October and November 1980), the department stated (August 1981) that no process of manufacture was involved since the component parts were only assembled into light fittings. The reply does not indicate why duty was charged at all if no manufacture was involved. Even if the company is correctly taken to be the real manufacturer in terms of Board's instructions issued on 14 May 1982 (and not the so called assembler), it has not been stated that duty was realised from the company on the full value of the product including the cost of so-called assembly.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

2.51 *Incorrect grant of exemption on clearances from small scale units*

As per a notification issued on 1 March 1979, on clearance of goods (classifiable under tariff item 68) of value not exceeding Rs. 15 lakhs in the aggregate from small scale units with investment on plant and machinery not exceeding Rs. 10 lakhs (Rs. 20 lakhs from 1 April 1981) levy of duty was exempted. On clearances beyond the first clearances valuing Rs. 15 lakhs duty in excess of 4 per cent *ad valorem* was exempted. As per another notification issued on 19 June 1980, the limit of Rs. 15 lakhs for full exemption was raised to Rs. 30 lakhs with no exemption beyond that limit. If the total value of the said excisable goods cleared for home consumption by the manufacturer or on his behalf from one or more factories in the preceding financial year exceeded Rs. 30 lakhs, the exemption was not available.

(i) A manufacturer was allowed to avail of the aforesaid exemption in respect of clearances made from a unit in which the value of plant and machinery allegedly did not exceed Rs. 10 lakhs. However, the annual accounts for the years ending 31 December 1980 and 31 December 1981 in respect of the unit showed that capital investment on plant and machinery amounted to Rs. 26,18,853 and Rs. 28,87,315 respectively. On the value of clearances made amounting to Rs. 15,34,146 during 1980-81 and Rs. 4,85,065 during the period April to September 1981 exemption from duty irregularly availed of amounted to Rs. 1,61,537.

On the mistake being pointed out in audit (July 1982) the department issued a show cause notice to the manufacturer. Report on recovery is awaited (June 1983).

The Ministry of Finance have stated that the exemption was validly availed of because value of plant and machinery in the production unit of the manufacturer which was utilised for the production of the goods in question was only Rs. 9.09 lakhs. The balance of plant and machinery in excess of Rs. 10 lakhs or Rs. 20 lakhs was either not utilised in the manufacture of the goods in question or was located or lay outside the factory. The exemption notification requires that the value of plant and machinery installed in the industrial unit in which the goods in question are manufactured should not exceed Rs. 20 lakhs. It does not relate the limit to only those plant and machinery as are utilised in the production of the goods in question or to the boundary line of an area demarcated as a factory.

(ii) A manufacturer of 'furfural' a chemical classifiable under tariff item 68 was allowed to avail of the aforesaid exemption on clearances made from July 1980 even though the capital investment on plant and machinery was Rs. 26,60,819 as certified in the balance sheet as on 31 July 1982. The irregular grant of exemption resulted in duty being realised short by Rs. 4,29,723 on clearances made during the years 1981-82 and 1982-83.

The mistake was pointed out in audit (between March and July 1983).

The Ministry of Finance have stated (December 1983) that the investment on plant and machinery made only in the said unit was however less than Rs. 20 lakhs and therefore the audit objection is not acceptable.

(iii) A manufacturer of electronic goods having capital investment of more than Rs. 10 lakhs on plant and machinery (as per the balance sheet of the manufacturer) was allowed to clear goods valuing Rs. 20,72,825 without payment of duty

during the years 1978-79 and 1979-80 by availing of exemption under aforesaid notification. This resulted in duty being levied short by Rs. 1,50,287.

On the mistake being pointed out in audit (March 1981) the department raised demand for Rs. 2,93,401 on clearances made during the period from 1 April 1978 to 31 March 1981. Report on recovery is awaited (July 1983).

The Ministry of Finance have admitted the facts as substantially correct (November 1983).

(iv) A firm manufacturing corrugated paper cartons (classifiable under tariff item 68) cleared them without payment of duty by availing of the above exemption. During the year 1979-80, till the end of November 1979, the assessee had cleared goods valuing Rs. 14,23,757. In December 1979, the factory with its entire plant and machinery was leased out to a newly formed trust. From 1 January 1980 to 31 March 1980 the trust cleared goods valuing Rs. 3,89,719. The total clearance from the factory during the year 1979-80 exceeded Rs. 15 lakhs and the department demanded in August 1981 duty on the clearance in excess of the value of Rs. 15 lakhs, and the adjudication of the demand is pending.

In the year 1980-81, the newly formed trust carried on business till July 1980 and during the period from April 1980 to July 1980, the trust cleared goods valuing Rs. 8,49,313. Thereafter, the factory was given back to the original firm by the trust and the firm cleared goods valuing Rs. 25,84,905 till the end of March 1981. Thus during the year 1980-81 the value of goods cleared amounted to Rs. 34,34,218. But no duty was demanded on the clearances in excess of Rs. 30 lakhs. The duty not realised amounted to Rs. 34,737.

During the year 1981-82 the assessee was not entitled to any exemption on his clearances because the clearances during the year 1980-81 exceeded Rs. 30 lakhs. But during the period from April 1981 to November 1981, the assessee was allowed to clear goods valuing Rs. 14,58,379 without payment of duty which resulted in non-realisation of duty amounting to Rs. 1,16, 670.

On the mistakes relating to clearances during the years 1980-81 and 1981-82 being pointed out in audit (January 1982) the department initiated rectificatory action in January 1982

and February 1983 and demanded duty amounting to Rs. 1,69,488 relating to the years 1980-81 and 1981-82. It also imposed a penalty of Rs. 20,000 on the proprietor of the firm. Report on recovery is awaited.

The Ministry of Finance have stated (Noyember 1983) that the party has filed an appeal before the Tribunal.

(v) A manufacturer was allowed to avail of the aforesaid exemption in respect of high density polyethelene woven bags, classifiable under tariff item 68, produced and cleared by him during the year 1979-80. The value of clearances of laminated jute bags, another article manufactured in the same factory of the manufacturer and classifiable under tariff item 68, was not taken into account in computing the value of clearances of goods falling under tariff item 68 during the preceding financial year 1978-79 for purposes of applying the limit of Rs. 30 lakhs. The value of clearances of laminated jute bags alone was more than Rs. 1 crore and had exceeded Rs. 30 lakhs during the year 1978-79. Therefore the aforesaid exemption was not admissible on clearances made during the year 1979-80. The irregular grant of exemption resulted in duty being realised short by Rs. 1,80,000 on clearances of woven bags made during the period from 1 April 1979 to 22 November 1979.

On the irregularity being pointed out in audit (December 1980), the department stated that the laminated jute bags were not classifiable under tariff item 68 but under tariff item 22A. As per an exemption notification issued in June 1979 laminated jute bags were clearly classifiable, under tariff item 68.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(vi) A manufacturer of welded wiremesh classifiable under tariff item 68 provided it on his own behalf as well as on behalf of other manufacturers (on job work basis using raw materials supplied by other manufacturers). He was allowed to avail of full exemption from duty on clearances made during the years 1981-82 and 1982-83 in terms of the aforesaid notifications. However the value of clearances including the job charges and cost of raw materials supplied by other manufacturers exceeded

Rs. 30 lakhs during 1980-81 and 1981-82. The value of clearances having exceeded Rs. 30 lakhs during 1980-81 and 1981-82, the exemption was availed of irregularly during the years 1981-82 and 1982-83 and resulted in duty being realised short by Rs. 3,21 lakhs.

Similarly two other manufacturers cleared goods (classifiable under tariff item 68) valuing more than Rs. 30 lakhs (inclusive of job charges in one case) in the preceding year. But they were allowed to avail of the exemption resulting in duty being realised short by Rs. 2,64,701. The manner of computing the value of clearances has not been specified in the aforesaid notification. Supreme Court had held in the case of Indo International Industries Vs. Commissioner of Sales Tax U. P. that in the absence of any contrary indication, value should be computed as the value to the customers. On that basis the value of the clearances had exceeded Rs. 30 lakhs in the preceding year in all the above cases.

The mistakes were pointed out in audit in the above three cases in December 1982 and January 1983.

The Ministry of Finance have stated (November and December 1983) that the matter is under examination.

(vii) Prior to 1 March 1979, as per a notification issued on 18 June 1977 on goods falling under tariff item 68 cleared for home consumption levy of duty is exempt on clearances upto a value of Rs. 30 lakhs made in the financial year provided the total value of all excisable goods cleared by or on behalf of the manufacturer in the preceding financial year had not exceeded Rs. 30 lakhs. The concession was limited to units with capital investment in plant and machinery intalled not exceeding Rs. 10 lakhs in value.

Printed corrugated boards manufactured in a factory were cleared for home consumption after wrongly classifying them under tariff item 17 instead of under tariff item 68. Further the boards were exempted from duty under another notification issued on 26 August 1978. Accordingly the value of the boards cleared was not taken into account in deciding on the admissibility of the exemption under notification dated 18 June 1977 and March 1979. By taking the value of the boards, which were wrongly classified and exempted, into account, the

value of clearances made during the preceding financial year 1978-79 was Rs. 42,10,406 which exceeded Rs. 30 lakhs and exemption under notification dated 1 March 1979, could not be availed of. The irregular grant of exemption had resulted in duty being levied short by Rs. 9,40,106 on clearances made during the period from April 1978 to May 1981.

On the mistake being pointed out in audit the department booked an offence case against the factory (June 1981) and issued a show cause-cum demand notice (September 1981) demanding duty of Rs. 9,40,106. The demand has since been confirmed and a penalty of Rs. 10 lakhs has also been imposed on the factory by the Collector (September 1982). The party is reported to have started paying duty from 20 October 1981. Report on realisation of the demand and action taken to demand duty for the period from June 1981 to 19 October 1981 is awaited (March 1983).

The Ministry of Finance have accepted the facts as correct (July 1983).

2.52 *Irregular grant of exemption to manufacturers of specified goods*

As per a notification issued on 1 March 1978 (effective upto 18 June 1980) and another issued on 19 June 1980 on specified excisable goods cleared for home consumption by or on behalf of a manufacturer during the financial year 1980-81 levy of duty was wholly exempt on the first clearances upto a value of Rs. 5 lakhs and only 75 per cent of duty otherwise leviable was to be levied on the subsequent clearances upto a value of Rs. 10 lakhs. The concession was subject to the condition that the exemption would not be admissible to a manufacturer if the aggregate value of specified goods cleared for home consumption during the preceding financial year had exceeded Rs. 15 lakhs.

By a notification issued on 30 March 1979 it was stipulated that the exemption was to be allowed only if the aggregate value of all excisable goods cleared during the preceding financial year did not exceed rupees 20 lakhs.

The Ministry of Finance, in consultation with the Ministry of Law clarified on 14 May 1982 that where a manufacturer produced goods on behalf of another manufacturer (called loan

licensee), even if the loan licensee does not supply raw materials but only specifications or his brand name, he will remain loan licensee and primary manufacturer and the other his secondary manufacturer.

The expression 'value' for the purpose of above notifications is taken to be value specified in Section 4 of the Central Excises and Salt Act, 1944, unless the context requires otherwise.

(i) Two secondary manufacturers produced paints and varnishes on behalf of a loan licensee to his specification and embossed the brand name and trade mark of loan licensee on containers supplied by such loan licensee. The loan licensee's clearances of excisable goods exceeded Rs. 20 lakhs in each of the financial years 1979-80 onwards. Accordingly on the goods produced on his behalf by secondary manufacturer no exemption under aforesaid notification was available. However such exemption was irregularly allowed resulting in duty amounting to Rs. 4,96,635 on clearances made during the years 1979-80 to 1982-83 not being realised.

On the mistake being pointed out in audit (December 1979 and July 1983) the department stated (October 1980) that the loan licensee could be treated as manufacturer only when he supplied raw material or paid labour charges. The reply is contrary to Ministry's instructions issued on 14 May 1982.

The Ministry of Finance have stated (November 1983) that the matter is under examination.

(ii) A manufacturer of welding electrodes (specified goods classifiable under tariff item 50) used steel wires also produced by him in the manufacture of electrodes. He used 'steel rods' purchased from outside in the manufacture of the wire. The value of all excisable goods cleared during the years 1980-81 and 1981-82 exceeded Rs. 20 lakhs. But still concession in duty amounting to Rs. 2,58,966 was irregularly allowed in respect of specified goods cleared during the years 1981-82 and 1982-83.

On the mistake being pointed out in audit (April 1982) the department did not admit the same and stated (July 1982) that steel wires drawn from duty paid steel rods is only a process and the production of steel wires did not involve 'manufacture' of excisable goods different and separate from 'steel

rods'. But the fact that steel wires and steel rods are classifiable under the same tariff item 26AA (ia) does not mean that one is not manufactured from the other. It has been held by the Supreme Court (Union of India Vs. D. C. M. Ltd. 1977 ELT-J199 SC) that products having distinct name, character and use from the products from which they are manufactured will be subject to excise duty because of the manufacturing process involved which is the basis for levy of excise duty.

The department has, however, issued a show cause-cum demand notice which is under the process of adjudication.

The Ministry of Finance have stated (November 1983) that the matter is under examination.

(iii) A manufacturer of paints and varnishes was producing these specified goods on behalf of another manufacturer who was the dealer of that brand name. The manufacturer was allowed the benefit of exemption under the aforesaid notifications from the year 1979-80 onwards on the grounds that the clearances of paints and varnishes did not exceed Rs. 15 lakhs during the preceding year though it would exceed that limit if manufactures on behalf of the brand name holder were included. The mistake resulted in duty being realised short by Rs. 63,268 on clearances made during the period from June 1979 to March 1981.

On the mistake being pointed out in audit (July 1981) the department did not accept the mistake but proposed to issue a show cause-cum demand notice.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(iv) As per tariff advice issued in September 1981, an adhesive manufactured from resin is classifiable under tariff item 15A

A manufacturer of phenol formaldehyde resin mixed it with two other products brought from outside and produced an adhesive. He cleared both the resin and the adhesive without payment of duty after classifying them respectively under tariff item 15A and 68. He was allowed to avail of exemption from duty to which small scale units are eligible provided the aggregate value of clearances of the said products did not

exceed Rs. 7.5 lakhs. However the value of the two products amounted to Rs. 10,97,424 (resin Rs. 7,46,179 and adhesive Rs. 3,51,245). The grant of irregular exemption therefore resulted in duty amounting to Rs. 54,719 not being levied on clearances made during the year 1981-82.

On the mistake being pointed out (December 1982) in audit the department did not admit the objection and stated (December 1982) that the value of resin used in manufacture of adhesive was not to be taken into account for the purpose of calculating the aggregate value of clearances from the said factory, since adhesive produced from the resin was manufactured in the same factory. But even without taking into account the value of the clearances of resin which was used in the manufacture of adhesive, the aggregate value of clearances of adhesive and resin (as resin) which were both specified goods falling under tariff item 15A amounted to Rs. 10,97,424 during the year 1981-82, which amount was in excess of Rs. 7.5 lakhs, the grant of exemption from the whole of the duty was therefore irregular.

The Ministry of Finance have stated (December 1983) that the matter will be examined.

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)

2.53 *Irregular grant and utilisation of credit not admissible*

As per Rule 56A of the Central Excise Rules, 1944, credit for the duty paid on raw materials and components is allowed to be utilised towards payment of duty on finished products in the manufacture of which the raw materials and components are utilised provided the raw materials and the finished goods fall under the same tariff item or the utilisation of duty paid on raw materials and components towards duty payable on a finished product has been specifically permitted by the Central Government by issue of a notification.

As per proviso (i) to Rule 56A(2), no credit shall be allowed in respect of any material or component parts of the finished excisable goods which are exempt from the whole of the duty of excise leviable thereon or are chargeable to nil rate of duty.

(i) As per a notification issued on 1 March 1979 utilisation of credit allowed for duty paid on steel sheets classifiable under tariff item 26AA, where such sheets are used in the manufacture of electrical stampings and laminations all sorts (classifiable under tariff item 28A), was allowed towards payment of duty on such stampings and laminations. Credit for duty paid on steel strips was also similarly allowed to be utilised as per a notification issued on 10 July 1981.

A manufacturer was allowed to avail credit of Rs. 1.54 lakhs for duty paid on strips in coils used in the manufacture of electrical stampings and laminations of all sorts cleared during the period April 1980 to March 1981 even though the facility was to be allowed only with effect from 10 July 1981. The irregularity resulted in duty being levied short by Rs. 1.54 lakhs.

On the mistake being pointed out in audit (July 1981) the department raised demand for Rs. 2.28 lakhs in respect of clearances made during the period from April 1980 to July 1981.

The Ministry of Finance have stated (November 1983) that show cause-cum demand notice for Rs. 2,27,588 was issued in August 1982 prior to receipt of the formal audit objection in October 1982. The audit objection had in fact been raised in July 1981 and demand was raised thereafter rectifying the irregularity occurring from April 1980.

(ii) A manufacturer was permitted to utilise duty paid on copper bars used as input item towards payment of duty on copper pipes and tubes manufactured from the said bars since both the items were classifiable under tariff item 26A. However, not all the copper bars received were used for the manufacture of pipes and tubes. Some were also used in the manufacture of goods falling under tariff item 68. Since the benefit of utilisation of credit for duty paid on copper bars was not admissible towards payment of duty in respect of goods falling under tariff item 68 as per provision of Rule 56A and notification issued thereunder, the irregularity resulted in duty amounting to Rs. 2,23,485 not being realised on goods classifiable under tariff item 68, cleared during the period from August 1980 to December 1982.

On the mistake being pointed out in audit (December 1982) the department stated (April 1983) that it had raised a demand in January 1983 and realised the amount of Rs. 2,23,485.

The Ministry of Finance have confirmed the facts.

(iii) A manufacturer of tyres and tubes (chargeable under tariff item 16) cleared a part of his production of tyres and tubes without payment of duty to manufacturers of Original Equipment (OE) as also tyres of animal drawn vehicles under an exemption notification issued under Rule 8(1) of the Central Excise Rules. However, he was allowed credit under Rule 56A of the Central Excise Rules, 1944 for duty paid on imported and indigenous raw materials (classifiable under tariff item 16AA, 64 and 65) used in manufacture of the tyres and tubes exempted from duty. The irregular grant of credit for raw materials used in manufacture of finished products exempted from duty resulted in duty amounting to Rs. 6.77 lakhs not being realised on clearances made during the period from March 1982 to December 1982.

The mistake was pointed out in audit (February 1983).

The Ministry of Finance have stated (December 1983) that department was aware of the misatke and had asked the assessee on 16 August 1982 to resist from committing such mistakes. The reply is silent on why no action was taken when mistake continued upto December 1982 when it was detected in audit.

2.54 *Irregular grant of credit for countervailing duty paid on inputs*

As per second proviso to Rule 56A(2) of Central Excise Rules, 1944, credit for countervailing duty paid on imports shall not be allowed in respect of any raw material or component parts used in the manufacture of finished excisable goods where such inputs are classifiable under tariff item 68.

A manufacturer of synthetic organic dyes classifiable under tariff item 14D was allowed to avail of procedure prescribed in Rule 56A. On items imported by him for use in the manufacture of finished goods credit for countervailing duty paid under tariff item 68 was allowed irregularly. This resulted in duty being levied short by Rs. 2,26,429 on clearances made against utilisation of the credit. The irregular credit of Rs. 2,26,429 taken was subsequently utilised in discharge of duty liability on finished goods.

The mistake was pointed out in audit (March 1983) to the department.

The Ministry of Finance have stated (November 1983) that the matter is under examination.

2.55 *Credit not lapsed*

Under Rule 56A of Central Excise Rules a manufacturer of excisable goods notified in this regard who brings into the manufacturing premises duty paid excisable goods as inputs is allowed credit in respect of such duty paid on such inputs which credit is allowed to be utilised towards payment of duty on the finished products manufactured out of such inputs. Where the credit exceeds the duty payable on finished products, the excess credit lapses as per clause 3(vi) of the said Rule 56A.

(i) A manufacturer holding stock of duty paid aluminium ingots and properzi rods on 18 October 1978 when duty rates were revised under the levy policy, also procured duty paid aluminium ingots after that date. He was allowed to take credit amounting to Rs. 23,04,969 towards the duty paid on the ingots. He manufactured wire rods out of these ingots and cleared them after payment of duty amounting to Rs. 15,77,286 at the lower rates after revision of duty and to utilise the credit towards the payment of duty. The balance of credit available on 18 October 1978 was allowed to be utilised wholly towards duty payable without lapsing duty credited at higher rates prior to 18 October 1978. This resulted in excess utilisation of credit amounting to Rs. 7,27,683.

On the mistake being pointed out in audit in May 1979, the department did not accept the objection and stated that credit for duty could be utilised towards payment of duty on any finished excisable goods and a circular issued by the Ministry of Finance on 7 June 1975 to the contrary would only apply to steel ingots under tariff item 26 and not to aluminium under tariff item 27. The reply of the department is contrary to the said provision of Rule 56A.

Reply of the Ministry of Finance is awaited.

(ii) Steel pipes and tubes all sorts are classifiable under tariff item 26AA(iv) and not under 26AA(ia). A manufacturer produced "Square welded hollow sections" and was allowed to pay duty after classifying them under tariff item 26AA(ia), as extruded shapes and sections not otherwise specified. He was allowed to avail of credit under Rule 56A for duty paid on strips used in the manufacture of the hollow sections. The

square welded hollow sections were classifiable under tariff item 68 since they were not pipes or tubes and therefore credit for duty paid on strips could not be used towards payment of duty on square welded hollow sections.

The misclassification and irregular grant of credit resulted in duty being realised short by Rs. 48,000 on clearances of thousand pipes of such hollow sections.

On the mistake being pointed out in audit (May 1982) the department admitted (June 1982) that the credit allowed in respect of strips needed to be expunged. However, it held that the square sections were "pipes and tubes". But they are not known in the market as tube. They are advertised and marketed not as tubes but as "square welded hollow sections" only. Further in Chapter 76.06 of Customs Co-operative Council Nomenclature, only the description aluminium pipes and tubes cover hollow bars also. But square or rectangular hollow sections of iron and steel are not included under "pipes and tubes" of iron and steel in Chapter 73.18 of the said nomenclature.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(iii) The proviso below sub-rule 2 of Rule 56A of the Central Excise Rules, 1944, requires that if duty paid on raw materials or component parts for which credit has been allowed is subsequently varied due to any reason and results in payment of refund of duty for which credit has been allowed, the credit allowed shall be varied accordingly by adjustment.

A manufacturer of washing soap cakes producing them on behalf of another used duty paid soap noodles received from another. He availed of credit under Rule 56A towards payment of duty on soap cakes. The duty paid on the soap noodles was subsequently reduced based on the percentage of minor oil and rice bran oil used therein. The credit availed of by the assessee was, however, not reduced by adjustment. This resulted in duty being realised short by Rs. 13,67,575 on clearances made during the period from July 1972 to December 1978.

On the mistake being pointed out (December 1977) in audit a demand for Rs. 13,67,575 was raised and confirmed by the department (November 1981). On appeal the demand has been stayed (December 1981).

The Ministry of Finance have stated (August 1983) that the assessee has paid the amount and also gone in appeal before the Appellate Tribunal.

(iv) A manufacturer of steel bars and flats used electric furnace and was allowed credit of Rs. 330 to Rs. 350 per tonne towards duty paid on semi-finished steel brought into the factory by him. On bars and flats (manufactured out of the semi-finished steel) weighing 1,139 tonnes cleared by him during the period from August 1980 to February 1981 he was allowed to utilise the credit towards payment of duty at the rates of Rs. 100 to Rs. 120 per tonne applicable to steel products manufactured from steel melting scrap with the aid of electric furnace. The specific rate of duty on output being less than normal rate of duty on input for which credit was allowed by Rs. 230 per tonne, excess credit was required to be lapsed but was allowed to be utilised.

The incorrect grant of excess credit and short payment of duty was not noticed on the basis of excise returns and resulted in short realisation of duty amounting to Rs. 2.88 lakhs.

On the mistake being pointed out in audit (January 1982), the department rectified the mistake in February 1982.

The Ministry of Finance have confirmed the facts (November 1983).

2.56 *Clearance of waste or scrap without payment of duty after availing of credit on inputs*

Sub rule 3(iv)(a) of Rule 56A of the Central Excise Rules, 1944 requires that any waste arising out of the raw materials or component parts in respect of which credit has been allowed towards duty paid on them should be cleared only on payment of duty. Under sub rule 3(vi) a credit cannot be utilised towards payment of such duty except where the waste is identifiable and classifiable to be the same raw material or component parts as such.

(i) A manufacturer was allowed credit for duty paid on 'aluminium sheets in coil form' used in manufacture of aluminium foils. However, he was allowed to utilise part of the credit towards payment of duty on scrap (not identifiable with sheets in coil form) arising in course of manufacture of foils. The

irregular utilisation of the credit resulted in duty being realised short by Rs. 3,10,838 on clearances of scrap made during the period from March 1981 to April 1981.

On the mistake being pointed out in audit (August 1981) the department recovered (September 1981) duty amounting to Rs. 3,10,818.

The Ministry of Finance have confirmed the facts (November 1983).

(ii) A manufacturer of electrical stampings and laminations produced them from hot rolled and cold rolled steel sheets. The scrap arising in the process was cleared on payment of duty at the rate of Rs. 450 per tonne (at the rate of duty paid on hot rolled sheets). However, on cold rolled sheet scrap included in the cleared scrap, duty was payable at the rate of Rs. 650 per tonne as applicable to cold rolled sheets. The manufacturer had taken credit for duty paid on cold rolled sheets at that rate. The mistake was allowed by the department resulting in duty being levied short by Rs. 1,88,570 on clearances made during the period from December 1979 to March 1981.

On the mistake being pointed out (December 1981) in audit, the department accepted the objection (December 1982). Report on recovery is awaited.

The Ministry of Finance have stated (August 1983) that a show cause-cum demand notice for Rs. 3,98,933 for the period from 1 March 1979 to 30 August 1982 was issued on 2 March 1983 and the same is under adjudication.

2.57 *Loss or delay in collection of duty by grant of credit for duty paid on inputs even though duty has been exempted on output to that extent*

Rule 56A of the Central Excise Rules allows credit being given for duty paid on raw materials and components (inputs) used in the manufacture of specified finished excisable goods (output) and utilisation of the credit towards payment of duty on the specified finished products. Rule 56A also provides that such finished products have to be notified in relation to the procedure contained in Rule 56A and that the input and output goods must fall under the same tariff item. If they do not fall under the same tariff

item, Government should have notified that remission or adjustment of duty paid on the inputs which will be allowed towards payment of duty on the notified finished goods.

Presently Government have issued about 26 notifications not under Rule 56A but under Rule 8(1) of the Central Excise Rules which exempt specified finished excisable goods from duty payable thereon to the extent of duty paid on inputs (not falling under the same tariff item) specified in such notifications. These notifications do not refer to remission or adjustment of duty levied on inputs but exempt a part of duty leviable on the specified finished output. However, the notifications contain a rider that in relation to such exemption the procedure set out in Rule 56A should be followed. Accordingly credit is allowed for the duty paid on the inputs specified in the notification as per provisions of Rule 56A and the manufacturers obtain credit on the entire quantity of the inputs brought into the factory at once. All such credit is allowed to be utilised towards payment of the whole of the duty payable on the finished output so long as the credit lasts. No payment of duty is needed to be made in cash till the credit is exhausted. If the stock of inputs in the factory is sufficiently high, duty need be paid in cash only on output which is cleared after a significant portion of the input has been consumed. This is the advantage sought to be conferred by relating the exemption notification to Rule 56A.

Where Rule 56A is linked to the notifications issued under Rule 8(1) exempting the output from a part of the duty leviable thereon, there is a risk that the manufacturer may demand to utilise the credit towards paying only the non-exempted part of the duty payable on the output, whereas the intention is that he should lapse the credit to the extent of duty exempted.

(i) Where a notification under Rule 8(1) of Central Excise Rules exempts duty to the extent of duty paid on inputs and provision also exists for taking credit for duty paid on inputs under Rule 56A ibid, as clarified by the Central Board of Excise and Customs in their letter issued on 10 July 1975 the manufacturer has the option to avail of either the exemption or the credit for duty paid on inputs.

A manufacturer of excisable goods classifiable under tariff item 68 availed of exemption from duty under a notification issued under Rule 8(1) on 18 June 1977. From August 1978, he opted for availing of credit under Rule 56A but was also allowed to avail of the exemption.

In the result he availed of credit for duty paid on inputs towards discharging duty on finished excisable goods on which duty payable was again reduced by the amount of duty paid on the inputs. The grant of double benefit resulted in duty being realised short by Rs. 1,59,138 on clearances made during the period from February 1979 to August 1981.

On the mistake being pointed out in audit (September 1981) the department issued a show cause notice to manufacturer in July 1982. Report on confirmation of demand is awaited.

The Ministry of Finance have stated (December 1983) that the matter will be re-examined.

(ii) As per a notification issued in March 1979 under Rule 8(1) of the Central Excise Rules, when electrical stampings and laminations all sorts (classifiable under tariff item 28A) are used in the manufacture of electric motors all sorts and parts thereof (classifiable under tariff item 30) the duty payable on the latter is exempted from so much of the duty of excise as is equivalent to the amount of duty paid on the stampings and laminations, subject to the procedure set out in Rule 56A being followed in relation to the exemption. Similarly, electric fans (classifiable under tariff item 33) are exempted from duty to the extent of duty paid on electric motors, used in their manufacture.

As per proviso (i) to Rule 56A(2) no credit shall be allowed in respect of duty paid on any material or component parts which are used in the manufacture of the finished excisable goods where the finished goods are exempt from the whole of the duty of excise leviable thereon or are chargeable to nil rate of duty.

(a) As per a notification issued on 1 March 1969 rotors and stators (classifiable under tariff item 30) were exempted from duty if they are used within the factory of production in the manufacture of electric fans (classifiable under tariff item 33).

Two manufacturers of electric fans were allowed exemption from duty on rotors and stators produced and used in the production of fans. Therefore in respect of the duty paid on electric laminations used in the manufacturer of rotors and stators, no credit under Rule 56A was admissible. However, such credit was allowed and it was irregularly utilised towards payment of duty on fans resulting in duty being realised short by Rs. 1,72,39,804 on clearances made during the period from June 1979 to June 1983.

The irregularity was pointed out in audit in July 1981 and February 1982.

The Ministry of Finance have stated (December 1983) that the matter will be re-examined.

(b) Another manufacturer was allowed credit for duty paid on electrical stampings and laminations brought into the factory and used in the manufacture of electric motors which in turn were used in the manufacture of air-conditioners, air-conditioning appliances and machinery, domestic electrical appliances and electric fans. The motors were exempt from payment of duty as per notifications issued on 24 September 1966 and 1 March 1969. Therefore, grant of credit for duty amounting to Rs. 4,88,060 paid on stampings and laminations was irregular and resulted in duty being realised short by a similar amount on clearances made during the period from June 1979 to January 1981.

On the irregularity being pointed out in audit (May 1981), the department stated (December 1981) that a show cause notice had been issued to the assessee. Report on adjudication is awaited (June 1983).

The Ministry of Finance have stated (November 1983) that the matter is under examination.

(c) Another manufacturer utilised duty paid die cast rotors received in his factory in the manufacture of electric motors which in turn were used in the manufacture of industrial air circulators (classifiable under tariff item 33). He was allowed to avail of the exemption from payment of duty on electric motors as per a notification issued in March 1969. But he was incorrectly allowed credit for duty paid on the die cast rotors under the said Rule 56A though they were used in the manufacture of electric motors which were exempted from duty. The credit was allowed to be utilised towards the payment of duty on industrial circulators resulting in duty being realised short by Rs. 64,955 on clearances made during the period from September 1981 to February 1983.

On the irregularity being pointed out in audit (March 1983) the department stated (April 1983) that credit was allowed as per a clarification issued by the Board in June 1980 that where an intermediate product is exempt from duty credit could still be allowed. The clarification goes counter to proviso (i) to Rule 56A(2).

The Ministry of Finance have stated (December 1983) that the matter will be re-examined.

(d) Seven manufacturers brought in duty paid electrical stampings and laminations into their factories and used them for the manufacture of rotors and stators which in turn were used in the manufacture of electric motors. Credit for the duty paid on the stampings was used towards discharging the duty payable on the electric motors manufactured by them. The amount so utilised on clearances made during the period from April 1980 to December 1982 was Rs. 13.56 lakhs. Since the electric motors were wholly exempt from duty the grant of utilisation of the credit was not in order.

On the irregularities being pointed out in audit (July 1982 and February 1983) the department did not accept the irregularity (August 1982 and April 1983). In one case subsequently the department stated (October 1982) that show cause notice for recovery of Rs. 57,762 in respect of clearances made during the period from July 1981 to February 1982 had been issued and demand confirmed.

In respect of four manufacturers the department stated that according to a clarification issued by the Government of India in June 1980 where an intermediate product fully exempt from duty has come into being during the process of manufacture of a specified finished product, utilisation of credit for duty paid on inputs used in the manufacture of an intermediate product, towards payment of duty on specified finished product was permissible if the intermediate product had been manufactured and consumed within the factory manufacturing the finished product. However, such a clarification issued by the Ministry does not override the statutory provisions of proviso (i) to Rule 56A(2) referred to above. Further, no duty being legally payable on the electric motors which were wholly exempt from duty, legally no duty could have been paid on the electric motors and the exemption to the extent of duty paid on such motors even where available would be nil.

The Ministry of Finance have stated (December 1983) that is one case the matter is before the Tribunal.

(e) Four manufacturers of electric motors (falling under tariff item 30) availed of credit for duty paid on electric stampings and laminations (falling under tariff item 28) towards payment of duty

on electric motors under the provisions of the notification issued in 1979 linking exemption to Rule 56A. The stampings and laminations were first used in the manufacture of rotors and stators which in turn were used in the manufacture of electric motors. Rotors and stators captively consumed in the manufacture of electric motors stood exempted from payment of duty as per a notification issued in 1968. Therefore, the manufacturers were not entitled to avail of the credit for duty paid on electric stampings and laminations used in the manufacture of the said rotors and stators. The credit irregularly availed of by them towards payment of duty on clearance of motors made during the year 1981-82 (in one case during the period from July 1981 to July 1982) resulted in duty being realised short by Rs. 75.68 lakhs.

On the mistake being pointed out in audit (December 1982), the department stated (March 1983) that according to a clarification issued by Government of India in June 1980 where intermediate products were exempt from duty, credit could be utilised towards payment of duty on finished excisable product. But in one case the department issued notice for demand of duty amounting to Rs. 82.50 lakhs on clearances made during the period from March 1979 to November 1982.

The clarification issued in June 1980 goes counter to the provisions of Rule 56A which does not refer at all to intermediate products but only to notified finished products and utilisation of credit (not its lapsing). However, the notifications issued under Rule 8(1) demand the lapsing of the credit notwithstanding following the procedure in Rule 56A for utilisation of credit. So long as the input specified in the notification is not used in the manufacture of the specified finished excisable product but is used in the manufacture of another product (whether or not exempted from duty) the exemption notification cannot be applied to the case at all.

The Ministry of Finance have stated (December 1983) that the matter will be re-examined.

(iii) A manufacturer of fans used as inputs steel sheets in manufacture of laminations. He then used the laminations in manufacture of rotors cum stators. Thereafter, he used the rotors cum stators in manufacture of fans. All the products were specified in a notification as respective inputs to output of successive stage of production. Therefore he was allowed exemption from duty on outputs to the extent of duty paid on inputs and also

allowed credit under Rule 56A for the duty paid on inputs. However, such credit was to be allowed only to the extent of duty paid on the inputs and not to the extent of duty payable (which was the aggregate of duty paid and duty exempted). But he was given credit for duty paid on output (become input) to the extent of duty payable on it. In the result credit for duty paid on inputs got inflated at successive stages to the extent of duty exempted on outputs. In the final result duty was realised short by Rs. 42,42,444 on clearances made during the period from April 1979 to October 1980.

Credit was not to be given to the extent of duty payable on the output when it became input. This view which is dictated by Rule 8(1) was not taken into account by the department and it ignored the fact of exemption of a part of the duty payable. In the result credit was irregularly given for gross duty payable on the inputs.

Though Rule 56A(2)(ii)(b) provides for inputs and outputs being notified under Rule 56A without the two having to fall under the same tariff item, the notification granted exemption under Rule 8(1) and it was not a notification issued under Rule 56A. Therefore the department could not regulate grant and utilisation of credit wholly under Rule 56A without exempting any part of duty. Nevertheless, in effect, the department adopted the view that on credit being given for duty paid on input, the input becomes non duty paid and the credit can be used for paying duty under the procedure in Rule 56A i.e. towards paying the gross duty payable on the output as if no part of the duty payable on it had been exempted. This view was irregularly adopted notwithstanding the fact that the notification was for exemption and was issued under Rule 8(1)! The concept of inputs becoming non-duty paid on grant of credit for duty paid on input was not available to the department because the credit was not available for utilisation but only for exemption or lapsing.

On the mistake being pointed out in audit (May 1981) the department held that grant of credit under Rule 56A did not render the input goods non duty paid. But as per the advice of the Ministry of Law and decision in Government revision order (No. 1202/1980) of November 1980 as also the accounting practice in manufacturing industries (of excluding duty paid on inputs for purposes of determining assessable value of output on

costing basis under Section 4 of the Central Excise Act) grant of credit for duty paid on inputs under provisions of Rule 56A renders the input goods non duty paid if the credit is utilised (as happened in this case) instead of expunging it or lapsing it.

The Ministry of Finance have stated (December 1983) that the matter will be re-examined.

Similar mistake involving duty amounting to Rs. 5,47,702 was reported in paragraph 2.34(i)(b) of Audit Report for the year 1981-82 to which reply of the Ministry of Finance is still awaited.

2.58 *Irregular grant of credit for duty paid on the strength of which further exemption was allowed*

Rule 8(1) of Central Excise Rules, 1944 provides that the Central Government may, by notification, exempt any excisable goods from the whole or any part of the duty leviable on such goods. Where duty payable on output (excisable goods) is exempted to the extent of duty paid on any inputs going into the manufacture of the output (excisable goods) the input goods continue to remain duty paid goods for purposes of valuation (on cost basis) under Section 4 of the Central Excises and Salt Act and duty paid is part of the cost of the input goods.

Under Rule 56A of the Central Excise Rules, subject to certain conditions, credit is allowed for duty already paid on raw materials and components (inputs) used in the manufacture of excisable goods (output). On allowing such credit the inputs become non duty paid because the credit is allowed to be utilised towards payment of duty on the finished excisable goods (output). When Rule 56A is invoked there is no grant of exemption, and duty paid on output goods is the whole of the duty payable. It is paid by utilisation of the credit allowed for duty paid on inputs, where credit is inadequate the balance of duty is paid in cash. For purpose of valuation (on cost basis) under Section 4 of the Central Excise Act, where credit for duty paid on inputs is allowed the duty paid on inputs is no longer a part of the cost of the input. Therefore the value of the output goods will not include the duty paid on the input because

credit for that duty has been allowed, thereby effectively making the inputs non duty paid goods. Therefore, the cost of such inputs to the manufacturer is exclusive of the duty on inputs.

In November 1980 in deciding a revision application, Government confirmed that if duty paid raw material is brought into the factory under the procedure prescribed in Rule 56A of Central Excise Rules, 1944 and credit for the duty paid on such raw materials is allowed, such materials will become non duty paid raw materials.

(i) As per a notification issued on 3 December 1981, aluminium plates, sheets, circles (other than circles having thickness of and above 0.56 mm but not above 2 mm) classifiable under sub-item (b) of tariff item 27 are exempted from duty in excess of 26 per cent *ad valorem*. Where they are manufactured from aluminium of any description mentioned in the said notification, the exemption would be available only if excise duty or countervailing duty has been paid on aluminium of such description on the rates specified in the said notification.

A manufacturer of aluminium plates, sheets and circles produced them from aluminium in crude form such as ingots etc. mentioned in the aforesaid notification and cleared them at the aforesaid concessional rate of duty of 20 per cent *ad valorem*. But he had taken credit for the duty paid on aluminium in crude form under the provision of Rule 56A of the Central Excise Rules and so the aluminium in crude form had become non duty paid goods. Accordingly on the sheets, plates and circles full duty was payable and not concessional rate of duty. In the result duty was realised short by Rs. 5.29 crores in respect of clearances made during the period from March 1982 to January 1983.

The short levy was pointed out in audit in May 1983.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(ii) As per the notification issued on 3 December 1981 certain specified aluminium products classifiable under tariff item 27 were exempted from duty provided the goods were manufactured out of aluminium products on which appropriate duty of excise or countervailing duty as per notification had been paid.

(a) A manufacturer of aforesaid specified products classifiable under tariff item 27 availed of the credit under Rule 56A in respect of duty paid on raw materials used in the manufacture of said goods on which he paid duty after availing of aforesaid exemption. On credit being taken for duty paid the raw materials became non duty paid and accordingly the exemption was not available. Irregular grant of exemption resulted in duty being realised short by Rs. 56.26 lakhs in respect of clearances made during the period from January 1982 to December 1982.

The short levy was pointed out in audit in March 1983.

The Ministry of Finance have stated (December 1983) that the matter will be re-examined.

(b) A manufacturer produced laminated aluminium foils out of aluminium foil on which duty had been paid after availing of exemption under another notification issued in 1972. The manufacturer availed of credit under Rule 56A in respect of the duty paid on the aluminium foil but was allowed to clear the laminated aluminium foils after availing exemption under aforesaid notification of 1981 even though the aluminium foils had become non duty paid on credit being allowed. The irregular grant of exemption resulted in duty being realised short by Rs. 3.31 lakhs on clearances made during the period from April 1982 to August 1982.

The irregularity was pointed out in audit in September 1982.

The Ministry of Finance have stated (December 1983) that the matter will be re-examined.

(iii) As per a notification issued on 3 December 1981 on aluminium foils classifiable under tariff item 27(e) and manufactured from duty paid aluminium, duty is leviable at the concessional rate of 25 per cent *ad valorem*.

(a) A manufacturer used duty paid aluminium sheets procured from another factory in the manufacture of aluminium foils and was allowed credit on the duty paid on the sheets. Therefore, benefit of concessional rate of duty on aluminium foils under the aforesaid notification is not available in respect

of the foils manufactured. However, the concession was allowed resulting in duty being levied short by Rs. 46 lakhs on clearances made during the period from May 1982 to August 1982.

On the mistake being pointed out (December 1982) in audit the department did not accept (March 1983) the objection on the ground that grant of proforma credit on aluminium sheets did not render manufacturer ineligible for the concessional rate of duty, notwithstanding the decision of the Government to the contrary.

The Ministry of Finance have stated (November 1983) that the matter is under examination.

(b) A manufacturer of laminated and printed foils produced them from aluminium foils and was allowed credit of duty paid on such aluminium foils under Rule 56A which he utilised towards duty paid on the final product cleared by him. The aluminium of any description having become non duty paid, exemption under notification aforesaid was not available. Still exemption was allowed resulting in duty amounting to Rs. 11.86 lakhs not being realised on clearances made during the period from February to November 1982.

On the mistake being pointed out in audit (February 1983) the department stated (February 1983) that the mistake was already pointed out by their internal audit party in June 1982. However, no action to rectify the mistake had been taken and manufacturer was allowed to continue to avail of exemption till date of audit (January 1983).

The Ministry of Finance have stated (November 1983) that the matter is under examination.

(iv) As per a notification issued on 3 December 1981 on aluminium 'Slugs' and 'Foils' classifiable under sub item (b) and (c) of tariff item 27 duty leviable in excess of 26 per cent and 25 per cent *ad valorem* was exempted if they were manufactured from aluminium of any description specified in the notification on which the duty of excise or the countervailing duty has been paid to the satisfaction of Assistant Collector of Central Excise.

A manufacturer produced aluminium slugs from circulating scrap (on which levy of duty is exempted) as well as from 'ingots' brought into the factory under the procedure prescribed in Rule 56A and availed of credit for the duty paid on the ingots. Another manufacturer under the same Collectorate manufactured 'aluminium foils' from aluminium sheets and strips part of which were imported (on which countervailing duty was exempted) and which were brought into the factory and on which credit for duty paid on the indigenous sheets and strips was availed. Though the raw materials had become non duty paid, exemption as in the aforesaid notification was allowed resulting in duty being levied short by Rs. 47,94,380 on clearances of foils during the period from December 1981 to May 1982 and slugs during the period from April 1982 to June 1982.

On the mistake being pointed out in audit (July 1982) the department did not admit the objection in respect of 'slugs' and stated that the goods were manufactured from duty paid ingots and duty on circulating scraps was exempted. No comments in respect of foils were offered (June 1983). However, the notification as worded does not allow of exemption where raw materials have become non duty paid consequent to allowing credit for duty paid.

The Ministry of Finance have stated (December 1983) that the matter will be re-examined.

(v) As per a notification issued in December 1981 on aluminium billets and on extruded shapes and sections of aluminium (classifiable under tariff item 27) which are manufactured from aluminium of any description on which appropriate duty had been paid, duty in excess of 20 per cent and 26 per cent *ad valorem* respectively was exempted.

In an integrated factory manufacturing ingots, billets, rods and extruded products of aluminium the manufacturer was allowed to avail of the aforesaid exemption in respect of aluminium billets. On the extruded products of aluminium also aforesaid exemption was allowed even though the manufacturer was allowed credit for the duty paid on the billets under Rule 56A of the Central Excise Rules and was allowed to utilise the credit towards payment of duty on extruded products. On grant of credit, the billets had become non duty paid raw material and exemption availed of in respect of extruded products

became irregular. The irregularity resulted in duty being realised short by Rs. 17.7 lakhs on clearances made during the period from 1 January to 6 September 1982.

On the mistake being pointed out in audit (September 1982), the department did not accept the objection (February 1983). But the order passed by the Government in November 1980 in disposing of a revision application and the Law Ministry's opinion communicated by the Ministry of Finance in December 1981 confirm the mistake.

The Ministry of Finance have stated (December 1983) that the matter will be re-examined.

(vi) As per a notification issued on 4 June 1979 output excisable goods were exempted from duty to the extent of duty paid on input goods classifiable under tariff item 68 used in the manufacture as raw materials and component parts. The exemption was subject to credit being allowed for duty paid on inputs and utilisation of such credit for payment of duty on output similar to procedure set out in Rule 56A.

As per a notification under Rule 8(1) of Central Excise Rules issued on 27 February 1980, 'Phenol formaldehyde moulding powder' (falling under tariff item 15A) is exempt from so much of duty as is in excess of 30 per cent *ad valorem*, if it is manufactured from raw naphtha or any chemical derived therefrom, on which the appropriate amount of duty has already been paid.

(a) A manufacturer of artificial resins, laminated sheets and tubes was allowed to pay duty on his clearances of phenol formaldehyde moulding powder, (marketed as hylak plastics) at the rate of 30 per cent even though he was allowed to avail of credit for the duty paid on the raw materials like formaldehyde, phenol, hexamine used in its manufacture and on which therefore appropriate amount of duty had not been paid after credit for duty paid was allowed. Since the inputs could not be viewed as having paid appropriate duty the grant of exemption was irregular and resulted in duty being realised short by Rs. 43,43,737 on clearances made during the period from January 1981 to May 1982.

On the irregularity being pointed out in audit the department stated (December 1982) that show cause notice had since been issued in September 1982 demanding the duty of Rs. 43,43,737. Report on recovery is awaited (July 1983).

Similar mistake involving duty amounting to Rs. 38.46 lakhs was pointed out in paragraph 2.25 (iii) in Audit Report for the year 1981-82 to which reply is still awaited.

The Ministry of Finance have stated (December 1983) that the matter will be re-examined

(b) A manufacturer of urea formaldehyde moulding powder classifiable under tariff item 15A(1) produced it from formaline or from formaldehyde moulding powder which was derived from raw naphtha. On the urea formaldehyde moulding powder which was cleared, exemption aforesaid was granted.

The manufacturer was also allowed credit for the duty paid on formaldehyde (classifiable under tariff item 68) brought into the factory by him. Since the formaldehyde thereupon effectively became non duty paid material (credit having been given for appropriate duty paid), therefore the exemption allowed under aforesaid notification became irregular. The irregular grant of exemption resulted in duty being realised short by Rs. 55,377 on the clearances made during the period from 1 March 1980 to 2 June 1982.

On the mistake being pointed out in audit (August 1982), the department stated (June 1983) that the grant of credit was only procedural and thereby the inputs would not become non duty paid and cited a Law Ministry's opinion given in February 1974 in support. The Law Ministry's opinion was given in relation to duty leviable on waste arising during the process of manufacture, and is not relevant. The Government of India held in November 1980 while deciding a revision application that on grant of credit the raw material would become non duty paid and the Ministry of Law have also advised accordingly.

The Ministry of Finance have stated (December 1983) that the matter will be re-examined.

(vii) As per a notification issued under Rule 8(1) of Central Excise Rules in February 1980, artificial or synthetic resins and plastic materials classifiable under sub item (1) of tariff item

15A are exempt from duty in excess of 29 per cent *ad valorem* if they are manufactured from raw naphtha or any chemical derived therefrom on which the appropriate amount of duty of excise has already been paid.

A manufacturer of artificial or synthetic resins (classifiable under tariff item 15A) used duty paid raw material classifiable under tariff item 68 and was allowed exemption to the extent of duty paid on the raw materials in paying duty on the resin under a notification issued on 4 June 1979. But the manufacturer was also allowed credit to the extent of duty paid on raw materials which also he utilised towards payment of the balance duty payable. The credit was not lapsed with the result that appropriate amount of duty had not been paid on the chemical derived from raw naphtha classified under tariff item 68, duty being realised short by Rs. 7.76 lakhs on clearances made during the period from April 1981 to May 1982.

On the irregularity being pointed out in audit (August 1982) the department stated (September 1982) that the credit allowed on the raw materials did not make them non-duty paid materials. This view of the department, however, is contradicted by Order in Revision passed by the Government of India in November 1980 and is also contrary to commercial practice in computing cost of resin which is exclusive of duty paid on raw materials on which credit is allowed for duty paid.

The Ministry of Finance have stated (November 1983) that the matter is under examination.

DEMANDS FOR DUTY NOT RAISED

2.59 *Omission to raise demand where due*

(i) As per a notification issued on 15 July 1977 on cotton fabrics, composite rate of excise duty was leviable under the Central Excises and Salt Act, 1944 and the Additional Duty (Goods of Special Importance) Act, 1957. In addition certain additional duties of excise in lieu of Sales tax on textiles and textile fabrics and special duty of excise became leviable after 1977.

On an application from a manufacturer a High Court granted stay in 1982 and restrained the departmental officers from collecting the additional duties and special duties levied after 1977. From 25 March 1982 the manufacturer also stopped paying the original additional duty already being paid as per notification of 15 July 1977. The duty not demanded amounted to Rs. 38,04,888 in respect of clearances made during the period from 25 March 1982 to 16 October 1982.

On the incorrect reading of the stay order being pointed out in audit (October 1982) the department realised the amount of Rs. 38,04,888 on 25 October 1982.

The Ministry of Finance have confirmed the facts.

(ii) Where goods are removed under bond, without payment of duty, from one warehouse to another, on arrival at the warehouse of 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 consignee for transmission to the consignor. The consignor is required to present the certificates to the officer in-charge of the warehouse of removal within ninety days of issue of transport permit, which allowed the removal. On failure to do so, the rules require that duty be levied on such goods.

In 21 cases, where mineral oils were removed under bond for rewarehousing during the period from September 1975 to March 1977, rewarehousing certificates had not been received. However, duty had not been demanded although the period of ninety days had expired long ago. The amount of duty not demanded was Rs. 63,44,408.

On the omission being pointed out in audit between November 1977 and January 1978, the department stated (July 1982) that rewarehousing certificates have since been received in all but two cases where duty amounting to Rs. 5,31,984 was demanded in September and December 1980 and the duty was realised from the consignors in March 1981.

The Ministry of Finance have confirmed the facts (July 1983).

(iii) As per a notification issued on 29 January 1979, duty was exempted on skull scrap, runners and risers classifiable

under tariff item 26 and arising in the course of manufacture of steel ingots using electric furnace. The exemption was subject to the condition that the scrap be used in the manufacture of steel ingots in the factory of production. If used elsewhere than in the factory of production and in the manufacture of steel ingots using electric furnace, procedure prescribed in Chapter X of Central Excise Rules was to be followed in order that exemption may be allowed. On 5 June 1981 the exemption was extended to skull scrap, runners and risers arising in the manufacture of steel castings also (using electric furnace) provided the scrap was in turn used in the manufacture of steel ingots or steel castings.

(a) A manufacturer of steel castings was allowed to clear skull scrap, runners and risers produced in the manufacture of steel castings (without using electric furnace) without paying duty. They were removed for melting in another factory and the molten metal was received back by the manufacturer for production of steel castings. Since none of the conditions in the aforesaid notification was satisfied, the permission for duty free clearance allowed subject to manufacturer's furnishing a bank guarantee was withdrawn and manufacturer started paying duty under protest on clearances made from 23 March 1982 onwards. In August 1982 duty on clearances made from 15 September 1981 to 22 March 1982 amounting to Rs. 94,535 was demanded and paid by the manufacturer on 24 August 1982. But on clearances made from September 1977 to 14 September 1981 duty amounting to Rs 3,88,729 was not demanded.

On the failure to demand the amount of Rs. 3,88,729 being pointed out in audit in October 1982, the department raised a demand for this amount but stated that they were already aware of the need to demand and a letter was issued to the manufacturer in June 1981 requiring him to pay duty. The letter however, could not be legally enforced as a demand and only in February 1983 demand was raised after failure was pointed out in audit.

The Ministry of Finance have stated (December 1983) that the matter is being examined.

(b) A manufacturer of steel castings used skull scrap which had arisen out of the manufacture of steel castings in the manufacture of steel ingots without payment of duty. As the skull

scrap was not obtained in the manufacture of steel ingots as required under the notification issued in January 1979 duty was leviable. The duty not demanded amounted to Rs. 2.57 lakhs on clearances made during the period from April 1979 to June 1981.

On the mistake being pointed out in audit (May 1982) the department stated that they were aware of the mistake from May 1981. However, no action was taken by the department till mistake was pointed out in audit in May 1982 and a show cause notice was issued only thereafter in June 1982.

The Ministry of Finance have stated (November 1983) that a show cause notice issued in June 1982 is pending adjudication.

(iv) A Public Sector Company fabricated and supplied various items of machinery and parts thereof valuing Rs. 57.66 lakhs, during the period from November 1981 to June 1982, and realised duty on the clearances from its customers but failed to deposit the duty to the credit of Government. The excise returns had either not been scrutinised or duty not demanded by the department when omission to realise duty amounting to Rs. 4,61,291 was noticed in audit in September 1982.

On the omission being pointed out in audit (September 1982) the department realised an amount of Rs. 4,43,282 in the same month and raised demand for a further amount of Rs. 5,140 in March 1983. A sum of Rs. 12,869 was found not recoverable in view of the nature of jobs executed.

The Ministry of Finance have confirmed the facts.

(v) Short payment of duty was objected to by the department on excise returns of a manufacturer of polystyrene products cleared during the period September 1980 to October 1981. In November 1981 also duty was paid short by Rs. 2.87 lakhs on polystyrene manufactured. The department did not raise demand though the final assessment was completed in March 1982 after scrutiny of excise returns.

The omission was pointed out in audit (September 1982).

The Ministry of Finance have stated (November 1983) that a demand in respect of the period from November 1981 onwards has since been issued.

(vi) As per two notifications issued on 1 March 1970, on package tea falling under tariff item 3(2) duty is leviable at concessional rate of 40 paise or at one rupee per kilogramme according as it is made into packages containing not more than 25 grammes, or more than that quantity. The concession is not available in respect of packages containing tea more than 20 kilogrammes net.

Two manufacturers of package tea called 'dispenser carton tea bags' were allowed to clear their goods on payment of duty at 40 paise per kilogramme upto 24 March 1980 when the department observed that the quantity of tea in such cartons was more than 25 grammes and therefore duty was leviable at rupee one per kilogramme. The manufacturer paid duty at rupee one per kilogramme from 25 March 1980. Recovery at the rate of rupee one per kilogramme was not effected in respect of clearances prior to 25 March 1980. This resulted in duty amounting to Rs. 2,11,795 not being realised on clearances made during the period 1 May 1977 to 24 March 1980. The department, had not demanded differential duty of even Rs. 62,005 relating to the period of six months ending on 24 March 1980.

The failure was pointed out (February 1981) in audit to the department.

The Ministry of Finance have stated (August 1983) that the matter is under examination.

(vii) As per provisions of Rule 13 of Central Excise Rules, excisable goods may be exported without payment of duty on execution of a security bond which is not discharged unless the goods are duly exported to the satisfaction of the Collector. No proof of export had been furnished in respect of 13 consignments of excisable goods cleared between March 1976 to May 1976 under bond by a Saw Mill and timber company. The consignments were very likely not exported but were diverted for home consumption as evidenced by some correspondence.

The department did not take any action to demand the duty from the company nor levy any penalty resulting in loss of revenue amounting to Rs. 45,786.

The omission was pointed out in audit in March 1983.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

2.60 *Demand not raised before they came under bar of limitation*

(i) The Central Board of Excise and Customs in consultation with the Ministry of Law in November 1979 decided that on 'extra hard vegetable product' which is unfit for human consumption duty will be leviable under tariff item 68.

A manufacturer was allowed to clear 1,159 tonnes of extra hard rice bran during the period from 23 November 1979 to 27 October 1980 without realising duty amounting to Rs. 8.01 lakhs. The Assistant Collector issued a show cause notice on 8 July 1981 demanding the said amount. The Collector, however, set aside the demand as barred by limitation. In the result duty amounting to Rs. 8.01 lakhs was lost to Government.

The reasons for the delay in raising demand were enquired in audit (March 1983).

The Ministry of Finance have accepted the objection.

(ii) As per a notification issued on 21 June 1969 zinc dust, zinc powder, zinc plates and zinc sheets, classifiable under sub items (1) and (2) of tariff item 26B and used in the manufacture of zinc unwrought classifiable under tariff item 26B(1) are exempt from the whole of the duty of excise leviable thereon. The exemption is subject to the condition that the goods are so used within the factory of production. The Board of Central Excise and Customs held in June 1978 that such zinc dust or powder is classifiable as 'zinc unwrought' under tariff item 26B(1) and not under tariff item 68. But on 21 August 1981 the Board held that zinc dust or powder and zinc dross or ashes or skimmings would be classifiable under tariff item 68 and not under tariff item 26B, because they were wrought products.

A manufacturer of zinc, was allowed to classify atomised zinc dust or powder used for the purification of leached slurry under tariff item 26B and availed of aforesaid exemption. In September 1982, the department demanded duty on the zinc dust or powder

on the basis of the Board's decision of 21 August 1981. Failure to demand duty in August 1981 itself in respect of clearances from February 1981 onwards resulted in duty amounting to Rs. 7.96 lakhs being lost to Government on clearances made during the period from February 1981 to August 1981.

The underassessment had been pointed out in audit (May 1977) in that the atomised zinc powder could not be viewed as zinc unwrought and classified under tariff item 26B(1). The audit objection was reiterated in November 1981 when the tariff advice of 21 August 1981 had been issued by the Board. Still, the department demanded duty only for the period from 21 August 1981 in September 1982 resulting in loss of revenue of Rs. 7.96 lakhs.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(iii) Under Rule 10 of the Central Excise Rules, 1944 as it stood prior to 6 August 1977 and Rule 173J demand for duty levied short is to be raised within one year from the date on which the duty was paid by the manufacturer.

A leading manufacturer of paper, cleared "Angle cut azure laid envelope paper" after classifying it under tariff item 17(1). But the goods were correctly classifiable under tariff item 17(2). The misclassification allowed by the department resulted in duty being levied short by Rs. 2,87,979 on clearances made from July 1976 to July 1977.

On the misclassification being pointed out in audit (June 1977) the department stated in April 1978 that demand for Rs. 2,87,979 on clearances made during the period from 1 July 1976 to 31 July 1977 had since been raised (on 16 January 1978), but on appeal the Appellate Collector set aside (September 1980) the demand in respect of clearances made during the period from 1 July 1976 to 17 January 1977 as being barred by limitation. The delay in raising demand after the misclassification was pointed out in audit in June 1977 resulted in loss of revenue amounting to Rs. 1,90,696 on clearances made during the period from 1 July 1976 to 16 January 1977.

The loss of revenue was pointed out to the department (April 1982).

The Ministry of Finance have confirmed the facts (November 1983).

IRREGULAR REBATES AND REFUNDS

2.61 *Incorrect grant of rebate*

(i) Rule 12 of the Central Excise Rules, 1944 provides for the Central Government to grant, by notification in the official gazette, rebate of duty paid on excisable goods, when exported outside India.

As per a notification issued on 17 October 1981, the Central Government granted rebate of excise duty paid on the unblended tea (classifiable under tariff item 3) on its export outside India at a uniform rate of 40 paise per kilogram. The notification failed to stipulate that when duty paid was less than 40 paise per kilogram the rebate would be limited to duty paid on excisable goods as laid down in the said Rule 12. However, the notification to the extent it exceeded the power vested in Government under Rule 12 was void.

On the export made during the period 20 March 1982 to 31 July 1982 there was no record to indicate that duty had been paid at a rate higher than 25 paise per kilogram (the lowest zonal rate prescribed under a notification issued on 5 November 1981). However, the department allowed rebate at 40 paise per kilogram and paid rebate of Rs. 1.02 crores on the tea exported outside India. It was pointed out in audit that rebate should not have been allowed or should have been limited to 25 paise per kilogram.

The mistake in the notification and in making payments of rebate was pointed out in audit in August 1982. On 25 July 1983 Government amended the said notification of 17 October 1981 to say that only the duty of excise paid will be allowed as rebate even if it be at rates below 40 paise per kilogram.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

(ii) Under Rule 12 of Central Excise Rules read with a notification issued in September 1967, rebate of excise duty paid on mineral oil products (falling under tariff items 6 to 11A) is admissible if they are exported as stores for consumption on board

an aircraft on foreign run subject to fulfilment of certain conditions stipulated in aforesaid notification. One of the conditions is that the rebate is allowed in regard to only flights to two specified foreign countries having land frontiers with India.

Rule 13 provides that excisable goods may be exported in a like manner (as in Rule 12) without payment of duty after executing a bond and formally secured.

A Public Sector Corporation was allowed to export without payment of duty 'aviation turbine fuel' under bond (under the aforesaid Rule 13) for consumption on board an aircraft which was on foreign run to a third country not being one of the two specified countries. Non-recovery of duty by allowing exports under bond resulted in a loss of revenue amounting to Rs. 61,390 on clearances made during the period April 1977 to October 1977.

On the mistake being pointed out in audit (June 1982) the department have stated (June 1983) that necessary demand is being raised.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

2.62 *Irregular grant of refund*

On copolymer beads classifiable under tariff item 15A(1)(ii) duty was leviable at 40 per cent *ad valorem* and on ion exchange resins (produced out of such copolymer beads) classifiable under tariff item 68 (provided the resin was without resinous character) duty was leviable at 8 per cent *ad valorem*.

A manufacturer producing ion exchange resins from copolymer beads was made to pay duty on the resins under protest after classifying the resins under tariff item 15A(1)(ii) in respect of resins cleared upto 12 September 1978. Consequent to the issue of tariff advice in January 1981 clarifying that the ion exchange resin was classifiable under tariff item 68 the manufacturer was allowed (May 1981) refund of the excess duty paid by him on the ion exchange resins which amounted to Rs. 2.58 crores. While granting the refund the department failed to recover the duty on the beads on which duty amounting to Rs. 13.41 lakhs had not

been realised in respect of the period from 30 October 1977 to 12 September 1978 though duty on resin was realised under protest.

The omission was pointed out in audit (February 1982) to the department.

The Ministry of Finance have stated (November 1983) that demands for Rs. 13.41 lakhs were raised on 29 September 1978 and are under adjudication.

CESS

2.63 *Non levy of cess*

(i) Under the Produce Cess Act, 1966, cess is leviable on the oil extracted from oil seeds at the rate of one rupee per quintal of oil (sixty paise prior to 5 March 1979).

On 3,86,687 quintals of oil extracted from oil seeds in 70 oil mills during the years 1966-67 to 1980-81 cess was neither levied nor recovered by the department.

On the omission being pointed out in audit between March 1980 and May 1981, the department recovered a sum of Rs. 1.33 lakhs from owners of 58 mills. Recovery of the balance amount of Rs. 1.99 lakhs was pending decision on appeals filed in Courts.

The Ministry of Finance have stated that the matter is *sub judice* (November 1983).

(ii) Under the Khadi and other Handloom Industries Development (Additional Excise Duty on Cloth) Act, 1953 additional duty (called handloom cess) at the rate of 1.9 paise per square metre is leviable on all fabrics on which excise duty is paid.

Grey cotton fabrics manufactured on powerlooms were processed in a power processing unit on a job work basis. Neither the supplying unit nor the processing unit had paid the handloom cess on the grey fabrics or on the processed fabric. The cess not levied amounted to Rs. 1.27 lakhs on 66,93,415 metres of cloth cleared from May 1976 to September 1982.

When the failure was pointed out in audit (November 1981), the department stated that the processing unit has since started paying handloom cess from 24 September 1982. Report on recovery is awaited (July 1983).

The Ministry of Finance have stated (December 1983) that the matter is being examined in consultation with the Ministry of Commerce.

(iii) As per an order issued on 27 October 1980 under the Industries (Development and Regulation) Act, 1951 from 1 November 1980 a duty of excise at the rate of 1|8 per cent *ad valorem* was leviable for collection as cess on paper pulp including paper products. The levy was withdrawn on 3 February 1981 by another order. The cess was, therefore, leviable during the period 1 November 1980 to 2 February 1981.

On 'wood pulp', 'bamboo pulp' and 'paper pulp' manufactured in two units cess was not levied during the aforesaid period resulting in cess amounting to Rs. 60,527 not being realised.

On the omission being pointed out in audit (August 1982 and December 1982) the department stated that according to an order issued on 27 April 1982 by the Ministry of Finance, demands for cess on pulp, if any, raised, should be withdrawn. The aforesaid order of the Finance Ministry is contrary to the orders of Ministry of Industry which is the authority for issuing such orders under the Industries (Development and Regulation) Act on levy of cess.

The Ministry of Finance have stated (December 1983) that the matter will be examined.

(iv) As per an order issued on 25 February 1976 by the Ministry of Industries and Civil Supplies (Department of Industrial Development) under the provisions of the Industries (Development and Regulation) Act, 1951 (65 of 1951), excise duty of the nature of cess became leviable on certain specified classes of goods manufactured or produced wholly or in part of jute. This included jute twine and yarn. The Central Board of Excise and Customs in consultation with the Ministry of Commerce and the Ministry of Law, clarified on 19 April 1977 that jute twine and yarn consumed within the factory for the manufacture of jute goods even if exempt from payment of Central Excise duty, were liable to cess under the Jute Manufactures Cess Rules, 1976 since the Industries (Development and Regulation) Act, 1951 did not contain any provision for grant of exemption.

In four jute mills duty on jute yarn contained in the finished jute goods was demanded by the department but not yarn wasted in the process of manufacture of jute goods. This resulted in duty amounting to Rs. 36,388 on clearances made from March 1976 to December 1980 being not demanded in the case of one mill and duty amounting to Rs. 48,742 on clearances made from January 1979 to December 1980 in case of three other mills.

On the failure being pointed out in audit (April and June 1981), the department stated (July 1982) that as a measure of abundant caution and in order to safeguard Government revenue, demand for cess on twine and yarn wasted in the process of manufacture in a composite mill was being raised. Report on recovery is awaited (April 1983).

Reply of the Ministry of Finance is awaited.

2.64 *Short levy of cess*

Section 9(1) of the Industries (Development and Regulation) Act, 1951 provides for the levy and collection as a Cess on all goods manufactured or produced as may be specified, a duty of excise at such rate as may be specified. 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 therefrom, without any abatement or deduction whatever except trade discount and the amount of duty then payable. Cess at the rate of 1/8 per cent *ad valorem* became leviable on paper with effect from 1 November 1980 as per a notification issued by Government under the aforesaid Section 9(1) on 27 October 1980.

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 or expressly refers to the provision of the Central Law in the preamble.

Cess on paper was realised from four manufacturers of paper on a value exclusive of excise duty leviable under the Central Excises and Salt Act, 1944, special excise duty leviable under the Finance Act and Sales Tax leviable under a State Act. The

exclusion of the excise duties (basic and special) and the sales tax was not correct since they were not duties leviable under the Industries (Development and Regulation) Act. Only the cess and trade discount was to be excluded. The mistake resulted in short levy of cess amounting to Rs. 84,340 during the period from November 1980 to January 1983.

On the mistake being pointed out in audit (September 1982) the department stated (November 1982) that as per Rule 3 of the Paper and Paper Board Cess Rules, 1981, the provisions of the Central Excise Act and the Rules made thereunder were applicable to the levy and collection of cess as they apply to the levy and collection of excise under the Central Excises and Salt Act, 1944. But as a measure of abundant caution, show cause notices for the amounts were issued in October 1982. The said rules made under the Act cannot override the express provisions of the Act.

The Ministry of Finance have stated (December 1983) that the matter is under examination.

2.65 *Non recovery of cess*

Till 23 November 1979 all varieties of man-made fabrics manufactured either wholly or partly from man-made fibre or yarn were classifiable under tariff item 22. Man-made fabrics processed by bleaching, dyeing, printing, shrink proofing, tentering, heat setting, crease resistant processing or any other process were also to be classified under tariff item 22 from 24 November 1979.

In January 1979, a High Court held that processed man-made fabrics manufactured by an independent processor (not being the manufacturer of the fabric) will not be classifiable under tariff item 22, since the process involving bleaching, dyeing or printing did not bring into existence any new woven stuff or substance. The Government issued an Ordinance in November 1979 in order to continue the scheme for levy and assessment of duty on man-made fabrics and to validate past assessments. The Ordinance was replaced by an Act of Parliament on 12 February 1980.

As per provisions of Khadi and other Handloom Industries Development Act, 1953, handloom cess at the rate of 1 paise per square metre is leviable on cloth.

A manufacturer engaged in the processing of man-made fabrics obtained interim stay orders from another High Court on 24 April 1979 on a petition made on similar grounds. Though the stay was only in respect of excise duty demands under items 19 and 22 of Central Excise tariff, he did not pay the cess on such fabrics, but furnished only bank guarantees in respect of cess also. He recovered duty and cess from his customers and the duty and cess collected on clearances made during the period from May 1979 to July 1982 amounted to Rs. 73.89 lakhs of which the handloom cess collected amounted to Rs. 2,09,051. The interim relief prayed for and granted as stay was only in respect of excise duty and not in respect of handloom cess.

On the irregularity being pointed out in audit (December 1982) the department has stated (May 1983) that the matter is being pursued at the highest level to have the stay orders vacated and the amount collected. It is not clear how the recovery of cess is barred by the stay.

The Ministry of Finance have stated that the matter has become sub judice (November 1983).

OTHER TOPICS OF INTEREST

2.66 *Fortuitous benefit*

A manufacturer produced out of processed vegetable oil (rice bran oil) extra hard vegetable products which he used for the manufacture of soaps in the same factory and also in another manufacturing unit of his. The process of manufacture involved bleaching of oil and conversion by hydrogenation. The product was classified under tariff item 13 upto 28 February 1978 and from 1 March 1978, under tariff item 12. On reclassification of the product the manufacturer claimed the benefit of exemption available as per a notification issued on 1 March 1963, exempting from duty extra hard vegetable product used in the manufacture of soaps during the period from 1 March 1978 to 21 February 1979. Accordingly, a sum of Rs. 25,40,878 was refunded to him (October 1979) by the department and a further sum of Rs. 6,92,710 was adjusted towards dues from him even though the manufacturer had passed on the full burden of the amount of duty to his customers. The refund

of Rs. 32,33,588 was made to the manufacturer even though the High Court in the State had held on 10 October 1979 that the refund should be restricted to what he may in turn have to refund to his customers.

On their failure to restrict refund being pointed out in audit (October 1980) the department did not accept the objection and stated (July 1981) that there was no provision in the Central Excise Rules to forfeit to Government the amount of refund due to the assessee on the ground that the grant of such refund would result in unjust enrichment of the party to whom the refund is due.

In its 95th Report (4th Lok Sabha) the Public Accounts Committee had recommended that the Government should consider whether it would be possible to incorporate a suitable provision in the Central Excise Bill on the lines of Section 37(1) of the Bombay Sales Tax Act, so that Trade does not get fortuitous benefit of excess collections of tax realised from the consumers This would ensure that the excess collections accrue to Government. Later in their 13th Report (6th Lok Sabha) the Committee again recommended that the Government might re-examine the question of amending the Central Excise Law in the light of subsequent developments. The Committee in its 46th Report (7th Lok Sabha) reiterated its earlier recommendation that "a suitable provision should be incorporated in the Central Excise Act on the lines of Section 37 of Bombay Sales Tax Act."

The Ministry of Finance have stated (December 1983) that the question of feasibility of making a provision on the lines of section 37 and 46 of the Bombay Sales Tax Act in the Central Excises and Salt Act, 1944 is still under examination in consultation with the Ministry of Law.

2.67 *Delays in recovery of duty*

As per Section 2(f) of the Central Excises and Salt Act, 1944 'manufacture' includes any process incidental or anciliary to the completion of a manufactured product. As per Rules 9 and 49 of the Central Excise Rules if the manufacture of excisable goods has been completed the goods may not be removed without payment of duty except where they are so allowed to be removed by Government in the manner notified and subject to such conditions as have been specified.

As per provision of Section 11A of the Central Excises and Salt Act, 1944, when any duty of excise has not been levied or paid or has been short levied or short paid, a Central Excise Officer may within six months from the relevant date serve notice on the person chargeable with duty which has not been levied or paid or which has been short levied or short paid requiring him to show cause as to why he should not pay the amount specified in the notice. Where a monthly return showing particulars of duty paid on goods removed by him during the month is to be filed by the manufacturer (under the Self Removal Procedure), the relevant date is the date on which the return is filed.

(i) As per Rule 96D of the Central Excise Rules, 1944, cotton fabrics, jute manufacturers or man-made fabrics can be removed from one factory to another including a processing factory for the purpose of processing without payment of duty, subject to the observance of a procedure prescribed therein. Grading and packing does not amount to manufacture and the Supreme Court had held* in a case that sorting out of the goods according to their size, colour or quality and packing them in different packages does not amount to manufacture.

A unit was engaged solely in grading and packing processed man-made fabrics but it was licensed as a manufacturing unit. The licensee was allowed to bring in man-made fabrics from other manufacturing premises without payment of duty for purpose of grading and packing. The fabrics were cleared from the unit on payment of appropriate duty but after a period of 3 to 6 months and without accounting for losses and wastages of fabrics. In the result duty amounting to Rs. 1.8 crores was realised after delay of 3 to 6 months from the completion of manufacture of fabrics in other premises from where they were brought into the said unit for post manufacturing process.

On the irregularity being pointd out in audit (May 1982) the department conceded the mistake. Report on loss of duty apart from loss of interest on delay in realisation of duty is awaited.

The Ministry of Finance have stated (December 1983) that a show cause notice which was issued to the party for revocation of licence on 19 October 1983 is pending adjudication.

*Commissioner of CST Vs Harbans Rai—1968 (21) STC 17 (S.C.)

(ii) Duty payable on electricity generated and supplied during a month is to be paid within seven days of the month following the month in which the supplies were made.

A manufacturer of goods classifiable under tariff item 68 cleared his products during the period September 1979 to February 1980 without payment of duty amounting to Rs. 1.68 lakhs. Further in the month of September 1979 there was a debit balance in his personal ledger account (in which amounts paid by him are credited and duty on goods paid by him are debited). In another unit generating electricity and supplying it in bulk to different consumers duty was paid after delays ranging from 2 months to 14 months and in contravention of Central Excise Rules. Duty amounting to Rs. 6.40 lakhs remained with the manufacturer for the said period.

On the delays affecting Government's resource position being pointed out in audit (May 1980 and December 1982), the department stated (May 1983) that it had since raised demand for recovery of Rs. 73.04 lakhs and imposed penalty of Rs. 7 lakhs (September 1981 and April 1982).

The Ministry of Finance have confirmed the facts (December 1983).

(iii) A manufacturer of metal containers produced them (on job work basis) as captive to a Public Sector undertaking which used them for packing petroleum products. Because of delay in valuation of the containers, duty was assessed provisionally on clearances made during the years 1975-76 to 1979-80 by the manufacturer. Price lists for the years 1975 to 1979 were filed only in 1979 and 1980. Because of delay in finalisation of the price list duty amounting to Rs. 8.80 lakhs had not been realised.

When the delay was pointed out in audit in September 1980 the department finalised the price list in March 1981 and recovered (17 January 1983) duty amounting to Rs. 10.13 lakhs (including Rs. 8.80 lakhs pointed out in audit).

The Ministry of Finance have confirmed the facts (November 1983).

(iv) A manufacturer of plywood commenced production in December 1978 and cleared his goods without payment of duty. In the year 1979-80 on first clearance upto a value of Rs. 5 lakhs, he did not pay duty though duty was payable. The duty not realised amounted to Rs. 1,27,398. The mistake was pointed out in audit during February 1982. The department did not admit the objection and stated (April 1983) that it had demanded the duty in November 1979. It issued a show cause-cum demand notice for an amount of Rs. 1,29,273 only on 10 November 1982 which is still to be adjudicated (August 1983).

The Ministry of Finance have stated (December 1983) that the matter is under examination.

CHAPTER-3

RECEIPTS OF THE ADMINISTRATIONS OF THE UNION TERRITORIES

SECTION-A : UNION TERRITORY OF DELHI

3.01 *Trend of revenue receipts*

The revenue receipts of the Administration of the Union Territory of Delhi, during the year 1982-83 amounted to Rs. 334.72 crores, consisting of tax revenue amounting to Rs. 326.54 crores and non-tax revenue amounting to Rs. 8.18 crores. The collections during the year under major heads of revenue alongside corresponding figures for the preceding two years are given below :

Tax revenue	1980-81	1981-82.*	1982-83*
	(in crores of rupees)		
1. Sales tax	154.80	190.90	211.02
2. State excise . . .	40.62	55.19	66.10
3. Taxes on goods and passengers**	17.61	19.04	20.13
4. Stamp duty and registration fees	7.05	9.09	10.80
5. Taxes on motor vehicles . .	6.01	6.72	7.27
6. Land revenue	0.25	0.23	0.24
7. Other taxes and duties on commodities and services including entertainment taxes . .	8.17	10.42	10.98
A. Total tax revenue . .	234.51	291.59	326.54
B. Non-tax revenue . . .	7.03	7.46	8.18
C. Total revenue receipts .	241.54	299.05	334.72

*Provisional figures furnished by Principal Pay and Accounts Officer, Delhi Administration.

**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.

3.02 *Collection of tax revenue vis-a-vis budget estimates*

The collection of revenue during the year 1981-82 vis-a-vis the budget estimates, alongside the corresponding figures for the preceding two years are given below :

Tax revenue	Year	Budget estimates	Actual receipts	Percentage increase (+) or decrease(—) of actuals over budget estimates
		(in crores of rupees)		
1. Sales tax . . .	1980-81	126.71	154.80	(+)22
	1981-82	160.97	190.90	(+)19
	1982-83	205.00	211.02	(+)3
2. State excise . .	1980-81	22.78	40.62	(+)79
	1981-82	32.14	55.19	(+)12
	1982-83	49.00	66.10	(+)35
3. Taxes on goods and passengers . . .	1980-81	18.00	17.61	(—)72
	1981-82	35.00	19.04	(—)46
	1982-83	19.50	20.13	(+)3
4. Stamp duty and registration fees	1980-81	4.58	7.05	(+)54
	1981-82	8.06	9.09	(+)13
	1982-83	8.95	10.80	(+)21
5. Taxes on motor vehicles	1980-81	5.75	6.01	(+)5
	1981-82	7.45	6.72	(—)10
	1982-83	9.11	7.27	(—)20
6. Land revenue . .	1980-81	0.18	0.25	(+)39
	1981-82	0.21	0.23	(+)10
	1982-83	0.22	0.24	(+)9
7. Other taxes and duties on commodities and services including entertainment tax	1980-81	6.00	8.17	(+)36
	1981-82	9.54	10.42	(+)9
	1982-83	10.19	10.98	(+)8
Total tax revenue	1980-81	184.00	234.51	(+)27.4
	1981-82	253.37	291.59	(+)15.00
	1982-83	301.97	326.54	(+)8.13

3.03 *Cost of collection of tax revenue*

Cost of collection of tax revenue, where records are maintained to determine the same and as furnished by the departments are given below :—

Tax Revenue	Year	Gross collection	Expenditure on collection	Cost of collection as percentage of collection (in round figures)
1 2	3	4	5	
		(in crores of rupees)		
1. Sales tax . . .	1980-81	154.80	1.31	1
	1981-82	190.90	1.53	1
	1982-83	211.02	1.70	1
2. State excise . . .	1980-81	40.62	0.34	1
	1981-82	55.19	0.36	1
	1982-83	66.10	0.40	1
3. Taxes on goods and passengers . . .	1980-81	17.61	1.30	7
	1981-82	19.04	1.12	6
	1982-83	20.13	1.38	7
4. Stamp duty and registration fee . . .	1980-81	7.05	0.25	3
	1981-82	9.09	0.31	3
	1982-83	10.80	0.27	3
5. Taxes on motor vehicles	1980-81	6.01	0.32	5
	1981-82	6.72	0.36	5
	1982-83	7.27	0.38	5
6. Land revenue . . .	1980-81	0.25	0.14	56
	1981-82	0.23	0.15	65
	1982-83	0.24	0.17	71
7. Other taxes and duties on commodities and services	1980-81	8.17	0.03	0.4
	1981-82	10.42	0.06	0.6
	1982-83	10.98	0.08	0.7

SALES TAX

3.04 *General*

(i) Under the Delhi Sales Tax Act, 1975, a dealer who is a trader is required to register himself and pay tax if his gross turnover exceeds Rs. 1 lakh in a year. A dealer who is a manufacturer is required to register himself if his turnover exceeds Rs. 30,000 in a year. *Halwais* are required to register themselves if their turnover exceed Rs. 75,000 in a year. The dealers are required to get themselves registered under Central Sales Tax Act also if they engage in inter-State sale or purchase for any amount. The number of registered dealers has been increasing in the last three years as per details given below. The figures within brackets indicate the number of dealers who are also registered under the Central Sales Tax Act.

	As on 31 March 1981	As on 31 March 1982	As on 31 March 1983
1. Total number of registered dealers	71,732 (65,852)	70,651 (70,432)	82,128 (75,855)
2. (a) Number of dealers having turnover exceeding Rs. 10 lakhs	7,666 (7,448)	9,528 (9,007)	10,880 (10,272)
(b) Number of dealers having turnover exceeding Rs. 5 lakhs but below Rs. 10 lakhs	10,806 (10,072)	12,673 (11,733)	14,929 (13,606)
(c) Number of dealers having a turnover exceeding Rs. 3 lakhs but be low Rs. 5 lakhs	18,338 (16,930)	19,770 (17,957)	20,534 (19,088)
(d) Number of dealers having turnover exceeding Rs. 1 lakh but below Rs. 3 lakhs	19,310 (17,672)	19,831 (18,154)	20,720 (19,490)
(e) Number of dealers having turnover less than Rs. 1 lakh	15,612 (13,730)	14,849 (13,581)	15,065 (13,399)

(ii) The progress in assessment of Sales Tax dealers in the last three years as per information received from the department is given below:

	1980-81		1981-82		1982-83	
	Local	Central	Local	Central	Local	Central
(a) Number of assessments pending at the beginning of 1982-83 . .	1,66,670	1,50,428	1,82,709	1,67,117	2,00,022	1,84,271
(b) Number of assessments arising during 1982-83	70,865	64,989	73,035	66,769	77,970	72,964
(c) Number of assessments completed during 1982-83	54,826	48,300	55,722	49,615	61,397	55,466
(d) Number of assessments pending at the end of 1982-83 . . .	1,82,709	1,67,117	2,00,022	1,84,271	2,16,595	2,01,769
(e) Number of assessments out of (c) above which related to previous year .	883	707	661	554	780	689
(f) Number of assessments out of (c) which related to earlier years and were liable to be barred by limitation if not completed in 1982-83 . .	50,218	44,995	52,089	46,553	56,541	51,130
(g) Assessment effort engaged on avoiding bar of limitation . . .	92 per cent		94 per cent		92 per cent	

(iii) Sales tax demands pending recovery as on 31 March 1982 amounted to Rs. 53.80 crores as detailed below:

(in crores of rupees)

	1979-80		1980-81		1981-82	
	Local	Central	Local	Central	Local	Central
(a) Recovery of demands for tax in arrears at the beginning of the year	28.09	10.40	34.38	14.84	35.89	15.81
(b) Demands raised during the year .	9.88	6.37	8.18	5.74	7.51	3.73
(c) Tax collected during the year . .	1.51	0.91	2.92	2.93	2.88	1.98
(d) Adjustments on account of write off, reduction and revision of demands .	2.08	1.02	3.75	1.84	3.06	1.22
(e) Demands for tax outstanding at the end of the year (a+b)—(c+a) . .	34.38	14.84	35.89	15.81	37.46	16.34
	49.22		51.70		53.80	
(iv) Statement of demands in process of recovery are detailed below :						
(a) In process of recovery including recovery as arrears of land revenue	18.48	8.96	16.90	8.13	17.21	8.44
(b) Recovery stayed by court . .	2.67	0.80	2.36	1.02	4.08	1.15
(c) Recovery stayed by other authorities	2.27	1.41	2.12	1.45	1.83	1.62
(d) Recovery held up due to insolvency of dealers	1.18	0.27	0.93	0.21	2.68	0.79
(e) Recovery held up on appeal or review	4.22	2.29	7.01	3.34	4.87	2.28
(f) Demand likely to be written off .	3.08	0.61	2.67	1.04	4.09	1.11
(g) Other reasons	2.48	0.50	3.90	0.62	2.70	0.95
TOTAL	34.38	14.84	35.89	15.81	37.46	16.34
	49.22		51.70		53.80	

(v) Statement of certified demands pending recovery as arrears of land revenue are given below :—

	1981-82		1982-83	
	Number of certificates	Amount (in lakhs of rupees)	Number of certificates	Amount (in lakhs of rupees)
(i) Number and amount of certified demands pending for recovery from the previous year . . .	8,739	369.79	14,583	703.42
(ii) Demands certified for recovery during the year .	13,121	707.82	31,441	946.57
(iii) Certified demands recovered during the year . .	6,354	120.80	4,338	285.45
(iv) Certified demands returned without effecting recovery	923	253.39	10,404	205.30
(v) Certified demands pending at the close of the year .	14,583	703.42	31,282	1159 .24

3.05 *Short levy due to failure to detect misdeclaration, interpolations etc., in returns*

As per provisions of the Delhi Sales Tax Act, 1975 dealers are required to file returns periodically and pay the tax due on the basis of such returns. A dealer may furnish a revised return within three months after the date prescribed for filing the original return. If the assessing authority, in the course of any proceedings under the Act, is satisfied that a dealer has concealed the particulars of his sales, he may direct that the dealer shall pay, by way of penalty, in addition to the amount of tax payable, a sum not exceeding two and half times the amount of tax which would thereby have been avoided.

(i) A dealer in pipes and pipe fittings declared inter-State sales amounting to Rs. 4,09,980 in his quarterly return, but during the annual assessment offered the sales for tax as local sales made to registered dealers. The transactions were clearly inter-State sales and non-levy of tax at 8 per cent and levy of tax at only 4 per cent under the local Act resulted in tax being realised short by Rs. 16,400. Also penalty not exceeding Rs. 41,000 was leviable.

On the mistake being pointed out in audit (May 1981) the department stated (August 1983) that demand for Rs. 1,01,840 had since been raised under the Central Sales Tax Act (including penalty and interest amounting to Rs. 40,171 and Rs. 27,700 respectively). The case was reported to Ministry of Home Affairs in September 1983; their reply is awaited (December 1983).

(ii) Purchases valuing Rs. 3,96,420 made by a registered dealer from two other dealers during 1977-78 were excluded from the turnover of sales of the two dealers. The purchasing dealer reflected in his trading account purchases valuing Rs. 65,725 only and had concealed purchases amounting to Rs. 3,30,695. The concealment was not noticed by the assessing officer. On the purchases which are concealed, after adding profit at 3 per cent as per trading account, tax amounting to Rs. 23,843 was not levied even though no tax had been levied at the time of purchase from the two dealers.

The dealer was also liable to pay penalty not exceeding Rs. 59,608 for furnishing inaccurate particulars of his sales, but no penalty was imposed.

On these mistakes and omissions being pointed out (July 1982) in audit, the department stated (November 1982) that additional demand for Rs. 1,26,392 including penalty of Rs. 90,125 had since been raised consequent to re-assessment on best judgement. The case was reported (June 1983) to Ministry of Home Affairs and they have stated (September 1983) that recovery is pending decision on appeal.

(iii) The assessment of a dealer for the year 1976-77 was done in August 1980 on the basis of duplicate quarterly returns filed by the dealer even though the original returns were available on record. Sales amounting to Rs. 129,713 which were included in the gross turnover in the original returns were erroneously shown as non-taxable sales in the duplicate returns. Accepting the duplicate returns without examining the original returns, the assessing authority assessed the dealer to nil tax resulting in non-levy of tax amounting to Rs. 9,080. Penalty not exceeding Rs. 22,700 was also leviable.

On the mistake being pointed out in audit (May 1981), the department stated (December 1981) that a demand of Rs. 9,080 had since been raised and penalty of Rs. 20,000 imposed. An amount of Rs. 8,086 deposited by the dealer in April 1977, had

been adjusted against the demand. The department also intimated, that the dealer deposited a further sum of Rs. 10,000 and further collection had been stayed by the appellate authority in January 1982 pending decision on appeal.

The case was reported to the Ministry in June 1982; their reply is awaited (December 1983).

(iv) As per the Delhi Sales Tax Act, 1975 and rules made thereunder, tax leviable at first point of sales is exempt if the sale is supported by a prescribed declaration from the dealer from whom the goods are purchased. Under Section 50 of the Act a person found guilty of the offence of falsification of records is liable to be punished with imprisonment for a term which may extend to six months or with fine or both.

A dealer claimed that sales amounting to Rs. 2,49,600 made by him during the year 1976-77 was not sale at first point and was, therefore, exempt from levy of tax. However, in the prescribed declarations which he obtained from the purchasers he had altered the value of the sales. The alterations which were accepted by the department resulted in tax being levied short by Rs. 15,927.

On the alteration and under-assessment being pointed out (March 1982) in audit the department revised (April 1982) the assessment and raised additional demand for Rs. 15,927 and imposed penalty of Rs. 24,000 (maximum penalty leviable was Rs. 39,818) for falsification of records. The dealer paid Rs. 15,927 (April 1982) and appealed against the imposition of the penalty (May 1982). Decision on the appeal is awaited (December 1983).

The case was reported (July 1982) to the Ministry of Home Affairs who have accepted the facts (September 1982).

(v) On his sales, at points subsequent to the first point, amounting to Rs. 25,03,633 in respect of the assessment year 1976-77 exemption was claimed on sales amounting to Rs. 24,69,030 by a dealer on the basis of supporting declarations obtained from his sellers. However, in the declarations, figures were seen to have been interpolated and the amounts altered and increased and the value of supporting declarations thereby inflated. The alterations resulted in the assessing authority exempting from levy of tax, sales amounting to Rs. 28,33,599 instead of Rs. 25,03,633 and tax being levied short by

Rs. 16,498. Penalty not exceeding Rs. 26,538 was also imposable on the dealer for furnishing inaccurate particulars of his sales

On the interpolations, alterations and the under-assessment being pointed out in audit (March 1982), the Ministry of Home Affairs stated (November 1982) that the department had since raised demand for Rs. 42,498 and imposed penalty of Rs. 26,000. Recovery is pending decision on appeal.

(vi) A dealer had declared that value of goods on which tax had been paid at the time of purchase amounted to Rs. 3,52,085 whereas value amounted to only Rs. 2,70,400. The wrong declaration accepted in assessment (August 1981) resulted in tax being realised short by Rs. 9,026. Penalty not exceeding Rs. 22,565 was also leviable.

On the mistake being pointed out (January 1983) in audit, the department raised (15 January 1983) demand for Rs. 12,010 including interest amounting Rs. 2,295 and penalty of Rs. 800. The demand was realised on 17 January 1983.

The case was referred to Ministry of Home Affairs in August 1983; their reply is awaited (December 1983).

(vii) Under the Delhi Sales Tax Act, 1975, a registered dealer purchasing goods, can, on strength of his registration certificate, avoid payment of tax on the sale to the seller, provided he furnishes to the seller, declaration in a prescribed form. If the dealer makes a false representation in regard to the fact of his registeration or in regard to the goods or class of goods covered by his registeration cartificate or conceals particulars of his sales or files inaccurate particulars of his sales, penalty is leviable in addition to the tax payable on the sale.

A dealer prior to obtaining his registration certificate as a dealer purchased watches valuing Rs. 1,04,857 from a registered dealer during the year 1977-78. But the purchases were not reflected in his trading account and moreover the dealer made a false representation that he was a registered dealer on the date of purchase. In the result, the department failed to realise tax amounting to Rs. 11,536 from the dealer and penalty not exceeding Rs. 28,835 which could also have been imposed on the dealer, was not imposed.

On the failure being pointed out in audit (July 1982) the department stated (April 1983) that demand for Rs. 14,650 had since been raised and penalty amounting to Rs. 30,000 had also been imposed on the dealer. Report on recovery is awaited (December 1983).

The case was reported to the Ministry of Home Affairs in June 1983; their reply is awaited (December 1983).

3.06 *Punishment not imposed under Central Sales Tax Act*

As per Section 9A of the Central Sales Tax Act, 1956, no registered dealer shall make any collections in respect of any sales made by him of goods in the course of inter-State trade or commerce, by way of tax except in accordance with the Act and rules made thereunder. As per Section 10(f), if any dealer collects any amount by way of tax in contravention of the aforesaid provisions, he shall be punishable with simple imprisonment which may extend to six months or with fine or with both and when the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues.

A dealer engaged in the re-sale of electric motors and parts thereof had collected Rs. 3,08,681 as tax on inter-State sales made by him during the year 1975-76 as against tax of Rs. 1,34,742 which was recoverable (as subsequently assessed in July 1979) by the sales tax officer. The dealer retained the excess tax of Rs. 1,73,939 realised by him but no action was taken by the department against the dealer notwithstanding the requirement in law referred to above.

On the omission being pointed out in audit (July 1981) the department stated (July 1983) that a penalty of Rs. 1.75 lakhs had since been imposed on the dealer. The reasons for levy of penalty instead of imprisonment and fine provided for in the Act has been enquired in audit (November 1983).

The case was reported to the Ministry of Home Affairs (November 1983); their reply is awaited (December 1983).

3.07 *Short levy due to irregular exclusion of sales from levy of tax*

(i) As per Section 4 of Delhi Sales Tax Act, 1975, sale made by a registered dealer (of goods specified in his registration certificate) to another registered dealer is not taxed

provided the purchasing dealer furnishes a prescribed declaration to the effect that goods so purchased are meant for resale or for raw material in the manufacture of finished goods for sale in the Union Territory of Delhi. The tax becomes leviable at the stage when finished goods are finally sold for consumption.

Sales amounting to Rs. 2,23,705 made by a dealer in the year 1975-76 to registered dealers were exempted from tax by the assessing authority even though they were not supported by the aforesaid declarations from the purchasing dealers. The mistake resulted in tax being realised short by Rs. 15,459

The irregularity was pointed out in audit to the department in July 1981; the department stated (July 1983) that demand for Rs. 13,746 had since been raised (April 1982) after reassessment.

(ii) Under the Central Sales Tax Act, 1956, a dealer who sells goods to a registered dealer, in the course of inter-State trade or commerce shall be liable to pay tax only at a concessional rate if the sales are supported by prescribed declarations. On inter-State sales valuing Rs. 1,99,479 made during the year 1975-76 tax was levied at the concessional rate by the assessing authority, even though the sales were not supported by prescribed declarations. The mistake resulted in tax being realised short by Rs. 13,759.

On the irregularity being pointed out in audit in July 1981, the department stated (July 1983) that a demand for Rs. 8,184 was raised (April 1982).

Report on recovery is awaited (December 1983).

(iii) Under Section 8 of the Central Sales Tax Act, 1956, a dealer who, in the course of inter-State trade or commerce sells any goods to the Government, shall be liable to pay tax at concessional rate of 4 per cent subject to furnishing of a declaration in prescribed form. The Government of India in the Ministry of Finance had clarified in January 1959 that for the purpose of Central Sales Tax Act the term "Government" excludes local bodies, municipalities, notified area committees, government undertakings or other statutory bodies or corporations that derive their rights, powers, duties and jurisdiction independent of the Government even if they are set up under

statutes and are financed wholly or partly by the Government. The term "Government" also excludes private and public limited companies wholly or partly owned by the Central or State Governments.

(a) On his sales relating to the assessment year 1977-78, a dealer was charged tax at the concessional rate of 4 per cent on inter-State sales amounting to Rs. 2,26,373 supported by declarations issued by a State Government Corporation which claimed to be a Government department. However, as per above referred letter of Ministry of Finance, the corporation was not a Government department. In the result, tax was levied short by Rs. 13,582.

On the mistake being pointed out in audit (April 1982) the department rectified the mistake and collected an additional tax amounting to Rs. 13,582 (August 1982).

(b) It has been judicially held* that if the sale is to a Board which is not a department of the Government, then the benefit under Section 8 cannot be claimed.

On inter-State sales made during the year 1977-78 a dealer was taxed at the rate of 4 per cent. Sales amounting to Res. 23,47,880 were supported by declarations, in prescribed form issued by a River Project Construction Board (set up by notification by Government under a statute) which claimed to be a department of the Central Government. However, as per aforesaid clarification issued on 12 January 1959 the Board was neither Government nor a department of Government. As a result, tax was realised short by Rs. 1,40,873.

On the mistake being pointed out (October 1982) in audit the department stated (January 1983) that the Board was a limb of the Government. However, the Board was set up by Central Government under an Act in discharge of its functions on behalf of certain States in order to create assets not belonging to Central Government. Further the officers of the Central Government joined the Board on foreign service terms and not on deputation within the Government. The authorising officers of the Board were also, therefore, not officers of the Government as required under Section 8 of the Act.

*Indian Steel and Rolling Mills
Vs.
State of Madras (1974) 34 STC 445 Madras.

(iv) Under Delhi Sales Tax Act, 1975 and the rules framed thereunder, on sales made by a registered dealer to the Ministry of Defence of goods meant for official use of the Ministry or to such of its subordinate offices as were notified by the Delhi Administration from time to time, levy of tax was exempt upto 28 June 1978. However, no subordinate offices had been notified.

On sales amounting to Rs. 1,82, 669 made to an office subordinate to the Ministry of Defence (which was not notified) during the assessment year 1977-78 a dealer was incorrectly allowed exemption from payment of tax. The tax not levied amounted to Rs. 18,267.

On the mistake being pointed out in audit (July 1982), the department stated (May 1983) that demand for Rs. 18,267 had since been raised. Recovery has not been made pending decision on appeal.

The above cases were reported to Ministry of Home Affairs in May 1983 and October 1983 who have accepted (September 1983) the facts in the case in sub-paragraph (iv) above. Replies in respect of other cases are awaited (December 1983).

3.08 *Short levy of tax due to irregular grant of exemption*

Section 5 of Delhi Sales Tax Act, 1975, provides for tax being levied on certain notified goods at first point of sale within the State and their exemption from tax at subsequent points of sales. The exemptions at subsequent points of sale are, however, allowed subject to the dealer producing in support of such subsequent sales declarations obtained from his sellers to the effect that the sellers were liable to pay the sales tax.

(i) Sale of goods taxable at point of first sale and valuing Rs. 2,11,006 made by a dealer to various registered dealers during the year 1975-76 were exempted from tax by the assessing authority on the basis of declarations which were valid only for goods other than goods notified for tax at point of first sale. The exemption irregularly allowed on the basis of invalid declarations resulted in under-assessment of tax by Rs. 21,101.

The mistake was pointed out in audit in July 1981; the reply of the department is awaited. The case was referred to Ministry of Home Affairs in September 1983; their reply is awaited (December 1983).

(ii) A dealer in general merchandise was allowed (November 1981) exemption from tax on sales amounting to Rs. 3,45,446 relating to assessment year 1977-78. But he could support only sales amounting to Rs. 1,49,564 with aforesaid declarations. No separate trading account in respect of sale of first point goods was furnished by him. Based on a margin of profit of 4 per cent which could be allowed on the sales supported by declarations included in the turnover, on balance sales amounting to Rs. 1,89,900 the grant of exemption was irregular. The mistake resulted in irregular grant of exemption and consequent short realisation of tax by Rs. 16,570.

On the mistake being pointed out in audit (June 1982) the department stated (July 1983) that the dealer had been re-assessed and demand for Rs. 16,570 had since been raised (July 1983). Report on recovery is awaited (December 1983).

Ministry of Home Affairs have confirmed (July 1983) the facts.

(iii) In assessing a dealer on his sale of electrical goods which are notified goods, tax was not levied on a turnover of Rs. 6,43,402 in respect of the assessment year 1976-77 even though only purchases amounting to Rs. 4,75,255 were supported by aforesaid declarations. The balance of turnover, after excluding purchases supported by declaration and the *prorata* margin of profit, amounted to Rs. 1,08,740 on which tax amounting to Rs. 10,874 was omitted to be levied because of irregular grant of exemption.

On the mistake being pointed out in audit (July 1981), the department stated (May 1983) that the dealer had since been re-assessed and additional demand for Rs. 10,874 raised. The dealer had also since made payment and a sum of Rs. 978 as interest had also been recovered from him. The department also stated (June 1983) that a penalty of Rs. 5,000 had been imposed on the dealer (maximum penalty leviable was Rs. 27,185) for misrepresentation of facts. Report on recovery is awaited (December 1983).

The Ministry of Home Affairs have accepted the facts (June 1983).

3.09 *Tax not levied on sales or purchases*

(i) Under the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi, a registered dealer can purchase from another registered dealer goods free of tax if the goods are for resale within the territory or for use in manufacture, in Delhi, of taxable goods for sale in Delhi. If the goods so purchased are not used for the specified purpose the dealer is liable to pay tax on the purchase price.

(a) From 1st August 1970, tax became liable on sale of silk in Delhi. On sales of *khadi* silk amounting to Rs. 12,54,557 and Rs. 12,60,081 made by a dealer during the years 1971-72 and 1972-73 respectively, levy of tax was erroneously exempted resulting in non-levy of tax amounting to Rs. 75,439.

During the years 1972-73 to 1974-75 the dealer used *khadi* silk valuing Rs. 10,69,892 and tailoring material valuing Rs. 47,670 in the manufacture of ready made *khadi* garments. However, no tax was leviable on sale of such garments. He was, therefore, liable to pay tax on the purchase price of *khadi* silk and tailoring material. But tax amounting to Rs. 34,480 was not levied.

On the above mistakes resulting in non-levy of tax amounting to Rs. 1,09,920, being pointed out (January 1980) in audit, the department revised (May 1982) the assessments and created additional demand for Rs. 1,24,848. Report on recovery is awaited (December 1983).

(b) On *bardana* valuing Rs. 9,16,508 purchased by a registered dealer from another dealer taxable during the year 1973-74 and *bardana* valuing Rs. 3,24,624 purchased during the year 1974-75, tax was not levied. But the purchasing dealer utilised the goods for purposes other than for re-sale and in packing *atta, maida* etc. on sale of which no tax was leviable.

The omission was pointed out in audit in August, 1979; Rs. 62,056.

The omission was pointed out in audit in August 1979; the reply of the department is awaited (December 1983).

The cases were reported to Ministry in May and October 1983; their reply is awaited (December 1983).

(ii) Subject to certain conditions and exceptions, on sale of goods specified in the Third Schedule to the Delhi Sales Tax Act, tax is not leviable. Cotton fabrics and goods are so specified in the said Third Schedule.

On sale of unstiffened collar, duty was not levied by viewing the collars as cotton fabrics even after the Appellate Tribunal ruled* in March 1982 that on sale of stiffened or unstiffened collars which have been processed, tax is leviable at the general rate. The misclassification resulted in tax being realised short by Rs. 51,221 on sales made by a dealer during the years 1972-73 and 1973-74. The misclassification was initially pointed out in audit in March 1978. The department stated in September 1983 that action to revise the assessment had since been taken. Report on rectification is awaited (December 1983).

The case was reported to Ministry of Home Affairs in October 1983 who have confirmed the facts.

(iii) Under the provisions of the Bengal Finance Sales Tax Act, 1941 as extended to the Union Territory of Delhi, tax was leviable on sale which included any transfer of property in goods for cash or deferred payment or other valuable consideration. It also included a transfer of goods on hire purchase or other instalment system of payment, where the total amount payable was to be the consideration for the sale. But the hire purchase company had the option either to show the total consideration of the sale as price received for the goods transferred or if it so elects, it could show the sale price as received over the assessment periods in which the actual instalments were received.

A dealer selling moor vehicles on hire purchase system was to receive in all Rs. 5,20,500 in monthly instalments on account of sales made under hire purchase system in the years 1970-71 and 1971-72. He received Rs. 1,81 000 in the year 1970-71 and Rs. 3,39,500 in 1971-72. Though the dealer had purchased vehicles without payment of tax in his capacity as a registered dealer, no tax was levied on the sales of vehicles made by him.

The omission was pointed out in audit in January 1974. No reply has been received from the department even after 9 years. The case was reported to the Ministry in September 1983: their reply is also awaited (December 1983).

*Case of Uttam Udyog, Gopal Bhavan, Wazirpur, New Delhi in appeal 347 and 348 of 1975-76.

(iv) As per the provisions of Bengal Finance (Sales Tax) Act, 1941, which was applicable to the Union Territory of Delhi upto 20 October 1975, where a dealer fails to comply with the terms of any notice or fails to furnish returns in respect of any period (by the prescribed date) the assessing officer may make the assessment to the best of his judgement. He may also do so on the basis of any information which has come into his possession after giving the dealer a reasonable opportunity of being heard.

An assessment made (May 1976) on best judgement basis related to sales made by a dealer during the year 1971-72 and the turnover was estimated at Rs. 2,40,600. Half of the turnover was taken to relate to sale of sewing machines (taxable at 5 per cent) and the balance to sale of electric fans (taxable at 9 per cent).

The declaration made by a dealer of another ward in respect of sales made to the said dealer revealed that purchases valuing Rs. 7,48,344 were made during the year 1971-72 by the said dealer thereby indicating that the estimate of sale turnover at Rs. 2,40,000 was a gross under assessment. In relation to purchases from this one dealer alone on the sale turnover of the assessee, tax amounting to Rs. 35,584 was not realised.

On the error in best judgement being pointed out in audit (August 1977) the assessment was revised by the department in January 1979.

A fresh assessment was made in September 1982 and additional demand for Rs. 52,326 (including the original demand for Rs. 16,884) was raised. Report on recovery is awaited (December 1983).

Though a maximum penalty of Rs. 88,960 could have been levied in this case, no penalty was levied.

The case was reported to the Ministry of Home Affairs in July 1983; their reply is awaited (December 1983).

3.10 *Short levy due to application of incorrect rates of tax*

Under the provisions of Section 4(1) of Delhi Sales Tax Act, 1975, read with notification issued thereunder, on sales of "sanitary fittings" and "iron and steel goods" tax is leviable at the rate of 10 per cent and 4 per cent respectively.

On sales of sanitary fittings valuing Rs. 6,36,079 and iron and steel valuing Rs. 36,445 made by a dealer during the year 1977-78 tax was incorrectly levied at the rate of 4 per cent and 10 per cent respectively resulting in short levy of tax by Rs. 35,978.

On the mistake being pointed out (May 1982) in audit the department stated (September 1982) that Rs. 35,978 had since been realised (July 1983). The Ministry of Home Affairs have confirmed the facts (September 1983).

3.11 *Dealing in goods not covered by certificate of registration and non-levy of purchase tax*

As per provisions of Delhi Sales Tax Act, 1975, a registered dealer who misrepresents that any goods or class of goods purchased by him are covered by his certificate of registration is liable to pay by way of penalty a sum not exceeding two and half times the tax which would have been leviable under the Act in respect of sale to him of such goods, but for the misdeclaration.

Under the Act, a registered dealer can purchase from another registered dealer raw materials without payment of tax if the goods manufactured out of the materials are for sale within the territory of Delhi or for inter-State sale or export out of India. If the goods so purchased are not used for such purposes, the price of the goods so purchased shall be allowed to be deducted from the turnover of the selling dealer but shall be included in the taxable turnover of the purchasing dealer.

(i) A dealer purchased chemicals which he was not authorised to purchase on the strength of his registration certificate. Further he transferred the goods to his head office in Bombay without paying tax. But the purchases made during the year 1977-78 of chemicals valuing Rs. 21,46,818 was not included in the taxable turnover of the dealer nor taxed at 7 per cent, resulting in tax amounting to Rs. 1,50,277 not being levied Penalty upto Rs. 3,75,693 was also leviable on him.

On the omission being pointed out in audit (August 1982) the department raised demand for Rs. 1,50,277 and imposed penalty of Rs. 3,75,693 and also charged interest amounting to Rs. 1,25,417 (August 1983). Recovery has not been made pending decision on appeal.

The matter was reported to Ministry of Home Affairs in August 1983; their reply is awaited (December 1983).

(ii) A dealer engaged in the business of manufacture and sale of switch gears made purchases of galvanised iron boxes and bakelite tubes valuing Rs. 9,48,491 as a registered dealer in such goods, though the goods were not covered by his certificate of registration. On the misdeclaration he was liable for penalty upto Rs. 1,65,986 but no penalty was imposed.

On the failures being pointed out in audit (August 1982) the department imposed penalty of Rs. 15,000 on 18 June 1983. Report on recovery is awaited (December 1983).

The case was reported to the Ministry of Home Affairs in September 1983; their reply is awaited (November 1983).

(iii) In respect of the assessment year 1977-78 on purchase of goods valuing Rs. 1,03,770 which were not covered by his registration certificate, a dealer misdeclared the goods as so covered and thereby evaded tax amounting to Rs. 7,264.

Further, purchases of auto parts valuing Rs. 1,62,668 made during the assessment year 1977-78 were declared by the dealer, to be for purposes of resale but his declaration was not correct since as per his registration certificate he was engaged in the business of manufacture of auto parts and not in trading in them. The irregular declaration resulted in evasion of tax amounting to Rs. 16,267.

On the irregularities being pointed out (September 1982) in audit, the department stated (March 1983) that a penalty of Rs. 23,535 under both the Acts had since been imposed on the dealer for incorrect declaration and that the amount of tax evaded has been realised. Report on recovery of penalty is awaited (December 1983).

The case was reported to the Ministry of Home Affairs in June 1983; their reply is awaited (December 1983).

(iv) A dealer misdeclared packing material valuing Rs. 93,804 purchased by him during the year 1977-78 as being covered by his registration certificate and thereby evaded tax amounting to Rs. 6,566. Penalty not exceeding Rs. 16,415 was also imposable on the dealer.

On the evasion being pointed out (August 1982) in audit the department imposed a penalty of Rs. 15,000 on the dealer. The department have stated (November 1983) that the dealer had deposited (August 1983) Rs. 1500 and furnished (September 1983) a surety bond for balance amount of Rs. 13,500. An appeal had also been filed by him against the orders levying penalty.

The case was reported to the Ministry of Home Affairs in September 1983; their reply is awaited (December 1983).

(v) As per provisions of the Bengal Finance (Sales Tax) Act, 1941 (when it was applicable in the Union Territory of Delhi) on purchase by a registered dealer of goods specified in his registration certificate and intended for resale by him for use as raw material in the manufacture of furnished goods for sale, if the goods purchased are not so utilised by him, the price of the goods so purchased is required to be added to the taxable turnover of the purchasing dealer and assessed to tax.

No tax was levied on purchases of drugs, chemicals and packing material by a dealer, which goods he was using in manufacturing operations (and not for resale) as per entries in his registration certificate. The goods were sold by him during the years 1970-71 and 1971-72 for a value of Rs. 7,67,012 to other registered dealers. Since the dealer had sold the goods, the purchase price of the goods sold should have been included in his taxable turnover and additional tax amounting to Rs. 38,350 should have been demanded from him.

On the failure being pointed out in audit (October 1974) the department stated (November 1978) that dealer was allowed to buy raw material for resale also. However, the dealer was not allowed the purchase of drugs and chemicals for resale purposes as per his registration certificate and this fact was again pointed out to the department in March 1979, which issued (June 1983) a show cause notice to the dealer demanding the tax.

The matter was reported to the Ministry in October 1981 who have confirmed (July 1983) the facts.

3.12 *Short recovery of interest on belated payment of tax*

Section 27 (1) of Delhi Sales Tax Act, 1975 requires that when a dealer fails to pay tax due, he is liable to pay simple interest at the rate of one per cent per month for the first

month of delay and at the rate of one and half per cent thereafter from the date immediately following the last date for submission of the return and payment of tax and upto the time the default continues or till the date on which the dealer is assessed to tax whichever is earlier. Section 55 provides that when a dealer fails without reasonable cause to furnish any return by the prescribed date or to pay tax due according to the return he shall pay, by way of penalty, in addition to the amount of tax payable, a sum not exceeding twice that amount.

A dealer who had defaulted in regard to payment of tax alongwith filing of return was charged interest and penalty amounting to Rs. 60,921 in respect of the assessment years 1975-76 to 1977-78. However, Rs. 89,790 was the amount of interest chargeable in respect of the assessment years 1975-76 to 1977-78 as per above provisions of the Act. Interest amounting to Rs. 28,869 was, therefore, short charged on the belated payment of tax. Also no penalty had been levied.

On the mistake being pointed out (August 1982) in audit, the department stated (February 1983) that additional demand for Rs. 28,869 had since been raised and penalty of Rs.20,000 had since been imposed. Report on recovery is awaited (December 1983).

The case was reported to the Ministry of Home Affairs (June 1982) who have accepted the facts (October 1983).

STATE EXCISE

3.13 *Interest not charged on delayed payments*

Under the provisions of the Delhi Licence Rules, 1976 interest is chargeable at the rate of 1.5 per cent per month for belated payment of dues. In pursuance of a directive received in October, 1977 from the Government for introduction of total prohibition in stages in the Union Territory of Delhi, the Commissioner of Excise increased the number of dry days in a week. The licenced vendors selling in retail, Indian made foreign liquor, beer and country liquor, alleged that their business was adversely affected by that order and they filed a petition in the High Court against the action of the department. During the pendency of the case, the High Court ordered that 60 per cent of the instalment of licence fee payable should be paid in cash and the remaining 40 per cent should be secured

by bank guarantees, to be furnished by the licensees to the department. The High Court, dismissed the petition on 21 March 1979, but the licensees, thereafter individually filed suits in the lower court. Thereafter the stay on payment of licence fee was vacated and the department was permitted to recover the 40 per cent dues secured by bank guarantees.

Wherever the licensees failed to pay the balance 40 per cent of licence fees, the department realised the same by moving the bank for payment on the strength of the bank guarantees. In 17 cases there was delay in obtaining payment amounting to Rs. 8,59,870 against the bank guarantees for periods ranging from 6 months to 2 years because the banks were reluctant to make the payments without the concurrence of the licensees. On such delays in payments, interest was chargeable at 1.5 per cent per month as aforesaid. The amount of interest recoverable from the licensees amounted to Rs. 1,23,086. However, no interest was charged or demanded.

The non-recovery of interest was pointed out to the department in September 1982 and again in February 1983; their reply is awaited (December 1983).

The matter was reported to the Ministry in August 1983; their reply is awaited (December 1983).

3.14 *Short recovery of licence fee*

Under the Delhi Liquor Licence Rules, 1976 the successful bidder in an auction is required to pay a sum, not less than one fourth of the licence fee, prior to the grant of the licence and the remainder of the fee in nine equal monthly instalments commencing from the month after the licence comes into force.

In 1978-79, a licensee filed a suit praying that the department be restrained from recovering monthly instalments of the licence fee and the Court ordered that 60 per cent of the instalments of licence fee would be payable in cash during the pendency of the suit and the remaining 40 per cent would be secured by bank guarantees.

After the balance of 40 per cent secured by bank guarantees became recoverable, in recovering the balance of fee, there was short realisation by Rs. 1,46,880.

On the mistake being pointed out in audit (in December 1979) the department recovered Rs. 73,319 and stated (September 1983) that certificate for recovery of balance of Rs. 73,561 had since been issued.

The matter was reported to Ministry of Home Affairs in August 1983; their reply is awaited (December 1983).

3.15 *Short levy of duty due to application of incorrect rates*

Under the Delhi Liquor Licence Rules, 1976, Indian made foreign liquor can not be removed from bonded warehouses without paying of special duty and assessed fee at rates fixed from time to time by the Lieutenant Governor. Special duty is payable by a licenced retail trader on 'gin' of two specified strengths at Rs. 10.24 and Rs. 11.81 on each bottle containing 750 mililiters, before the liquor is removed from a bonded warehouse under a transport pass.

(i) Special duty was not recovered from a licensed retail trader at the higher rate on 'gin' of higher strength but was recovered only at lower rate, on clearances made during the year 1980-81. The mistake resulted in special duty being realised short by Rs. 39,899.

The mistake was pointed out in audit in May 1982, and the department stated (November 1983) that a sum of Rs. 23,555 had since been realised and balance amount was also being recovered.

(ii) From a wholesale dealer in wines special duty and excise duty was realised at the rate of Rs. 311.11 per case (pint size) of Indian made foreign liquor instead of at Rs. 331.11 per case leviable from 1 May 1980. The mistake resulted in duty on 612 cases and nine bottles sold during the year 1980-81 being realised short by Rs. 12,247. Similar short realisation on sales of quart sized bottles made in May 1980 amounted to Rs. 813.

On the mistakes which resulted in short realisation of Rs. 13,060 being pointed out (June 1982) in audit, the department accepted the objection and stated (April 1983) that recoveries were since being effected from the licensees. Report on recovery is awaited (December 1983).

The cases were reported to the Ministry of Home Affairs in July 1983; their reply is awaited (December 1983).

TAXES ON MOTOR VEHICLES

3.16 *Fees not recovered under bilateral agreements and the zonal and national permit schemes*

(i) *Fees under bilateral agreements*

Under the bilateral agreements which the Delhi Administration has with 11 State Governments, an operator of a vehicle registered in the State which is the other party to the agreement, is required to get the permit issued to him in that State, countersigned by the Transport Authority in Delhi on payment of fee before he can ply his vehicle in Delhi. If the vehicle would not ply in Delhi for more than 30 days, the other State Government is empowered to issue a temporary permit and no countersignature by the Transport Authority in Delhi is necessary. In such cases the other Government collects the tax on behalf of Delhi Administration and remits it to Delhi Administration.

Similar reciprocal arrangements exist for plying vehicles registered in Delhi in the States which are the other parties to the bilateral agreements. A limit has been fixed on the number of temporary permits that can be issued under the bilateral agreements with four State Governments. Similarly under the agreements with some States, limits have also been fixed on the number of permits which could be countersigned.

(a) In a surprise check conducted by the Provincial Motor Transport Union Congress on 5 March 1981, eleven out of 45 buses which had arrived in Delhi from Haryana along a particular route, were seen to return to Haryana after picking up passengers from different parts of Delhi. The said 45 buses had entered Delhi without permit in excess of the number scheduled to arrive from Haryana and departed from Delhi even though there was no limit on the number of temporary permits that could be issued by Government of Haryana. There was also no limit on the number of permits issued by that Government which could be countersigned by the Transport Authority in Delhi on payment of fee. The operators were free to choose to obtain temporary permits if it was cheaper instead of getting permits countersigned from the Transport Authority in Delhi on payment of fee. But apparently many operators were plying in Delhi without either a temporary permit or a countersigned permit.

(b) Under the bilateral agreements with 7 State Governments the number of countersignatures that could be made by the Transport Authority in Delhi was 824 but only 368 permits had been presented for countersignatures even though applications were invited in May 1980. On 456 more countersignatures which could have been made (had the enforcement machinery made it costlier for operators to ply without countersignature) fee amounting to Rs. 86,640 could have been realised.

(ii) *Fees under zonal permit scheme*

Under the north and west zonal permit schemes which were introduced in the years 1973 and 1974 respectively, the States and Union Territories in each zone are authorised to issue composite permits enabling the holder to ply his vehicle in any of the States mentioned in the permit even though the permit is issued in his home State. The fees payable to the home State as also to other States covered by the permit are collected in the home State. The share of the respective other Governments are remitted to them by the Government of the home State. The fee payable to each State (other than the home State) covered by the permit is Rs. 1,000 per year for each State and Rs. 500 for Delhi. The fee recoverable by the Home State as its share is the motor vehicle tax and goods tax leviable in the home State. In addition, the home State is entitled to charge an authorisation fee of Rs. 300 per vehicle for the issue of the permit.

(a) No provision was made till February 1978 for the Delhi Administration to charge an authorisation fee under the scheme. On 354 permits issued upto February 1978 authorisation fee amounting to Rs. 4.25 lakhs was, therefore, lost to the Delhi Administration, despite the absence of the provision having been pointed out in audit in April 1976.

(b) There was limit of 200 on the number of permits to be issued by the Delhi Administration under the north and west zonal schemes which limit was raised to 300 permits in 1979 and further to 450 permits in 1981. In Delhi, till July 1983, only 179 permits had been issued under the west zone scheme and 175 under the north zone. Applications were invited in April and December 1982 and 1576 applications were received for north zone permits and 1800 applications for west zone

permits respectively. The applications are still under consideration (September 1983). The revenue not realised on the permits not issued amounted to at least Rs. 10 lakhs per year. As per information compiled by the inter-State Transport Commission, other States in the northern zone had issued between 44 to 75 per cent of the maximum number of permits allowed to be issued as against 39 per cent utilisation by Delhi Administration. In west zone, other States had utilised between 51 per cent and 67 per cent as against only 40 per cent utilised by Delhi Administration.

(iii) *National permit scheme* :

A National permit scheme (similar to the zonal scheme) was introduced in 1975 and the Central Government determined the number of permits which could be issued by Delhi Administration at 250. This number was increased to 400 in December 1976 to 800 in October 1980 and to 1200 in October 1982. The holder of the national permit for plying in specified other States is required to pay an authorisation fee of Rs. 500 to the home State in addition to the taxes payable in the home State. In respect of every other State covered by the permit he has to pay an annual composite fee of Rs. 1,000 for each State (Rs. 500 in respect of Delhi). The composite fee is collected by the home State (on behalf of the concerned other State) and remitted by it to the concerned other State.

Upto July 1983, Delhi Administration had issued only 672 permits against the limit of 1200 permits. The process of grant of permits took between 1 to 4 years.

(iv) *Basic data not gathered* :

(a) The zonal scheme provided for the home State to obtain from the operators who were granted permits, their names, the registration mark of their vehicles and the summary of the trips made by them during the quarter. The particulars were to be forwarded to the concerned other States covered by the permits. Such quarterly returns were neither received by the Delhi Administration nor furnished by it to the concerned other States.

(b) Under the zonal scheme copies of composite permit issued by the home State were to be furnished to the other States covered by the permits, within 30 days of issue of the permit. Neither such copies of permits were received by the Delhi Administration from other States nor sent by it to the concerned other States.

(c) Under the National Scheme, the home State is required to obtain from the national permit holder, a quarterly return in respect of vehicles covered by the permit and to forward copies of the return to the concerned other State Governments. No such returns were either received by the Delhi Administration from the other States nor sent by it to the concerned other States.

(v) *Serious system defects*

In the absence of return from other concerned State Governments, no vehicle-wise demand and collection register was prepared to keep track of the revenue due to Delhi Administration in the form of composite fee in respect of the national permits and zonal permits issued by and on behalf of Delhi Administration in respect of vehicles allowed to ply in Delhi. Consequently no audit to check recovery of composite fees, which were due, culd be conducted.

(a) In respect of composite fees recovered by other State Governments on behalf of Delhi Administration during the year 1978 to 1982 bank drafts numbering 1 to 17 and amounting to Rs. 1.06 lakhs were recovered by the Delhi Administration after delays of 3 to 14 months. In the absence of demand and collection register there was no system for watching the receipt of such amounts or even to know that the amounts were due. Non-receipt of such dues could not, therefore, be detected or checked in audit.

(b) The period of currency in respect of 285 bank drafts amounting to Rs. 85,000 recovered during the years 1978 to 1982 had expired and had to be sent to the respective banks after 4 to 5 years for re-issue. The amount remained outside government account with corresponding benefit to the banks during that period. In the absence of demand and collection register revenue in the form of bank drafts lying outside the government account are not susceptible of detection in audit since there is no record by which to know what is due in respect of any vehicle and from which collecting authority.

(c) Under the west zone scheme Delhi Transport Authority remitted 421 bank drafts amounting to Rs. 3.45 lakhs to the Government of Uttar Pradesh during the years 1978 to 1982 but after delays of one to seven months. There was no record to check what amounts are still to be remitted to other State Governments.

(vi) *Penalties*

In April 1979, the Government of India made a suggestion that if receipt of composite tax under the zonal and the national schemes be delayed, a penalty be levied at a uniform rate of Rs. 100 per month of default in payment. The State Governments and Union Territories were advised to incorporate provisions for levy of penalty in their enactments and rules with effect from April 1981.

(a) In Delhi Administration no enabling provision has been made in the enactment or the rules, but penalty was being levied in cases of delay. Penalty amounting to Rs. 1.57 lakhs levied in 520 cases during the years 1979 and 1982 was, therefore, unauthorised. The amount of penalty has not been recovered so far.

(b) In 650 cases, composite fee was collected by other State Governments on behalf of Delhi after delay and remitted to Delhi Administration but penalty amounting to Rs. 61,000 had not been realised or was short realised by the other State Governments with corresponding loss to Delhi Administration. No action was taken by Delhi Administration for recovery of the said amount through the other State Governments.

The foregoing was reported to the department and to Government in September 1983; their replies are awaited (December 1983).

SECTION—B : UNION TERRITORY OF CHANDIGARH

3.17 *Goods tax not levied*

Punjab Passengers and Goods Taxation Act, 1952 as applied to Union Territory of Chandigarh, provides that there shall be levied, charged and paid to the State Government, a tax at prescribed rates on all fares and freights in respect of all passengers carried and goods transported by motor vehicles. The tax is levied by the Excise and Taxation department. Under the Punjab Motor Vehicles Taxation Act, 1924 as applied to Union Territory of Chandigarh, road tax is levied on vehicles by the Transport Authorities.

In respect of 35 public carrier vehicles, registered with the Transport Authorities goods tax amounting to Rs. 31,125 was not realised by the Excise and Taxation department in respect of different periods between January 1974 and March 1981.

The omission was pointed out in audit in April and December 1981 by cross checking the levies imposed by the two departments. The reply of the Excise and Taxation department is awaited (December 1983).

The matter was reported to the Ministry of Home Affairs in October 1983; their reply is awaited (December 1983).

3.18 *Assessment of token tax at incorrect rates*

The Punjab Motor Vehicles Taxation Act, 1924 as applied to Union Territory of Chandigarh, prescribes the rates of token tax leviable on various types of vehicles depending on their unladen weight or seating capacity.

In Chandigarh, token tax on 26 vehicles, for different periods between April 1973 and March 1981, was levied at incorrect rates, resulting in token tax being realised short by Rs. 22,025.

The mistake was pointed out in audit in November 1981; the reply of the department is awaited (December 1983).

The matter was reported to the Ministry of Home Affairs in September 1983; their reply is awaited (December 1983).

N. Sivasubramanian

New Delhi
The 13 Feb. 1984 1984

(N. SIVASUBRAMANIAN)
Director of Receipt of Audit-II

Countersigned

Gian Prakash

20-2-1984

New Delhi
The 1984

(GIAN PRAKASH)
Comptroller & Auditor General of India