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MGIPF-412 NAL/79



**REPORT
OF THE
COMPTROLLER
AND
AUDITOR GENERAL
OF INDIA**

FOR THE YEAR

1979-80

UNION GOVERNMENT (CIVIL)

REVENUE RECEIPTS

VOLUME I

INDIRECT TAXES

93

ERRATA

<i>Page</i>	<i>Para No.</i>	<i>Line</i>	<i>For</i>	<i>Read</i>
6	1.09(v)	25th from top	Under any of the headings 1 to 27 of Chapter 85 of the Customs.	under item 37AA of the Central, Excise Tariff is leviable on such.
38	2.11(a)	21st from bottom	manufacturers	manufacturers
51	2.16 (a)	1st from bottom	Price	Prices
52	2.16 (a)	10th from top	Drug	Drugs
85	2.50(c)	14th from bottom	Septembe	September
103	2.62	11th from bottom	brough	brought
106	2.65(a)(i)	16th from bottom	cause-cum-demand notice for Rs. 35,86,067 for the period	revealed that yarn duty was not paid on the quantity of yarn
142	3.13	17th from bottom	immeiately	immediately



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of the

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and

Auditor General

of India

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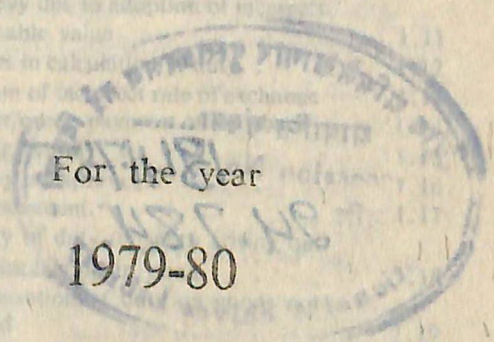
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Volume I

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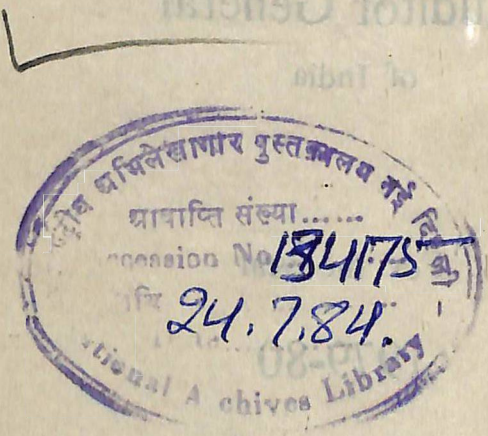
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PREFATORY REMARKS

The Audit Report on Revenue Receipts (Civil) of the Union Government for the year 1979-80 is presented in two volumes—one relating to Indirect Taxes and the other relating to Direct Taxes.

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

Chapter 1—mentions the actuals of customs revenue and points of interest which came to the notice of Audit in the audit of these receipts;

Chapter 2—deals, likewise, with receipts of Union Excise duties;

Chapter 3—sets out the results of Audit of receipts relating to Sales Tax and Excise duty of the Union Territory of Delhi.

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

CHAPTER I

CUSTOMS RECEIPTS

1.01. The total net receipts after deducting refunds and drawback under each minor head below the Major Head 037-Customs during the year 1978-79 and 1979-80 together with budget estimates for the year 1979-80 are given below:—

	Actuals for 1978-79	Budget Estimates for 1979-80	Actuals for 1979-80
			(In crores of rupees)
Customs Receipts	3163.57	3376.37	3736.39
Customs Exports	159.70	81.33	118.49
Excise Receipts	8.86	8.30	9.03
Other Receipts	110.75	23.13	18.78
Net Receipts	2912.98	2389.35	2921.99
Refunds		49.80	11.82

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1.02. The realisation of Customs receipts exceeded the Budget estimate for 1979-80. The actual receipts for the year 1979-80 were Rs. 3736.39 crores as against the Budget estimate of Rs. 3376.37 crores. The increase of Rs. 360.02 crores over the Budget estimate is due to the increase in the receipts from the following items:—

1.03. In the Budget of 1979-80, the revenue from excise duties was estimated at Rs. 81.33 crores. The actual receipts were Rs. 118.49 crores. The increase of Rs. 37.16 crores over the Budget estimate is due to the increase in the receipts from the following items:—

CHAPTER 1

CUSTOMS RECEIPTS

1.01. The total net receipts after deducting refunds and drawback under each minor head below the Major Head 037-Customs during the year 1978-79 and 1979-80 together with budget estimates for the year 1979-80 are given below :—

	Actuals for 1978-79	Budget Estimates for 1979-80	Actuals for 1979-80
(In crores of rupees)			
Customs Imports	2163.67	2276.37	2756.79
Customs Exports	139.70	81.33	118.49
Cess on Exports	8.86	8.50	9.93
Other Receipts	110.75	23.15	38.78
Net Revenue	2422.98	2389.35	2923.99
Refunds		49.90	51.82
Drawback		43.00	58.74

1.02. The realisation on "Customs Imports" exceeded the actuals of 1978-79 and the budget estimates for 1979-80. The buoyancy in the revenue collections for the year 1979-80 was attributed to liberal import policy and larger import of machinery, mechanical appliances and electrical equipments, iron and steel, copper, chemicals other than pharmaceuticals and miscellaneous chemicals, fertilizers etc.

1.03. In the Budget of 1979-80, the revenue from export duties was estimated at Rs. 81.33 crores. The revised estimates for 1979-80 placed the receipts from export duties at Rs. 116.49 crores. The actual realisation, however, was Rs. 118.49 crores. The increase in estimated receipts was stated to be mainly on account of larger realisations from coffee, turmeric and turmeric powder, hides, skins and leathers etc.

1.04. The budget estimates for payment of drawback under the minor head "Imports" was placed at Rs. 43.00 crores. This was later revised to Rs. 53.00 crores in the revised estimates. However, the actual payment of drawback booked in the accounts came to Rs. 58.74 crores. Reasons for this variation are not known.

1.05. Cost of collection

The expenditure incurred in collecting revenues booked under the Major Head 037-Customs for the years 1978-79 and 1979-80 is as follows :—

		(In crores of rupees)	
		1978-79	1979-80
A-1—Revenue Cum/Import/Export Trade Control Functions	(i)	5.46	5.69
A-2—Preventive and other Functions.	(ii)	19.29	22.68
	TOTAL	24.75	28.37

1.06. Test Audit of the records of various Custom Houses/Collectorates revealed under-assessments, overpayments and losses of revenue amounting in all to Rs. 28.00 crores. Over-assessments and short payments amounting to Rs. 6.23 lakhs were also noticed during audit.

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

- (a) Non levy/short levy of additional duty.
- (b) Short levy due to misclassification of goods.
- (c) Incorrect application of exemption notification.
- (d) Short-levy due to adoption of incorrect assessable value.
- (e) Mistakes in calculation of duty.
- (f) Adoption of incorrect rate of exchange.

(i) Revenue functions.

(ii) Preventive functions.

- (g) Irregular/excess payment of drawback
- (h) Irregular refund.
- (i) Non-levy of export cess.
- (j) Over-assessment.

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

Under Section 3 of the Customs Tariff Act, 1975 additional duty equal to duty leviable on like goods produced or manufactured in India, is leviable on all imported goods. With effect from 1 March, 1979, Central Excise Duty under item 68 of the Central Excise Tariff also is leviable on imported goods, as additional duty.

In paragraph 3.20 of their 212th Report (Fifth Lok Sabha), the Public Accounts Committee reiterated their earlier recommendations that cases of levy of additional (countervailing) duty should be subjected to careful scrutiny by the Internal Audit Department and that the working of the Internal Audit Department should be gone into with a view to streamlining its procedure and functions. Further recommendations in this regard were made in paragraphs 2.17 to 2.20 of their 219th Report (Fifth Lok Sabha). Notwithstanding the restructuring of the Internal Audit Department based on these recommendations, non-levy/short-levy of additional duty amounting to Rs. 3.75 lakhs was noticed in test audit. This related to eleven cases in each of which the short-levy/non-levy exceeded Rs. 10,000. Three of these cases are detailed below :

(i) Alloy forged steel rolls imported in May 1979 through a major port for fitment to rolling mills were not subjected to additional duty under item 68 of the Central Excise Tariff. On this being pointed out by Audit (November 1979), the department recovered the short levy of Rs. 1,19,331.

The Ministry of Finance have confirmed the facts.

(ii) A consignment of goods described as "Moore's precision jigborer matric machine and parts" imported in February 1979

through a major port was assessed to customs duty at 40 per cent *ad valorem* under heading 84.23 of the Customs Tariff Act, 1975. Though the bill of entry was presented on 22 February 1979, the "entry inwards" of the vessel carrying the goods was given only after 28 February 1979 after the presentation of the Finance Bill, 1979. Hence the goods falling under heading 84.23 also attracted additional duty at 8 per cent *ad valorem* under item 68 of the Central Excise Tariff, but this was not levied. On this being pointed out by Audit (August 1979) the department recovered the short levy of Rs. 58,940 (November 1979).

The Ministry of Finance have confirmed the facts.

(iii) In a major Custom House parts of 'Electric traffic control equipment for Railways' made of glass, imported in April 1979, were assessed to additional duty under item 23A(4) of the Central Excise Tariff at 30 per cent *ad valorem* instead of at 35 per cent *ad valorem*, applicable from 1 March, 1979. This resulted in a short levy of additional duty of Rs. 46,578.

On this being pointed out by Audit (January 1980), the department recovered the amount (June 1980).

The Ministry of Finance have confirmed the facts.

1.09. Short levy due to misclassification of goods

In paragraph 2.59 of their 76th Report (Sixth Lok Sabha) the Public Accounts Committee expressed doubt about the adequacy and effectiveness of the existing checks prescribed for the scrutiny of classifications in Internal Audit Department and wanted Government to take remedial action. Despite this observation and the action taken thereon by the department, short levy of duty amounting to Rs. 18.31 lakhs due to wrong classification of goods during assessment was noticed in the course of test audit relating to eighteen cases in each of which short levy exceeded Rs. 10,000. Some of these cases are detailed below :

(i) In a major Custom House gear wheel and pinion were assessed to basic customs duty at 40 per cent *ad valorem* under heading 86.09 of the Customs Tariff Act, 1975, as parts of railway locomotives. It was pointed out by Audit (May 1979) that the imported goods, being gears and gearing, were correctly assessable to basic duty at 60 per cent *ad valorem* and auxiliary duty at 15 per cent *ad valorem* under heading 84.63 *ibid*.

A Conference of Collectors of Customs held in August 1979 upheld the Audit view. The under-assessment involved in four imports between March 1978 and March 1979 came to Rs. 11.98 lakhs.

While confirming the facts, the Ministry of Finance stated that the issue is proposed to be re-examined.

(ii) In a major Custom House 'Hyster Lift Truck and Components' imported in November 1976 were classified under heading 84.22 of the Custom Tariff Act, 1975 as "Lifting, Handling, Loading or Unloading Machinery". However, mechanically propelled work trucks of the types used in factories, warehouses, docks or Airports for transport or handling of goods are properly classifiable under heading 87.07.

On this being pointed out by Audit (September 1978), the department recovered the short levy of Rs. 96,866 (July 1979).

The Ministry of Finance have confirmed the facts.

(iii) A consignment of "interphase insulations" comprising polyester foil and varnished glass fibre cloth glued together in rolls, imported through a major port in May 1976, was assessed at 60 per cent *ad valorem* under item 87 of the Indian Customs Tariff and auxiliary duty at 15 per cent *ad valorem* without levy of any additional duty.

Audit pointed out (May 1976) that the goods would be more appropriately assessable at 100 per cent *ad valorem* under item 53 with auxiliary duty at 20 per cent *ad valorem* and additional duty under item 22B of the Central Excise Tariff at

25 per cent *ad valorem*. The department admitted the same; particulars of recovery of the short levy of Rs. 61,835 are, however, awaited (December 1980).

The Ministry of Finance have confirmed the facts.

(iv) A consignment of gravity meters, imported through a major port in June 1979, was assessed at 40 per cent plus 5 per cent auxiliary duty under heading 90.25(1) of the Customs Tariff Act, 1975 with additional duty at 8 per cent under item 68 of the Central Excise Tariff.

On being pointed out by Audit (November 1979) that these were more appropriately classifiable under heading 90.14 at 60 per cent plus auxiliary duty at 15 per cent with additional duty at 8 per cent, the department recovered the short levy of Rs. 39,408.

The Ministry of Finance have confirmed the facts.

(v) Electrical parts of machinery and apparatus, not falling under any of the headings 1 to 27 of chapter 85 of the Customs Tariff Act, 1975, are classifiable under heading 85.28 and assessable at 60 per cent *ad valorem* with auxiliary duty at 15 per cent *ad valorem*. However, Sound Recorders are specifically classified under heading 92.01/13 assessable at 100 per cent *ad valorem*, plus auxiliary duty at 20 per cent *ad valorem*. In addition, additional duty at 30 per cent *ad valorem* (with special duty of excise at 5 per cent thereon) under any of the headings 1 to 27 of Chapter 85 of the Customs recorders.

A consignment of electric parts of machinery and accessories imported through a major port in March 1978 was assessed under appropriate headings of the Customs Tariff Act, 1975. However, the consignment *inter alia* included a "Recorder" which was assessed under heading 85.28 at 60 per cent *ad valorem* and auxiliary duty at 15 per cent *ad valorem*. On being pointed out by Audit (September 1978) that the goods were appropriately

assessable under heading 92.01/13 and under item 37AA, the department recovered the short levy of Rs. 35,190 (August 1979).

The Ministry of Finance have confirmed the facts.

(vi) A consignment of component parts of oscilloscope containing cathode ray tubes imported through a major port in October 1977, was assessed at 60 per cent *ad valorem* under heading 90.28(1) of the Customs Tariff Act, 1975 with auxiliary duty at 15 per cent *ad valorem*.

On being pointed out by Audit (April 1978) that the goods would correctly fall under heading 85.18/27(1) and be assessable to customs duty at 100 per cent *ad valorem* and auxiliary duty at 20 per cent *ad valorem*, the department, after accepting the audit point, referred the matter to the Electronics Commission for clarification. Subsequently similar consignments were assessed by the department at the higher rate of 100 per cent *ad valorem*.

Short levy of duty in the instant case worked out to Rs. 32,282; particulars of recovery are awaited (December 1980).

The Ministry of Finance have confirmed the facts.

(vii) Ferro phosphorus containing 21.77 per cent of phosphorus imported through a major port in November 1977 was assessed to duty under heading 73.02 of the Customs Tariff Act, 1975 instead of under heading 28.01/58(1)

On this being pointed out by Audit (May 1978), the department recovered the short collection of Rs. 31,696 (June 1979).

The Ministry of Finance have confirmed the facts.

1.10. *Incorrect application of exemption notification*

Short levy of Rs. 33.87 lakhs resulting from incorrect application of exemption notification was noticed during test

audit. This related to six cases wherein the short levy exceeded Rs. 10,000 in each case, of which three cases are detailed below :

(i) Kernite is a variety of crude Sodium Borate, classifiable under Chapter 25 of the Customs Tariff Act, 1975, which covers all crude mineral products. Under a notification issued in August 1976, Kernite and its concentrates are eligible for assessment at the concessional rate of 45 per cent *ad valorem*. The other varieties of crude Sodium Borates and manufactured Sodium Borates are respectively liable to duty under Chapters 25 and 28 at 75 per cent *ad valorem*.

Rasorite 46 described as partially crude Sodium Borate, imported through a major port during 1978-79, was assessed at the concessional rate of 45 per cent *ad valorem* on the ground that Rasorite is a synonym for Kernite and that the material imported can be regarded as a concentrate of Kernite obtained by crystallisation from Kernite. It was pointed out in audit that "Rasorite" is a brand name representing all varieties of Sodium Borates originating from California and that though Kernite may be a Rasorite, all Rasorities are not Kernite. Further, according to the Customs Tariff, mineral products which have undergone processes resulting in change in structure on the process of crystallisation are excluded from Chapter 25. If Rasorite 46 is obtained from Kernite by the process of crystallisation, it is assessable as a chemical under Chapter 28 at the rate of 75 per cent *ad valorem*. If it is in itself a crude mineral subjected only to the permissible processes listed in note 1 of Chapter 25, its molecular structure is different from that of Kernite and is, therefore, not eligible for assessment at the concessional rate as Kernite or its concentrates under the notification mentioned above. Rasorite 46 is, therefore, liable to duty only at the rate of 75 per cent *ad valorem*. The total differential duty involved in the thirteen test cases pointed out in audit works out to Rs. 28,52,797. The Conference of Collectors of Customs has upheld the Audit view. Particulars of demands raised are awaited (December 1980).

The Ministry of Finance have confirmed the facts.

(ii) Electrostatic precipitators are classifiable under heading 84.18(2) of the Customs Tariff Act, 1975, whereas their component parts are not eligible for concessional assessment under a notification issued in August 1976 as tariff heading 84.18(2) is not specifically mentioned in the said notification.

Component parts of electrostatic precipitators imported through a major port during November 1977 and February 1978 were assessed to duty at the concessional rate of 40 per cent under the aforesaid notification of August 1976. Audit pointed out (April 1978) that they had to be assessed on merits only. An underassessment of Rs. 3,15,601 was pointed out.

The department recovered Rs. 13,388 in August 1978 in respect of the import of November 1977. Particulars of recovery of Rs. 3,02,213 relating to the import of February 1978, for which voluntary payment has been requested, are still awaited (December 1980).

While confirming the facts, the Ministry of Finance have stated that electrostatic precipitator, being only gas purifier and not air filter, would fall under heading 84.18(2); as the matter was not free from doubt, it was proposed to be re-examined.

(iii) Chemical elements such as silicon, doped with boron phosphorus etc., for use in electronics, in the form of discs, wafers or similar forms are assessable to duty under heading 38.01/19 of the Customs Tariff Act, 1975. However, according to the explanatory notes in the Customs Co-operation Council Nomenclature, such articles more extensively worked (e.g. by selective diffusion) fall under heading 85.21 [heading 85.18/27(1) of the Customs Tariff Act, 1975] as semi conductor devices. Under a notification issued in July 1977, articles falling under heading 85.18/27(1) are exempt from customs duty in excess of 60 per cent *ad valorem*, whereas, many other items

like diodes, transistors, and similar semi conductor devices are assessable at 100 per cent *ad valorem*.

A major Custom House assessed two consignments of silicon chips, (which according to the invoice description were in scribed wafer form), imported in October and November 1979, to customs duty at 60 per cent *ad valorem* plus auxiliary duty at 15 per cent *ad valorem* plus additional duty at 8 per cent *ad valorem* under heading 38.01/19.

Audit pointed out (March and April 1980) that the silicon chips were in scribed wafer form and were extensively worked and as such would be assessable as semi conductor devices to customs duty at 100 per cent *ad valorem* plus auxiliary duty at 20 per cent *ad valorem* plus additional duty at 8 per cent *ad valorem* under heading 85.18/27(1).

The short levy involved in three consignments is Rs. 81,928, for which demands have been raised by the department.

While confirming the facts, the Ministry of Finance stated that the matter is proposed to be examined further.

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

Short levy of duty of Rs. 1.79 lakhs, as a result of incorrect determination of assessable value, was noticed during the course of test audit. This related to five cases where the short levy exceeded Rs. 10,000 in each case. Two of these cases are detailed below :

(i) Departmental charges at varying rates depending upon the nature and kind of service rendered by the India Supply Mission, London, are levied in respect of goods purchased through that agency. In a minor Custom House, a consignment of 15,947.940 Metric Tonnes of fertilizers was imported by a Public Sector undertaking in May 1975 through the India Supply Mission, London. It was noticed in audit that the departmental charges were not included in the assessable value, resulting in short

levy of duty of Rs. 1,12,736. On this being pointed out by Audit (July 1978), the department intimated that a request for voluntary payment had been issued since the demand had become time barred.

The Ministry of Finance have confirmed the facts.

(ii) A consignment of X-Ray films (sensitized films cut to size) imported in March 1979 was assessed to duty at 100 per cent *ad valorem* under heading 37.10/08 of the Customs Tariff Act, 1975 and auxiliary duty at 20 per cent *ad valorem* plus additional duty at 8 per cent *ad valorem* under item 68 of the Central Excise Tariff. The assessable value under Section 14 of the Customs Act, 1962 was computed as Rs. 9,835 as against Rs. 29,562 inclusive of freight and insurance charges, resulting in short levy of duty of Rs. 23,347.

On this being pointed out by Audit (June 1979), the department recovered the short levy (March 1980).

The Ministry of Finance have confirmed the facts.

1.12. Mistakes in calculation of duty

Short levy of Rs. 0.85 lakh arising out of incorrect computation of duty and application of the incorrect rate of duty was noticed during test audit. This related to three cases where the short levy exceeded Rs. 10,000 in each case. Two of these cases are detailed below :

(i) A consignment of Ice Cube Machines imported through a major port in November 1979 was assessed to basic customs duty at 100 per cent *ad valorem* plus 20 per cent auxiliary duty under heading 84.15(2) of the Customs Tariff Act, 1975 and additional duty at 80 per cent under item 29A of the Central Excise Tariff. The additional duty worked out to Rs. 55,839 against which an amount of Rs. 5,584 only was levied and collected.

On this being pointed out by Audit (May 1980), the short levy of Rs. 50,255 was recovered by the department.

The Ministry of Finance have confirmed the facts.

(ii) According to a notification of March 1978 the effective rate of basic customs duty on Polyester filament yarn falling under heading 51.01/03 of the Customs Tariff Act, 1975 is 200 per cent *ad valorem*. In respect of Polyester filament yarn imported through a major port in August 1978, the department levied basic customs duty at 100 per cent *ad valorem* as against the correct rate of 200 per cent *ad valorem*. On this being pointed out by Audit (May 1979), the department stated (April 1980) that the short collection of Rs. 18,446 could not be recovered owing to the late receipt of the audit point. -

In this case, when the bill of entry of 26 August 1978 was sent to audit on 21 March, 1979, it was already time barred. The late submission of the documents to audit thus resulted in loss of revenue of Rs. 18,446.

The Ministry of Finance have confirmed the facts.

1.13. *Adoption of incorrect rate of exchange*

In paragraph 1.50 of their 43rd Report (Fifth Lok Sabha), the Public Accounts Committee desired that necessary instructions should be issued by the Board to the Custom Houses to avoid confusion in the conversion of the currencies bearing the same name prevalent in different countries and that the Internal Audit Department should be particularly vigilant in auditing the conversion calculations. Despite this observation and pursuant action, short levy of duty amounting to Rs. 0.54 lakh and excess levy of Rs. 3.02 lakhs as a result of application of incorrect rates of exchange were noticed in test audit in three cases wherein the individual short/excess levy exceeded Rs. 10,000. Two of these cases are detailed below :

(i) While assessing a consignment of 'Galvanised plain sheets', imported in February 1979 from Australia, the department

applied the rate of exchange relating to U.S. dollars for conversion into Rupees whereas the invoice showed the value of the goods in Australian currency and as such the rate of exchange relating to Australian dollars should have been applied. On this being pointed out by Audit (September 1979), the department recovered the short levy of Rs. 24,821 (October 1979).

The Ministry of Finance have confirmed the facts.

(ii) With effect from 1 July, 1978 valuation of imported goods is to be done by applying the rate of exchange prevailing on the date of presentation of the bills of entry under Section 46 of the Customs Act, 1962. In the case of four consignments where "entry inwards" was granted after 1 July, 1978, though the bills of entry were filed prior to that date, the value of goods was determined by applying the rate of exchange in force on the date of "entry inwards" of the vessels. The liability to duty arising only on the date of importation, the duty in respect of the four consignments should have been levied on the value of goods assessed with reference to the law in force on those dates *i.e.*, applying the rate of exchange in force on the day of presentation of bills of entry. Non-application of the correct rate of exchange resulted in short levy of Rs. 12,433 in three cases and excess levy of Rs. 3,01,680 in the fourth case. The department justified the assessment citing the advice of the Bombay Branch Secretariat of the Law Ministry according to which bills of entry filed before 1 July, 1978 should be disposed of as if the amendment has not been brought into force on 1 July, 1978.

The correct legal position over-ruling the advice of the Bombay Branch Secretariat had, however, been circulated in March 1979 and the excess levy referred to above was made after receipt of this circular.

The Ministry of Finance have confirmed the facts.

1.14. Irregular/excess payment of drawback

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

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

Nine cases of excess payment of drawback amounting to Rs. 45.44 lakhs were noticed during test audit, three of which are detailed below :

(i) Drawback on cut and polished diamonds of not less than twelve pieces per carat was fixed at the rate of 3 per cent F.O.B. value under sub-serial number 5804 of the drawback schedule. Government, however, by issue of a public notice on 7 April 1978 withdrew this rate.

During the course of audit of drawback claims in a major port, it was noticed that the department continued to pay upto 31 May 1978 drawback on export of cut and polished diamonds even after withdrawal of the said rate. On this being pointed out by Audit in September 1979 and again in December 1979, the department initiated action to review all such excess payments. Demands have been issued against the diamond exporters for a total amount of Rs. 41,90,850. One demand for Rs. 3,556 has been realised; all others are pending realisation (December 1980).

The Ministry of Finance have confirmed the facts.

(ii) Instant coffee exported from the country is entitled to drawback at the brand rates approved by Government. The drawback is payable on the net weight of such coffee exported.

A Custom House paid drawback on the gross weight of 588.80 quintals instead of on the net weight of 276 quintals. Further, the drawback was paid at the rate of Rs. 269.50 per quintal fixed by Government in April 1979 instead of at the revised rate of Rs. 250 per quintal fixed in December 1979. This resulted in excess payment of drawback of Rs. 89,681.60. On this being pointed out by Audit (December 1979), the department recovered the amount (April 1980).

The Ministry of Finance have confirmed the facts.

(iii) Drawback on pressure stoves made of brass and metallic components thereof has been fixed at eleven per cent of the F.O.B. value under the Drawback Rules, 1971. If the value of export goods is invoiced in currency other than Indian rupees, it should be converted into Indian rupees for calculating the drawback payable on export goods.

While settling a drawback claim on account of Indian Gold Mohar pressure stoves and spare parts exported through a major port in March 1979, the department had taken cost and freight values at US \$ 26,570 instead of the correct value expressed in Indian rupees at Rs. 26,570 in the invoice attached to the drawback claim. This resulted in excess payment of drawback of Rs. 20,931 on the export of goods other than gas mantles.

On this being pointed out by Audit (September 1979), the department recovered the excess payment of drawback of Rs. 20,931 (December 1979).

The Ministry of Finance have confirmed the facts.

1.15. *Irregular refund*

Irregular refunds amounting to Rs. 86.09 lakhs were noticed during test audit, relating to ten cases wherein irregular refunds exceeded Rs. 10,000 in each case. Five cases are detailed below :

(i) Section 25(2) of the Customs Act, 1962 empowers Government to issue special orders to exempt goods from payment of duty. One such order was issued in May 1973 in respect

of import of fertilizers covering the period December 1972 to December 1973 in which these goods were exempted from payment of duty.

In a major Custom House a consignment of "Mono Ammonia Phosphate" fertilizers, covered by the order of May 1973, imported in January 1973, and valued at Rs. 1,08,01,897 was provisionally assessed to customs duty under item 28 of the Indian Customs Tariff at 60 per cent *ad valorem* (regulatory duty at 5 per cent *ad valorem* with additional duty at 15 per cent *ad valorem* under item 14 HH of the Central Excise Tariff). The final assessment was made in January 1975. The bond obtained for provisional payment was, however, cancelled in April 1977. The importers filed in June 1977 an application for reassessment of the goods in terms of the *ad hoc* exemption order of May 1973 issued by Government. The goods were reassessed by the Custom House and a consequential refund of Rs. 80,74,418 was made in September 1978.

A less charge demand was issued thereafter in November 1978 for the amount refunded in view of the Attorney General's opinion of August 1978 clarifying that Government was not competent to exempt any goods from the payment of duty after duty became leviable thereon.

The less charge demand issued was, however, withdrawn as per Collector's orders on these grounds :

- (a) Attorney General's opinion cannot be given retrospective effect ;
- (b) The imports were of earlier period and the practice of the Custom House was to grant such benefits in the past ; and
- (c) orders of Government for exemption are for specific consignments.

The withdrawal of demand is not correct for the following reasons :

- (a) Prior to the issue of the Attorney General's opinion of August 1978, the scope of the rule 8(1) of Central Excise Rules and Section 25 of the Customs Act, 1962, was reviewed by the same authority and it was held that Section 25 of the Customs Act, 1962, if made applicable under Section 12 of the Excise Act, did not empower Government to issue notification with retrospective effect. Thus, issue of exemption order under Section 25 of the Customs Act, 1962, subsequent to the import of goods was not proper.
- (b) Though the exemption orders are for specific consignments, the exemption order itself was issued after the goods were imported and hence not in order. The duty liability is on import of goods and there is no specific provision to forgo any part of the duty after the event of import.

Irregular grant of refund and subsequent withdrawal of demand resulted in loss of revenue of Rs. 80.74 lakhs.

The Ministry of Finance have confirmed the correctness of the facts stated in the para.

(ii) Goods like extruded profiles, tubes, plates, castings, forgings, steel sheets etc. intended for the manufacture of 'Krupp Man Light Metal Float Bridge' when imported are assessable under the relevant items of the Indian Customs Tariff according to the nature of the material. No customs duty is leviable but auxiliary and additional duties are, however, chargeable.

A consignment of goods meant for Krupp Man Light Metal Float Bridges imported through a major port during May 1976 was assessed to duty at the rate of 60 per cent *ad valorem* under item 63(28) of the Indian Customs Tariff treating them as manufactures of iron and steel. Auxiliary duty at the rate of 15 per

cent *ad valorem* and additional duty at the rate of Rs. 165 per Metric Tonne under item 26 (AA) of Central Excise Tariff were also levied. The importers filed a refund claim requesting for the reassessment of the goods at concessional rate under a notification. The claim was rejected by the department as the evidence required was not furnished and the notification quoted in the refund claim was not valid at the time of the import. The importers went on appeal against the decision. It was held in appeal that, though the notification under which the importers claimed reassessment was not valid, the same benefit had been extended in another notification which was in force at the time of import. The case was, therefore, ordered to be considered *de novo* according to law.

While making the reassessment and granting the refund, the department assessed the goods without customs duty under item 63(28) of the Indian Customs Tariff but with auxiliary duty at the rate of 15 per cent *ad valorem*. No additional duty was levied. An amount of Rs. 4,32,921 was, therefore, refunded. It was noticed during audit (August 1979) that the goods were actually aluminium alloy procured for fabrication of Krupp Man Light Metal Float Bridge. The goods were, therefore, correctly assessable under item 66(b)/70(1) of the Indian Customs Tariff without customs duty but with auxiliary duty at the rate of 15 per cent *ad valorem* and additional duty at the rate of 30 per cent *ad valorem* plus Rs. 2000 per Metric Tonne, under item 27 of the Central Excise Tariff read with Customs notification of April 1976. On this being pointed out by Audit (August 1979), the department recovered the differential duty amounting to Rs. 2,64,587 (April 1980).

The Ministry of Finance have confirmed the facts.

(iii) Naphthalene derived from Coal tar is classifiable under heading 27.07 of the Customs Tariff Act, 1975 and chargeable to customs duty at the rate of 40 per cent *ad valorem* plus auxiliary duty at 5 per cent *ad valorem*.

Two consignments of Naphthalene imported through a major port in May 1978 were assessed to duty at 40 per cent *ad valorem* plus auxiliary duty at 5 per cent *ad valorem* under the head mentioned above. The department, however, refunded to the importers auxiliary duty charged on these two consignments in October 1979 on the basis of an exemption notification issued in May 1978. On being pointed out by Audit (May 1980), that the said notification did not apply to the goods covered by heading 27.07, the department issued a notice of demand for Rs. 1,16,436 (May 1980); particulars of recovery are awaited (December 1980).

The Ministry of Finance have confirmed the facts.

(iv) A consignment described as "Insulation for motors-Dipotherm fibre glass cloth", imported through a major port in February 1974 and valued at Rs. 40,842, was assessed at 100 per cent *ad valorem*, auxiliary duty at 20 per cent *ad valorem* under item 53 of the Indian Customs Tariff plus additional duty at 25 per cent *ad valorem* under item 22 B of the Central Excise Tariff. In June 1977, the entire amount of Rs. 22,463 recovered as additional duty was refunded to the importers based on an objection raised by the Internal Audit of the department.

While reviewing the audit objection raised by the Internal Audit, Audit pointed out (July 1978) that the refund was not in order. Audit further pointed out (September 1978) that additional duty was appropriately leviable under item 22(3) of the Central Excise Tariff as the goods were coated fabrics. After examining the matter further, the department decided that the goods were correctly chargeable to additional duty as coated fabrics.

The department issued a request for voluntary payment of Rs. 22,463 in November 1979. Since the goods would attract additional duty under item 22(3) of the Central Excise Tariff, a revised request for voluntary payment of Rs. 30,457 was issued, which has not been paid so far (December 1980).

The Ministry of Finance have confirmed the facts.

(v) A consignment of "Air Craft Engine side coils S/Steel semifinished" valued at Rs. 1,65,233 imported from Australia through a major port in April 1973, was assessed to duty at 60 per cent *ad valorem* under item 63(28) of the Indian Customs Tariff plus 10 per cent auxiliary duty together with additional duty at Rs. 123.75 per Metric Tonne. During assessment, the department adopted the rate of exchange of Australian dollars 9.06 = Rs. 100 for arriving at the assessable value. The Internal Audit of the department objected to this rate in October 1973 and suggested the exchange rate of Australian dollars 12.43 = Rs. 100. Accordingly, the department refunded Rs 31,358 *suo motu* to the importers.

It was pointed out by Audit (July 1978) that according to the State Bank of India currency slip, the rate of Australian dollars 12.43 for Rs. 100 was applicable only upto an equivalent of Rs. 10,000 and as the value of goods exceeded this amount, that rate of exchange was not applicable. After ascertaining the correct rate of exchange in July 1980 the department agreed to issue a request for a voluntary payment of Rs. 29,598 ; particulars of realisation are awaited (December 1980).

The Ministry of Finance have confirmed the facts.

1.16. *Non-levy of export cess*

Non-levy of export cess of Rs. 1.28 lakhs was noticed during test audit relating to two cases wherein the individual non-levy exceeded Rs. 10,000. One of the cases is detailed below :

Cess at the rate of one Rupee per Metric Tonne is to be levied and collected under Section 3 of the Iron Ore Mines and Manganese Ore Mines Labour Welfare Cess Act, 1976 on all manganese ore exported from 1 September 1978. This cess was not levied on 1,10,653 Metric Tonnes of the ore exported in 14 consignments through a major port and two outports from December 1978 to May 1979. On this being pointed out by Audit (July 1979), cess amounting to Rs. 1,10,653 has been realised by the department (October-November 1979).

The Ministry of Finance have confirmed the facts.

1.17. *Over-assessment*

Over-assessment amounting to Rs. 4.66 lakhs was noticed during test audit in three cases wherein the individual over-assessment exceeded Rs. 10,000. Two of these cases are detailed below :

(i) Electrical parts for making and breaking electrical circuits for the protection of electrical circuits or for making connections to or in electrical circuits, falling under heading 85.18/27(3) of the Customs Tariff Act, 1975 are subject to 40 per cent customs duty, provided they are designed for use in circuits of 400 volts or above, or of 20 amperes or above or for use with motors of 1.5 Kilowatts and above. "Contactors", electrical parts of connectors with different rating capacities ranging from 80 amperes to 200 amperes, imported through a major port in November 1979 were, however, assessed to duty under heading 85.18/27(1) read with a notification of August 1977 at 60 per cent plus 15 per cent.

When the over-assessment was brought to the notice of the department in March 1980, the department admitted the excess collection of Rs. 1,24,234. However, in terms of a departmental order issued in February 1979, duty collected in excess was not refunded to the importer *suo motu*.

The Ministry of Finance have confirmed the facts.

(ii) "Naphthols" ordinarily used as coupling compounds are correctly assessable under heading 29.01/45(9) of the Customs Tariff Act, 1975 at 60 per cent plus 15 per cent *ad valorem* with appropriate additional duty under item 14 D of the Central Excise Tariff.

"Naphthol AS.SR"—described as such in the invoice and declared in the bill of entry as an "azoic coupling compound"—imported through a major port in February 1979 was classified under heading 32.04/12(1) of the Customs Tariff Act, 1975/14 D of Central Excise Tariff and assessed to duty at 100 per cent plus 20 per cent *ad valorem* with appropriate additional duty. This resulted in an excess collection of Rs. 86,363.

On this being pointed out by Audit (October 1979), the department admitted the over-assessment but stated that no refund was being made *suo motu*.

The Ministry of Finance have confirmed the facts.

1.18. *Non-levy of duty on scrap arising out of manufacture in bond*

A Government ship building company was allowed the concession of bringing imported steel under bond without payment of duty for manufacturing vessels. One of the conditions of the bond was—

“All refuse/waste obtained in the process of manufacture shall be duly brought to account. It shall be stored separately and its disposal shown separately. As soon as possible after the manufacturing operations start, the Assistant Collector of Customs, Bond Department will arrange for fixation of a reasonable percentage of waste/refuse arising in the course of manufacturing operations after taking into consideration the results of the operations conducted under the supervision of one or more customs officers. Only so much of the waste/refuse as worked out on the basis of the percentage so fixed will be eligible for accountal as stipulated in Section 65(2) of the Customs Act, 1962.”

During the course of audit of the bonded warehouse of this company, it was noticed (October 1976) that no account of such scrap was maintained nor any duty recovered on the scrap emanating from the imported steel used in manufacture. It was further noticed that all scrap was mixed up and in the absence of separate accounting, it was not possible to verify how much scrap had arisen out of imported steel from each bond. The department had not fixed up the quantum of reasonable waste as required under the bond and duty was not collected on the scrap/wastage which was in excess of the quantum of reasonable wastage.

When this was pointed out, the department admitted the omission to insist on the maintenance of a separate account of scrap. It was further stated that instructions were issued to maintain a proper account of wastage.

The department accepted the wastage as worked out by the company at 5 per cent of the quantity of input as reasonable wastage and agreed to the payment of duty on that basis. The company paid Rs. 1,44,000 in February 1980 in respect of the scrap/waste for the period 1968 to 1977 ; particulars of payments of duty for later periods are awaited (December 1980).

The department has not, however, intimated as to how in the absence of a separate account, the company's plea of 5 per cent wastage was accepted.

The Ministry of Finance have confirmed the facts.

1.19. *Non-realisation of duty on goods not cleared*

Section 48 of the Customs Act, 1962 provides for disposal of goods imported but not cleared within two months. Accordingly goods for home consumption or transshipment may be sold by the persons having the custody thereof after taking permission from customs authorities, and giving due notice to the importers.

Prior to 1 March 1976, the Air Unit of a major port was dealing with the clearance of all consignments imported by air in the Custom House itself. From 1 March 1976 the Air unit attached to the Custom House started functioning in the international air port. With the commissioning of a new international air cargo complex near the air port from May 1977, the International Airport Authority of India have been appointed as the custodian for the goods imported by air and lying uncleared. They are also responsible for periodical auctioning of the imported goods remaining uncleared and/or abandoned in the Air Port.

For this purpose sale lists are prepared by the undertaking (I.A.A.I.) and transmitted to the Customs Officer for indicating Customs duty (including additional duty) and also the Import

Trade Control fine imposable on such goods. The fine is presently levied at 50 per cent for industrial raw material and machinery and at 100 per cent for all other goods. After the sales are made in respect of uncleared and abandoned goods, allocation of sale proceeds is made in the following order :—

- (i) Payment of freight to the carriers.
- (ii) Expenses of sale.
- (iii) Customs duty.
- (iv) Import Trade Control fine.
- (v) Warehouse charges.
- (vi) Surplus, if any, will be paid to the importers provided they prefer a claim within one year of the sale.

As soon as the sales are completed and allocation of the sale proceeds has been done, a cheque is required to be forwarded to the customs department indicating the total amount of customs duty along with the fine.

In all, twelve auction sales were held from March 1978 to June 1980 and demands aggregating to Rs. 12,96,462 were issued to the undertaking from time to time against which only a sum of Rs. 5,62,382 was paid by the undertaking as confirmed by the Ministry of Finance. The Ministry have added that the allocation of sale proceeds was according to the formula but the amounts claimed by the undertaking as expenses of sale are yet to be finalised.

Particulars of recovery of the balance are awaited (December 1980).

1.20. *Short levy of fees for rendering of services by customs officers due to application of lower rates*

By a notification of October 1976, the Central Board of Excise and Customs enhanced the rates of fees for the rendering of services of any Customs Officer as prescribed under the Customs (Fees for Rendering Services by Customs Officers) Regulations, 1968 with effect from 1 November 1976.

In the course of audit of six Land Customs Check Posts it was noticed that the fees for rendering of services by Customs Officers were continued to be charged at lower rates even after their enhancement, resulting in short levy of fees aggregating to Rs. 41,657 during the period November 1976 to October 1978.

The Ministry of Finance have stated in reply that out of this amount, a total of Rs. 2,523 has been recovered and action initiated for recovery of the balance amount.

1.21. *Import of RBD Palm Oil*

The import of RBD Palm Oil was canalised through the State Trading Corporation of India with effect from 13 January 1978. In respect of the import licences issued prior to this date, however, clearances were continued if irrevocable letters of credit had been opened prior to this date.

In terms of a notification issued on 1 March 1979 RBD Palm Oil, assessable to customs duty under heading 15.07 of the Import Schedule, was exempted from so much of the duty as was in excess of 12.5 per cent *ad valorem* and from the whole of the additional duty leviable thereon. In respect of the canalised imports, however, an *ad hoc* exemption order was issued in March 1979, exempting *inter alia* Palm Oil imported by the State Trading Corporation of India upto certain quantitative limits from the whole of the duty of customs in excess of 5 per cent *ad valorem*, and also from the whole of the auxiliary duty as well as additional duty.

RBD Palm Oil is normally imported in bulk or in tins or in drums. The cost of packing normally used in the course of trade is included in the value of goods and as long as the packing or containers are not of durable type suitable for repeated use, there is no assessment to duty of such packing.

RBD Palm Oil imported in 10 consignments through a major port during December 1978 to April 1979 was packed in stainless steel drums. The invoiced price ranged from US dollars 720 to US dollars 875 per tonne against the invoiced price of US

dollars 850 for the same commodity imported in tins by the same importer in March 1979. The examination reports of the said ten consignments stated that the containers were normal trade packings and the consignments were, therefore, charged to duty at 12.5 per cent *ad valorem* in accordance with the notification of March 1979.

Subsequently, on the basis of certain information, the department issued 11 notices of demand amounting in all to Rs. 1.29 crores as duty leviable on the import of stainless steel drums on the ground that only mild steel containers, and not stainless steel containers, were normally used in international trade. In fact, the importation of stainless steel as such, as a consumer item is banned and prohibited.

The demand was not honoured by the importer who filed a writ against it in the High Court. In allowing the writ on the holding that it had not been proved that stainless steel containers are not normally used in international trade, the High Court observed as under :—

“It might sound anomalous that stainless steel as such is a prohibited item but stainless steel containers for carrying permitted goods are not. It can even be said that this is a lacuna in the law as it stood on the date of the importation in the present case.”

While confirming the facts the Ministry of Finance have stated that a Special Leave Petition has been filed in the Supreme Court.

1.22. *Incorrect grant of exemption with retrospective effect*

While explaining the scope of Section 25 of the Customs Act, 1962, Government stated that as no notification having retrospective effect can be issued under that Section, orders for any exemption under Section 25(2) should be given either prior to the date of entry of the goods into the territory of India or at least prior to the dates mentioned in Section 15(1) of the Act.

During the test audit of documents relating to a major port, it was noticed that in respect of certain imports of fertilizers made in 1973, assessment was made provisionally and at the time of finalisation of the assessment, the basic duty and auxiliary duty initially collected were refunded on the strength of *ad hoc* exemption orders issued on dates subsequent to the dates of imports.

The incorrect exemption orders issued after the dates of imports were pointed out by Audit in July 1979. The department has issued demands for Rs. 2,75,85,978. Particulars of realisation are awaited (December 1980).

While confirming the facts, the Ministry of Finance have stated that the exemption was in conformity with the accepted interpretation of Section 25 of the Act at the relevant time based on the advice of the Ministry of Law in March 1977.

This stand is not acceptable since even in an earlier opinion in 1970, the Attorney General had advised that Government is not empowered to issue an exemption notification with retrospective effect.

1.23. *Delay in the revision of tariff values*

Section 14(2) of the Customs Act, 1962, empowers the Government to fix tariff values for any class of imported goods having regard to the trend of value of such or like goods for the purpose of levying customs duty on *ad valorem* basis.

Fresh and dry fruits when imported into India are liable to customs duty on *ad valorem* basis. Tariff values of fresh fruits were revised upward last in July 1969 (grapes) and September, 1971 (pomegranates). Tariff values of dry fruits were last revised upwards in June 1975; those of almonds, raisin and dates were revised upwards on 27 June, 1979.

It was noticed in audit that the invoiced values of 18 varieties of fresh and dry fruits imported through a Land Custom Station during the period January 1975 to 26 June, 1979 in respect

of fresh fruits, and from 30 June, 1975 to 26 June, 1979, in respect of the dry fruits, were much higher than the tariff values which had not been revised. The non-revision of the tariff values in accordance with the invoice values resulted in a short realisation of duty to the extent of Rs. 22.40 crores.

The Ministry of Finance have stated that the system of commercial invoicing in the exporting countries in this case was not very reliable. They have not, however, stated whether the international prices of fresh and dry fruits or their local market values, or both, had actually remained stable during the period 1975—1979.

1.24. Exemption orders issued under the Customs Act, 1962

Section 25(2) of the Customs Act, 1962 empowers the Central Government to exempt, in the public interest, and under circumstances of an exceptional nature to be stated in such order, from the payment of customs duty, any goods on which duty is leviable. The number of exemptions issued and acted on during the past four years is indicated below :

	1976-77	1977-78	1978-79	1979-80
(i) Number of exemptions issued and acted upon	248	301	198	97
(ii) Total duty involved (in crores of rupees)	9.44	15.52	59.98	204.54
(iii) Number of cases having a duty effect above Rs. 10,000	138	191	125	75
(iv) Duty involved in the cases at (iii) above (in crores of rupees)	9.35	15.48	59.95	204.53

1.25. Remissions and abandonments of Customs Revenue

The total amount of customs duties written off, penalties abandoned and *ex gratia* payments made during the year 1979-80 is Rs. 3.73 lakhs*.

*Figures furnished by Ministry of Finance.

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

Year	Amount (In lakhs of rupees)
1976-77	18.04
1977-78	4.61
1978-79	27.62
1.26 <i>Arrears of customs duty*</i>	

The total amount of customs duty remaining unrealised during the period upto 31 March, 1980 was Rs. 1795.15 lakhs on 31st October, 1980 as against Rs. 747.85 lakhs for the corresponding period in the previous year. Out of this, an amount of Rs. 676.48 lakhs has been outstanding for more than one year.

1.27 *Time barred demands**

Time barred demands where voluntary payments have been asked for by the department upto 31 March, 1980 but pending realisation as on 31 October, 1980 amounted to Rs. 282.28 lakhs in respect of ten Custom Houses/Collectorates.



*Figures furnished by Ministry of Finance.

CHAPTER 2

UNION EXCISE DUTIES

2.01 The receipts under Union Excise duties during the year 1979-80 were Rs. 6011.09* crores. The receipts for the last five years along with corresponding number of commodities on which excise duty was leviable under the Central Excises and Salt Act 1944, are given below :—

year	Receipts under union excise duties	Number of commodities subject to excise levy
(In crores of rupees)		
1975-76	3,844.78	130
1976-77	4,221.45**	132
1977-78	4,447.51	136
1978-79	5341.95**	138
1979-80	6,011.09	139

2.02 The break up of the receipts for the year 1979-80 with the corresponding figures for 1978-79 is given below :—

038-Union Excise Duties	1978-79 Rs.	Actuals 1979-80 Rs.
A. Shareable duties:		
Basic excise duties	46,71,45,81,710	53,21,59,65,630
Auxiliary duties of excise	50,62,699	7,37,659
Special excise duties	2,05,13,96,167	93,44,54,378
Additional excise duties on mineral products	(—)42,51,889	1,54,60,130
TOTAL (A)	48,76,67,88,687	54,16,66,17,797

*Figures (provisional) intimated by the Controller General of Accounts, New Delhi in December 1980.

**Revised actuals intimated by the Controller General of Accounts, New Delhi in February 1981.

	Rs.	Rs.
B. Duties assigned to States :		
Additional excise duties in lieu of sales tax	3,20,27,40,576	3,57,84,51,806
Excise duty on generation of power		66,36,50,014
TOTAL (B)	3,20,27,40,576	4,24,21,01,820
C. Non-Shareable duties :		
Regulatory excise duties	26,12,468	57,60,011
Auxiliary duties of excise	1,18,747	5,71,599
Special excise duties	(—)2,609	49,00,481
Additional excise duties on textiles and textile articles	20,21,63,261	50,02,78,528
Other duties	2,35,05,096	88,29,828
TOTAL (C)	22,83,96,963	52,03,40,447
D. Cess on commodities	1,20,53,08,269	1,15,24,12,434
E. Other receipts	1,62,37,459	2,94,55,613
TOTAL—Major Head	53,41,94,71,954	60,11,09,28,111

2.03 Salient features of the budget for 1979-80

In order to give relief to nearly a million tobacco growers, curers, small dealers and warehouse licensees from excise control, unmanufactured tobacco was completely exempted from excise duties including additional excise duties through budget 1979-80. The short fall in revenue of the order of Rs. 121.20 crores on this account was made good partially by revising the rates of duties on manufactured tobacco products. Other significant changes introduced, included :—

- (i) substantial increase in the rates of duties on petroleum products like motor spirit, refined diesel oil, kerosene and liquified petroleum gas;
- (ii) increase in the rate of duty on the residuary tariff item 68 from 5 per cent to 8 per cent *ad valorem*;

(iii) reduction in excise duty on all chemical fertilisers; and

(iv) levy of duty for the first time on floor coverings namely—carpets, carpetings and rugs under tariff item 22G.

2.04 The following twenty five commodities fetched revenue in excess of Rs. 50 crores each during the year 1979-80. Collectively these duties account for about 82 per cent of the net receipts :—

	In crores of rupees
1. Cigarettes	583.20
2. Motor spirit	526.46
3. Man-made fibres and yarn	405.57
4. Refined diesel oil and vaporising oil.	386.33
5. All other goods not elsewhere specified	386.17
6. Iron or steel products	262.16
7. Sugar including khandsari	235.55
8. Petroleum products not otherwise specified	208.65
9. Tyres and tubes	205.73
10. Motor vehicles	160.23
11. Kerosene	158.42
12. Paper	139.67
13. Electricity	134.53
14. Biris, chewing tobacco and snuff	130.75
15. Cotton fabrics	127.24
16. Cement	122.05
17. Plastics	106.21
18. Aluminium	102.98
19. Cotton yarn all sorts	95.59
20. Man-made fabrics	93.95
21. Patent or proprietary medicines	75.18
22. Non cellulosic spun yarn	71.97
23. Electric wires and cables	64.21
24. Fertilisers	63.85
25. Tea	63.55
	4,910.20*

*Figures intimated by the Ministry of Finance in October 1980.

2.05 Variations between the budget estimates and actuals

The budget estimates, actual realisation and variations for the year 1979-80 together with the corresponding figures for the last three years are given below :—

Year	Budget Estimates	Actuals	Variations	Percentage
(In crores of rupees)				
1976-77	4093.30	4221.45(a)	(+)128.05	(+)3.10
1977-78	4593.24	4447.51	(-)145.73	(-)3.17
1978-79	5299.06	5341.95(a)	(+)42.89	(+)0.81
1979-80	5825.20	6011.09(b)	(+)185.89	(+)3.19

2.06 Cost of collection

The expenditure incurred in collecting revenue on account of Union Excise duties during the year 1979-80 along with the corresponding figures for the preceding three years is furnished below :—

Year	Collection	Expenditure on collection
(In crores of rupees)		
1976-77	4221.45(a)	30.41
1977-78	4447.51	33.10
1978-79	5341.95(a)	35.35
1979-80	6011.09(b)	35.39

2.07 Simplified procedure

By issue of a notification on 20th March 1979, simplified procedure laid down in Chapter VII B of the Central Excise Rules 1944 was abolished from 1st April 1979.

(a) Revised actuals intimated by the Controller General of Accounts, New Delhi in February 1981.

(b) Figures (provisional) intimated by the Controller General of Accounts, New Delhi in December 1980.

2.08 Goods, not elsewhere specified

Special procedure laid down in rule 173 PP of the Central Excise Rules 1944 for assessment of goods falling under tariff item 68, was modified with effect from 1st August 1979 and such goods were brought under production based control from that date.

2.09 Test audit results

Test audit of the records maintained in the offices of all the central excise collectorates and basic excise records of licensees revealed underassessments and losses of revenue to the extent of Rs. 34.61 crores.

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

- (a) Non levy of duty under executive orders
- (b) Incorrect application of exemption notification
- (c) Incorrect grant of exemption
- (d) Evasion/avoidance of duty
- (e) Non levy/short levy of duty owing to misclassification of commodities
- (f) Cess
- (g) Irregular refunds
- (h) Other topics of interest

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

NON LEVY OF DUTY UNDER EXECUTIVE ORDERS

2.10 Integrated factories

Under section 3 of the Central Excises and Salt Act 1944, any excisable goods mentioned in the tariff attracts duty as soon as these are produced or manufactured. According to rules 9 and 49 or 173-G of the Central Excise Rules 1944 duty has to be paid on excisable goods at the time of 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. In this connection the Ministry of Law opined (August 1976) as under :—

- (i) The expression 'any other commodity' used in rule 9 would be construed to mean any commodity excisable or non excisable other than that was taken for such use as is understood in the market; and
- (ii) the stage of collection of duty would be before such goods are removed for further production.

It, therefore, follows that in an integrated factory, duty is leviable at each stage of manufacture unless the goods at that stage are specifically exempted therefrom. Instead of issuing any notification exempting the intermediary goods from payment of duty, the Central Board of Excise and Customs issued from time to time, latest *vide* letter dated 3rd November 1977, executive instructions to charge duty in the form in which the following excisable goods leave the factory of production :—

- (i) Synthetic resins and articles made therefrom (tariff item 15A) or non-ferrous metals such as copper, aluminium, zinc and lead where the semis and manufactures fall under one and the same item; and
- (ii) iron, steel ingots and iron/steel products which fall under different items of the tariff.

The Board also stated that the question of providing legal cover for the aforesaid principle namely "the later, the better principle" was under examination. It was also added that the demands of duty, if any, issued because of the absence of legal cover for this principle should not be pressed for payment until further orders.

No legal backing to the said principle has yet been given (December 1980).

A review of records of seven factories in five collectorates, revealed non collection of duty to the extent of Rs. 23.49 crores as detailed in the succeeding paragraphs under the aforesaid 'later, the better principle'.

(a) Aluminium in crude form and specified manufactures therefrom are dutiable under tariff item 27.

A factory in a collectorate manufactured aluminium billets and captively consumed a portion of the produce in the manufacture of extruded shapes and sections without payment of duty. This resulted in non levy of duty of Rs. 2,256.49 lakhs during the period April 1965 to March 1980. The records for pre April 1965 period were not produced to audit.

(b) (i) Steel ingots and steel products are assessable to duty under tariff items 26 and 26AA respectively.

Four integrated factories in two collectorates, manufactured steel ingots and used them captively for the manufacture of steel products. These factories did not pay duty at the ingot stage and paid it at the final product stage on the weight of the steel products manufactured. This resulted in non levy of duty of Rs. 88.19 lakhs at the ingot stage on 43,579 metric tonnes of steel ingots lost during melting/heating in the course of their conversion into steel products during the period 1974-75 to 1979-80.

(ii) Steel melting scraps and steel castings are assessable to duty under two different tariff items namely tariff item 26 and tariff item 26AA respectively, the effective rates applicable with effect from 18th June 1977 being Rs. 330 per metric tonne in the case of the former and Rs. 200 per metric tonne in the case of the latter.

In a third collectorate an integrated steel plant manufactured steel castings out of steel melting scraps obtained by it in the course of manufacture of other steel products. Steel castings thus manufactured, were cleared on payment of duty of Rs. 200 per metric tonne. Though steel melting scraps were chargeable to duty under a different tariff item, no duty was levied thereon at the intermediate stage of production. Non levy of duty in respect of 832.345 metric tonnes of steel castings cleared by the plant during 18th June 1977 to 31st March 1978 owing to payment of duty only at the final stage of manufacture worked out to Rs. 1,08,564 assuming that the same quantity of steel melting scraps were used in the manufacture of castings.

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

A factory in a fourth collectorate manufacturing cathodes, used part of the production for manufacture of wire bars by casting process without payment of duty. The duty was assessed and realised only at the time of clearances of wire bars from the factory. Non realisation of duty on cathodes before their clearance for captive consumption led to non levy of duty of Rs. 23,20,453 on 516.726 metric tonnes of cathodes lost in the process of manufacture of wire bars during the years 1975-76 to 1979-80 (October 1979).

The paragraphs pertaining to these cases were sent to the Ministry of Finance in July 1980 and September 1980. In one case the Ministry have stated (December 1980) that the matter is under examination. Replies in other cases are awaited (December 1980).

INCORRECT APPLICATION OF EXEMPTION NOTIFICATIONS

2.11 Small scale units

(a) The Government introduced under a notification date 1st March 1978, a scheme of duty relief to encourage small scale manufacturers. The scheme came into force from 1st April 1978. Initially, the scheme applied to 69 specified commodities. Subsequently, as a result of addition to/deletions from the list it operated in respect of 70 commodities.

A test audit of the assessment records of the manufacturers covered by the scheme was conducted. Following irregularities were noticed.

1. Under the scheme, the first clearance of the specified goods for home consumption upto an aggregate value not exceeding Rs. 5 lakhs, made by or on behalf of a manufacturer from one or more factories, was exempt from duty subject to the following conditions.

(i) The value of clearance during the previous financial year should not exceed Rs. 13.75 lakhs during the period 1st April 1977 to 28th February 1978 for availing of the concession in the year 1978-79 and Rs. 15 lakhs for the subsequent years.

(ii) The aggregate value of clearances made during any financial year should be computed separately for each of the specified goods.

(iii) Where the factory producing specified goods was run at different times in any financial year by different manufacturers, the value of specified goods so cleared from such factory in any such year at 'nil' rate of duty was not to exceed Rs. 5 lakhs.

By a notification of 30th March 1979, a manufacturer, who produced excisable goods falling under more than one tariff items

and if the aggregate value of all excisable goods cleared by him or on his behalf for home consumption during the preceding financial year exceeded Rs. 20 lakhs, was excluded from the purview of the said scheme.

Incorrect availment of exemption in the following cases resulted in underassessment of Rs. 3.84 lakhs.

(i) A unit manufacturing patent or proprietary medicines was allowed concession of Rs. 1.20 lakhs in duty during the years 1977-78 and 1978-79. This was irregular as the clearances of medicines for home consumption were Rs. 23.84 lakhs and Rs. 32.11 lakhs respectively during these years.

The case was reported to the Ministry of Finance in September 1980; reply is awaited (December 1980).

(ii) A unit manufacturing electric motors (specified goods) as also power driven pumps (non specified goods), was allowed exemption of Rs. 99,172 in respect of clearances of electric motors upto Rs. 5 lakhs during the period 1st April 1979 to 19th July 1979, on the ground that the value of clearances of electric motors during 1978-79 did not exceed Rs. 20 lakhs. The exemption granted was, however, not admissible as the value of such clearances of electric motors exceeded Rs. 15 lakhs during that year. On this being pointed out in audit, the department accepted (August 1980) the objection and issued a show cause notice for realising the duty.

The Ministry of Finance have admitted the facts as substantially correct (December 1980).

(iii) Four units manufacturing excisable goods availed of the exemption amounting to Rs. 56,875 during the financial year 1979-80, even though the aggregate value of the excisable goods cleared during the preceding financial year 1978-79 had exceeded Rs. 20 lakhs. On this being pointed out in audit,

the department issued show cause notices in all the four cases. In one case a sum of Rs. 4,055 has been recovered (July 1979); recovery particulars in the remaining three cases are awaited (June 1980).

The paragraph was sent to the Ministry of Finance in May 1980; reply is awaited (December 1980).

(iv) Two licensees manufactured specified goods as well as goods falling under tariff item 68. They were allowed concession of Rs. 72,982 in duty on the clearances of specified goods during the period 1st April 1979 to 31st December 1979. As the total value of clearances of specified goods and goods falling under tariff item 68 which were not so specified, exceeded Rs. 20 lakhs during the preceding year 1978-79, those licensees were not eligible for the aforesaid concession. When this was pointed out by Audit (September 1979 and February 1980), the department recovered Rs. 17,458 in one case and issued show cause notice for Rs. 55,524 in the other case.

The Ministry of Finance have admitted the facts (December 1980).

(v) A manufacturer was allowed to avail of the exemption of Rs. 34,972 in respect of a variety of barley classifiable as prepared or preserved food cleared from one of his units during the financial year 1978-79, though the aggregate value of other varieties of barley manufactured and cleared during the period 1st April 1977 to 28th February 1978 had exceeded Rs. 13.75 lakhs. On this being pointed out in audit (September 1979), the department stated that the Assistant Collector concerned was being advised to raise demand after ascertaining the duty liability.

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

2. (i) A manufacturer of synthetic organic products, cleared the goods on payment of duty and also collected the same from the customers even though he was eligible to avail of the exemption from duty as a small manufacturer.

Subsequently, when he preferred a refund claim in respect of duty already paid by him on 6th November 1978, the department sanctioned a refund of Rs. 1,10,575. The incorrect computation of the limit of Rs. 5 lakhs in this case by excluding the element of duty recovered by the manufacturer from the customers, resulted in short levy of Rs. 30,918. On this being pointed out in audit, the department issued a show cause notice and had a personal hearing. Final decision is awaited (August 1980).

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

(ii) Similarly in the case of six other units, the element of duty recovered from customers was not included in the computation of the limit of Rs. 5 lakhs. This resulted in short levy of duty of Rs. 98,000, out of which Rs. 2,000 were recovered; demands were raised for Rs. 12,000, and reply from the department is awaited for the balance of Rs. 84,000.

The case was reported to the Ministry of Finance in September 1980; reply is awaited (December 1980).

3. Under the notification of 1st March 1978, the value of goods exempted from duty under any other notification, was to be taken into account for computing the limits for exemption as well as clearance specified therein. This was also clarified by Government on 22nd January 1979.

By an amending notification issued on 30th March 1979, it was provided that for the purposes of computing the aggregate value of clearances, the clearances of any specified goods which

were exempt from duty by any other notification should not be taken into account with effect from 1st April 1979.

It was noticed in audit that two units manufacturing rubber products, claimed exemption on the first clearances of goods upto Rs. 5 lakhs prior to 1st April 1979 without taking into account the value of the clearances of the goods which were exempt from duty under another notification. This resulted in underassessment of duty of Rs. 92,247.

The department accepted the underassessment of duty of Rs. 37,598 in one case and issued a show cause notice for the recovery of Rs. 54,649 in the other case. Recovery particulars in both the cases are awaited (January and February 1980).

Ministry of Finance have admitted the facts as substantially correct (December 1980).

4. In paragraph 38(a) of the report of the Comptroller and Auditor General of India for the year 1976-77 (Revenue Receipts, Volume I), a few cases of legal avoidance of duty by manufacturers due to change in proprietorship were commented upon. The issue engaged the attention of the Public Accounts Committee. In paragraph 1.16 of their 149th Report (Sixth Lok Sabha) the Committee urged Government to examine the matter carefully and to take urgent rectificatory steps to plug the loopholes for future so that legal avoidance of duty does not recur. The matter was still under consideration of Government and their final decision was awaited (November 1980).

In another case of a partnership firm manufacturing rubber products, it was noticed (January 1979) that the value of clearances during the period 1st April 1977 to 28th February 1978 exceeded Rs. 13.75 lakhs and as such the firm was not entitled to the concession under the notification *ibid*. The partnership was, thereafter, dissolved and the factory was sold to another partnership firm whose partners were close relations of the partners

in the dissolved firm. A new Central Excise licence was issued and the licensee claimed exemption for clearance of goods valued at Rs. 4,99,938 during the period 14th July 1978 to 29th September 1978 without payment of duty amounting to Rs. 1,88,977.

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

5. An assessee engaged in the manufacture of domestic electrical appliances cleared goods worth Rs. 6,05,412 during the year 1978-79 without payment of duty even in respect of the clearances exceeding Rs. 5 lakhs. The omission escaped the notice of the department till it was pointed out by Audit in September 1979 and resulted in non levy of duty of Rs. 27,670. The said amount together with a penalty of Rs. 150 for improper maintenance of accounts was realised from the assessee in December 1979 and April 1980.

The Ministry of Finance have admitted the facts as substantially correct (December 1980).

6. The value of excisable goods cleared for captive use in the same factory in further manufacture of other goods is taken into account for calculating the value of clearances as clarified by Government in December 1978.

A unit manufacturing power driven pumps did not take into account the value of electric motors cleared for captive consumption in computation of total value of clearances during the year 1978-79, resulting in short payment of duty of Rs. 27,000 during the period August 1978 to March 1979. On this being pointed out by Audit (April 1979), the department stated that the demand of Rs. 27,525 had been raised (May 1979) and confirmed. Recovery particulars are awaited.

The case was reported to the Ministry of Finance in September 1980; reply is awaited (December 1980).

(b) By a notification issued on 18th June 1977, clearances upto Rs. 30 lakhs of goods falling under tariff item 68 during a financial year were exempt if the total value of the capital investment made from time to time on plant and machinery installed in the industrial unit in which the said goods were produced was not more than Rs. 10 lakhs. Subsequently, the concession was restricted to the first clearances for home consumption upto a value not exceeding Rs. 30 lakhs during the preceding financial year subsequent to 1977-78, the exemption being limited to Rs. 24 lakhs for the year 1977-78. By another superseding notification issued on 1st March 1979, the aforesaid goods were totally exempt from duty upto Rs. 15 lakhs and leviable to duty at 4 per cent *ad valorem* on clearances after the first clearances of Rs. 15 lakhs during the year 1979-80 subject to the conditions notified earlier.

(i) A unit in a collectorate manufacturing parts of textile machinery, availed of the concession under the aforesaid notification of 18th June 1977. Thereupon its licence was cancelled in October 1977. As the value of the goods cleared by the unit exceeded the prescribed limits during the years 1977-78 and 1978-79, it was not entitled to the concession. On this being pointed out in audit (July 1979), the department issued (September and December 1979) show cause notices demanding Rs. 5,09,780 for the period 18th June 1977 to 31st December 1979 calculated at the rates of duty prevalent on the dates of clearances. Since the clearances were made without observing the central excise formalities, the unit was liable to duty at the rate and valuation in force on the date of payment in terms of rule 9A(5) of the Central Excise Rules 1944. The total non levy would thus work out to Rs. 6,23,379.

The unit was brought under the licensing control from January 1980 onwards and was paying duty under protest since then. Final reply of the Collector is awaited.

The paragraph was forwarded to the Ministry of Finance in September 1980; reply is awaited (December 1980).

(ii) It was noticed in audit (March 1980) that a unit in another collectorate manufacturing boiled sweets, availed of the said concession even though the investment on plant and machinery installed in the industrial unit exceeded Rs. 10 lakhs. This resulted in short levy of duty of Rs. 1.81 lakhs during the period 1st April 1979 to 29th February 1980.

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

2.12 Semi finished steel products

Under the fourth proviso to a notification dated 18th June 1977 as amended on 15th July 1977, a set off of duty of Rs. 330 per metric tonne was allowed on semi finished steel products (tariff item 26 AA) manufactured with the aid of power from the specified raw materials as against the following effective rates of duty :—

Sr. No.	Description	Rate of duty
		Rs.
1.	All forms of semi finished steel falling under sub item (i) of item 26 AA.	330
2.	All products falling under sub item (ia) of item 26 AA (other than rails and sleeper bars specified in serial no. 3)	330
3.	Rails and sleeper bars	175
4.	Steel castings	200

By another notification dated 20th January 1979, the aforesaid fourth proviso was amended, whereby, *inter alia*, the substantive

portion namely, "the duty specified against the corresponding entries in column (3) of the table shall be reduced by three hundred and thirty rupees per metric tonne" was omitted. Subsequently, the said proviso was deleted by virtue of a notification dated 9th April 1979. Thus, during the period 20th January 1979 to 8th April 1979, there was no valid legal sanction for the set off of duty. It was noticed in test audit that 28 units in 12 collectorates were nevertheless allowed reduction of Rs. 1.49 crores in duty during the said period.

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

2.13 *Scheme of duty relief to encourage higher production*

By a notification issued on 16th June 1976, a scheme of duty relief to encourage higher production was introduced. The scheme which remained in force till 31st March 1979, envisaged exemption from 25 per cent of duty on the specified goods cleared in excess of the clearances made during the base period. A number of cases highlighting irregularities in the implementation of the said scheme were commented upon in paragraphs 34 and 45 of the reports of the Comptroller and Auditor General of India on Revenue Receipts (Volume I, Indirect Taxes) for the years 1977-78 and 1978-79. A few more instances subsequently noticed in audit are given below.

(1) In the case of factories clearing the specified goods for the first time prior to 1st April 1973, the year among financial years 1973-74, 1974-75 and 1975-76 during which the clearances were highest would be reckoned as base year and the aggregate of clearances during that year would be taken as the base clearance.

(a) A unit in a collectorate producing polyester fibre falling under tariff item 18(I), fixed the base clearance at 4,36,453 kilograms which also included fibre waste falling under the same sub item. A new sub item (IV) below tariff item 18

was introduced from 1st March 1978 covering non-cellulose wastes all sorts and the unit accordingly cleared the fibre waste from 1st April 1978. Since the new sub item had not been mentioned in the notification as one of the specified goods, the clearance of fibre waste would neither qualify for concession nor was to be included in the total clearance of polyester fibre for determination of base clearance.

The irregular availment of duty relief during the year 1978-79 amounted to Rs. 17,35,794. The department stated (April 1980) that a reference had been made to the Board for clarification.

The paragraph was sent to the Ministry of Finance in July 1980; reply is awaited (December 1980).

(b) For the purpose of computing the excess clearances, the value or the average value of clearances of the specified goods during the base period as determined in sub-paragraph (1) above was to be applied to clearances of similar goods in any year subsequent to 1975-76. It was clarified by the Central Board of Excise and Customs on 6th December 1977 that the relevant date for determining the base period and base clearance was the date on which the specified goods were cleared from the factory for the first time irrespective of the fact whether such goods were excisable or not.

Cutting tools were not excisable till 28th February 1974. In the case of a licensee manufacturing cutting tools from a date prior to 1st April 1973, the base clearance was fixed as the average of the clearances during the three year period 1973-74 to 1975-76 treating the factory to have commenced clearance of specified goods after 1st April 1973 for the first time. Further, the value of goods was taken as the actual value at the time of clearance, for computing the excess clearances during the years 1976-77, 1977-78 and 1978-79. This resulted in excess grant of relief of duty of about Rs. 1,78,500.

The paragraph was sent to the Ministry of Finance in August 1980; reply is awaited (December 1980).

(2) (a) In the case of factories from which clearances commenced from a date prior to 1st April 1973, if the unit of calculation of clearances is value, the aggregate value of the clearances of the best year from the base years 1973-74, 1974-75 and 1975-76 would be taken as the base clearance. For the purpose of finding out the best year, value of clearances during the three years were to be adjusted with reference to the average index number of the wholesale prices. The relief in duty was, however, to be determined on the excess clearances over the unadjusted value (*i.e.* actual value) of the clearances of the base period.

An assessee manufacturing transmission belts, conveyer belts, and V belts incorrectly availed of duty relief with reference to adjusted value resulting in short levy of duty of Rs. 3,10,732 during the years 1977-78 and 1978-79. On this being pointed out (March 1979), the department intimated in February 1980 that a show cause notice had been issued. Further report is awaited.

The paragraph was sent to the Ministry of Finance in July 1980; reply is awaited (December 1980).

(b) For determination of value based clearances, if an article similar to the specified goods was produced in the base period, the excess clearances would be calculated by adopting the value prevailing in the base period in respect of such article and if the values were varying in the base period, average of such values would be adopted.

It was noticed that a licensee dealing in welding electrodes had manufactured similar specified goods during the base period also, but the excess clearances were irregularly fixed with reference to value applicable on the date of clearances which happened to be higher than that in the base period. On this being pointed out, the department issued (March 1980) show

cause-cum-demand notices for Rs. 2.57 lakhs for the years 1977-78 and 1978-79.

The Ministry of Finance have accepted the facts as substantially correct (December 1980).

(3) Where duty is paid under rule 56A of Central Excise Rules 1944 by debit to proforma account against credit taken in respect of duty paid on raw materials/component parts, duty relief should be calculated only on the balance of duty payable after deducting the duty debited to proforma account. This position was also made clear by the Government in their letter dated 30th January 1978.

It was noticed that in a collectorate duty relief was allowed on the duty paid by debit to the proforma account in the case of three factories resulting in underassessment of duty of Rs. 2,68,528 during the years 1977-78 and 1978-79.

The Ministry of Finance have admitted the objection in one case (December 1980). The paragraph in the other cases was sent to the Ministry of Finance in August 1980; reply is awaited (December 1980).

2.14 *Steel ingots*

In terms of two notifications issued on 18th June 1977, steel ingots falling under tariff item 26 and iron or steel products falling under tariff items 26AA(i) and 26AA(ia), manufactured with the aid of electric furnace, were eligible for concessional assessment at Rs. 180 per metric tonne provided they were manufactured from any of the following materials, namely—

- (a) old iron or steel melting scrap;
- (b) a combination of the material referred to at (a) above with fresh unused steel melting scrap on which appropriate duty had been paid;

- (c) iron in any crude form falling under tariff item 25, on which the appropriate duty had been paid in combination with materials referred to at (a) and (b) above.

Subsequently, under a notification issued on 15th July 1977 steel ingots and iron or steel products fulfilling the above conditions, were fully exempt from payment of duty.

In a collectorate, three scrap based units manufacturing steel ingots with the aid of electric furnace and then rolling them into steel products including semi finished steel, held a stock of 10,662.704 metric tonnes of semi finished steel and other products like billets, bars, rods, etc., on 14th July 1977 which were cleared subsequently without payment of duty. It was pointed out in audit (October/November 1977) that since the steel ingots had been manufactured and used internally for the manufacture of products before 15th July 1977, the ingot stage duty of Rs. 19,19,287 was payable.

The Ministry of Finance have stated (May 1980) that demands amounting to Rs. 17,39,704.40 on a total quantity of 9,665.026 metric tonnes of steel ingots found on verification to have been actually consumed during the period 18th June 1977 to 14th July 1977, have been raised against the assessee and that the matter is under the process of adjudication.

2.15 Tools

Cutting tools falling under tariff item 51A were brought under the excise net from 1st March 1974. Other kinds of tools became excisable with effect from 18th June 1977 by revision of tariff item 51A. Under a notification dated 21st November 1977, tools falling under tariff item 51A(iii) are exempt from the whole of duty if they are used within the factory of production.

During audit (September 1979) of a factory manufacturing aircrafts and other goods, it was noticed that cutting tools and

other tools had been manufactured and cleared without payment of duty as detailed below :—

- (a) Cutting tools were manufactured and cleared during the period 1st March 1974 to 17th June 1977 without payment of duty of Rs. 44,150.
- (b) Hand tools were manufactured and cleared during the period 18th June 1977 to 31st July 1979 without payment of duty of Rs. 1,00,912.
- (c) Tools falling under tariff item 51A(iii) were manufactured and cleared during the period 18th June 1977 to 20th November 1977 without payment of duty amounting to Rs. 4,45,790.
- (d) Tools falling under tariff item 51A(iii) were manufactured and cleared during the period 21st November 1977 to 31st July 1979 without payment of duty amounting to Rs. 6,73,755 even though they were not used within the factory of production.

As a result there was short collection of duty amounting to Rs. 12,64,607 during various periods from March 1974 to July 1979.

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

2.16 *Patent or proprietary medicines*

(a) By a notification dated 8th October 1966 as amended, the manufacturers of patent or proprietary medicines falling under tariff item 14E were given the option to have the assessable value fixed at prices specified in the price lists for sale to retailers less 10 per cent discount or retail prices specified in the price lists less 25 per cent discount, such price lists being the price lists referred to in paragraph 8 of the Drugs (Price Control)

Order 1970 issued under section 3 of the Essential Commodities Act 1955.

Three pharmaceutical factories in three collectorates manufactured, *inter alia*, medicines in special packs with distinct markings for exclusive supply to Government departments like hospitals, Central Government Health Scheme, etc. Assessment in respect of such packs for which special prices were charged, was done after deducting the *ad hoc* discount of 25 per cent from these prices. Such deduction was not admissible as the prices of hospital packs were neither covered by the Drug (Prices Control) Order 1970, nor were such packs sold to consumers. This resulted in short levy of duty of Rs. 3,58,887 during the period 1st January 1978 to 30th November 1979.

These cases were reported to the Ministry of Finance in August and September 1980; replies are awaited (December 1980).

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

A manufacturer in a collectorate, availed of the concessional rate in respect of three medicines, namely amigia plus tablets, tetravit capsules and tinizole tablets which contained certain ingredients which are neither specified in the schedule nor fall under the category of pharmaceutical necessity as mentioned in the said notification. The concession thus allowed resulted in underassessment of duty of Rs. 79,501 during the period April 1977 to July 1979.

On this being pointed out by Audit (May and August 1979), the department intimated (January and February 1980) that

two show cause notices for recovery of differential duty of Rs. 57,128 and Rs. 22,373 had been served on the manufacturer (May and August 1979) and that the adjudication proceedings were being initiated. Particulars of recovery are awaited (August 1980).

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

2.17 Cellulose tri-acetate base films

Under a notification dated 31st May 1975, cellulose tri-acetate falling under tariff item 15A(1)(iii) and intended for use in the manufacture of cine films, X-ray films or photographic films, is exempt from the whole of duty. The said notification was amended on 1st April 1976 so as to extend the exemption to cellulose tri-acetate films falling under tariff item 15A(2) also, if those were used for the same purpose. Thus cellulose tri-acetate films even if so used, were dutiable under tariff item 15A(2) till 31st March 1976.

A public sector undertaking manufactured cellulose tri-acetate base films from December 1966 without a licence and cleared them without payment of duty mainly for captive consumption in the manufacture of cinematograph films, while a portion thereof was sold as such. A licence was issued on 17th March 1976 only. Out of the total production of 2,54,42,468 square metres of cellulose tri-acetate base films, 2,51,99,940 square metres were captively consumed and the balance was sold to outsiders during the period 1st April 1968 to 31st March 1976.

The demand for Rs. 5.13 crores towards duty on the total quantity of cellulose tri-acetate base films manufactured by the undertaking during the period 1st April 1968 to 31st March 1976 issued by the department was not honoured by the assessee and the department referred (July 1977) the matter to the Ministry of Finance. By an order issued in August 1978 the

Ministry without assigning any reason, waived duty of Rs. 5.28 crores for the period December 1966 to 31st March 1976. Information regarding the recovery of Rs. 3.80 lakhs representing the duty due on the sale of cellulose tri-acetate base films to outsiders is awaited (April 1980).

The Ministry of Finance have stated (December 1980) that the matter is under examination,

2.18 *Tractors*

Under a notification dated 26th February 1977 motor vehicles falling under tariff item 34, were exempt from so much of the duty as was equivalent to the duty already paid on the internal combustion engines falling under tariff item 29 and used in the manufacture of such motor vehicles. The tariff item 34, which bore the heading "motor vehicles" and included tractors, as one of the sub items, was restructured from 18th June 1977. Under the restructured tariff item "34 motor vehicles and tractors", motor vehicles and tractors were distinctly exhibited as two separate sub items, viz. (i) motor vehicles and (ii) tractors, including agricultural tractors. Motor vehicles were defined as meaning all mechanically propelled vehicles other than tractors, designed for use upon roads. Thus, from this date tractors stood excluded from the purview of the said exemption till 1st May 1978 when the concession was re-introduced by issue of another notification.

The benefit of the said exemption from duty on tractors was, however, allowed to an assessee in a collectorate during the intervening period 18th June 1977 to 30th April 1978. This resulted in short levy of duty of Rs. 2,59,248. On this being pointed out in audit in January 1980, the department issued (February 1980) a show cause-cum-demand notice for short levy. Subsequently, the demand was confirmed in August 1980. Recovery particulars are awaited (August 1980).

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

2.19 *Corrugated board*

By a notification dated 24th April 1971 as amended, corrugated board falling under tariff item 17 was assessable to duty at 5 per cent *ad valorem*, if it was manufactured out of duty paid paper falling under the same tariff item. However, such board manufactured out of kraft paper or out of paper board of the type known as kraft linen or corrugating medium of a substance equal to or exceeding 65 grammes per square metre in each case on which duty at 37.5 per cent *ad valorem* had been paid, was fully exempt from duty.

Nine licensees in a collectorate, manufactured corrugated board out of kraft paper and cleared it without payment of duty, though the duty paid on kraft paper used was less than 37.5 per cent *ad valorem*. This resulted in non levy of duty of Rs. 1.48 lakhs during the period 24th January 1978 to 25th August 1978.

When the irregularity was pointed out by Audit (between November 1978 and April 1979), the department stated that jurisdictional Assistant Collectors concerned have been directed to enforce the demand in all the cases. Further progress is awaited (November 1978).

The paragraph was sent to the Ministry of Finance in May 1980; reply is awaited (December 1980).

2.20 *Motor vehicle parts*

According to a notification issued in July 1971, parts of motor vehicles falling under tariff item 34A are exempt from duty leviable thereon if they are used in the manufacture of assembled components of motor vehicle parts and such assembled units are used as original equipment parts by manufacturers of motor vehicles falling under tariff item 34.

A licensee in a collectorate, obtained motor vehicle parts without payment of duty for use as original equipment parts/assembled components of motor vehicles. However, instead of using all these parts as original equipment parts in his factory he cleared some of them as spares, which were not covered by the aforesaid notification. This resulted in non levy of duty of Rs. 98,910 during the period April 1978 to March 1979.

The reply of the department to the statement of facts issued in October 1979 is awaited (February 1980).

The paragraph was sent to the Ministry of Finance in May 1980; reply is awaited (December 1980).

INCORRECT GRANT OF EXEMPTION

2.21 *Thin walled bearings*

Under a notification dated 29th May 1971 as amended, thin walled bearings falling under tariff item 34A are exempt from duty, if they are intended for use as original equipment parts by manufacturers of motor vehicles and the procedure set out in Chapter X of the Central Excise Rules 1944 is followed.

A unit manufactured thin walled bearings, bushes and thrust washers and cleared them mostly to manufacturers of motor vehicles without following the procedure set out in Chapter X of the Central Excise Rules 1944. On the omission being pointed out by Audit in March 1979, the department raised (December 1979) a demand for Rs. 37,86,732 for the period 1st March 1975 to 31st January 1979 in December 1979. Further progress is awaited (April 1980).

The paragraph was sent to the Ministry of Finance in July 1980; reply is awaited (December 1980).

2.22 *Polyethylene sandwiched paper*

According to a notification issued in March 1976, polyethylene coated paper was exempt from duty in excess of

12.5 per cent *ad valorem* provided duty paid base paper is used in its manufacture. By another notification issued on 28th April 1977, the aforesaid concession was extended to polyethylene sandwiched paper which was previously assessable to duty at 30 per cent *ad valorem*.

A factory manufacturing polyethylene sandwiched paper, paid duty at the concessional rate of 12.5 per cent during the period 28th March 1976 to 27th April 1977. In June 1977 the department raised demands for differential duty of Rs. 10.74 lakhs, but on an appeal preferred by the factory, the Appellate Collector set aside the orders of the lower authority and ordered withdrawal of demands holding that 'polyethylene coated paper' mentioned in the notification of March 1976 covered polyethylene sandwiched paper also. The demands were accordingly withdrawn in April 1979.

When Audit pointed out (October 1979) that the concessional rate of duty was applicable to polyethylene sandwiched paper with effect from 28th April 1977 and that the withdrawal of the demands was not correct, the department stated in June 1980 that a demand for Rs. 10.74 lakhs was again raised against the factory. Further progress is awaited (July 1980).

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

2.23 Electricity

Electricity is assessable to duty at the rate of two paise per kilowatt hour under tariff item 11E.

(a) Under a notification dated 1st March 1978, electricity produced by generating stations and supplied to their auxiliary plants for generation purposes is exempt from the whole of duty. During the audit of the records of a thermal power station engaged in the production of electricity, it was noticed (September 1979) that the aforesaid exemption was availed of by the unit on account of (i) losses in transformation of electricity through

'step up and step down' transformers of the station and (ii) electricity supplied to another thermal power project of the same unit under construction near its site.

It was pointed out in audit (January 1980) that in both the above cases the electricity supplied was not used in the 'auxiliary plants' of the station for generation purposes but was used in the post generation stage and hence the exemption envisaged in the aforesaid notification was not admissible. The irregular availment of exemption resulted in non levy of duty of Rs. 7,46,660 in the first case and Rs. 38,737 in the second case during the period March 1978 to March 1979. The department agreed with Audit and raised demands for non levy of duty against the unit (May 1980). Further progress is awaited (July 1980).

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

(b) Under a notification of 1st March 1978, electricity produced by a generating station, an industrial unit or an establishment (including Railways) and used therein is exempt from duty.

A company availed itself of the above concession in respect of electricity produced in one of its industrial units and supplied to another unit belonging to its subsidiary company. This resulted in an incorrect grant of exemption from duty of Rs. 1.20 lakhs for the period March 1978 to July 1979.

When this was pointed out in audit in September 1979, the department while admitting the objection as substantially correct, stated (May 1980) that action had been initiated to realise the duty short levied.

The Ministry of Finance have admitted the audit objection (December 1980).

2.24 Asphalt and bitumen

Cut back asphalts and bitumens falling under tariff item 14(II) (ii), were chargeable to duty at twenty five paise per litre till 17th June 1977 and at 5 per cent *ad valorem* thereafter. By a notification dated 12th March 1960, they were, however, exempt from the whole of the duty provided the manufacturer, *inter alia*, followed the procedure prescribed in Chapter X of the Central Excise Rules 1944; subsequently this condition was withdrawn under another notification dated 27th May 1978.

A factory in a collectorate, manufacturing cut back asphalts and bitumens was allowed to clear them without payment of duty and without observing Chapter X procedure even prior to 27th May 1978. This resulted in non levy of duty of about Rs. 5.96 lakhs during the period June 1973 to March 1977. Details of duty recoverable for the subsequent period till 26th May 1978 are awaited.

Reply to the statement of facts issued in February 1980 is awaited from the department (August 1980).

The paragraph was sent to the Ministry of Finance in September 1980, reply is awaited (December 1980).

2.25 Toluene

By a notification dated 21st December 1967 as amended, goods falling under tariff items 6 to 11A and produced in any premises other than a refinery are totally exempt from duty, provided they are cleared to another factory in accordance with the procedure prescribed in Chapter X of the Central Excise Rules 1944 for use in the manufacture of any of the twelve commodities specified in that notification. One such commodity is 'carbon black'.

A factory did not pay any duty under the aforesaid notification on toluene/toluol (tariff item 6) obtained for use as solvent in the making of carbonaceous coating, named as 'C.P. coating' which is made, *inter alia*, from graphite and acetylene.

It was pointed out by Audit (October 1975) that grant of exemption from duty to such toluene/toluol was not admissible as carbonaceous coating was not 'carbon black'. Initially the department did not agree (December 1976) with Audit, but subsequently it issued a show cause-cum-demand notice for Rs. 4,66,584 on 225.609 kilolitres of toluene/toluol used during the period September 1968 to May 1977. On verification it was noticed that the above demand had been adjudicated and confirmed by the Assistant Collector concerned (December 1979), and the assessee had gone in appeal (February 1980). The department also issued two other show cause-cum-demand notices for Rs. 83,583 and Rs. 28,018 covering the periods June 1977 to June 1979 (July 1979) and July 1979 to November 1979 (December 1979) respectively.

While admitting the facts as substantially correct the Ministry of Finance have stated (December 1980) that the demand for Rs. 28,017.96 has been confirmed by the jurisdictional Assistant Collector. However, the demand for Rs. 83,582.90 is still under process of adjudication.

EVASION/AVOIDANCE OF DUTY

2.26 *Steel wires*

By a notification dated 20th May 1967, iron and steel products falling under tariff item 26AA, if made from another article falling under the same item and on which the appropriate amount of excise duty or the additional duty under section 2A of the Indian Tariff Act 1934, has been paid, are exempt from so much of the duty as has been paid on that article.

It was noticed in audit (December 1978) that two units in a collectorate, did not pay duty on steel wires manufactured out of wire rods purchased from outside, for which no proof of payment of duty was available. This resulted in escapement of duty of about Rs. 17.19 lakhs during the period April 1976 to December 1979.

Reply to the statement of facts issued in January 1980 is awaited from the department (May 1980).

The paragraph was sent to the Ministry of Finance in July 1980; reply is awaited (December 1980).

2.27 *Ammonia and synthesis gas*

Under a notification issued in April 1977, ammonia (tariff item 14H) and synthesis gas (tariff item 68) supplied by fertiliser factories to the heavy water plants for manufacture of heavy water and returned by those plants were exempt from duty provided the gases so returned were ultimately used in the manufacture of fertilisers. The main purpose of this arrangement was to enable the heavy water plants to extract 'deuterium' present in minute quantities in these gases for use in the manufacture of heavy water.

It was noticed in audit that there was difference between the volume of ammonia and synthesis gases supplied by two fertiliser factories in two collectorates to two heavy water plants and that returned by the latter to the former. The difference was attributed to the processing loss in the plants.

As the exemption notification did not contemplate any loss in processing in the heavy water plant and was conditional on the return of the gases to the fertiliser factory for ultimate use in the manufacture of fertilisers, duty was leviable on the quantities of gases reportedly lost in processing in the heavy water plants. Non levy of duty on such losses in the two plants resulted in underassessment of duty of Rs. 10,60,812 during the period 18th June 1977 to 31st May 1980.

On this being pointed out by Audit in April 1978, May 1979 and June 1980, the department issued (May 1978, June 1979 and June 1980) show cause notices demanding duty of Rs. 1,79,578. Action taken to recover the remaining amount is awaited. In one case, the heavy water plant is understood to have taken up the matter with its controlling department.

The paragraph was sent to the Ministry of Finance in July 1980; reply is awaited (December 1980).

2.28 J.P. 5 (avcat) fuel

J.P. 5 (avcat) a type of mineral oil specially produced for a Government department by an oil refinery from July 1975 onwards, was classified under tariff item 7 as it satisfied the definition of superior kerosene. Exemption from duty was not available to this product issued to naval ships for use by air crafts on board till the issue of an order under rule 8(2) of the Central Excise Rules 1944 by the Central Board of Excise and Customs in January 1977.

Two units in a collectorate, supplied 2,053.005 kilolitres of J.P. 5 during the period August 1975 to December 1976 to an air craft carrier of the Indian Navy for use by air crafts without collecting duty of Rs. 7,49,347. When the irregularity was pointed out in audit, the department raised demands for the said amount. One of the units paid the duty of Rs. 48,803, while the other unit went in appeal which is pending with the Appellate Collector (October 1979).

The paragraph was sent to the Ministry of Finance in May 1980; reply is awaited (December 1980)

2.29 Electric motors

A licensee in a collectorate, manufactured electric motors falling under tariff item 30. The speed of these motors was regulated by a gear mechanism, which was also manufactured in the same factory. Such geared motors were, therefore, required to be assessed to duty on the value including the value of the gear mechanism. However, the geared motors were assessed to duty excluding the value of the gear mechanism resulting in underassessment of duty of Rs. 4,72,470 during the period 1st April 1976 to 22nd May 1979. When this was pointed out in audit in August 1978, the department issued show cause notices demanding the duty (April 1979 and November 1979). Further progress is awaited (May 1980).

The licensee started paying duty on the total value of geared motors with effect from 23rd May 1979.

The paragraph was sent to the Ministry of Finance in August 1980; reply is awaited (December 1980).

2.30 *Untrimmed circles*

Manufactures of copper and copper alloys namely plates, sheets, circles, strips and foils in any form or size, are assessable to duty under tariff item 26A(2).

In a collectorate, the rolling mills manufacturing untrimmed circles from brass billets on job work basis were paying duty on trimmed circles although the job order was for the manufacture of untrimmed circles only and the trimming work was done by the labourers of the owners of brass billets in the premises of the rolling mills. As the process of manufacture was complete when circles in untrimmed condition were rolled according to job order, the duty was payable on circles in untrimmed form. The Supreme Court also held in 1971 in a similar case that the process of manufacture of circles is complete even if the circles are uncut. The short levy on this account in the case of seven units during 1977-78 worked out to Rs. 4.18 lakhs.

When this was pointed out by Audit in August 1979, the department intimated (January 1980) that the matter had been referred to the Central Board of Excise and Customs and their reply is awaited (May 1980).

The paragraph was sent to the Ministry of Finance in July 1980; reply is awaited (December 1980).

2.31 *Raw naphtha*

Mineral oils suffer duty under the tank discharge system, by which the quantity of mineral oils chargeable to duty is determined through dip readings of the bonded storage tanks before and after removal of oil. The Central Board of Excise and Customs, in a circular letter issued in September 1976, desired that this system may be adopted in the case of petroleum products cleared under Chapter X procedure also.

It was noticed in audit that duty on raw naphtha supplied by an oil installation to different fertiliser plants under Chapter X

procedure was paid on the quantities determined on the basis of dip measurements of tank wagons in which such oil was despatched, instead of dip measurements of the storage tanks; the differential quantities being shown as 'loading variation'.

When the underassessment due to adoption of incorrect system of measurement was pointed out in audit (March 1977), the department intimated (April 1978) that two demands for Rs. 3,02,211 had been raised in September 1977 against the oil installation on 143.910 kilolitres of raw naphtha at 15°C shown as loading variation during the period 3rd May 1976 to 31st August 1977. Later on, the department intimated (September 1979) that the case was pending in appeal. Further progress is awaited (May 1980).

The Ministry of Finance have stated (December 1980) that the matter is pending in revision with them.

2.32 *Lassi*

Prepared or preserved foods falling under tariff item 1B are assessable to duty at 10 per cent *ad valorem* plus 5 per cent thereof as special duty from 1st March 1978 to 28th February 1979 and thereafter at 15 per cent *ad valorem* plus 5 per cent as special duty.

Ready-to-serve beverages mentioned in the schedule to a notification dated 1st March 1970 as amended, were not exempt from the aforesaid duty. It was noticed in audit (October and December 1977 and April 1978) that in three milk plants in a collectorate 'lassi' a ready-to-serve beverage, was cleared without payment of duty of Rs. 86,536 during the years 1972-73 to 1978-79.

On this being pointed out in audit (November 1977 to April 1978), the department confirmed (June and October 1979, January and February 1980) the demand of Rs. 88,593 for the period 1972-73 to 1978-79 and started realising duty from May

1979 from one milk plant. Further developments and progress of recovery are awaited (May 1980).

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

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

2.33 *Geared motors*

Electric motors, all sorts, are assessable to duty under tariff item 30. The Central Board of Excise and Customs clarified in May 1978 that geared motors assembled in units by manufacturing the geared mechanism and procuring duty paid electric motors from outside, should be subjected to levy under tariff item 30. It was, further, clarified that such manufacturers would be eligible for proforma credit in respect of electric motors received in their premises for manufacturing geared motors.

A unit manufacturing geared motors by assembling duty paid electric motors obtained from outside, was allowed to clear them on payment of duty under tariff item 68 even after the issue of the above clarification. The amount of duty short levied in respect of 3,595 geared motors cleared by the unit during the period 1st April 1976 to 31st December 1978 was estimated at Rs. 13.89 lakhs. The unit would, however, be entitled to a set off on account of the duty paid on the electric motors procured from outside.

This was brought to the notice of the department in April 1979 with the request to work out the actual underassessment. Its comments are still awaited (April 1980).

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

2.34 *Stencil paper*

With effect from 16th March 1976, paper board and all kinds of paper other than printing and writing paper subjected to various treatments such as coating and impregnation, are assessable to duty under tariff item 17(2).

A unit manufacturing stencil paper by coating paper with chemicals paid duty on stencil paper under tariff item 68 instead of tariff item 17(2). On the incorrect classification being pointed out in audit, the collectorate issued show cause notices in May and June 1980 for the payment of differential duty amounting nearly to Rs. 9.29 lakhs for the clearances made during the period 25th September 1979 to 29th February 1980. Information about the action taken for collecting the differential duty due for the earlier period 16th March 1976 to 24th September 1979 is awaited (July 1980).

The Ministry of Finance have accepted the facts as substantially correct (December 1980).

2.35 *Stencil coating melt*

'Stencil coating melt' is manufactured by dissolution of nitrocellulose in denatured spirit and subsequently mixing into it fillers like barium sulphate, pigment, oil and plasticisers.

A factory manufacturing 'stencil coating melt' was removing it without payment of duty for captive consumption, coating it on tissue paper for conversion into stencil paper. It was pointed out in audit in December 1975 that owing to its composition 'stencil coating melt' merited classification under sub item III(ii) of tariff item 14. The department did not agree to it on the ground that composition alone did not qualify a product for classification. At the instance of audit it, however, consulted the Deputy Chief Chemist who opined (July 1977) that the product was a coating composition based on nitrocellulose for specific use and was appropriately classifiable under tariff

item 14 III(ii) as pigmented nitrocellulose lacquer/ancillary in the liquid form. The department still maintained (November 1979) that the product was not classifiable under tariff item 14 on the ground that it did not give an adherent paint like film or coating at room temperature or at somewhat higher temperature. It also added that 'stencil coating melt' internally used by the assessee in the manufacture of stencil paper was neither commercially known in the market as an item falling under tariff item 14, nor did the end use indicate that it was a lacquer/ancillary as was commercially known in the market; it had a short life say two days and it was not marketed by any concern either in India or abroad as an item commercially known as such.

The fact, however, remains that (i) according to the opinion of the Deputy Chief Chemist the product is essentially a coating composition and is classifiable under item 14 III(ii); (ii) it was also used for coating of tissue paper; and (iii) life of a product is not a criterion for determining its classification. The escape-ment of duty during the period April 1974 to September 1975, worked out to about Rs. 7.00 lakhs.

The Ministry of Finance have stated (December 1980) that the matter is under examination.

2.36 Kraft paper

According to a notification dated 24th January 1978 (as amended), all sorts of paper commonly known as kraft paper of a substance equal to or exceeding 65 grams per square metre falling under tariff item 17(2) was assessable to duty at 37.5 per cent *ad valorem* till 28th February 1979 and at 40 per cent *ad valorem* thereafter, whereas other papers falling under the same item continue to be assessed to duty at the rate of 30 per cent *ad valorem*.

A paper manufacturer paid duty on the paper required for wrapping purposes within the factory at the lower rate applicable to other papers. At the instance of audit which was conducted

in September 1978, a sample of such paper was tested and it was found to contain kraft pulp making it liable for assessment as kraft paper at the higher rate of duty. The department issued in March 1980 a show cause notice to the licensee for payment of differential duty of Rs. 3.73 lakhs for the period January 1978 to February 1980; further progress is awaited (June 1980).

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

2.37 Varnish

Bituminous and coal tar blacks are chargeable to duty under sub item II(ii) of tariff item 14 at 5 per cent *ad valorem*, while the rate applicable to varnishes falling under sub item II(i) of the same tariff item is 15 per cent *ad valorem*. According to a clarification issued in September 1956, solution of asphalt, bitumen or coal tar in volatile organic liquids, will come within the scope of bituminous blacks if substances like resins, drying oils, pigments, etc., are absent and if any such ingredient is present, the product will be liable to duty elsewhere.

A leading paint factory was allowed to clear a product manufactured by using maxphalt, synthetic resins and volatile solvent of which the resin contents constituted 5 per cent, on payment of duty at the lower rate applicable to bituminous and coal tar blacks falling under tariff item 14 II(ii). It was pointed out in audit that in the light of aforesaid clarification of September 1956 the product was classifiable under sub item II(i) and not sub item II(ii) of tariff item 14. The misclassification resulted in an underassessment of Rs. 2,74,320 during the period 22nd June 1977 to 4th November 1979.

When this was pointed out in audit in November 1979, the department confirmed the presence of resin to the extent of 5 per cent in the product (February 1980).

The Ministry of Finance have admitted the audit objection (December 1980).

2.38 Zinc oxide

Zinc oxide attracts duty under sub item I(1) of tariff item '14 paints and varnishes', but zinc oxide as an inorganic compound (accelerator) is covered under sub item (1) of tariff item '65 rubber processing chemicals' and is fully exempt from duty under a notification dated 1st March 1973.

In a collectorate, an assessee who had been manufacturing and clearing zinc oxide on payment of duty under tariff item 14 I(1)(i) since 1972, subsequently obtained (May 1976) another licence for the manufacture of rubber processing chemicals and classified his goods—zinc oxide as falling under tariff item 65(1) from 4th June 1976. The department accepted the revised classification and allowed him full exemption from duty under the notification of 1st March 1973. As there was no change in the composition or process of manufacture or the end use of the goods which otherwise also, could not be established as capable of being used exclusively as an inorganic accelerator, the duty free clearance of the said goods was irregular. Non levy of duty of Rs. 48,205 during the period June 1976 to March 1977 was pointed out by Audit (February 1978) and the department was advised to work out the amount of duty not paid during the subsequent period and to take remedial action. The department issued show cause-cum-demand notices for payment of Rs. 2,06,199 in respect of clearances during the period June 1976 to December 1979. The demands have been confirmed (March 1980) by the Assistant Collector; recovery particulars are awaited (August 1980).

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

2.39 Fibre glass reinforced plastic sheets

A new tariff item 22F to cover 'mineral fibres and yarns and manufactures therefrom, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power' was introduced with effect from 16th March 1976. According to sub clause (iv) of the explanation thereunder, the said tariff item includes, among others, manufactures containing mineral fibres and yarn other than asbestos cement products. Further, the Central Board of Excise and Customs issued a tariff advice on 7th December 1977 to the effect that the percentage of mineral fibre was not a material factor and the term 'containing' should be interpreted as 'containing any percentage of mineral fibres and yarn' and that the product was classifiable under tariff item 22 F.

A manufacturer of fibre glass reinforced polyester translucent sheets composed of polyester resins, fibre glass mat and other chemicals, cleared such sheets on payment of duty applicable to rigid plastic sheets falling under tariff item 15A(2) because resin content of such sheets, according to a chemical examination report, was sixty per cent. However, on the basis of aforesaid tariff advice dated 7th December 1977 the manufacturer stopped paying duty under tariff item 15A(2) with effect from 1st February 1978. He did not also pay any duty under tariff item 22 F, as the product was not manufactured with the aid of power.

Audit pointed out (June 1978) that the reclassification of the product under tariff item 22 F was not correct since :—

- (i) its resin constituent predominated in weight;
- (ii) it was sold as polyester sheets; and
- (iii) it was not manufactured with the aid of power.

While confirming the facts, the department stated (April 1979 and March 1980) that on further examination, in consultation with the Ministry of Law, the Central Board of

Excise and Customs had clarified in August 1978 that the fibre glass reinforced plastic articles did not fall under tariff item 22F and such articles were covered more specifically by tariff item 15A. The department added that the manufacturer started paying duty from August 1978 under protest and preferred an appeal against the demand of Rs. 1,72,825 for the period 1st February 1978 to 31st July 1978. The decision of the appellate authority is awaited.

The Ministry of Finance have admitted the facts as substantially correct (October 1980).

2.40 Flats

Iron and Steel bars made from duty paid old used re-rollable scrap or fresh unused re-rollable scrap and semi finished steel are exempt from duty under a notification dated 30th November 1963 as amended. On the other hand flats are dutiable at various rates depending upon thickness and the raw material used under notifications dated 1st March 1974 and 18th June 1977.

Five units in a collectorate, cleared flats with thickness below 3 mm free of duty under the aforesaid notification dated 30th November 1963 applicable to bars. The Collector clarified in May 1978 that flats below 3 mm were not bars and were liable to duty under the notification of 18th June 1977. Thereupon the department raised demand for the period April 1978 to January 1980. No action was, however, initiated to realise the amount of Rs. 1,20,461 on account of non levy of duty during the period January 1976 to March 1978. On this being pointed out by Audit in January 1979, the department intimated that the show cause notices had been issued and the demands were being finalised.

The Ministry of Finance have stated (December 1980) that the matter is under examination.

CESS

2.41 *Bidi workers welfare cess*

Under Bidi Workers Welfare Cess Act 1976, unmanufactured tobacco issued from a warehouse for the manufacture of bidis is liable to cess at the rate of twenty five paise per kilogram. The responsibility for collecting the cess was with the Central Excise Department till 28th February 1979. On the abolition of duty on unmanufactured tobacco with effect from 1st March 1979, it was no more possible for that department to collect this cess. Accordingly, in the Budget Instructions 1979 it was stated that the concerned Ministry was being requested to make alternative arrangements for its collection.

On 29th April 1980, Ministry of Finance was asked to intimate whether any alternative arrangements by the concerned Ministry for the administration and collection of the cess after the abolition of duty on unmanufactured tobacco had been made. The Ministry was reminded in the matter in July 1980; reply is still awaited (December 1980).

It was noticed in audit that cess amounting to Rs. 52.33 lakhs had not been collected from 121 units in seven collectorates during the period 1st March 1979 to 31st July 1980. According to the figures booked in accounts by the Controller General of Accounts, the amount collected on account of this cess during the year 1979-80 came only to Rs. 20,743 against Rs. 1,86,81,767 in the immediately preceding year 1978-79.

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980)

2.42 *Cess on jute yarn and twine*

Under a notification dated 25th February 1976, cess at different rates was leviable on all jute manufactures with effect from 1st March 1976. In their letter dated 19th April 1977,

the Central Board of Excise and Customs clarified that cess should be levied on jute yarn or jute twine consumed within the factory of production for the manufacture of jute goods.

It was noticed in audit that four jute mills did not pay cess, whereas in the case of a fifth mill demand raised was based on the weight of finished goods and not on the weight of the yarn/twine used in their manufacture, thus leaving the goods lost as processing waste, unassessed. The total short collection of cess for the period March 1976 to December 1979 was Rs. 5.75 lakhs. When the omission was pointed out, the department stated (July 1980) that in two cases demands were being raised; reply in two other cases was awaited (August 1980). In the fifth case a supplementary demand for Rs. 7,821 was raised (August 1979).

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

2.43 *Tea cess*

Tea falling under tariff item 3, is liable to pay cess at eight paise per kilogram unless otherwise exempted by issue of a notification under the provisions of the Tea Act 1953. Under rule 191-B of the Central Excise Rules 1944, excisable goods can be removed without payment of duty for manufacture in bond of articles, subject to such conditions as may be laid down by Government by issue of notification. Clearance of tea waste under bond for manufacture of instant tea was permitted by a notification dated 13th March 1976.

It was noticed in audit that no cess was levied on tea waste received by a manufacturer of instant tea under rule 191-B. When this was pointed out (May 1979), the department stated that tea waste was exempt from cess under rule 191-B by virtue of section 25(3) of the Tea Act 1953. As no notification was issued by Government under the provisions of Tea Act extending the concession under rule 191-B to cess leviable under the Tea Act,

the reply of the department is not sustainable. The cess not collected during the period January 1979 to June 1980 amounted to Rs. 1,21,340.

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

2.44 Cess on copra

Under Produce Cess Act 1966, cess at the rate of sixty paise per quintal was leviable on copra consumed in any mill. Consequent upon the enactment of Copra Cess Act 1979, the rate of cess on copra so consumed was fixed at Rs. 5 per quintal from 1st April 1979 by issue of a notification on 27th March 1979.

A review of cess collections during the period April 1976 to March 1979 in a collectorate and connected sales tax records in the sales tax offices revealed that 319 mills paying sales tax, did not furnish the required information to the collectorate under sections 5 and 7 of the said Acts. 291 of these mills crushed 1,93,137 quintals of copra during the period April 1976 to March 1979 and did not pay cess of Rs. 1,15,882 thereon. Position in respect of the other mills which had a turnover of Rs. 31 crores in their sales tax records could not be ascertained.

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

IRREGULAR REFUNDS

2.45 P.V.C. sheetings/sheets

Rule 173-L of Central Excise Rules 1944, provides for grant of refund of duty paid on excisable goods cleared for home consumption and returned to the same factory or any other factory for being remade, reconditioned or subjected to any other similar process in the factory.

A factory manufacturing P.V.C. sheetings and sheets, cleared its products on payment of duty, partially by debit to proforma account against the credit of duty paid on raw materials under rule 56-A and balance by debit to the personal ledger account. It was permitted to bring back the duty paid goods for reprocessing under rule 173-L. While admitting the claim for refund of duty paid on the initial clearances the department, however, refunded (November 1978) in cash the entire duty including that portion which was earlier debited to the proforma account. This contravened sub rule 3 of rule 56-A according to which no part of the duty paid through proforma account shall be refunded in cash and resulted in excess cash refund of Rs. 2.15 lakhs. Reply to the statement of facts issued in September 1979 is awaited (May 1980).

The paragraph was sent to the Ministry of Finance in August 1980; reply is awaited (December 1980).

2.46 Artificial or synthetic resins

Artificial or synthetic resins, in any form whether solid, liquid or pasty are assessable to duty *ad valorem* under tariff item 15A. The Central Board of Excise and Customs clarified in November 1971 that resin solution irrespective of its volatile solvent content, would be liable to duty on the value of its entire weight.

In a collectorate, a unit manufacturing and clearing phenacyn syrup (a resinous solution), appealed against the orders of the assessing authority demanding duty on the value of the entire weight of the solution under tariff item 15A, contending that the duty should be levied on 'resin' content only as the syrup was only a formulation containing resin. In his orders of 1st April 1977 the Appellate Collector upheld this contention and directed refund of the duty paid on 'phenacyn syrups' during the period 1st January 1974 to 31st March 1977. Accordingly,

the duty paid under tariff item 15A on 'phenacyn syrups' was refunded by the department. From 1st April 1977 syrup was assessed to duty under tariff item 68, while resin content was assessed to duty under tariff item 15A.

It was noticed in audit (November 1978 and January 1979) that the whole duty paid on resin/resinous solution during the period 1st January 1974 to 31st March 1977 had been refunded instead of retaining the duty payable (i) on resin content under tariff item 15A and (ii) on the syrup under tariff item 68. This resulted in excess refund of Rs. 59,223.

On this being pointed out (December 1978 and February 1979) the department accepted the objection and recovered the sum of Rs. 59,223 (November 1979).

The Ministry of Finance have accepted the facts as substantially correct (December 1980).

OTHER TOPICS OF INTEREST

2.47 *Excess rebate on sugar exported*

(a) Government by notifications issued from time to time, announced rebates in duty on sugar produced in excess over that produced in the base period. As soon as the excess production is determined, the amount of rebate allowed is credited in the personal ledger account of the factory in anticipation of the clearance of such sugar. The amount of rebate is to be adjusted against the payment of duty at the time of clearance of such sugar at full rates.

A sugar factory in a collectorate, was allowed rebate in duty at the rate of Rs. 20 per quintal on sugar produced during the period December 1972 to February 1973 in excess of 115 per cent of the sugar produced during the corresponding base period

from December 1971 to February 1972. It was noticed in audit in April 1977 and April 1978 that 6,858 quintals out of the excess sugar produced in February 1973, was exported under bond without payment of duty, and a sum of Rs. 1,37,160 had been allowed as rebate thereon also.

Similarly, during 1976-77 season also the factory was allowed rebate on 3,464 quintals of excess sugar produced during the period October 1976 to November 1976 and on 46,203 quintals of excess sugar produced during the period December 1976 to September 1977, out of which 103 quintals and 1,377 quintals respectively were exported under bond without payment of duty and rebate aggregating to Rs. 47,366 had been allowed. Since no duty was paid on sugar exported out of excess production, the rebate given in advance to the extent of Rs. 1,84,526 was inadmissible.

The Ministry of Finance have admitted the audit objection (December 1980).

(b) By a notification dated 12th October 1974, rebate was allowed on sugar produced in a factory during the period commencing on 1st December 1974 and ending with 30th September 1975, in so far as it was in excess of the average production of the corresponding period of the preceding five years, at different rates for levy sugar and free sale sugar. Since the question of claiming rebate could arise only after the duty liability on the quantity produced in excess had been discharged, such sugar if exported without payment of duty, would not be eligible for rebate under the excess production scheme.

A factory had claimed rebate of Rs. 7,19,404 on 27,332.20 quintals of sugar produced in excess during the aforesaid period which was inclusive of 7,350 quintals exported without payment of duty. Initially the factory was allowed a rebate of Rs. 7,19,403. Subsequently, the admissible rebate for 1974-75

was recalculated at Rs. 6,13,549 and a show cause notice was issued to the factory.

Audit pointed out (December 1976) that after excluding the quantity of sugar exported without payment of duty, the factory was eligible for excess production rebate on 19,982.02 quintals only. The excess credit of Rs. 3,13,007 allowed on 7,350 quintal sugar was, therefore, irregular.

Although the department in the first instance stated (May 1977) that exemption under the said notification was admissible on the excess quantity of sugar produced and it was immaterial whether the sugar was cleared for home consumption or was exported, it later intimated (October 1979) that the computation of rebate of Rs. 6,13,549 having been found incorrect show cause notice (July 1976) had been withdrawn and the assessee had been served with a fresh show cause notice for recovery of rebate of Rs. 3,13,007 granted on the quantity of sugar exported.

Subsequently in May 1980, the department revised their earlier stand of October 1979 stating that there was no irregular admission of rebate claims as the quantity of sugar exported was well within the limit of base level production. The fact, however, remains that because no duty was paid on the sugar exported under bond, no claim could lie for rebate of duty.

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980)

(c) Under a notification dated 28th April 1978 as amended and another notification dated 16th August 1978, sugar produced in sugar factories during the periods 1st May 1978 to 15th August 1978 and 16th August 1978 to 30th September 1978 respectively, which was in excess of the average production of the corresponding period of the preceding three sugar years, was entitled to rebate of duty at the rate of Rs. 54 per quintal

on free sale sugar and Rs. 9.60 per quintal on levy sugar during the period 1st May 1978 to 15th August 1978 and at the rate of Rs. 25 per quintal for the period 16th August 1978 to 30th September 1978.

As the rebate allowed was in the form of an exemption notification under rule 8(1) of the Central Excise Rules 1944, the amount of rebate should not have exceeded the amount of duty payable thereon. In the course of audit it was, however, noticed that an amount of Rs. 114.59 lakhs on account of rebate was allowed in excess of the duty paid in respect of 48 factories in eight collectorates.

On this being pointed out in audit, the department stated that show cause notices had been issued to 12 factories. Details of show cause notices issued and report of action taken in the remaining 36 cases are awaited (May 1980).

The cases were reported to the Ministry of Finance in July and November 1980; reply is awaited (December 1980).

2.48 Tobacco

Manufactured tobacco is assessable to duty under tariff item 4; the rate being specific cum *ad valorem*.

(a) Unmanufactured tobacco was exempted from the whole of duty with effect from 1st March 1979. The incidence of duty on manufactured tobacco was enhanced from that date. In case the manufactured products were made out of unmanufactured tobacco which had discharged duty prior to 1st March 1979, set off of duty so paid was admissible from the duty payable on manufactured tobacco. Further, duty payable on cigarettes (tariff item 4 II) manufactured out of duty paid unmanufactured tobacco was to be reduced at the rate of Rs. 5.50 per thousand cigarettes. According to a budget circular of 31st March 1979, the assessable value of such cigarettes was to be determined

from their cum-duty prices by applying the reduced rates of duty till 29th March 1979. The procedure for assessment was revised by introducing rule 95 in Central Excise Rules 1944 from 30th March 1979.

(i) It was noticed in audit that in three factories manufacturing cigarettes, the assessable values of cigarettes were worked out from the cum-duty prices by applying the unreduced rates of duty. The factories availed of set off of Rs. 5.50 per thousand cigarettes, which was not taken into account for arriving at the assessable values of the cigarettes. This resulted in underassessment of duty of Rs. 58,54,269 for the period 1st March 1979 to 29th March 1979. On this being pointed out by Audit in July 1979, the department issued show cause-cum-demand notices for the said amount. The details of recovery are awaited (July 1980).

The Ministry of Finance have admitted (December 1980) the facts in one case. Their reply in the other two cases reported to them in September 1980, is awaited (December 1980).

(ii) In another case a factory was allowed to avail of the aforesaid concession at the rate of Rs. 5.50 per thousand cigarettes without including in their assessable value the element of duty paid on the unmanufactured tobacco used in their manufacture. This led to an underassessment of Rs. 19,79,674 during April and May 1979.

This was pointed out in audit in April 1980; reply of the department is awaited (August 1980). The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

(b) By a notification dated 1st March 1979 biris falling under sub item II(3)(ii) of tariff item 4, not sold under a brand name (unlabelled biris) are liable to duty at the rate of Rs. 1.60 per thousand. A proviso was introduced to the said notification on 13 March 1979 according to which a reduction of duty to the

extent of Rs. 1.60 per thousand biris is admissible in the duty payable on branded biris if such biris have been manufactured from unbranded biris on which duty at Rs. 1.60 per thousand biris has been paid.

Instructions were issued in one collectorate that unbranded biris produced by agents of branded biri manufacturers on behalf of their principals can be removed without payment of duty under rule 56B of Central Excise Rules 1944, according to which semi finished goods could be removed under bond without payment of duty from one manufacturer to another. As the unlabelled biris in these cases were fully manufactured goods for which specific rate of duty was introduced from 1st March 1979, the movement of such biris under rule 56B was irregular during the period 1st March 1979 to 12th March 1979 when reduction on account of duty paid on unlabelled biris was not admissible towards the duty payable on labelled biris. This resulted in non payment of duty of Rs. 4,65,570 by four manufacturers of unbranded biris during the said period. The particulars of duty forgone in the entire collectorate called for during September 1979 are awaited (June 1980).

The Ministry of Finance have admitted the facts as substantially correct (December 1980).

2.49 Invoice value

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

(a) In the case of 10 units in six collectorates, invoice values were worked out incorrectly owing to the following reasons :---

- (i) omission to take into account the price charged on supplemental invoices ;

- (ii) adoption of the price charged by the manufacturer to the sole distributor instead of the price charged by the sole distributor ;
- (iii) non inclusion of the cost of material purchased and the charges incurred on erection/installation of machinery ; and
- (iv) incorrect computation.

The total amount of underassessment covered by the above cases worked out to Rs. 20,54,195 during the period 1st March 1975 to 12th November 1979. Two of the units paid the full duty of Rs. 3.38 lakhs, whereas the third unit made part payment of Rs. 19,931 towards the demand raised against it. Show cause notices were issued to the other five units and offence cases were booked against the remaining two units.

The Ministry of Finance have admitted the facts as substantially correct in two cases (December 1980). The paragraphs covering the remaining cases were sent to the Ministry in May, July and September 1980 ; replies are awaited (December 1980).

- (b) (i) One of the units mentioned in sub para (a) supra did not pay duty of Rs. 20.94 lakhs collected by it in some of the adjustment bills for the year 1978-79.
- (ii) The same assessee, under an agreement, also received Rs. 929.69 lakhs as interest on loans for working capital attributable to the supplies made during the period 1975-76 to 1978-79. Although the interest received formed part of the value of the equipment supplied, duty amounting to Rs. 17.35 lakhs leviable thereon was not paid.

The department issued a show cause notice to the assessee (October 1979) for the aforesaid amounts. Further progress is awaited.

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

2.50 Irregular utilisation of proforma credit

Rule 56A of the Central Excise Rules 1944, prescribes a special procedure enabling assesseees to claim credit for duty already paid on raw materials or component parts used in the manufacture of specified excisable goods. Such credit is allowed to be utilised towards duty payable on the finished excisable goods and can be availed of only after permission is granted by the Collector. No credit is, however, allowed in respect of any material or component part used in the manufacture of finished excisable goods which are either totally exempt from duty or are not excisable. A number of cases of irregular availment of proforma credit were pointed out in the earlier audit reports of the Comptroller and Auditor General of India (Revenue Receipts, Volume I), latest being para 83 of Audit Report 1978-79.

Similar cases of irregular availment/utilisation of proforma credit continue to occur. Some instances subsequently noticed by Audit are given below :—

(a) Sub rule 3(IV) of rule 56A *ibid* lays down that any waste arising out of the process of manufacture from raw materials/component parts on which credit has been allowed, should be cleared on payment of duty. The Ministry of Law also opined in February 1979 that utilisation of proforma credit in respect of payment of duty on waste was prohibited under the rules.

Three manufacturers in a collectorate, received duty paid steel sheets (tariff item 26AA) for use in the manufacture of electrical stampings and laminations (tariff item 28A). They incorrectly utilised proforma credit amounting to Rs. 5,55,232 towards payment of duty on steel sheet cuttings/scrap obtained in the course of manufacture of stampings and laminations and cleared during the period 1st May 1979 to 31st October 1979.

Similarly four units in two other collectorates, utilised the proforma credit of duty paid on aluminium ingots and billets

falling under tariff item 27(a)(i) for payment of duty on waste. The incorrect proforma credit availed of by these units worked out to Rs. 13,78,034 for the period January 1978 to February 1980.

The department has admitted the facts in one case. The matter is stated to be under examination in two other cases, whereas reply in the remaining four cases is awaited.

The Ministry of Finance have admitted the facts in one case. Ministry's reply in other cases is awaited (December 1980).

(b) By a notification dated 18th June 1977, hot rolled iron strips and cold rolled iron strips both falling under tariff item 26AA(iii) are chargeable to duty at Rs. 450 and Rs. 650 per metric tonne respectively. Under an earlier notification issued in May 1967, cold rolled strips manufactured out of duty paid hot rolled strips were entitled to set off of duty paid on hot rolled strips.

A unit manufactured cold rolled strips out of duty paid hot rolled strips brought from outside and availed of rule 56A procedure. The unit obtained these strips from a manufacturer who under a production incentive scheme, paid duty at the reduced rate of Rs. 337.50 per metric tonne (75 per cent of the full rate of Rs. 450 per metric tonne) and passed on the benefit to the consumer. In a notification issued in November 1978 it was provided that notwithstanding the concession availed of under the said scheme, the full duty otherwise payable shall be deemed to have been discharged by such manufacturers for purposes of adjustment of duty under rule 56A by a secondary manufacturer. The unit was, therefore, liable to pay differential duty of Rs. 312.50 (Rs. 650 minus Rs. 337.50) per metric tonne till November 1978. It was noticed in audit (January 1978) that the unit paid duty at the rate of Rs. 200 per metric tonne after taking credit for Rs. 450 instead of Rs. 337.50.

On this being pointed out by Audit (March 1978), differential duty of Rs. 35,066 for the period May and June 1977 was

recovered. The department also issued in May 1978 another show cause notice for Rs. 8,69,948 (subsequently revised to Rs. 8,85,551 in June 1979), towards differential duty in respect of hot rolled strips received during March, August, September, November and December 1977 and February 1978.

While admitting the audit objection, Ministry of Finance have stated that the case has been adjudicated (September 1980) demanding Rs. 6,31,424 (December 1980).

(c) Under a notification dated 4th June 1979, a manufacturer can take and utilise credit of the duty already paid on inputs (tariff item 68) received by him after submission of required declaration. According to a telex issued by the Central Board of Excise and Customs in February 1980, utilisation of credit taken under an earlier notification of June 1977 and lying in R.G. 23 on 4th June 1979 is not permissible.

An assessee utilised credit lying in R.G. 23 on account of duty of Rs. 7,38,809 paid on inputs (tariff item 68) which were received prior to the submission of the requisite declaration. On this being pointed out in audit in March 1980, the department issued (September 1980) a show cause-cum-demand notice for Rs. 6,56,311 (October 1980).

The Ministry of Finance have admitted the facts as substantially correct (December 1980).

(d) Laminated as well as polypropylene sheets are assessable to duty under tariff item 15A(2). A unit manufacturing laminated sheets was permitted to avail of the proforma credit procedure under rule 56A *ibid* in respect of polypropylene sheets. It was noticed in audit that the polypropylene sheets were utilised as separator in the manufacture of laminated sheets and were reused upto four times. Accordingly, the polypropylene sheets could not be stated as having gone into the production of laminated sheets. The utilisation of proforma credit in this case was, therefore, not regular.

On this being pointed out in audit in November 1979, the department raised in March 1980 a demand of Rs. 3,88,290 for the period August 1977 to February 1980. Recovery particulars are awaited.

The Ministry of Finance have accepted the facts (December 1980).

2.51 *Knocked down condition*

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 and over a period of time against a particular contract, the clearances are assessable to duty provisionally and the value of the article in completely assembled condition should be taken for assessment purposes.

Five units in two collectorates manufacturing various items of machines falling under tariff item 68, entered into contracts for manufacture and supply of such machines. The machines were cleared in knocked down condition over a period of time from the factories on payment of duty on the basis of invoice value under notification dated 30th April 1975 at the rates prevalent at the time of clearances of the parts of such machines. This was not regular as goods assessable to duty are the completed articles and the duty at the rate prevalent on the date of completion of the contract/assembly of goods is, therefore, to be levied on the total value of the machines including assembling charges. The incorrect assessment led to a short levy of duty of Rs. 24,77,086 calculated at the rates prevalent during February 1977 to May 1979 when the contracts were finalised.

While accepting the objection in three cases the Ministry of Finance have stated (July 1980) that in one case the demand of Rs. 2,33,520 has been confirmed but the amount is pending realisation. They have added that show cause-cum-demand notices for Rs. 5,22,071 and Rs. 22,919 issued in other two cases are under process of adjudication.

Ministry's reply in respect of remaining two cases is awaited (December 1980).

2.52 Tariff item 68

Tariff item 68 to cover 'all other goods not elsewhere specified' was introduced with effect from 1st March 1975, the rate of duty being one per cent upto 17th June 1977, two per cent during the period 18th June 1977 to 28th February, 1978, five per cent during the period 1st March 1978 to 28th February 1979 and eight per cent thereafter.

Certain irregularities noticed during test audit of assessments under tariff item 68, are enumerated below :—

- (a) (i) Under a notification dated 1st March 1978, all drugs, medicines, pharmaceuticals and drugs intermediates not elsewhere specified are exempt from the whole of duty. A manufacturer in a collectorate, treated hard empty gelatine capsules manufactured by him as drugs intermediates and cleared them without payment of duty. It was pointed out by Audit in July 1978 that since the exemption availed of under the aforesaid notification did not seem to be in order, the opinion of the chemist might be obtained. On the basis of the opinion obtained from the Deputy Chief Chemist, the department issued show cause-cum-demand notices for Rs. 4,81,138 for the period April 1978 to October 1978. Recovery particulars are awaited (June 1980).

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

- (ii) An assessee in a collectorate did fabrication of steel structures on behalf of engineering contractors, who eventually supplied the fabri-

cations to their customers. The assessee paid duty on the finished product including the cost of raw materials supplied by the contractors. It was pointed out by Audit in April 1979 that the engineering contractors would be manufacturers in terms of provisions of section 2(f) of Central Excises and Salt Act 1944 and the duty on the said goods would be payable on their cost including their margin of profit. The department accepted the objection and raised a demand for Rs. 87,775 for the period July 1977 to July 1979. Reply to the statement of facts issued in January 1980 and particulars of recovery are awaited (July 1980).

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

(iii) According to rule 173 PP of the Central Excise Rules 1944 as it existed till 31st July, 1979, an assessee manufacturing goods falling under tariff item 68 could himself determine and pay duty on excisable goods. He was also required to maintain a register and enter therein particulars of goods removed and the amount of duty paid. In addition, he had to file a return with the proper officer within 10 days after the close of the month showing, *inter alia*, the description of goods manufactured and removed during the month together with value thereof and the duty paid thereon. For removal of any excisable goods in contravention of the rules, the assessee is liable to a penalty not exceeding three times the value of the excisable goods or Rs. 5,000 whichever is more.

The management of a 'boat building yard' of a State Fisheries Corporation, constructed and cleared 313 non-mechanised boats costing about Rs. 14 lakhs during the period 11th January 1978 to 13th June 1978 without payment of duty. Such clearances were also not exhibited in the central excise records. When the omission was pointed out by Audit in June 1978, the department ordered recovery of duty of Rs. 64,000 and imposed a penalty of Rs. 25,000. The licensee appealed to the Central Board of Excise and Customs against the orders of the Collector which was rejected. Accordingly, the party was directed to pay duty and penalty (June 1980).

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

- (iv) Under a notification issued in June 1977 as amended, excisable goods in the manufacture of which goods falling under tariff item 68 are used, are exempt from so much of duty as is equivalent to the duty on the inputs.

A factory in a collectorate, cleared rubber products falling under tariff item 16A manufactured by it after packing in card board boxes, cartons or composite containers and availed set off of duty paid under tariff item 68 on the packing material. As the material used for packing finished excisable products could not be considered as used in the manufacture of excisable goods, set off of duty paid on the packing materials was not admissible. The irregular concession availed of by the licensee during the period October 1978 to June 1979, amounted to Rs. 57,057.

The paragraph was sent to the Ministry of Finance in July 1980; reply is awaited (December 1980).

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

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

- (i) Complete machinery manufactured in a factory and meant for producing or processing any goods, even if intended for use in the same factory in which they are manufactured or in any other factory of the same manufacturer are, however, not so exempt from duty.

In four cases in three collectorates, duty was not paid on complete plant and machinery fabricated and installed in the factory of production or cleared outside. The total underassessment of duty in these cases worked out to Rs. 4,66,689, out of which Rs. 59,677 were recovered. Besides, a fine of Rs. 5,000 and redemption fine of Rs. 5,000 were also imposed in one of these cases.

The Ministry of Finance have admitted the facts as substantially correct in two cases (December 1980). In the

third case the Ministry have stated that the jurisdictional Assistant Collector confirmed the demand for Rs. 38,831.86 (January 1980); thereupon the assessee filed an appeal with the Collector who has stayed recovery (March 1980) and the matter is pending decision in appeal.

The paragraph covering the fourth case was sent to the Ministry in September 1980; reply is awaited (December 1980).

- (ii) Hydrogen falling under tariff item 68 obtained in a fertiliser factory while cracking raw naphtha was captively consumed in the production of ammonia and fertilisers and a small portion thereof was sold out. It was noticed that though duty was levied on the quantity of hydrogen sold, no duty was levied on the quantity of hydrogen captively consumed during the period 1st to 5th March 1975. On the omission being pointed out, the department realised a sum of Rs. 1,68,464 in September/December 1979.

The Ministry of Finance have accepted the facts as substantially correct (October 1980).

- (iii) An ore based iron and steel factory produced blast furnace gas (tariff item 68) and used it within the factory of production as fuel in the manufacture of iron or steel products. The assessee paid duty in respect of the gas used during the period 1st March 1975 to 5th March 1975. No duty was, however, paid for the gas used during the period 6th March 1975 to 29th April 1975 in pursuance of adjudication order of the jurisdictional Assistant Collector dated 1st December, 1978, on the ground that it was an intermediate product in the manufacture of iron or steel products. Since, after combustion, the gas lost its identity completely and its presence could not be traced as an element or part in the final products, it could not be treated as

intermediate goods or component parts of the end products. This led to an underassessment of duty to the tune of Rs. 67,731 during the period 6th March 1975 to 29th April 1975.

On this being pointed out in audit, the department intimated (June 1980) that the amount had been realised.

The Ministry of Finance have admitted the facts as substantially correct (December 1980).

2.53 *Iron or steel products*

By a notification issued on 1st March 1973, the duty prescribed on certain iron or steel products falling under tariff item 26AA is to be reduced by fifty rupees per metric tonne, if manufactured with the aid of electric furnace from old iron or steel melting scrap, etc., and in case these products are made from duty paid steel ingots the duty has to be reduced by an amount equal to the duty already paid on such steel ingots.

In a collectorate, two assessees manufactured iron or steel products out of duty paid ingots. These products were entitled to a reduction in duty equal to the amount of duty already paid on steel ingots. It was, however, noticed that these assessees were allowed a further reduction in duty at Rs. 50 per metric tonne which was applicable to cases where the steel products were manufactured from old iron or steel melting scrap. This resulted in underassessment of duty of Rs. 9,78,833 during the period 1st March 1973 to 28th February 1974.

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

2.54 *Equalised freight*

Under section 4 of the Central Excises and Salt Act 1944, in cases where value forms the basis for assessment, such value shall be deemed to be the normal price at which goods are ordinarily sold in the course of wholesale trade for delivery at the time and place of removal. Where those goods are sold by

the assessee at different prices to different classes of buyers (not being related persons), each such price shall be deemed to be the normal price of those goods in relation to each such class of buyers. The Ministry of Law, Justice and Company Affairs clarified in March 1976 and July 1976, that dealers of different regions to whom goods may be sold at different prices, constitute different classes of buyers and that when the price is inclusive of equalised freight, no deduction is permissible to arrive at the assessable value.

The term 'equalised freight' has not been defined in the Act or Rules but has been clarified by the Central Board of Excise and Customs in their letter dated 9th December, 1969, which envisages the sale of the product throughout the country.

(a) A unit manufacturing motor cycles/scooters, recovered freight charges on the clearances of vehicles for deliveries to various stations, including the place of manufacture. These charges were uniform for each station and were more than those actually paid by the unit to the transporter. The assessable value was, however, fixed without taking into account the freight charges. This resulted in fixation of lower assessable value and consequently resulted in short levy of duty. A show cause notice for payment of differential duty of Rs. 58,233 for the period 1st October, 1975 to 15th August, 1976 issued by the department was pending adjudication even after more than three years. The unit started paying duty from 24th May 1979 after adding Rs. 40 per vehicle as freight charges in the assessable value. No action was, however, taken by the department to raise demand of Rs. 4,80,400 in respect of clearances during the period 16th August, 1976 to 23rd May 1979.

On this being pointed out in audit (February 1980), the department issued a show cause notice for the said amount in May 1980. Further progress is awaited (June 1980).

The paragraph was sent to the Ministry of Finance in July 1980; reply is awaited (December 1980).

(b) Another unit manufactured and supplied 'sewing machine tops' and 'hand attachments' on behalf of a company under the latter's brand name. Although freight charges at the uniform rates of Rs. 10 per machine top and sixty paise per hand attachment were collected, these were not included in the assessable value resulting in underassessment of duty of Rs. 1,89,676 during the period March 1975 to December 1979.

On this being pointed out in audit, the department raised and confirmed a demand of Rs. 78,403 in February 1980 and raised a further demand of Rs. 1,11,273 in March 1980. Against the first demand the assessee has filed an appeal, whereas the second demand is pending confirmation (June 1980).

The paragraph was sent to the Ministry of Finance in July 1980; reply is awaited (December 1980).

(c) A manufacturer of biscuits (tariff item 1C) and chocolates (tariff item 1A) cleared the goods to his depots at various places as also to the dealers in regions not covered by his depots. He paid duty on the basis of wholesale price after excluding the element of freight charged uniformly at 5 per cent of the said price.

On this being pointed out in audit (May 1979), the department issued in December 1979 show cause-cum-demand notices for Rs. 2,09,037 for the period April 1977 to March 1979. The reply of the department to the statement of facts issued in March 1980 is awaited (July 1980).

While admitting the audit objection, the Ministry of Finance have stated that the demand is under process of adjudication (December 1980).

2.55 Incorrect application of section 4

In paragraphs 95,82 and 81 of the reports of the Comptroller and Auditor General of India on Revenue Receipts (Volume I,

Indirect Taxes) for the years 1976-77, 1977-78 and 1978-79 respectively cases of underassessment of duty owing to incorrect determination of assessable value under section 4 of the Central Excises and Salt Act 1944 and the rules framed and instructions issued thereunder, were commented upon.

A few other cases of underassessment of duty of Rs. 8.35 lakhs on this account subsequently noticed in test audit, are given below :—

(a) According to section 4 *ibid* the value of goods chargeable to duty *ad valorem* is to be determined on the basis of normal price or the nearest equivalent of the normal price of such goods, if the normal price is not ascertainable. In fixing such a price there is no provision to exclude the value of raw material/component parts forming integral part of the goods sold and supplied by the customer.

A unit in a collectorate, manufactured and cleared combination sets of wound stators and machined rotors after fixing overload protectors supplied by a customer. The cost of the overload protectors was, however, not included in the assessable value on the ground that these were supplied by the customer free of charge. This resulted in underassessment of duty of Rs. 1.93 lakhs for the period July 1976 to July 1978. When this was pointed out by Audit, the department intimated in January 1979 that a show cause-cum-demand notice for the amount had been issued.

While accepting the facts, the Ministry of Finance have stated (October 1980) that the assessee has filed an appeal against the order of the Assistant Collector.

(b) Excise duty, sales tax and other taxes, if any, payable on excisable goods, are abated from the assessable value of such goods under section 4(4)(d)(ii).

Under a notification issued in March 1972 different varieties of soap falling under tariff item 15 were assessable to duty at rates ranging between 5 to 15 per cent *ad valorem*. According to other notifications issued in March 1972 and March 1975, soaps in which a minimum prescribed percentage of specified minor oils has been used are eligible for a further reduction in duty depending on the percentage of minor oils used.

Three manufacturers of soap in a collectorate, declared their wholesale prices as cum-duty and paid duty on assessable values computed without taking into account the concession in duty availed of for use of minor oils in the soap. This resulted in computation of lower assessable values and short payment of duty of about Rs. 4.91 lakhs during the period April 1976 to March 1978.

The paragraph was sent to the Ministry of Finance in July 1980; reply is awaited (December 1980).

(c) A manufacturer of television sets supplied, in addition to local sales, a large number of television sets to a Government undertaking at a price of Rs. 2,010 per set. It was noticed by Audit (April 1978) that apart from this price the Government undertaking charged an additional sum of Rs. 190 per set as servicing/warranty charges. The servicing/warranty charges were an essential part of the cost of television sets as those were compulsorily recovered from the customers and hence those ought to have been taken into account in determining the assessable value.

Non inclusion of such charges in the assessable value resulted in short levy of duty of Rs. 1,50,854 on 3,910 sets cleared during the period 1976-77 to 1979-80. On this being pointed out in audit, the department enhanced the price of each set by Rs. 190 and raised an additional demand of Rs. 1,50,854 (June 1980).

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

2.56 Dry dock gates

According to a notification issued on 1st March 1975, goods manufactured by Government and intended for use by Government departments are exempt from duty. In the explanatory notes to the budget 1975, it was clarified that Government factories would not cover public sector undertakings.

A Government company engaged in the manufacture of ships, supplied dry dock gates of the value of Rs. 1,34,29,050 to a Government department in August 1978 and September 1979 without collecting duty. When this was pointed out in audit in November 1979, the department stated (May 1980) that as the shipyard is a Government company, no duty need be paid by the dry dock authorities under the aforesaid notification of 1st March 1975. As this notification did not apply to manufactures of public sector undertakings, the exemption mentioned therein was not applicable in this case and the duty recoverable worked out nearly to Rs. 8.06 lakhs.

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

2.57 Captive consumption

In paragraph 79 of the report of the Comptroller and Auditor General of India for the year 1978-79 (Revenue Receipts, Volume I) cases of underassessment of goods captively consumed in the factory of production, were reported. Following cases have subsequently been noticed :—

(a) An assessee manufacturing, *inter alia*, sulphuric acid of 93 to 98 per cent purity for captive consumption in the production of dyes, got the assessable value of the sulphuric acid approved at Rs. 318.44 per metric tonne on the basis of cost of production. Another assessee manufacturing sulphuric acid of the same purity sold it for a price ranging between Rs. 490 to Rs. 725 per metric tonne. The assessee factory also purchased such sulphuric acid

from the other assessee for the manufacture of dyes, for which it was using the sulphuric acid manufactured by it. Since the value of comparable goods was available it should have formed the basis of the assessable value of the product manufactured by the assessee instead of the cost of its production. Adoption of the lower assessable value resulted in underassessment of duty of Rs. 3.13 lakhs for the period 10th November 1976 to 31st December 1978.

The paragraph was sent to the Ministry of Finance in August 1980; reply is awaited (December 1980).

(b) A manufacturer of wrapper paper and other kinds of paper consumed the wrapper paper internally for packing purposes. He paid duty on the wrapper paper on the basis of a price fixed in a contract with the Directorate General of Supplies and Disposals in the year 1976-77 for supply of various papers and not on the basis of the value of comparable goods. A comparison of the prices of other papers mentioned in the contract with those of the wholesale prices prevailing in 1978, revealed that the latter prices were generally higher by more than 50 per cent. As such, duty on wrapper paper was payable on the basis of the enhanced wholesale price instead of the contract price fixed for 1976-77. Fixation of lower assessable value resulted in short levy of duty of nearly Rs. 2.68 lakhs during the period September 1977 to June 1978.

While admitting the audit objection, the Ministry of Finance have stated that the quantum of short levy is under examination (December 1980).

2.58 *Related person*

According to the instructions issued by Government in November 1968 on section 4 of the Central Excises and Salt Act 1944, assessable value in cases where a manufacturer sells his entire output to related persons, is to be determined on the basis of price charged by such related persons to dealers. These

instructions were incorporated in Central Excise (Valuation) Rules 1975 after the amendment of section 4 *ibid* with effect from 1st October 1975.

In the following two cases, these instructions were not followed in determining assessable value resulting in short levy of duty of Rs. 2,32,194.

(a) Deep freezers and bottle coolers are assessable to duty *ad valorem* under tariff item 29A.

A manufacturer of deep freezers and bottle coolers sold his entire production to one party. The assessable value of goods was determined after an abatement of discount at forty per cent allowed to the party instead of discount at ten per cent allowed by that party to wholesalers.

On this being pointed out in audit (October 1978), the department issued in March 1979 a show cause-cum-demand notice for Rs. 1,64,822 on account of differential duty for the period 1st April 1974 to 31st March 1978.

While accepting the facts as substantially correct, the Ministry of Finance have stated (December 1980) that the demand has been confirmed.

(b) A unit assembling watches on behalf of a public undertaking out of the components supplied by the latter, paid duty on the basis of the actual cost of Rs. 122.40 each to the undertaking and not on the basis of the wholesale price of Rs. 168.18 each at which those watches were sold by the undertaking through its sales depots. This resulted in short levy of duty of Rs. 67,372 during the period 8th March 1979 to 25th April 1979.

On this being pointed out by Audit in March 1980, the department issued a show cause notice for paying the amount. Recovery particulars are awaited (June 1980).

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

2.59 *Motor spirit*

According to the systems prevalent for the accountal of oil falling under tariff item 6 in bonded calibrated non-duty paid storage tanks, dip readings are taken after every receipt into or withdrawal from the tank. In order to protect evaporation of oil, the storage tanks are provided with floating roof inside the tank which could be made to rest on built-in legs capable of being raised or lowered to two different fixed positions known as lower and higher positions. The legs are normally kept at the lower position but to enable workers to move freely inside the tanks during clearing operations, the legs are raised to the higher position.

According to the calibration tables of the tanks, the oil would not touch the floating roof when it rests on the legs either at the lower position or at the higher position and no deduction on account of the quantity of oil displaced by the floating roof is, therefore, required to be made for the purpose of accountal of oil in the tank. A deduction equivalent to the quantity of oil displaced by the weight of the floating roof is, however, to be made for accountal and assessment of duty when the roof is in full floating position.

Similarly, the calibration tables specified the depths between which the floating roof would be in partly submerged position when the accurate dip readings are not possible. In such cases "mean proportionate fractional capacity" of oil actually displaced by the floating roof is required to be worked out. The following irregularities were noticed (April 1979) during the audit of records of an oil storage company:—

- (i) In the case of one tank when the roof was in full floating position on 11th May 1978 and 25th May

1978, no deduction on account of the quantity of oil displaced by the floating roof was made at the time of accountal and assessment of duty resulting in short payment of duty of Rs. 1,26,494.

- (ii) In the case of two other storage tanks, when the floating roof was in partly submerged position on 29th November 1978, 17th January 1979 and 28th February 1979, the "mean proportionate fractional capacity" of oil displaced by the floating roof was not worked out leading to an underassessment of duty of Rs. 38,571.

On this being pointed out in audit in June 1979, the department stated (January 1980) that while short levy of duty in respect of the second case had been recovered in full, the assessee had paid (December 1979) an amount of Rs. 20,026 only in respect of the first case and had made a representation for the balance (May 1980).

The Ministry of Finance have admitted the facts as substantially correct (November 1980).

2.60 Sugar

Under a notification dated 12th October 1974, exemptions of duty on slab basis were prescribed for sugar produced in excess of a specified quantity for the relevant sugar year. The excess quantity of sugar produced was to be bifurcated into levy and free sale sugar and the relief was to be restricted to the actual amount of duty paid or payable thereon.

A unit in a collectorate, was granted rebate of Rs. 36,95,777 in respect of the excess production of sugar for the sugar year 1974-75 under three separate orders of the Assistant Collector between September 1976 and August 1978. It was noticed in audit (February 1979) that the department applied the rate of Rs. 22 per metric tonne for the last slab of excess production

(beyond 37.5 per cent) of levy sugar instead of limiting the same to the actual amount of duty paid at Rs. 18.55 per metric tonne resulting in grant of excess rebate of Rs. 1,20,502. On this being pointed out, the department accepted the objection and realised the amount in July 1979.

The Ministry of Finance have accepted the facts as substantially correct (December 1980).

2.61 Packing charges

According to section 4(4)(d)(i) of the Central Excises and Salt Act 1944, value in relation to any excisable goods where 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, pirn, spool, reel or warp beam or any other thing in which or on which the excisable goods are wrapped, contained or wound.

Artificial or synthetic resins, etc., (P.V.C. resins) are assessable to duty *ad valorem* under tariff item 15 A(1)(ii).

A factory manufacturing P.V.C. resin partly sold it outside and substantially consumed it internally for manufacturing P.V.C. compound. The P.V.C. resin was transferred to P.V.C. compounding plant for internal use either through pneumatic pressure or in packed condition by first putting in alkathene bags and thereafter placing them in hessian bags. It was noticed in audit (August 1979) that the department allowed deduction on account of the cost of both the packings *i.e.* alkathene bags and hessian bags in respect of P.V.C. resins used internally assuming that these packing materials were of durable nature and were also returnable. It was further observed that alkathene bags were torn out at the time of unpacking and there was no evidence to show that these were returned to the P.V.C. resin plant for re-use. The exclusion of the cost of alkathene

bags from the assessable value resulted in short levy of duty of Rs. 1,10,862 during the period October 1975 to November 1979.

On this being pointed out by Audit (December 1979), the department stated (June 1980) that the party had started paying duty on the cost of alkathene bags from 1st December 1979 and that demand for the earlier period had been raised. Further progress is awaited (August 1980).

The Ministry of Finance have accepted the facts as substantially correct (December 1980).

2.62 *Annual stock taking*

Under the provisions of the Central Excise Rules 1944, the stock of excisable goods remaining in a factory is required to be weighed, measured, accounted for or otherwise ascertained atleast once in a year in the presence of proper Central Excise Officer. The owner is liable to pay the full amount of duty chargeable on the deficiencies noticed and in addition, a penalty unless the deficiency is accounted for to the satisfaction of the department. The central excise procedure also envisages that surpluses, if any, noticed as a result of stock taking, should be brought on the Central Excise records *viz.*, R.G.I. In other words, surplus noticed in the stock of one product cannot be set off against the shortage noticed in another product though both the products might fall under the same tariff item.

While conducting annual stock taking in April 1976 of a unit manufacturing motor vehicle parts falling under tariff item 34A, the department noticed deficiencies and surpluses in respect of certain motor vehicle parts dutiable at 20 per cent *ad valorem* under a notification of May 1971 as amended. The actual number as verified during stock verification was taken in the production records.

While reviewing the result of annual stock taking in audit in March 1977, it was noticed that the value of shortages was Rs. 6,73,738 which involved duty of Rs. 1,34,750. On this being pointed out (May 1977), the department initiated action, retabulated the entire transactions since 1974 onwards and adjudicated the proceedings by demanding a duty of Rs. 83,115 and imposing a penalty of Rs. 200. Further progress is awaited (May 1980).

The paragraph was sent to the Ministry of Finance in July 1980; reply is awaited (December 1980).

2.63 *Cash discount*

Under section 4(4)(d)(ii) of the Central Excises and Salt Act 1944 where goods are assessable on the basis of value, such value does not include trade discount allowed in accordance with the normal practice of the wholesale trade.

A unit manufacturing electric fans was allowed deduction on account of cash discount at varying rates from the assessable value of the fans. A scrutiny of the invoices in audit, however, showed that no such cash discount was allowed by the manufacturer to the purchasers. Its abatement from assessable value was, therefore, irregular. This led to an underassessment of Rs. 0.79 lakh even at the lowest rate of discount during the period December 1977 to August 1979. On this being pointed out in audit, the department issued (March 1980) a show cause notice for recovering Rs. 0.80 lakh. Report regarding recovery as also the action taken to raise supplementary demand on the basis of actual discounts allowed are awaited (July 1980).

While admitting the facts as substantially correct, the Ministry of Finance have stated that demand of Rs. 80,050 is under adjudication by the jurisdictional Assistant Collector (December 1980).

2.64 *Irregular application of chapter X procedure*

By a notification dated 28th April 1955 as amended, Government exempted zinc oxide falling under tariff item 14 from payment of duty if it is used in the manufacture of specified goods and the procedure laid down in chapter X of the Central Excise Rules 1944, is followed.

A licensee manufacturing rubber products, obtained zinc oxide in excess of the quantity permitted by the Collector under chapter X *ibid* without payment of duty and used it from December 1974 in the manufacture of 'base stock compound'. Utilisation of excess quantity of 1086.5 quintals of zinc oxide during the period December 1974 to December 1975 resulted in short levy of Rs. 48,892. On this being pointed out by Audit in December 1976, the department issued a demand for Rs. 65,190. Particulars of realisation are awaited. The department further stated that it was examining whether zinc oxide was brought to the factory under L 6 licence of another factory for whom the manufacture was done, although there was no scope for adopting such a procedure under the rules.

The Ministry of Finance have admitted the audit objection (March 1980).

2.65 *Cotton textiles*

Cotton fabrics were first brought under excise net in 1949. Initially the levy was *ad valorem* for 'superfine' and 'fine' varieties and at specific rates for others. In 1953, specific rates of duty were prescribed for all varieties. In 1958, progressively increasing rates of specific duties depending on the nature of process done on fabrics, were introduced.

Duties at *ad valorem* rates were again introduced in the case of 25 specific varieties of fabrics [tariff item 19(1)] in 1969 and

1970. From March 1976 *ad valorem* rates were made applicable to all cotton fabrics.

A test audit of the central excise assessment records of some of the textile mills revealed underassessments of duty of Rs. 182.48 lakhs as brought out in the succeeding subparagraphs :—

(a)(i) Under rule 49A introduced on 24th November 1977 in Central Excise Rules 1944, composite mills were given an option to pay yarn duty alongwith the duty on fabrics provided an additional amount on account of interest at 1.5 per cent for grey fabrics and at 3 per cent on processed fabrics was paid. According to a clarification issued by the Central Board of Excise and Customs on 2nd February 1979, duty liability is on the yarn cleared for the manufacture of fabrics and there is, therefore, no question of exclusion of losses in the process of manufacture.

A scrutiny of records of nine assessees in three collectorates, cause-cum-demand notice for Rs. 35,86,067 for the period wasted in the manufacture of fabrics, resulting in short levy of duty of Rs. 127.49 lakhs during the period 24th November 1977 to May 1980.

In one case the department issued (October 1979) a show cause-cum-demand notice for Rs. 35,86,067 for the period 1st December 1977 to 30th September 1979; recovery particulars are awaited (April 1980). In the other case the department did not accept (June 1980) the objection, *inter alia*, on the grounds that waste of cotton yarn was not chargeable to duty under a notification dated 1st April 1961. The said view is, however, not in conformity with the aforesaid clarification dated 2nd February 1979. The reply in the remaining seven cases is awaited.

The cases were reported to the Ministry of Finance in July 1980 and September 1980; reply is awaited (December 1980).

(ii) A composite mill in a collectorate who opted to discharge duty at fabrics stage, did not pay it on yarn included in the chindies of the cotton fabrics. This resulted in underassessment of duty of Rs. 50,780 during the period 1st December 1977 to 31st March 1979.

On this being pointed out in audit in September 1979, the department intimated (December 1979) that the mill had paid Rs. 51,297 under protest.

The Ministry of Finance have admitted the facts as substantially correct (December 1980).

(b) Prior to 18th June 1977, cotton fabrics falling under tariff item 19 I(2) were further classified as 'superfine', 'fine' etc., depending upon the average count of yarn contained in the fabrics calculated under the rules prescribed in explanation III below tariff item 19. This formula would apply only when the fabrics contained in warp and weft or both, single count of yarn and when fabrics were manufactured by using different counts of yarns in warp and weft or both, the average count would not be determinable and such fabrics would become classifiable under tariff item 19 I(2)(f) as 'cotton fabrics not otherwise specified'. Similarly, the yarn used for manufacture of such fabrics would also be assessable to duty at tariff rates at the spindle stage, since the compounded rate of duty was not prescribed for 'cotton fabrics not otherwise specified'.

Twelve units in two collectorates cleared fabrics manufactured by using different counts of yarn in warp and weft or both after paying duty at rates under tariff items 19 I(2)(a) to (e) instead of under item 19 I(2)(f) resulting in underassessment of duty of Rs. 44.76 lakhs (Rs. 28.78 lakhs on cotton fabrics plus Rs. 15.98 lakhs on yarn content in such fabrics) during the period 1st January 1974 to 17th June 1977.

On this being pointed out by Audit in November 1979, the department accepted the objection (February 1980). Recovery particulars are awaited (April 1980).

The paragraph was sent to the Ministry of Finance in August 1980 ; reply is awaited (December 1980).

(c) (i) The variety of drill woven in 3/1 or 1/3 (four harness warp or weft faced fabric) is not drill as defined under the Cotton Textile (Control) Order 1948. This variety of drill, therefore, does not qualify for the reduced rate of duty in terms of a notification issued on 15th July 1977.

During audit of a textile mill it was noticed (August 1978) that though the unit manufactured and cleared drill woven in 3/1 or 1/3, it paid duty at reduced rates. This resulted in underassessment of duty of Rs. 3.26 lakhs during the period 15th July 1977 to 16th August 1978.

When this was pointed out (August 1978) by Audit, the department directed the mill to pay duty on the drill in question at normal rates with effect from 16th August 1978. Subsequently, the department stated (November 1979) that the matter had been referred (February 1979) to Government for clarification.

While admitting the facts, the Ministry of Finance have stated (December 1980) that to remove the anomaly the notification issued by the Textile Commissioner in 1964 was rescinded on 19th December 1979.

(ii) The notification dated 15th July 1977 mentioned in sub para (c)(i) supra was amended on 30th November 1979 restricting the concession in duty to those varieties of drill which answer the description of controlled drill in the Cotton Textile (Control) Order 1948.

Another manufacturer of textile fabrics cleared drill not answering to the description of controlled drill at concessional rates instead of normal rates of duty during the period December 1979 to March 1980, which resulted in short levy of duty of Rs. 60,612.

On this being pointed out in audit in May 1980, the department stated that the amount of differential duty had been realised.

The paragraph was sent to the Ministry of Finance in September 1980 ; reply is awaited (December 1980).

(d) Prior to 18th June 1977, costly varieties of cotton fabrics like canvas etc., were assessable under tariff item 19 I(1) on the basis of their value and certain other types of cotton fabrics were dutiable under tariff item 19 I(2) at specific rates depending on the average count of yarn contained in the fabrics. According to the definition circulated by the Central Board of Excise and Customs on 6th June 1969 for the purpose of assessment as canvas, the fabric must have at least two fold (ply) yarn both in the warp as also in the weft, with plain or double end plain weave and weighing not less than 6 ounces per square yard. The Board further clarified on 25th February 1976, that if the fabric for hose pipe in grey state satisfied the said criterion of canvas, it would be classifiable under tariff item 19 I(1), and if not, it would fall under tariff item 19 I(2).

A factory in a collectorate, manufactured different varieties of rubberised cotton hose pipes and cleared them on payment of duty under tariff item 19 I(2). The relevant classification list effective from 16th March 1976 filed by the factory, was approved by the department (May 1976). The fabric for hose pipes in grey state, however, satisfied the criterion of canvas and ought to have been classified under tariff item 19 I(1). The under-assessment of duty owing to misclassification of the rubberised cotton hose pipes during the period April 1976 to May 1977 worked out to Rs. 2,75,957.

On this being pointed out by Audit (January 1978), the department stated (April 1980) that a show cause-cum-demand notice had been issued (July 1978). Further progress is awaited (July 1980).

The paragraph was sent to the Ministry of Finance in September 1980 ; reply is awaited (December 1980).

(e) In paragraphs 34 and 44 of the reports of the Comptroller and Auditor General of India on Revenue Receipts (Volume I, Indirect Taxes) for the years 1977-78 and 1978-79 respectively cases of non levy of duty on yarn lying in stock on 15th July 1977 were reported.

Three more cases of textile mills, which did not declare the quantity of yarn held by them in their various departments on the crucial date and did not pay duty on such quantity of yarn were noticed by Audit. When those cases were pointed out (January 1979) to the department, show cause-cum-demand notices for Rs. 2,48,460 were issued to two mills in February and September 1979. In the third case (Rs. 17,878) the notice was stated to be under issue (June 1979).

While admitting the objection in one case, the Ministry of Finance have stated (December 1980) that the matter is pending in a High Court. Paragraph covering the other two cases was sent to the Ministry in August 1980 ; reply is awaited (December 1980).

(f) Exemption from inclusion of yarn stage duty in the assessable value of cotton fabrics was granted by a notification dated 15th July 1977. The said exemption was withdrawn by issue of another notification on 24th November 1977 and thereafter yarn stage duty formed part of such assessable value.

Two cotton mills in two collectorates manufacturing cotton fabrics, did not include the yarn stage duty in the assessable value of the fabrics during the period 25th November 1977 to October 1979. This resulted in underassessment of duty of about Rs. 94,583.

On this being pointed out in audit, the department confirmed the demand in both the cases in May 1979 and May 1980. In one case the amount of Rs. 84,583 has been recovered in March 1980, whereas recovery particulars in the other case are awaited.

The paragraphs were sent to the Ministry of Finance in September 1980 ; reply is awaited (December 1980).

2.66 Loss of revenue due to operation of time bar

The total amount of revenue forgone by Government owing to non issue of demand within the prescribed time limit in respect of assessments during 1979-80 was Rs. 1,05,96,068* as detailed below :—

	No. of cases	Loss of revenue Rs.
(a) Demands not issued due to operation of time bar	7	16,30,392
(b) Demands withdrawn due to operation of time bar	42	89,65,676

Some cases of loss of revenue noticed in audit are given below :—

(i) A factory manufactured rough steel castings which were subsequently machined so as to convert them into identifiable machine parts. The Central Board of Excise and Customs clarified on 23rd September 1975 that such items should be assessable to duty under tariff item 68. The factory, however, discharged its duty liability by classifying the product under tariff item 26 AA(v). This led to an escapement of duty of Rs. 3,26,060 during the period 22nd July 1977 to 31st August 1978 on the basis of the average value of the machined castings at the rate of Rs. 13,000 per metric tonne.

On this being pointed out in audit in December 1978, the department prepared (February 1980) a demand for Rs. 16,64,427 for the period March 1975 to May 1979, which could not be served (July 1980) due to closure of the factory in September 1979. The department claimed that it detected (December 1976) the case earlier than audit. The fact, however,

*Figures are provisional and are in respect of twenty two collectorates as intimated by the Ministry of Finance in December 1980.

applied from the date of their issue and as such the demands for the past period were not enforceable. Actually the Board's letter was in the form of a clarification which was equally applicable to past clearances.

The total loss of revenue due to misclassification of the product between November 1968 to April 1977 worked out to Rs. 3,17,968.

The paragraph was sent to the Ministry of Finance in September 1980 ; reply is awaited (December 1980).

(iii) Calcium carbide was brought under the excise net under tariff item 14 AA from 1st March 1970, the rate of duty being *ad valorem*. The chemical is generally marketed in different sizes to suit the requirements of customers.

A manufacturer in a collectorate, sold calcium carbide of the same size to different customers at varying wholesale prices. The assessee filed price lists declaring all such prices as prices of different grades of carbide within the same size and cleared the goods after paying duty on the basis of the aforesaid prices. The provisional approval given to these price lists was confirmed by the department in June 1971.

There were, however, no different grades within the same size and all clearances of calcium carbide of the same size should have been assessed to duty on the basis of the maximum declared price. This was detected by the department and a show cause notice for payment of Rs. 2,51,685 on account of differential duty for the period 10th March 1970 to 31st May 1972 was issued to the assessee on 28th June 1972. No action on the said show cause notice was taken by the department till it was pointed out by Audit in August 1972. Of these, one demand for Rs. 1,13,169 was set aside by the Appellate Collector on the ground of time bar. The failure of the department in not taking

timely action resulted in loss of Rs. 1,13,169 for the period 10th March 1970 to 28th June 1971. Assessee's writ petition against the other two demands for Rs. 1,52,219 was dismissed by the High Court in November 1979 and the amount was realised in July 1980.

While accepting the facts as substantially correct, the Ministry of Finance have stated (December 1980) that the short levy of Rs. 1,52,219 for the period 29th June 1971 to 31st July 1972 has been adjusted in the personal ledger account of the assessee on 17th July 1980. The Ministry have also added that the assessee has requested for the adjustment of short levy of Rs. 1,13,169 for the period 10th March 1970 to 28th June 1971 in his refund claim pending with the jurisdictional Assistant Collector.

(iv) A licensee manufacturing P.V.C. film laminated textile fabrics, filed in July 1970 a classification list classifying the product under tariff item 19 I(2) which attracted duty at the rate of 25 paise per square metre. While approving the classification list in April 1971, the department held the product as classifiable under tariff item 19 III chargeable to duty at the rate of 25 per cent *ad valorem*. The licensee went in appeal in September 1971 against the classification approved by the department. The appellate authority dismissed the appeal as time barred in October 1974. A show cause notice and demand for differential duty for the period July 1970 to April 1971 during which the product was cleared on payment of duty at lower rate was, however, issued by the department in April 1976 when only the department could finally collect the price list from the licensee. On an appeal filed by the licensee against the said demand the appellate authority held in July 1979 that the demand was not sustainable under rule 10 of Central Excise Rules 1944.

The failure of the department to issue demand on receipt of the order of the appellate authority in October 1974, resulted in a loss of Rs. 89,779. On this being pointed out, the department accepted the objection in July 1980.

The Ministry of Finance have accepted the facts as substantially correct (December 1980).

(v) A factory manufacturing motor vehicle parts submitted a price list, effective from 1st October 1975, claiming abatement of discounts allowed to its area distributors. After initial approval of the price list in September 1975, the Assistant Collector disallowed these abatements in May 1976 on the ground that the distributors were related persons as defined under section 4(4) (c) of the Central Excises and Salt Act 1944. Accordingly, demands were raised against the assessee by the range officer in December 1976 and March 1977 for the payment of differential duty of Rs. 63,711 for the period 1st October 1975 to 12th May 1976. Subsequently, a show cause notice was issued by the Assistant Collector in April 1977. After a personal hearing, another show cause notice was issued to the assessee in June 1977 and demand was confirmed in September 1977. On an appeal preferred by the assessee, the Appellate Collector set aside, in September 1978, the confirmatory order issued by the Assistant Collector in September 1977 stating that the demand was hit by limitation under the then rule 10. It was also added that even the show cause notice issued by the Assistant Collector in June 1977 was not valid as by that time the period of one year within which such notices could be issued had lapsed. Thus, delay in the issue of demand and show cause notices resulted in loss of revenue of Rs. 0.64 lakh.

Reply of the department on the loss of revenue called for in March 1980 is awaited (August 1980).

The Ministry of Finance have accepted the facts as substantially correct (December 1980).

2.67 *Arrears of Union Excise duties**

The total amount of demands outstanding without recovery on 31st March 1980 in respect of Union Excise duties as reported

*Figures (provisional) intimated by the Ministry of Finance in December 1980 and January 1981.

by the Ministry of Finance was Rs. 17,765.47 lakhs as per details given below :—

Commodity	Amount (In lakhs of rupees)
Unmanufactured tobacco	1,078.47
Motor spirit including raw naphtha	1,856.05
Refined diesel oil	194.37
Paper	703.98
Rayon yarn	379.60
Cotton fabrics	703.31
Iron or steel products	1,192.67
Tin plates	30.69
Refrigerating and air conditioning appliances	511.73
All other items	11,114.60
TOTAL	17,765.47

2.68 Remissions and abandonment of claims to revenue*

The total amount remitted, abandoned or written off during 1979-80 was stated by the Ministry of Finance to be Rs. 20,39,887.* The reasons for remissions and writes off were stated to be as follows :—

	Number of cases	Amount Rs.
I. Remissions of revenue due to loss by :		
(a) Fire	810	9,66,611
(b) Flood	12	23,399
(c) Theft	2	1,035
(d) Other reasons	74	2,68,181
II. Abandoned or written off on account of :		
(a) Assesseees having died leaving behind no assets	181	2,98,892
(b) Assesseees being untraceable	289	47,090
(c) Assesseees having left India	2	1,812
(d) Assesseees being alive but incapable of payment of duty	893	3,51,703
(e) Other reasons	40	81,164

*Figures (provisional) intimated by the Ministry of Finance in December 1980

2.69 *Frauds and evasions**

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

1. Number of offences under the Central Excise Law prosecuted in courts	99
2. Number of cases resulting in convictions	33
	Rs.
3. Value of goods seized including value of transportation	6,13,81,071
4. Value of goods confiscated	1,82,71,583
5. Value of penalties imposed	1,80,85,507
6. Amount of duty assessed to be paid in respect of goods confiscated	1,23,78,416
7. Amount of fine adjudged in lieu of confiscation	40,87,466
8. Amount settled in composition	30,610
9. Value of goods destroyed after confiscation	44,690
10. Value of goods sold after confiscation	2,64,491

*Figures relating to nineteen collectorates intimated by the Ministry of Finance in January 1981.

CHAPTER 3

OTHER REVENUE RECEIPTS

MINISTRY OF HOME AFFAIRS

Receipts of the Union Territory of Delhi

SECTION 'A'

GENERAL

3.01 Variations between Budget estimates and actuals

The figures of Budget estimates and actuals for the three years 1977-78 to 1979-80 in respect of some of the principal sources of revenue receipts are given below to show the variation and its magnitude in each case :—

Principal source of revenue	Year	Budget estimates (in crores of rupees)	Actuals	Variations (+)Increase (-)Decrease	Percentage of variation
Sales Tax	1977-78	94.85	95.25	(+)0.40	0.42
	1978-79	106.01	106.29	(+)0.28	0.26
	1979-80	109.71	121.32	(+)11.61	10.58
State Excise	1977-78	18.25	23.15	(+)4.90	26.85
	1978-79	22.71	19.75	(-)2.96	13.00
	1979-80	10.62	29.10	(+)18.48	174.01
Taxes on vehicles	1977-78	4.55	4.39	(-)0.16	3.51
	1978-79	4.55	4.94	(+)0.39	8.57
	1979-80	5.05	5.28	(+)0.23	4.55
Stamps and Registration Fees	1977-78	3.59	4.49	(+)0.90	25.00
	1978-79	4.62	3.11	(-)1.51	32.68
	1979-80	4.48	6.11	(+)1.63	36.40
Entertainment Tax	1977-78	4.61	4.70	(+)0.09	1.95
	1978-79	4.86	4.98	(+)0.12	2.47
	1979-80	4.94	6.70	(+)1.76	35.63

(Figures are as furnished by the departments)

Reasons for the variation in respect of Sales Tax, State Excise, Stamps and Registration Fees and Entertainment Tax are as under :—

1. Sales Tax : Increase is attributed to actual trend of receipts.
2. State Excise . Due to non-implementation of the prohibition policy originally contemplated and recovery of arrears.
3. Stamps and Registration Fees : Increase due to increase in litigation.
4. Entertainment Tax : Increase due to enhancement of rates and opening of new cinemas.

3.02 Arrears in Assessments (Sales Tax)

On 31st March, 1980, the number of cases pending both under the Delhi Sales Tax Act, and Central Sales Tax Acts were 3,17,098 against 2,51,578 cases at the end of the year 1977-78 and 2,94,698 cases at the end of the year 1978-79. The position regarding pendency of assessments for the three years ending March, 1980 is indicated below :—

Year	As on 31-3-1978			As on 31-3-1979			As on 31-3-1980		
	Local	Central	Total	Local	Central	Total	Local	Central	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1974-75	28,703	26,054	54,757						
1975-76	48,893	43,797	92,690	41,446	37,997	79,443			
1976-77	55,569	48,562	1,04,131	51,802	46,035	97,837	50,218	44,995	95,213
1977-78 . . . . .	..	..	..	62,363	55,055	1,17,418	56,306	51,451	1,07,757
1978-79 . . . . .	..	..	..	..	..	..	60,146	53,982	1,14,128
TOTAL	1,33,165	1,18,413	2,51,578	1,55,611	1,39,087	2,94,698	1,66,670	1,50,428	3,17,098

3.03 Frauds and evasion (Sales Tax) during 1979-80

	Non-registered dealers	Concealment/ evasions by registered dealers	Total
(a) Number of cases pending on 31st March 1979	8544	Nil	8544
(b) Number of cases detected during the year 1979-80	1796	Nil	1796
TOTAL:	10340	Nil	10340
(c) Number of cases in which assessments were completed			
(i) Out of cases detected prior to 1st April 1980	2758	Nil	2758
(ii) Out of cases detected during the year 1979-80	157	Nil	157
TOTAL	2915	Nil	2915
(d) Number of cases pending on 31st March 1980	7425	Nil	7425
(e) Amount of concealed turnover and amount of tax raised in cases mentioned at (c) above			
Concealed turnover (Rs. in lakhs)	639.44	Nil	639.44
Tax demand raised (Rs. in lakhs)	14.69	Nil	14.69

There was no case of imposition of penalty, prosecution and composition of offence.

(Figures as furnished by the department)

(c) The total number of cases in which tax demands were reduced/enhanced or which were remanded for fresh assessment or dismissed/rejected during the year 1979-80 is indicated below :—

(i) Number of cases in which demands were reduced	6
(ii) Number of cases in which demands were enhanced	1057
(iii) Number of cases remanded	1538
(iv) Number of cases dismissed/rejected	1409
	<hr/>
	4010
	<hr/>
Total number of cases/disposed of during the year 1979-80	4010
(d) Number of appeals/revision petitions/review applications pending as on 31st March 1980.	5477

The yearwise break-up of the pending appeals/revision petitions/review applications is given below :—

Year	Number of appeals review applications and revision petitions pending
1974-75	5
1975-76	7
1976-77	61
1977-78	190
1978-79	1796
1979-80	3418
	<hr/>
	5477

(Figures as furnished by the department)

The Ministry, while confirming the under assessment stated (November 1980) that necessary recovery certificate has also been issued. Report regarding recovery is awaited (November 1980).

3.07 *Under assessment of Central Sales Tax due to incorrect levy of tax at a concessional rate*

Inter-State sales to registered dealers are liable to tax at a concessional rate of 4 per cent if such sales are supported by valid declarations in form "C" from the purchasing parties. From 21st October, 1975, the Central Government, by a notification reduced the rate of tax from 4 per cent to 2 per cent in respect of inter-State sales of goods, other than the goods specified in the First Schedule to the Delhi Sales Tax Act, 1975, provided the goods were sold to registered dealers outside the Union Territory of Delhi and the sales related to goods which had already been subjected to tax under the Central Sales Tax Act at the time of their import into the Union Territory and were re-exported without undergoing any processing or change in identity.

"Laminated sheets" are included in the first Schedule and were, therefore, not entitled to the concessional rate of tax of 2 per cent. It was, however, noticed in audit (May 1980) that in one case, inter-State sales of 'laminated sheets' amounting to Rs. 13,99,616 effected from 21st October 1975 to 31st March 1977 were assessed (March 1978 and May 1978) at the concessional rate of 2 per cent as claimed by the dealer in his returns. This resulted in under-assessment of tax of Rs. 27,992.

It was further observed that the dealer continued to deposit tax at the rate of 2 per cent on his turnover of laminated sheets during the period April 1977 to December 1979. The short remittance of tax of Rs. 66,696 calculated on the basis of quarterly returns filed by the dealer also remained undetected by the department.

of tax on sales made to the Ministry of Defence and its subordinate offices for official use on production of prescribed certificates duly signed and authenticated by the authorised officer of the Ministry or its subordinate office, as the case may be.

In the course of audit it was noticed (October 1978) that during the year 1973-74, a dealer was allowed exemption from tax on sales amounting to Rs. 2,74,187 on the basis of spare or duplicate copies of such prescribed certificates which contained interpolations in the amounts and against which exemptions had already been granted in respect of the amounts stated in the original certificates. It was further noticed that exemption from tax was also allowed on sales of Rs. 98,534 not supported by the prescribed certificates while sales worth Rs. 18,287 although not included in the gross sales, were exempted from tax. Thus, the taxable turnover amounting to Rs. 3,91,008 escaped levy of tax amounting to Rs. 35,191.

On this being pointed out in audit (November 1978), the department lodged a report against the dealer with the Police under Sections 463 and 465 of the Indian Penal Code and Section 195 of the Criminal Procedure Code as also for any other offences found to have been committed by him, which might be observed during investigations. In so far as offences under the Delhi Sales Tax Act are concerned, a composition fee of Rs. 40,000 was levied against the dealer which has since been realised (November 1979).

The Ministry to whom the matter was reported in June 1980 has accepted the factual position (November 1980).

3.10 *Loss of revenue due to registration of a bogus dealer by accepting false surety*

Under the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi upto 20th October 1975 and the Central Sales Tax Act, 1956, a dealer seeking registration may be required to furnish a security upto an amount and in the manner

of tax on sales made to the Ministry of Defence and its subordinate offices for official use on production of prescribed certificates duly signed and authenticated by the authorised officer of the Ministry or its subordinate office, as the case may be.

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The matter was reported to the Ministry in October 1980. The Ministry while confirming the raising of additional demand of Rs. 1,12,830 (Rs. 70,142 under local Act and Rs. 42,688 under Central Act) stated that the concerned assessing authority has been warned and recovery proceedings were being initiated against the dealer. Further report is awaited (November 1980).

3.11 *Non-levy of interest on belated payments and irregular grant of instalments*

The Delhi Sales Tax Act, 1975 requires every registered dealer to pay sales tax on the basis of self assessment before the dates of submission of the prescribed returns and to furnish with it, proof of such payment. The Commissioner is, however, authorised, for reasons to be recorded in writing on an application made by a dealer before the due date for payment, to allow payment of tax in instalments subject to such conditions as he may deem fit to impose. But in case of a default in paying any of the instalments within the time fixed by the Commissioner, the dealer shall be deemed to be in default in respect of the whole amount then outstanding and the other instalment(s) shall be deemed to have become due on the same date as applicable to the instalment in actual default. Under the Act the levy of interest on belated payments is also mandatory.

In the course of audit it was noticed (February 1979 and March 1979) that two dealers in wine were registered with dates of liability as 23rd April 1977 and 4th April 1978, respectively. Monthly returns were also prescribed for them. Both the dealers defaulted in the submission of returns and payments of tax for the years 1977-78 and 1978-79, respectively. In both the cases, the Commissioner of Sales Tax granted permission to pay tax in instalments despite the fact that the applications for such permission were received after the due dates. No reasons were recorded for allowing payments in instalments, as required under the Act. Further, no interest was levied on the belated payments and unpaid amounts. Neither of the dealers, however, paid tax as per prescribed instalments.

One of the dealers who owed Rs. 4,02,712 gave post-dated cheques which were dishonoured by his bankers. Except for asking him (November 1978) to produce proof of having paid the instalments, no other legal action was taken to recover the dues. Action to levy and collect interest of Rs. 78,856 due thereon till the time of audit (February 1979) was also not initiated. In the case of the second dealer the interest leviable for belated payment of tax upto January 1979 was also not charged. On this being pointed out in audit (March 1979) the department levied interest (April 1979) of Rs. 27,807 against the dealer.

The matter was reported to the Ministry in November 1980; reply is awaited.

3.12 Working of the Recovery Branch of Sales Tax Department

3.12.1 Introduction

Sales Tax is levied and collected under the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi (Upto 20th October 1975) and the Delhi Sales Tax Act, 1975 and the Rules made thereunder. While pre-assessment collection is made on the basis of self-assessment as per the returns furnished by the dealer along with the receipted treasury challans, the post assessment collection is made on the basis of demand notice issued by the department. The assessed tax for which a demand notice is issued is payable within 30 days from the date of service of the notice. If the Sales Tax dues (including interest, penalty and composition fee) are not paid within the time specified in the demand notice or within the extended time, the uncollected amount in such cases can be recovered as arrears of land revenue under the Delhi Land Reforms Act, 1954.

3.12.2 Organisation of the Recovery Branch

(i) The work connected with the recovery of arrears of Sales Tax was transferred from the administrative control of the Deputy Commissioner, Delhi, to the Commissioner of Sales Tax with effect from October, 1963. The work was actually entrusted to

a Recovery Branch created within the Sales Tax Department under an Assistant Commissioner of Sales Tax. The Recovery Branch was vested with powers of the certificate court. The number of officers and staff actually deployed in the Recovery Branch, as furnished by the department (October 1980) is indicated below :—

Nature of the post	Number (position as on 1-1-80)
Assistant Commissioner	1
Assistant Sales Tax Officer (known as Assistant Collector)	3
Inspectors	6
Upper Division Clerks	7
Lower Division Clerks	6
Stenographers	2
Bailiffs	10

(ii) It was noticed that there were no definite plans and programmes to collect the dues in-as-much as no targets for disposal of certificate cases and amounts of collection had been fixed by the department from time to time. Consequently, the efficacy of the functioning of the Recovery Branch could not be assessed in audit (October 1980).

On this being pointed out in audit (July 1980), the department stated (October 1980) that "in view of the departmental machinery and limited transport facilities" tentative targets were fixed and concerted efforts were made to achieve them. But neither the figures of even tentative targets nor the achievements thereagainst could be furnished (October 1980) to audit for the year 1979-80.

(iii) It was also noticed in audit that even though more than 16 years had passed since its creation in 1963, the procedure to be followed in the Recovery Branch, instructions and guidelines issued by the authorities, from time to time had not been manualised. In the absence of a manual it is hardly possible to devise systematic plans in streamlining the procedure and techniques of recovery.

(iv) The working of the Recovery Branch was also not subjected to internal audit by the Sales Tax Department. As the audit conducted by the statutory Audit is only a test audit, an effective internal audit of the Recovery Branch is essential to tone up the administration of the Recovery Branch and to plug the loopholes in the recovery work.

3.12.3 Procedure for recovery

When the Sales Tax dues are not collected under the provisions of the normal rules, the Sales Tax Officer is required to issue a recovery certificate in the prescribed form to the Recovery Branch furnishing *inter alia* full details of the amount to be recovered. On receipt of recovery certificates in the Recovery Branch, the cases are entered in a register and separate case file is opened for each case. Thereafter, a notice for the payment of demand is issued to the defaulting dealer to make payment in a specified period. If the defaulter fails to make payment within the notice period, the Recovery Branch proceeds to recover the amount *inter alia* by attachment and sale of his movable/immovable property, including arresting and detaining him in civil prison. After effecting the recovery, the recovery certificate is returned to the Sales Tax Officer who issued it with details of recovery.

3.12.4 Recovery certificates missing—Defects in the procedure

Immediately after the issue of the recovery certificate, further actions on it rest with the Recovery Branch. It is, therefore, essential that all such certificates issued by the Sales Tax Officer are duly acknowledged by the Recovery Branch.

In the course of audit (July 1980 to October 1980) of the Recovery Branch for the year 1979-80, it was noticed and confirmed by the department that there was no system of acknowledging the receipt of recovery certificates. Receipt of 19 recovery

certificates issued by three Sales Tax Officers involving Rs. 41,518 in the aggregate had not been acknowledged by the Recovery Branch. Consequently, no action to effect recovery in these cases had been taken either by the Sales Tax Officers or by the Recovery Branch. Evidently, in the absence of any system of issuing acknowledgements, the Sales Tax Department could hardly ensure that (i) all cases for which recovery certificates were issued had actually reached the Recovery Branch and (ii) all cases actually received in the Recovery Branch were entered in the register for further action.

3.12.5 *Trend of actual recovery and disposal of revenue recovery cases*

The total number of revenue recovery cases received and disposed of by the Recovery Branch for the three years ending March 1980 as furnished by the department is given in Annexure 'A' to indicate *inter-alia* the magnitude of the disposal by non-recovery.

It would be evident from the said table that while pendency both in terms of number and recoverable amount had increased considerably, the number of recovery certificates received in the Recovery Branch had decreased. The gradual decrease in the receipt of recovery certificates could be attributed to belated issue of recovery certificates by the Sales Tax Officers.

3.12.6 *Delay in issuing recovery certificates*

Belated issue of recovery certificates by the Sales Tax Officers often adversely affects the recovery of the dues as the delay indirectly gives an opportunity to the defaulter to avoid recovery proceedings by disposal of his assets, in the meanwhile.

In the course of test check of 125 cases, it was noticed (July, October 1980) that 75 certificate cases for Rs. 10.38 lakhs

were issued late by the Sales Tax Officers. The extent of delay ranged between 6 months and 8 years as indicated below :—

Extent of delay	Number of cases	Amount (In Lakhs of rupees)
Between 6 months and 1 year	15	1.10
Between 1 year to 2 years	22	5.77
Between 2 years to 3 years	13	2.61
Between 3 years to 5 years	11	0.67
More than 5 years	14	0.23
	75	10.38

3.12.7 Cases involving petty amounts

Sales Tax Officers in the Union Territory of Delhi are not empowered to write-off amounts of out-standing arrears, however, small the amount may be. Some instances of petty amounts (ranging from Rs. 1.75 to 35.56) referred to the Recovery Branch for collection as arrears of land revenue in other States were noticed. The actual number of such cases involving petty amounts included in the total pending cases of 5140 referred to in Paragraph 3.12.5 above could not, however, be ascertained in audit.

3.12.8 A test check of the case records of the Recovery Branch indicated that its workings was constrained by administrative delays and information deficiencies as indicated in the following sub-paragraphs :—

(A) Administrative delays

(i) Delay in initiating action in the Recovery Branch

On receipt of a recovery certificate the Recovery Branch is required to initiate immediate steps to recover the uncollected amount by issuing a demand notice to certificate debtor. The process of recovery by the Recovery Branch is set into motion by the service of the initial notice.

In the course of audit for the year 1979-80 it was noticed that in 30 cases involving arrears amounting to Rs. 2.75 lakhs no action had been taken by the Recovery Branch for a considerable period ranging between 6 months and 39 months till the date of audit (July—October 1980).

(ii) *Delay in executing the orders of higher authorities*

Increase in the pendency of cases in the Recovery Branch could also be attributed to belated implementation of the orders given by the competent authorities. Some such cases where orders were not complied with till the date of audit are indicated below by way of illustration.

Certificate/ Case Number.	Ward	Amount covered by the Certificate	Date of order & name of the authority who passed the order	Substance of the order	Date of test audit upto which orders not complied with
18956/73-74(L)} 15583/73-74(C)}	23	Rs. 13,596	26-10-78 Asstt. CST (Recovery)	To attach the property	4-10-1980
26478/74-75	21	9,34,740	21-3-80 AC(R)	To put up the file to him for further orders	4-10-1980
Penalty /66-67} /67-68} /68-69}	23	68,140	13-2-76 Asstt. CST (Recovery)	Value of the property might be ascertained from Delhi Develop- ment Authority.	4-10-1980
21211/73-74(L)} 17188/73-74(C)}	14	22,313	27-12-79 Asstt. CST (Recovery)	To contact partner.	24-9-1980

(iii) After the issue of the revenue recovery certificates for effecting recoveries in other States, the cases are to be properly pursued till finally disposed of by the concerned Collector of the States. It was, however, noticed in audit that as many as 27 cases (including 6 cases exceeding Rs. 1 lakh each) involving a total amount of Rs. 22,41,691 had not been pursued at all for years together.

(B) Information deficiencies

Delay in furnishing the information to the Recovery Branch

For the efficient functioning of the Recovery Branch there should be close co-ordination between the Recovery Branch and the Sales Tax Officers of the Wards. In the course of audit it was noticed (July—October 1980) that there was no effective co-ordination between the Sales Tax Officers and the Recovery Branch. Often Sales Tax Officers did not furnish the complete information about the Certificate debtor, the period for which the demand was due, etc. Sometimes even on a reference from the Recovery Branch, the information was either not furnished or furnished very late. Owing to lack of effective co-ordination there was delay in inflow of information. Consequently, the progress of recovery was hampered as the certificate debtor gets an opportunity to circumvent the recovery proceedings in various ways. A few instances in which information was not furnished by the Sales Tax Officers upto the date of audit are cited below :—

Sl. No.	Certificate number	Amount covered by the Certificate Rs.	Date of last reference to the Sales Tax Officer	Date upto which reply had not reached recovery branch
1.	Nil/1960-61 to 1970-71 .	109,730	12-5-1980	1-10-1980
2.	Nil/1972-73 . . .	7,135	16-2-1980	21-9-1980
3.	19884/73-74 . . .	6,741	29-5-1980	19-9-1980
4.	1581/71-72 (c) . . .	6,926	30-5-1980	19-9-1980

3.12.9 Analysis of Recovery certificates returned to the Wards without effecting recovery.

A test check of the records of 25 Wards (out of 50 Wards) revealed that during the year 1979-80 the Recovery Branch returned to the Wards 700 recovery certificates involving Rs. 193.51 lakhs without effecting any recovery as per details given below :

Reasons for returning the cases	No. of cases	Amount (in lakhs of rupees)
1. Cases remanded	50	16.35
2. Collection stayed	307	56.94
3. Cases under rectification	82	7.68
4. Revised Revenue Recovery Certificates to be issued for effecting recovery outside the Union Territory of Delhi.	89	71.86
5. Firms under liquidation	14	8.07
6. Dealers not traceable	85	18.92
7. Miscellaneous	73	13.69
	<hr/>	<hr/>
	700	193.51
	<hr/>	<hr/>

Yearwise break up of these cases is given below :—

Year	Number of cases	Amount (in lakhs of rupees)
From 1961 to 1970	24	3.50
1970-71	16	2.89
1971-72	30	2.25
1971-72	63	8.90
1972-73	109	53.99
1973-74	316	98.34
1974-75	92	10.28
1975-76	18	3.18
1976-77	17	6.36
1977-78	5	0.18
1978-79	3	0.19
1979-80	7	3.45
Year not specified	<hr/>	<hr/>
	700	193.51
	<hr/>	<hr/>

It would be evident from the aforesaid table that out of 700 cases returned to the Ward by the Recovery Branch 24 cases were more than a decade old. The cases were, apparently, not reviewed periodically to locate the reasons for non-disposal of a case for a long time.

3.12.10 *Delay in issuing revised revenue recovery certificates for effecting recovery in other States.*

As per the practice obtaining at present the Recovery Branch does not watch the progress of recovery in respect of certificate cases returned to the Ward and these cases are scored through from the Register of the Recovery Branch. Obviously, further action in respect of these cases rests with the Sales Tax Officer who issued the original recovery certificate.

In the course of audit it was noticed that no system had been evolved to ensure that revised recovery certificates were issued promptly in all cases where the recoveries were to be effected from the properties of the defaulter situated outside the Union Territory of Delhi. While correlating the returned recovery certificates with the records of the Wards, it was noticed in audit (July 1980 to October 1980) that in 18 such cases involving total amount of Rs. 41.85 lakhs, action had not been taken. Out of the above, one case of recovery certificate for Rs. 9.55 lakhs was pending in the Ward from January 1980 to October 1980 (date of audit) and another case involving Rs. 3.08 lakhs was pending from December 1979 to July 1980 (date of audit); two recovery cases for a sum of Rs. 32.02 lakhs were also pending from February 1980 to October 1980 (date of audit).

3.12.11 *Unrealisable arrears*

(a) It was noticed in audit that the Recovery Branch had satisfied itself that during the last 3 years ending 31-3-1980 in 2364 certificate cases the amount of outstanding Sales Tax of Rs. 210.88 lakhs could not be recovered from the dealers who were either untraceable or assetless. An illustrative list of 21 cases involving Rs. 106.95 lakhs which were returned unexecuted to

the Assistant Commissioner, Recovery Branch, by the Collectors of other States is given in Annexure 'B'. Evidently, the entire amount had become unrealisable.

(b) In the course of review of some of the returned recovery cases it was noticed that the amounts had become irrecoverable mainly due to delay and deficiencies in the procedures. A few illustrative cases are cited below :

I. A firm was registered as a dealer on 27th December 1971 on furnishing cash security of Rs. 500 only as a condition for issuing the registration certificate. The firm collected registration certificate on 10th January 1972. But after registration the firm had neither submitted any return nor paid any tax on the basis of self-assessment. Survey conducted by the department on 26th September 1972 revealed that the firm had closed the factory a month earlier. No action had been taken on this survey report for about 3 years. However, a show cause notice was issued to the firm on 18th August 1975. The registration certificate of the dealer was cancelled with effect from 1st April 1976. A further survey conducted on 6th March 1976 revealed that the firm had removed goods and machinery from the business premises. Finally, assessments for the year 1971-72 to 1974-75 were made *ex-parte* between March 1976 and November 1978, raising a tax demand of Rs. 4.93 lakhs in the aggregate and recovery certificates were also issued to recover the amount.

The certificates were returned by the Recovery Branch to the Sales Tax Officer without effecting any recovery as the partners were not traceable. The amount had thus, become irrecoverable. In this case—

No action had been taken by the department when the dealer defaulted persistently to furnish the prescribed quarterly returns from the beginning. Evidently timely receipt of the returns from all the registered dealers was not properly watched and remedial action was not taken promptly.

No follow-up action had also been taken on the results of the first survey conducted on 26th September 1972, for about 3 years. There was apparently, no effective system to ensure proper pursuance of the survey reports.

The assessments for the years 1971-72 and 1972-73 had been finalised at the fag end of the year on 30-3-1976 and 19-3-1977 just before their becoming time barred on 31st March 1976 and 1977, respectively. Abnormal delay in assessment and consequent delay in issuing the recovery certificates had also helped the dealer to remove his goods and machinery from the business premises, prior to 6th March 1976.

II. A partnership firm was registered as a dealer under the Local and Central Sales Tax Acts on 10th August 1973 with 5th February 1973 as date of liability. The dealer furnished a surety bond of Rs. 5,000 and a cash surety of Rs. 500 as a condition for registration. The firm defaulted in filing returns after 30th September 1974 but no penal measures were initiated for the failure to submit returns and to pay tax on the basis of self-assessment as per returns. Even enquiries were not made by issue of show cause notice or otherwise to ascertain the reasons for non-submission of returns. Instead, five 'C' Forms were issued to the dealer on 24th February 1975 for making purchases outside the Union Territory of Delhi at concessional rates.

A News item dated 1st April 1975 in a local paper about evasion of tax to the extent of Rs. 10.5 lakhs by this firm prompted the department for the first time to make enquiries about the dealer. The Special Investigation Branch of the Sales Tax Department conducted enquiries on 10th June 1975 and found that the dealer had closed the business in the declared premises. The registration certificate of the dealer was cancelled with effect from 18th June 1975. The assessments for the years 1972, 1973-74 and 1974-75 were made *ex-parte* in January 1977, April 1978 and 1979, respectively, raising a tax demand of Rs. 18.55 lakhs in the aggregate. The recovery certificates issued by the

Sales Tax Officer for the collection of the dues were returned on 29-4-1980 by the Collector unexecuted with the remarks that the firm had closed its business and the partners were not traceable at the addresses given in the recovery certificate. The surety bond reported to have been filed was not also available in the relevant Sales Tax Ward and the partners had no immovable asset.

From the Special Investigation Branch report dated 16th April 1975 it was, however, noticed that the partners were available for detention or otherwise till April 1975.

The following lapses contributed to this loss of revenue :

- (i) The department had not taken any cognisance of the dealer's default in submitting returns and payment of taxes.
- (ii) The issue of 'C' Forms to a defaulting dealer was irregular.
- (iii) Even after the first enquiry report of 10th June 1975, the department had taken 18 months to complete the *ex-parte* assessment for the year 1972-73 on 15th January 1977.

Thus, inaction and delay at various stages had helped the dealer to circumvent the recovery proceedings.

3.12.12 *To sum up, the review highlights the following deficiencies and irregularities :—*

(i) Ever since the creation of the Recovery Branch in October 1963, no definite plans and programmes to collect the dues from the defaulters had been formulated and even the procedures to be followed and guidelines issued from time to time had not been manualised. The internal audit wing of the department did not also conduct audit of the Recovery Branch.

(ii) No system had been evolved to acknowledge the receipt of recovery certificates ; consequently, some recovery certificates were missing.

(iii) The working of the Recovery Branch was marked by administrative delays and procedural deficiencies.

(iv) The Recovery Branch had satisfied itself that in 2364 cases Rs. 210.88 lakhs could not be recovered as the dealers were either untraceable or assetless. The amount had become irrecoverable mainly due to delay at various stages and deficiencies in the system to follow up survey reports, to watch timely receipt of returns, etc.

The points contained in the above review were brought to the notice of the department/Ministry (November 1980) ; reply is awaited.

SECTION 'C'

STATE EXCISE

3.13 *Non-levy and non-collection of interest from excise licensees*

In the Union Territory of Delhi the levy and collection of state excise duties are regulated by the Punjab Excise Act, 1914. The terms and conditions of the grant of different types of licences issued under the Delhi Liquor Licence Rules 1976 framed under that Act for the year 1978-79 are listed below :—

Name of Licences	Dealing with	Payments required to be made	Brief conditions of payment
L.1	Wholesale vend of India made foreign liquor	(i) Licence Fee	12½ per cent of bid money immediately on conclusion of auction and the balance in 9 equated monthly instalments payable on 7th of each month.
		(ii) Excise duty	Collected in advance at the time of issue of permit
L.2	Retail vend of Indian made foreign liquor	(i) Licence fee	As above.
		(ii) Assessed fee	Payable monthly on 10th of the following month.
L.4	Retail vend of Beer	(i) Licence fee	As above.
		(ii) Assessed fee	Payable monthly on 10th of the following month.
L.10	Retail vend of country liquor	(i) Licence fee	As above.
		(ii) Excise duty	Collected in advance at the time of issue of permit.

For the year 1978-79, 52 licences for wholesale and retail vend of Indian made foreign liquor, beer and country liquor were auctioned by the Collector of Excise between 21st March 1978 and 29th March 1978 after publication of the terms and conditions of the auction on 9th March 1978. On due fulfilment of the prescribed conditions, 52 licensees (L. 1—14, L. 2—25, L. 4-3, L. 10-10) were issued licences for the year 1978-79 and all of them carried on liquor trade for the full tenure of the licences.

Some licensees, however, filed writ petitions in April 1978 in the Delhi High Court praying for proportionate deduction of licence fee and assessed fee owing to declaration of 111 dry days for the year 1978-79 (by a notification issued on 31st March 1978). These petitions were dismissed (March 1979).

The validity of the levy of excise duty was also challenged. The challenge was upheld by the High Court. The Punjab Excise Act, 1914, as extended to the Union Territory of Delhi was amended on 20th January 1979 by the Punjab Excise (Delhi Amendment Ordinance 1979) to get over the High Court Order and levy excise duty in the form of special duty. The challenge to this ordinance failed in the Supreme Court (April 1979).

The Delhi High Court had passed interim orders staying the collection of licence fee to the extent of 40 per cent and of excise duty and assessed fee, to the extent of 50 per cent of the amount due from the various licensees. The stay was subject to the condition that the licensees should secure full payment of the unpaid amount by furnishing bank guarantees to the satisfaction of the Excise Commissioner.

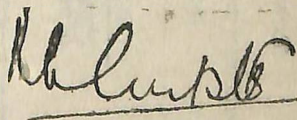
In terms of the conditions of auction, duty accepted by bidders, interest at the rate of 1.5 per cent per month for the belated payment of the withheld dues was payable. It was

In the course of audit, it was noticed that during the year 1977-78, a licensee dealing in Indian made foreign liquor defaulted in making payment of the assessed fee for the period from 1-12-1977 to 16-12-1977. The sale and stock registers of the licensee were stated to be in the possession of the department in connection with an inquiry and in the absence of these records the licensee could not calculate and deposit the fees due for the aforesaid period.

The department, however, neither intimated the licensee the amount of assessed fee due from him for the aforesaid period nor initiated any action to recover the same.

On this being pointed out in audit (May 1979), the department stated (January 1980) that assessment fee amounting to Rs. 51,352 and interest of Rs. 18,487 payable for the period of default were due from the licensee and these demands had been adjusted against the advance assessment fee of Rs. 64,000 and the security deposit of Rs. 10,000 paid by the concerned licensee.

The Ministry of Home Affairs have confirmed the above facts (February 1980).



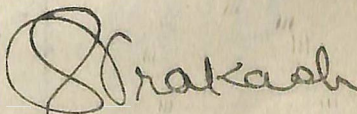
(R. S. GUPTA)

Director of Receipt Audit

New Delhi,

The 21-2, 1981

Countersigned.



(GIAN PRAKASH)

New Delhi,

The 21-2, 1981.

Comptroller and Auditor General of India

ANNEXURE 'A'

(Referred to in paragraph 3.12.5)

Position of recovery certificates pending with the Sales Tax Department during the last three years ending 31-3-1980

Sl. No.	1977-78		1978-79		1979-80		
	Number of cases	Amount (in lakhs of rupees)	Number of cases	Amount (in lakhs of rupees)	Number of cases	Amount (in lakhs of rupees)	
1	2	3	4	5	6	7	8
1.	Number of cases pending on 1st April.	1779	78.03	1334	68.00	3312	140.48
2.	Number of cases received during the year	8708	584.74	8644	515.38	7589	608.79
3.	Number of cases returned after recovery of tax during the year	5624	162.87	4647	171.95	3909	157.48
4.	Number of cases returned without effecting recovery of tax for various reasons	3529	431.90	2019	270.95	1167	259.79
5.	Total number of cases pending at the close of the year	1334	68.00	3312	140.48	5825	332.00

ANNEXURE 'B'

(Referred to in para 3.12.11(a))

Statement of Revenue Recovery Certificates received back unexecuted from the Collectors of other States by the Assistant Commissioner (Recovery Branch) and returned to the Sales Tax Officers

S. No.	Recovery Certificate No. & Date of issue	Year of Assessment	Amount Rs.	Remarks
(1)	(2)	(3)	(4)	(5)
1.	2239 dated 14-10-1968	1962-63	2,33,922	Papers in original returned to the ward on 12-8-1970 as the firm was reported to be under liquidation by the Tehsildar Ghaziabad, Meerut (U.P.).
2.	67013 dated 9-1-1968	1952-53 to 1954-55	12,891 1,29,843 2,01,481	Report called for from Collector, Amritsar on 18-8-75. Further development awaited (October, 1980)
3.	2246-47 & 2278, 2280-81 dt. 15-10-68	1965 -66 to 1967-68	16,26,034	Since received back from the Collector Gurgaon and returned to the Sales Tax Officer in original.
4.	481, 83, 85, 87 dt. 17-10-73 215-16 dt. 31-5-1974	1967-68 to 1968-69 1969-70	1,95,420 2,52,798	Received back unexecuted and returned to ward on 29-10-1976.
5.	918 to 943 dated 21-1-74	1967-68 to 1973-74	18,62,377	Returned unexecuted from the Collector Bombay and returned to Ward on 30-12-1975
6.	431-38 dated 29-9-1973	1964-65 to 1968-69	5,66,233	Received back from the Collector Chandigarh and returned to the Sales Tax Officer on 8-10-1975 and again sent to the Collector Gurgaon on 5-12-1975 but received back unexecuted and returned to the Sales Tax Officer on 8-11-1976.

1	2	3	4	5
7.	1188—1202 dated 12-3-1974	1964-65 to 1968-69	5,66,233	Received back from the Collector, Roper and returned to the Sales Tax Officer on 9-4-1979.
8.	209-10 dated 22-5-1974	1969-70	5,51,556	Received back from the Collector, Kapurthala and returned to the Sales Tax Officer on 22-8-1974.
9.	736 & 39 dated 9-9-1974	1968-69 to 1969-70	98,835	Received back from the Collector, Mohinder Garh and returned to the Sales Tax Officer on 5-10-1974 and simultaneously sent to the Collector, Ferozepur and received back unexecuted and returned to Sales Tax Officer on 22-11-1974.
10.	1266 dated 19-12-1979	1972-73	1,38,735	Received back from the Collector, Sangrur and returned to the Sales Tax Officer on 17-3-1976.
11.	1257 dated 19-12-1974	1973-74	1,35,000	Returned to the Ward 19 on 6-5-1975 On return from the Collector, Meerut (U.P.).
12.	1385, 89, 87, 91 dated 20-1-1975	1968-69 to 1969-70	1,67,846	Received back from the Collector, Jullundur and returned to the Sales Tax Officer on 27-5-1975.
13.	1490, 87, 96, 93 dated 30-1-1975	1971-72 & 1973-74	8,15,770	Received unexecuted and returned to Sales Tax Officer on 25-2-1976.
14.	2023 dated 6-5-1975	1970-71	3,73,426	Returned unexecuted by the Collector Bombay and returned to the Sales Tax Officer on 29-10-1976.

15. 2271 dated 3-7-1975	1970-71	6,17,000	Returned unexecuted by the Collector, Kapurthala Punjab and returned to the Ward on 1-11-1975 and 30-12-1975 respectively.
16. 2288, 90, 92, 94 dated 9-7-1975.	1968-69 to 1970-71	4,63,717	The party requested to defer the payment which the Collector, Hyderabad, refused and returned the case. The Sales Tax Officer was informed accordingly on 22-10-1975. Further action awaited (October, 1980).
17. 1636, 38, 42, 40, & 44 dated 3-6-1978	1971-72	3,09,127	Received back unexecuted and sent to the Sales Tax Officer on 7-4-1979.
18. 689, 91 dated 8-7-1976	1971-72	4,09,153	Received back unexecuted and returned to the Sales Tax Officer on 29-10-1976.
19. 800, 802 dated 15-7-1976	1971-72	1,34,456	Received back unexecuted and returned to the Ward on 9-9-1976.
20. 1151—53 dated 23-8-1976	1954-55 & 1955-56	1,71,956	Received unexecuted and returned to the Ward on 10-11-1976.
21. 1239 to 49 dt. 1-9-1976	1971-72 to 1973-74	6,61,692	Received back unexecuted and returned to the Ward on 20-12-1976.
TOTAL		106,95,501	

Price: Indian Rs. 21.00
Foreign: £ 2.45 or \$ 7.50

