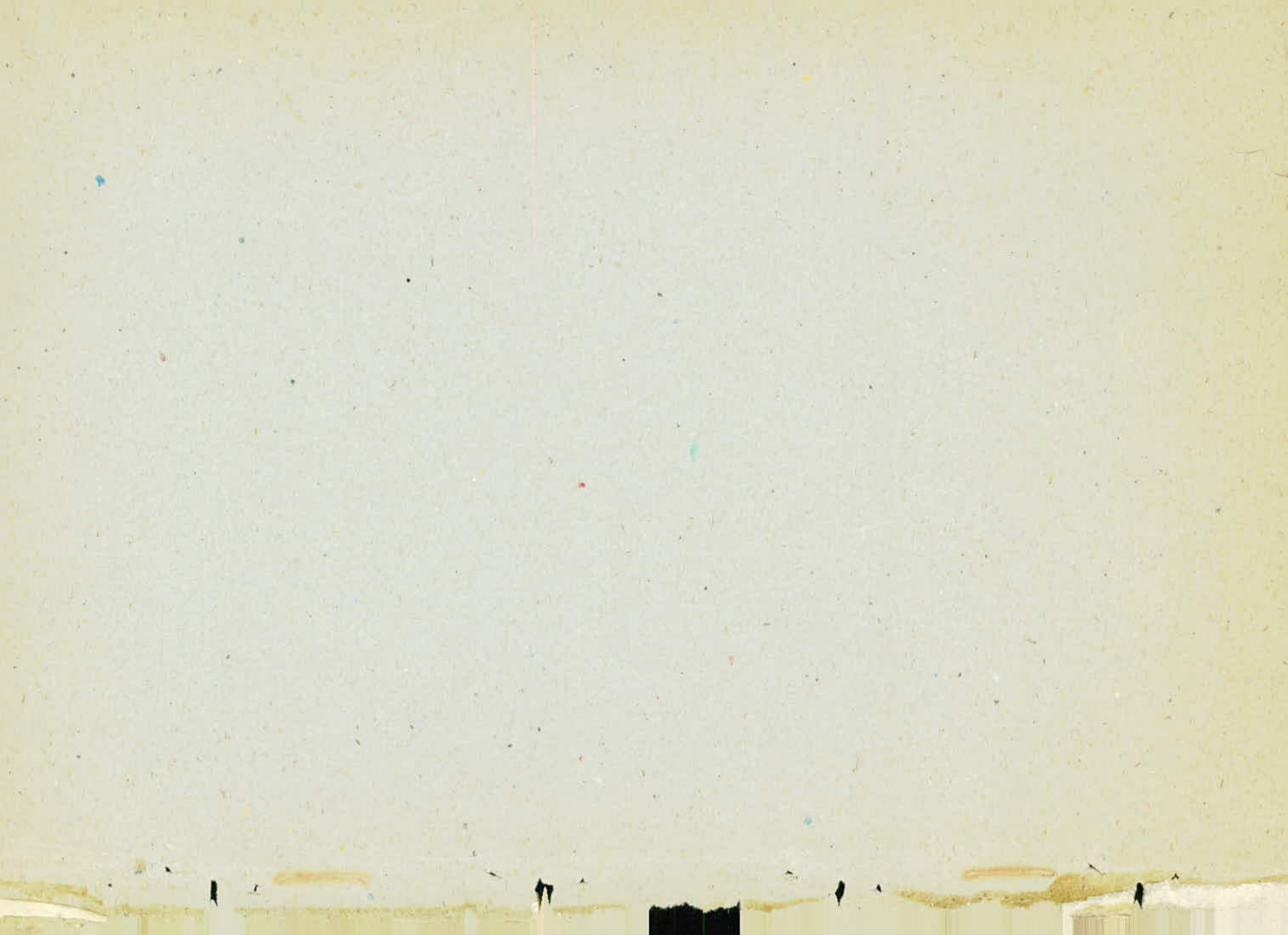
REPORT
OF THE
COMPTROLLER
AND
AUDITOR GENERAL
OF INDIA

FOR THE YEAR
1973-74

UNION GOVERNMENT (CIVIL)

REVENUE RECEIPTS
VOLUME I
INDIRECT TAXES



Errata for the Audit Report, 1973-74 (Revenue Receipts)

Vol. I

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Report

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Union Government (Civil)

Revenue Receipts

Volume I

Indirect Taxes

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PREFATORY REMARKS

As in the last year, the Audit Report on Revenue Receipts (Civil) of the Union Government for the year 1973-74 is presented in two volumes—one relating to indirect taxes and the other relating to direct taxes.

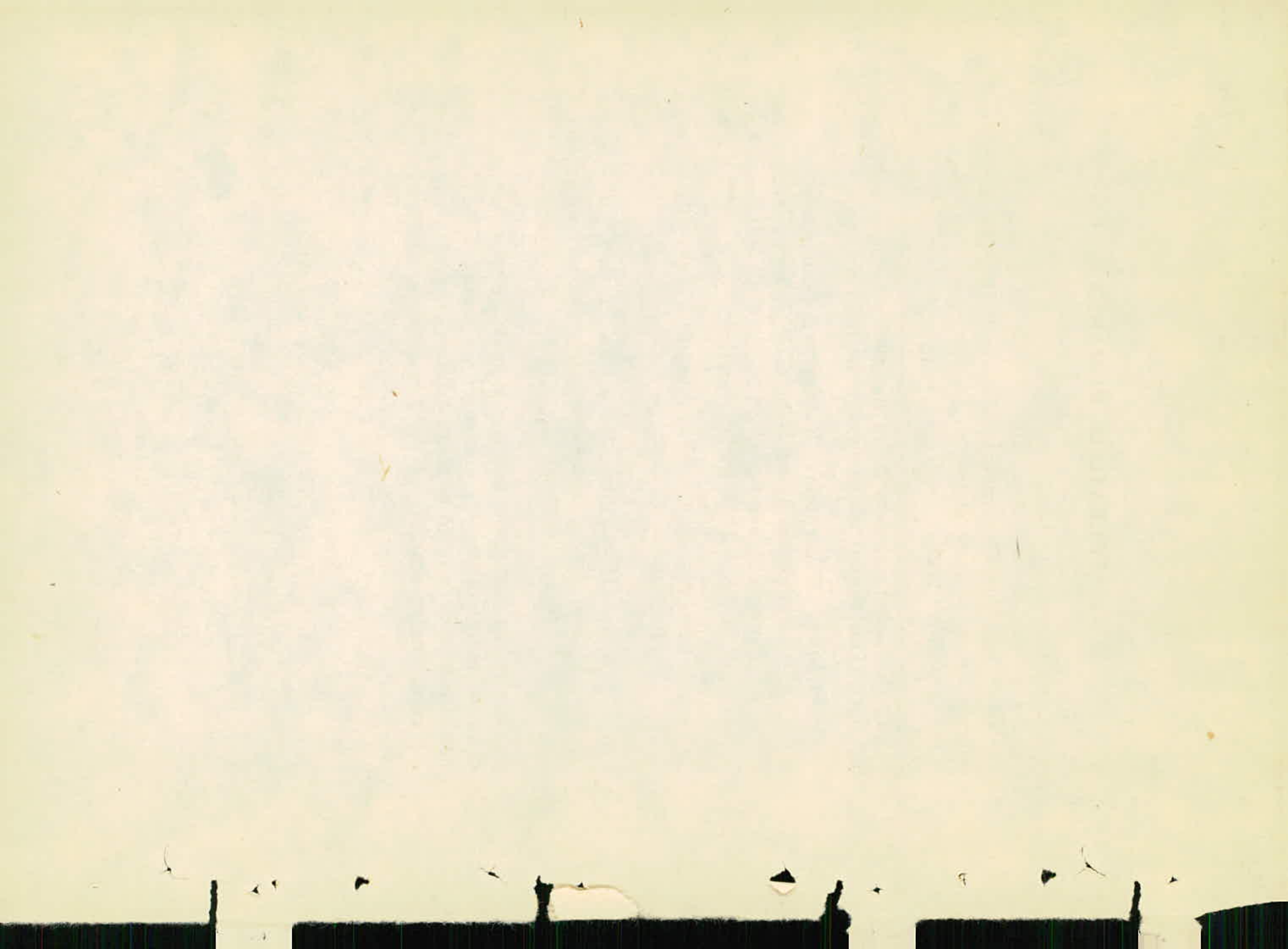
In this volume the results of the audit of indirect taxes are set out. This Report is arranged in the following order :—

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

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

Chapter III—sets out the results of audit of Sales-tax State Excise and Betting-Tax receipts 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

The total receipts under Major Head I—Customs during the year 1972-73 and 1973-74 are given below :—

	1972-73 Rs.	1973-74 Rs.
Customs Imports . . .	6,79,50,19,596	8,30,57,82,683
Customs Exports . . .	89,43,60,975	84,00,62,087
Additional Duties . . .	1,10,67,08,208	1,21,20,62,460
Cess on Exports . . .	2,85,12,124	4,03,02,368
Miscellaneous . . .	15,03,18,258	20,39,50,350
Fees, Fines, Forfeiture and Miscellaneous Penalties . .	..	6,18,644
Gross Revenue . . .	8,97,49,19,161	10,60,27,78,592
Deduct Refunds and Drawback	*40,85,29,222*	*63,84,35,114*
Net Revenue : . . .	8,56,63,89,939	9,96,43,43,478

It will be observed that the receipts have shown an overall increase, though there is a fall of Rs. 5.43 crores under Customs exports. The increase under Customs imports, which works out to about Rs. 151 crores, has been explained by the Ministry as follows :—

> "The increase in receipts during 1973-74, as compared to those during 1972-73, was largely due to increase in receipts from import duties on account of budgetary changes in the 1973 budget. These changes were estimated to yield an additional revenue of Rs. 154.20 crores. The earlier estimate of additional revenue of Rs. 156.00 crores, had

been reduced to Rs. 154.20 crores on account of reduction in import duty on certain items following discussions in Parliament on the budget proposals."

Fall in receipts from export duties has been stated to be mainly on account of reduction in export duty on certain categories of jute manufactures on 12-6-1973 and 28-8-1973, which was partly offset by an upward revision of export duty on hides, skins and leathers from 1-1-1974.

Regarding refunds and drawback, the increase in 1973-74 is nearly 50 per cent over that of 1972-73. In paragraph 1.52 of their 80th Report (Fifth Lok Sabha), the Public Accounts Committee had suggested the desirability of showing, in the accounts, the figures relating to refunds separately from those relating to drawback. The Ministry have stated that instructions have been issued to show these figures separately from the 1st April, 1974.

2. Test audit of the records in various Customs stations revealed under-assessments/over payments and losses of revenue amounting to Rs. 42.57 lakhs; over-assessments and short payments amounting to Rs. 8.31 lakhs have also been noticed.

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

(a) Mistakes in the levy of regulatory duty.

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

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

(d) Excess payment of drawback claims.

(e) Mistakes in the determination of assessable value.

(f) Mistakes due to adoption of wrong rates of exchange.

(g) Irregular/erroneous refunds.

(h) Cases of over-assessments.

(i) Other types of cases.

Some instances of the cases noticed are given in the following paragraphs :

3. *Mistakes in the levy of regulatory duty*

Under a Government of India notification dated 17th March, 1972 regulatory duty of customs is leviable on imports of all goods. The rates of duty range from 2.5 per cent to 10 per cent of the value of the goods.

(i) In a major Custom House, regulatory duty of Customs on a consignment of 'Urea' imported in November, 1972 was levied at 2.5 per cent *ad valorem,* against the correct rate of 5 per cent *ad valorem,* although in respect of an identical consignment imported in October, 1972 regulatory duty had been levied correctly at 5 per cent *ad valorem.* Adoption of lower rate resulted in a short levy of Rs. 1,43,740. This was pointed out in Audit in May, 1973 and the amount was recovered in August, 1973.

(ii) A consignment of Air Craft spares, instruments etc. valued at Rs. 5,21,240 imported in December, 1965 was assessed to duty in a Custom House under item Nos. 76 and 73 of the Indian Customs Tariff and was released free of customs duty under exemption notification No. 145-Customs dated 10th May 1958.

It was pointed out in audit that the said goods attracted regulatory duty of customs at 10 per cent *ad valorem* and that there had been short levy of Rs. 52,124 on this account. The

department accepted the audit objection and recovered the short levy by book transfer.

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

Imported goods attract levy of additional duty under Section 2A of the Indian Tariff Act, 1934. The duty is leviable at rates equal to the excise duty for the time being leviable on like goods if produced or manufactured in India.

(i) In a major Custom House "immersion coolers" imported in February, 1967 and "milk receiving and cooling units" imported in April, 1967 charged to Custom duty under item 72(9) of Indian Customs Tariff were not subjected to countervailing duty. In July, 1967 Audit called for full details, catalogue etc. and pointed out that the goods would *prima-facie* be liable to countervailing duty at 40 per cent *ad valorem* under item 29A of Central Excise Tariff. The catalogue was furnished only in February, 1971 on verification of which Audit reiterated that countervailing duty was leviable under item 29A(I) of Central Excise Tariff, as the goods in question were used in refrigerating and air-conditioning units and the milk receiving and cooling units formed part of refrigerating appliances used in chilling plants.

On receipt of the audit objection the Custom House raised a demand of Rs. 4,24,268 covering three bills of entry pointed out by Audit and two bills of entry found out on further review by Custom House of similar cases. The demands, however, were not immediately enforced and the matter was referred to the Collectors' Conference which decided in January, 1974 in favour of the view taken by Audit. The recovery of the demand has not been effected so far.

(ii) In a major Customs House, countervailing duty was levied at 10 per cent *ad valorem* on certain component parts of agricultural tractors imported in April, 1973. It was pointed out in audit in November, 1973 that the relevant rate of additional duty leviable under item 34A of the Central Excise Tariff had

been revised from 10 per cent to 20 per cent *ad valorem* with effect from 1st March, 1973 and the assessment, therefore, involved a short levy of duty amounting to Rs. 22,106. The department accepted the audit objection and recovered the amount in February, 1974.

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

(i) In respect of goods consisting of a set of articles, section 19 of the Customs Act, 1962, permits assessment of the different articles on individual merits, provided satisfactory evidence for the split up value is produced by the importer.

In a major Custom House, thirteen refrigeration road vans valued at Rs. 16,37,497 imported during February, 1967 were assessed separately :

(a) for the van portion at 50 per cent *ad valorem* under item 75 of Indian Customs Tariff with countervailing duty at 15 per cent under item 34(4) of Central Excise Tariff; and

(b) for the Refrigeration Unit portion at 10 per cent *ad valorem* under item 72(21) of Indian Customs Tariff with countervailing duty at 26-2/3 per cent *ad valorem* under item 29A(I) of Central Excise Tariff

treating each van as a set of articles instead of as a composite unit. Another refrigerator road van valued at Rs. 84,193 imported through the same port in July, 1967 was, however, assessed to duty as a composite article at 50 per cent *ad valorem* under item 75 of Indian Customs Tariff with countervailing duty at 15 per cent *ad valorem*.

The refrigeration units being part and parcel of the refrigeration van and being indispensable for the functioning of the entire unit, should have been assessed as a composite article liable to duty at 50 per cent *ad valorem* under item 75 of Indian Customs Tariff, as was done in the other case of import of a similar van.

Further, the countervailing duty on all the imports should have been levied at the highest rate under item 34 of Central Excise Tariff (i.e. at 20 per cent *ad valorem*) since similar vans are not being manufactured in India. The total short levy on both counts works out to Rs. 3,00,354.

(ii) In a major Custom House, certain consignments of "antimony oxide" were being imported from 29th January 1968 and were assessed to duty under item 28 of the Indian Customs Tariff as "chemicals". In July, 1971, Audit questioned the assessment on the ground that as the oxide was predominantly used for colouring, it should be classified under item 30 instead of item 28. After assessing under item 30, additional duty was also leviable under the corresponding item 14 of the Central Excise Tariff. The Board issued a tariff advice in November, 1971 accepting that antimony oxide should be assessed as 'colour'. The misclassification by the Custom House resulted in a loss of revenue of Rs. 2,60,456.

Out of sixteen bills of enry, the Ministry have replied that the Collector has been able to trace only thirteen bills of entry and they are yet to locate the others an dthat the matter is still under verification. Further, even if all the bills of entry are traced action to recover the duty is barred by limitation.

(iii) Up to 28th February, 1973 machineries of specified plants were assessable to duty under item 72A of the Indian Customs Tariff at a lower rate by classifying them as project imports. To be eligible for this concession, the article should be imported against contracts registered with the Custom House in advance of their importation as prescribed in "Project Imports (Registration of contract) Regulations, 1965".

In a major Custom House, a consignment of plant and machinery, though imported (in September, 1970) prior to the registration of the contract, was allowed the benefit of assessment to duty at 27.5 per cent *ad valorem* under item 72A of

the Indian Customs Tariff, whereas the duty was correctly leviable at 35 per cent *ad valorem* under item 72 *ibid*. Short recovery of duty amounting to Rs. 86,196 in respect of this importation was pointed out by Audit in August, 1973. The department, while accepting the objection, stated in February, 1975 that the contract had been finalised on 7th June 1971 and the realisation of the short levy had become time-barred.

(iv) "Crane track rails" imported through a Customs Out port in November, 1963 under the special contract procedure, were assessed to duty under item 63 (21)A of the Indian Customs Tariff at 5.5 per cent *ad valorem* plus countervailing duty under item 26 AA of the Central Excise Tariff at Rs. 39.35 per metric tonne. During the audit of the contract files proposed for closure, it was pointed out in March, 1973 that crane track rails, not being railway track material, would be correctly assessable under item 63(28) of the Customs Tariff at 66 per cent *ad valorem* without countervailing duty. The mistake in classification was accepted by the department and the resultant short levy of Rs. 26,286 was recovered in December, 1973.

6. *Excess payment of drawback claims*

(i) In a major Custom House, drawback of Rs. 57,945 was granted on a consignment of 7,000 kgs. of synthetic coal-tar dyes at the prescribed rate of Rs. 827.79 per 100 kg. The quantity actually exported was 1000 kgs. only. Audit pointed out the mistake and the resultant excess payment of drawback amounting to Rs. 49,667 in February, 1974. The amount was recovered by the Custom House in March, 1974.

The Ministry have stated in reply that the mistake occurred at the stage of certification of the claim and it escaped notice of the Internal Audit Department of the Custom House. They have added that to avoid mistakes of this nature, instructions had been issued on 8th March 1973 to indicate the amount of drawback claimed in the Drawback Payment Order and that these instructions were implemented in the Custom House with

effect from 5th September 1973. If the instructions had been implemented with effect from September, 1973, the mistake would, at least, have been detected prior to February, 1974 when it was pointed out by Audit.

(ii) In another case, a drawback of Rs. 32,904 was paid in November, 1972 on 89.755 metric tonnes of steel wire ropes. The correct weight of the consignment was 8.9755 metric tonnes. This resulted in excess payment of drawback amounting to Rs. 29,400.

On Audit pointing out the error in May, 1973, the excess payment was recovered in August, 1973.

The Ministry have replied that the mistake arose on account of wrong placing of the decimal by taking steel content at 89.755 metric tonnes instead of 8.975 metric tonnes.

(iii) In a major Custom House, an exporter declared on a shipping bill that 60 fibre drums of uniform size containing "potassium iodide" were intended for shipment out of India under claim for drawback under Section 75 of the Customs Act, 1962. The amount of drawback of Rs. 19,860 was paid to the exporter at the rate of Rs. 6,620 per metric tonne on the entire consignment of 60 drums containing in all 3 metric tonnes of "potassium iodide". Audit pointed out that actually only 25 drums had been shipped as against 60 on which drawback was granted. The excess payment of drawback on 35 drums amounted to Rs. 11,585 which was recovered by the Custom House in August, 1973.

The Ministry have stated that short shipment escaped notice at the time of processing the claim and also at the pre-audit stage, and that the Appraiser and the Examiner concerned have been warned. According to the Ministry the excess payments resulted on account of human failure.

7. *Mistakes in the determination of assessable value*

Under Section 14 of the Customs Act, 1962, the assessable value of imported goods should include all charges up to the stage of landing in the port of import. The non-inclusion of such charges in the following cases led to under-assessment of the assessable value resulting in short levy of customs duties :

(i) It was noticed in audit in September, 1971 that in an Outport the value of a consignment of 2010 tonnes of 'urea' imported in May, 1970 had been declared by the importer as U.S. dollars 1,50,685 inclusive of freight, while the invoice showed the value as F.O.B.. The freight amount omitted to be declared was U.S. dollars 90.022.

On this being pointed out by Audit, the Custom House raised a demand on the 29 July, 1974, for Rs. 70,037 being the consequential short levy of duty which was collected from the importers in November, 1974.

The Ministry have stated that at the time of filing the bill of entry, the connected original documents were not made available by the Clearing Agents. As the importer's declaration indicated that the value was C & F the same was adopted for purpose of assessment which was made on the strength of a letter of guarantee executed by the importers undertaking to produce original documents subsequently. While filing the original documents the importers had not stated in their letter that they had declared the value wrongly and the guarantee, therefore, was cancelled without noticing the short levy. Only when Audit raised the objection, original documents were again called for and on scrutiny of these documents the objection taken by Audit was found to be correct.

(ii) Departmental charges at varying rates depending upon the nature and kind of service rendered by the India Supply Mission, Washington are levied in respect of goods purchased through that agency. In two Customs Outports, fertilisers and

chemicals were imported at different times from October, 1969 to December, 1972. In respect of these imports departmental charges were not added to the value of the goods. As the supply was arranged through the India Supply Mission, Washington, it was pointed out in audit, that the charges were required to be added for the purpose of assessable value. The omission to include departmental charges resulted in a short levy of customs duty of Rs. 51,659 approximately in fifteen cases. In one case Rs. 6,793 was recovered as short collection of duty by adjustment from the amount of refund due to the importer. The recovery particulars in the remaining cases are awaited.

The Ministry of Finance have stated that the Ministry of Food and Agriculture do not produce all the relevant documents/information to the Custom House at the time of making the assessment of the goods and the assessments are made on the basis of the "fixture notices" produced by them at the time of clearance which do not give any indication about the departmental charges. They have added that the departmental charges are now being added to the assessable value and a review of past cases of imports through the India Supply Mission is in progress (February, 1975).

(iii) In another Outport, landing charges were added at an *ad hoc* rate of 0.6 per cent of C.I.F. value instead of adding the actual landing charges. Although the Internal Audit pointed out a short levy of Rs. 2,118 in this case, the point that landing charges should be added on the basis of actuals and not on an *ad hoc* rate of 0.6 per cent was not raised. On the mistake being pointed out in Audit in January, 1971, the Custom House accepted the objection and issued in June, 1974 a demand for voluntary payment of Rs. 27,056 in respect of four imports made between June, 1969 and October, 1969. The Ministry have stated that the entire amount has since been recovered.

(iv) Rule 5(a) of "The Customs Valuation Rules, 1963" provides, *inter alia*, for inclusion in the assessable value of imported goods, of the expenditure incurred by the sole agent, distributor or indentor appointed in that capacity.

In a major Custom House, it was noticed that in two bills of entry filed by the importer, there was no declaration regarding local agency commission payable nor was any addition made on that account. It was accordingly enquired in Audit in July, 1970, whether the question of loading of the invoice on account of expenses incurred by the importer was examined by the Custom House. In June, 1973 the Custom House admitted that the invoice value should have been loaded by 2.5 per cent of F.O.B. value. The audit objection resulted in a review by the Custom House of all such cases of imports for the period from 1968 to 1970. This brought to light a short collection of Rs. 25,960 which has been recovered.

(v) In the same Custom House it was noticed that in respect of four imports of fertilisers made during 1970 and 1972, the importer declared in the bills of entry that no stevedoring charges were involved in those cases. The documents accompanying the bills of entry, however, showed that stevedores were to be appointed by the importer. The omission to ascertain and include stevedoring charges in assessable value was pointed out in audit in August, 1972 and August/September, 1973. Out of the approximate undercharge of duty of Rs. 30,495 involved in the four imports, an amount of Rs. 17,527 has so far been recovered from the importer. Intimation regarding recovery of the balance and the results of review of similar other cases are awaited (March, 1975).

In another import of "rock phosphate", it was noticed in July, 1971 that the stevedoring charges were not taken into account on the ground that such charges were not separately incurred as the unloading from ship to shore was done by a mechanical contrivance installed on the berth by the importers which was stated to form part of their plant operation. As the importer had installed the mechanical contrivance at a considerable cost and was incurring expenditure on its maintenance and operation it was pointed out in audit that stevedoring charges in respect of each import should be proportionately worked out taking into

account the cost of installation and its maintenance. The omission to include stevedoring charges in the assessable value in respect of two imports in 1970 resulted in loss of revenue of Rs. 18,873 approximately at the scheduled rates applicable to other importers in general. The exact amount of duty forgone in respect of all such imports and in respect of import in bulk of other articles by the importer remains to be determined.

8. *Mistakes due to adoption of wrong rates of exchange*

In the Audit Reports for the years 1969-70 and 1971-72, instances were given where short levy was noticed on account of mistakes in the conversion rate of foreign currency into Indian rupees and the Public Accounts Committee also had commented on the subject in their recommendation contained in para 1.50 of their 43rd report (Fifth Lok Sabha).

A number of similar mistakes in the conversion of currency have been noticed in audit and some instances of such incorrect conversion resulting in short levy are given in the following paragraphs :—

(i) In a Custom House the conversion rate was incorrectly shown in a bill of entry filed on 14th November, 1972 as U.S. dollars 13.21 = Rs. 100. The assessable value was, however, computed on the basis of the correct conversion rate of U.S. dollars 12.31 = Rs. 100 and the duty collected accordingly. The Internal Audit Department worked out the assessable value on the basis of the incorrect rate shown in the bill of entry and pointed out an excess collection of duty of Rs. 12,286. This amount was refunded to the party in July, 1973.

The irregular refund was pointed out in audit in December, 1973. The Custom House admitted the mistake and recovered the amount in January, 1974.

The mistake was repeated in another import of the same importer on 15th November, 1972 resulting in a short assessment

of Rs. 1,22,478. On this being pointed out by Audit, the department recovered the amount in July, 1973.

(ii) In a major Custom House, the assessable value of goods imported in July, 1971 was worked out applying an incorrect rate of exchange of N.F.L. 47.70 = Rs. 100, the correct rate of exchange being N.F.L. 46.70=Rs. 100. The Internal Audit Department of the Custom House which detected this mistake in December, 1971, instead of pointing out a short levy of Rs. 4,127 indicated the same amount as excess levy. Consequently, a refund to that extent was made to the importer in March, 1972. On the error being pointed out by Audit in September, 1972 the department recovered Rs. 8,254 from the importer in January, 1973.

(iii) Two consignments of earthmoving machinery imported in January, 1971 were provisionally assessed to duty by adopting the exchange rate of U.S. dollars 13.15 = Rs. 100. When the assessments were finalised in September—November, 1972, the Internal Audit Department of the Custom House suggested the rate of exchange as U.S. dollars 13.27 = Rs. 100. This rate was adopted and refunds of duty were allowed accordingly.

Audit pointed out that since the imports were in January, 1971, the correct rate of exchange was U.S. dollars 13.15 = Rs. 100 and that adoption of the incorrect rate of U.S. dollars 13.27 = Rs. 100 had led to an erroneous refund of Rs. 21,109. The Custom House admitted the mistake and recovered the amount from the party in July, 1974.

(iv) In a major Custom House two bills of entry were presented in June, 1973 under prior entry system. The date of entry inwards was 23rd August, 1973. The value of the goods imported expressed in Deutsche Marks was converted applying the rate of DM 35.30 for Rs. 100 which was in force up to 4th July, 1973. Audit pointed out in April, 1974 that the correct rate of exchange in force on 23rd August, 1973 was DM 30.95 for Rs. 100 which was fixed by Government on 8th

on values of Rs. 7.90 and Rs. 9.00 per kilogram respectively. A third consignment imported at the same time described as of air compressor over ¼ horse power was assessed to duty under item 72(b) *ibid* on value of Rs. 7.90 per kilogram. The re-examination (March, 1974) of valuation and assessment of the goods, on being questioned by Audit (March, 1971), showed that the three consignments covered twenty eight items liable to be assessed on different values under seven different tariff items. The over-charging of duty arising out of incorrect assessment in respect of the three consignments imported by a public sector undertaking in 1963, aggregated Rs. 1,78,524. The amount is yet to be refunded (August, 1974).

The Ministry have stated that the assessments were made at the plant site under the special procedure and as the contracts against which the goods in question were imported have not yet been finalised, the assessment made at the plant site continues to be provisional.

(ii) "Ferro-chrome" imported through a Customs Outport in April, 1968 was assessed to duty in September, 1972 under item 26 of Indian Customs Tariff at 27.5 per cent *ad valorem* treating the goods as "Chromium ore". The description in the bill of entry was "Chromium ores", though the licence for import of the goods was for "Ferro-chrome" (low carbon); the goods were assessed without examination. Ferro-chrome is a specific item under 63(1) of Indian Customs Tariff and was eligible for assessment at 15 per cent *ad valorem*. The incorrect classification was pointed out by Audit in March, 1973. The Custom House, on verification, found that the subject goods were manufactured out of the ores of iron and chrome. The goods were accordingly reassessed and consequential excess collection of Rs. 42,305 was refunded to the importer in August, 1973.

(iii) In a major Custom House assessment of "cobalt metal powder" was made at a higher rate under tariff item 70(1) instead of under item 70(7) of Indian Customs Tariff as per Board's tariff ruling No. 26/69 of July, 1969. This resulted in overassessment of Rs. 43,826 in respect of five consignments imported during July, 1969 to May, 1971.

On Audit pointing out the erroneous assessment in May/June, 1971 the department admitted the overassessment and refunded Rs. 10,774 in respect of two consignments. An amount of Rs. 30,335 relating to two other consignments could not be refunded due to time bar. The Ministry stated (January, 1975) that action is being taken to refund the balance amount of Rs. 2,717 pertaining to the fifth consignment.

Other Topics of Interest

11. *Illegal import of gold and action taken thereon.*

(i) Under Chapter IV A of the Customs Act, transactions in certain goods notified under that Chapter, have to be reported to Government and any violation of the provisions of that Chapter would invite penal provisions of the Act. The notified goods include gold.

An illegal import of gold would attract not only the penal provisions of the Customs Act, but also those of the Foreign Exchange Regulation Act and the Gold Control Act. Thus, apart from the extensive powers for search and seizure, adjudication, confiscation of goods and for levy of penalties under the Customs Act, the Customs authorities have powers to prosecute the offenders contravening the Customs and other associate Acts in a Court. With a view to preventing smuggling, the provisions relating to punishment and conviction in a court of law have been tightened so as to enhance the maximum imprisonment from five to seven years, the minimum punishment being six months.

During the period from January, 1970 to June, 1974, there were 134 cases of seizures of contraband gold, involving a total value of Rs. 14,74,70,361, excluding the value of 247 bars of gold of 10 tolas each seized in March and October, 1973, which is not known. (These seizures also involved other smuggled goods like wrist watches, watch straps, yarn and fabrics, glass chettons, silver, saffron and Indian/foreign currency of a total value of Rs. 77,00,662).

From out of these 134 cases, 81 cases have been adjudicated. Of the rest, in 19 cases adjudication proceedings are still pending and in 34 cases details of adjudication are not yet known. The yearwise breakup of these 19 and 34 cases is given below :—

Period	Adjudication pending	Adjudication details not known
January 1970 to March, 1970 . .	1	2
April, 1970 to March, 1971 . . .	—	3
April, 1971 to March, 1972 . . .	2	2
April, 1972 to March, 1973 . .	8	8
April, 1973 to March, 1974 . . .	6	10
April, 1974 to June, 1974 . . .	2	9

Penalties were levied in 54 cases ranging from Rs. 200 to Rs. 1000 in 6 cases, Rs. 1000 to Rs. 10,000 in 25 cases, Rs. 10,000 to Rs. 50,000 in 19 cases and Rs. 50,000 to Rs. 1,00,000 in 4 cases.

Prosecutions were launched in 47 cases. Of these, two resulted in acquittal/discharge, 30 resulted in conviction and 15 were pending. The punishments inflicted in cases of conviction

were simple imprisonment of one day in 3 cases, rigorous imprisonment from 3 months to 6 months in 22 cases, rigorous imprisonment from 9 months to 18 months in 5 cases and fines ranging from Rs. 500 to Rs. 1000 in 6 cases, Rs. 1000 to Rs. 10,000 in 19 cases and Rs. 10,000 to Rs. 70,000 in 5 cases.

12. *Delay in adjudication and disposal of goods other than gold.*

(i) A test check conducted in July, 1974 in a major Custom House relating to disposal of seized goods other than gold, in respect of the years 1968 to 1971 disclosed the following position :

(a) The progress in the adjudication of these cases was as under :—

Year	Total no. of cases of seizure	cases not adjudicated		cases adjudicated but disposal orders not passed	
		No.	Value Rs.	No.	Value Rs.
1968 . . .	862	26	9,424	44	11,447
1969 . . .	811	46	9,112	45	12,860
1970 . . .	805	51	35,792	40	25,047
1971 . . .	984	55	58,925	57	90,730

These figures do not include the value of 111 items (11, 37, 39 and 24 for the four years respectively) as their value was not shown in the Master Register.

(b) The value of seized goods awaiting disposal amounted to Rs. 5,91,229. These included sensitive goods under the following categories :—

Category of goods	No. of cases				Total value
	1968	1969	1970	1971	Rs.
Liquor, cigarettes etc	66	60	56	56	59,610
Foreign textiles, etc. . . .	31	29	40	71	1,87,579
Radiant yarn .	26	19	4	5	12,096
Electrical goods, etc.	33	33	43	63	48,671

There were 33, 17, 5 and 29 items under the above four categories respectively whose value was not on record.

(c) The stock taking reports (August, 1974) revealed that in a number of cases goods were not physically present in the shed and the Master Register did not also bear any indication of the sale proceeds thereof having been deposited to Government account. The number of cases and value of such goods totalled 493 and Rs. 99,257 respectively.

The Ministry have stated in March, 1975 that as on 1st February, 1975 there are 314 cases for the said 4 years which have not been adjudicated or in which disposal orders have not been passed. The total value of goods in these cases is Rs. 2,28,586 excluding the value of 37 items which is not shown in the Master Register because inventory and valuation are yet to be made in these cases in respect of seizures made in the past. As per report dated 4th February 1975 received by the Ministry from the Collector of Customs, the value of seized goods awaiting disposal amounts to Rs. 1,35,958 including Rs. 1,12,191 in respect of goods in the four specified categories. The Ministry have stated that in many of these cases 'the pendency shown in the statement should not be there as they have been mostly disposed of but not yet, suitably indicated as such in the Master Register'. As for the stock taking reports, the Ministry have replied that the Collector of Customs has stated that suitable entries are being made in the Master Register.

(ii) In December, 1972, the Government of India issued orders accepting the recommendation of the committee on disposal of confiscated goods that nylon and other synthetic yarn should be sold in auction by the department directly to Weavers' Associations/Co-operatives and certified actual users. Payment of any discount was not contemplated. Subsequently, in partial modification of the above orders, the Government of India in May, 1974 directed that such yarn could be sold to Weavers' Associations/Co-operatives on the basis of market price minus 10 per cent discount. These revised orders being prospective are operative from the date of issue only.

In disposing of some quantities of metallic yarn confiscated under the Customs Act in a Central Excise Collectorate, the department did not comply with the earlier specific orders of the Government of India and sold the yarn to cloth manufacturers' association and co-operatives during the period from March to November, 1973 at prices fixed by a price fixation committee and a discount of 10 per cent was also allowed to the buyers. The loss by way of discount of Rs. 74,354 allowed on these sales could have been avoided had the department followed the order issued in December, 1972. The practice at a major Custom House and in the Central Excise department in the neighbouring States was to conduct auction for disposal of such goods and no discount was being allowed.

Moreover, the price fixed by the department was not apparently based on a realistic estimation of the market price. The price was considerably lower than the price obtained during the corresponding period in auction sales of the same brands of yarn in a nearby Custom House. The parties who purchased the yarn at lower rates from the Central Excise department participated in such auctions, offered and paid higher prices. The omission of the department to conduct auction or at least to fix a realistic price, apart from the loss on account of grant of discount, resulted in a further loss of revenue amounting to Rs. 40,234 on the sale of 22,425 reels of yarn in August and October, 1973 as computed on the basis of prices (excluding sales tax) obtained in auction sales in a neighbouring State. The

loss sustained in the sales conducted during the months of March, April, June, July and November, 1973 could not be ascertained as there was no auction during these months in the neighbouring State.

(iii) 34 bundles of contraband goods thrown over-board a smuggler's launch on its being chased by a Customs Sea patrol party were salvaged and brought ashore on 9th April 1973. The goods consisting of shirtings, sarees and silk yarn of foreign origin were soaked in sea water. Before depositing the goods in the nearest Customs godown an attempt was made by the department to get some pieces of fabrics washed in fresh water but this was given up considering the expenditure involved and the possibility of the markings, numbers, country of origin etc. printed on the fabrics being erased making it difficult thereby to establish the contraband nature of goods. The silk yarn which did not obviously contain any such identification marks was not washed and dried. Even though the goods were of an abandoned nature the adjudicating authority issued orders for their disposal only in June 1973. Sarees and shirtings valued at Rs. 3,68,675 were disposed of during the last week of June, 1973 for Rs. 1,63,379. The silk yarn valued at Rs. 34,500 was disposed of by auction in October, 1973 for Rs. 400.

The Ministry have stated in February, 1975 that after a vain attempt to wash and dry the goods, an Appraiser from the Custom House took samples of the goods in question to ascertain their condition, marketability, etc. Subsequently the Customs officers examined the goods and observed that these would not fetch normal prices, if sold in the market and recommended that the sarees and check shirtings may be sold at 50 per cent of the normal scale of price fixed and other varieties of shirtings may be sold at 60 per cent of the normal price. Regarding the silk yarn the Ministry have replied that the Collector had stated that it was salvaged from the sea in a completely soaked condition, had already undergone chemical decomposition and had become a clustered damp mass in which condition it was not possible to wash and dry the entire yarn length.

13. *Erroneous duty free clearance of Defence Stores.*

Exemption from payment of Customs duty was granted for the first time to tools, fixtures, jigs, gauges etc. required for the manufacture of armoured vehicles under notification No. 51, Customs dated 26th March, 1968. Subsequently, in May, 1971 this exemption from the payment of customs duty was extended to components for armoured vehicles.

In a major Custom House, toolings and component parts were imported for the manufacture of armoured vehicles in October, 1965. They were assessed to duty at Rs. 70,716 which was collected in September, 1970. On the basis of a claim preferred by the importer for refund of the duty under the provisions of notification dated 26th March, 1968, the sum of Rs. 70,716 was refunded in November, 1971.

It was pointed out by Audit in August, 1972 that the duty free clearance of these goods came into effect from 26th March 1968 only and could not be made applicable to goods imported at an earlier date. The refund was, as such, erroneous.

A consignment of component parts of armoured vehicles imported through the same major port on 12th March, 1968 was also assessed free of duty under the provisions of notification dated 26th March 1968. Here also it was pointed out by Audit in December, 1969 that the exemption was erroneously granted since the import was anterior to the notification for exemption. In fact the exemption was extended to components only in May, 1971. The duty involved in the second import was Rs. 73,304.

The total loss of revenue in the above two cases amounts to Rs. 1,44,020.

The Ministry have accepted that the 1968 and 1971 notifications could have only prospective application. They have added that the Custom House is being asked to recover the short levy of Rs. 70,716 in the first case on voluntary payment

basis. As for the second case, they have stated that a short levy of Rs. 307 on bundy tubes of the value of Rs. 527 could not be realised through voluntary payment and the remaining short levy of Rs. 72,997 in respect of components would 'appear to be only academic in nature'.

14. *Delay in starting penal proceedings for failure to account for short-landings*

(i) It is a practice in a Custom House to grant refunds of duty to importers on account of short-landing of goods even before short landing is accounted for satisfactorily by Steamer Agents. For failure to do so, steamer agents are liable to penalty which according to the present practice in this Custom House is equal to the amount of duty leviable on short-landed goods. In this Custom House, refunds for declaration of short landing amounting to Rs. 1,08,689 were made to various importers in 54 cases during the period 1966—1972 on the basis of certificates issued by the Port Commissioners. It was, however, noticed that the steamer agents did not account for the disposal of short-landing satisfactorily and no action was taken by the department under Section 116 of the Customs Act, resulting in a loss of revenue of Rs. 1,08,689. The Ministry have replied that "in a few cases, adjudication orders have since been passed and action in respect of the remaining is being taken." The Ministry have further added that according to them there could be no inference of loss of revenue because there is no time-limit for adjudication.

(ii) A show cause memo in form of "Kedegree" letter of call is issued by the Custom House to steamer agents for accounting of short-landed goods on the basis of shortages noted in the Port Commissioners' Kedegree manifest which is the basic record of reference for taking penal action against steamer agents under the Customs Act, 1962.

In respect of 9,468 foreign ships which touched a major port during 1965 to 1972 Kedegree manifests of 156 ships had not been received in the Custom House upto April, 1973 although

according to the Central Manual of the Manifest Clearance Department, these were due to be received in the first week of the second month from the date of arrival of the vessel. As per records of the Port Commissioners, cases of short landing of cargo occur on an average in respect of 94 per cent of the ships calling at that port every year. Owing to failure to collect particulars of goods short-landed from these ships, no penal action could be taken against steamer agents and no penalties could be levied on them. The total amount of loss of revenue could not be determined as no show cause memo had been issued to the steamer agents of the ships for want of Kedegree manifest.

The Ministry have replied that the Collector of Customs has reported to them that out of 156 manifests, 88 manifests are still pending and that since May, 1973 lists of wanting Kedegree manifests are being forwarded to the Traffic Manager, Port Commissioners for expeditious return of the wanting manifests. Meanwhile, the Collector of Customs is proposing to initiate penal action under Section 116 of the Customs Act and as a further safeguard to initiate penal action simultaneously with any short-landing refunds granted to the parties, irrespective of whether refunds are granted on the basis of Kedegree manifests or 'B' forms.

15. *Insufficient documentation of imports of non-tourists' baggage.*

Section 81 of the Customs Act empowers the Central Board of Excise and Customs to make regulations providing for the manner of declaring the contents of any baggage. The Board have not issued any regulations as such or even notified the requirements of recording the detailed description of dutiable articles being brought into the country as baggage.

In a major Custom House on a review of the valuation of articles imported as baggage of passengers (other than tourists) it was found that the dutiable articles contained in the baggage

were declared only in very broad terms such as refrigerator, tape-recorder, camera etc. without giving any details of make, specification, size, type etc. It was not therefore, possible to verify either by assessing authorities or by Audit the reasonableness of the valuation actually adopted. There were instances of "refrigerators" being valued between Rs. 250 and Rs. 500 (4 cases of which 3 were duty free), washing machines being valued between Rs. 150 and Rs. 500 (5 cases all duty free), air conditioners valued from Rs. 500 to Rs. 1,000 (4 cases all duty free) watches valued from Rs. 20 to Rs. 50 (14 cases of which 6 were duty free), tape recorders valued from Rs. 100 to Rs. 200 (12 cases of which 4 were duty free), projectors valued from Rs. 150 to Rs. 350 (9 cases of which 8 were duty free) etc.

The Ministry have stated in February, 1975 that in baggage large revenue stakes are not involved and reporting all the details of articles in a baggage, would retard the process of clearance and may cause undue harassment and public criticism. They have added that in view of this it is not considered necessary to issue any regulations under Section 81 of the Customs Act.

16. *Clearance of goods intended for Nepal.*

Clearance of goods imported through Calcutta from third countries on behalf of the importers in Nepal is allowed duty free transit from the port of import in India to the border posts between India and Nepal in accordance with the procedure laid down in Indo-Nepal Trade and Transit Treaty, 1971 which came into force on 15-8-1971. The representatives of the importers at Calcutta are required to file "Customs Transit Declarations" which contain all relevant information regarding the goods. After these declarations are noted in a register in the Nepal unit of the Calcutta Custom House, the particulars are verified and one copy of the declaration is given to the representative of the importer for presentation at the border post between India and Nepal. At the border post, the copies of the

declaration received directly and presented by the importer are compared and clearance of goods across the border is allowed. Importer's copy of the declaration is handed over to the representative of the Nepalese importer with endorsement, in proof of legitimate transit of the goods over the border, the other copy being returned to the Calcutta Custom House with similar endorsement. The representative of the Nepalese importer is also required to get final endorsement on his copy of the declaration from the Nepalese Customs authorities and forward the document to the Calcutta Custom House. On receipt of either the copy of the declaration from the Indian Border Customs Post or the copy from the representative of the Nepalese importer with at least one endorsement of the transit of the goods across the border by either the Indian or the Nepalese Customs authorities, the Custom House at Calcutta records in its Register of Declarations the fact of the goods having gone over the Nepal border intact.

The number of cases and value of in-transit goods to Nepal during the years 1967-68 to 1971-72 were 31025 and Rs. 68.56 lakhs respectively. An examination of the records maintained by the Calcutta Custom House, to control movement of in-transit goods from Calcutta to Nepal revealed that in 2134 cases the proof of transit of goods over the border was not forthcoming in the case of declarations filed during the period from 1961 to 1972. For 1970-71 and 1971-72 alone, the number of cases and value of goods, the movement of which had not been confirmed were as under :

Year	No. of cases	Value of goods Rs.
1970-71	320	49,47,086
1971-72	268	45,10,893

These included goods like watches, transistors etc. of the value of Rs. 22.18 lakhs and Rs. 10 lakhs respectively for these two years.

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No liability for payment of Customs duty lies on the importer or exporter or agent if there is loss or diversion of goods in transit provided they are transported through Indian Railways at Railway risk rate. If the goods are lost or diverted while in the custody of the Railways the claim for Customs duty is to be made by the Customs authorities on the Railways within six months from the date of booking of the goods with the Railways. Even if the consignment reaches Nepal but the bill or invoice certified by the Indian or Nepalese Customs officer has not been received within six months after the date on which the invoice was completed at Indian port of import, a provisional customs duty claim against the Railways for the amount of duty due on such consignment is required to be lodged by the Customs authorities within six months and the final claim made on receipt of the documents indicating the short-fall in the value of goods crossing the border. The register of bills/ declarations and connected documents relating to 1970-71 and 1971-72 maintained in the Custom House showed that in a large number of cases goods were transported to the border by the Indian Railways at Railway risk rate and proof of movement of the goods over the border has not yet been received. Yet neither provisional Customs duty demand nor final demand has been raised by the Customs authorities (August 1974). In 1970-71 there were 54 such cases involving goods of c.i.f. value of Rs. 16,74,387 and in 1971-72 there were 25 cases involving goods of c.i.f. value of Rs. 2,05,909. Demands totalling Rs. 19,23,482 were also outstanding in the books of the Custom House against the Railways, insurance companies and others on account of shortage or loss of consignments cleared for transit to Nepal. These related to the years from 1964-65 onwards.

The importer has to give the proof of entry into Nepal within one month of the date on which transit was allowed at the Indian port of importation or such extended time as the Assistant Collector might allow. For every week of delay in presenting the certified copy, the importer has to pay Re. 1 for every

Rs. 1,000 of the value of the goods at Indian market value, as penalty. It was, however, observed in Audit that such penalty was not being levied by the Custom House. In 106 cases selected at random the penalties forgone amounted to Rs. 1,28,664 (approximately).

The Ministry of Finance have stated in January, 1975 that pendency of cases for closure for want of the Border Examiners' certificates has gone down from 2134 to 1996 as on 11th December 1974. As for the lodging of claims against the Railways they have stated that although there has been a delay in respect of some cases in the timely issue of provisional demand on Railways, such demands are, otherwise, being regularly issued. Out of the 54 cases for 1970-71 demands have been issued in 40 cases and in the remaining 14 cases demands are not required to be issued. Against 25 cases for 1971-72, demands have been issued in 9 cases and in the remaining 16 cases no demands are required to be issued for various reasons. The Ministry of Finance have added, however, that when the Railway risk rate system was introduced in 1968, the Ministry of Railways had issued instructions to their lower formations for accepting the claims of the Customs department in respect of goods lost/diverted while in transit with the Railways, but the Railways had not actually honoured a single claim so far and the matter is being pursued with the Railways. Regarding the claims against the insurance company, the Ministry of Finance have stated that the monopoly of this business is with one insurance company which from 1971 has started coming up with all sorts of objections to resist the claims and the matter is being actively pursued by the Collector.

17. *Remissions and abandonment of Customs Revenue**

(i) The total amount of customs revenue remitted, written off or abandoned during the year 1973-74 is Rs. 3,41,361.

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*Figures furnished by Ministry of Finance.

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

Year	Amount Rs.
1970-71	15,35,045
1971-72	24,76,649
1972-73	12,19,636

(ii) During the year 1973-74, a total of 348 exemptions were issued under Section 25(2) of the Customs Act, 1962 by the Central Government, having revenue effect of Rs. 4,19,82,459. Of these in 143 cases involving exemptions in each case exceeding Rs. 10,000 the revenue forgone amounted to Rs. 4,15,07,022. The Ministry have, however, stated (March, 1975) that these figures are provisional and are based on reports received from the concerned Collectors of Customs and Central Excise. It is not clear how the figures of exemptions issued upto 31st March 1974 are still stated to be provisional.

18. *Arrears of Customs duty**

The total amount of customs duty remaining unrealised for the period upto 31st March, 1974 was Rs. 58.16 lakhs on 31st October, 1974 as against Rs. 59.10 lakhs for the corresponding period in the previous year. Out of this Rs. 53.37 lakhs have been outstanding for more than one year.

In addition, the department has requested for voluntary payments of customs duty amounting to Rs. 34.31 lakhs in cases where demands have become time-barred. This amount is pending realisation. Last year the amount of such demands was Rs. 12.71 lakhs only.

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* Figures furnished by Ministry of Finance.

CHAPTER II

UNION EXCISE DUTIES

19. The receipts under Union excise duties during the year 1973-74 were Rs. 2,602.13 crores. The receipts for the last five years along with the corresponding number of commodities on which excise duty was leviable under the Central Excises and Salt Act, 1944 are given below :—

Year	Receipts under Union excise duties (In crores of rupees)	Number of commodities subjected to excise levy
1969-70	1524.31	81
1970-71	1791.44	91
1971-72	2061.10	116
1972-73	2324.25	120
1973-74	2602.13	124*

20. The break-up of the receipts for 1973-74 with the corresponding figures for 1972-73 is given below :—

Heads of Account	Actuals 1972-73 Rs.	1973-74 Rs.
II. Union Excise duties :		
A. Shareable duties :		
Basic excise duties	19,81,12,34,844	22,03,52,36,908
Additional excise duties on Mineral Products	1,29,90,47,753	1,38,08,44,778
Total	21,11,02,82,597	23,41,60,81,686

*Does not include changes brought about in Finance Bill (I) 1974 introduced in Parliament on 28th February, 1974 and commodities on which cesses are collected.

B. Duties assigned to States :		
Additional excise duty in lieu of Sales Tax	1,43,47,96,577	1,74,57,88,866
Total (B)	1,43,47,96,577	1,74,57,88,866
C. Non-shareable duties : . .		
Regulatory excise duties . . .	52,56,13,419	19,74,55,885
Special excise duties . . .	87,02,287	40,51,879
Other duties	9,89,08,520	16,47,96,807
Excise duty on Newspapers and all other printed periodicals . .	4,05,41,093	8,371
Auxiliary duties of excise . .	8,28,92,527	61,06,15,739
Total (C)	75,66,57,846	97,69,28,681
D. Cess on commodities . . .	34,12,48,204	32,82,94,049
Total (D)	34,12,48,204	32,82,94,049
E. Miscellaneous :	4,42,92,530	2,65,31,554
Total (E).	4,42,92,530	2,65,31,554
Gross receipts : . . .	23,68,72,77,754	26,49,36,24,836
F. *Deduct—Refunds and Drawbacks :*		
A. Shareable Duties :		
Basic excise duties . . .	(—)16,38,39,785	(—)17,19,52,055
Additional excise duties on Mineral Products	(—)10,926	(—)77,569
Total A—Refunds etc. . . .	(—)16,38,50,711	(—)17,20,29,624
B. Duties assigned to States . .		
Additional excise duties in lieu of Sales Tax	(—)78,17,185	(—)58,01,527
Total B—Refunds etc.	(—)78,17,185	(—)58,01,527

C. Non-shareable duties namely, regulatory excise duties, special excise duties, auxiliary duties and other duties	(—)72,28,380	(—)24,27,378
Total C—Refunds etc. . .	(—)72,28,380	(—)24,27,378
D. Cess on commodities . . .	(—)4,71,980	(—)15,86,178
Total D—Refunds . . .	(—)4,71,980	(—)15,86,178
E. Miscellaneous	(—)26,53,87,762	(—)29,05,09,378
Total E—Refunds . . .	(—)26,53,87,762	(—)29,05,09,378
Total Refunds and Drawbacks .	(—)44,47,56,018	(—)47,23,54,085
Net receipts	23,24,25,21,736	26,02,12,70,751

NOTE.—The figure of refunds and drawbacks for the year 1973-74 includes an amount of Rs. 1.73 crores paid to His Majesty's Government of Nepal.

21. *Salient features of the budget for* 1973-74

Four new commodities were added to the Central Excise Tariff Schedule with an expected yield of Rs. 3.00 crores to the exchequer. The Regulatory duty of excise imposed from year to year was replaced by 'Auxiliary' duty of excise at an amount equal to 20 per cent of the value of goods. This new levy was confined to nine commodities with an anticipated revenue of Rs. 115.22 crores.

The other measures proposed included:

(i) raising duty on motor spirit to curb consumption;

(ii) readjustment of existing denier groups of nylon yarn to curb avoidance of duty by adjustment of deniers marginally by the manufacturers;

(iii) imposition of duty on rags of cotton and art silk fabrics to curb the tendency of the textile mills to cut up fabrics into pieces euphemistically called 'rags';

(iv) subjecting art silk fabrics processed by machines without the aid of power to duty, though the incidence of duty on such fabrics was kept 40 per cent lower than what it would be had power been used; and

(v) liberalisation of existing concession for manufacture of paper to encourage use of unconventional raw materials like bagasse and cereal straw.

22. By issue of a Presidential Ordinance on 3rd November, 1973 (later enacted as Act No. 19 of 1973) duty on motor spirit was enhanced from Rs. 1000 to Rs. 2000 per kilo litre at 15°C. Similarly duty on kerosene was increased from Rs. 265 to Rs. 465 per kilo litre at 15°C.

23. As against the estimated realisation of Rs. 115.22 crores on auxiliary duty, the actual realisation as per accounts amounted to Rs. 61.06 crores. This figure also comprises revenue for March, 1974 when auxiliary duty was imposed on fourteen more commodities as part of budget proposals for 1974-75.

The clearances of motor spirit for the three years are given below:

1971-72	2249084 kilolitres
1972-73	2283713 ,,
1973-74	2207711 ,,

Further, information has been solicited from the Ministry of Finance on the following points:

(i) clearances of nylon yarn of denier groups affected by the budget proposals of 1973-74 for the years 1971-72, 1972-73 and 1973-74 and the duty realised thereon ;;

(ii) clearances of rags of cotton and art silk fabrics separately for the years 1971-72, 1972-73 and 1973-74 ;

(iii) the number of units which availed of the concession on paper for use of un-conventional raw materials, the production of such paper for the years 1971-72, 1972-73 and 1973-74 separately ; and

(iv) the number of units brought under excise by making art silk fabrics processed by machines without the aid of power liable to duty and the amount of duty realised for the year 1973-74.

The information is awaited.

24. The following thirteen commodities out of the total of 124 subjected to excise duty fetched revenue in excess of Rs. 40 crores each and collectively more than 50 per cent of the gross receipts.

	Revenue (in crores* of Rupees)
(*i*) Sugar other than Khandasari	197.93
(*ii*) Cigarettees	238.26
(*iii*) Motor spirit	307.24
(*iv*) Kerosene	141.12
(*v*) Refined diesel oil	290.92
(*vi*) Petroleum products	46.84
(*vii*) Tyres and tubes	76.76
(*viii*) Rayon yarn	119.50
(*ix*) Cotton fabrics	94.30
(*x*) Cement	53.60
(*xi*) Iron or Steel products	155.85
(*xii*) Motor vehicles	44.44
(*xiii*) Unmanufactured tobacco	94.49
Total	1861.25

*Figures furnished by Ministry of Finance.

25. *Variation between the budget estimates and the actuals*

The budget figures, actual realisation and variations for the year 1973-74 together with the corresponding figures for the last three years are given below :

Year	Budget estimates (In crores of rupees)	Actuals	Variation	Percentage
1970-71 . . .	1812.75	1758.55	(—)54.20	(—)2.99
1971-72 . . .	2071.56	2061.10	(—)10.46	(—)0.5
1972-73 . . .	2464.75	2324.25	(—)140.50	(—)5.7
1973-74 . . .	2741.05	2602.13	(—)138.92	(—)5.07

26. *Cost of collection*

The expenditure incurred in collecting revenue on account of Union excise duties during the year 1973-74 along with the corresponding figures for the preceding three years are furnished below :

(In crores of rupees)

Year	Collections	Expen-diture on collection
1970-71	1758.55	14.34
1971-72	2061.80	15.57
1972-73	2324.32	16.91
1973-74	2602.13	19.04

27. All the commodities were assessed to exise duty under the "Self Removal Procedure" during 1973-74, except 'unmanufactured tobacco' and 'matches'; unmanufactured tobacco continued to be under 'Physical Control Procedure', while in respect of matches 'Physical Control Procedure' was reintroduced, withdrawing the 'Self Removal Procedure' from 1st October, 1972.

28. *Provisions in the Act regarding valuation*

Where goods are assessable to duty *ad valorem,* the value is required to be determined under Section 4 of the Central Excises and Salt Act, 1944. To get over the difficulties which arose in the wake of the Supreme Court's judgement in *A. K. Roy* Vs. *Voltas Limited,* interpreting the provisions of Section 4 in favour of the assessee, the Section was amended by Act 23 of 1973. The revised section 4 is to come into force from such date as to be notified in the official gazette. So far effect to this revised section has not been given (March, 1975).

29. *Self Removal Procedure*

After the 'self removal procedure' was introduced in respect of certain commodities from 1st June, 1968 and later on extended to other commodities except unmanufactured tobacco from 1st August, 1969 there were reports and complaints of evasion of duty. The Secretary, Ministry of Finance stated before the Public Accounts Committee in October-November, 1971 that the Finance Minister desired the setting up of a sub-committee to go into the matter. A committee was accordingly set up under the chairmanship of Shri B. Venkatappiah in October, 1971 with wide terms of reference.

In that context the Public Accounts Committee in para 1.23 of their 44th report (fifth Lok Sabha) stated, "The Committee would like to be apprised of the findings of the Committee and action taken thereon".

The S.R.P. Review Committee, as it was known, submitted its report to the Government in two volumes. Volume-I was submitted on 29th September, 1973 and Volume-II on 30th June, 1974.

Action taken on the recommendations of the Committee is yet to be known (March, 1975).

30. A test audit of the records maintained in the offices of all the central excise collectorates and the basic excise records of the licensees revealed under assessments and losses of revenue to the extent of Rs. 51.83 crores.

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

31. *Evasion of duty on processed Art silk fabrics*

Artificial silk fabrics were brought under the excise levy by Section 8 of the Finance Act, 1954, whereby a duty of excise was imposed at specific rates. As an alternative, a special procedure for recovery of duty under 'compounded levy scheme' was also provided from 27th April, 1954. Subsequently in 1962, the following changes were effected :

(1) Unprocessed fabrics were fully exempted from basic and additional duties.

(2) Only processed fabrics were to pay basic duty at 3.5 np per sq. metre and additional duty as applicable.

(3) Compounded levy scheme was withdrawn.

With the exemption of duty on unprocessed art silk fabrics, only those manufacturers who processed art silk fabrics with the aid of power were required to take out a licence and pay duty on the processed fabrics at the appropriate rates at the time of clearance. Similarly a powerloom unit which, besides producing grey fabrics, also processed them, was required to pay on its production of processed fabrics, excise duty at the appropriate standard rates. In respect of all other units manufacturing unprocessed art silk fabrics, the excise department had practically no control on production.

The specific rate of duty was changed to *ad valorem* in March, 1970; the tariff rate of duty was fixed at 10 per cent *ad valorem.*

This was changed to 20 per cent *ad valorem* plus Rs. 5 per square metre from 17th March, 1972. The effective rates of duty as prescribed by notifications were as under :—

No.	Description	Effective rate of duty (% *ad valorem*)	Additional duty of Excise (Goods of Special Importance Act, 1957) (% *ad valorem*)
	Processed Rayon or Artificial Silk fabrics		
(*a*)	not exceeding Rs. 3 per sq. mt. in value	2.40	0.60
(*b*)	exceeding Rs. 3 per sq. mt. but not exceeding Rs. 3/50 per sq. mt. in value	3.50	1.50
(*c*)	exceeding Rs. 3/50 per sq. mt. but not exceeding Rs. 5 per sq. mt. in value . . .	6.00	2.00
(*d*)	exceeding Rs. 5 per sq. mt. in value	9.50	5.50

The scope of levy was further amplified in 1973 to cover all rayon or artificial silk fabrics processed with the aid of machines whether operated with or without the aid of power or steam. After this date, all such processed rayon or artificial silk fabrics where processes had been carried out without the aid of machines became dutiable.

The Committee appointed by the Government of India to review the 'self removal procedure' have in their report pointed out that art silk fabrics was a "notorious" item for the scale of evasion prevalent. The committee have observed in para 9 of Chapter 10 of Volume I of their report as under :—

"Several witnesses brought to our notice the fact that processed art silk fabrics were available in the markets of Surat and Bombay at prices which were

only marginally higher than the cost of yarn contained. It was alleged, and the allegation would seem to us to have substance that several producers were in fact processing such fabrics with the aid of power but were showing them as processed without such aid in collusion with hand processors".

They have also observed at page 114 in the same chapter :

"Art silk fabrics : The levy is on processors who are not the owners and only do the job work. They do not know the correct composition, the constructional particulars or the value of fabrics processed by them. This makes supervision difficult and evasion easy".

Investigations conducted by audit revealed the following :

The production of grey fabrics and the quantity of processed fabrics as reported by the Textile Commissioner and in the Statistical Year Book 1972-73 of the Central Excise Department are as under :—

Year	Production of grey fabrics	Clearance of processed fabrics	Million metres	Difference* Million sq. metres
1970-71 .	951 m. metres	409 m. metres	542	406.50
1971-72 .	968 „	431 „	537	402.75
1972-73 . (April to December 1972)	919 „	409 „	510	382.50
	Total processed fabrics less assessed			1191.75
			say	1192.00 million square metres.

*Taking average width of fabrics as 75 cms.

The gap between the figures of production of grey fabrics and clearance of processed fabrics as recorded is indicative of goods evading duty, even after allowing for normal wastages.

Taking the average minimum tariff value and rate of duty as provided in the tariff the revenue evaded is computed to be of the order of Rs. 7.60 crores for the years 1970-71 to 1972-73.

In reply the Ministry of Finance have stated that the art silk fabrics are also processed in non-power operated sector, and the grey fabrics go for hosiery manufacture or for export. The Ministry, however, is unable to quantify the fabrics attributable to these factors. There is no system of control over movement of unprocessed fabrics for processing and no account is kept as to the number of processors who process with the aid of power and those who process without the aid of power. Unprocessed art silk fabrics hardly find a market and as the following instance has shown fabrics processed with the aid of power were cleared as processed without the aid of power or as unprocessed fabrics.

In a collectorate, twenty two mills manufactured 'art silk fabrics' and cleared them free of duty as unprocessed fabrics although processing was being done with the aid of steam. The omission was realised by the department in July, 1964 and demands totalling Rs. 13,59,926 for the clearances made from 24th April, 1962 onwards were raised against these mills. The demands were confirmed by the Assistant Collector in December, 1967. However, on revision petition from the parties the Government of India decided that the demands had become time barred under Rule 10 of the Central Excise Rules, these having been raised after three months of the removal of goods. The failure of the department to raise the demands in time, thus, resulted in a revenue loss to the Government of Rs. 13,59,926.

32. *Evasion of duty in cotton yarn*

From 1st March, 1973, a new sub-item (1A) was introduced under tariff item 19-I (cotton fabrics) through the Finance Act, 1973, to cover cotton fabrics containing 30 per cent or more by weight of fibre or yarn or both, of non-cellulosic origin. Though these fabrics are assessable to duty *ad valorem,* Government issued specific instructions in March, 1973 that cotton yarn used in the manufacture of these fabrics should be subjected to duty.

It was, however, noticed in audit in January, 1974 that duty on cotton yarn used in the manufacture of cotton fabrics falling under tariff item 19-I(1A) was not levied in a textile mill. When this was pointed out to the department in February, 1974 a show cause notice was issued to the Company for an amount of Rs. 2,17,800. The Ministry, while admitting the facts, have stated that the assessee paid an amount of Rs. 56,007 being the duty calculated on compounded rates applicable as for superfine fabrics and that the show cause notice proceedings are in progress. The Ministry have added that action is being initiated in respect of officers responsible for this irregularity and disciplinary action, if warranted, will be taken against the officers.

33. *Evasion of duty in cotton fabrics*

A manufacturer in a collectorate was recording cotton fabrics produced in grey stage in the loom shed daily production register. During a check of accounts, it was seen that certain quantities of fabrics manufactured as per daily production register were either short-accounted or not accounted at all in the register prescribed for recording daily production as per Central Excise Rules. Besides one day's production was also not recorded therein. This was brought to the notice of the department for investigation. It is since intimated by the department that a scrutiny of records maintained by the manufacturer disclosed short accounting of 76,597 sq. mts. of fabrics and that a demand for Rs. 12,864 for the central excise duty has been realised.

The Ministry have stated that penal proceedings have been initiated against the assessee for improper maintenance of accounts.

34. *Evasion of duty in motor vehicle parts*

A factory manufacturing internal combustion engines for tractors obtained motor vehicle parts free of duty for the manufacture of the engines. However, parts worth Rs. 3,72,134 obtained thus were not so used but were transferred to another factory during the period October—December, 1972. This transfer attracted *ad valorem* duty at the rate in force on the date of its actual payment. Duty at 10 per cent was paid only on 12th July, 1973 though the rate of duty, on that date, was 20 per cent *ad valorem*. According to Rule 9A of the Central Excise Rules, duty in such cases is recoverable at the rates prevailing on the date of payment of duty and the goods have to be valued accordingly. When this was pointed out in audit, the department intimated that short assessment of duty of Rs. 37,213 on account of increase in rate had been realised in May, 1974.

Mineral Oils (Tariff items 6 to 11C)

35. *Underassessment of central excise duty in respect of oil in Pipe line.*

Raw naptha is excisable as motor spirit under item 6 of the Central Excise Tariff. The tariff rate of duty was Rs. 1000 per kilolitre at 15°C. A concessional rate of Rs. 4.15 per kilolitre is notified, if raw naptha is removed for use in industrial production of certain specified goods subject to the prescribed procedure being followed. The removal of raw naptha may be by tank or rail wagon or through pipe lines.

In December, 1967 the Central Board of Excise and Customs issued instructions in respect of a private company getting raw naptha for such industrial use from a refinery, to the

effect that there was no objection to the raw naptha having paid duty at the concessional rate being retained in the connected pipelines. Later in October, 1973 the Government of India issued instructions in supersession of the earlier one of December, 1967 to the effect that the raw naptha retained in the pipeline connecting the refinery and other industry or installation should be charged to duty at the full rate applicable to motor spirit. It was noticed in audit that in pursuance of these instructions a demand for Rs. 2,35,365 was raised and recovered in another collectorate. However, a demand for Rs. 3,38,196 was raised but the recovery is still pending.

In reply the Ministry of Finance stated that the instructions of 1967 which applied to the second case laid down a rational working arrangement. The Ministry have added that instructions of October, 1973 were issued to achieve uniformity. The instructions of 1967 were issued at the instance and for the benefit of a particular party. Admittedly these instructions were not in larger interests, as these were revised in 1973 in the interests of revenue. The Ministry have not explained the delay of six years to secure uniformity nor given the total amount of duty involved in following the earlier instructions.

36. *Non levy of excise duty*

A quantity of 3,710 kilolitres of oil described as 'weathered crude oil', was marketed as a substitute of 'furnace oil' during February, 1969 to December, 1969 on which no excise duty was paid. This oil is reported to have been produced by allowing crude oil to decompose by weathering to attain the properties for use as furnace oil. Chemical test of the oil was not conducted to verify whether the oil conformed to the description of 'furnace oil' as per tariff specification. The oil is said to have been sold to tea factories as a substitute for 'tea drier oil' which is excisable. Had this been assessed as furnace oil, the revenue realisation would have been Rs. 4.19 lakhs. The case was referred to the Ministry in July, 1973 and reply is awaited (March, 1975).

37. *Short levy of duty*

Lube base stocks falling under tariff item 11-A are assessable to duty at 20 per cent *ad valorem*. Pending fixation of the sale prices of the lube base stocks by the Petroleum Ministry, a refinery was clearing such products from March, 1970 and paying duty on a provisional basis. In July, 1971 the prices were fixed by the Petroleum Ministry and the revised price list filed by the refinery was finally approved by the department in August, 1971. Based on the final price, differential duty on the clearances from March, 1970 upto January, 1971 was worked out as Rs. 24,78,411 and demanded by the department from the refinery in September, 1971 (realised in October, 1971). It was, however, pointed out in audit in November, 1971 that the demand for the differential duty based on the final prices fixed by Petroleum Ministry was not calculated correctly and that the sum demanded was less than what was due. On verification, the department found that the demand issued covered the period upto 3rd January, 1971. The department therefore raised and realised in March, 1972 a supplemental demand of duty of Rs. 13,12,708 relating to the period from 24th March, 1971 to 19th June, 1971. The department intimated in January, 1974 that there were no clearances during the period 4th January, 1971 to 23rd March, 1971 and 20th June, 1971 to 19th July, 1971.

The Ministry have replied that the department was aware of the provisional nature of assessment of lube base stocks pending fixation of the prices by the Ministry of Petroleum and Chemicals. They have further added that there was some delay in issue of demand for Rs. 13,12,708 for the period 24th March, 1971 to 19th June, 1971 on account of time consuming work involved in detailed verification of records.

It is, however, observed that demands finally raised were incomplete and did not cover the full period from March to June, 1971. For this period demand was raised only in March, 1972 long after audit pointed out the omission in September, 1971.

38. *Non-levy of excise duty*

Central excise duty was imposed on calcined petroleum coke from 29 May, 1971, under item 11-C of the Central Excise Tariff at the rate of 20 per cent *ad valorem*. By a notification issued on the same date, the Government exempted calcined petroleum coke manufactured from duty paid petroleum coke falling under tariff item 11-A to the extent of the duty already paid on petroleum coke.

A factory manufactured calcined petroleum coke from duty paid petroleum coke and used the entire product internally as anodes for extraction of aluminium by electrolysis. The factory, however, did not apply for any central excise licence for the manufacture of calcined petroleum coke from 29th May, 1971, when the product became excisable as required under Rule 174 of the Central Excise Rules. The fact of manufacture without licence and the non-levy of duty on the product to the extent of Rs. 3,24,527 was pointed out by audit in August and again in October, 1973. In reply, the department stated (May/July, 1974) that an offence case had been booked and a show cause notice issued to the licensee demanding duty for the amount as calculated by audit for the period 29th May, 1971 to 31st July, 1973.

39. *Clearance of mineral oil without payment of duty*

(a) According to Central Excise Rules, excisable goods cannot be removed from any warehouse except on payment of duty or where so permitted, for removal to another warehouse or for export out of India.

A refinery delivered a quantity of 1996.921 metric tonnes of mineral turpentine oil to a ship through a pipeline on 1st October, 1970. Out of this quantity, 911.587 tonnes of oil were brought back to the refinery for reprocessing, as the oil was found to be contaminated after delivery. The refinery, however, paid excise duty on the net quantity of oil delivered. It was pointed out in audit that the entire quantity of oil put on board

the ship should be considered as removed from the refinery. A demand for Rs. 70,174 was raised by the department in October, 1971 towards duty payable on the quantity claimed to have been contaminated after delivery. The demand was realised in August, 1974 after the party's appeals were rejected.

(b) In another case, in January, 1972 the same refinery received back into its slop tank two consignments of 109.571 kilolitres of aviation turbine fuel and 52.602 kilolitres of superior kerosene after initial delivery to a ship. These oils were reprocessed by the refinery. It was stated that the pumping was done inadvertently by the vessel, while draining water. -It was pointed out by audit in February, 1973 that duty amounting to Rs. 46,000 should have been demanded in this case as the oil was actually removed from the refinery and not rewarehoused or exported out of India.

The Ministry have stated that they have no comments to offer regarding the first case and as regards the second case, there has been a procedural irregularity.

40. *Loss of duty due to clearance of goods without chemical test*

Petroleum products attract duty liability, if the products conform to the specifications/characteristics prescribed under the respective tariff item namely 6 to 10 of the Central Excise Tariff, irrespective of the fact whether they are marketable or known to the market in that name.

In a collectorate, 479 tonnes of a petroleum product known as cutter stock was used by the refinery for cleaning an asphalt tank in April, 1971. No tests were conducted to determine whether the cutter stock conformed to the specification/characteristic prescribed under any of the tariff items to assess the same to appropriate duty. The definitions of the tariff items relating to petroleum products are so worded that any product coming out of the fractionating column in refining crude petroleum will

fall under one or other of these items and attract duty accordingly. The omission to levy duty on the oil used for cleaning the tank has resulted in loss of revenue to the extent of Rs. 2,45,008 treating it as refined diesel oil (tariff item 8) based on the specific gravity of the oil. The paragraph was sent to the Ministry in October, 1973. No reply has been received so far (March, 1975).

41. *Storage of mineral oil products in contravention of Central Excise Rules*

An oil company in a collectorate purchased an oil installation of another oil company and obtained licence to warehouse its mineral oil products on 1st April, 1969. On that date the company which sold its installation had 5,507.32 kl. of mineral oil products in its tanks. These products continued to be the property of the seller and stored in the bonded storage tanks of the purchaser, under an agreement entered into between the buyer and the seller. According to this agreement the purchaser *inter alia* has to provide marketing, installation facilities to the seller and also provide a specific ullage (volume of the tank expressed as height) in the tanks to store the latter's products. As the licence of the seller ceased to be effective from 1st April, 1969 that company should have removed the goods to a public warehouse or sold them to the licensee of another private warehouse or removed them for home consumption. There was no possibility for the seller to remove the products to a public warehouse nor did it sell the products on the date of transfer of the installation to its purchaser.

Thus, by continuing to keep its stock of mineral oil products in the bonded storage tanks of the purchaser in contravention of Rule 172 of Central Excise Rules, the seller has avoided the payment of duty of Rs. 21,60,029 on 31st March, 1969.

Even after that date the mineral oil products of the seller continued to be brought and stored in the bonded storage tanks of the purchaser in the space reserved for the seller therein. As

and when mineral oil products of the seller in the purchaser's tanks are cleared, the latter pays the central excise duty, as if they were its own products. But for the above facility, the seller would have been liable to pay before drawing the mineral oil products from the refinery or elsewhere, the duty, the payment of which is now being postponed until the actual clearance from time to time. The following clearances of mineral oil products were made by the seller from the installation of the purchaser after the cancellation of its licence, upto 31st December, 1973.

Period	Quantity of mineral oil products cleared (in kilolitres)	Duty amount
		Rs.
April, 1969 to August, 1971 .	3,70,372.268	17,35,13,116
September, 1971 to March, 1972	1,01,689.000	5,37,16,237
April, 1972 to October, 1972 .	87,508.000	4,97,15,277
November, 1972 to December, 1973	1,74,425.679	10,32,44,795
		38,01,89,425

The Ministry stated that the relevant provision in the rules could have been relaxed if approached and that a general relaxation was given on 5th October, 1974.

The fact, however, remains that for the period mentioned in this paragraph there was no relaxation of the rules. Even the so called general relaxation was by a demi-official letter addressed by the Under Secretary to all Collectors of Central Excise for issuing instructions for further guidance. Thus at the time of storing these oils there was omission to levy duty.

Vegetable non-essential oils (Tariff item 12)

42. *Non-levy of duty*

(a) Central excise duty on vegetable non-essential oil was imposed with effect from March, 1956 under tariff item 12. The

Government clarified in March, 1967 that acid oil would not be liable to duty as vegetable non-essential oil provided the free fatty acid content in the oil was not less than 35 per cent. It was pointed out by audit in June, 1971 that the clarification of March, 1957 amounted to recognition of the product as dutiable provided the free fatty acid therein, was below 35 per cent. As the tariff description did not stipulate any percentage content of acid in vegetable non-essential oil, acid oil was chargeable to duty under tariff item 12 irrespective of the percentage content of acid. To remove the product without payment of duty required an exemption notification under Rule 8(1) of the Central Excise Rules, 1944. In November, 1971 the Central Board of Excise and Customs clarified that acid oil containing 25 per cent or more of free fatty acid could not be used as edible oil or for any other purpose for which processed vegetable non-essential oils were used implying thereby that acid oil containing less than 25 per cent of free fatty acid would only be chargeable to central excise duty. Edibility or end use on the basis of free fatty acid content is not the criterion for classification and is outside the scope of the tariff. Non-levy of duty on acid oil resulted in loss of revenue to the extent of Rs. 5,52,296 in respect of three factories during the period January, 1968 to March, 1974. The paragraph was sent to the Ministry in November, 1974. Reply is awaited (March, 1975).

(b) By a notification of 1st March, 1963, processed vegetable non-essential oil used in the manufacture of vegetable product is exempt from the whole of the excise duty leviable thereon. Such vegetable non-essential oil does not pay excise duty, if so used within the same factory. If such oil has to be removed to another factory for the manufacture of vegetable product, the procedure prescribed in Rule 56-A of the Central Excise Rules is required to be followed. One condition of this rule is that, if the final product does not pay any excise duty, the credit for duty paid on the raw material is not available. Vegetable tallow is classifiable as vegetable product but is exempt from duty. Therefore, vegetable tallow manufactured in the same factory

does not bear duty on vegetable non-essential oil used therein, while such tallow manufactured elsewhere under Rule 56-A *ibid* has to bear duty on such oil used. This anamolous position was allowed to continue till 9th October, 1971 when by issue of a notification the use of such oils without payment of duty was not permitted.

Thus for the period January, 1969 to 8th October, 1971 the non-levy of duty on vegetable non-essential oils used in the manufacture of vegetable tallow in integrated factories amounted to Rs. 69.05 lakhs. The paragraph was sent to the Ministry in October, 1974 and reply is awaited (March, 1975).

Vegetable product (Tariff Item 13)

43. *Vegetable products Rebate Scheme*

A scheme to provide incentive for greater use of cotton seed oil in the manufacture of vegetable product was introduced from 7th July, 1960 under which a rebate in excise duty to the extent of Rs. 6 per quintal was admissible from 1st March, 1962 for use of cotton seed oil above a certain percentage provided the proportion of vegetable product of cotton seed oil in a consignment was in excess of 7 per cent of the total vegetable product. The amount of rebate was increased to Rs. 7.50 per quintal from May, 1962. From 22nd July, 1967 the grant of rebate was restricted to use of indigenous cotton seed oil only.

In May, 1971. the quantum of rebate was increased to Rs. 10 per quintal subject to the same conditions.

On 19th February, 1972, however, the Directorate of Sugar and Vanaspati issued the 'Vegetable Oil Product (Standard of Quality) Order', prescribing a minimum use of the following oils namely :

hydrogenated cotton seed oil	10% minimum
refined sesame oil	7.5% minimum
refined safflower oil	2.5%, minimum

Consequently the rebate scheme for use of cotton seed oil was also reviewed and revised with effect from 1st April, 1972. The essential features of the revised scheme were :

(i) the rebate was made on slab rates on a quarterly basis;

(ii) the rebate was admissible only on the indigenous cotton seed oil content of the vegetable product;

(iii) the rebate was admissible only if the cotton seed oil content was in excess of 10 per cent.

As the revised scheme of rebate was in consequence of the Vegetable Products Control Order 1972, fixing a minimum percentage for use of cotton seed oil, the vegetable products manufactured as per old standards and kept in stock on the date the new scheme came into effect would not be eligible for this rebate. On a review, it was noticed in audit that a rebate of Rs. 1,44,986 was allowed on the stock of vegetable products lying with the manufacturers on 31st March, 1972 but cleared on or after 1st April, 1972 in respect of eleven factories in four Central Excise collectorates. The paragraph was sent to the Ministry in October, 1974. Reply is still awaited (March, 1975).

Pigments, Colours, Paints, Enamels, Varnishes, Blacks and Cellulose lacquers (Tariff item 14)

44. *Loss of revenue due to incorrect application of exemption.*

Roller coating compositions falling under item 14 of Central Excise Tariff were exempted from payment of central excise duty by a notification dated 27 August, 1955 provided that such goods were intended for printing on metals. The exemption was, however, withdrawn from 17 March, 1972.

The Government issued instructions in October, 1959 that duty free clearance was to be granted only after proper verification of end use. The Government, however, did not define roller

coating composition. In January, 1968 the Government issued instructions defining roller coating composition as a special type of enamel. The definition of roller coating composition was revised by further instructions issued in March, 1969 to mean special types of composition including enamels and varnishes.

A manufacturer of "printed aluminium foils" manufactured also printing ink based on nitrocellulose lacquer for printing on metals, but did not pay central excise duty treating this as roller coating composition. Audit pointed out in September, 1972 that nitrocellulose based ink did not conform to the definition of roller coating composition and that the product was not eligible for exemption from duty. The incorrect application of exemption resulted in loss of revenue of Rs. 4,93,619 in respect of 3,43,086 litres of nitrocellulose based inks consumed internally for printing on metals from 1st April, 1968 to 16 March, 1972. The paragraph was sent to the Ministry in October, 1974; reply is awaited [March, 1975].

45. *Under assessment due to irregular extension of concessional rates.*

(a) According to a notification dated 1st October, 1960 'stiff paints and ready mixed paints' could be cleared at the concessional rates of duty shown in the table annexed to the notification by any manufacturer for home consumption, on the first 750 tonnes of oil paints and enamels taken together for home consumption from factories having output of all paints and enamels not exceeding 3000 tonnes in a financial year.

In a collectorate, a manufacturer of paints and varnishes claimed this concession in July, 1972 but was allowed the same from the financial year 1973-74. The department, while conceding the concessional rates did not take into account the total output of all the factories owned by the manufacturer. It was noticed that he had another factory in another State producing similar goods classifiable as ready mixed paints. If the output of both

the factories were taken into account the manufacturer would not be entitled to the concessional rates. When this was pointed out in audit, the department accepted the objection and raised demand amounting to Rs. 68, 474 against the factory. The recovery particulars are awaited (June, 1974). The paragraph was sent to the Ministry in October, 1974; reply in awaited (March, 1975).

(b) A manufacturer of paints and varnishes in another collectorate whose total annual output did not exceed 3000 tonnes, was also manufacturing paints on behalf of another big manufacturer having his own factory in a different collectorate out of raw materials supplied by the latter and cleared them under the latter's brand name, receiving only labour charges. These paints were assessed at the concessional rates of duty prescribed in the aforesaid notification.

Since the bigger manufacturer is liable to be treated as manufacturer in respect of these paints under Section 2(f) of the Central Excise and Salt Act, 1944 he is not eligible for the concessional rates of duty for these paints. On this being pointed out in audit (September, 1973) the department accepted the mistake and reported (May, 1974) that a show cause notice had been issued to the assessee (small manufacturer) demanding differential duty of Rs. 1,30,566 for the period from 13th August, 1971 to 11th February, 1974. The paragraph was sent to the Ministry in November, 1974. Reply is awaited (March, 1975).

46. *Non-realisation of duty on an excisable product*

A factory had been manufacturing varnish assessable to duty under tariff item 14 II(i) since March, 1957 and using it internally for insulating electric wires without payment of duty. The department detected it after five years in September, 1962. After ascertaining the excisability of the product on chemical test, it raised three demands (October, 1962, November, 1962

and January, 1963) aggregating Rs. 4,65,196 covering the period March, 1957 to October, 1962. Regarding failure to detect it earlier the department stated (March, 1963) that there was limited scope for detection as the unit manufactured varnish for its own use as intermediate product and that the excise officer posted to the factory from April 1962 had insufficient technical knowledge.

The Collector turned down the appeal of the licensee against the demands (June, 1964). In his order-in-appeal the Collector held that the varnish manufactured by the licensee was chemically examined and found to be assessable under tariff item 14 II(i). A reference was also made by him to a notification dated 18 January, 1964 in support of his decision that varnish used for insulating electric wires and cables was an excisable product. On a revision application being filed by the licensee in July, 1964, the Government set aside in May, 1972 the order-in-appeal of the Collector on the ground that the Collector had relied on the notification of January, 1964 in deciding the case and had not examined the case independently. The Government further directed the Collector to decide the case on merits. The department informed in May, 1974 that the case was being examined *de-novo*.

Thus there was initial failure to detect the case and thereafter no action was taken against the manufacturer for producing excisable goods without a central excise licence in contravention of the Central Excise Act and the Rules. There was also delay in deciding the appeal and revision petition.

Synthetic Organic Dyestuffs (Tariff item 14D)

47. *Incorrect proforma credits due to change in classification*

Aniline oil had been mostly imported, and on import, was being classified under item 30(1) of Indian Customs Tariff as an organic dye with levy of countervailing duty under item 14D of the Central Excise Tariff. As Aniline oil had other uses

besides being a dyestuff the classification on the customs side was changed by issue of a tariff advice on 29th March, 1971 to item 28 as chemicals. The Board correspondingly changed the classification on the central excise side on 15th May, 1972 and from that date aniline oil became non-excisable.

It was held in audit that as a consequence of the change in classification the proforma credit taken under Rule 56A of the Central Excise Rules, 1944 in respect of imported aniline oil for manufacture of dyes was not permissible on or after 15th May, 1972. On enquiry with the department, it came to notice that in five collectorates the proforma credit taken amounted to Rs. 1,00,816 out of which an amount of Rs. 18,135 was treated as lapsed to the department. Action is reported to be under way to recover the balance amount irregularly availed of. The paragraph was sent to the Ministry in October, 1974 ; reply is awaited (March, 1975).

Tyres (Tariff item 16)

48. *Incorrect grant of exemption.*

By a notification issued in April, 1941 the Government exempted tyres specially designed for use on animal drawn vehicles (hereinafter referred to as ADV tyres) from the whole of the excise duty leviable thereon.

Two tyre factories under the jurisdiction of two collectorates manufactured and cleared ADV tyres free of duty which worked out to Rs. 4.39 crores for the period 16 August, 1968 to 30 June, 1974. No verification was conducted by the department to ensure that such tyres were actually used on animal drawn vehicles.

A test check of central excise revenue records of certain manufacturers of motor vehicle trailers under the jurisdiction of one of the collectorates revealed that exempted ADV tyres were used by them on motor vehicle trailers. As the motor

vehicle trailers did not come under the category of animal drawn vehicles, tyres used therefor were chargeable to full duty under tariff item 16(1). The revenue involved in respect of tyres found by audit to have been used in motor vehicle trailers worked out to Rs. 72,046 in respect of 13 factories during the period January, 1969 to July, 1973.

The paragraph was sent to Government in November 1974; reply is still awaited (March, 1975).

49. *Incorrect refund and short levy of duty.*

'Tyres for motor vehicles' are chargeable to duty at higher rates than 'all other tyres'.

A unit manufactured tyres of sizes 1800-25 and above which were classified by the department as tyres for motor vehicles and charged to duty accordingly. On a representation from the manufacturer that these tyres were meant for earth moving equipment and therefore were classifiable as 'all other tyres', the Assistant Collector allowed in December, 1969 refund of duty amounting to Rs. 4,18,455 for the period from 18th December, 1967 to 12th March, 1968. The company thereafter started paying duty at lower rates. A further refund claim of Rs. 19,48,810 for the period from 13th March, 1968 to 25th February, 1970 was, however, rejected as in the meantime the Board clarified in July, 1971 that the said tyres were classifiable as 'tyres for motor vehicles'. The manufacturer again started paying duty at higher rates from August, 1971. No conclusive action was, however, taken to recover the incorrect refund of Rs. 4,18,455 and short levy of duty from March, 1970 to August, 1971 amounting to about Rs. 26.07 lakhs. A show cause notice for the recovery of Rs. 1,12,849 being differential duty due for the period 13th July, 1971 to 5th August, 1971 was issued in June, 1972 but was not pursued further. The refund of Rs. 4,18,455 also involved an excess payment of Rs. 87,325

due to calculation mistake. Even this amount has not been recovered.

Rubber Products (Tariff item 16A.)

50. *Short-levy due to adoption of incorrect value.*

Rubber products falling under tariff item 16A(2) are assessable to duty and accordingly the value has to be computed in accordance with Section 4 of the Central Excise Act. A manufacturer of rubber products approached the department in March, 1973 requesting it not to include the post manufacturing expenses in calculating the assessable values, which he computed at the rate of 5.3 per cent of the ex-duty prices. He filed revised price lists on this basis. The department, however, rejected this claim. The licensee, thereupon, moved the High Court to direct the Central Excise department not to include post manufacturing expenses in the assessable value and also obtained a stay order in May, 1973. The department thereafter permitted the licensee to clear the goods on payment of duty on the declared prices, provisionally.

The prices adopted for assessment by the department were, on audit scrutiny, found to be lower than what they should have been. This was because the department deducted duty at the rate of 30 per cent on the listed prices instead of deducting the element of duty actually payable by the licensee in accordance with 'Explanation' below Section 4. Adoption of such lower values for assessment resulted in short levy of duty to the extent of Rs. 2,03,040 during the period May, 1973 to October, 1973.

When this was pointed out to the department in December, 1973, two show cause notices were issued to the licensee for the short levy of Rs. 3,00,092 covering the period May, 1973 to February, 1974. Recovery of this amount is still awaited.

Plywood (Tariff Item 16B)

51. *Loss of Revenue*

Tariff item 16-B covers plywood block board, lamin board etc. whether or not bonded with natural or artificial synthetic resins or similar binders.

The rate of duty is *ad valorem*. In February, 1969 the Central Board of Excise and Customs issued a clarification stating that non-decorative plywood when affixed with impregnated paper, cotton facrics or P.V.C. sheets is not to be considered as decorative plywood.

Two factories bought duty paid commercial plywood, processed the same by treating it with synthetic fibre and cleared the processed plywood without payment of excise duty based on the clarification issued by the Board. Non-assessment of such plywood resulted in a loss of duty of Rs. 1,33,783 for the period from April, 1970 to August, 1972.

The paragraph was sent to the Ministry in September, 1973. No reply has been received so far (March, 1975).

Paper (Tariff item 17)

52. *Under assessment*

(a) Mill boards are chargeable to duty, whether cleared outside the factory or cleared for captive consumption for the purpose of manufacturing other boards, at the slab rates of duty prescribed by notification. On 29th July, 1972 the Government

of India issued notification exempting mill board from duty, if it was used for manufacture of other boards. It was further notified that the clearances of these mill boards would be computed against the slabs.

In a collectorate, one factory, however, cleared 5,40,915 kgs. of mill board during the period 20 June, 1972 to 28 July, 1972 at 'Nil' rate of duty for manufacture of solid fibre board in their own factory and this was not computed for slab concessions.

When this was pointed out in audit, the department accepted the objection and intimated that action to recover the amount of Rs. 1,59,895 being the duty payable on the mill boards so cleared, is being taken. The paragraph was sent to the Ministry in October, 1974. Reply is awaited (March, 1975).

(b) Prior to 17th March, 1972 printing and writing paper was assessable under Tariff item 17(3) at 35 paise per kg. plus 20 per cent thereof as special excise duty.

Under Government of India notification dated 28th February, 1965 as amended by notification dated 1st October, 1965 'printing and writing paper' of a substance not exceeding 75 grammes per square metre was liable to duty at a concessional rate of 15 paise per kg. only.

A paper mill was clearing printing paper at concessional rate admissible for paper not exceeding 75 g.s.m., although the paper was actually of weight exceeding 75 g.s.m. On the under-assessment being pointed by audit, (September, 1967) the department raised demands for differential duty amounting to Rs. 1,44,930 covering the period from 3rd June, 1966 to 12th June, 1969.

Realisation of demand is awaited. The paragraph was sent to the Ministry in November, 1974 and reply is not received (March, 1975).

53. *Short levy of duty due to grant of inadmissible concession*

Under a notification issued by Government on 8th September, 1967 as amended from time to time concessional rates of duty were prescribed for the clearance of first 1000 metric tonnes of paper of certain varieties during any financial year provided the paper was not manufactured in a factory having plant attached thereto for making bamboo pulp.

However, a paper factory in a collectorate availed itself of the above concession in the year 1972-73 even though it has a plant for making bamboo pulp. This resulted in the grant of inadmissible concession of duty amounting to Rs. 4,13,564. When this was pointed out in audit the Assistant Collector intimated (August, 1974) that a show cause notice for recovery of short assessment had been issued.

54. *Loss of Revenue*

Paper, 'all sorts' are excisable. Certain varieties of paper like 'art, flint' are chargeable to duty at higher rate. A factory in a collectorate started manufacturing these varieties of paper by subjecting the ordinary paper chargeable to duty at lower rates to various processes from June, 1963. No licence for this manufacture was obtained by the factory nor any differential duty was paid. The department detected the evasion of duty and brought the unit under excise control in September, 1965 when a licence was issued. Meanwhile the factory started paying duty from June, 1965. A demand for excise duty amounting to Rs. 1,09,905 was raised in March, 1966 for the

period from 7th June, 1963 to 21st June, 1965. The Assistant Collector later confirmed the demand in January, 1968 but reduced it to Rs. 88,395. When the party filed a revision petition, the Government of India vacated the demand in March, 1972 on grounds of time-bar. Thus Government lost revenue amounting to Rs. 88,395 on account of the demand not being raised in time.

Rayon and synthetic fibres and yarn (Tariff item 18)

And

Rayon or Artificial silk fabrics (Tariff item 22)

55. *Loss of revenue*

Rayon and synthetic fibres and yarn are assessable to excise duty under tariff item 18. The Central Board of Excise and Customs issued instructions on 11th July, 1972 stating that strips of synthetic material such as metalised polyester, high density polyethelene not exceeding 5 m.m. in width including fabrics woven from such strips would fall within the purview of central excise. Accordingly such strips were excisable to duty as yarn and the woven fabrics were excisable under item 22 of the tariff. By issue of a notification dated 10th July, 1972 the high density polyethelene tapes falling under tariff item 18 were exempted from duty, if used in the manufacture of art silk fabrics. Similarly by another notification of the same date high density polyethelene woven fabrics intended for making sacks were exempted from central excise duty.

Prior to the issue of these notifications no duty was levied on such strips or woven synthetic fabrics. The manufacturers were also not licensed for the purpose. The loss of revenue on

account of non-levy of duty in these cases was Rs. 8.81 lakhs for the period 1st February, 1971 to 10th July, 1972. The Ministry have, while admitting the facts, reported that the demands in these cases were withdrawn in accordance with Ministry's instructions issued on 23rd February, 1973.

Yarn, all sorts, not elsewhere specified (Tariff item 18E)

56. *Revenue loss in assessment of yarn all sorts.*

By the Finance Act, 1972, items in Central Excise Tariff relating to textile yarn were redefined and a new item, "18-E yarn, all sorts, not elsewhere specified," was introduced with effect from 17th March, 1972 to cover all blended yarn containing less than 90 per cent by weight of any single fibre. This new tariff item carried a tariff rate of duty of Rs. 50 per kilogram. Effective rates of duty payable were fixed by notifications and these varied depending on the fibre contents and the count of yarn. The compounded levy procedure for payment of duty (applicable to cotton yarn falling under item 18-A of the tariff, when such yarn is used in a composite mill for weaving) was extended to yarn classifiable under this new tariff item by issue of a notification dated 17th March, 1972 and this procedure was confined to yarn containing partly cotton (more than 40 per cent by weight) and partly any other fibre or fibres, the wool and silk contents being less than 40 per cent by weight of such yarn (where such yarn contained wool or silk). The rates of compounded duty so fixed were the same as those fixed for cotton yarn containing not less than 90 per cent by weight of cotton, though yarn falling under the item 18-E was costlier than cotton yarn. Besides, such yarn removed for weaving outside attracted higher rates of duty. This anamolous position was reviewed on receipt of representations from the trade. By an amending notification issued on 24th July, 1972 the benefit of paying duty at compounded rates on yarn used in the manufacture

of fabrics in composite units was restricted to yarn containing two or more of (a) synthetic staple fibre of cellulosic origin, (b) jute including Bimlipatam jute or mesta fibre and (c) cotton, wherein the jute content, if any, was less than 50 per cent by weight of such yarn. Accordingly yarn on which compounded levy was withdrawn from 24th July, 1972 and which was already cleared without payment of duty for use in weaving of fabrics was leviable to duty separately at effective rates.

It was noticed that in seven units in three collectorates differential duty of Rs. 17,04,497 was recoverable in respect of yarn in stock with weaving departments or used in fabrics lying in stock on the crucial date and cleared after 23/24th July, 1972. Out of this an amount of Rs. 75,208 was recovered in respect of two units in one collectorate. Particulars of recovery of the balance of Rs. 16,29,289 were awaited.

It was further noticed that revenue forgone on account of collection of duty due to fixation of low compounded rates in the types of yarn to which the procedure applied earlier but was withdrawn from 24th July, 1972 amounted to Rs. 30,63,454 in respect of 21 units in three collectorates for the period from 17th March, 1972 to 23rd July, 1972. The total revenue loss is being ascertained. The paragraph was sent to the Ministry in October, 1974; reply is awaited (March, 1975).

Cotton fabrics—(Tariff item 19)

57. *Short levy of duty due to incorrect classification of fabrics.*

Certain types of cotton fabrics are assessed to central excise duty on the basis of average count of yarn contained in the fabrics. The fabrics where the average count of yarn is 26s or more but is less than 35s are classified as 'Medium A' and those where the average count of yarn is 35s or more but less than 48s are classifiable as 'fine'.

A textile mill in a collectorate declared the average count of yarn of some sorts of fabrics as 33s and accordingly paid duty applicable to Medium(—)A category. The chemical analysis of the fabrics showed the average count of yarn as 34.8s. The test report was also communicated to the mills in September, 1973. Although the fabrics were classifiable as 'fine fabrics' as per test report and higher rates of duty are leviable no action was taken in this regard. On this being pointed out in audit in March, 1974 the department issued three show cause notices in April, 1974 for recovery of differential duty totalling Rs. 2,04,927. Recovery particulars and reply of the Ministry to the paragraph which was sent in October,1974 are awaited (March 1975)

58. *Non-levy of processing surcharge*

Cotton fabrics falling under tariff item 19-I(2) are liable to duty on account of processing at varying rates depending on the nature of processing. In a notification dated 1st March, 1969 the Government laid down that cotton fabrics subjected to certain specified processes including stentering would not be liable to further duty for such processing. By an amending notification dated 29th May, 1971 Government omitted stentering from the category of non-dutiable processes, but again specified it as a non-dutiable process in a subsequent notification dated 2nd September, 1972. Thus during the period 29th May, 1971 and 1st September, 1972 cotton fabrics were liable to further duty, if subjected to stentering.

Cotton fabrics manufactured in a cotton mill were subjected to various processes including stentering. No further processing duty was, however, charged on the stentered cotton fabrics during the period June, 1971 to August, 1972. The under-assessment on this account worked out to Rs. 7,59,690.

59. *Loss of revenue due to allowing inadmissible discounts*

Under instructions issued by the Board, quantity discounts granted outright at the time of removal of the goods from the

factory alone are admissible for deduction from price for arriving at the assessable value. Thus deferred conditional discounts are not eligible for abatment from prices.

Two units in a collectorate, manufacturing P.V.C. coated cloth, allow quarterly trade discounts at a graded percentage on the net quarterly turnover, if it is backed by prior order and acceptance by the manufacturer. On each clearance of goods, discount is initially allowed at the rate admissible on the amount of quarterly indent and at the end of each quarter, the actual clearances made during the quarter are worked out and consequential adjustments are made in the rate and amount of discounts as also in the central excise duty.

These discounts being thus of the nature of deferred condi tional discounts, are not eligible for deduction from price for purposes of determination of assessable value. By deducting discounts in these cases Government lost revenue which for the period from January, 1971 to March, 1974 worked out to be Rs. 3,70,440. The paragraph was sent to the Ministry in November, 1974. Reply is awaited (March, 1975).

60. *Non levy of duty*

Cotton fabrics impregnated or coated with preparations of cellulose derivatives or other artificial plastic materials, falling under tariff item No. 19 III, are assessable to duty at 25 per cent *ad valorem* (in addition to the duty leviable on base fabrics).

"Food quality", plastic coated conveyor belting and flame resistant, colliery conveyor belting manufactured by a factory by impregnating cotton fabrics with PVC resins and attracting duty under tariff item 19 III, were incorrectly treated as non-excisable and cleared without payment of duty.

On this being pointed out in audit (September, 1971), the department issued six show cause notices to the manufacturer for duty amounting to Rs. 1,06,24,864 due on these products

cleared during the period from 1965-66 to June, 1974. The Board also clarified in August, 1974 that such articles were assessable under item 19-III. Reply of the Ministry to this paragraph which was sent to them in November, 1974 is awaited (March, 1975).

61. *Unitended benefit due to compounded rates.*

In the annual budget of 1971-72 the Government of India imposed levy of excise duty on cotton fabrics, if some processes were carried out by machines operated manually. Prior to this such processed cotton fabrics were exempt from duty. In July, 1971, a system of compounded levy was introduced for processes carried out by stentering and mercerising machines operated manually, fixing the compounded levy per month per machine/ equipment installed without reference to the total equipment employed or the quantity of fabrics processed.

A review of the cases of assessees paying compounded levy under this system showed that their turnover was much higher than estimated by the department. This was because the number of machines employed was substantially more. Consquently the turnover was very high reducing the compounded rate lower. This adventitious gain was stopped only from Ist August, 1973 by an amendment restricting the benefit of the scheme of compounded levy to assessees having not more than one stentering machine and/or one mercerising machine having two rollers.

In the case of one assessee alone such unintended benefit worked out to Rs. 24 lakhs (approx.), for the period from July, 1971 to July, 1973. Data in respect of remaining 12 units in the same and in another collectorate is being ascertained.

62. *Loss of duty due to inadmissible exemption*

Cotton drill, long cloth and markin cotton fabrics intended for use in the coated abrasives industry are fully exempted from central excise duty since January, 1957 by notifications issued from time tc time. A manufacturer described one of the varieties of cotton fabrics produced by him as "industrial cloth-non-

wearable variety" in the prescribed return to the Textile Commissioner and cleared the particular variety free of duty as 'long cloth' for use in coated abrasive industries.

The maximum difference between reeds and picks per inch of the cloth was 12, whereas under the specification laid down by the Textile Commissioner in notification of October, 1964 issued under Cotton Textile (Control) Order, 1948 the maximum permissible difference in respect of long cloth was only 8 per inch. It was accordingly pointed out by audit that as the industrial cloth in question did not conform to the specification of long cloth it was not eligible for duty—free clearance. The Textile Commissioner, Bombay to whom the matter was referred by audit in January, 1973 also stated in February, 1974 that "the cloth could not be termed as long cloth both from the definition given by Mercury Dictionary of Textile Terms as well as from the control point of view".

However, from the Ministry's reply it is seen that on a subsequent reference made by the Assistant Collector of Central Excise in September, 1974 the Textile Commissioner intimated in November, 1974 that he has no objection if the central excise authorities would treat it as long cloth for central excise purposes.

It is not understood how there could be one definition of long cloth for control purposes and another for non control purposes. "Long cloth" is the term used in the notification issued by the Textile Commissioner and this should be binding for purposes of central excise levy.

The excise duty involved on the quantity of cloth cleared during the period April, 1967 to February, 1972 was Rs. 2,20,142.

Asbestos cement products (Tariff item 23-C)

63. *Under-assessment due to incorrect price approval*

While determining the assessable value of asbestos cement couplings for pressure pipes, manufactured by a factory, the cost

of rubber rings is not being taken into account, even though the rings form an integral part of asbestos cement couplings without which the couplings cannot be fitted to the asbestos pressure pipes. Further, the sale value of the couplings by the factory includes the price of the rubber rings also and it should have, therefore, been included in the assessable value. No separate price list for couplings alone has been issued by the factory nor has there been any sale of bare couplings so far. The collectorate, however, accepted the licensee's contention that the rings were not manufactured by him but were purchased from outside and supplied in a separate pack to the customers and that the purchase of the rings was optional for the buyer.

The duty payable on the value of the rubber rings amounted to Rs. 3,87,606 during the period June, 1972 to July, 1974.

The Ministry have replied that the rings with specifications so as to fit in with different types of couplings, were obtained from outside and supplied and that there would be no question of charge of duty, if the rubber rings were kept outside the factory and supplied. Further the Ministry stated that the Collector felt that it would be incorrect to charge duty on the value of rubber rings relying on the instructions of the Board on the question of inclusion of the velue of metal caps for glass bottles and jars. The fact, however, remains that these couplings were cleared along with rubber rings and therefore, the value of such rings should have been taken for purpose of assessment.

Iron or steel products (Tariff item 26AA)

64. *Clearance of goods without payment of duty*

A railway production unit has been manufacturing steel castings from scraps of duty-paid steel from November, 1963.

A central excise licence for the manufacture of the product was taken by the unit but the licensee did not comply with the procedural requirements of Central Excise Rules as regards maintenance of production accounts, opening of personal ledger account, and submission of statutory returns. A production register was, however, opened in November, 1973 incorporating therein the production and clearance of steel castings retrospectively from 1st March, 1973. After over five years the department raised demands for Rs. 20,99,218 in June, 1969 and September, 1970 in respect of steel castings cleared during the period 1st March, 1964 to 28th February, 1969. The licensee submitted a revision application to the Government in October, 1971 on the ground that excise duty on steel castings made out of duty-paid steel scrap was not leviable. The revision application was rejected by the Government. The department also issued two more show cause notices in October, 1973 and March, 1974 demanding duty of Rs. 3,02,070 for the period March, 1973 to January, 1974, no duty being leviable for the intervening period March, 1969 to February, 1973 according to an exemption notification of March, 1969.

The department stated (May, 1974) that an offence case had been booked against the licensee for non-maintenance of central excise records, that the demands for Rs. 20,99,218 had not been paid and that the demands for Rs. 3,02,070 were in process of adjudication. Reply of tne Ministry to the paragraph sent in November, 1974 is awaited (March, 1975).

65. *Underassessment due to non-levy of duty at appropriate rate*

(*a*) Central excise duty on steel products falling under tariff item 26AA is leviable at the specified rates per tonne plus the excise duty for the time being leviable on steel ingots. The Government issued exemption notifications from time to time laying down effective rates of duty for steel products falling under tariff item 26AA(ia) subject to the condition that duty at the appropriate rate had already been paid on steel ingots.

The effective rate of excise duty on steel ingots was enhanced from Rs. 75 to Rs. 97.50 per tonne under notification dated 17 March, 1972. Steel ingots made from scrap, hitherto exempted were also liable to duty at Rs. 50 per tonne plus auxiliary duty at 75 per cent of basic excise duty under notification dated 1st March, 1973.

It was held in audit that duty on steel ingots having been stepped up effective from 17th March, 1972/1st March, 1973 the ingot duty liability on steel products manufactured from steel ingots held in stock coming under the purview of tariff item 26AA(ia) on these crucial dates ought to be calculated at the enhanced rate and differential duty charged. Rule 9A of the Central Excise Rules also provides that the rate of duty applicable to goods cleared on payment of duty shall be the rate in force on the date of actual removal of goods from the factory.

Differential duty was, however, not charged in two factories in a collectorate resulting in underassessment to the extent of Rs. 17,07,245 in respect of products made from steel ingots held in stock on 17th March, 1972/1st March, 1973 and cleared subsequent to these dates.

(*b*) Semi-finished steel like billets etc. falling under tariff item 26AA(i) and steel products *viz.* bars, rods etc. coming under tariff Item 26AA(ia) bear the same rate of duty. Under notification dated 30th November, 1963 as amended from time to time products under tariff Item 26AA(ia) made from materials under tariff item 26AA(i) on which appropriate amount of duty of excise has already been paid are fully exempted from payment of the whole of the excise duty leviable thereon.

A regulatory duty of excise at 50 per cent of basic excise duty was imposed on all steel products effective from 13th December, 1971. This was replaced by auxiliary duty at the rate of 75 per cent of basic excise duty with effect from 1st March, 1973. Further, the effective basic rates of excise duty on blooms, billets, bars, rods etc. were enhanced from Rs. 125 to 162.50 per tonne from 17th March, 1972 and again from Rs. 162.50

to 165 per tonne from 1st March, 1973. Six factories in a collectorate manufactured bars, rods etc. from duty paid stocks of billets held on 13th December, 1971, 17th March, 1972 and 1st March, 1973 and cleared them subsequent to these dates without payment of duty on the ground that the raw materials *viz.* billets had already borne the appropriate amount of duty in terms of the exemption notification dated 30th November, 1963 as amended. As the duty rates under tariff items 26AA(i) and 26AA(ia) were the same, no differential duty would normally accrue. But due to enhancement of rates differential duty became payable on the products falling under tariff item 26AA (ia) made out of materials under tariff item 26AA(i) held in stock on the crucial dates and cleared thereafter.

In a general notification dated 20 May, 1967, the Government exempted iron or steel products made from another article under tariff item 26 AA on which the appropriate amount of duty had been paid from so much of the duty of excise as was equivalent to the duty so paid. This clearly provided for levy of differential duty whenever the duty payable would be more than the duty paid.

It was pointed out by audit in September, 1972 and also subsequently that the discharge of excise duty leviable on bars, rods etc. would have to be determined at the time of clearance of bars/ rods after the crucial dates with reference to the amount of duty paid on the billets etc. The underassessment on account of non-levy of differential duty on bars, rods made out of billets and cleared after the crucial dates worked out to Rs. 9,42,324.

Reply of the Ministry to the paragraph sent in November, 1974 is awaited (March, 1975).

66. *Under-assessment due to non-levy of duty on steel melting scraps internally used.*

Under notifications effective from 1st March, 1973 steel ingots and steel castings falling under tariff item 26 and 26AA respecti-

vely were chargeable to central excise duty at the concessional rate of Rs. 50 per tonne provided such steel ingots and steel castings were manufactured with the aid of electric furnace from duty paid old iron and/or steel melting scrap and/or fresh unused steel melting scrap. Fresh steel melting scrap were dutiable under tariff item 26 at the same rate applicable to steel ingots.

Fresh unused steel melting scraps generated in course of manufacture of steel ingots and steel castings in electric furnace were partly cleared by a factory on payment of duty and partly used by it without payment of duty alongwith old iron or steel scrap in the manufacture of steel ingots and steel castings. The steel ingots or steel castings so manufactured from fresh unused internal steel melting scrap and old iron and steel scrap were cleared on payment of duty at the concessional rate of Rs. 50 per tonne, though no duty was paid on the fresh steel melting scrap internally used. In such cases it was open to the department to assess steel ingots/castings either at the concessional rate of Rs. 50 per tonne after realising full duty of Rs. 50 per tonne on the fresh steel melting scraps internally used, or to assess them at the tariff rate of Rs. 100 per tonne without charging any duty on the fresh steel melting scrap so used. Neither of the two permissible modes of assessment was, however, adopted by the department and instead the entire assessment was made at the concessional rate of Rs. 50 per tonne. The Ministry have replied that on a review, a show cause-*cum*-demand notice was issued for Rs. 9,90,905.

67. *Underassessment due to unauthorised reduction in duty*

As per a notification issued in March, 1973 the excise duty prescribed on certain iron and steel products falling under tariff item 26AA is to be reduced by fifty rupees per metric tonne, if these are manufactured with the aid of electric furnaces from old iron or steel, melting scrap etc. In a collectorate, it was seen that reduction of duty at Rs. 50 per metric tonne of such iron and steel products was allowed in cases where only steel ingots

were manufactured with the aid of electric furnace, resulting in under assessment of duty of Rs. 24,14,518 for the period from March, 1973 to February, 1974. The department reported in May, 1974 that a show cause notice for the amount has been issued to the party. Reply of the Ministry to the paragraph sent to them in November, 1974 is awaited (March, 1975).

Refrigerating and Air conditioning appliances and machinery (Tariff item 29A)

68. *Loss of Revenue due to time-bar.*

A factory in a central excise collectorate was manufacturing walk-in-coolers from July, 1961 and was clearing them without payment of central excise duty. These coolers were first assembled in the factory and thereafter dismantled and sent to the various consignees for assembling at their places. The manufacturer contended that these walk-in-coolers were not ready assembled units and therefore, were not assessable under tariff item 29-A(i) of the Central Excise Tariff. The department allowed the clearances of the coolers as parts of refrigerating machinery after collecting duty as such. In December, 1965 the department decided that the coolers were complete refrigerating units and should be charged to duty under tariff item 29-A(i). Accordingly, a demand for Rs. 1,38,388 was issued to the manufacturer covering the period from 4th July, 1961 to 20th September, 1965. When the assessee appealed against this demand, the Collector of Central Excise decided that duty was leviable as complete unit on these coolers with effect from 24th April, 1962 only, when the tariff item 29 was amended. The demand was thus revised to Rs. 1,21,229.

On a revision application by the assessee the Government of India upheld the classification of the cooler under tariff item 29-A(i) but gave relief to the assessee restricting the demand to a period of 3 months prior to the issue of demand as provided under Rule 10 of the Central Excise Rules. The demand was thus

reduced to Rs. 4,640 resulting in forgoing revenue to the extent to Rs. 1,16,589. The amount of Rs. 4,640 was realised on 24th July, 1972.

Electric motors, all sorts (Tariff item 30).

69. *Incorrect assessment.*

Electric motors are chargeable to excise duty *ad valorem.* By a notification dated 6 December, 1969, as amended from time to time, the Government fixed tariff values for electric motors of various types depending on their horse power and speed. The notification also defined that horse power of electric motors corresponded to continuous rating and for intermittent motors, not continuously rated, an equivalent continuous rating should be deemed to be the horse power.

A factory paid excise duty on the intermittent electric motors manufactured on the basis of wholesale cash price instead of adopting the tariff value. Audit pointed out in November, 1970 that assessment should be made on the basis of appropriate tariff value by determining the equivalent continuous rating of the intermittent electric motors as per notification. The department intimated in June, 1972 that demand for Rs. 68,141 had been raised in April, 1971 covering the period December, 1969 to July, 1970 and that the demand was worked out on the basis of declared horse power of the intermittent motors in absence of their equivalent horse power on continuous rating.

70. *Short collection of duty on electric motors fitted into power driven pumps*

Electric motors with a rated capacity not exceeding 10 H.P. and designed to work at a pressure exceeding 400 volts are assessable to duty at 15 per cent *ad valorem.* When fitted to power driven pumps, however, these electric motors are exempt from payment of duty to the extent of 10 per cent of their value, by virtue of a notification dated 22 March, 1972.

In integrated factories manufacturing electric motors and power driven pumps, the duty on motors was collected when pumps were cleared. If, however, duty paid motors are brought and fitted to such pumps in any factory, the duty paid at higher rates on the motors is adjustable against the duty payable on the power driven pumps manufactured.

A manufacturer in a collectorate cleared pumps fitted with electric motors, with rated capacity not exceeding 10 H.P. but did not pay duty at 5 per cent *ad valorem* payable on the motors, resulting in short payment. On this being pointed out, the department raised a demand for Rs. 60,506 on the clearances from 18 April, 1972 to 31 July, 1972. Particulars of realisation are awaited.

Electric batteries (Tariff item 31)

71. *Non levy of duty due to incorrect classification*

Certain specified parts of storage batteries including 'containers' are subject to central excise duty under tariff item 31(3), the rate of duty being 25 per cent *ad valorem*. Metal containers are excisable under item 46, the rate of duty being 10 per cent *ad valorem*.

Since 1967-68, a factory has been producing a variety of specially designed steel containers for use by a storage battery manufacturer as outer casing of a certain type of battery, the cells of which are assembled in hardened vulcanised rubber container which are encased in the steel container and the gaps were sealed with pitch to make the battery, the rubber and the metal containers as integral unit. In November, 1972 the metal portion of the containers was classified by the department as "metal containers" falling under tariff item 46 and the manufacturer paid duty amounting to Rs. 10,635 for the period January, 1972 to April, 1972. Thereafter the licensee ceased to pay duty on

the ground that the specially designed portion being essentially an integral part of the battery was not classifiable as container. On 10 November, 1972 the department decided that the product was not dutiable as battery part. Again on 7th April, 1973 the department decided that the product was also not a metal container. However, the Board indicated in a clarification dated 18th April, 1973 that such containers could be classified as 'metal containers' assessable under tariff item 46. On 2nd June, 1973 the department intimated the manufacturer accordingly. In this instance, the product being an integral part of the storage battery and the purchaser's specifications requiring the battery to be manufactured to include the metal casing as an integral part of the container portion, both the rubber and the metal casings should have been regarded as parts of the battery containers and the metal portion should have attracted duty under tariff item 31. The non-levy of duty on the product amounted to Rs. 1,30,651 during the period March, 1970 to May, 1973.

The Ministry have replied that the Assistant Collector decided, that the steel containers should be assessed as 'metal containers' and that on appeal the Appellate Collector had, set aside the order of Assistant Collector. The case has been forwarded for review under Section 36(2) to the Government of India who have issued a show cause notice for review.

72. *Under-assessment in parts of electric batteries.*

A manufacturer producing electric storage batteries and parts thereof, was removing these parts for fitments to batteries by dealers under the warranty. These parts were assessed to excise duty on cost data. It was noticed in audit (July, 1971) that the cost price adopted for assessment was not revised for over five years, though as per instructions of the Board revision of such prices is called for every year. When this was pointed out, the department recovered an amount of Rs. 56,898 being the duty difference on revised cost for the period February, 1970 to April, 1973. Reply to the paragraph which was sent to the Ministry in November, 1974 is awaited (March, 1975).

Metal Containers (Tariff item 46)

73. *Under-assessment due to incorrect classification*

Metal containers became excisable from Ist March, 1970 at 10 per cent *ad valorem*. The Central Board of Excise and Customs clarified on 15th September, 1970 that 'composite containers' partly made of metal and partly of other materials like plastic, card board etc. should fall outside the scope of this item, if the body of the container were not made of metal.

A manufacturer of three brands of lip stick containers paid duty on these and represented to the Assistant Collector regarding their excisability. The Assistant Collector decided on 21st December, 1970 that two of these brands were excisable but not the third. On appeal, the Collector decided on 11th May, 1971 that one of the containers declared excisable by the lower authority would also be outside the scope of the tariff. Thereupon, a refund of Rs. 42,120 was made to the party.

Another manufacturer of similar containers was refunded Rs. 17,042 on the decision of the Collector. Not being satisfied he filed a revision application with the Government of India who ordered in February, 1973 that the two containers declared as non-excisable would be subject to duty.

The department did not take any action on Government decision till it was pointed out in audit in June, 1973 that the sum of Rs. 59,162 refunded to the parties concerned was recoverable. In the meantime, the manufacturers were clearing their products without payment of duty and the amount recoverable at the end of March, 1973 accumulated to Rs. 1,15,980. A demand notice asking the parties to show cause why the short levy should not be recovered from them was issued in June, 1973; no recovery has so far been effected. The paragraph was sent in November. 1974; reply is awaited (March, 1975).

Other Topics of Interest

74. *Loss due to low tariff values*

Asbestos cement products are assessable to central excise duty on *ad valorem* basis. The Government of India have by issue of a notification on 18th July, 1969 fixed tariff values for these products.

The tariff values fixed were:

(a)	all moulded products such as gutters roofing accessories and septic tanks but excluding fittings.	Rs. 1090 per metric tonne.
(b)	sheets and boards of all descriptions.	Rs. 575 per metric tonne.

The value for (b) was subsequently revised on 10th June, 1972 to Rs. 650 per metric tonne. Another revision of the values was effected on 12th January, 1974 when the values for the products shown against (a) and (b) were revised to Rs. 1190 and Rs. 690 per metric tonne respectively.

However, on a comparison of tariff values with the actual sale prices, it was noticed that the tariff values were very much on the lower side. In respect of moulded products the average price in one factory was Rs. 1123 per metric tonne in 1971 and Rs. 1203 per metric tonne in 1972. Thus on the basis of these prices the loss of duty for the years 1971—73 amounted to Rs. 4,49,300.

Another factory manufactured corrugated sheets and flexo boards which were assessed as per values fixed against (b) above. The sale prices of corrugated sheets ranged between Rs. 718 to 799 and those of flexo boards were between Rs. 1035 and 1155 per metric tonne. The tariff values fixed were, however, Rs. 650 in 1972 and Rs. 690 in 1974. The loss of duty in the former case was Rs. 3,76,304 for the years 1971-73. In the case of corrugated sheets and flexo boards the loss of revenue

due to fixation of tariff values is computed at Rs. 16,85,500 for the period July, 1972 to March, 1974. Reply to the audit paragraph sent to the Ministry in October, 1974 is awaited (March, 1975).

75. *Unintended concession in duty*

Hot heavy stock (HHS), a kind of furnace oil is supplied by one oil company to a power generating unit. This petroleum product is outside the government pricing system for oil products, as there is only one supplier and one consumer. This product is assessed to duty under the same tariff item as furnace oil, as it answers the tariff description attracting thus the basic excise duty and additional duty under the Mineral Products Act, 1958.

By an order issued on 29th July, 1959, under Rule 8(2) of the Central Excise Rules the Board, however, exempted this product from payment of additional duty. After devaluation of rupee in June 1966, the position was reviewed and the basic duty on furnace oil was reduced by Rs. 36.95 per metric tonne from 6th June 1966. As the hot heavy pitch was classified as furnace oil, the product enjoyed this reduction in duty in addition to full exemption on additional duty. Later, on a review it was felt by Government that the application of reduced rate as for furnace oil to this product was unjustified. To mop up this loss, an additional duty was levied at Rs. 30.70 per metric tonne on this product from 27th April, 1967. Wh[illegible] tariff was changed to volumetric basis in March, 196[illegible] duty was revised to volumetric basis at Rs. 28.95 per kilolitre at 15°C from 1st March, 1968. This concessional additional duty continued without justification, until it was withdrawn by an order dated 21st September, 1973, involving a revenue of Rs. 47.92 lakhs for the period 1st April, 1971 to 20th September, 1973.

The Ministry have stated that H.H.S. being outside the pricing system, only part of the adventitious gain would accrue to the refinery and that from the policy of levy of additional excise duty the grant of exemption from time to time till its withdrawal

from 21st September, 1973 was justified. The Ministry have however, not explained the non levy of additional duty prior to 27th April, 1967 nor have they explained the total quantum of adventitious gain and the amount so far recouped.

76. *Mixed yarn not charged to central excise duty*

A factory manufactured mixed yarn containing less than 90 per cent staple fibre and flax. Upto 16th March, 1972, the mixed yarn was liable to central excise duty under tariff item 18 as synthetic yarn.

When the tariff was recast from 17th March, 1972 creating a new item for mixed yarn, the particular yarn made of flax did not fall under any of the items. Realising this, the tariff item 18E was enlarged from 1st March, 1973 to cover all sorts of yarn not falling under any other tariff item. As a result, the mixed yarn containing staple fibre and flax again became dutiable with effect from 1st March, 1973.

Thus, during the period 17th March, 1972 to 28th February, 1973 this particular variety of mixed yarn was not charged to central excise duty.

Revenue forgone by the Government on this account in respect of one factory during the period 17th March, 1972 to 28th February, 1973 worked out to Rs. 4,51,512.

The audit paragraph was sent to the Ministry in November, 1974 and reply is awaited (March, 1975).

77. *Irregular assessment of drums*

According to Section 2 (f) of the Central Excises and Salt Act, 1944, as amended under Finance Act, 1964 the word 'manufacturer,' shall be construed to include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account. Persons who got their

goods manufactured from other manufacturers by supplying the raw materials and on payment of labour charges are, therefore, to be treated as manufacturers and they should obtain licence as such under Rule 174 of the Central Excise Rules, 1944.

In two collectorates an oil company got drum containers manufactured from other manufacturers on payment of fabrication charges by supplying their own steel sheets. The principal manufacturers paid central excise duty on the basis of assessable value worked out by adding fabrication charges to the cost price of steel sheets as declared by the oil company. When non-inclusion of profit element was pointed out in audit, the department raised demands amounting to Rs. 20,39,151 in four cases. However, two demands for Rs. 43,128 in one collectorate were withdrawn on the plea that fabrication charges included the profit element also. Particulars of realisation in the other two cases were awaited.

The mode of assessment was irregular. The correct course would have been to treat the company as loan licensee whose declaration of prices of the completed drums should have been obtained and value for assessment adopted on that basis.

The paragraph was sent to the Ministry in November, 1974 and reply is awaited (March, 1975).

78. *Incorrect refund to a manufacturer*

Excise duty on goods manufactured is either specific or *ad valorem*. In either case, the Government of India have been granting exemptions from excise duty either whole or in part in respect of goods produced by small scale manufacturers. These exemptions have been in one of the following types, namely :

(a) with reference to specified categories of goods;

(b) with reference to production within the limits prescribed ;

(c) with reference to clearances during specified periods ;

(d) in relation to production in small scale units as defined.

Electric wires and cables are assessable to duty *ad valorem*. By a notification dated 1st June, 1970 the Government of India fixed concessional rates of duty for electric wires and cables produced by small scale units satisfying the definition laid down. The effective rates are 12 per cent and 4 per cent against the tariff rates of 15 per cent and 10 per cent *ad valorem*. A unit intending to avail itself of these lower rates has to comply with the definition of small scale unit, according to which, the Assistant Collector of Central Excise should be satisfied that the capital investment in plant and machinery only installed therein as on the date of the initial installation of plant and machinery is not more than Rs. 7.5 lakhs.

An industrial unit having an initial investment of less than Rs. 7.5 lakhs on plant and machinery applied to the department for refund of excise duty paid in excess, on the basis of the notification, supporting its claim with a certificate from a chartered accountant about the investment. The Assistant Collector being satisfied with the certificate granted the refund of Rs. 1,12,449 for the period June, 1970 to April, 1971.

It was, however, noticed in audit that the factory had expanded considerably by further investment on plant and machinery after commencing production in September, 1966. In September, 1970 the unit came out of the small scale sector and is since registered with the Director General of Technical Development, New Delhi. Notwithstanding these developments the unit is still allowed to enjoy the concession in excise duties as applicable to small scale industries.

The unit was thus allowed the concession amounting to Rs. 2,69,343 during the period, June, 1970 to February, 1972, of which Rs. 2,60,777 is in respect of the period after its registration as a small scale unit was cancelled on 9th September, 1970.

The Ministry have stated that it is proposed to take up the matter with the D.G.T.D., the Ministry of Industrial Development and Development Commissioner (S.S.I.) to examine whether the existing criterion of initial capital investment in the classification of 'small scale units' requires any change.

79. *Irregular Proforma Credit availed of*

Rule 56A of the Central Excise Rules lays down a special procedure for availing credit of 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. Credit is, however, not to be allowed in respect of any material or component parts used in the manufacture of finished excisable goods, if the final goods are exempted from the whole of duty of excise leviable thereon or are not excisable.

A factory manufacturing "footwear," however, availed of such credit in respect of duty paid on rubber soles used in the manufacture of footwear valued at Rs. 5 or less per pair which is wholly exempted from payment of excise duty. Irregular credit, thus, allowed during the period from 28th December, 1968 to 31st July, 1971 amounted to Rs. 1,31,931.

When this was pointed out in audit the department raised demand for realisation of the amount. A sum of Rs. 47,157 was realised in December, 1971 and the balance of Rs. 84,774 was realised by adjustment against a refund claim on 2nd December, 1972.

80. *Comments on assessment and collection of central excise revenue in Andaman and Nicobar Islands*

The administration of the Central Excises and Salt Act, 1944, and the Rules thereunder in the Andaman and Nicobar Islands is vested in the Union territory administration, under rule 2(ii) (m) of the Central Excise Rules, 1944 and accordingly the administration of the Central Excise and Salt Act is entrusted to the Deputy Commissioner, Port Blair, who is assisted in the performance of this function by the Tahsildars in addition to their revenue, law and order etc. duties. These officers do not have any special training in central excise matters nor have any trained personnel from the Central Excise and Customs cadres

been lent to the local administration to assist them. The central excise revenue in the Islands has been increasing in the last five years as indicated below :—

Year	Revenue Rs.
1969-70	11,98,816
1970-71	10,75,003
1971-72	35,26,836
1972-73	54,61,917
1973-74	57,22,360

The principal revenue yielding units in the Islands at present comprise the Indian Oil Corporation, two timber factories manufacturing plywood etc. and a coffee plantation. Though the number of units is small, the revenue yield is considerable and hence the desirability of posting minimum number of trained officers and personnel of the Central Excise and Customs department for administration of excise and customs laws merits consideration.

From 1970 onwards audit observations have been communicated to the administration and also included in the reports of the Comptroller and Auditor General of India-Union Government (Civil). These highlighted various types of irregularities arising primarily from the lack of staff trained in Central Excise matters.

(*i*) In 1971, it was noticed that the 'self-removal procedure' introduced elsewhere in India in 1968 had not yet been started in the Islands and annual stock takings were not being conducted.

(*ii*) 18 cheques in payment of revenue of Rs. 1,88,331 received from one industry during the period November 1969 to March, 1970 were lying uncashed in the office of the Deputy Commissioner till February, 1971.

(*iii*) Increase in the tariff value of commercial plywood with effect from 16 August, 1969 and 20 February, 1970 was not given effect to by the factories nor detected by the excise staff till pointed out by audit. The revenue realised at the instance of audit was Rs. 27,431.

(*iv*) Incorrect calculation of the quantity of commercial plywood cleared by the excise authorities was noticed and revenue of Rs. 6,791 under-assessed during the years 1967 to 1969 and pointed out by audit in March, 1970 was realised by the excise authority.

(*v*) In para 40(iv) of the Report of the Comptroller and Auditor General of India for 1971-72 it was pointed out that duty paid on resins and iron strips was regularly taken in reduction by duty payable on plywood by a factory. The under-realisation of duty of Rs. 2,17,350 for the period 6th November, 1971 to 20th April, 1972 was pointed out by audit and the amount was realised on 1st August, 1972. In reply, the Government stated in 1972 that the under-assessment had been rectified and that the question of posting trained staff for assessment and collection of central excise duties in the Islands was under their active consideration. Till June, 1974, no trained staff had been posted there for this purpose.

During the latest audit conducted in May-June, 1974 of the excise revenues assessed and collected during 1973-74, the following irregularities have come to notice indicating that the delay in taking remedial action by the Government is continuing to result in indifferent assessment and collection of central excise revenues :—

(*i*) The same plywood factory which had irregularly utilised the duty paid on resins and steel strips in reduction of the duty payable on plywood had repeated the irregularity. It credited in its books Rs. 1,75,096 being

duty paid by it on synthetic resin for utilisation as reduction in payment of duty on plywood manufactured and cleared by it. Out of a credit of Rs. 1,75,096 accumulated during the period 13th February, 1973 and 1st June, 1974, the factory had incorrectly utilised Rs. 2,013, till the date of audit on 5th June, 1974. On the inadmissible utilisation being pointed out by audit, the utilisation of Rs. 2,310 was cancelled by payment of an equal amount of duty. The irregularity had not been detected by the excise authority.

(*ii*) One of the plywood factories produced synthetic resin which was wholly utilised in the manufacture of plywood. The duty payable on the manufactured synthetic resin was paid on the basis of its value computed from the cost of production. The cost sheets were approved by the excise authority on 21st March, 1973. The costed value, as per circular of the Board of Customs and Excise should hold good only for one calendar year and even then only, if there be no major fluctuations of the price of raw materials or profit margin. Though there was increase in the price of raw material of resin after December, 1973, the assessable value was not revised by the factory or revision ordered by the excise authority till pointed out by audit in May, 1974. Consequent on the revision of the cost sheet at the instance of audit the under-valuation of duty realisable on synthetic resin worked out to Rs. 5,343 for the period January, 1974 to May, 1974. The excise authority approved the revised assessable value on 7th June, 1974.

(*iii*) The tariff value of commercial plywood was enhanced effective from 21st July, 1973. One of the factories continued to pay duty on the basis of the earlier lower tariff from 21st July, 1973 to 31st July, 1973 and this led to the detection by audit of under-assess

ment of duty of Rs. 1,589. A consignment of commercial plywood cleared for export purposes on 16th July, 1973 without payment of duty was diverted for home consumption on 31st December, 1973 whereupon duty was paid at the rate prevalent on the date of original clearance instead of the revised rate as required under the law. The short realisation of duty of Rs. 274 was realised after detection by audit.

(*iv*) Under the excise rules a licensee is required to pay the supervision charges for utilising the services of the central excise staff for examination and sealing export consignments. A plywood factory which used the services of the excise officer did not pay the supervision charges amounting to Rs. 416 covering the period 7th August, 1972 to 15th May, 1974. The non-realisation has been pointed out by audit; intimation of realisation is yet awaited from the excise authority.

(*v*) The Oil Corporation cleared a consignment of mineral oil involving duty of Rs. 2,566 without observing central excise formalities and without payment of duty till detection by audit. Rectificatory action is yet to be taken.

(*vi*) The Oil Corporation also cleared another consignment at old rate of duty instead of the correct rate prevailing during the period 22nd December, 1973 to 28th March, 1974. Consequently short realisation of duty of Rs. 747 was detected by audit. Intimation of the recovery is awaited.

The Ministry have stated that with a view to provide for supervision and inspection of the central excise work in the Islands and also to tone up the administration there, orders have since been issued to set up a central excise range with a Superintendent of Central Excise as its head. As for inspections,

it has been decided by the Ministry to bring the Islands under the jurisdiction of the Collector of Central Excise, Calcutta and Orissa.

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

The total amount of revenue forgone by Government owing to non issue of demands before the prescribed time limit in respect of assessments during 1973-74 was Rs. 1,75,915 as detailed below:

	No. of cases	Loss of revenue involved Rs.
(*a*) demands not issued due to operation of time-bar . .	1	2,317
(*b*) demands withdrawn due to operation of time-bar . . .	10	1,73,598

According to the instructions issued by the Board in March, 1965, in cases where on examination by the Chemical Examiner, cotton yarn of marginal counts are found to fall in a higher duty range even after allowing tolerance of 2.5 per cent, not only the consignment in question should be subjected to higher rate of duty but all subsequent clearances thereafter should be similarly treated, until fresh samples are drawn and sent to the Chemical Examiner and certified by him that they fall within the category declared by the mills. A sample of cotton yarn of marginal count declared by a manufacturer to be of 33.9 NF count falling under the count group of 29 or more counts but less than 34 counts was, on test by the Chemical Examiner, in July, 1966 found to be of 35 NF counts. Even after allowing 2.5 per cent tolerance towards error in spinning, sampling and testing, the yarn fell under the higher count group of 34 or more counts but less than 40 counts attracting higher rate of duty. The next sample was drawn in January 1967 which, on test by the Chief Chemist, was found to fall within the count group of 29 or more counts but less than 34 counts declared by the manufacturer. According to the instructions of the Board the entire clearance of the yarn in

*Figures furnished by the Ministry of Finance and stated to be provisional even though related to 1973-74.

question from July, 1966 to January, 1967 should have been assessed to duty at the higher rate applicable to the count group 34 or more counts but less than 40 counts. But no action was taken by the department to collect the differential duty till the irregularity was pointed out by the Internal Audit Party in November, 1968 and by the Accountant General in December, 1968. A demand for differential duty amounting to Rs. 1,30,466 was raised against the licensee in February, 1969. The licensee appealed to the Collector without success. On the Revision Application filed, the Government of India held in March, 1973 that the demand was hit by the limitation under rule 10 of the Central Excise Rules.

82. *Arrears of Union excise duties.**

The total amount of demands outstanding without recovery on 31st March, 1974 in respect of Union excise duties as reported by the Ministry of Finance was Rs. 3386.34 Lakhs, as per details below:—

Commodity	Amount (in Lakhs of rupees)
Unmanufactured tobacco	284.94
Motor Spirit (including S. R. Naptha and Benzene	560.04
Refined diesel oil and Vaporising oil	25.26
Paper	66.33
Rayon yarn (including synthetic fibre yarn)	9.62
Cotton fabrics	239.37
Iron or Steel products	119.18
Tin plates	12.63
Refrigerating and Air conditioning machinery	35.83
All other Commodities	2033.14

NOTE: Two show cause notices issued on 14th December, 1972 and 7th February, 1973 demanding an amount of Rs. 3.77 crores from a public sector fertiliser manufactur-

*Figures furnished by the Ministry of Finance and stated to be provisional even though related to 1973-74.

ing factory, are pending. These notices were in respect of raw naptha obtained at a concessional rate of duty for manufacture of fertilisers but used for production of ammonia gas which was sold outside. The demand covers the period January, 1966 to December, 1972.

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

The total amount remitted, abandoned or written off during 1973-74w as Rs. 10,62,591.

The reasons for remissions and writes off are as follows:—

I. Remissions of revenue due to loss by

	No. of cases	Amount Rs.
(*a*) Fire.	53	5,13,982
(*b*) Flood	22	26,606
(*c*) Theft	11	3,724
(*d*) Other reasons.	6	21,045

II. Abandonment or write-off on account of:—

	No. of cases	Amount Rs.
(*a*) Assessees having died leaving behind no assets	227	67,960
(*b*) Assessees being untraceable	339	38,582
(*c*) Assessees having left India	2	186
(*d*) Assessees being alive but incapable of payment of duty	602	1,84,937
(*e*) Other reasons	44	2,05,569

84. *Frauds and evasions **

The following statement gives the position relating to the number of cases prosecuted for offences under the Central

*Figures furnished by the Ministry of Finance and stated to be provisional even though related to 1973-74.

Excise Law for frauds and evasions together with the amount of penalities imposed and the value of goods confiscated.

(1)	Total number of offences under the Central Excise law prosecuted in courts	37
(2)	Total number of cases resulting in convictions	20
(3)	Total value of goods seized including value of transportation	Rs. 1,89,44,742
(4)	Total value of goods confiscated	Rs, 1,49,95,632
(5)	Total value of penalties imposed	Rs. 13,45,625
(6)	Total amount of duty assessed to be paid in respect of goods confiscated	Rs.45,18,016
(7)	Total amount of fine adjudged in lieu of confiscation	Rs. 9,61,242
(8)	Total amount settled in composition	Rs. 16,477
(9)	Total value of goods destroyed after confiscation	Rs. 52,923
(10)	Total value of goods sold after confiscation	Rs. 74,990

CHAPTER III

OTHER REVENUE RECEIPTS

MINISTRY OF HOME AFFAIRS

Receipts of the Union Territory of Delhi

SECTION—A

General

85. *Variation between the budget estimates and actuals*

The figures of budget estimates and actuals for the three years 1971-72 to 1973-74 in respect of scme principal sources of revenue receipts are given below to show the variation and its magnitude in each case :—

Principal sources of revenue	Year	Budget estimates	Actuals	Variation (+) increase (—)decrease	Percentage
				(In crores of rupees)	
State Excise Duties	1971-72	3.81	4.55	(+)0.74	19.42
	1972-73	6.36	8.05	(+)1.69	26.57
	1973-74	9.80	10.25	(+)0.45	4.60
Sales Tax .	1971-72	27.50	28.73	(+)1.23	4.47
	1972-73	29.76	34.21	(+)4.45	14.95
	1973-74	35.53	39.80	(+)4.27	12.01
Entertainment Tax .	1971-72	3.50	3.27	(—)0.23	6.57
	1972-73	4.00	3.53	(—)0.47	11.75
	1973-74	4.10	3.83	(—)0.27	6.60
Betting Tax .	1971-72	2.20	1.92	(—)0.28	12.70
	1972-73	2.50	2.03	(—)0.47	18.80
	1973-74	2.53	2.19	(—)0.34	13.44

The Ministry have stated (January, 1975) that the increase in the actuals during 1973-74 under Sales Tax is due to substantial rise in the prices of commodities. Reasons for variations in respect of State Excise Duties, Entertainment Tax and Betting Tax are awaited.

*86 Arrears in assessment (Sales Tax)**

On 31st March, 1974, 120,964 cases were pending assessment as against 95,974 cases at the end of the year 1972-73 and 77,134 cases at the end of the year 1971-72.

The position regarding pendency of assessment for three years ending 31st March, 1974 is indicated below :—

Year	As on 31st M rch, 1972			As on 31st March, 1973			As on 31st March, 1974		
	Local	entral	Total	Local	Central	Total	Local	Central	Total
1968-69 . . .	5,185	4,756	9,941						
1969-70 . . .	11,114	9,820	20,934	6,226	5,441	11,667			
1970-71 . . .	24,984	21,275	46,259	14,010	2,127	26,137	7,623	7,566	15,189
1971-72 . . .				31,376	26,794	58,170	19,781	17,114	36,895
1972-73 . . .							37,505	31,375	68,880
Total . . .	41,283	35,851	77,134	51,612	44,362	95,974	64,909	56,055	1,20,964

The number of assessments completed out of arrears and current cases during three years ending 31st March, 1974 is given below :

	Total no. of assessments for disposal			Total no. of assessments completed			Percentage of disposal	Total no. of assessments pending at the end of the year
	Arrear	Current	Total	Arrear	Current	Total		
1971-72								
Local	40,392	38,230	78,622	13,246	24,093	37,339	47.5%	41,283
Central	33,958	30,992	64,950	9,717	19,382	29,099	44.8%	35,851
							Total	77.134
1972-73:								
Local	41,283	44,055	85,338	21,047	12,679	33,726	39.50%	51,612
Central	35,851	35,109	70,960	18,283	8,315	26,598	37.48%	44,362
							Total	95,974
1973-74								
Local	51,612	43,866	95,478	28,597	1,972	30,569	32.01%	64,909
Central	44,362	36,104	80,466	22,645	1,766	24,411	30.33%	56,055
							Total	1,20,964

*Figures are as furnished by the department.

87. *Arrears of Sales Tax Demands**

(a) The sales tax demands pending recovery at the close of the four years ending on 31st March, 1974 are indicated below:—

Arrears of tax as on	(In lakhs of rupees)
31-3-1971	564.17
31-3-1972	603.46
31-3-1973	817.81
31-3-1974	1150.65

(b) The year-wise break-up of the arrears of tax as on 31-3-1974 is given below :—

Year	(In lakhs of rupees) Under local Act	Under Central Act
1952-53 to 1961-62 . . .	32.70	1.71
1962-63	2.38	0.80
1963-64	1.71	1.21
1964-65	3.48	2.04
1965-66	4.20	3.36
1966-67	6.14	5.17
1967-68	17.73	11.95
1968-69	36.16	17.56
1969-70	39.93	17.23
1970-71	44.05	29.93
1971-72	111.80	45.99
1972-73	123.50	74.39
1973-74	410.32	105.21
Total	834.10	316.55

(c) Out of total arrears of tax of Rs. 1,150.65 lakhs mentioned above Rs. 465.03 lakhs (40 per cent) are accounted for by 194 cases involving tax of Rs. 50,000 or more in each case as shown below:

	No. of cases	Amount (In lakshs of rupees)
(*i*) Over Rs. 50,000 but less than Rs. 1,00,000	96	67.55
(*ii*) Over Rs. 1,00,000 in each case .	98	397.48
	194	465.03

(d) The department stated that the effective recoverable arrears on 31st March, 1974 were Rs. 593.99 lakhs (399.58 lakhs local and Rs. 194.41 lakhs-Central). The balance of Rs. 556.66 lakhs represents the following :

	Local	Central
	(In lakhs of rupees)	
(*i*) Amount likely to be written off .	107.78	35.83
(*ii*) Amount stayed by High Court .	129.97	9.44
(*iii*) Amount stayed by Additional District Judge . . .	1.29	2.88
(*iv*) Amount stayed by Appellate /Revisionary Authorities . . .	75.29	15.29
(*v*) Amount held up due to dealers having become insolvent . .	32.93	9.50
(*vi*) Amount held up on account of instalments granted by Appellate/ Revisionary Authorities . .	8.38	1.39
(*vii*) Amount awaiting adjustment .	0.11	0.15
(*viii*) Amount held up on account of non-disposal of rectification/review application . . .	78.76	47.67
Total .	434.51	122.15

*Figures are as furnished by the department.

88. *Frauds and evasions during 1st April,* 1973 *to* 31*st March,* 1974 (*Sales Tax*).*

	Under Section 11(2)	11A	Total
(*a*) No. of cases pending on 31st March, 1973	3211	3	3214
(*b*) No. of cases detected during 1973-74	1077	6	1083
Total	4288	9	4297
(*c*) No. of cases in which assessments were completed :			
(*i*) Out of cases detected prior to Ist April, 1973 . .	1014	1	1015
(*ii*) Out of cases detected during Ist, April, 1973 to 31st March, 1974	184	5	189
Total	1198	6	1204
Amount of concealed turnover detected and amount of tax demands raised in cases mentined at (c) above			
	(in rupees)		
Concealed turnover .	4,63,25,971	34,522	4,63,60,493
Tax demands raised .	18,98,878	3,177	19,02,055
Penalty imposed .	63,394	Nil	63,39
(*d*) No. of cases pending on 31st March, 1974 . . .	3,090	3	3,093
(*e*) No. of cases in which			
(*i*) Penalties were imposed in lieu of prosecution . .	173	..	173
(*ii*) Prosecutions were launched for non-registration . .	Nil	Nil	Nil
(*iii*) Offences were compounded .	Nil	Nil	Nil

*Figures are as furnished by the department.

89. *Searches and seizures during Ist April,* 1973 *to* 31*st March,* 1974 (*Sales Tax*).*

(*a*) No. of cases pending on 31st March, 1973 . .	412
(*b*) No. of cases in which seizure of books was made during the year 1973-74	319
Total	731
(*c*) No. of cases in which assessments were completed	
(*i*) Out of cases detected prior to Ist April 1973 .	151
(*ii*) Out of cases detected during Ist April, 1973 to 31st March, 1974	62
Total	213
(*d*) No. of cases pending on 31st March 1974 . .	518
(*e*) No. of cases in which prosecutions were launched or offences were compounded	Nil
(*f*) (*i*) Amount of concealed turnover detected . .	3,41,21,900
(*ii*) Demand raised for tax out of cases mentioned at (c) above	30,29,548
(*iii*) Penalty imposed	11,894

90. *Recovery certificates* (*Sales Tax*) *pending on* 31*st March,* 1974.*

The position of Recovery certificates pending with the department as on 31st March, 1974 is indicated below :—

	No. of cases	Amount (in lakhs of rupees)
I.		
(*i*) No. of cases pending on Ist April, 1973	2,165	64.22
(*ii*) Received during the period Ist April, 1973 to 31st March, 1974	5,862	309.78

Figures are as furnished by the department.

	No of cases	Amount (in Lakhs of Rs.)
(*iii*) Certificates returned after recovery of tax during 1973-74 .	3513	57.82
(*iv*) Certificates returned without effecting recovery of tax for certain reasons. . . .	2653	252.70
(*v*) Total number of certificates pending as on 31st March, 1974	1861	63.48

II. Out of 1861 cases pending recovery on 31st March, 1974 in 169 cases the amount involved was Rs. 10000 or more in each case. The yearwise break-up of such cases is given below:—

	No. of cases
1967-68	1
1968-69	3
1969-70	7
1970-71	6
1971-72	16
1972-73	27
1973-74	109
	169

91. *Appeals pending on* 31*st March,* 1974.*

The following table shows the extent of pending appeals, review applications and revision petitions as on 31st March, 1974 under the Sales Tax :

	Appeals, review applications and revision petitions with Assistant Commissioner	Revision petitions and Review applications with Commissioner/ Deputy Commissioner
(*a*) Out of appeals/review applications, revision petitions instituted during 1973-74	1514	743
(*b*) Out of appeals/review applications revision petitions instituted in earlier years	554	607
Total	2068	1350

*Figures are as furnished by the department.

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

	Appeals review Applications revision petitions with Assistant Commissioner	Revision petitions review applications with Commissioner and Deputy Commissioner
1968-69	..	1
1969-70	..	4
1970-71	4	27
1971-72	33	56
1972-73	517	519
1973-74	1514	743
	2068	1350

The number of cases in which tax demands were reduced or which were remanded for fresh assessment during the year 1973-74 is indicated below :

	Total No. of cases disposed of	No. of cases in which demands were reduced	No. of cases remanded
(*a*) By Assistant Commissioner	4533	920	945
(*b*) By Cmmissioner/ Deputy Commissioner . . .	527	63	26

SECTION 'B'

SALES TAX

92. *Under-assessment of tax on account of levy of lower rate of sales tax*

The sales of electrical goods other than electrical plant, equipment and their accessories required for generation, transmission and distribution became liable to tax at the rate of 9 per cent from 1st September, 1966. The rate of tax on "Electrical goods" covered by the phrase "Electrical plant, equipment and their accessories required for generation, transmission and distribution" however continued to be the general rate of 5 per cent.

It was noticed that the department was levying tax on the sale of electric wires and cables at the general rate of 5 per cent under certain executive guidelines issued in December, 1966 even though electric cables became liable to be taxed at the rate of 9 per cent with effect from 1st September, 1966. Electric wires and cables do not fall in the category of electrical goods required for generation, transmission, and distribution of power. In the case of two dealers tax was under-assessed by Rs. 42,427 on their sale of electric cables worth Rs. 10,60,681.

The matter was referred to the Ministry in September, 1974; final reply is awaited (February, 1975).

93. *Under-assessment of tax on halwai preparations*

Under a notification issued by the department, the articles ordinarily prepared by the 'Halwais' are taxable at the reduced rate of 2 per cent with effect from 1st October, 1962 provided the 'Halwai' deals exclusively in such articles. This concession,

according to a Delhi High Court decision, is not available, if the 'Halwai' deals also in goods other than 'halwai' preparation.

It was noticed during test audit in cases of 8 'Halwais' that during the period 1st October, 1962 to 31st March, 1973 their sales of 'halwai' preparations were taxed at the concessional rate of 2 per cent instead of 5 per cent (4 per cent up to 31st May, 1963) even though they were not dealing exclusively in 'halwai' preparations. This resulted in an under-assessment of tax of Rs. 3.10 lakhs. On this being pointed out in audit (November, 1973), the department agreed with the audit point and issued instructions to the assessing authorities to review all the past cases decided otherwise (March, 1974).

The Ministry stated (February, 1975) that in eight cases mentioned by audit the 'halwais' were selling milk, curds or tin containers in addition to 'halwai' preparations and this aspect was being examined in consultation with the Law Department of the Delhi Administration.

94. *Under-assessment of tax on account of irregular exemption*

Under Sales Tax Act the sale or purchase of any goods which takes place in the course of import of the goods into or export of the goods out of India is exempt from sales tax. A firm imported goods against the licences of actual users and subsequently sold these goods worth Rs. 25,94,821 to the actual users. These sales were, however, treated by the department as import into India and excluded from the taxable turnover of the firm. Thus sales to the extent of Rs. 25,94,821 were exempted from sales tax on the assumption that these sales were in the course of import. This assessment was not correct owing to the fact that the import of the goods was as a result of contract of sale between the importing firm and the foreign seller and not as a result of contract of sale between the foreign seller and the actual user (licence holder) in India. As such the sales did not qualify for exemption. Thus in this case there was an under-assessment of tax of Rs. 2,59,482.

At the instance of audit the firm was reassessed *suo motu* by the department (August, 1974) and a tax demand of Rs. 2,59,482 created against it. Recovery of the amount is awaited (February, 1975).

95. *Loss of revenue*

A dealer engaged in the business of resale of transistors, radios and their spare parts was granted registration certificate under both the Local and the Central Sales Tax Act with effect from 21st August, 1967 and 13th October, 1967 respectively. Though the dealer was asked by the department to collect his copies of registration certificates on 22nd February, 1968, the certificates were not collected by him and these remained with the department.

The dealer filed a return for the quarter ending 31st March, 1968 showing a sales turnover of Rs. 1,21,804. The dealer also paid a tax of Rs. 291 on 30th April, 1968. Thereafter the dealer neither submitted any return nor paid any tax. It was reported on 12th March, 1970 by a Sales Tax Inspector that the dealer had closed his business in 1968 and he was also not traceable. The dealer was, however, assessed for the years 1967-68 and 1968-69 *exparte* on 30th November, 1971 and 28th February, 1973 respectively creating a demand of Rs. 17,989. No action to cancel the registration certificate of the dealer was taken till the matter was pointed out in audit in May, 1973. The registration certificates were cancelled with effect from November, 1973.

The Ministry have stated (October, 1974) that the recovery certificates sent to the collector for recovery of Rs. 17,989 had been returned with the remark that the dealer had closed his business and he was not traceable. The matter is stated to have been reported to the police.

96. *Under-assessment on account of irregular exemption from payment of sales tax*

Under the Delhi Sales Tax Rules, sales of goods made to the Ministry of Defence or to any of its subordinate offices for official use are exempt from sales tax. It was, however, seen that

goods worth Rs. 1,61,150 sold by one radio dealer to three organisations were exempted from sales tax by the department treating them as sales to the Ministry of Defence or to its subordinate offices . This resulted in under-assessment of tax to the tune of Rs. 16,115.

The Ministry stated (January, 1975) that necessary orders had been passed creating an additional demand of Rs. 16,115. The particulars of recovery are awaited (February, 1975).

97. *Bogus dealers—loss of revenue due to failure to take timely action.*

A registered dealer can purchase material free of tax for the purpose of manufacture or resale on the basis of registration certificate granted by the Sales Tax Department. The registration certificates are granted after necessary verification of the antecedents of the dealers by the department. The registered dealers are required to file quarterly returns of their sales and pay tax due thereon regularly. To ensure the submission of quarterly returns and payment of tax, periodical survey is conducted by the department. On the basis of such survey, action is initiated against the dealers who default in filing the returns or in payment of tax. In the course of local audit the following irregularities were noticed:

(*i*) A dealer engaged in the business of manufacture and sale of machines was granted registration certificates both under the Local and the Central Sales Tax Acts on 24th October, 1951 and 1st August, 1957 respectively. The dealer did not file quarterly returns of the sales, nor did he pay the sales tax due thereon since 1965-66. The first survey is reported to have been conducted on 28th November, 1969. The assessment for the years 1965-66 to 1969-70 was made *exparte* between 15th December, 1969 to 10th December, 1973. The Sales Tax Inspector in his survey report dated 30th November, 1972 stated that the dealer had ceased functioning at the declared

premises three years ago and recommended that the registration certificates should be cancelled to avoid its mis-use by the dealer. The registration certificates have not so far been cancelled (February, 1975). A demand of Rs. 90,470 is outstanding against the dealer to end of the assessment year 1969-70. The amount of tax involved for the subsequent period of five years from 1970-71 to 1974-75 could not be worked out as the assessments for these years were yet to be completed (February, 1975).

(*ii*) Another dealer engaged in the manufacture and sale of radios and spare parts was granted registration certificates under both the Local and the Central Acts on 27th September, 1967. Survey was conducted for the first time on 25th October, 1971 inspite of the fact that the dealer had neither filed return of his sales nor paid any sales tax due thereon regularly. The assessment in his case was also completed *exparte*, for the assessment years 1967-68 and 1968-69 on 30th November, 1971 and 28th February, 1973 respectively. In his survey report dated 25th October, 1971 the Sales Tax Inspector stated that the dealer had shifted from his place of business 2½ years ago and appeared to be a bogus one. This statement was further corroborated by the subsequent survey report dated 9th November 1971 by the Sales Tax Officer. A third survey report by the Sales Tax Inspector dated 5th December, 1972 revealed that the dealer had vacated the premises about six months back. The registration certificates of the dealer were cancelled only on 2nd July, 1973. A demand of Rs. 63,016 created to end of the assessment year 1968-69 is outstnding against the dealer. The tax involved for the subsequent four years 1970-71 to 1973-74 could not be worked out as the assessments for these years were yet to be completed (February, 1975).

The Ministry stated (February, 1975) that action for effecting recovery of dues in both the cases was in progress.

SECTION 'C'

STATE EXCISE DUTIES

98. *Non-recovery of duty/fee*

Under the Punjab Excise Act, 1914 as made applicable to the Union Territory of Delhi, exemption from payment of fee/duty on the import and sale of liquor in the Union Territory of Delhi may be granted only prospectively by the Chief Commissioner (now Lieutenant Governor). A proposal made in July, 1967 by the India Tourism Development Corporation to exempt them from payment of fee/duty in respect of a duty free shop proposed to be opened by them at transit-cum-departure-lounge, International Air-Port, Palam, New Delhi for the sale of foreign liquor was agreed to in March, 1970 and a notification of exemption from payment of fee/duty was issued on 27th April, 1970 effective from that date only. As the exemption order came into froce from 27th April, 1970 it was proposed then, that the Corporation had either to pay duty/fee on the import and sale of liquor from 1st September, 1967 (the date on which the shop was opened) to 26th April, 1970 or to get the same written off under orders issued by the Government of India.

It was, however, noticed in audit (April, 1974) that neither the Corporation had paid the duty/fee on the quantity of liquor imported and sold by it during the period 1st September, 1967 to 26th April, 1970 nor had the Excise Department of Delhi Administration initiated any action to assess and realise the dues. The Corporation also failed to submit the monthly statement of receipts/sales of liquor as required under the Excise Rules.

The Ministry stated (November, 1974) that the matter had already been taken up with the Ministry of Tourism and Civil

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Aviation and they had been requested to pay Rs. 3.49 lakhs as assessed. Report on further development of the case is awaited (November, 1974).

99. *Irregular refund of assessed (permit) fee on denatured spirit*

In accordance with the Delhi Excise Rules, the Excise Commissioner or any other authorised officer may exempt the officers of Government from the payment of assessed (permit) fee on the import of denatured spirit, when the same is imported by them or on their behalf, in their official capacity. There is, however, no provision for such exemptions from assessed fee in the case of import by officers of non-Government institutions.

It was, however, noticed that a sum of Rs. 71,235 representing the assessed (permit) fee paid on import by the wholesale licensees on the quantity of denatured spirit purchased by non-Government officers from them, on the strength of the transport permit, for use in institutions such as, hospitals, dispensaries etc. was refunded to the wholesale licensees during the period from 23rd July, 1967 to 27th October 1972. The refund resulted in a loss of revenue of Rs. 71,235.

When this was pointed out in audit (October, 1973), the department admitted (May, 1974) that no provisions for such refunds exist in the Excise Manual and the matter had been referred to the Delhi Administration for suitable amendment in the Rules. The Ministry, however, stated (December, 1974) that such institutions are entitled to supply of denatured spirit without payment of permit fee in pursuance of a decision taken by the Delhi Administration, and thus there was no violation of the rules. In view of the clear provision in the Rules, however. the present contention of the Ministry is not acceptable.

100. *Loss of revenue due to re-auction of poppy head shop.*

The system of auction for grant of licence for the supply to poppy head shops was introduced in the Union Territory of Delhi for the first time in 1968-69. Prior to this, the licence for the sale of poppy heads was issued on payment of a fixed annual licence fee. According to the terms and conditions of the auction,

the applicant licensees were to submit a written partnership deed duly executed and signed by all the partners, a solvency certificate for an amount of Rs. 10,000 from each of the partner and a clearance certificate from the Income-Tax authorities concerned. The loss, if any, due to re-sale has also to be borne by the licensees. The solvency certificates and the income tax clearance certificates indicate the financial soundness of the bidders and also that the bidders are not bogus or benamidars of others.

It was , however, observed during test audit that the prescribed formalities were not observed in many cases and the successful bidders, after making part payment of the fees immediately after the fall of hammer, either defaulted in paying the instalments or did not turn up to take up the licence.

Two such specific cases are cited below :

(*i*) A poppy head shop was first auctioned for the year 1969-70 for Rs. 39,000 on 20th March, 1969 and the successful bidder, after payment of the advance fee of Rs. 3,500 defaulted in paying the instalments. The shop was reauctioned to another party for Rs. 22,000 on 27th June, 1969. This party also, after making payment of advance fee of Rs. 2,500, did not turn up to obtain the licence and the department reauctioned the shop to a third party for Rs. 11,000 on 22nd September, 1969.

Consequently, loss on resales amounting to Rs. 23,270 (including expenses) was recoverable from the first and second licensees, but both the parties are reported to be not traceable by the Collector concerned.

(*ii*) In another case one poppy head shop was auctioned for the year 1969-70 on 20th March, 1969 for Rs. 2,21,000. After depositing the advance fee of Rs. 18,600, the licensee defaulted in paying the subsequent instalments and the licence was cancelled on 4th June, 1969 and the shop was reauctioned to another party on 27th June, 1969 for Rs. 85,600. The loss on resale amounting to Rs. 1,17,570

SECTION 'D'

BETTING TAX

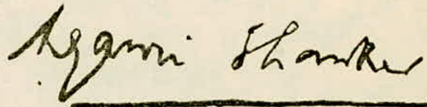
102. *Levy of commission by the Delhi Race Club-Unauthorised subsidy.*

Betting tax, a tax on backers, at the rate of 7.5 per cent with effect from 1st July, 1953 and at the rate of 10 per cent with effect from 18.5.1970 was leviable and payable to the Government on all moneys paid as a bet to a licensed book maker by a backer, in an enclosure set apart, on any race. This betting tax is collected by the licensed book maker from the backer with the money laid by him as a bet for deposit in the Government Treasury/ Bank.

At the request of the Delhi Race Club, the Delhi Administration has been allowing the Club since June, 1960 to levy a commission of 2.5 per cent over and above the betting-tax, on all moneys paid as a bet to a licensed book maker in an enclosure set apart on any race. The commission collected by the Club from the backers was in the nature of an additional levy borne by the backers on the bets laid by them and not being authorised by law is not in accordance with the provisions of Article 265 of the Constitution of India. The unauthorised collection by the Club during the five years (1968-69 to 1972-73) amounted to Rs. 18.86 lakhs.

The Ministry stated (November 1974) that this levy of commission was not a tax, but "implies a sort of allowance" and "since this charge (commission) was not for the benefit of people in general, the commission allowed to be charged by the Club

cannot be called a "Tax." In audit's view no levy can be imposed by implication and any compulsory levy in addition to the betting tax is a tax in form and content.



New Delhi
The 11th April, 1975.

(V. GAURISHANKER)
Director of Receipt Audit

Countersigned

New Delhi
The 11th April, 1975.

(A. BAKSI)
Comptroller & Auditor General of India.

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