REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

FOR THE YEAR ENDED 31 MARCH 1990

NO. 4 OF 1991

UNION GOVERNMENT
(REVENUE RECEIPTS - INDIRECT TAXES)

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PREFATORY REMARKS

This Report relates to results of audit of Indirect Taxes of the Union Government for the year ended 31 March 1990 and is arranged in the following four chapters:-

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

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

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

CHAPTER 4 - refers to volume of receipts of Union Territories without Legislatures and results of audit of Sales Tax, State Excise, Taxes on Vehicles, Stamp Duty and Registration fee, other Tax and non-Tax receipts in the Union Territories of Chandigarh and Daman and Diu. The results of test check of the records of Revenue Departments of the Union Territory of Delhi are included separately in the Audit Report of the Comptroller and Auditor General of India - Union Government (Delhi Administration).

OVERVIEW

I. Trend of receipts

The Central Government collected following revenues under Indirect Taxes during the years 1988-89 and 1989-90. The Budget Estimates 1989-90 and Revised Estimates 1989-90 in respect of Customs Receipts and Union Excise duties are also shown against them.

(Rupees in crores)

	Receipts 1988-89	Receipts 1989-90	Budget Estimates 1989-90	Revised Estimates 1989-90
Customs Receipts	15,788	18,015	18,000	17,877
Union Excise duties	18,749	22,307	21,910	22,103

Cost of collection of customs receipts as a percentage of receipts was 0.76 during 1989-90 as against 0.96 during 1988-90, whereas on the central excise side this percentage was 0.60 during the year 1989-90 as against 0.63 in the preceding year (Paras 2.04 & 3.03).

The total tax and non-tax receipts of the Union Territories without Legislatures during the year 1989-90 were Rs.1101.99 crores as against Rs.980.38 crores during the year 1988-89 (Para 4.01).

II. Results of audit

Results of test audit of post assessment records of the Customs and Central Excise departments during April 1989 to March 1990 revealed underassessment of tax and loss of revenue of Rs.231.47 crores as under. Underassessments and losses of revenue amounting to Rs.56.38 crores have been accepted.

	(Rupees in crores) underassessment/losses
Customs Receipts	47.71
Union Excise duties	183.76

The number of objections raised in audit till March 1989 and pending settlement as on 30 September 1989 was 13151 having a revenue effect of Rs.876.50 crores (Para 2.11 & 3.10).

Systems appraisal

System studies on four vital areas of administration of indirect taxes conducted revealed that the desired objectives had not been achieved. The prescribed rules and procedures had not been properly applied and the internal controls were found wanting.

III. Project Imports

Concessional rates of customs duty have been extended from time to time from 1965 in respect of imports required for initial setting up of a plant/project/unit or for substantial expansion of capacities.

An appraisal of the procedures for levy and collection of duty on Project Imports revealed:

- incorrect grant of project contract concession without verification of details of substantial expansion of installed capacity in Custom houses at Bombay and Kandla leading to short levy of duty of Rs.3.81 crores.
- incorrect grant of project concession to excluded categories of machinery involving short levy of duty of Rs.1.51 crores in Custom Houses at Bombay and Madras.
- incorrect de-registration of project contracts and irregular split up of imports for availing of project import concessions or claiming assessment under other tariff heading in the Collectorates/Custom Houses at Delhi, Madras and Bombay leading to short levy of duty of Rs.1.17 crores.
- irregular extension of concession to diesel generating sets separately imported for standby use at Madras Custom House and Inland Container Depot Bangalore leading to short levy of duty of Rs.2.03 crores.
- incorrect grant of exemption on spares

and raw materials imported in excess of the prescribed limits (ten per cent of the value of capital goods) in Custom Houses/Collectorates at Bombay, Madras, Bangalore and Indore leading to short levy of duty of Rs.29.87 lakhs.

-- delay in invoking bonds and bank guarantees executed for project contract imports, against defaulting importers in Custom Houses/Collectorates of Delhi and Bombay leading to loss of revenue of Rs.5.66 crores.

-- failure on the part of Bombay Custom House to finalise 651 project contract cases where reconciliation statements had been received.

-- failure to notice discrepancy between the details of the goods licensed to be imported and those actually imported in Custom Houses/Collectorates at Madras, Calcutta and Delhi.

IV. Iron & Steel and products thereof

Steel ingots were brought under the excise net from April 1934 as tariff item 25 of the schedule to the Central Excises and Salt Act, 1944. After the introduction of the Central Excise Tariff Act, 1985 from 28 February 1986, Iron and Steel and products there of became classifiable under chapter 72 and 73 of the schedule to the Act ibid.

An appraisal of the system of levy, assessment and collection of duty on iron and steel disclosed the following:

-- short accountal of production of excisable goods leading to escapement of duty of Rs.10.29 crores;

-- duty to the extent of Rs.19.49 crores not demanded where rewarehousing certificates were not received within the prescribed period;

-- 14 units not paying duty of Rs.3.59 crores on goods produced by them and consumed captively for further manufacture of other products;

-- incorrect availment of concessional rates of duty resulting in non-levy/ short levy of duty of Rs.15.65 crores;

-- incorrect classification of excisable goods resulting in short levy of duty of Rs.19.28 crores; and

-- irregular credits amounting to Rs.8.70 crores taken under the Modvat Scheme.

V. Exemption to Small Scale Industries

The General Small Scale Exemption Scheme was introduced under Notification 175/86-CE dated 1 March 1986 to give concessions in excise duty to small scale units producing excisable goods. The eligibility criteria for the general small scale exemption as well as the extent of exemption were revised with a view to simplifying the procedure for expansion of the small scale sector. An important objective was to provide an environment for growth of the industries ensuring at the same time that tax concessions were not taken advantage of by large scale units.

An appraisal of the scheme "Exemption to Small Scale Industries" revealed the following:

-- In 102 cases in 21 collectorates S.S.I concessions had been availed by units beyond the validity period of registration or during the period subsequent to the registration becoming inoperative involving duty of Rs.5.31 crores.

-- In respect of goods manufactured by the S.S.I units, on behalf of other manufacturers, who were not themselves entitled to the concessions, concessions were availed in 64 cases in 16 collectorates, and duty not levied amounted to Rs.5.32 crores.

-- There were 76 cases, in 17 Collectorates, where the units had not been registered as S.S.I units, but were allowed to avail of the concessions irregularly. The duty not levied amounted to Rs.4.13 crores.

-- Misuse of notional higher credit under

Modvat scheme in relation to duty paid goods manufactured by S.S.I units, was noticed in 42 cases in 10 collectorates. This irregularity involved duty of Rs.2.08 crores.

-- There were other cases of irregularities in the implementation of the scheme involving short levy of duty of Rs.1.50 crores.

VI. Submission and finalisation of monthly return (R.T. 12)

Under the Self Removal Procedure the manufacturer himself determines the duty and, on payment of duty, removes the goods. Manufacturers are required to file, with the concerned Range Officer, a monthly return in a prescribed form (R.T. 12) and the assessment should be finalised within one month of the filing of returns but not later than three months in order that demand for duty, if any, may not become barred by limitation.

An appraisal of the system of submission and finalisation of monthly return (R.T. 12) from 1987-88 to 1989-90 revealed the following:

-- non receipt/delay in receipt of R.T. 12 returns;

-- non assessment/delay in the assessment of R.T. 12 returns;

-- delay in the finalisation of R.T 12 returns provisionally assessed;

-- failure to issue show cause notices cum demand for Rs.288.78 lakhs within the limitation period of six months;

-- not taking appropriate follow up action on show cause notices cum demands resulting in delay in recovery of dues amounting to Rs.58.48 crores; and

-- other miscellaneous irregularities amounting to Rs.5.98 crores.

CUSTOMS RECEIPTS

VII. Short levy of duty due to incorrect grant of exemption

As per Section 25 of the Customs Act, 1962, the Central Government can grant exemption from customs duties unconditionally or, subject to fulfilment of certain conditions, before or after the import of goods. Short levy of import duty amounting to Rs.543.64 lakhs due to incorrect grant of concession was noticed in a number of cases. The Ministry have accepted audit objections amounting to Rs.147.62 lakhs. Some of the instances are cited below:

-- Against the statutory rate of auxiliary duty of 40 per cent ad valorem, a concessional rate of auxiliary duty at 5 per cent ad valorem is applicable in respect of goods which enjoyed either partial or full exemption from the basic duty. Partial exemption on coal tar which was available was withdrawn from 1 March 1989 and consequently auxiliary duty became leviable at 40 per cent from that date. In respect of nine consignments of coal tar pitch imported between April 1989 and August 1989, auxiliary duty was levied incorrectly at 5 per cent ad valorem, instead of at 40 per cent ad valorem. This resulted in short levy of duty of Rs.264.30 lakhs {Para 2.14(a)}.

-- Under a notification of 28 February 1985, Horological machines and testing equipments imported for direct use in the manufacture and assembly of wrist watches are eligible for the concessional rate.

Four consignments of machines described as 'electric discharge machine, friction press, machine tools, turning machines, copy milling machines, tapping machines, three C.N.C. Milling machines imported between May 1987 and June 1989 were irregularly allowed the concessional rate although these were general purpose machines i.e. machine tools working on metals. This

irregular exemption resulted in short levy of Rs.52.73 lakhs {Para 2.34}.

-- Pharmaceutical chemicals i.e. chemicals having prophylactic or therapeutic value and used solely or predominantly as drugs were eligible for concessional rate of duty at 60 per cent ad valorem in terms of a notification of 17 February 1986. However, this notification was not applicable to 'Propylene glycol' as this chemical is not solely or predominantly used as drug but primarily as a solvent in drugs. Seven consignments of Propylene glycol USP imported after March 1987 were incorrectly allowed the benefit of the aforesaid notification. This resulted in short levy of duty of Rs.42.73 lakhs {Para 2.16(a)}.

-- In terms of a notification dated 18 August 1983, certain goods specified in the table annexed thereto were eligible for a concessional rate of basic customs duty. Mechanical assembly lamps, alarm buzzer etc. for use in the manufacture of transmission equipment and telephone instruments, which were not specified in the aforesaid notification were, however, assessed at the concessional rate in terms of the said notification. This resulted in short levy of duty of Rs.37.37 lakhs (Para 2.13).

-- certain consignments of internal combustion engines imported and cleared between July and October 1983 were assessed to import duty at the lower rate under a notification of 28 September 1979 as components parts of tractors, instead of assessing them on merits in terms of a notification of 2 August 1976. This resulted in short levy of Rs.32.63 lakhs (Para 2.21).

-- A consignment of "Plastic Resin Base Material" cleared from warehouse in November 1989 was irregularly assessed at the lower rate applicable to various types of vessels falling under heading 89.01 to 89.06 of the Customs Tariff Act under a notification of 16 June 1987. The goods were parts or materials relating to the vessels and not eligible for the aforesaid exemption. This resulted in short levy of Rs.8.59 lakhs (Para 2.17).

-- Four consignments of "Polystyrene moulding powder" imported between March and August 1987 were assessed at a lower rate as 'polystyrene resins' under a notification of 1 March 1986. Since polystyrene resins and its moulding powder are two different and distinct goods, the irregular exemption granted on moulding powder resulted in short levy of duty of Rs.7.80 lakhs (Para 2.18).

-- A consignment of one Mikron 2.84 Jig/milling machine, imported in June 1987, was incorrectly assessed to import duty at the lower rate applicable to Jig boring machine only under a notification of 1 March 1978. The imported machine being a composite one having the function of boring as well as milling, was not eligible for the concessional rate under the said notification of 1 March 1978. This resulted in short levy of Rs.3.99 lakhs (Para 2.22).

-- Polyphenylene oxide resin is eligible for concessional rate of basic customs duty at 20 per cent ad valorem under a notification dated 1 March 1987 and auxiliary duty at 45 per cent ad valorem and additional duty at 20 per cent ad valorem under a notification of 1 March 1986. The concession was also extended to modified polyphenylene oxide by a notification dated 1 November 1988. But a consignment of modified polyphenylene oxide resin cleared on 15 July 1988 was allowed at the concessional rate. This resulted in short levy of Rs.3.67 lakhs (Para 2.19).

VIII. Non levy/short levy of import duties

Goods on their import are assessable to duty under Section 12 of the Customs Act

1962. Non levy/short levy of import duties amounting to Rs.117.72 lakhs were noticed in a number of cases of imports. The Ministry have accepted short levy/non levy of duty of Rs.33.24 lakhs. Some of the instances are cited below:

-- 77 consignments of T.V tuners (parts of television receivers), imported between May 1987 and April 1988 were assessed to duty (under heading 98.06) at 100 per cent ad valorem under a notification of 1 March 1987. The goods under this heading were also liable to additional duty at 15 per cent ad valorem with effect from 29 April 1987, by an amendment to the notification dated 1 March 1987. The goods were, however, subjected to additional duty at 10 per cent ad valorem with effect from 1 March 1988 with reference to a notification of 17 March 1985 issued on the central Excise side. This resulted in short levy of duty of Rs.48.00 lakhs {Para 2.35(i)}.

-- Air bus engine was liable to basic customs duty at 3 per cent ad valorem in terms of notification 145/Customs dated 9 July 1977. Additional duty was also leviable at 15 per cent ad valorem. A consignment of Air bus engines, reimported in October 1988 after repairs was assessed to duty at 3 per cent ad valorem without levy of the additional duty. This resulted in short levy of duty of Rs.22.47 lakhs {Para 2.35(ii)}.

-- A consignment of 'video tape deck mechanism' imported in April 1989, and cleared from bonded warehouse in June 1989, was assessed to additional duty at 15 per cent ad valorem instead of 25 per cent ad valorem. This resulted in short levy of duty of Rs.10.52 lakhs {Para 2.35(iii)}.

-- Cable insulating, impregnating and filling compounds are assessable to additional duty at rates based on their classification under chapter 38 or 39 of the Central Excise Tariff. Four consignments of cable impregnating/ compound grade NAPLEC-C imported and cleared from bond during June, September, October and November 1988 were assessed to additional duty at the lower rate of 15 per cent ad valorem under sub headings 3823.90 and 2801.30 of central Excise Tariff. Since the goods composed mainly of polyisobutylene, a polymer, they were liable to additional duty at a higher rate of 40 per cent ad valorem under heading 39.02 ibid. This resulted in short levy of Rs.5.99 lakhs {Para 2.35(iv)}.

-- Electron guns were exempted from additional duty by virtue of an exemption notification of 1 April 1987. By a notification dated 5 June 1987 the exemption from additional duty was withdrawn. In respect of two consignments of electron guns imported through an air cargo complex in September 1987 no additional duty was levied with reference to the notification of April 1987. This resulted in short levy of duty of Rs.5.66 lakhs {Para 2.35(v)}.

IX. Short levy of duty due to misclassification

The rates of customs and countervailing duties are given under various headings and sub headings to Customs Tariff Act, 1975 and Central Excise Tariff Act, 1985 respectively. The short levy of duty amounting to Rs.110.55 lakhs due to misclassification of imported goods was noticed in a number of cases. Out of this, under assessment of duty of Rs.23.92 lakhs has been accepted by the Ministry of Finance/Collectors of Customs. Some of these cases are given below:

-- Photo composing/photo type setting systems - computer systems, imported between June and September 1989, were misclassified as photo type setting and composing machines under sub heading 8442.10 of the Customs Tariff Act, 1975 instead of as computers (Automatic data processing ma-

chines) under heading 84.71 of the Customs and Central Excise Tariffs. This resulted in underassessment of duty of Rs.37.38 lakhs (Para 2.44).

-- A consignment of "polo-4-5-Ice cream making machine, Polo packing machine, its components and accessaries imported in February 1987 was classified as "packing wrapping machinery and parts of refrigerating and freezing equipment" under different headings of chapter 84 of Customs Tariff. Polo 4/5 machine and its accessories for production of ice cream were incorrectly classified as "parts of refrigerating equipment" under sub heading 8418.99 instead of as "refrigerating/ freezing equipments" in CKD/SKD condition under sub heading 8418.69. This resulted in short levy of duty of Rs.12.80 lakhs (Para 2.43).

-- A consignment of thrust collar, sleeves and keys, parts of thrust bearings was misclassified under sub heading 8406.90 of the Customs Tariff Act 1975, instead of under sub heading 8483.90 as parts of goods falling under heading 84.83. This resulted in short levy of Rs.3.28 lakhs (Para 2.49).

-- Goods described as electronic temperature regulators, image intensifier tubes and electronic position transmission, industrial X-ray equipment and SADC power cylinder were misclassified under various sub headings 9032.89, 9022.30 and 9031.80 of the Customs Tariff Act, 1975 although the goods were correctly classifiable under heading 98.06 ibid. This resulted in short levy of duty of Rs.3.15 lakhs (Para 2.58).

-- Goods described as'temperature controller, level controller, temperature recorder and pressure indicator' were assessed as complete instruments under sub headings 9032.89 and 9026.20 of the Customs Tariff although the goods, being spare parts of other insturments/ machinery were correctly classifiable under heading 98.06 in terms of notification 68/87-Customs dated 1 March 1987. This resulted in short levy of duty of Rs.2.73 lakhs (Para 2.62).

-- A consignment of various components of apparatus for joining power cables described as "PST insulator Silicon PST EPDM PST TR6, Silicone Seal, Crotch Seal EPDM, PSTTR4" was assessed to duty at 60 per cent ad valorem under sub heading 8547.90 of Customs Tariff treating these as articles of electrical insulating fittings. As the imported articles were made of resin like silicone they were correctly assessable at 100 per cent ad valorem under sub heading 3926.90. The misclassification resulted in short levy of Rs.2.44 lakhs {Para 2.38(a)}.

X. Short levy due to undervaluation

In cases where rates of import/export duty depend upon the value of goods, such value is required to be determined under section 14 of the Customs Act, 1962. Short levy of duty amounting to Rs.56.38 lakhs on account of incorrect valuation of goods was noticed. The Ministry of Finance have admitted short levy of Rs.52.51 lakhs. A few cases are given below:

-- In a case of import of 'crankshaft for transmission' the f.o.b value of the goods was adopted incorrectly as U.S Dollars 58623 instead of U.S. Dollars 232191, resulting in short levy of duty of Rs.36.96 lakhs (Para 2.63).

-- In three cases, the value of goods imported was arrived at by adopting incorrect rates of exchange resulting in short levy of duty of Rs.3.05 lakhs (Para 2.65).

XI. Short levy due to mistake in computation

-- On a consignment of superior kerosene oil, additional duty was levied without converting the weight into volume for applying the rate prescribed per kiloliter. This resulted in short

levy of duty of Rs.1.97 lakhs {Para 2.70(a)}.

XII. Other irregularities

Other irregularities involving non levy/ short levy of import duty of Rs.959.60 lakhs were pointed out in audit. Out of this, non levy/short levy of import duty of Rs.28.64 lakhs has been admitted by the Ministry of Finance/Customs department. Some of these cases are given below:

-- In the explanatory memorandum to Finance Bill 1989, certain concessions by way of reduced rate of duty (20 per cent ad valorem) on import of coke for use in the production of low phosphorus pig iron were announced. But the condition regarding the end use of such coke in the manufacture of pig iron was not incorporated in the exemption notification of 1 March 1989; resulting in unintended benefit to certain importers on import of coke, utilised for manufacture of products other than pig iron. The unintended benefit to importers amounted to Rs.7.10 crores in three cases (Para 2.72).

-- Goods when imported (i) in connection with any fair, exhibition, seminar, demonstration, conference etc., (ii) as samples for executing or securing orders, or (iii) for fixing on or packaging of articles for export are exempted from whole of customs duty subject to the execution of a bond by the importer to re-export the goods within the specified period and in the event of failure to so re-export, to pay the appropriate customs duty.

In 16 cases, goods imported in terms of the aforesaid notification during the period from February 1977 to December 1988, were not re-exported within the stipulated period. In 9 out of the 16 cases involving Rs.26.22 lakhs, the department did not invoke the bank guarantees within the period of their validity and the bank did not honour the guarantees when the department invoked the same after their expiry {Para 2.75(a)}.

-- Under Section 61(2) of the Customs Act, 1962, interest on warehoused goods shall be payable on the amount of duty for the period beyond the initial warehousing period of three months or one year till the date of clearance of goods.

On a consignment of palm kernel, imported in April 1988 and cleared from warehouse at a concessional rate of 60 per cent ad valorem (basic duty), the department collected the interest on the duty collected in terms of an adhoc exemption order instead of on the amount of duty involved at the time of initial warehousing. This resulted in short levy of interest of Rs.12.68 lakhs (Para 2.76).

-- The period of warehousing of consumable stores is 3 months which can be extended to six months by the Collector, and beyond that with Board's permission.

A consignment of 2004 drums of Aluminium Chloride (weighing 50 kilograms each) was warehoused in March 1985 of which only 900 drums were cleared subsequently. The Collector gave extentions up to August 1986. The party did not clear the goods even then, by that time condition of the goods had deteriorated. Extension of the warehousing period, without proper authority and without ascertaining the condition of the goods, resulted in loss of revenue of Rs.9.82 lakhs {Para 2.74(b)}.

CENTRAL EXCISE DUTIES

XIII. Non levy of duty

Excisable goods can be removed from the place of their production, manufacture or curing on payment of duty only. A number of cases where excisable goods were removed without payment of duty were noticed in audit. The duty not levied amount to Rs.14.72 crores. The Ministry of Finance/Central Excise Col-

lectorates have accepted the non levy of duty to the extent of Rs.4.88 crores. Some of these cases are mentioned below :

(a) **Excisable goods captively consumed**

-- A primary manufacturer of aluminium in Belgaum collectorate did not pay duty of Rs.6.60 crores on certain graphite based products used captively as appliance for extraction of metal during the period from April 1986 to August 1990 {Para 3.12(i)}.

-- Two undertakings in Bolpur collectorate manufactured "burnt dolomite" and cleared the goods without payment of duty for use within their factories for fettling refractory lining in hot furnace for upkeep and maintenance of steel melting furnace. This resulted in non levy of duty amounting to Rs.1.97 crores during the period from April 1987 to June 1989 {Para 3.12(ii)(a)}.

-- Two manufacturers of Railway wagons in Calcutta II collectorate did not pay duty on steel castings of Railway wagons manufactured within their factories and cleared the wagons on payment of concessional rate of duty on the plea that no credit was taken on input goods. This resulted in non levy of duty of Rs.1.35 crores during the period from 20 November 1986 to 30 September 1989. {Para 3.12(iii)(a) & (b)}.

-- Fourteen manufacturers in seven collectorates did not pay duty on sugar syrup consumed captively in the manufacture of aerated water and fruit pulp drink. This resulted in non levy of duty of Rs.68.28 lakhs on clearances during the period from April 1986 to June 1988 {Para 3.12(iv)}.

-- A manufacturer of roller bearings, in Jaipur collectorate, did not pay duty on the components of roller bearings manufactured and captively consumed in the manufacture of bearings although the roller bearings were cleared without payment of duty. The non levy of duty on this account amounted to Rs.57.44 lakhs during April 1988 to November 1989 {Para 3.12(v)(a)}.

-- A manufacturer of motor vehicles in Aurangabad collectorate manufactured and captively consumed dies and die plates without payment of duty of Rs.27.51 lakhs during March 1986 to February 1989 {Para 3.12(vi)}.

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

-- A test check of the production records of a manufacturer in Indore collectorate disclosed that production of glazed titles/pavings was not correctly accounted for resulting in non collection of duty of Rs.54.23 lakhs {Para 3.13(i)}.

-- A manufacturer of cement in Hyderabad collectorate suppressed production figures resulting in short levy of duty of Rs.9.51 lakhs in 1987-88 {Para 3.13(ii)}.

(c) **Excisable goods cleared without payment of duty**

-- Contrary to the Board's instructions of November 1988 that only duty paid molasses can be stored in "katcha pits", seven sugar factories, in seven collectorates, did not pay duty on molasses stored in katcha pits. This resulted in non levy of duty of Rs.47.81 lakhs during December 1988 to April 1989 {Para 3.14(i)}.

-- A manufacturer in Bangalore collectorate did not pay duty of Rs.4.55 lakhs on a "bottom dumper" cleared to another unit for test but allowed by the collector to be retained for use in that factory {Para 3.14(vi)}.

XIV. Short levy of duty due to misclassification

The rates of Central Excise duties are given under various headings and sub head-

ings of the schedule to the Central Excise Tariff Act, 1985. Short levy of duty of Rs.14.21 crores in a number of cases due to misclassification of excisable goods was noticed The amount of short levy of duty accepted was 8.37 crores. Some of these cases are mentioned below :

-- A lube blending unit of an assessee in the Calcutta collectorate misclassified speciality oil as blended or compounded lubricating oils resulting in short levy of duty of Rs.3.47 crores on clearances made during June 1986 to March 1988 {Para 3.18(i)(a)}.

-- An assessee in the Madras collectorate manufacturing "aluminium castings" for motor vehicles misclassified the products (under heading 76.16) as other articles of aluminium instead of as motor vehicles parts (under heading 87.08) resulting in short levy of duty of Rs.1.67 crores during September 1988 to July 1989 (Para 3.21).

-- A leading manufacturer of tyres and tubes in Calcutta II collectorate misclassified his products "aerotyres and tubes" and cleared them at lower rate of duty. This resulted in short levy of duty of Rs.1.64 crores on clearances during April 1988 to December 1989 {Para 3.19(i)(a)}.

-- Two manufacturers in Bombay I and Bombay III collectorates misclassified their products "prickly heat powder" as a P.O.P. medicine instead of as personal deodorants and anti perspirants (sub heading 3307.20) resulting in short levy of duty of Rs.1.01 crores on clearances during April 1986 to July 1987 (Para 3.22).

-- An assessee in Bangalore collectorate manufacturing "Integrated circuits" misclassified them under the erstwhile tariff item 33AA as transistors and semi conductor diodes instead classifying them rightly under tariff item 68 and cleared them without payment of duty resulting in short levy of Rs.77.63 lakhs during 5 December 1979 to 8 May 1985. {Para 3.20(i)}.

-- Contrary to the Board's instructions dated 17 June 1987, a public sector oil refinery in Calcutta II collectorate misclassified the product known as "carbon black feed stock" as furnace oil under sub heading 2710.50 without ascertaining aromatic constituents in it. This resulted in short levy of duty of Rs.67.19 lakhs on the clearances during March 1986 to July 1989 {Para 3.18(ii)}.

-- A manufacturer of electrical goods in Madras collectorate misclassified valve actuators operated by built in electric motor and having the essential characteristics of an electrically operated valve actuator under sub heading 9032.80 and their parts under sub heading 9032.99 as automatic regulating or controlling instruments and parts thereof instead of under the heading 85.01 and 85.03 respectively. This resulted in short levy of duty of Rs.52.02 lakhs on the clearances during April 1988 to May 1989 {Para 3.20(ii)}.

-- A manufacturer of aluminium strips in Calcutta II collectorate misclassified the products as other articles of aluminium (sub heading 7613.90) resulting in short levy of duty of Rs.46.28 lakhs on the clearances during march 1986 to June 1987 {Para 3.23(i)}.

-- An assessee in the Ahmedabad collectorate manufacturing synthetic enamels cleared his product in tins of 500 ml and above (sub heading 3208.90) on payment of duty at 25 per cent but the same product in small tins of 200 ml or below was misclassified under heading 32.13, and cleared on payment of duty at 10 per cent resulting in short levy of duty of Rs.41.20 lakhs {Para 3.25(i)}.

-- A manufacturer of paints, varnishes etc., in the Calcutta collectorate was allowed to clear his product 'ducco

putty' under heading 32.14 on payment of duty at 15 per cent ad valorem although as per chemical examiner's report it was classifiable as N.C. lacquers (sub heading 3208.30). Similar product manufactured by another assessee in the same collectorate was being assessed at the higher rate under sub heading 3208.30. Incorrect classification resulted in short levy of duty of Rs.38.43 lakhs during the period March 1986 to February 1990 {Para 3.25(ii)}.

XV. Short levy of duty due to incorrect grant of exemption

As per section 5A(i) of the Central Excises and Salt Act, 1944 government is empowered to exempt excisable goods from the whole or any part of the duty leviable thereon conditionally or unconditionally. A number of cases of short levy of duty of Rs.11.16 crores were noticed in audit. The Ministry of Finance/Central Excise department have accepted the objection of short levy of duty of Rs.10.48 crores. Some of these cases are mentioned below :

(a) Nuclear fuel

-- A public sector undertaking manufacturing nuclear fuel in Hyderabad collectorate cleared the product to three atomic power reactors without payment of duty claiming exemption under a notification dated 28 August 1987 on the ground that the goods were cleared for use in government department. Since the three nuclear power reactors were handed over to a public sector company from September 1987 no such exemption was available after this date till 6 October 1988. This resulted in short levy of duty of Rs.3.95 crores (Para 3.31).

(b) Textile and textile articles

-- A manufacturer in Madurai collectorate availed exemption from duty on clearance of sewing thread whereas the exemption was meant for multifold yarn. This resulted in short levy of duty of Rs.1.30 crores during July 1987 to December 1989 {Para 3.32(i)(a)}.

-- A manufacturer of P.V.C. coated/ laminated cotton fabrics in Madurai collectorate cleared the goods at concessional rate under a notification dated 1 March 1987 which was not applicable. This resulted in short levy of duty of Rs.76.34 lakhs during March 1987 to June 1989 {Para 3.32(ii)(a)}.

(c) Plastics and articles thereof

-- A manufacturer in Bombay III collectorate cleared "film labels" on payment of duty at concessional rate of 25 per cent under a notification dated 1 March 1988 which was not applicable. the duty was payable at 40 per cent ad valorem. This resulted in short levy of duty of Rs.87.74 lakhs on clearances during April 1988 to March 1989 {Para 3.33(i)}.

(d) Survey vessels

-- A public sector undertaking in Calcutta I collectorate cleared one survey vessel to ONGC for off-shore drilling during 1987-88 without payment of duty and without also observing the prescribed procedure. This has resulted in short levy of duty of Rs.87.31 lakhs {Para 3.34}.

(e) Footwear and parts thereof

-- A manufacturer of footwear in Bangalore collectorate incorrectly availed exemption from payment of duty by declaring the value less than Rs.60 per pair (instead of Rs.65.80 per pair). This resulted in short levy of duty of Rs.41.38 lakhs on the clearances during February 1988 to October 1989 {Para 3.35(i)}.

-- Another footwear manufacturer, in Patna collectorate availed exemption on captive use of parts of footwear which was not applicable during March 1987 to 23 April 1987. The short levy wroks out to Rs.33.75 lakhs {Para 3.35(ii)}.

(f) **Petroleum products**

-- A manufacturer in Hyderabad collectorate was permitted to clear furnace oil without payment of duty to a fertilizer factory where the oil was not used as feedstock but as fuel in generating steam. The irregular exemption resulted in short levy of duty of Rs.19.25 lakhs during March 1986 to July 1989 {Para 3.36(i)(a)}.

(g) **Patent of proprietary medicaments**

-- A manufacturer in Calcutta I collectorate incorrectly availed exemption on a medicine 'Pyrigesic' based on 'Paracetamol' under a notification dated 1 March 1988 although the medicine was not meant for use in the National Health Programme. The incorrect grant of exemption resulted in short levy of duty of Rs.16.69 lakhs during March 1988 to January 1989 {Para 3.37(i)}.

-- Two manufacturers in the Calcutta Ii collectorate cleared clinical samples without payment of duty though they were not packed in a form distinctly different from the regular trade packing. This resulted in short levy of duty of Rs.15.76 lakhs on the clearances during the period from 15 January 1987 to October 1989 {Para 3.37(ii)}.

XVI. Short levy of duty due to undervaluation

In cases where rates of Central Excise duty depend upon the value of excisable goods, such value is required to be determined under section 4 of the Central Excises and Salt Act, 1944 and the Central Excise (Valuation) Rules, 1975. Short levy of duty amounting to Rs.9.05 crores on account of incorrect valuation of goods was noticed. The Ministry of Finance have accepted the short levy to the extent of Rs.7.90 crores. Some of these cases are mentioned below :

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

-- An assessee in Allahabad collectorate escalated the price of transmission equipment, telephone instruments and parts thereof from April 1986 but did not pay duty on the escalated price. This resulted in short levy of duty of Rs.4.18 crores (approx.) from April 1986 to July 1988. The department has since recovered differential duty of Rs.5.60 crores from 1986-87 to 1987-88 {Para 3.42(i)(a)}.

-- A manufacturer of motor vehicles in Pune collectorate did not include the after sale service charges in the assessable value of the vehicles. This resulted in short levy of duty of Rs.1.12 crores during April 1987 to March 1988 {Para 3.42(ii)(a)}.

-- An assessee in Bolpur collectorate manufacturing rubber V belts entered into a contract with another company for obtaining specification, technical knowhow etc and sale of 50 per cent of the goods to the company at a price lower than the normal price after embossing its trade name. As the price was not the sole consideration for sale the value adopted for assessment based on lower price was incorrect leading to short levy of Rs.29.05 lakhs. Department has since raised the demand for Rs.59.36 lakhs covering the period from August 1984 to March 1988 {Para 3.42(iii)(a)}.

(b) **Excisable goods assembled out of duty paid parts/components**

-- An assessee in Bangalore collectorate manufactured containerised uplink and transportable remote area control partly out of goods manufactured in his factory and partly out of boughtout including imported goods. The assessee did not include the cost of boughtout goods in the assessable value of the equipment leading to undervaluation and consequential short levy of duty of Rs.45.63 lakhs {Para 3.43(i)}.

(c) **Mistakes in computing costed value**

-- A manufacturer of cigarettes and smoking mixtures in Patna collectorate did not include the element of profit in computing the assessable value of shells and slides manufactured and used captively for packing of machine rolled cigarettes. This resulted in underassessment of duty amounting to Rs.27.15 lakhs during March 1988 to June 1989 {Para 3.44(i)}.

(d) **Undervaluation of goods consumed captively**

-- An assessee in Bombay II collectorate manufactured internal combustion engines and cleared some for his own captive use and the remaining for sale. Although the model numbers of both types of engines were the same, the assessee adopted a lower price for the engines captively used and paid duty on that lower price, resulting in short payment of duty. The department has since raised demand for Rs.11.86 lakhs for the period from November 1987 to October 1988 {Para 3.45(i)}.

XVII. Irregular availment of Modvat credit

Cases of irregular availment of Modvat credit of Rs.7.17 crores were noticed in audit, out of which the Ministry of Finance/Central Excise collectorates have admitted objections involving duty effect of Rs.6.16 crores. Some of these cases are mentioned below :

-- A manufacturer of aluminium conductors in Bangalore collectorate erroneously availed Modvat credit of Rs.61.74 lakhs during April 1989 to December 1989 on goods not declared as inputs in the declaration filed {Para 3.54(i)}.

-- Seven assessees in five collectorates, engaged in the manufacture of paper, zinc and articles thereof, soap, biscuits etc., took Modvat credit of duty paid on inputs but while clearing the inputs as such from the factory paid duty at lower rates or nil rates, resulting in short levy of duty of Rs.39.85 lakhs (Para 3.57).

-- A manufacturer of graphite electrodes in Indore collectorate irregularly utilised Modvat credit of Rs.39.65 lakhs on account of duty paid on inputs (power feeding electrodes) used in the manufacture of graphite electrodes, which were not "inputs" as per the central excise rules {Para 3.53(i)(a)}.

-- A manufacturer of detergent powder in Ahmedabad collectorate using sulphuric acid and oleum as inputs did not restrict the amount of credit of duty paid on the concentrated sulphuric acid used in sulphonation reaction as required in the rules resulting in excess availment of credit of Rs.32.69 lakhs during March 1986 to December 1989 {Para 3.56(i)}.

-- A manufacturer of tractors and I.C. engines in Chandigarh collectorate did not reverse the credit of duty paid on inputs, tyres and tubes used in the manufacture of exempted finished goods, resulting in excess availment of credit of Rs.25.11 lakhs during January 1988 to July 1989 {Para 3.55(i)}.

-- Four assessees in three collectorates (Bombay I,II and Bangalore) erroneously availed Modvat credit of Rs.22.69 lakhs during the period between March 1987 and November 1989 on account of duty paid on copper wire used for welding {Para 3.53(ii)}.

-- An assessee in Hyderabad collectorate erroneously took credit of duty paid on inputs used in the manufacture of moulds for metal castings. Since moulds are in the nature of equipment, no credit was admissible. Revenue involved amounted to Rs.7.83 lakhs during February 1986 to March 1989 {Para 3.53(v)}.

-- Two assessees in Delhi and Bangalore collectorates availed of Modvat credit twice once on the original and again on the duplicate copies of duty paying

documents. This resulted in availment of double credits amounting to Rs.2.90 lakhs {Para 3.64(viii)}.

XVIII. Irregular utilisation of credit of duty paid on inputs

The credit of duty paid on specified inputs is allowed to be utilised on specified finished goods in the manufacture of which such inputs are utilised subject to the fulfillment of conditions specified in the rules. Irregular credits of Rs.3.65 crores were noticed in audit. The Ministry of Finance/Central Excise department have admitted the objections involving credits of Rs.35.17 lakhs. Some of these cases are mentioned below :

-- A manufacturer of polyvinyl chloride resins in Coimbatore collectorate irregularly availed credit to the extent of Rs.20.93 lakhs on the quantity of ethyl alcohol which was not issued for the manufacture of finished products {Para 3.65(ii)(a)}.

-- Another manufacturer of polystyrene in Guntur collectorate took irregular credit of Rs.14.75 lakhs on the quantity of molasses used in the manufacture of final products instead of taking credit on the quantity of ethyl alcohol manufactured out of molasses. Department has issued a show cause notice {Para 3.65(iii)}.

XIX. Non levy of cess

Cess is a tax on specified goods for the purpose of carrying out measures for the development of production of those goods and matters connected therewith. Non levy/ short levy of different cesses amounting to Rs.3.81 crores was noticed in a number of cases in audit. Some of these cases are mentioned below :

-- Nine jute mills in Calcutta collectorate did not pay cess amounting to Rs.2.84 crores on jute yarn consumed captively for the manufacture of jute products during the period from May 1984 to October 1989 {Para 3.66(i)}.

-- Six manufacturers of motor vehicles and paper in three collectorates Bombay III, Pune and Bhubaneshwar did not include excise duty, special excise duty, sales tax etc., in the value of manufactured products for determination of the amount of cess leviable. This resulted in short levy of cess of Rs.50.19 lakhs {Para 3.68(i) & (ii)}

-- Three hundred six assessees, in sixteen collectorates, engaged in body building activity on motor vehicle chassis did not during different periods between March 1986 and April 1990 pay cess amounting to Rs.41.04 lakhs {Para 3.67}.

XX. Demands for duties not raised

Demands pending adjudication

Demand cases should be adjudicated within a maximum period of six months from the date of issue of show cause cum demand notices. Delays beyond that period should be brought to the notice of the Collector who would discuss the matter with the adjudicating officer for expeditious disposal.

A show cause notice cum demand for Rs.143.22 crores was issued against a cigarette manufacturer in Bangalore collectorate in September 1987. It had not been adjudicated till November 1990 {Para 3.71(i)}.

XXI. Procedural irregularities involving duty implications

-- An assessee in Patna collectorate cleared goods, involving duty of Rs.2.52 crores, for export without payment of duty but had not furnished proof of export within the prescribed period of six months. No action was taken by the department either to obtain the proof of export from the assessee or to raise a demand {Para 3.77}.

-- The Public Accounts Committee in para 1.9 of the 9th Report (eighth Lok Sabha) recommended that the gov-

ernment should review all cases pending in High Courts and take all the steps to get the stay orders vacated and dues collected immediately.

Two manufacturers of cement in Belgaum collectorate collected duty in full from the customers during the period from 18 August 1987 to 30 April 1989 but paid duty at 50 per cent of the effective rate on the basis of High Court's order dated 18 August 1987 and 19 April 1988. The stay order had not been got vacated, thereby enabling the assessee to retain Rs.102.55 lakhs {Para 3.76 (ii)}.

-- The Central Board of Excise & Customs have clarified that all provisional assessment cases on account of classification of excisable goods and their valuation should be finalised within a period of 3 months and in any case not later than six months.

The price lists for the years 1983 to 1986 in respect of goods manufactured and captively used by an assessee in Bombay collectorate were approved provisionally. On finalisation of the accounts the final price lists were submitted by the assessee in February 1985, September 1985 and September 1986 but the same were pending final approval. Delay in final approval of price lists resulted in financial accommodation of Rs.33.44 lakhs {Para 3.78}.

XXII. Other irregularities of interest

Other irregularities involving non levy/short levy of duty of Rs.1.29 crores were pointed out in audit. The Ministry of Finance/Central Excise collectorates have accepted non levy/short levy of duty of Rs.1.22 crores. Some of the cases are mentioned below :

-- An assessee was irregularly permitted to avail the facility of debiting his personal ledger account on the basis of average weekly duty in the preceeding year. Irregular clearance of goods without discharging full duty liability resulted in notional loss of interest of Rs.1.11 crores on monthly shortfall of Rs.1.82 crores during the period from March 1986 to August 1988 {Para 3.81(i)}.

-- Another manufacturer of inorganic chemicals in Calcutta Ii collectorate was permitted to take credit in the Personal Ledger Account on the basis of cheques which were realised late between one to 22 days. This practice of taking advance credits resulted not only in debit balance in Personal Ledger Account ranging from Rs.10 to 12 lakhs but also in substantial financial accommodation to the assessee {para 3.81(ii)}.

CHAPTER 1

1.01 Project Imports

(1) Introduction

Project Imports required for the setting up of a plant/project/unit or for its substantial expansion for increasing the installed capacity are classifiable under heading 98.01 of the Customs Tariff Act, 1975 and are subjected to levy of customs duty at concessional rate. The imports made were till 2 April 1986 governed by the Project Imports (Registration of Contracts) Regulations 1965 and, thereafter, by Project Imports Regulations, 1986 which came into force.

Under the erstwhile regulations, project imports required for initial setting up of a plant/project/unit or substantial expansion were classified under the erstwhile heading 72A of the Indian Customs Tariff upto 1 August 1976 and during the period from 2 August 1976 to 27 February 1986 under the erstwhile heading 84.66.

(2) Salient features governing the Project Imports Scheme

i) Goods imported whether in one or more consignments against one or more specific contracts should be registered with the custom house through which the importer wants to import major portion of his requirements.

ii) All the goods covered by project contract as and when imported through the port, are allowed clearance by the proper officer of customs. In respect of the imports made through ports other than the one where it is registered, the clearance of goods against the project imports is allowed on the basis of telegraphic advice issued by the custom authorities at the port of registration.

iii) Service establishments designed to offer services of any description such as Hotels, Hospitals, Photographic Studios, Photographic film processing laboratories, Laundries, Garages and Workshops were excluded from the eligibility of project import concession. A single machine or a composite machine within the meaning assigned to it in notes 3 and 4 to Section XVI of Customs Tariff Act, 1975 was also excluded from the eligibility of project import concession.

iv) For availing the project import concession, the importer has to submit an application to the custom house which should, inter alia, contain;

(a) location of the project;

(b) the description of the articles to be manufactured; and

(c) the installed and designed capacity of the plant or the project and, in case of substantial expansion of an existing plant or project, the installed capacity and the proposed addition thereto.

v) The application should be accompanied by the original deed of contract together with a true copy thereof, the import trade control licence wherever required or an approved list of items from the D.G.T.D. in case of imports covered by the open general licence and any other particulars or documents, as may be required.

vi) In addition to the various documents required to be enclosed with the application as aforesaid, the importers are required to furnish a bond for provisional assessment of duty for a value of 5 per cent of the total C.I.F. value of the goods being imported, supported by a bank guarantee or a bond with surety of a firm of good reputation and sound financial position covering full value of the contract.

(3) System of assessment and monitoring of the project contracts

i) Assessment of the goods imported under the project import are initially made under section 18(1) of the Customs Act 1962 read with para 37 of the Central Manual of Appraising Department (Volume I).

ii) A period of three months from the date of clearance of last consignment of goods covered by each contract has been prescribed, within which the importer has to produce the following documents, for finalisation of the contracts.

(a) reconciliation statements in the prescribed form showing the items/value listed in the contract vis-a-vis the items/value actually imported;

(b) triplicate copy of the Bills of Entry;

(c) certificate of payment or statement of accounts from the suppliers or such other authorised agents indicating the value at which the contract has been settled;

(d) customs copy of the I.T.C.;

(e) exchange control copy of I.T.C.;

(f) amendments to the contracts, if any; and

(g) any other document that may be required by the proper officer for finalisation of the contracts.

iii) A register is required to be maintained in the prescribed proforma wherein the details of contracts registered and imports made thereunder are to be recorded.

iv) Each contract has to be assigned a number in token of the registration and the number intimated to the importer for quoting the same in future references.

v) The goods could be imported in one or more consignments from one or more suppliers against one or more contracts or purchase order.

vi) The examining officer has to review the register once a month in order to ensure that in respect of the various on going contracts all necessary actions are being taken in accordance with laid down procedures.

vii) On finalisation of the assessment, the provisional duty bond is cancelled.

(4) Scope of Audit

A review of the project imports registered and imports made at major custom houses/collectorates at Bombay, Calcutta, Madras, Delhi, Cochin, Ahmedabad, Bangalore, Kanpur, Allahabad, Indore, Madurai including the Inland container Depots located in the various collectorates was conducted for the period 1985-86 to 1989-90 (upto December 1989). The scope of audit was primarily designed to see:

i) that there was no discrepacny between the particulars of the goods licenced to be imported and of those actually imported;

ii) that the import of spares, raw materials etc., did not exceed the prescribed ceiling of 10 per cent of the value of the capital goods for the project;

iii) that in case of imports for substantial expansion, the expansion was not less than 25 per cent of the existing installed capacity of the project;

iv) that there was no delay in submission of reconciliation statements and necessary documents for finalisation of the contract;

v) that the contracts were finalised within one year from the date of the last consignment of the goods covered by the contract;

vi) that there has been no short levy and non levy of customs duty in respect of these project imports and in cases of recovery of customs duty due from the importers, the customs authority had promptly raised the demands;

vii) that the benefit of assessment under the heading 98.01 (erstwhile heading 84.66) had been allowed in accordance with the description of the tariff heading and subject to the conditions prescribed thereunder, and

viii) that the conditions governing the project contract imports had been fulfilled in all respects.

(5) Highlights

An appraisal of the procedures for levy and collection of duty on Project Imports revealed:

- **incorrect grant of project contract concession without verification of details of substantial expansion of installed capacity in Custom houses at Bombay and Kandla leading to short levy of duty of Rs.3.81 crores.**
- **incorrect grant of project concession to excluded categories of machinery involving short levy of duty of Rs.1.51 crores in Custom Houses at Bombay and Madras.**
- **incorrect de-registration of project contracts and irregular split up of imports for availing of project import concessions or claiming assessment under other tariff heading in the Collectorates/Custom Houses at Delhi, Madras and Bombay leading to short levy of duty of Rs.1.17 crores.**
- **irregular extension of concession to diesel generating sets separately imported for standby use at Madras Custom House and Inland Container Depot Bangalore leading to short levy of duty of Rs.2.03 crores.**
- **incorrect grant of exemption on spares and raw materials imported in excess of the prescribed limits (ten per cent of the value of capital goods) in Custom Houses/Collectorates at Bombay, Madras, Bangalore and Indore leading to short levy of duty of Rs.29.87 lakhs.**
- **delay in invoking bonds and bank guarantees executed for project contract imports, against defaulting importers in Custom House/Collectorate of Delhi and Bombay leading to loss of revenue of Rs.5.66 crores.**
- **failure on the part of Bombay Custom House to finalise 651 project contract cases where reconciliation statements had been received.**
- **failure to notice discrepancy between the details of the goods licensed to be imported and those actually imported in Custom Houses/Collectorates at Madras, Calcutta and Delhi.**

(6) Analysis of data

i) During 1985-86 to 1989-90 (Up to December 1989) 7405 project contract cases valued at Rs.9178.05 crores were registered as under:

Year	No. of cases	Contract value (In crores of Rupees)
1985-86	2052	2,822.45
1986-87	2371	2,468.62
1987-88	1499	1,130.28
1988-89	925	1,434.69
1989-90 (Upto December 1989)	558	1,322.01
Total	7405	9,178.05

ii) The customs duty collected during the Corresponding period was:

Year	No. of cases	Contract value	Customs duty collected (In crores of Rupees)
1985-86	2038	2,812.38	1,341.45
1986-87	2374	2,419.79	868.44
1987-88	1508	1,128.68	804.29
1988-89	932	1,414.51	588.91
1989-90 (Upto December 1989)	565	1,314.01	417.22
Total	7417	9,089.37	4,020.31

The number of cases finalised during the period from 1985-86 to 1989-90 (Upto December 1989) are as follows:

Year	No.of cases finalised	Number of cases where extra duty collected	Number of cases where duty refunded as a result of finalisation
1985-86	513	81	24
1986-87	549	81	31
1987-88	275	56	10
1988-89	211	17	10
1989-90 (Upto December 1989)	212	18	107
Total	1760	253	182

It will be seen that only 24 per cent of the cases registered were finalised up to December 1989.

Yearwise pendency of outstanding cases yet to be finalised is detailed below collectoratewise:

Sl. No.	Collectorate Custom House	Upto 84-85		85-86		86-87		87-88		88-89		89-90		Total	
		P	G	P	G	P	G	P	G	P	G	P	G	P	G
			(A)						(B)						
1.	Madras	-	3	4	5	5	10	9	8	-	-	-	-	18	26
2.	Calcutta	116	185	129	143	183	208	114	245	62	64	69	53	673	898
3.	Air Cargo Ahmedabad	-	-	2	-	1	-	-	-	-	-	-	-	3	-
4.	Rajkot (Kandla)	-	-	5	19	3	5	4	2	4	1	-	-	16	27
5.	Cochin	-	-	7	5	7	1	1	-	2	1	-	-	17	7
6.	Mangalore	-	-	9	2	-	-	-	-	-	-	-	-	9	2
7.	Bangalore	-	-	13	6	15	5	19	6	8	3	-	-	55	20
8.	Visakhapatnam	2	35	-	1	2	5	1	5	-	3	-	-	5	49
9.	Bombay (Sea)	258	61	641	176	772	135	546	61	387	40	258	40	2862	513
10.	Allahabad	-	-	-	10	-	10	-	12	-	-	-	-	-	32
11.	Patna	-	-	-	-	1	-	-	-	-	-	-	-	1	-
12.	Delhi	-	-	40	8	118	20	73	28	74	12	45	10	350	78
	Total	**376**	**284**	**850**	**375**	**1107**	**399**	**767**	**367**	**537**	**124**	**372**	**103**	**4009**	**1652**

P= Private (A)= Includes 1 case of Tuticorin Collectorate
G= Government (B)= Includes 1 case of I.C.D Bangalore

It was stated by the customs authorities that the delay in finalisation of project import cases arose mainly due to,

(a) non submission of the reconciliation statements within the prescribed period of three months.

(b) non production of the requisite documents by the importers.

It was also added that the importers did not display the same sense of urgency for producing the documents as they showed for clearance of goods. It was observed that money value involved in the bank guarantee (5 per cent) was negligible and the importers were willing to forgo this amount rather than fulfil the prescribed conditions for submission of the required documents.

iii) Delay in finalisation of project contract cases even after receipt of reconciliation statement.

In Bombay it was noticed that in 651 cases, pertaining to the period 1976 to 1988, though the reconciliation statements had been received the assessments were not yet finalised. Yearwise break up is given in Statement I.

iv) Discrepancies between the details of the goods licensed to be imported and actually imported

In terms of the Project Import Regulations 1986, the application for registration of the project contract with the Custom House is to be accompanied by a copy of I.T.C licence wherever required, or an approved list of items from the D.G.T.D or the concerned sponsoring authority in the case of imports made by O.G.L or import by a government agency. The details of the description of the goods and the quantity actually imported should be in accordance with the details specified in I.T.C licence or approved list of items. The imports

effected under one project contract should not exceed the contract value registered with the Custom House for that contract. A few cases of imports made in excess of contract value are given below:

(a) Customs collectorate (Delhi): In six cases of imports the value of goods imported under the project exceeded the contract value registered with the Custom House by Rs.1544.64 lakhs. The consequential short levy in these cases amounting to Rs.1191.37 lakhs was pointed out in June 1990; reply has not been received.

(b) Madras: A project contract was registered in February 1987 and the sponsoring authority recommended, under the project contract, import of 2092 tonnes of various sizes of STS2 wide flanged beams. But a quantity of 2276.763 tonnes valued at Rs.10.43 lakhs was allowed to be imported by Customs authorities. Thus customs duty on the excess quantity of imports of 184.763 tonnes resulted in omission to recover duty of Rs.5.09 lakhs. This was pointed out in audit (February 1990); reply has not been received.

(c) Calcutta: The value of imports exceeded their contract value registered with the Custom House in 29 cases covering April 1985 to December 1989. This was pointed out in audit (March 1990); reply has not been received.

(7) Incorrect grant of project concessional rate due to non verification of details of substantial expansion

In terms of Regulation 3(b) of Project Import Regulations 1986, concessional duty under project imports made for substantial expansion should be allowed only after verifying that the substantial expansion would increase the installed capacity of the project by not less than 25 per cent. Omission to so verify resulted in incorrect grant of concession amounting to Rs.380.77 lakhs in the following four cases.

i) A leading manufacturer of textiles, having units at Patalganga (Maharashtra) and Ahmedabad, registered their contracts for project imports at the Bombay Custom House. Seven items of machinery cleared through Bombay Custom House were warehoused in a private bonded warehouse at Ahmedabad and cleared for home consumption between April 1986 and February 1987 on payment of duty at concessional rate applicable to project imports. The Bills of Entry were assessed provisionally on the basis of assessments made by Bombay Custom House on the Into Bills of Entry and final assessments were still pending. The importer's textile unit at Ahmedabad is an existing unit of long standing. A comparison of figures of installed capacity for manufacture of polyester yarn, cotton blended yarn, cotton and manmade fabrics as at the end of December 1985, 1986 and June 1988 given in the annual accounts of the importer indicated that the installed capacity had remained unchanged at 25125 M.T, 12494 spindles and 450 looms. The machinery imported in April 1986 and February 1987 had not resulted in substantial expansion of the installed capacity of the existing unit to justify the concessional rate of project imports. The incorrect grant of concession has resulted in duty being levied short by Rs.340.78 lakhs in respect of seven items of machinery.

The department, in reply to audit's observations in January 1990 stated (February 1990) that the assessments were provisional. It added that as some of the items of machinery were cleared in February 1987, the installed capacity as per the Schedule to balance sheet would not reflect the correct position. This reply is not factually correct as subsequent annual accounts as at the end of 30 June 1988 also confirmed that there was no substantial expansion of the unit at Ahmedabad. Action to recover the duty short levied on account of incorrect grant of concession has not yet been taken (April 1990).

ii) In the case of a cement company, registration of project contract for import of

certain equipment was granted in November 1988 by Kandla Custom House and the importer stated in his application for registration that the equipment was required for carrying out certain modifications in its plant for improving the quality of cement. The importer, in his communication to the customs authorities in November 1988, added that their plant was commissioned in 1985 and started commercial production in the year 1986. But since the white cement quality was not good, certain modifications were to be carried out which would improve the quality of whiteness from the existing 75 per cent to atleast 83 per cent and rated capacity of the plant would also go up by at least 25 per cent. It was mentioned that the equipment was for initial setting up and that it would constitute a new unit. The question whether the benefit of project imports could be allowed in the instant case where the project was already commissioned and imports made for improving the quality of the product was discussed in a departmental conference of Collectors of Customs held at Calcutta on 9 December 1988 and it was decided that such benefit of concession of project import would not be admissible. The department has issued a show cause notice for the differential duty involved Rs.7,93,419, covering one import made through Kandla port. However, action taken by the customs authorities for imports of equipment made through Bombay and released on the basis of two release advices dated 21 February 1989 and 7 June 1989 has not been intimated.

iii) In Bombay a contract was registered for import of machines (Power Looms) for substantial expansions, valued at Rs.19.19 lakhs in 1986 and the looms were stated to be for replacing old looms. There was no indication in the Contract file to indicate as to whether the existing installed capacity was increased by the replacement of looms. The case was finalised in March 1987 and the bond was cancelled in June 1987. In the absence of any indication regarding the verification of the achievement of installed capacity before the cancellation of bond, an amount of Rs.9.59 lakhs representing the differential duty may become recoverable, if increase in capacity is not established.

iv) A private company applied for and was granted project contract registration in Kandla. The importer stated in his application that it was granted import licence, as a contractor, for installation and commissioning of Ammonia storage tank for a fertilizer factory in the cooperative sector which formed part of a substantial expansion scheme of the said fertilizer factory. The importer, after producing the necessary certificate from the D.G.T.D recommending the grant of project import concession under the heading 84.66 of the Customs Tariff Act 1975, for these imports, imported 10 consignments (one at Kandla and nine at Bombay) till May 1981. The importer furnished the reconciliation statement in July 1981. Since the importer was only a contractor, having no plant of his own in India the grant of project concession for substantial expansion in respect of these imports under the Project Import Regulations 1965 was irregular. The Custom department at Kandla has raised a show cause notice cum demand for the differential duty of Rs.22.47 lakhs involved. Similar action, if any, in respect of imports of 9 consignments made through Bombay port was not available.

The irregular registration of the contract for a contractor without proper appreciation of facts and consequent delay in recovery of the differential duty for over 8 years was pointed out in audit. The full extent of short levy could not be ascertained.

Reply of the department has not been received.

(8) Incorrect grant of concession of project Imports to excluded categories of machinery

As per the notification 230/86-Cus. dated 3 April 1986, the industrial plant as defined in Project Import Regulations does not include

(a) establishments designed to offer services of any description such as hotels, hospitals, photographic studios, photographic films, processing laboratories, laundries, garages, workshops;

(b) a single machine or a composite machine within the meaning assigned to it in Notes 3 and 4 to Section XVI of Customs Tariff Act, 1975.

i) under the erstwhile Project Import Regulations 1965, concessional assessment applicable to project imports was allowed under tariff heading 84.66 for the purpose of initial setting up of a unit or the substantial expansion of existing unit. In the case of photo visual Vs. Custom Collectorate (ELT 1984 (17) 443 (Tribunal) the CEGAT held that photographic establishment/laboratory neither manufactured nor marketed any standard goods and that supplying copies of colour picture would not make it an industry and further that developing process could not be considered as an industrial activity. The Tribunal, therefore, held that the photographic establishment, laboratory could not be included as industry for benefit of concessional assessment under erstwhile heading 84.66 as project contract import.

(a) A project contract was allowed to be registered on 19 May 1986 in Madras Custom House for import of cinematographic sound recorders, scoring and re-recording and mixing equipment valued at Rs.51.72 lakhs. The importer, while claiming the concessional assessment of the aforesaid goods imported in June/ August 1986, stated that the project import was being claimed under Project Import (Registration of contracts) Regulations 1965 on the ground that the application was tendered to the custom House on 16 March 1986 i.e, prior to the date of coming into force of Regulations 1986 specifically excluding the service establishments. It was noticed in audit that no documentary evidence was available in the file to prove the contention of the importer that the documents along with the application were filed prior to 3 April 1986. It was pointed out in audit (January 1990) that having regard to the decision of CEGAT cited supra the date of import was not material and grant of concession had resulted in short levy by Rs.84.57 lakhs. Reply of the department has not been received.

(b) In respect of three other imports of similar machinery registered as project contracts on 1, 7 and 10 January 1986, audit pointed out (November 1989) short levies amounting to Rs.8.72 lakhs, Rs.11.18 lakhs, and Rs.5.90 lakhs respectively; reply of the department has not been received (April 1990).

ii) As already stated in the introduction to sub para (i) the project concessions are not available to a single machine or composite machine within the meaning assigned to it in notes (3) and (4) to Section XVI of the Customs Tariff Act 1975. Non fulfilment of these conditions in the following illustrative cases resulted in duty being levied short by Rs.40.29 lakhs.

(a) A project contract was registered in May 1986 in Madras Custom House for import of one "Chewing Gum machine" valued at Rs.4.63 lakhs. It was pointed out that as the imported machine was a composite machine consisting of (i) Extruder (ii) Ball shaping machine (iii) cooling table (iv) powder filling device and (v) set of spares and in the absence of details as to the increase in the installed capacity for substantial expansion, the project concession was not in order. On this being pointed out in audit (January 1990), the department contended (March 1990) that the various components of the imported ma-

chine had individual functions and that the import was for substantial expansion of an already existing machine.

The departmental reply is not acceptable since according to notes 3 and 4 of Section XVI the composite machine consisting of two or more machines fitted together for the purpose of performing two or more complementary or alternative functions and that where a machine including a combination of machine consisted of individual components whether separate or inter connected, intended to contribute together to a clearly defined function, it would still come under the definition of single/composite machine. As per the details of the catalogue, the imported machine fulfilled this criterion, and therefore the import would not be governed under the Regulations 1986. The argument that the present import was for substantial expansion of the already existing machine would also not be correct since the concept of single/composite machine is not nullified by it. The incorrect grant of concession resulted in short levy amounting to Rs.4 lakhs.

(b) In Bombay a single spring and grinding machine (valued Rs.8.02 lakhs; import in 1986) and Float welding machine (valued Rs.45 lakhs; import in March 1988) were allowed the benefit of concessional assessment under project contract, and the duty benefit extended was Rs.9.96 lakhs. The department's reply has not been received (April 1990).

(c) In the same Custom House, one automatic cone baking machine (ice cream) valued at Rs.9.99 lakhs was imported in 1986 and cleared under project Import. The importer was having other machine for biscuit baking, packing etc., the machines were not having functions complementary to each other. Hence the grant of exemption was irregular.

Similarly another case of import of additional baking plates valued at Rs.3.09 lakhs and clearance of the same under project concession without any registration of supplementary contract therefor was pointed out in audit (March 1990). The total short levy involved in both the cases amounted to Rs.11.33 lakhs.

(d) Import of 2098 empty oxygen cylinders valued at Rs.10.28 lakhs was allowed project concession by the Bombay Custom House after registering the same for project contract in February 1986. It was pointed out in audit (March 1990) that empty cylinders being neither industrial machinery, nor parts of machinery as defined in Project Import Regulations 1986 would not be eligible for the project concession. The irregular grant of concession resulted in extension of benefit of Rs.15.00 lakhs. Reply from the department has not been received (April 1990).

(9) Incorrect de-registration and split up of imports, assessment partly under project Imports and partly under the tariff heading on merits under other notifications

An importer claiming project import concessions does not have the option for assessment of goods on merits at rates other than those applicable to project imports and can not claim benefits under any other scheme. A standing order (No.35/87) issued by a major Custom House stipulates such a condition that once a contract is registered for project imports, the imports covered by the said contract became classifiable under heading 98.01 and liable to duty as such items of goods so forming part of a contract lose their identity under the individual tariff headings and could not be classified on merits under any other heading of the tariff. Further, once a contract is registered for project imports no de-registration of the whole or part would be allowed.

Five cases of irregular exemption contrary to the aforesaid regulations and the standing order of the major custom House are mentioned below.

i) A project contract was registered by a private importer in Madras on 29 April

1986 for import of industrial burners and alloy steel buttweld pipe fittings for manufacture of industrial furnaces. Goods valued at Rs.11.46 lakhs were imported in January 1987 and warehoused in February 1987, and the warehousing bill of entry was assessed under heading 98.01 at basic customs duty 30 per cent and auxiliary duty at 25 per cent both ad valorem. At the time of clearance from the warehouse in June 1987, the goods were allowed to be cleared and assessed on merits under tariff heading 84.17 at 40 per cent ad valorem in terms of notification 155/86- and additional duty at 15 per cent ad valorem under the same heading. The importer availed Modvat credit on the additional duty of customs which worked out to 21 per cent and also utilised the credit for payment of duty on the final products. By opting for assessment on merits, the importer had thus paid duty at a net rate of 40 per cent ad valorem against 55 per cent under Project Regulations resulting in an un-intended benefit to the importer amounting to Rs.1.72 lakhs. This was pointed out in audit (March 1990), reply has not been received (April 1990).

ii) A consignment of dumpers in SKD/CKD condition valued at Rs.20.33 lakhs was imported in November 1985 and January 1986 against a contract registered on 26 September 1986 in the Madras Custom house for supply to a Government undertaking. The components were cleared from a private bonded warehouse on 28 September 1987 and assessed on merits under sub heading 8704.10 with basic duty at 40 per cent ad valorem, auxiliary duty at 30 per cent ad valorem and additional duty at 20 per cent ad valorem under heading 87.04 of C.E.T. The importer had paid duty amounting to Rs.21.33 lakhs out of which additional customs duty worked out to Rs.7,10,169 which was availed of as 'Modvat credit' by him. The said goods should have been cleared under Project Import Regulations, under heading 98.01, with basic customs duty at 45 per cent, auxiliary duty at 45 per cent both ad valorem and without levy of additional duty. The total duty on this basis would have amounted to Rs.18.30 lakhs. By irregularly opting out of the project contract assessment and resorting to assessment on merits, there was a loss of revenue of Rs.4.07 lakhs to Government. The department issued a show cause notice on 14 January 1988 for de-registration of the contract. The case is pending adjudication (April 1990). It was pointed out in audit (February 1990) that the registration of the project contract was done without the backing of the sponsoring authority's certificate. Besides, the bond had been taken for Rs.5.7 lakhs on 29 June 1986 with bank guarantee whose validity was for a period of six months only and which has not been renewed from time to time. The reply of the department has not been received (April 1990).

iii) In Delhi, against a project contract for Rs.4,40,000 on 3 May 1986 for import of three machines, only one machine was allowed under project contract at the request of the importer and the remaining two were assessed on merits i.e., at a lower rate under exemption notifications which were beneficial to the importer. The short levy could not be worked out as the documents called for in audit (June 1990) had not been received.

It was pointed out in audit (June 1990) that all the three machines should have been allowed under project contract.

iv) Two project contracts were registered in Madras custom House by a private importer in 1985 and 1986 for import of "Form fill and seal lacking with gas flushing". The import of the said machines was allowed during June 1985 under heading 84.66 and duty was assessed at 20 per cent ad valorem plus auxiliary duty at 25 per cent ad valorem without levy of countervailing duty. Another consignment of nine machines imported in July 1986 was also allowed

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under heading 98.01 and assessed to duty at the rate of 10 per cent ad valorem under the notification 125/86-Cus. dated 17 February 1986 and auxiliary duty as 25 per cent ad valorem.

Since the imported goods were classified under heading 98.01 as project imports, the extension of the concessional rate notified under the aforesaid notification in respect of goods falling under chapters 84 and 39 was not correct. It was also pointed out in audit (March 1988) that the benefit of exemption notification in respect of any goods falling under any specified heading of the customs tariff will be applicable for those imports made under project import regulations only when the said notification specifies the headings such as item 72A/84.66 or 98.01. Incorrect extension of the benefit of the notification resulted in duty being levied short by Rs.1.02 lakhs.

v) A consignment of electronic equipment Max-I System, valued at Rs.1,68,92,845 was imported in December 1987 through a port and the same was treated as an importation for power project under heading 98.01 and was assessed to duty at 25 per cent ad valorem in terms of notification 67/87-Cus dated 1 March 1987. It was pointed out in audit (February 1990) that the exemption notification 67/87 pertained to only power projects defined in the explanation thereunder and that the importer neither produce power nor end product was power. The correct rate of duty should have been 45 per cent (basic) plus 45 per cent (Auxiliary duty) in terms of notification 132/85 dated 19 April 1985 as amended and 85/88 dated 1 March 1988. This resulted in duty being levied short by Rs.109.80 lakhs. Reply from the department has not been received (April 1990).

(10) Incorrect grant of project concession to diesel generating sets imported separately as stand by generators

i) A project contract was registered in Madras in October 1986 for import of two diesel generating sets, valued at Rs.339.38 lakhs, with a capacity of 5800 Kw for initial setting up of power unit to implement caustic soda programme. The goods were covered by Import Trade Control Licence, recommendation from sponsoring authority and the clearance certificate from Karnataka State Electricity Board that the diesel Generating sets would be used for continuous operation and not as standby units. The imports were made in November 1986 and February 1987 and the project case was closed in August 1989. It was noticed that the production of caustic Soda during the period form March 1986 to February 1987 and from March 1987 to February 1988, were 24094 tonnes and 360657 tonnes respectively. For this purpose while Karnataka Electricity Board supplied for the corresponding periods 82048800 units and 56002000 units respectively, the power generated by diesel generating sets for supply to the production was 49256600 units. These details indicated that diesel generating sets functioned for standby operation mechanism and, therefore, the import of diesel generating sets alone for standby use under concessional assessment applicable for project imports was not in order. In the departmental tariff conference held in April 1985 the question of criterion for extending the project import concession for import of diesel generating sets for standby generation of power was discussed. While the conference noted that standby generating sets formed an integral part of capital investment by the industries for uninterrupted power supply and therefore, if it formed part of an initial set up or substantial expansion it would be eligible for project concession, the conference decided that there was no justification for concessional assessment when the diesel generating sets were imported separately as standby generators. It was, therefore, held in audit (February 1990) that the incorrect grant of concession resulted in duty being levied short by Rs.117.86 lakhs. Reply from the department has not been received (April 1990).

ii) Another project contract was registered by a public sector undertaking in November 1985 for import of three 2500 K.V.A diesel generating sets for substantial expansion of their electronic project, after obtaining a 'no objection certificate' from the Karnataka State Electricity Board. The sets were imported in January 1986 and April 1989 through an Inland Container Depot (Bangalore) and were assessed to duty at 25 per cent ad valorem in terms of notification 315/83 applicable to electronic industry. While the importer claimed this supported by a certificate from the Department of Electronics, the no objection certificate issued by the Karnataka Electricity Board stated that the diesel generating sets were for standby arrangements.

Audit cited the decision of the tariff conference of April 1985, mentioned in sub-para (i) above and pointed out that the concessional assessment was, therefore, not in order. The department justified their action on the ground that the diesel generating sets were required for substantial expansion programme; they, however, raised a demand for Rs.85.26 lakhs on the importer at the instance of audit objection.

The reply of the department is not acceptable for the following reasons:

(a) the diesel generating sets were imported for standby use under separate Import licence,

(b) apart from the extension of the project concession being incorrect in the light of the decision of the tariff conference, the argument of its requirement for substantial expansion of existing capacity has been indicated in terms of money value i.e from Rs.56.26 crores to Rs.100 crores and not in terms of factors reflecting the increase in the existing capacity of the unit by not less than 25 per cent.

(11) Incorrect grant of concession of project import without recommendation of the sponsoring authority

i) A project contract was registered provisionally pending the production of a certificate of the sponsoring authority within three months on 28 May 1986 by an importer in Madras, for import of one Vertical Roller Mill for Raw Meal for replacement/modernisation of two wet and one semi dry kilns. The importer claimed that the imported goods valued at Rs.226.60 lakhs was for a new unit as well as for substantial expansion. The importer executed a provisional duty bond for Rs.12.02 lakhs and a differential duty bond of Rs.97.70 lakhs with an under- taking to produce the D.G.T.D's recommendation.

The importer was allowed to clear the goods under project concession in June 1986 on payment of concessional duty amounting to Rs.113.59 lakhs.

The importer did not produce the required certificate from the sponsoring authority viz., D.G.T.D stating that they were not legally bound to produce the said certificate. The department allowed the final registration of the contract dispensing with the requirement of certificate from the sponsoring authority holding the opinion that the goods were meant for initial setting up of a unit even though the importer had claimed that it was meant for both initial setting up and for modernisation. The contract was finalised in July 1988 on that basis.

It was pointed out in audit (March 1990) that the final registration of the project contract was not in order and therefore, the entire concession of project import was incorrect for the following reasons:-

(a) according to the submission made by the importer, as recorded in the Custom House records, the modernisation and replacement was expected to result in the achievement of increased production capacity by 18 per cent. As the

project contract regulations prescribe a minimum achievement of 25 per cent capacity for claiming the benefit of substantial expansion provision in the Project regulations 1986, the concession was irregular,

(b) in the departmental tariff conference held in February 1986, it was decided that modernisation not involving substantial expansion in the installed capacity would not qualify for project concession under the project import regulations,

(c) the dispensing with the requirement of recommendation of D.G.T.D, the sponsoring authority, was contrary to the instructions governing the Project Import Regulations, 1986.

The incorrect grant of project concession resulted in duty being levied short by Rs.118.40 lakhs; reply of the department has not been received (April 1990).

ii) Under para 288(1) of Handbook of Import and Export procedures 1985-88 (as amended) import of capital goods, connected raw materials and components required for the initial setting up of a unit or for substantial expansion of a unit, would be classified under the heading 84.66 C.T.A/98.01 of C.T.A 1975 provided the sponsoring authority recommends such imports as eligible for project import concessions under the Project Import Regulations 1965.

A contract for import of 78 nos. of Petals and Plates and 4000 meters of Seamless Steel Pipes was registered in March 1986 for a value of Rs.52.82 lakhs, without the recommendation of the sponsoring authority. This was pointed out in audit in February 1990. The duty concession amounted to Rs.45.69 lakhs. Reply of the department has not been received (April 1990).

(12) Import of spares and consumables in excess of 10 per cent of the value of the goods specified in Heading 98.01 of the C.T.A 1975

Besides the machinery, equipment, instruments etc., required for the initial setting up of an industrial unit plant project, raw material, spares and consumables stores not exceeding 10 per cent of the value of the goods specified in sub heading (1) to (6) of the heading 98.01 of C.T.A 1975, are also allowed to be cleared under the concessional assessment of 'Project Imports'. In the following cases the imports of spares, consumables etc., were allowed to be imported under 'project contract' in excess of the ceiling prescribed (10 per cent) in the tariff heading.

i) Imported spares and consumables to the extent of 92 per cent, 12.5 per cent and 37.2 per cent of the value of 'Honing machine', Flexible 'manufacturing cell' and 'Lapping machine' in July 1986, January 1987 and March 1987 respectively, were extended concessional rate for project imports for the entire imports instead of limiting these to 10 per cent of the value of aforesaid machines. This resulted in total duty being levied short by Rs.19.33 lakhs. The objection of I.A.D in this regard was closed after accepting the explanation of the appraising officer that 10 per cent restriction would be applicable with reference to the total value of capital goods and not with reference to value of individual machines for which they were imported.

It was pointed out in audit (March 1990) that the reply of the Appraising Department was not correct because I.T.C licence was issued in respect of each machinery separately and that spare parts of a particular machinery could not normally be used with other machinery. It was, therefore, held in audit that the restriction of 10 per cent in respect of value of import of spares etc., should be with reference to each machine and not on the total value of the machinery contracted for in the project. It was also noticed that the import of spares and

consumables in respect of first machine viz., Honing machine under O.G.L was not covered by the recommendations from the sponsoring authority.

ii) In the collectorate of Indore (M.P) an importer had imported spares valued at Rs.52.18 lakhs against the limit of Rs.31.46 lakhs, resulting in excess imports of Rs.20.72 lakhs and consequential incorrect grant of exemption from customs duty of Rs.6.22 lakhs.

iii) In Bombay, it was noticed that in a contract registered for import of equipment and machinery for manufacture of marble tiles in 1986, the value of spares and consumables imported and cleared amounted to Rs.7.63 lakhs as against Rs.25.43 lakhs being the value of the main machinery and equipment. The bond was cancelled and the case was finalised without taking action to recover the differential duty of Rs.4.32 lakhs leviable on the spares and consumables imported in excess of the prescribed limit.

This was pointed out in audit (February 1990); reply of the department has not been received (April 1990).

(13) Omission to review the Adjudication Orders involving undervaluation of machinery imported under Project Regulations

An importer and its sister concern registered two project contracts on 20 March 1986 at an Inland Container Depot (Bangalore) for import of 22 items of second hand machinery and 16 items of machinery respectively, for initial setting up of a plant for manufacture of silk yarn from silk waste and for substantial expansion of manufacture of silk fabrics respectively. On the basis of written information received regarding undervaluation of the said imported goods with the intention of evading customs duty, the department, after satisfying themselves about the existence of a prima-facie case after seizing certain documents, issued a show cause notice on 20 August 1987 to the importer. The collector in his order dated 17 May 1988, accepted the value Rs.19,21,806 and Rs.11,25,021 declared by the importer and its sister concern for the two imports, since it was found that the value declared by the importer was more than the amount arrived at by giving depreciation on the new machinery after addition of reconditioning charges.

The adjudication orders of the Collector required review by the Board of Excise and Customs under section 129D of Customs Act 1962 for the following reasons.

i) The orders of the Collector were communicated in the form of a letter intimating the closure of the case against the importer. This was not correct because formal orders recorded in the Adjudication proceedings i.e. original decisions under the customs Act 1962 which were subject to appeal, should have been self contained, unambiguous and also a speaking order issued in the prescribed form.

ii) The machines imported were supplied by a foreign concern after purchasing from the manufacturer. It was an undisputed fact from the records of the Custom House file that the foreign supplier reconditioned these old machines to 1985 technology in his own factory.

iii) Section 14(i)(a) of the Customs Act 1962 should have been adopted for valuation only where the seller and buyer did not have any interest in the business of each other. In this case it was observed from the records that the foreign supplier had acted more like an agent of the importer procuring the goods for the importer by negotiating the price on behalf of the importer. In view of this, the price alone was not the sole criterion for this transaction to adopt valuation under Section 14(i)(a). The proper course would have been that the comparable value of goods by depreciating the correct value of the goods at the time of manufacture by 15 per cent per year of use and also by adding the reconditioning charges should have been adopted.

iv) While the show cause notice drew the attention of the importer to the Chartered Engineer's certificate, certifying among other things the value and residual life of the machinery, the certificate, however, did not indicate the year of manufacture of the machines and the correct value of the machine at the time of manufacture. Because of these omissions, the value of the machines could not be determined by adopting the depreciation method.

v) The adjudication orders of the Collector stated that the valuation had to be done as per Rule 8 of the valuation Rule 1963 as other rules were not applicable. There was no documentary evidence in this regard as to whether the procedure prescribed in S.O No.33/83 of the Madras Custom House for determining value of the second hand machinery was followed.

vi) The import under O.G.L in respect of the sister concern has not been supported by the sponsoring authority and hence has not fulfilled the conditions for availment of concessional assessment under Project Import Regulations.

The short levy as indicated in the show cause notice was Rs.90.96 lakhs. In the absence of the correct value of the machinery the short collection involved could not be worked out in audit.

These observations were communicated by audit (February 1990); reply has not been received (April 1990).

(14) Delay in invoking the bonds and Bank guarantees executed for project contract imports from defaulting importers

i) Collectorate Delhi: The customs authorities did not monitor the validity of bank guarantees lying with them where the additional documents, were awaited. It was brought to the notice of the department that bank guarantees for Rs.523.91 lakhs had lapsed in 183 cases where the documents were to be received.

ii) In yet three more cases in the same collectorate although the importers did not produce reconciliation statement/ other documents required for finalisation of project contract, within 3 months from the date of last import of the consignment, the customs authorities did not invoke the bank guarantees for Rs.7.53 lakhs for the differential duty in time, with the result that the bank guarantees given by the Bank had already expired.

iii) A project contract was registered for import of goods valued at Rs.72.51 lakhs. The importer furnished the bank guarantee for Rs.3.63 lakhs which was valid up to 28 February 1987 besides the bond executed for that purpose. During the finalisation of the case custom authorities noticed that the amount remitted through the bank by letter of credit for the import of goods differed from the value of machine shown in the project import contract. Although the acceptance of the value in this case required the prior permission of the Ministry of Finance, the customs authorities issued a show cause notice for Rs.26.45 lakhs and the guarantor bank was requested not to release the bank guarantee, but the bank guarantee had lapsed by that time. The case is stated to be pending with D.R.I for investigation. Further reply from the department has not been received.

iv) In the Air Customs Collectorate (Delhi), a project import was made on 16 January 1985 and duty aggregating to Rs. 5,52,078 was levied. Since the importer failed to submit the Industrial licence a demand notice for Rs.8.41 lakhs on 10 July 1985 was issued. While issuing a reminder to the importer on 29 August 1988 for depositing the amount within 10 days from the date of issue, the department also wrote to the guarantor bank prefering claim against the bank guarantee dated 22 October 1984, which was valid upto 22 October 1986 due to extension from time to time. The letter to the importer was returned undeliv-

ered that no such unit was existing at such address. The bank expressed its inability claiming that the period of Bank guarantee had lapsed already. The department had approached the clearing agent on 6 April 1990 for settlement of the case.

Reply from the department regarding realisation of duty has not been received (April 1990).

v) Bombay: Nearly 1236 cases were pending for finalisation over a period of one year for want of reconciliation statements. In 200 cases test checked in audit, no action invoking the bank guarantee/bond has been taken. Even in one or two cases where the department had raised certain demand, the importers have not honoured the demands on the ground of being time barred.

(15) Miscellaneous

i) Contract Registers - maintenance of

Regulations 4 and 5 of Project Import Regulations (Registration of contract) 1965 and the subsequent Regulations framed in the year 1986 read with the provisions contained in the Appraising Manual envisages (a) the maintenance of contract register in prescribed form by the contract cell of the Appraising Department and (b) forwarding all relevant Bills of Entry in original by the Manifest Clearance Department to the contract section after taking action at their end. The register is required to be reviewed once a month by the proper officer for effective monitoring of the cases.

In the major Custom House (Bombay), it was noticed that even though contract registers were opened and contract numbers were assigned for the contracts at the time of registration, no entries were being made such as contract value, bills of entry no. and other particulars relevant to the contract, in the prescribed columns. There was also no indication that the register was ever reviewed by the higher officers for monitoring the finalisation of pending contracts.

In another major custom House (Madras) also, there was no evidence of review having been conducted by the proper officer every month. The uneven flow of original Bills of Entry from 'Manifest Clearance Department to contract cell resulted in delay in finalisation of the pending contract cases.

ii) Incorrect grant of exemption without production of industrial licence

Along with the prescribed documents, the applications for project import are to be accompanied by industrial licence granted by the appropriate authority and the original import licence with the list of goods being imported duly attested by the licencing authorities. The particulars of goods, the number, quantities of items specified in the bills of entry have to be tallied with the list of goods specified in the industrial licence.

In the course of test check of 200 project import contract files pertaining to the period 1980-1988, an attempt was made to verify in audit as to the manner in which Custom House was checking actual imports vis-a-vis quantities specified in the licence. In the absence of the bills of entry, import licence etc., in the contract file, this was not possible. However, in the following 4 cases illustrated the goods worth Rs.95.52 lakhs were allowed clearance without Industrial/Import licence at Bombay. The cases were registered provisionally subject to production of licences within three months of registration.

(a) Glass tubes valued at Rs.95.00 lakhs imported without proper import licence were allowed clearance under project contract regulations in July 1980. Even though a demand for Rs.1.48 lakhs was raised in July 1987, the importer did not honour the demand. Action taken to pursue the recovery was not available from the records.

(b) In another case, machinery and equipment valued at Rs.31.48 lakhs were allowed clearance in April 1982 without production of industrial licence. The department has not taken any action till date for finalising the case.

(c) In the third case, walnut processing equipment valued at Rs.47.19 lakhs were allowed clearance during February 1985, March 1985, without the industrial licence. Further action to finalise the pending case by calling for the industrial licence is not known.

(d) In another case of equipment and machinery for manufacture of plastic films valued at Rs.11.38 lakhs, clearance was allowed in February 1984 subject to production of industrial licence. The bank guarantee for Rs.57,318 accepted by the Custom House expired in February 1985 and the demand raised (June 1987) enforcing recovery could not materialise.

These cases were brought to the notice of the department (February 1990); reply has not been received (April 1990).

iii) Grant of project import concession to imports towards replenishment of stocks of imports already utilised in the project contract

In a major Custom House (Madras) the project import concession was extended to imports of capital goods for manufacture of motors, valued at Rs.7.52 lakhs made in January 1988, June 1988 and November 1988. It was pointed out in audit (March 1990) that the concession was not in order as there was no specific provision in the Project Import Regulations, for the imports in replenishment of the existing stock. The short levy involved worked out to Rs.9.95 lakhs.

iv) Non fulfillment of conditions stipulated at the time of registration of contract

A project was registered at Madras on 2 September 1986 for import of one brand new 'Reflect baby pony-246, valued at Rs.4.15 lakhs with a stipulation that the importer should also import a four colour offset printing machine within six months from the date of registration.

Even though the imports were covered by O.G.L and were covered by recommendations from the sponsoring authority, the stipulation of importing printing machine was not fulfilled and the contract was finalised (July 1987).

Short levy on the basis of assessment on merits worked out to Rs.2.63 lakhs

This was pointed out in audit (February 1990); reply has not been received (April 1990).

v) Short levy due to application of incorrect rate of duty

As per proviso to Section 15(1) of the Customs Act 1962, the rate of duty in respect of any imported goods, the bill of entry which has been presented before the date of entry inwards of the vessel by which the goods are imported, shall be the rate in force on the date of such entry inwards.

On a consignment of "Main project equipments" imported in September 1987, auxiliary duty of customs was levied at the rate (40 per cent ad valorem) in force on the date of presentation of the bill of entry (14 September 1987) instead of at the rate of 45 per cent ad valorem applicable on the date of entry inwards (22 September 1987) of the vessel. This resulted in duty being levied short by Rs.85,177.

On this being pointed out in audit (June 1989), the department stated (February 1990) that the subject goods were imported against a project contract and the assessment of the goods was provisional. A demand for the short levied amount was however, issued.

The department's contention is not acceptable inasmuch as Section 18 of the Customs Act, 1962 provides for

provisional assessment where final assessment is not feasible for want of further relevant information. The project contract cases are provisionally assessed mainly for want of information about valuation. The applicability of section 15(1) of the said Act is not dependent upon such information.

Further, it has been clarified in Ministry's letter No.F.20/36/70 Cus.I dated 15 March 1972 after a tripartite meeting with Ministry of Law that in a case of provisional assessment where a short levy has been noticed, the importer could be asked to pay the short levied amount, without waiting for final assessment.

vi) Irregular availment of project import concession by contractors/Sub contractors

It was noticed in a major Custom House (Bombay) that benefit of assessment of power project, fertilizer projects etc., was being availed by contractors and sub contractors who were executing different types of work for such projects. These imports were being registered as for Power Projects/Fertilizer projects in these contractor's names and were finalised on completion of the respective imports. The total imports allowed under the main project were not consolidated and accounted for.

In reply to a query in this regard from audit the department stated that in all such cases of imports by contractors etc., on an undertaking from the parties/project authorities, the benefit of project assessments were being passed on to the major projects.

The fact remains that there is no system/control with the customs authorities for ensuring that the imports by contractors/sub contractors and project authorities were made according to and within the overall value permitted in the original project contract.

The aforesaid appraisal was sent to the Ministry of Finance in October 1990; their reply has not been received (December 1990).

STATEMENT I

(See para 6(iii))

Statement showing the year wise breakup of non-finalisation of cases after receipt of reconciliation statements.

Sl.No.	Year	Number of reconciliation statements
1.	1976	4
2.	1977	2
3.	1978	6
4.	1979	-
5.	1980	1
6.	1981	14
7.	1982	14
8.	1983	16
9.	1984	46
10.	1985	149
11.	1986	251
12.	1987	124
13.	1988	24
	Total	**651**

1.02 Iron & Steel and products thereof

(1) Introduction

Central Excise duty was imposed for the first time on steel ingots on 1 April 1934. It was included as item 25 in the first schedule to the Central Excises & Salt Act, 1944. On 1 March 1960, pig iron was added (tariff item 26) and 'Iron & steel products' were brought under the central excise net (tariff item 26AA) with effect from 24 April 1962. From 1 August 1983, all these products were realigned to become classifiable under tariff item 25 till 27 February 1986. After the introduction of the Central Excise Tariff Act, 1985, replacing the schedule I ibid with effect from 28 February 1986, Iron & steel and articles thereof became classifiable under chapters 72 and 73 of the schedule to the Act ibid.

The excise duty realised from iron and steel products during the last three years and the number of units involved are given below :-

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Year	Number of units	Duty realised (Rs. in crores)
1987-88	3743	630.74
1988-89	4492	829.60
1989-90	N.A.	1069.51

(2) Central Excise Control

Earlier the excise control over the manufacturers of iron and steel had been of two types, viz., (i) physical control and (ii) audit type of control till 31 May 1968. Consequent on the introduction of self removal procedure, these types of control were replaced by the new procedure with effect from 1 June 1968.

(3) Scope of Audit

The audit of assessment documents relating to levy, assessment and collection of central excise duty on iron and steel and products thereof was designed to test check the efficiency of the system of assessment of duty on these goods. It was primarily aimed to see :

i) that there was no suppression of production leading to evasion of central excise duty;

ii) that necessary rewarehousing certificates were received in respect of goods cleared at concessional rates of duty;

iii) that duty was properly levied on excisable goods consumed captively;

iv) that the benefits of different duty exemption notifications were granted only when the prescribed conditions were satisfied;

v) that the products were correctly classified;

vi) that materials which could be used as such were not cleared as wastes and scraps;

vii) that there was no irregularity in availing Modvat credit on various inputs;

viii) that the physical verification of stock was conducted and duty on shortages, if any, was demanded.

The audit was conducted in 32 central excise collectorates during the year 1989-90, and records relating to last three years were generally scrutinised. The audit party also visited the assessees premises, where necessary, to check primary records.

(4) Highlights

A review on the system of levy, assessment and collection of duty on iron and steel and products thereof falling under chapters 72 & 73 was conducted. The results of review are contained in the succeeding paragraphs which highlight the following :-

- **Short accountal of production of excisable goods leading to escapement of duty of Rs.10.29 crores**
- **Duty to the extent of Rs.19.49 crores was not demanded where rewarehousing certificates were not received within the prescribed period**
- **14 Units did not pay duty of Rs.3.59 crores on the goods produced by them and consumed captively for further manufacture of other products**
- **Incorrect availment of concessional rates of duty resulted in non levy/short levy of duty of Rs.15.65 crores**
- **Incorrect classification of excisable goods resulted in short levy of duty of Rs.19.28 crores**
- **Irregular credits of Rs.8.70 crores were taken under Modvat scheme**

(5) Non levy of duty due to production suppressed or not accounted for

As per rule 53 of the Central Excise Rules, 1944, every manufacturer is required to maintain an account of stock in prescribed form (RG.1) where he is required to enter, interalia (a) the quantity of goods manufactured (b) the quantity of goods removed on payment of duty and (c) the quantity delivered from the factory without payment of duty for exports or other purposes. Rules 9 and 49 of the said rules further provide that excisable goods shall not

be removed from the place of manufacture or storage unless the duty leviable thereon has been paid. The manufacturer is also required to file periodical returns (RT.5) to the proper officer indicating the quantity of raw materials used in the manufacture of excisable goods and the quantity of finished goods manufactured.

Escapement of duty of Rs.10.29 crores on account of short accountal of production by eight assessees in seven collectorates, was noticed in test audit. A few cases are given below:-

i) A comparison of the production of iron and steel and products thereof as shown in the central excise records of an integrated steel plant in Bolpur collectorate with the production shown in the Annual Operational Statistics revealed discrepancies between the two which indicated short accountal of production in the central excise records involving duty liability of Rs.7.67 crores during the period from 1986-87 to 1988-89.

The mistake was pointed out in audit in September 1989. Department's reply has not been received (April 1990).

ii) A comparison of the production of different items of steel and stainless steel as per records maintained in "production planning and control department" (annual statistics) of an integrated steel plant in the public sector in the Bhubaneswar collectorate with those shown in the central excise records (RG.1 and RT.12) revealed that the production accounted for in the latter was far less. The amount of central excise duty involved on the short accountal of production in the central excise records worked out to Rs.2.12 crores.

On this being pointed out in audit (January 1989), the department stated (July 1989) that a show cause notice was under issue in respect of discrepancy in production figures for the year 1987-88. Comments of the department in respect of the discrepancies in production for the year 1986-87 and 1988-89 have not been received (April 1990).

iii) A comparison of the production of M.S.Rounds as per daily stock account (RG.1) of an assessee in Bombay III collectorate with the figures of production shown in his annual accounts (balance sheet) for the year 1986-87 revealed short accountal of 3729 tonnes of M.S.Rounds on which the duty liability worked out to Rs.13.61 lakhs.

The comments of the department have not been received (July 1990).

(6) Non fixation of norms of production

As per provisions of rule 173E of the Central Excise Rules, 1944, an officer duly empowered by the collector, is required to fix the norm of production having regard to the installed capacity of the factory, raw material utilisation, labour employed, power consumed and such other relevant factor as he may deem appropriate. In case the short fall is not accounted for to the satisfaction of the proper officer, he is required to assess the duty due thereon to the best of his judgment, after giving the assessee a reasonable opportunity of being heard. After the introduction of self removal procedure these provisions assumed greater importance as they provided an independent method to verify that the production was according to the norm prescribed.

Test check of records of 690 licensees in 27 collectorates revealed that norms of production were not prescribed.

Some of the cases are given below :-

i) The approximate ratio between principal raw materials and finished products in certain products were prescribed by the Directorate of Inspection, Customs and Central Excise in letters dated 26 April 1971 and 26 April 1972.

As per the above instructions in the case of manufacture of steel ingots falling under chapter 72 (in duplex process in integrated steel plant) 1.15 tonnes of scrap, hot metal, ore etc., was required to produce one tonne of ingot.

In an integrated steel plant in Bolpur collectorate production of steel ingots fell short by 55158 tonnes during 1986-87 to 1988-89 in comparison to the norm fixed, involving central excise duty of Rs.2.05 crores.

This was pointed out in audit in September 1989. Department's reply has not been received (May 1990).

ii) As per the above instructions if the steel ingots are made from hot metal and scrap in the open hearth furnace process, the ratio of steel ingots should be 87 to 95 per cent, depending on the quality of the ore. The maximum permissible loss should, therefore, not exceed 13 per cent.

It was noticed that loss of raw materials ranged from 14 to 44 per cent in the case of one assessee in Meerut collectorate and above 16 per cent in the case of another in Kanpur collectorate. Department did not investigate the reasons for such abnormal low production. Taking into account the norm prescribed the amount of duty involved worked out to Rs.3.61 lakhs during April 1986 to December 1989 in the case of the former and Rs.18.22 lakhs during April 1987 to December 1989 in the case of the latter assessee.

The department has not replied to the facts reported in January/February 1990.

(7) Non receipt of rewarehousing certificates

As per notifications issued from time to time (February 1986, March 1988, May 1988 and March 1989), railway track construction materials (sleeper bars, sleepers etc.,) falling under chapter 73 of the schedule to the Central Excise Tariff Act, 1985 are assessable at concessional rate of duty if they are actually used for specified purposes and the procedure set out in chapter X of the Central Excise Rules, 1944, is followed. Since the exemption is conditional, the consignor is required to present the triplicate copy of the application duly endorsed with such certificate to the proper officer incharge of the warehouse of removal (rewarehousing certificate) within 90 days of the date of issue of the transport permit as provided in rule 156A of the Central Excise Rules, 1944. On failure to do so, the rules require that full duty be demanded on such goods which should be paid within 10 days.

Test checks revealed that in 4973 cases rewarehousing certificates were not received till 31 December 1989 in respect of goods cleared prior to 30 September 1989. The differential duty involved amounted to Rs.19.49 crores.

Some of the cases are given below :-

i) In an integrated steel plant in Indore collectorate the rails (sub heading 7302.10) had been despatched to Indian Railways under chapter X procedure at concessional rate of duty. As on 31 December 1989, in respect of such rails despatched upto 30 September 1989, in 4730 cases (starting from 1971-72) rewarehousing certificates were not received. The differential duty involved amounted to Rs.24.36 crores. Though rewarehousing certificates were pending since 1971-72, it was only during the period January 1984 to January 1988 that demands for differential duty amounting to Rs.8,78,19,665 were confirmed by the department against which the consignor filed an appeal in CEGAT whose decision was awaited. In fact, no regular and timely action was taken by the department for demanding the differential duty from the consignor. The long pendency of rewarehousing certificates since 1971-72 is indicative of the lack of coordination between the departmental officers incharge of the warehouses at both the ends.

The irregularity was pointed out in audit (January 1990); the reply of the department has not been received (April 1990).

ii) In an integrated steel plant in Bolpur collectorate clearing railway track construction materials (B.G.sleeper) at concessional rates to different Indian Railways, rewarehousing certificates

pertaining to the period June 1987 to September 1989 were not received in 232 cases and the department failed to demand the differential duty of Rs.3.89 crores.

The irregularity was pointed out in audit (February 1990); the reply of the department has not been received (April 1990).

(8) Non levy of duty on excisable products consumed within the factory of production

Rules 9 and 49 of the Central Excise Rules, 1944, require that duty shall be paid on excisable goods before removal from any place where they are produced or manufactured or any premises appurtenant thereto whether for consumption, export or manufacture of any other commodity in or outside such place. However, as per a notification issued on 2 April 1986, specified excisable goods manufactured in a factory and used as input within the factory of production in or in relation to the manufacture of specified final products, were exempt from the whole of duty of excise leviable thereon provided the final product was not exempt from duty. As per explanation to the notification inputs do not include apparatus, tools or appliances.

In fourteen cases non levy of duty of Rs.3.59 crores on goods consumed captively when the final product was exempt from duty were noticed in test audit.

Some of the cases are given below :-

i) An integrated steel plant in Patna collectorate manufactured pig iron/molten iron (hot metal) classifiable under sub heading 7201.00 and captively consumed the same in the manufacture of ingot moulds (sub heading 8454.00). As ingot moulds were exempted from payment of duty, the duty was leviable on molten iron captively consumed in the manufacture of ingot moulds which was not paid. This resulted in non levy of duty of Rs.1.27 crores on 111635.056 tonnes of hot metal (molten iron) during the period from 1987-88 to 1989-90 (upto November 1989).

The non levy of duty was pointed out in audit (December 1989). Reply of the department has not been received (May 1990).

ii) In a similar case, in an integrated steel plant in Indore collectorate, the molten iron (heading 7201) manufactured in the plant was consumed captively for manufacture of 'ingot moulds' (heading 84.54). Non levy of duty on captive consumption of 111900.800 tonnes of 'molten iron' in the manufacture of 'ingot moulds' during the period from 1 November 1986 to 31 March 1989 amounted to Rs.1.10 crores.

On the non levy of duty being pointed out in audit (December 1989), the department intimated (March 1990) that the assessee had admitted the mistake and recovery would be made soon. Further progress has not been reported (May 1990).

iii) An integrated steel plant in Belgaum collectorate manufactured molten pig iron (heading 72.01) and steel rods (heading 72.13) for captive consumption in the manufacture of ingot moulds, bottom stools & poking rods, which were exempted from payment of duty. As the inputs were captively consumed in the manufacture of exempted goods, duty was payable on those inputs, viz., molten pig iron and steel rods. The duty not levied amounted to Rs.5.74 lakhs for the period from March 1988 to November 1989.

On this being pointed out in audit (March 1990), the department stated (March 1990) that the necessary demands were being raised.

iv) An assessee in Bombay III collectorate manufactured and used molten iron captively for manufacture of ingot moulds and bottom stools without payment of duty, though such moulds and stools were exempted from payment of duty. This resulted in non levy of duty of Rs.2.76 lakhs on molten iron consumed captively during the period from April 1986 to December 1989.

Non levy was pointed out in audit in February 1990. Reply of the department has not been received (June 1990).

(9) Non levy/Short levy of duty due to incorrect grant of exemption

Exemptions from duty on the iron and steel and products thereof falling under chapters 72 and 73 have been notified from time to time under rule 8(1) of the Central Excise Rules, 1944, (now section 5A of the Central Excises & Salt Act, 1944). Such notifications generally provide for specific conditions for availment of the exemptions.

Seventy two cases of incorrect grant of exemption resulting in non levy/short levy of duty of Rs.15.65 crores were noticed in test audit.

Some of the cases are given below :-

i) As per notifications dated 1 August 1983 and 1 March 1988, tubes, pipes and blanks therefor of steel other than seamless tubes and pipes of steel were exempt from payment of duty if made from inputs plates, sheets, strips, skelp, hoops or flats not exceeding 5 mm in thickness, if no credit of duty paid on such inputs has been taken under rule 56A or rule 57A of the Central Excise Rules, 1944. In the notification dated 20 May 1988 it was made clear that the words 'not exceeding 5 mm in thickness' applied also to sheets and strips. Further, the input 'plate' has been omitted from the list of inputs.

An integrated steel plant under Bhubaneswar Collectorate manufactured electric resistance weld pipes and spiral weld pipes (sub heading 7303.27/ 7305.90) from duty paid input H.R.strips exceeding 5 mm thickness (sub heading 7211.32/7208.31) and cleared them without payment of duty claiming exemption under the aforementioned notifications. As the thickness of the input strips exceeded 5 mm, the assessee was not entitled to the benefit of exemption contemplated in the notification ibid. The incorrect grant of exemption resulted in short levy of duty of Rs.6.76 crores on the clearance of 133957.678 tonnes of pipes during the period from 1 April 1986 to 19 May 1988.

The irregularity was pointed out by Audit in March 1990. The department did not admit the objection (June 1990) and stated that as per Board's clarification dated 13 December 1985 the expression "not exceeding 5 mm thickness" should be read only in relation to flats and not for other inputs specified in the notification.

The contention of the department is not acceptable to audit as (a) it has been well settled in law that expression in a notification has to be interpreted in the manner it is expressed and not in any other assumed meaning and (b) the applicability of the expression "not exceeding 5 mm thickness" to strips has been amplified beyond any doubt in another notification dated 20 May 1988.

ii) As per the notification issued on 20 May 1988, specified final products manufactured from specified inputs were exempt from payment of duty provided that no credit of duty paid on inputs had been taken under rule 56A or rule 57A of the Central Excise Rules, 1944. The notification did not provide for exemption from payment of duty on rods and bars twisted after rolling which, however, came within the ambit of exemption under another notification issued on 16 August 1989. Thus rods and bars twisted after rolling were liable to duty during the period from 20 May 1988 to 15 August 1989.

Nine manufacturers of iron & steel products in Belgaum, Bangalore and Cochin collectorates cleared rods and bars twisted after rolling without payment of duty during the period from 20 May 1988 to 15 August 1989 when no exemption from payment of duty was available on the product. The amount of duty omitted to be levied aggregated to Rs.3.42 crores. Although department

had issued show cause notices demanding duty of Rs.1.28 crores, no action has been taken to recover the balance duty of Rs.2.14 crores.

On the omission being pointed out in audit (December 1989/January February/March 1990) the department replied (March 1990) in two cases that waiver of duty by issue of a notification under section 11C was being considered by the Government. Reply to the remaining cases has not been received (June 1990).

iii) As per the notifications dated 1 March 1988 and 20 May 1988 specified final products falling within chapters 72, 73, 84 are exempt from payment of duty provided these are made from any goods of the description specified in the corresponding entry.

(a) Two manufacturers in Indore collectorate manufactured iron sleeper plates (sub heading 7302.20) out of duty paid input and cleared them without payment of duty in terms of the aforesaid notifications. The final products were, however, not specified in the table to the notifications ibid and as such availment of exemption was irregular. This resulted in non levy of duty of Rs.2.62 crores on the clearances made during the period from March 1988 to October 1989.

The irregular availment of exemption was pointed out in audit (November/ December 1989). Reply of the department has not been received (April 1990).

(b) Four assessees of the same collectorate manufactured M.S.Round bars, M.S. Angles, gate channels, window sections and M.S.Flats etc., out of plate end shearings, plate cuttings etc., obtained from an integrated steel plant in the public sector who cleared them as waste and scrap (sub heading 7204.90). The goods were cleared without payment of duty claiming exemption under the aforesaid notification dated 20 May 1988. As the inputs used were not specified in the notification ibid., availment of the exemption was irregular. This resulted in short realisation of duty of Rs.35.53 lakhs on clearances made during 20 May 1988 to 31 October 1989.

On the irregularity being pointed out in audit (December 1989) the concerned Range Officer stated (January 1990) that the inputs were nothing but pieces roughly shaped by rolling of iron and steel which were specified in the notification.

The fact, however, remains that these inputs were classified by the consignor as wastes and scrap which were not specified in the notification ibid.

iv) As per a notification dated 13 May 1988 goods and materials obtained by breaking up of ships, boats and other floating structures falling under heading 72.30 or 73.27 are leviable to duty at concessional rate of Rs.365 per tonne provided the customs duty as well as additional duty specified therein has already been paid on the imported vessels.

An assessee in Madurai collectorate obtained goods falling under headings 72.30 and 73.27 through auction by breaking up an ocean going cargo ship of foreign registry. The ship was sold in distress under orders of the court in 1986. No customs duty on the ship was paid by the assessee who obtained a stay from the court on the demands raised on this count. He, however, cleared the goods obtained by breaking of the ship at the concessional rate of Rs.365 per tone as per the notification ibid.

It was pointed out in audit (March 1990) that the notification was not applicable as the ship had not suffered customs duty, and, therefore, duty on the ship breaking material was leviable at Rs.1800 per tonne. Short levy of duty on 4886.680 tonnes of goods cleared during 15 March 1989 and 31 January 1990 worked out to Rs.75.29 lakhs.

Reply of the department has not been received (July 1990).

(10) Short levy of duty due to misclassification

Classification of a product under a wrong heading or sub heading results in incorrect levy of duty.

A test audit of records revealed that 110 assessees manufacturing products of iron and steel misclassified them under incorrect heading or sub heading thereby resulting in short levy of duty to the extent of Rs.19.28 crores.

Some of the cases are given below :-

i) In a major integrated steel plant in Bolpur collectorate 'structurals' had been classified under the sub heading 7210.10 of the schedule to the Central Excise Tariff Act, 1985 as angles/shapes etc., and the department approved the classification in May 1987 although these were other articles of iron and steel classifiable under the residuary sub heading 7308.90 ibid attracting duty at 15 per cent ad valorem upto February 1988. With effect from 1 March 1988 the tariff structure was amended and structures and parts of structures of iron and steel; rails, angles, shapes, sections etc., prepared for use in structures of iron and steel have been classified under heading 73.08 ibid. Such structurals are covered by amended sub heading 7308.90 ibid attracting the same rate of duty at 15 per cent ad valorem. The misclassification resulted in short levy of duty of Rs.6.96 crores during the period from March 1986 to March 1988.

On the mistake being pointed out in audit in August 1988, the department stated (September 1989) that the items were known by respective names on the basis of profiles (such as angles, zeds etc.), and that such goods were not further worked other than hot rolling and hence correctly classified under heading 72.10.

The fact, however, remains that zeds, colliery arch, angles etc., as produced were prepared for use in structures and, therefore, they were classifiable under heading 73.08.

ii) Cast articles of motor vehicle parts and I.C.Engine parts even though unmachined were classifiable under heading 8409 and 8708 respectively, and attracted duty at 20 per cent ad valorem during the period from 1 March 1988 to 22 June 1988. After the issue of a notification dated 23 June 1988, these attracted a specific rate of duty at Rs.500 per tonne from 23 June 1988. They were completely exempted from payment of duty with effect from 4 November 1988 with reference to another notification dated 4 November 1988 provided no Modvat credit was availed on the inputs.

An assessee in Madras collectorate manufacturing inter alia unmachined iron castings such as engine block, cylinder block, TM case, central housing, etc., for motor vehicle, did not pay duty on the castings till June 1989. The assessee started paying duty with effect from 1 July 1989 after availing Modvat credit on inputs.

The non levy of duty amounting to Rs.3.23 crores during the period from 1 March 1988 to 3 November 1988 was pointed out by Audit in November 1989. The department admitted (April 1990) the objection and added that the Ministry have initiated steps to consider waiver of duty under section 11C. Further development has not been intimated (July 1990).

iii) Prior to 1 March 1988, 'pieces roughly shaped by rolling or forging of steel not elsewhere specified were classified under the heading 7208 of the schedule to the Central Excise Tariff Act, 1985. The Ministry of Finance in a telex dated 4 June 1987 clarified that the classification under sub heading 7208.00 was confined only to semi finished products of rough appearance and large dimensional tolerances produced from blocks/ingots

by action of power hammers or forging process. They might take the crude recognisable shapes in order that the final article can be fabricated without excessive waste but the heading covered only those pieces which required considerable shaping in the forge, press, lathe etc. Forgings which had not been further worked, but which did not conform to the description of "pieces roughly shaped" were, therefore, appropriately classifiable under the residuary sub heading 7308.90 ibid (73.26 from 1 March 1988).

Further in terms of rule 2(a) of the Rules of Interpretation of Central Excise Tariff Schedule read with note 2 of section XVI of the schedule forgings identifiable as parts suitable for use solely or prinicipally with the machinery heading are classifiable under respective chapter heading/ sub heading.

(a) Irregular classification of forged tractor parts being manufactured by two assessees in Chandigarh collectorate under sub heading 7208.00 instead of under 7308.90 resulted in non levy of duty amounting to Rs.67,13,115. Action has been initiated for the recovery of Rs.10,40,787 by issue of demand cum show cause notices covering the period July 1987 to December 1987 which were pending adjudication. No action was taken to recover the remaining amount of Rs.56,72,328 (April 1986 to June 1987) in the case of one assessee which was beyond six months period from the date of show cause notices already issued for the period July 1987 to December 1987.

(b) An assessee in Bangalore collectorate was engaged in the manufacture of forged products namely shafts, gears, spacers, body bonnet and sockets. He was allowed to clear his products under sub heading 7214.10 with tariff rate of duty at Rs.550 per tonne from 1 March 1988. Even though the assessee was engaged in production of similar products prior to 1 March 1988, he was brought under central excise control only from 1 March 1988. The pieces of rough forgings manufactured in his factory by the assessee were subjected to further processes like cuttings, upsettings, bending, drawing, piercing, punching, drafting, twisting and surface finishing in order to give finishing shape and dimension. These finished forged products were also subjected to further work like heat treatment, proof machining and short blasting. The products manufactured by the assessee were thus, clearly recognisable as a part of machinery or machinery appliances falling under chapters 84 and 87 in terms of rule 2(a) of the interpretative rules of the schedule to the Central Excise Tariff Act, 1985. Nevertheless no duty was levied on the products on the clearances made till February 1988. Even in respect of the clearances from March 1988 onwards duty levied was neither in accordance with the interpretative rules nor in terms of the Ministry's instructions communicated in telex dated 4 June 1987. This resulted in short levy of duty of Rs.53.20 lakhs on the clearances made during the period from 1 March 1986 to 28 February 1989. If the department atleast had followed the clarification contained in the Ministry's telex dated 4 June 1987 according to which such products were classifiable under sub heading 7308.90 with tariff rate of duty at 15 per cent ad valorem, the short levy of duty of Rs.33,02,746 on the value of clearances of Rs.2,20,18,310 during the years 1986-87 to 1987-88 could have been avoided.

The short levy of duty was brought to the notice of the department in January 1990. Reply has not been received (April 1990).

(c) An assessee in Indore collectorate was manufacturing steel alloy forgings classifiable under sub heading 7308.90 and chargeable to duty at 15 per cent ad valorem. Instead the assessee had classified them under heading 72.08 and availed exemption from licencing control (rule 174) on the ground that these were manufactured from duty paid steel

bars specified as input in the notification issued on 1 August 1983 and were thus exempt from duty. The assessee was brought under licensing control from 2 September 1987 and the goods were classified under sub heading 7308.90 thereafter.

As the goods manufactured by the assessee were correctly classifiable under sub heading 7308.90 from the very beginning, the exemption from licensing control as well as from payment of duty was irregular. This resulted in escapement of duty amounting to Rs.26.70 lakhs during the period 1 March 1986 to 30 September 1987.

On the matter being pointed out (June 1988) the department stated (February 1990) that a show cause cum demand notice was issued for Rs.24.08 lakhs for the period 1 March 1986 to 2 September 1987 after the irregularity was pointed out by Audit but the same was dropped by the Collector in October 1989. No reasons for dropping of the demand was given.

(d) An assessee under Bombay III collectorate manufactured forged products of iron and steel as per specification and drawings of his customers in the automobile industry. The products were incorrectly classified under sub heading 7224.00 resulting in short levy of duty of Rs.14.36 lakhs during the period from 1 March 1988 to 23 June 1988.

The irregularity was pointed out in audit in October 1989. Reply of the department has not been received.

iv) Ten assessees in Madras, Coimbatore and Trichy collectorates manufacturing unmachined steel castings of machinery parts classified their products under sub heading 7325.20 and paid duty at Rs.220 per tonne even though their products were correctly classifiable under chapter 84 attracting duty at 15 per cent ad valorem during the period from 1 March 1988 to 22 June 1988. The short levy worked out to Rs.1.38 crores.

Further, during the period from 23 June 1988 to 28 February 1989, five units in Madras collectorate manufacturing steel castings of machinery parts continued to classify their products under chapter 73 and were paying duty at Rs.365 per tonne even though their products were correctly classifiable under chapter 84 attracting duty at Rs.500 per tonne with reference to notification dated 23 June 1988. This resulted in short levy of duty of Rs.5.95 lakhs.

On the matter being pointed out in audit (December 1989/March 1990), the department accepted (April 1990) the irregularity and added that issue of notification under section 11C was being contemplated by the Ministry. Further development has not been reported (July 1990).

v) As per note (ix) under chapter 72, waste and scrap of iron and steel fit only for recovery of metal or for use in the manufacture of chemicals were classifiable under chapter 72 upto 29 February 1988. Consequent on the realignment of chapters 72 and 73 with effect from 1 March 1988, waste and scrap came to be defined as follows:

"Metal waste and scrap from the manufacture or mechanical working of metals and metal goods definitely not usable as such because of breakage, cutting up, wear or other reasons".

It thus follows that the articles which with or without repairs or renovation could be refashioned into other goods without first being recovered as metal would not be classifiable as waste or scrap.

(a) Cuttings and trimmings of flat rolled products of iron or non alloy steel of width 600 mm or more, cold rolled (cold reduced) not clad plated or coated are classifiable under sub heading 7209.90 as the products are capable of being used as sheets.

A manufacturer of scooters (chapter 87) in Kanpur collectorate cleared cut-

tings and trimmings of aforesaid sheets by classifying them as waste and scrap under sub heading 7204.90. The misclassification resulted in short levy of duty of Rs.19.94 lakhs during May 1988 to May 1989.

On the irregularity being pointed out in audit (September 1989), the department stated (December 1989) that demand cum show cause notices aggregating to 29.62 lakhs covering the period from February 1988 to July 1989 have been issued. Further developments have not been received.

(b) An assessee in Pune collectorate engaged in the manufacturer of motor vehicles (chapter 87) cleared scraps generated in the manufacture of motor vehicles as steel melting scraps. Scrutiny of sales invoices revealed that these were sold to other industrial units.

As the scraps had a potential end use as sheets of steel these were liable to duty as steel sheets/strips etc. depending on the nature of the sheets.

On this being pointed out in audit (January 1988) the department intimated (September 1989) that show cause notice demanding duty of Rs.3.58 lakhs for the period from May 1988 to October 1988 has been issued and that notices for the remaining periods were under issue.

vi) An assessee under Baroda Collectorate classified its products unmachined seamless rings under sub heading 7208.00 and paid duty at the rate of Rs.365 per tonne even though these were correctly classifiable under sub heading 7308.90 and liable to duty at 15 per cent ad valorem. The misclassification resulted in short levy of duty of Rs.11,43,597 on the clearances made during the period from April 1987 to June 1987.

On this being pointed out in audit (June 1987), the department recovered the entire amount (November 1988 and January 1989).

(11) Irregularities in availment of Modvat credit

Government of India introduced Modvat (modified form of value added tax) scheme for allowing credit of duty paid on the specified inputs used in or in relation to the manufacture of specified products with effect from 1 March 1986. Iron and steel and products thereof falling under chapters 72 and 73 are covered under this scheme from 1 March 1986.

The irregularities in the implementation of the scheme in respect of iron and steel and products thereof were noticed in test audit in 122 cases in 21 collectorates involving central excise duty of Rs.8.70 crores during the period from 1986-87 to 1988-89.

Some of the cases are given below :-

i) Incorrect availment of deemed credit

The Modvat scheme enables a manufacturer to obtain instant credit of excise duty or countervailing duty, as the case may be, paid on certain specified inputs used in or in relation to the manufacture of the specified final products and to utilise the credit for payment of excise duty on such final products. The scheme debars taking of credit unless the inputs are accompanied by a prescribed document evidencing payment of duty on such inputs. Proviso to sub rule (2) of rule 57A of the Central Excise Rules, 1944, however, empowers the Central Government to direct, having regard to relevant considerations, that with effect from a specified date all stocks of specified inputs except those which are clearly recognisable as being non duty paid, may be deemed to be duty paid and credit of duty may be allowed at such rates and subject to such conditions as may be specified without production of any document evidencing payment of duty. By an order dated 7 April 1986, government directed that inputs of specified ferrous and non ferrous metals/ including waste and scrap of iron purchased from outside and lying in stock on or after 1 March 1986 with the manufacturers of final product may be deemed to have paid duty and credit allowed at the specified rates, without production of documents evidencing payment of duty. The aforesaid order, however, ex-

pressly provided that no credit shall be allowed if such inputs are clearly recognisable as non duty paid or had been charged nil rate of duty.

The facility of allowing deemed credit in respect of wastes and scraps of iron and steel was withdrawn under an order dated 29 August 1986 because such wastes and scraps were exempt from central excise duty under notifications dated 1 August 1983 and 10 February 1986 respectively (and, therefore, were clearly recognisable as being non duty paid or charged to nil rate of duty). Since the above exemptions were admissible even before 1 March 1986, the facility of allowing deemed credit should not at all have been extended to wastes and scraps of iron and steel under the said order dated 7 April 1986.

a) Seven units in Delhi collectorate (Haryana Region) purchased waste and scrap termed as "sheet cuttings" from the market and took Modvat deemed credit amounting to Rs.34.85 lakhs during the period from July 1988 to May 1989. Sheet cuttings were nothing else but waste and scrap which were actually used for melting purpose. As such the credit so taken was in contravention of the instructions contained in Ministry's order dated 29 August 1986.

The matter was brought to the notice of the department (between September 1989 and February 1990); reply has not been received. Similar credit taken during the subsequent period was, however, disallowed by issue of demand-cum-show cause notices and the assessees were not allowed to take any further credit on such inputs.

b) A manufacturer of iron and steel in Patna collectorate using steel waste and scrap as input in the manufacture of steel inputs availed of irregular deemed credit of Rs.20,59,330 during the period June 1986 to August 1986.

On this being pointed out in audit, the department stated (December 1989) that the scraps purchased from the market should be treated as duty paid. The reply is not acceptable because the wastes and scraps were chargeable to nil rate of duty.

c) An assessee in Bangalore collectorate who manufactured steel ingots by using end cuttings of steel bars, defective wire cuttings etc., was allowed deemed credit of Rs.12.16 lakhs without production of any duty paying documents during January 1989 to November 1989. This credit was not admissible for the reason that the aforesaid inputs were in the form of metal wastes and scraps and such wastes and scraps were chargeable to nil rate of duty.

The matter was reported in December 1989. Reply has not been received.

d) The facility of allowing deemed credit in respect of steel and articles thereof falling under sub heading 72.09 was withdrawn under an order dated 2 November 1987.

A manufacturer of 'standard wires' and 'wire ropes' (chapter 73) in Hyderabad collectorate took deemed credits on account of duty paid on inputs viz., 'steel wire rods' (heading 72.09) used in the final products even after 2 November 1987, though such a facility stood withdrawn from that date as per the aforementioned Government order. The incorrect deemed credit availed of amounted to Rs.8,10,517 for the period from December 1987 to May 1988.

On this being pointed out in audit (July 1988) the department stated (July 1988) that action was initiated for reversal of the credit. Reply to the factual statement sent in May 1990 has not been received (July 1990).

e) Four manufacturers of iron and steel in Rajkot collectorate availed deemed credit of Rs.5,66,671 during February 1986 to December 1989 in respect of wastes and scraps purchased from market.

The irregular credit was reported to the department in February 1990. Reply

f) An assessee in Kanpur collectorate manufacturing steel ingots, bars and rods took deemed credit of Rs.3,78,433 on wastes and scraps of steel purchased from market during April 1986 to August 1986 and took further credit of Rs.1,21,701 on wastes/scraps of steel lying in stock on 1 March 1986. The credits so taken were in contravention of the instructions contained in Ministry's orders dated 7 April 1986.

The matter was reported in December 1988. Final comments of the department have not been received.

g) An assessee in Bangalore collectorate engaged in the manufacture of mild steel blocks (sub heading 7206.90) from melting scrap and end cuttings of bars and billets (heading 72.04) opted for the Modvat scheme and was availing the credits of duty suffered by inputs received in his factory. A review of the assessee's records in audit (March 1990) disclosed that the assessee had availed a deemed credit of Rs.2,69,090 on 538.180 tonnes of scrap comprising of end cuttings of mild steel bars and billets purchased from the market during December 1989 and January 1990 although the facility of availing deemed credit on such scrap was withdrawn in August 1986 itself. The availment of the aforesaid deemed credit was, therefore, irregular.

The irregular availment of deemed credit was pointed out in audit in March 1990. Reply of the department has not been received (June 1990).

ii) Irregular availment of duty paid on goods other than inputs

As per clause (b) of explanation below rule 57A 'inputs' do not include machines, machinery plant, equipment, tools or appliances used for production or processing of any goods or for bringing about any change in any substance in or in relation to the manufacture of the final products.

a) A manufacturer of steel ingots, blooms etc., under Patna collectorate took credit of duty on ramming mass (foundry chemicals which were used for lining electric arc furnace) forming a part of the plant and as such Modvat credit on the input was not admissible on the input as per the above explanation. CEGAT, South Regional Bench, Madras in order dated 23 February 1988 held that ramming mass was essentially a part of the furnace and would, therefore, be in the nature of being part of the machinery/ equipment used for producing final product. The irregular credit taken by the said manufacturer on ramming mass during the period from October 1988 to July 1989 amounted to Rs.11,05,285.

On the omission being pointed out in audit (August 1989) the department stated (February 1990) that the Assistant Collector ordered in October 1987 that ramming mass was ineligible for Modvat credit. On an appeal filed by the assessee, the Collector (appeals) allowed the input for Modvat credit. The department went in appeal before the CEGAT Delhi and filed a stay petition on 29 June 1988, which was rejected by the CEGAT on 16 December 1988. Thereafter the case was reported to have been transferred to CEGAT, Calcutta and the decision on the issue is still pending. However, the CEGAT, Madras had given their decision on 23 February 1988 which was much before the department filed their appeal with the CEGAT, New Delhi. No action was taken to recover the irregular credit on ramming masses according to this decision and the assessee is still allowed to avail of the irregular credit.

b) Two manufacturers in Delhi collectorate engaged in the manufacture of iron and steel products availed Modvat credit amounting to Rs.8,49,995 during the period April 1988 to May 1989 in respect of duty paid on fire clay, fire bricks, cement mortar etc., used in lining of furnace being part of equipment used in the manufacture of iron and steel products.

The availment of inadmissible credit was brought to the notice of department in May and June 1989. The department in one case reported (August 1989) recovery of Rs.3,68,743. In the second case it was stated that the assessee had declared the above items in the declaration filed with the department and the credit was allowed by the competent authority. The reply of the department is not acceptable as they were used in lining of furnace being part of equipment.

c) A manufacturer of concast billets in Patna collectorate availed of Modvat credit amounting to Rs.2,76,663 during the period April 1988 to July 1988 on ramming mass (foundry chemicals) which was used for lining electric arc furnace.

On the irregularity being pointed out (August 1988) the department raised a demand for Rs.16,15,304 covering the period from March 1986 to September 1988 (December 1988).

d) One unit in Baroda collectorate availed of Modvat credit of Rs.1,38,596 being duty paid on refractory bricks, fire bricks and sodium silicate.

The irregularity was reported to the department in January 1990, reply has not been received.

iii) Irregular availment of Modvat credit without proper duty paying documents

As per first proviso to sub rule (2) of rule 57G of Central Excise Rules, 1944, credit of duty paid on inputs can be taken under rule 57A ibid, if the inputs are received in the manufacturer's factory under the cover of prescribed duty paying documents except where credit has been specifically allowed by Central Government in respect of any inputs at specified rate without production of duty paying documents in terms of second proviso to sub rule (2) of rule 57G.

A manufacturer of iron and steel products in Kanpur collectorate availed additional credit aggregating to Rs.10,74,164 during August 1989 in respect of input M.S.scrap received earlier without proper duty paying documents or order of central government allowing such credit without production of duty paying documents.

On the irregularity being pointed out in audit (October 1989), the department has intimated (February 1990) that the entire irregular credit of Rs.10,74,164 has been disallowed and since reversed by the assessee in November 1989.

iv) Irregular availment of credit without filing a declaration or without obtaining acknowledgement

As per rule 57G a manufacturer intending to avail the input relief under rule 57A should file a declaration with the jurisdictional Assistant Collector of Central Excise indicating the description of the inputs intended to be used in the final product and take credit of the duty paid on the inputs received by him after obtaining a dated acknowledgement for such declaration.

a) A unit in Delhi collectorate procured rejected M.S.ingots etc., on payment of duty for use as waste and scrap in the manufacture of steel ingots and availed Modvat credit of duty amounting to Rs.3.92 lakhs without filing any declaration to avail the Modvat credit which was in contravention of the provisions of rule 57G ibid.

On this being pointed out in audit (July 1989), the department stated (August 1989) that a show cause notice demanding duty of Rs.3.11 lakhs was under issue. Action taken to recover the balance amount of Rs.0.81 lakh has not been received (March 1990).

b) An assessee in Coimbatore collectorate manufacturing steel ingots (chapter 72) declared MS scrap, turnings, borings as inputs in the Modvat declaration filed, but availed credit of duty paid on steel ingots and casted steel blocks as well which were not declared. The availment of Modvat credit on the inputs not

declared was not in order. The credit availed during the period from October 1988 to September 1989 amounted to Rs.1,67,106.

On this being pointed out in audit (November 1989), the department reported (March/June 1990) that credit of Rs.1,66,826 was expunged in December 1989.

c) A manufacturer of various products in Indore collectorate started availing Modvat credit on inputs falling under chapter 72 with effect from 1 August 1989. He also availed a credit of Rs.1,46,730 in respect of duty paid on inputs received by him prior to the date of filing of declaration. No permission for availing the credit was also granted by the department under rule 57H. Hence, the credit availed of was irregular and required to be expunged.

Reply of the department to audit pointing out (February 1990) the irregularity has not been received (July 1990).

d) An integrated steel plant in Belgaum collectorate took credit of Rs.1,18,215 on account of duty paid on Vanadium Pantoxide which was not declared as input in the declaration submitted on 16 January 1989.

On this being pointed out in audit (November 1989) the department recovered the entire amount.

The same assessee took credit of Rs.2,24,542 during July 1988 and January 1989 on inputs which were not included in the declaration filed under rule 57G. On this being pointed out (December 1989) the department accepted the mistake and stated (March 1990) that action was being taken for recovery of the amount.

v) Irregular availment of credit on goods not covered under Modvat scheme

As per rule 57A credit of duty paid on specified inputs is permitted to be utilised for payment of duty on specified finished excisable goods. The inputs for which Modvat credit is admissible was specified by a notification issued on 1 March 1986.

A mini steel plant in Bangalore collectorate producing goods covered under chapters 72 and 73, availed Modvat credit of duty paid on calcined petroleum coke (sub heading 2713.12). Since the goods classifiable under chapter 27 are not specified items in the notification dated 1 March 1986 issued under rule 57A, no Modvat credit was admissible for inputs covered under chapter 27. This resulted in irregular grant of credit of Rs.1,70,336 during the period from July 1989 to November 1989.

On the irregularity being pointed out in audit (December 1989) the department stated (March 1990) that the Modvat credit availed on such input had been expunged in January 1990.

(12) Annual physical verification of stock of excisable goods

Rule 223A of the Central Excise Rules, 1944, (prior to its amendment vide notification dated 10 May 1989) required that stock taking should be done annually in the presence of the proper officer in respect of all excisable goods. If the quantity of stock ascertained was found to be less than the quantity which ought to have been found in such premises, the owner of the premises would, unless the deficiency is accounted for to the satisfaction of the proper officer, be liable to pay full duty chargeable on such goods as found deficient and also a penalty leviable under the rule.

i) Test check of records of about 150 units in Delhi Collectorate (Haryana Region) revealed that the codal obligation was discharged only in 13 units in 1986-87, 14 units in 1987-88 and 25 units in 1988-89. Manner in which the department satisfied itself that no pilferage of excisable goods had taken place in the units was enquired (February 1990) but reply has not been received (March 1990).

ii) The plant authorities of an integrated steel plant in the public sector in Bhubaneswar collectorate did not associate the central excise department in the annual physical verification of stock of excisable goods. In respect of the deficiencies noticed for the year 1986-87 and 1987-88 during such stock verification after making 1 per cent allowance for waste, the amount of central excise duty involved worked out to Rs.27.51 lakhs and Rs.2.42 lakhs in respect of galvnised sheets and cold rolled sheets respectively.

On this being pointed out in March 1988 and January 1989 the department stated (January 1989/July 1989) that show cause-cum-demand notices were under process of issue by the Collector.

iii) In Bombay III collectorate in respect of two assessees engaged in the manufacture of forging of iron and steel, annual stock taking was conducted on 13 January 1989 and 1 February 1989. The annual stock taking report disclosed that weighment of finished product was not physically verified by stock taking officer and without such verification he had certified that the stock was correct as per RG.1 register.

Omission in conducting annual stock taking as per rule 223A of Central Excise Rules, 1944, was pointed out in audit in March 1990. Reply from the department has not been received.

iv) The Central Board of Excise and Customs in their instructions dated 12 April 1971 prescribed that central excise officers should associate themselves with the stock taking verification undertaken by the steel plants and the steel plant should furnish to the department the results of stock taking in order that the Collector may give due consideration in adjudicating the shortages.

The annual stock taking for the years ended 31 March 1985, 1986 and 1987 in an integrated steel plant (a public sector unit) in Indore collectorate were conducted by the plant on its own accord. The proposals for condonation of variations as noticed therein were submitted to the jurisdictional Assistant Collector, central excise as late as 18 September 1989. The money value of shortages and surpluses in the above mentioned proposal was as under :-

Year	Shortage	Surplus	Net shortage (Rs.in lakhs)
1984-85	466.09	413.78	52.31
1985-86	657.94	197.18	460.76
1986-87	1,943.23	611.04	1,332.19

Their Board of Directors had already granted permission to write off the above difference/shortages. Action by the Assistant Collector thereon was pending.

It was observed in audit that :

(a) although the annual stock taking was conducted by the plant on their own accord every year, reports on variations noticed therein were not submitted to the Assistant Collector regularly immediately after conducting such annual stock taking;

(b) no proper officer of the central excise department was associated therewith as contemplated in rule 223A;

(c) the shortages noticed during such stock taking were adjusted against surpluses;

(d) the department also did not initiate action to recover duty on the gross shortages.

The matter was reported to the Collector of Central Excise in March 1990; reply has not been received (April 1990).

(13) Other irregularities

i) Non levy of duty on shortages

As per a notification issued on 2 April 1986, full exemption to certain specified goods are admissible if they are actually used within the factory of production for further production of specified dutiable excisable goods.

Two integrated steel plants in public sector under the Bolpur collectorate cleared internally some such excisable goods like steel ingots, black sheets, wheels and axles etc., without payment of duty for use in the manufacture of other specified goods. But before their actual use, the plant authorities detected huge shortages in the stock of such non duty paid goods lying in the floors of the shops/mills. No duty was, however, paid on the said shortages, although such goods not being actually used, did not attract the exemption under the notification dated 2 April 1986. This resulted in non levy of duty of Rs.84.38 lakhs during the years 1986-87 to 1988-89.

On the omission being pointed out in audit (August 1988, February 1989, and February 1990) the department in one case stated (May 1989) that a draft show cause-cum-demand notice (Rs.8.88 lakhs) had been forwarded to the Collector. Reply in other case has not been received (April 1990).

ii) Loss of revenue due to delay in issue of demand

An assessee, in Jaipur collectorate manufacturing steel forgings, was availing exemption from duty under sub heading 72.08 as per a notification of 1 August 1983. Based on samples of the product, the goods were considered to be classifiable under sub heading 7308.90 and the assessee started paying duty from July 1987 under this sub heading at 15 per cent ad valorem. No action was however taken by the department to raise demand, simultaneously for the past period of six months from January 1987 in terms of the Central Excise Act. A demand of Rs.2,38,339 for May and June 1987 only was raised in November 1987. Delay in issue of demand resulted in the loss of revenue amounting to Rs.5.86 lakhs for the period from January 1987 to April 1987.

iii) Irregular receipt of oxygen under chapter X procedure

Under a notification dated 17 March 1985 oxygen could be received without payment of duty if it is to be utilised for the manufacture of goods falling under chapters 72 or 73 provided chapter X procedure is followed.

An assessee in Madras collectorate and another in Coimbatore collectorate continued to bring oxygen under chapter X procedure, for the manufacture of steel castings of machinery parts though they are dutiable under chapters 84, 85 and 86, consequent to the alignment of central excise tariff with HSN with effect from 1 March 1988. The assessee was also not eligible to avail Modvat credit on oxygen since major portion was used only for cutting purposes in oxy-acetelene blow pipe. This resulted in loss of revenue of Rs.3.82 lakhs during the period from March 1988 to March 1989.

On this being pointed out in audit (December 1989) the department stated (February 1990) that the Oxygen was used for removing the excess material on rough castings and that the waste and scrap dutiable under chapter 72 were also obtained in the process of gas cutting. The department's contention is not acceptable for the reasons that (a) according to Board's letter dated 28 July 1989, the castings as it emerged from the mould or after fattling etc., would be classifiable under chapters 84 to 87, with effect from 1 March 1988 and (b) The assessee is not engaged in the manufacture of waste and scrap and it is only generated during the course of manufacture of goods dutiable under chapter 84 to 87.

iv) Non levy of duty due to irregular clearance

As per rule 173B of the Central Excise Rules, 1944, every assessee engaged in the manufacture of excisable goods should file a classification list in Form 1 for approval of excise officer.

A manufacturer in Bangalore collectorate engaged in the manufacture of

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gear couplings, electrical winches (chapter 84) was engaged in the manufacture of structurals faliing under chapter 73 with tariff rate of duty at 15 per cent ad valorem. The fact of such manufacturing activity was not declared in the classification list filed by him. The manufacturer had cleared the structurals of value of Rs.17,40,000 without payment of duty in July 1989. This resulted in non levy of duty of Rs.2,74,050.

On this omission being pointed out in audit, the department stated that show cause cum demand notice was issued. Results of adjudication have not been received (April 1990).

The aforesaid appraisal was sent to the Ministry of Finance in October 1990; their reply has not been received (December 1990).

1.03 Exemption to Small Scale Industries

(1) Introduction

Exemptions from levy of the duty of excise are being given by the government on goods manufactured or produced in factories, which belong to what is commonly referred to as, the Small Scale Industries (SSI) sector, to enable them to become economically viable and to help competitive pricing of their products vis-a-vis large scale manufacturers.

A number of such notifications were issued from 1972, covering various commodities and stipulating conditions governing the grant of exemption which were operative till a comprehensive notification 175/86 CE dated 1 March 1986 building in the essential features of the earlier notifications was issued and given effect to from April 1986.

Introducing this notification as a new scheme of duty concessions to the SSI units, the Finance Minister in his 1986 Budget speech, expressed the hope that these concessions would serve "as a ladder and not as a lid".

The different categories of small scale industrial units and the amount of duty paid by them during the year 1986-87 to 1989-90 are given in statement I.

(2) Salient Features of the scheme

Although the new scheme of concessions was meant for the SSI units, an SSI unit had not been defined either in notification 175/86 CE dated 1 March 1986 or elsewhere in the central excise law. However, the conditions stipulated for concessions under this notification indicated a set of criteria to identify the targetted units.

The main features of that criteria are given below:

i) the factory must be engaged in the manufacture of excisable goods of the description specified in the Annexure to the aforesaid notification dated 1 March 1986, which are generally referred to as "specified goods";

ii) the factory, where such specified goods are manufactured shall be an undertaking registered with the Director of Industries in any state, or the Development Commissioner (Small Scale Industries) as a small scale industry under the provisions of the Industries (Development and Regulation) Act, 1951;

iii) full exemption was admissible in the case of first clearances of specified goods up to an aggregate value not exceeding Rs.30 lakhs (Rs.15 lakhs under one chapter heading). Thereafter duty was payable at concessional rate upto aggregate value not exceeding Rs.75 lakhs;

iv) in the case of manufacturers availing Modvat credit on inputs, the duty was payable at concessional rate from the very beginning;

v) the exemptions under this scheme would cease to apply if the aggregate value of clearances of all excisable goods for home consumption by a manufacturer from one or more factories or from any factory by one or more manufacturers had exceeded rupees one hundred and fifty lakhs in the preceding financial year.

(3) Scope of Audit

A test check of records maintained by the SSI units for the period from 1986-87 to 1988-89 was conducted during 1989-90. The scope of audit was primarily designed to see

i) that the exemption was availed of on specified goods upto the limits specified in the notification;

ii) that the exemption was allowed only to those units which were duly registered with the Director of Industries in any state or with the Development Commissioner (SSI) under provisions of Industries (Development and Regulation) Act, 1951;

iii) that the notional higher credit available under the Modvat scheme was not irregularly availed;

iv) that the concessions were not taken in respect of goods manufactured on behalf of large scale manufacturers, who by themselves were not eligible for the SSI benefits, and

v) that the concessions were not availed on goods manufactured in SSI units but affixed with a brand name or trade name of another manufacturer who is not eligible for the SSI benefits.

(4) Highlights

The results of review of the scheme of exemptions relating to the SSI units highlight the following :-

- **In 102 cases in 21 collectorates SSI concessions availed by units beyond the validity period of registration or during the period subsequent to the registration becoming inoperative, were noticed. The duty involved was over Rs.5.31 crores.**

  Concessions were availed of by SSI units, on behalf of other manufacturers, who were not themselves entitled to the concessions. The duty not levied amounted to Rs.5.32 crores in 64 cases spread over 16 collectorates.

- **There were 76 cases in 17 collectorates where the units had not even been duly registered as SSI units, but were allowed to avail the concessions irregularly. The duty not levied worked out to Rs.4.13 crores.**

- **The misuse of notional higher credit under Modvat scheme in relation to duty paid goods manufactured by SSI units, was noticed in 42 cases in 10 collectorates. This irregularity involved a duty of Rs.2.08 crores.**

- **There were other miscellaneous irregularities in the implementation of the scheme of SSI concessions. 50 such cases had been noticed in 17 collectorates which involved a duty of over Rs.1.50 crores.**

(5) Excisable goods covered by the scheme - misclassification of goods to avail the same

Excise concession to small scale units, under the new scheme applies only to goods specified in annexure to notification 175/86 CE dated 1 March 1986. Numerous amendments by way of additions and deletion of items have been carried out by the Government by issue of notifications under rule 8 of the Central Excise Rules, 1944 (now section 5A of the Central Excises and Salt Act, 1944). The items added become eligible for excise concessions from the date of issue of such amending notifications and items deleted from the annexure become ineligible for concessions from such date. In this context, it would be irregular to continue to avail SSI concessions in respect of goods falling under the sub heading deleted from the annexure to the said notification or to misclassify goods with a view to availing the concessions incorrectly.

A few cases are given below to illustrate such irregularities:

i) Three assessees in Shillong collectorate were engaged in the manufacture of tubewell brass strainer (sub heading 7411.21); nuts, bolts, gate, grill, water tank etc., (sub heading 7309.90 and 7308.30); steel windows, ventilators (sub

heading 7308.90) and brass strainer fabrication works (sub heading 7412.20) respectively. All the products classifiable under these sub headings were omitted from the notification 175/86 CE dated 1 March 1986 by an amending notification 47/88 CE dated 1 March 1988, but the assessees continued to avail of the small scale benefits. This resulted in non levy of duty of Rs.3.42 lakhs during 1988-89.

ii) A licensee in Bangalore collectorate carried out fabrication of structure on Maruti (Saloon) cars (not on chassis) as per the special design supplied by a big manufacturer. Such fabrication amounted to manufacture and a new product classifiable under heading 87.04 had emerged. As goods under heading 87.04 were not eligible for the SSI concessions, this product had been misclassified under heading 87.07 to avail of such benefits. The misclassification entailed loss of duty, otherwise leviable, to the extent of Rs.2.32 lakhs during the year 1989-90.

iii) An assessee in Delhi collectorate manufactured 'preformed expansion joint filler, bitumen impregnated fibre board'. It was noticed that the item had been classified under sub heading 2715.90 vide classification list filed on 24 March 1986. This item was reclassified under sub heading 4410.90 vide revised classification list filed on 2 April 1986. As the item manufactured by the assessee was made from ligneous material it was correctly classifiable under sub heading 4406.90 on which duty was leviable at the rate of 30 per cent ad valorem from 1 March 1986 to 28 February 1987 and 20 per cent ad valorem in March 1987.

The incorrect classification of preformed expansion joint filler resulted in short payment of duty of Rs.2.03 lakhs during 1986-87.

iv) An assessee in Patna collectorate manufactured "retreading cement" which was classified by the department under sub heading 4001.00 making the assessee eligible for full exemption (up to Rs.15 lakhs) under notification dated 1 March 1986 as amended. Natural rubber, carbon black and petrol were the principal constituent materials for manufacturing the retreading cement. The product, therefore, was nothing but rubber solution, and not natural rubber in raw or semi finished stage. The rubber solution was sold in litres and as such was appropriately classifiable under sub heading 4005.00. Rubber products falling under sub heading 4005.00 were not specified goods for availing the small scale units exemption benefit. The misclassification of the product resulted in short levy of duty of Rs.1.49 lakhs during April 1987 to October 1989.

(6) Registration as a small scale industrial unit

6.1 Registration of units with the Director of Industries in any state or with the Development Commissioner (SSI) under provisions of Industries (Development and Regulation) Act, 1951 was made a condition precedent to availment of proposed concessions, but not where a unit had already been availing SSI concessions under any of the notifications specified in the scheme or where its annual turnover was not likely to exceed Rs.7.5 lakhs. Valid certificates of registration from the Directorate of Industries of the state in accordance with the instructions issued by the Development Commissioner (SSI), New Delhi, in this regard is required. The registration is done in two stages :

i) Provisional Registration and

ii) Final Registration.

A provisional registration certificate is issued to enable the entrepreneur to take necessary steps to bring the unit into existence. When he has taken all steps to establish the unit, that is to say, where the factory building is ready, power connection is given, the machinery has been installed etc., he may apply for a final registration certificate. Such a certificate issued would specify the products proposed to be manufactured, the location and the

constitution of the factory at the time of registration for the admissibility of concessions under notification 175/86 CE. Any change in or alteration of these factors in the registration certificate, unless authorised by the registering authority, would render the unit ineligible for the said concessions.

A test check in audit revealed 76 cases in 17 collectorates where though the requirements of registration were not fulfilled, excise duty concessions of Rs.413 lakhs (vide Statement II) were availed of.

A few cases are given below to illustrate such irregularities:

i) An assessee in Delhi collectorate engaged in the manufacture of seats for scooters and motor vehicles, was availing SSI concession on these products although he had no valid registration for his factory. The provisional SSI certificate had not mentioned the address of the factory. The assessee had, therefore, availed the SSI concession irregularly during the period 1986-87 to 1988-89, the duty in respect of which amounted to Rs.21.17 lakhs.

ii) Another assessee in the same collectorate engaged in the manufacture of gases and chemicals was registered as a small scale industrial unit at an address different from the one where he was actually engaged in the manufacture. As the registration had not been done with reference to the place of actual manufacture, the benefits of the SSI were not available. However, the assessee had cleared goods during the period from April 1986 to January 1990, from the unregistered premises, on which the duty payable amounted to Rs.13.21 lakhs.

iii) An assessee in Bombay II collectorate engaged in the manufacture of PVC bonded aluminium sheets, decorative plywoods and other PVC bonded M.S.Sheets etc., (falling under headings 76.16, 44.08 and 73.26), was not paying duty claiming exemption under notification 175/86 dated 1 March 1986. The assessee had not taken any SSI registration from the Director of Industries, Bombay, though the clearance value during 1986-87 was above Rs.15 lakhs. As the assessee was not having any L4 licence and was working under the Shops and Establishment Act during 1985-86, the question of automatically availing the exemption under any of the notification covered under condition 4(b) of notification 175/86 dated 1 March 1986 did not arise. The assessee was consequently liable to pay duty at the appropriate rates and the duty that had not been so paid on the clearances during the years 1986-87 to 1988-89 amounted to Rs.13.15 lakhs.

iv) An assessee in Delhi collectorate had SSI registration for "Job work of auto parts", but was engaged in the activity of manufacture of motor vehicle parts (chapter 87). As the registration was not for manufacture of M.V.parts, the concession under notification 175/86 dated 1 March 1986 was not available. The duty not paid on the clearances during the period from April 1986 to January 1990 amounted to Rs.12.95 lakhs.

v) An assessee in Indore collectorate engaged in the manufacture of goods falling under headings 85.03, 85.04, 85.14, 85.38 and 85.43, besides items falling under heading 72.04, was availing small scale industry exemption. The concerned District Industries Centre had registered this unit with a specific condition that the registration was valid for factory location, products and constitution of the unit at the time of allotment of the factory.

Later, the assessee shifted the factory to a different location and the District Industries Centre when approached for amending the certificate of registration had refused to grant such permission.

The assessee had thus no valid registration as SSI unit during the period from March 1986 to July 1989 when he had availed the SSI exemption. The differ-

ential duty not levied amounted to over Rs.12.93 lakhs during the aforesaid period.

vi) An assessee in Coimbatore collectorate manufacturing goods falling under sub heading 8481.80 who had neither registered as a small scale industry (till 29 February 1988) nor was availing of any of the specified exemption notifications during 1985-86/1986-87 was allowed to avail the benefits of the exemption under the notification first cited on the ground that a sister unit (falling under another Collectorate) of the assessee was holding a small scale industry certificate issued in May 1973.

As registration of the factory as a small scale unit is a pre-requisite for availing the exemption, the availment of the benefits without such a certificate was not in order. The incorrect availment of exemption during the period from March 1986 to February 1988 resulted in short levy of duty of Rs.7.60 lakhs.

On this being pointed out in audit (May 1989), the department accepted the objection and reported (June 1989/December 1989) issue of a show cause notice for recovery of duty due. Report on adjudication and recovery action have not been furnished (January 1990).

6.2 Ministry of Finance (Department of Revenue) clarified in their letter F.No.B-21/15/86-TRU dated 3 April 1987 that the provisional registration from the state government should be accepted for the purpose of availment of duty concession under the notification dated 1 March 1986. In this connection following aspects were looked into :-

(a) whether the certificate of registration issued by the state government to the assessee was valid for the period and premises for which exemption had been availed;

(b) whether the provisional registration was regularised within a reasonable time, and whether the delay in granting regular registration certificate exceeded one year;

(c) Cases of "registered" small scale units were also checked with reference to their total investment on Plant and Machinery (without deducting depreciation allowed thereon) shown in the balance sheet. In case total (gross) investment on plant and machinery exceeded Rs.35 lakhs during a particular year, the certificate issued by the department/state government became inoperative from that date.

Major cases of irregular availment of exemption on this account were noticed in 102 cases in 21 collectorates. The amount of duty involved in these cases was over Rs.531 lakhs (vide Statement II).

A few cases are given below to illustrate such irregularities:

i) An assessee in Delhi collectorate, an ancillary unit of a public sector undertaking, was engaged in the manufacture of tractor parts falling under heading 87.08 of the schedule to the Central Excise Tariff Act, 1985. The assessee had been registered as a small scale unit with the Director of Industries, Haryana. According to a notification issued by the Ministry of Industry and Company Affairs on 18 March 1985, the limit of value of plant and machinery installed, for the purpose of registration as small scale industrial undertaking was Rs.35 lakhs.

It was noticed in audit that the assessee had crossed the limit of Rs.35 lakhs during the year 1985-86 as his balance sheet showed the value of plant and machinery at Rs.54.11 lakhs. Accordingly, the exemption as a small scale unit was not available to the assessee from 1985-86. The amount of duty that had not been paid on the value of clearances during the period from 1987-88 to December 1989 was Rs.27.53 lakhs.

ii) Another assessee in Chandigarh collectorate engaged in the manufacture of cement (heading 25.02), had indicated the value of plant and machinery in the

balance sheet ending June 1986 at Rs.37.85 lakhs and at Rs.38.10 lakhs at the end of June 1987. He had thus crossed the limit of Rs.35 lakhs and was therefore not entitled to exemption as a small scale unit. However, he was allowed to continue to avail himself of the benefits as an SSI unit. The total amount of duty not levied during the period from 1 April 1986 to 31 March 1988 worked out to Rs.21.07 lakhs.

iii) An assessee, a small scale unit in Hyderabad collectorate, was engaged in the manufacture of oxygen gas. As the investment on plant and machinery in this unit, stood at Rs.59.92 lakhs in 1984, Rs.54 lakhs in 1985, Rs.48.09 lakhs in 1986 and Rs.105.81 lakhs in 1987 as per the balance sheets for these years, he was liable to pay duty at appropriate rates. The duty not levied during the period from April 1986 to July 1989 amounted to Rs.18.89 lakhs.

iv) Another assessee, a small scale unit in Chandigarh collectorate, engaged in the manufacture of cement had indicated the total value of plant and machinery at over Rs.41.67 lakhs in the balance sheet for the period ended on 31 July 1986. He was, however, allowed to continue availing small scale benefits. The duty not levied during the period from 1 July 1986 to 31 March 1989 amounted to Rs.18.26 lakhs.

(7) Irregular duty free clearances in excess of the prescribed limits

Under the small scale exemption scheme, first clearances of specified goods for home consumption up to Rs.30 lakhs in value was wholly exempt from excise duty, where Modvat credit facility was not being availed of. By notification 216/86 CE dated 2 April 1986, it was however, stipulated that the aggregate value of clearances of specified goods in respect of any one tariff heading should not exceed Rs.15 lakhs. Thus, once the overall limit of Rs.30 lakhs is reached, the exemption ceased, even if in respect of any one tariff heading the value of clearances might not have reached the limit of Rs.15 lakhs. The scheme also provides payment of concessional rates of duty for clearances up to Rs.75 lakhs. Full rate of duty is to be paid after the aggregate value of clearances exceeded Rs.75 lakhs.

A test check in audit revealed infringement of the aforesaid provisions in 18 collectorates. The irregularities involved 47 cases, where goods of the value of Rs.718.91 lakhs had been cleared in excess of the permissible limits for duty free clearance or clearance on payment of concessional rate of duty. The amount of differential duty not paid in these cases was Rs.22.83 lakhs. Collectorate wise details are given in Statement III.

(8) Availment of SSI exemption and Modvat credit

The new scheme of excise duty concessions to small scale units introduced by notification 175/86 CE dated 1 March 1986 provided for an integrated method of computation of value of clearances made in a financial year. Under the notification, if a manufacturer avails of Modvat credit in respect of specified goods, then he is required to pay excise duty at normal rates reduced by 10 per cent ad valorem. In view of legal position obtaining after issue of notification dated 1 March 1986 and the fact that there is no one to one correlation between the input and output under Modvat scheme, it would not be possible to allow a manufacturer simultaneously to avail Modvat for some of the products and full exemption for others under the small scale exemption scheme. In other words, a manufacturer can avail himself either of the two facilities. Irregularities in this regard were noticed in 12 collectorates involving duty of Rs.46 lakhs (vide Statement IV).

A few cases are given below to illustrate such irregularities:

i) In Delhi collectorate four assessees had availed Modvat as well as SSI exemption resulting in short levy of excise duty amounting to Rs.12.07 lakhs on clearances during 1986-87 to 1988-89. The irregularities were pointed out to the department during August 1989 to May 1990 but replies have not been received (May 1990).

ii) In Bhubaneswar collectorate certificate of registration had been issued by the District Industries Corporation in favour of one person for two units which were located in the same compound and having one and the same administrative building. For all purposes the same person was the owner of both the units with his relatives as directors for both the units. One unit had produced "Portland Cement" under sub heading 2502.20 and the other unit had manufactured non alloy steel ingots (7606.90) and steel casting under sub heading 7325.90. One individual, being the assessee for both the products, had availed Modvat credit in respect of steel ingots (7606.90) and had simultaneously availed exemption benefit of Rs.15 lakhs for cement products (2502.20), which was irregular. The assessee had cleared a total quantity of 397.20 MT of cement valued at Rs.45 lakhs at nil rate of duty under SSI exemption. This resulted in irregular availment of concession of central excise duty to the tune of Rs.4.98 lakhs during the period 1986-87 to 1988-89.

iii) Another unit, in the same collectorate, a state government enterprise, had manufactured T.V. cabinets (sub heading 8529.00), as well as wooden furniture (sub heading 9403.00). The assessee had taken Modvat benefits for the manufacture of T.V. cabinets (8529.00) and had availed small scale exemption for the manufacture of wooden furniture (9403.00) which was irregular as the manufacturer could avail one of the two benefits. The assessee had cleared wooden furniture valued at Rs.20,90,236 during the period from 1986 to 1989. The duty concession erroneously allowed was Rs.3.88 lakhs.

iv) A manufacturer of auto parts (sub heading 8708.00) and nut bolts (sub heading 7319.10) in Meerut collectorate cleared his goods on payment of duty at concessional rate as he had been availing of deemed credit under rule 57G of the Central Excise Rules, 1944 on his only input viz. mild steel bright bars (sub heading 7207.20). With the withdrawal by the government of the deemed credit facility on mild steel bright bars from 2 November 1987 he discontinued availing of the benefit of credit on the input. He, however, continued to clear his goods at the concessional rate of duty even after 2 November 1987. The irregularity resulted in short levy of duty of Rs.3.17 lakhs on the goods cleared during the period from 1 April 1988 to 31 January 1990. Short levy for the period from 2 November 1987 to 31 March 1988 had not been worked out by the department.

The audit objection was communicated to the department in March 1990. Their reply has not been received (April 1990).

(9) Availment of concession under new SSI scheme before its application

As per two notifications issued under 77/85 CE dated 17 March 1985 and 85/85 CE dated 17 March 1985 small scale units manufacturing certain goods specified therein were allowed to avail of complete exemption from payment of duty on clearance of Rs.20 lakhs and Rs.7.5 lakhs respectively and on payment of concessional rates of duty thereafter upto Rs.40 lakhs according to different slabs.

With the introduction of notification dated 1 March 1986 the eligibility and the quantum of concession in respect of goods specified in the notification were revised. Complete exemption upto Rs.30 lakhs (if the specified goods were falling under one heading only) and/or concessional rate of duty upto Rs.75 lakhs was allowed.

This notification dated 1 March 1986 was suspended from 25 March 1986 to 31 March 1986. As a result the goods specified under the two notifications during the period from 25 to 31 March 1986 were cleared at the concessional rates of duty prescribed as per old slabs and at new tariff rates which came into force from 1 March 1986.

Though the period 1 March 1986 to 24 March 1986 was part of the financial year 1985-86, due to non issue of order suspending the

operation of notification dated 1 March 1986 during that period manufacturers cleared the goods at concessional rate of duty upto Rs.75 lakhs though some of them had crossed the limit of Rs.40 lakhs the maximum limit up to which the goods could have been cleared at concessional rates under the two earlier notifications in force upto 28 February 1986.

Thus, due to non-suspension of the operation of notification 175/86 dated 1 March 1986, which was done from 25 March 1986, a number of units cleared their goods availing concessional rates of duty on clearances even after crossing the limit of Rs.40 lakhs the limit upto which such concession was applicable from 1 April 1985 to 28 February 1986 and from 25 March 1986 to 31 March 1986.

Such irregular availment of concession was noticed in 41 cases, in 8 collectorates. The duty involved was Rs.14.91 lakhs (vide Statement V).

Two instances are given below :-

i) A unit in Delhi collectorate engaged in the manufacture of excisable goods classifiable under heading 90.11 (erstwhile tariff item 68) was availing of concessions under notification 77/85 CE dated 17 March 1985 prior to the issue of notification 175/86 CE dated 1 March 1986 which came to be effective from 1 April 1986. The assessee was therefore eligible for concessions under the new notification dated 1 March 1986 only with effect from 1 April 1986. Also, the concessions under the earlier notification dated 17 March 1985 had relevance to the value of clearances during the whole year and one of the conditions in that notification stipulated that the assessee paid duty at normal rates after the aggregate value of clearances of goods in the factory exceeded Rs.40 lakhs. As the assessee had crossed this ceiling, he was liable to pay duty at the normal rates.

It was seen in audit that the assessee had paid concessional rate of duty at 5 per cent ad valorem on his goods from 1 to 31 March 1986 under notification 175/86 CE dated 1 March 1986, although he was liable to pay duty at the normal rate of 15 per cent ad valorem during this period. This had resulted in short levy of duty of Rs.1.06 lakhs on the value of goods cleared by him during March 1986, availing irregularly the concessions under notification 175/86 CE dated 1 March 1986.

ii) A unit in Bombay I collectorate engaged in the manufacture of goods classifiable under erstwhile tariff item 15A was availing of concession under notification 85/85 CE dated 17 March 1985. Under this notification he could clear, at concessional rates of duty, goods of the value of Rs.40 lakhs during a financial year. As he had crossed this limit earlier, he was liable to pay duty at the normal rates.

However, it was seen in audit that the assessee had irregularly availed of concessional rates of duty under notification 175/86 CE dated 1 March 1986 and paid duty at 30 per cent ad valorem instead of at 40 per cent ad valorem on the clearances during March 1986. The irregularity had resulted in short levy of duty of Rs.54,132.

(10) Clearance of goods from SSI units belonging to Central/State Governments

As per Explanation V to notification 175/86 CE dated 1 March 1986, in cases where the specified goods are manufactured in a factory belonging to or maintained by the Central Government or by a State Government or by a State Industries Corporation or by a State Small Industries Corporation or by the Khadi and Village Industries Commission (KVIC), the value of excisable goods cleared from such factory alone shall be taken into account. The Central Board of Excise and Customs in their letter No.F.No.345/1/87-TRU, dated 16 April 1987 clarified that the benefit of not clubbing the clearances from different factories belonging to or maintained by the Central/State Government, KVIC, for the purposes of excise duty concession under the notification can not

be extended to the factories belonging to independent industrial corporations, notwithstanding the fact that these corporations are undertakings of Central/State Governments.

A test check in audit revealed that during the years 1986-87, 1987-88 and 1988-89, excise duty concession totalling to Rs.23 lakhs was availed of by 5 factories belonging to independent industrial corporations in three collectorates (vide Statement VI).

A few such cases are given below :-

i) One unit, a State Government Undertaking in Bhubaneswar collectorate, had two units manufacturing wooden furniture. As per the Board's instruction dated 16 April 1987 the department was required to club the value of clearances of wooden furniture of both the units (from 1986 to 1989), which was not done. This entailed irregular availment of excise duty concession of Rs.19.02 lakhs. On this being pointed out in audit the department confirmed differential duty amounting to Rs.2.23 lakhs of wooden furniture cleared during 1 March 1986 to 31 March 1987 and a show cause cum demand notice amounting to Rs.4.20 lakhs had been issued on the unit in respect of clearances during April 1987 to July 1988.

ii) In three cases in Coimbatore collectorate, clearances made by all the factories belonging to a public limited company whose shares were fully subscribed by a State Government, were not taken into account while determining the duty liability, under the presumption that those units were owned and maintained by the State Government and therefore, were eligible for assessment based on the value of individual clearances. This irregularity resulted in short levy of duty of Rs.2.96 lakhs on these three units during 1986-87. On the mistake being pointed out, the department accepted the objection in respect of one unit involving duty of Rs.2,01,786 and in another recovery of Rs.20,735 was reported. In the third case a demand for differential duty of Rs.73,773 had been confirmed.

iii) In Hyderabad collectorate it was seen that the clearances from a unit (an engineering workshop) which was a unit of the state Small Scale Industries Development Corporation was not being clubbed with the other factories of the same state Small Scale Industries Development Corporation for deciding the applicability of concessions under notification 175/86 dated 1 March 1986. If the clearances of other factories of the said corporation had also been taken into account, the aforesaid unit (an engineering workshop) would not have been eligible for the exemption. The irregularity resulted in under assessment of Rs.1.02 lakhs during the period from April 1986 to March 1988.

(11) Misuse of notional higher credit

As per rule 57A of the Central Excise Rules, 1944, Modvat credit for the duty paid on inputs used in or in relation to manufacture of final products is allowed to a manufacturer and this credit could be utilised towards payment of duty leviable on such final products. As per rule 57B ibid where the specified goods are cleared at concessional rates with reference to notification 175/86 CE dated 1 March 1986 exempting them from part of duty on it based on value of clearances of such goods during any specified period, Modvat input credit would be allowed in respect of these goods at a rate otherwise applicable but for the said notification. It follows, therefore, that if a manufacturer procures the goods (inputs) from a small scale manufacturer he could take credit of duty paid on these inputs at notional higher rates. With effect from 1 April 1988 such higher credit is admissible at the rate duty is actually paid plus five per cent or the duty otherwise applicable whichever is less.

In a test check audit looked for cases where duty had been paid on goods although no duty was required to be paid thereon or which were exempted from duty, so that the major buyer units could avail notional higher credit. Audit was also on the look out for cases where

the small scale industrial units, in collaboration with large scale industrial units cleared the specified goods to large scale units at inflated prices (by over invoicing) in order to facilitate the large scale units to avail higher notional credit under the said rule 57B. The possibility of such amounts (charged in excess) having been refunded by way of special discount or by adopting other methods, without correspondingly reducing the amount of notional credit already taken by the large scale units, was also looked into.

Irregularities relating to these areas were noticed in 10 collectorates and the amount of duty involved was over Rs.2.08 crores (vide Statement VII).

Some cases are detailed below :-

i) An SSI unit in Shillong Collectorate cleared goods valued at Rs.34 lakhs during 1987-88 (Rs.33.82 lakhs under heading 44.04 and Rs.0.19 lakhs under heading 44.05) of which goods valued at Rs.2.41 lakhs were cleared without payment of duty and the balance on payment of duty at 5 per cent ad valorem in place of total exemption upto Rs.30 lakhs clearances available to it. As a result the purchaser, a large scale unit, who purchased all veneers manufactured by the assessee availed higher Modvat credit of Rs.138 lakhs during 1987-88, due to irregular payment of duty although the assessee unit was not required to pay duty.

ii) Notification 175/86 CE dated 1 March 1986 (as amended) provided for concessional rates of duty on specified goods manufactured by small scale units and cleared for home consumption in a financial year by a manufacturer who avails of the credit of duty paid on input used in the manufacture of specified goods under rule 57A of the Central Excise Rules, 1944. The concession was available on clearance value up to Rs.75 lakhs in a financial year. To avail the benefit of concessional rate of duty of excise the manufacturer was under a legal obligation to avail of the credit of duty paid on inputs and the manufacturer who did not fulfil this condition would not be entitled to the benefits of concessional rate of duty of excise.

It was, however, noticed in Delhi collectorate that 11 manufacturers were paying duty at the concessional rate although they did not fulfil the condition of availment of credit of duty paid on inputs and did not maintain necessary records prescribed. The RG23A part I and II accounts had not been maintained. In the absence of fulfillment of the prescribed conditions, these assessees were not entitled to pay duty at concessional rate. The irregular clearances of goods at concessional rate of duty instead of at nil rate upto the clearances of Rs.15/30 lakhs under SSI scheme resulted in facilitating the buyers to avail of the notional credit of duty Rs.31.53 lakhs during the years 1986-87 to 1989-90.

iii) Ammonium nitrate whether or not pure was chargeable to duty at 15 per cent ad valorem under heading 31.02. The CEGAT had, however, held {1985 (21) ELT 889} that merely improving the quality of purity of ammonium nitrate by prilling did not amount to manufacture and no duty was leviable on prilled ammonium nitrate.

Five small scale units in Jaipur collectorate engaged in increasing the purity of ammonium nitrate by prilling paid duty incorrectly amounting to Rs.4,61,656 at concessional rate of 5 per cent ad valorem on consignments cleared by them from April 1986 to January 1989, notwithstanding the fact that no duty was leviable on these clearances in terms of 1985 decision of the CEGAT. Further these units not having availed of any Modvat credit in respect of duty paid on inputs, the first clearance of Rs.15 lakhs made by them in each year was also exempted from the whole of the duty. The incorrect payment of duty at the concessional rate by these units enabled the factories, which had purchased the

prilled ammonium nitrate from them to be used as input for manufacture of explosives, to avail of the notional higher credit amounting to Rs.10.43 lakhs and to utilise the credit to discharge the duty liability on their final product. This resulted in an unintended benefit to the ultimate consignee and loss of revenue of Rs.6.81 lakhs which could have been avoided had the clearances by small scale units been correctly allowed without payment of duty.

On the inadmissibility of the benefit being pointed out (February 1988 and March 1989) in audit, the department initially contended (March 1988) that the decision of the CEGAT was not based on sound legal footing and that so long as the units had filed declarations to avail of the Modvat credit, it was not necessary for them to actually avail of such credit so as to become eligible for payment of duty at the concessional rate. Subsequently, the department referred (April 1989) the matter to the Board for clarification. While upholding the view of Audit, the Board clarified (July 1989) that no duty on such prilled ammonium nitrate was to be paid and that no Modvat credit of such duty was to be allowed even if it had been paid. The Board accepted (November 1989) the audit objection and stated that concessional rate of duty in terms of notification of 1 March 1986 was not admissible if the Modvat credit was not availed of.

Action, if any, taken for the reversal/ recovery of the notional credit taken by the consignee in these cases has not been intimated by the department. A statement of facts was issued to the department in February 1990. The reply has not been received (May 1990).

iv) A manufacturer under Bolpur collectorate manufacturing stranded wire (SH 7312.10) received, free of cost, wire of non alloy steel from a large scale manufacturer for the manufacture of stranded wire on his behalf. The licensee, a SSI unit, received conversion charges for the job work and cleared those finished product (stranded wire) to the large scale manufacturer on payment of duty at concessional rate of 5 per cent ad valorem in terms of notification 175/86 CE. The large scale manufacturer availed notional Modvat credit at higher rate in terms of rule 57B. The assessee had also taken credit of the duty paid on the raw materials supplied to him by the supplier.

Total amount of duty paid by the assessee on the finished product (stranded wire) cleared to the large scale manufacturer was Rs.4,52,687 during February 1989 to September 1989. Higher notional credit of equivalent amount availed by the large scale manufacturer was irregular.

The irregularity was pointed out in audit in December 1989 and a statement of facts issued in February 1990. Reply has not been received.

v) The assessee of one factory, under Calcutta II Collectorate, situated within the same premises of another assessee manufacturing biscuits, is closely related to the proprietor of the biscuit factory. The former factory was manufacturing metal containers without the aid of power prior to 5 May 1987 and with the aid of power from that date and Central Excise duty was accordingly paid after the unit being allowed by the department to avail of small scale exemption under notification 175/86 CE dated 1 March 1986.

The electricity consumed by the first assessee's factory was also taken from the second assessee. Further, all the metal containers manufactured by the assessee were branded with the name of the second assessee and cleared exclusively to the second assessee who availed higher notional credit under rule 57B of the Central Excise Rules, 1944, read with para 5 of the notification dated 1 March 1986 mentioned above. Chapter 19 (biscuits) having been brought under

the Modvat scheme from 1 March 1987, the biscuit manufacturer started taking higher notional credit from May 1987. It was observed in audit that the biscuit manufacturer by paying duty through a dummy (i.e., the first assessee) reaped the benefit of higher notional credit, thereby misusing the benefit of the same. This resulted in availment of unintended benefit of higher notional credit of Rs.4.31 lakhs during the period from 5 May 1987 to 30 November 1989. A statement of facts issued in February 1990 to the department has not been replied (April 1990).

vi) Three assessees under Chandigarh collectorate manufacturing tractor parts under the heading 87.08 neither opted for clearing the goods without payment of duty upto the prescribed limit nor availed credit of duty on inputs under Modvat scheme but paid central excise duty at concessional rates applicable to assessees availing Modvat credit. This was irregular because these units did not avail Modvat and were required to clear the goods upto Rs.15/30 lakhs without payment of duty. These units paid duty and thus enabled the large scale units to whom clearances were made to avail notional higher credit amounting to Rs.3.97 lakhs during the years 1986-87 to 1988-89 which was otherwise inadmissible. The provisions for concession to SSI units, were thus misused.

(12) Goods manufactured by the SSI units on behalf of others

Under section 2(f) of the Central Excises and Salt Act, 1944, the term 'manufacturer' includes not only a person who employs hired labour in the production of excisable goods but also any person engaged in the production or manufacture of any excisable goods on his own account.

Many small scale units received supply of raw materials from principal manufacturers who were not eligible for small scale exemptions. These SSI units manufactured component parts or intermediate products on job work basis and returned them after payment of duty at the concessional rates of duty applicable to small scale units. The suppliers of the raw materials who utilised the component parts and intermediate products as inputs in the manufacture of final products took Modvat credit at higher notional rates under rule 57B of Central Excise Rules, 1944, than what had been actually paid. In all these cases the suppliers of the raw material should be treated as the principal manufacturers and as they were not eligible for small scale industry concession, the job worker should pay duty at the normal rates and return the goods to the principal manufacturer. Alternatively the supplier of raw materials being Modvat optees could send the raw materials to the job workers following the procedure under rule 57F(2) and receive the intermediate products from the job worker without payment of duty by opting for notification 214/86 dated 25 March 1986. In the former case the amount actually paid by the job worker would be taken as Modvat credit by the principal manufacturers and in the latter no credit would be admissible; and in either case no unintended credit benefit would accrue to the principal manufacturers.

It was pointed out in audit that in view of the decision of Supreme Court in the case of Shree Agencies {1977 ELT (J 168) SC} and Bajrang Gopilal Gajabi {1986 (25) ELT 609} and the Tribunal in the case of Guru Instruments {1987 (27) ELT 269} and also the clarification of the Board in letter No.F267/31/88/Cx.8 dated 20 September 1988, in consultation with Law Ministry, holding the suppliers of the raw materials as the real manufacturers, duty should have been paid at the normal rates only. However the department justified the availment of higher notional credit on the ground that both the principal manufacturer and the job worker were independent legal entities and the transactions were on principal to principal basis. The payment of duty at concessional rates by the small scale manufacturer (job worker) was at variance with the Supreme Court's judgment and the Board's order that non-observance of procedure laid down in rule 57F(2) and notification 214/86 dated 25 March 1986 by the principal manufacturers and job workers respectively would result in unintended benefit.

The Central Board of Excise and Customs vide its letter F.No.213/31/88-CEx.8 (circular 50/88) dated 20 September 1988, had also clarified that if the inputs were supplied by the principal manufacturer for the manufacture of any goods on job work basis, the concession under notification 175/86 CE dated 1 March 1986 for small scale manufacturer would be available only if the principal manufacturer himself is eligible for such concession.

A test check in audit had revealed 64 cases where the aforesaid considerations had been disregarded in 16 Collectorates leading to loss of revenue to the tune of Rs.532 lakhs (vide statement VIII).

Some cases are given below :

i) In Delhi collectorate 8 cases were noticed where large scale manufacturers, not entitled to small scale exemption, had sent the raw materials to SSI units for conversion into final product on job work basis and had paid them job charges only. Such job workers, though not liable to pay central excise duty, paid the same at concessional rate applicable to SSI units and the large scale manufacturers took higher notional credit. Since these job workers were actually engaged by the large scale manufacturers, the duty liability on these goods should have been at normal rates instead of the concessional rates. The differential duty in these cases worked out to Rs.111.28 lakhs on clearances during the period from 1986-87 to 1988-89. This was pointed out in audit in March 1990. Reply of the department has not been received (April 1990).

ii) A large scale manufacturer in Madras collectorate engaged in manufacturing parts of IC engines (chapter 84) also cleared cylinder liners from his duty paid godown. The 'Cylinder liners' were got manufactured from the job workers by supplying pig iron castings in the form of liner pot. The assessee cleared liner pots as iron castings (7325.10) which were exempted from duty as per notification 275/88 CE dated 4 November 1988. After machining, boring etc., as per assessee's instructions the finished goods viz., 'cylinder liners' were returned to the assessee's duty paid godown, on payment of duty by the job worker at concessional rate with reference to notification 175/86 CE dated 1 March 1986, as amended. The labour charges alongwith excise duty and transport charges were reimbursed to the job worker by the assessee.

As the supplier of raw material to job workers for manufacture of finished excisable goods is to be treated as manufacturer when the goods are manufactured on job charges basis, the same should be treated as goods manufactured by the supplier of raw material and the liability of duty decided accordingly. This was not done and the small scale concessions were availed irregularly. This resulted in short levy of duty of Rs.87.37 lakhs on the goods cleared during the period from April 1987 to March 1989.

iii) In Cochin collectorate 5 cases revealed irregular availment of SSI exemption involving duty of Rs.27.11 lakhs. In all these cases, the principal manufacturers who were large scale units, had supplied raw material and component parts to the small scale units for further processing. The SSI units had cleared these goods availing SSI benefits although the principal manufacturers were not entitled to the benefits of such concession. The aforesaid short levy related to the clearances by these SSI units during the period April 1986 to August 1989.

iv) Two assessees (small scale units) in Bangalore collectorate, manufacturing printed circuit board assembly (heading 85.17), were availing the exemption under notification dated 1 March 1986. The benefit of Modvat was also being availed simultaneously and concessional rate of duty of 10 per cent was being applied on clearances upto Rs.75 lakhs.

The inputs such as unpopulated circuit

board, diodes, resistors, transistors etc., required for the manufacture of PCB assembly were received on gate passes issued under rule 57F(1) from a manufacturer, who was not eligible for SSI exemption. The duty paid on these inputs was adjusted by the licensee in the Modvat records at the time of clearance of finished goods. The PCB assemblies were in fact manufactured on job work basis exclusively for the principal manufacturer and only job work charges and value of the inputs added by the licensee were realised from such principal manufacturer. In terms of the Board's letter dated 20 September 1988 the licensee was not entitled to clear excisable goods on job work charges (from out of the duty paid inputs supplied by them) at concessional rate.

This led to short levy of Rs.15.75 lakhs and Rs.7.96 lakhs respectively during the period 1988-89 and 1989-90. The matter was brought to the notice of the department (December 1989 and February 1990). The department replied (January 1990) that an offence case had been registered against one licensee. Reply in respect of the other licensee has not been received (April 1990).

v) A small scale unit in Madras Collectorate took up job work on behalf of a large scale manufacturer for the manufacture of roasted chicory powder falling under sub heading 2101.30 of the schedule to the Central Excise Tariff Act, 1985. The raw materials viz. chicory roots and the packing material viz. Polybags were supplied by the latter and the assessee was paid only labour charges for conversion of chicory roots into chicory roasted powder. The assessee cleared the goods on payment of duty at concessional rates under notification 175/86 dated 1 March 1986, as amended, applicable to small scale unit and the duty so paid was also reimbursed by the supplier of raw material, as per the agreement between them. The payment of duty at the concessional rates and the availment of benefits under exemption notification applicable to small scale units was not in order. Since the goods (chicory roasted powder) was manufactured on behalf of the large scale manufacturer on job charges basis the supplier of raw material was deemed to be the manufacturer of the goods. This resulted in underassessment of duty of Rs.16.60 lakhs during the period from April 1986 to May 1988.

vi) An assessee in Hyderabad collectorate undertook job work for manufacturing biscuits (chapter 19) under the trade name 'Cadburrys' out of the raw materials and packing materials supplied to him by another manufacturer who was the primary manufacturer. The finished product was cleared after payment of the duty at the concessional rate available to small scale industries under notification dated 1 March 1986, which concession the primary manufacturer was not eligible. Irregular availment of S.S.I. concession resulted in short payment of duty of Rs.4.49 lakhs during the year 1986-87.

On this being pointed out in audit (June 1988) the department accepted the objection and intimated (July 1989) that a show cause notice would be issued and a further report would be sent to audit in due course.

(13) Branded goods manufactured in a SSI unit

As per para 7 of notification 175/86 CE dated 1 March 1986 as amended by notification 223/87 CE dated 22 September 1987 the exemption contained in the former notification will not apply to the specified goods where the manufacturer affixes such goods with a brand name or trade name (registered or not) of another person who is not eligible for the grant of exemption under the said notification.

As per Explanation VIII of the aforesaid notification brand name or trade name shall mean brand name or trade name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, sig-

nature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person. Irregularities were noticed in 17 cases in 8 collectorates of small scale units affixing such brand/trade name and availing the concessional rates of duty, and the amount of duty involved was to the tune of over Rs.45 lakhs (Statement IX). Some of the cases noticed in audit are mentioned below:-

i) In Indore collectorate a manufacturer of aerated waters (sub heading 2202.11) was manufacturing goods under brand names of repute from 1 April 1988. He availed SSI exemption on these goods on the ground that property rights of these brands had now been assigned to another who was also a small scale manufacturer. It was noticed in audit (August 1988) that the goods were still being cleared in glass bottles affixed with the name of the company who were the brand name holders. Since the goods were being sold in market indicating a connection between the goods and brand name owning company, availment of SSI exemption was irregular and had resulted in loss of revenue amounting to Rs.7.15 lakhs in respect of clearances made from 1 April 1988 to 30 June 1988.

On this being pointed out in audit (August and September 1988), the range superintendent, while assessing the monthly RT12 returns, raised a demand for short levy of Rs.8.62 lakhs on clearances made during the period from 1 April 1988 to 30 September 1988. Though the assessee had not paid the amount demanded on RT12 assessments, a formal show cause cum demand notice had not been issued and the demand had thereupon become time barred.

ii) A private limited company in Coimbatore collectorate owning a small scale unit was engaged in the manufacture of food products falling under headings 20.01 and 21.03. They sent their entire products to a marketing agency for marketing them under the latter's brand name, till May 1989. The marketing agency had a factory and was also in possession of a SSI certificate, but the goods manufactured by them were chemicals that were completely exempted from payment of duty. The factory was also not under central excise licensing control and was enjoying SSI concession under notification 175/86 CE dated 1 March 1986. Since the marketing agency did not produce food products but placed orders with the assessee for manufacturing the goods out of his own (assessee's) raw materials but with their brand name and as such were acting as traders only. They were, therefore, not eligible for SSI concession and the entire goods should have been levied full rates of duty. Incorrect availing of concession had resulted in short levy of duty of Rs.4.56 lakhs during the period from April 1988 to April 1989. This was brought to the notice of the department (March 1990) and a reply thereto has not been received (April 1990).

iii) An assessee in Delhi collectorate manufacturing wheel rims for supply to well known moped manufacturers was putting the latter's stickers on the goods. The department, however, allowed the assessee concession, as a small scale unit which resulted in loss of revenue to the tune of Rs.3.39 lakhs during the period from October 1987 to May 1988. This was pointed by audit in November 1989. Reply has not been received (May 1990).

iv) A manufacturer of perfumery compounds, resinoids (chapter 33) in Bangalore collectorate was clearing the goods from the factory on payment of duty at 10 per cent which represented concessional rate of duty applicable to SSI units. The clearances were made after affixing a label which carried a brand name and a monogram which were not of Indian origin. Accordingly, the benefit of notification dated 1 March 1986 to clear the goods at concessional rate was

not available to a small scale manufacturer who had affixed the brand name of a foreign trader/manufacturer. Consequent short realisation of duty during the period May 1988 to October 1989 on the value of clearances of Rs.32.25 lakhs amounted to Rs.3.39 lakhs. The objection was communicated to the department in November 1989. The reply has not been received (March 1990).

v) Another manufacturer of unpopulated printed circuit boards, falling under chapter heading 85.34 in the same collectorate had started manufacturing single and double sided printed circuit boards from March 1988. He, however, obtained the central excise licence with effect from 15 November 1988 only. The printed circuit boards manufactured by the assessee were embossed with the diagram/drawings which could be identified with the brand name of the customers on whose behalf the goods were manufactured. As these customers were not entitled for the SSI concession, the goods cleared with their brand names were to be cleared at normal rates of duty. It was, however, seen that the assessee had cleared the goods at concessional rates, resulting in short payment of duty of Rs.3.31 lakhs on the value of clearances for the period from March 1989 to September 1989. This was brought to the notice of the department (November 1989). Reply has not been received (April 1990).

(14) Assessment on the basis of invoice price for small scale units

According to rule 173C (11) of the Central Excise Rules, 1944 an assessee has to declare the price of goods transacted. As this could be done only where firm prices are known before clearance of goods from the factory, the Central Board of Excise and Customs decided to allow the SSI units to pay duty on the basis of the provisional prices shown in the invoices at the time of transfer of such goods to their depots etc. (vide Board's circular No.86/88 CX-6 dated 27 December 1988). However, the assessments in such cases were required to be kept provisional until the final invoices were received. The SSI units availing of this facility were therefore required to execute a bond under rule 9 B ibid, pending finalisation of these assessments.

Further, the Board in their letter dated 11 October 1988 have allowed exemption to SSI units from filing the price lists provided those units made a declaration to the effect that the invoice prices conform to the definition of value in Section 4 of the Central Excise Rules, 1944.

Accordingly, where the assessable value is not susceptible of determination under the provisions of Section 4 of the Act, the provisions of the Central Excise (Valuation) Rules, 1975, made thereunder, come to play. Thus, in the case of an SSI unit who is a job worker and who receives materials from primary manufacturers free of charge, is required to add the cost of raw materials too in assessing the value of the finished products, for purposes of payment of duty.

Irregularities have been noticed in the implementation of these provisions which have resulted in loss of revenue.

A few cases are given below as instances

i) A unit in Chandigarh collectorate engaged in the manufacture of oxygen gas classifiable under heading 28.04 charged Rs.2 per cubic metre of the gas through an invoice and simultaneously issued debit notes also for rental charges and cylinder maintenance charges. The additional amount recovered through debit notes was not taken into account for arriving at the assessable value of the oxygen gas sold. By adopting this practice the manufacturer managed to remain within the exemption limit and thus could clear the gas at nil rate of duty upto an aggregate value of Rs.7.50 lakhs under provisions of paragraph 4(a) of notification 175/86 dated 1 March 1986. The irregular computation of assessable value resulted in incorrect grant of exemption and consequential non levy of duty amounting to Rs.3.76 lakhs during the period 1 April 1987 to 31 March 1989.

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ii) A small scale manufacturer of electrodes (heading 83.11) and machines for manufacture of electrodes (heading 84.79) in Bangalore collectorate, opted for invoice price in respect of all clearances where duty was payable on the value. The assessee entered into a contract with a firm for manufacture and supply of machinery/equipments including spares for a sum of Rs.11.50 lakhs but excluding central excise duty. The licensee cleared the goods from the factory and paid duty of Rs.73,237 on the machinery. Soon after completing the transaction the assessee raised a final invoice in terms of the contract. Central Excise duty of Rs.1,81,125 leviable under the Central Excise Tariff Act had also been realised on the contract as could be seen from the final invoice. The assessee had initially paid Rs.73,237 as central excise duty as stated above but the balance amount of Rs.1,07,888 realised from the customer was not paid to government account.

This irregularity was brought to the notice of the department (December 1989). Reply has not been received (April 1990).

iii) In Bombay II collectorate an assessee, an SSI unit, engaged in the manufacture of motor vehicle parts classifiable under heading 87.08, cleared these goods named "Brakes Pedal RH" to one customer only. The customer had supplied free of cost, bushes which are used in the brake pedal as component. The assessee after manufacturing the product cleared these goods back to the customer at concessional rate of duty on the value of brake pedal RH plus the excise duty on bushes but the cost of such bushes supplied free of charge by the customer was not added to the value. Non inclusion of the cost of bushes in the assessable value of brake pedal RH, resulted in short levy of duty to the tune of Rs.1.06 lakhs during the period from 1988-89 to 1989-90.

This was pointed out in audit (March 1990). Reply of the department has not been received (April 1990).

(15) Duty exemption on other goods manufactured by SSI units under separate schemes

Apart from the goods specified in Annexure to notification 175/86 CE dated 1 March 1986, there were certain other SSI exemptions. During a test check in audit, certain irregularities were noticed in clearances under these notifications too. The types of irregularities entailing loss of revenue, are indicated below :-

i) Tread rubber, camel black etc :

A licensee in Belgaum collectorate engaged in the manufacture of tread rubber (chapter 40) was also undertaking job work of conversion of raw materials.

It was seen that the licensee was availing the benefit of notification 56/88 CE dated 1 March 1988 for concessional rates in respect of tread rubber and cushion compound manufactured and cleared from the factory.

According to the aforesaid notification the following conditions were to be satisfied for claiming the benefit :

a) the aggregate value of all excisable goods cleared should not have exceeded rupees one and half crores during the preceding year.

b) the aggregate quantity of clearances of the said goods from any factory on behalf of one or more manufacturers for home consumption during the preceding financial year had not exceeded 250 metric tonnes.

The Ministry of Finance in their letter dated 19 April 1988 had clarified that the concession is not available if either of the two limits was exceeded.

The assessee in question, received from another manufacturer during 1987-88, various raw materials and manufactured excisable goods falling under chapter 40. The quantity of tread rubber compound in sheet form manufactured and cleared during the year 1987-88 was 550 metric tonnes. This was besides the goods manufactured on his own account. Nevertheless, the department allowed the assessee to

avail benefit under the aforesaid notification prescribing concessional duty for small scale rubber manufacturers on the clearances made on his own during the financial year 1988-89, even though the aggregate quantity of the said goods cleared (including the quantity cleared on job work) had exceeded 250 metric tonnes in the previous financial year 1987-88. The short levy of Rs.6,77,848 on a quantity of 87.552 Kgs. cleared from 1 April 1988 to 31 March 1989 was pointed out in audit in July 1989.

The Collector of Central Excise replied (January 1990) that the product cleared after completion of job work was masticated rubber which represented semi finished product and cannot be treated as clearance for home consumption within the meaning of notification referred to above.

The reply is not acceptable as the description of goods cleared after job work (i) rubber compound in sheet form (ii) C.M.compound/Flap compound and (iii) T.R.A. Compound are nevertheless goods which are classifiable under chapter 40 of the Central Excise Tariff and may not be taken outside the scope of clearance for home consumption as they are goods which were cleared from the factory.

ii) As per notification 232/85 CE dated 14 November 1985, tread rubber (sub heading 4006.10 w.e.f. 1 March 1986) was chargeable to duty at 12 per cent ad valorem on first clearances upto Rs.7.5 lakhs and at 18 per cent ad valorem on the next clearances upto Rs.17.50 lakhs provided the total value of clearances during the previous year did not exceed Rs.25 lakhs.

The scope of the exemption scheme was enlarged by bringing some retreading products viz., cushion compound cushion gum and tread packing strips thereunder vide notifications 45/87 dated 1 March 1987 and 130/87 dated 29 April 1987. Under these notifications first clearance of specified goods not exceeding 50 tonnes was exempted from duty in excess of Rs.6/Rs.4 per Kg. and duty in excess of Rs.9/Rs.8 per Kg. was exempted on next clearances not exceeding 100 tonnes provided the total quantity cleared during the previous year did not exceed 250 tonnes.

The scope of concession was further enlarged during 1988-89. As per notification 56/88 CE dated 1 March 1988 excise duty in excess of Rs.5 per Kg. on first clearances not exceeding 75 tonnes, Rs.7 per Kg. on the next clearances of 75 tonnes and Rs.10 per Kg. on the next clearances not exceeding 100 tonnes was exempt subject to the conditions that the value of clearances of all excisable goods in the preceding financial year did not exceed Rs.150 lakhs and the quantity of the specified goods did not exceed 250 tonnes. The rates of duty were again revised to Rs.5.25, Rs.7.35 and Rs.11.55 per Kg. w.e.f. 1 March 1989 by notification 44/89 dated 1 March 1989.

Large scale avoidance of central excise duty was noticed in certain tread rubber units in Cochin collectorate whose modus operandi was as follows:-

Members of one family had registered six independent, private limited companies and obtained six L4 licences from the range office for the manufacture of tread rubber. The six factories were housed in two adjoining sheds facing each other in the same compound and each factory being separated by partition walls erected in the sheds. A common varandah with collapsible iron bridge separately for each factory section was used as a common passage for the movement of raw materials and finished products. A single extruder was being used in turn by each unit after intimating the department that the extruder had been leased out by one unit to other units. They sold most of their finished products viz., tread rubber through a common agency set up by the same group. The rubber compound requirements for the production of tread rubber were obtained by all the units from another factory set up by the same group. All the six units were using the same entrance and same equipments like transformer, weigh bridge, workshop etc., and were having common technical personnel and office staff. All these factors taken singly and cumulatively established the fact that these units were set up with the sole idea of securing the benefit of lower rate of duty for tread rubber by keeping the production within the required ceiling slab fixed in the exemption notification. Similarly another group of factories (8 nos.) were set up by the members of the above said family under

the jurisdiction of another range. The duty evasion being made by this group was pointed out by audit on several occasions. The matter was adjudicated by the Collector who held on 21 August 1989 (original order 16/89) that for want of conclusive proof, each unit was to be treated as separate unit for the purpose of assessment and that the price at which the goods was sold by the aforesaid common agent to the consumer had to be taken as assessable value. A differential duty of Rs.4,45,658.94 (for the period 1978-79 to 1981-82) was therefore ordered to be realised from 10 units and a fine of Rs.5,000 each under rule 9(2) and 173(Q) was imposed. This amount was paid on 24 November 1989.

(16) Other Topics of interest

i) Irregular exemption

(a) An assessee in Delhi collectorate manufacturing goods falling under chapters 84 of the Central Excise Tariff Act, 1985 viz., electric fans, geysers, electric motors, rotors and stators for captive use in power driven pumps was also engaged in the manufacture of centrifugal power driven pumps which are exempt from duty vide notification 155/86 CE dated 1 March 1986. Assessee was also availing the benefit of duty in respect of inputs used in the manufacture of the final product i.e., fans, geysers, electric motors and rotors and stators for PD pumps as well as the benefits of concessional rate of duty under notification 175/86 CE dated 1 March 1986 (as amended). While computing the value of clearance of Rs.1.50 crores, the value of rotors and stators was not being taken into account although the assessee was paying duty at concessional rate under notification 175/86 CE dated 1 March 1986. Since the assessee was availing the benefits and paying concessional rate of duty under the said notification, the value of clearances of rotors and stators needed to be taken into account while computing limit of Rs.75 lakhs and 150 lakhs. The aggregate value would then work out to Rs.150,85,805 and Rs.150,54,369 at the end of financial years 1986-87 and 1987-88 respectively, and hence the assessee was not entitled to the benefit of concessional rate of duty upto Rs.75 lakhs during 1987-88 and 1988-89 under notification dated 1 March 1986. This resulted in short levy of duty of Rs.15.37 lakhs.

Similar irregularities were noticed in 6 cases in Delhi collectorate where the amount of duty not levied was to the tune of Rs.26.57 lakhs during the period from 1986-87 to 1989-90.

(b) One unit under Ahmedabad collectorate was doing job work on behalf of a big unit and was availing benefit under notification 175/86 CE dated 1 March 1986. Since the principal manufacturer was not eligible for the benefit of SSI concession, incorrect availing of benefit by the job worker resulted in short levy of Rs.2,84,632.60 for the year 1986-87 and Rs.6,29,229.60 for the year 1987-88. Further, the total clearance during 1987-88 had exceeded the limit of Rs.1.50 crores for the above unit and as such it became ineligible for the year 1988-89. However, the unit continued to avail the concession during 1988-89 also and this resulted in short levy of duty. When pointed out (September 1988) the department stated (April 1989) that show cause notice was issued for Rs.20,60,989 for the period April 1988 to September 1988 on 30 November 1988 and Rs.14,69,784 for the period October 1988 to February 1989.

ii) SSI concessions availed even after the aggregate value of goods cleared for home consumption exceeded the ceiling limits - units under the same proprietorship not clubbed:

It was noticed during audit that in the case of two assessees in Aurangabad collectorate, both of whom were engaged in the manufacture of aluminium conductors cleared them to certain state electricity boards in Maharashtra, Punjab, Rajasthan and Cooperative Electric Societies.

The partners in one unit and the Directors in the other were common and were related persons having proprietory interest in both. This contravened the declaration given by the assessees in the classification list that "they had no other interest in any other concern".

The finished products manufactured by both the units were the same with same brand name viz "Weared" "Rabit" and "Racoon". Their customers were also common.

Both units were located in the same premises separated by a compound wall and were managed by common employees.

The raw materials were transferred between the two units according to the requirements of each.

It was thus clear that there was mutuality of interest between the individuals controlling the units and that separate legal entity had been claimed only to avail excise concession applicable for small scale units.

The clearances of the two units during 1986-87 taken together amounted to Rs.231.24 lakhs which would keep the units out of the SSI benefit during 1987-88 and 1988-89. But the assessees had availed benefits of concessional rate of duty amounting to a total of Rs.30.75 lakhs (approx) during the years 1987-88 and 1988-89.

Similar cases were found in Calcutta II, and Aurangabad collectorates. The duty not levied amounted to Rs.21.89 lakhs (one case) and Rs.30.75 lakhs (2 cases) respectively, during the period from 1986-87 to 1988-89.

iii) Incorrect computation of value of clearance to avail of SSI concession:

An assessee in Nagpur collectorate manufacturing hard boiled sweets and toffees classifiable under sub heading 1704.90 availed exemption from payment of duty under notification 175/86 CE dated 1 March 1986 (as amended) during 1986-87.

The assessee had filed price list effective from 1 April 1986. While approving the price, deduction towards element of central excise duty was allowed to the extent of 12 per cent although the first clearances upto Rs.15 lakhs were exempt from payment of whole of duty as per the said notification. This resulted in approving the assessable value on the lower side to the extent of Rs.1,80,000 (12 per cent of Rs.15 lakhs) and finally resulted in under assessment and short payment of duty of Rs.18,000 (at effective rate of 10 per cent ad valorem). This was so, as the clearances during 1986-87 had exceeded Rs.75 lakhs and the assessee was liable to pay duty at normal rates.

On this being pointed out the department accepted the objection and stated (February 1988) that the assessee had paid the amount of Rs.18000 in January 1988 through P.L.A.

Test check in audit had also revealed 5 more cases in Nagpur collectorate in which such irregular computation was made. The duty involved was Rs.55,000.

iv) SSI concessions irregularly availed by units registered with Directorate General of Technical Development:

Concessions in the matter of payment of excise duties under the notification 175/86 dated 1 March 1986 were available to industrial units on clearances made of specified goods, provided the units are registered with the Director of Industries in any state or the Development Commissioner (small scale industries) as a small scale industry under the Industries (Development and Regulation) Act, 1951. Such a registration, however, is not necessary if the unit had already been availing of the exemption under the very notification (175/86 CE) or any of the notification specified in para 4(b)

of that notification during the preceding financial year. By a notification issued on 30 October 1987, the notification issued under 175/86 CE was amended to bring out that the concessions envisaged thereunder were not applicable to units registered with Directorate General of Technical Development.

A small scale industry by definition is an undertaking having investment in fixed assets in plant and machinery whether held on ownership terms or by lease or by hire purchase not exceeding Rs.35 lakhs and when the value of plant and machinery exceeds Rs.35 lakhs it is no longer a small scale industry and it is required to get registered under the DGTD.

An assessee in Goa collectorate engaged in the manufacture of industrial/medicinal oxygen classifiable under chapter 28 and dissolved acetylene gas falling under chapter 29 of the Central Excise Tariff Act, 1985 was registered with the DGTD. Though it was not a small scale industry, it availed the benefit of duty concession on clearances made even after issue of notification dated 1 March 1986 on the grounds it was paying duty in the financial year 1985-86 availing of the concession under notification 85/85 CE dated 17 March 1985 which was specified in para 4 (b) of the notification 175/86 CE dated 1 March 1986.

After issue of notification 244/87 dated 30 October 1987, excluding the DGTD units from the purview of notification 175/86 CE dated 1 March 1986, the assessee started paying full duty. Thus due to non-issue of orders excluding the DGTD units from the operation of notification 175/86 dated 1 March 1986 which was intended for units registered with Director of Industries, duty amounting to Rs.4.86 lakhs was lost on clearances made by the units during the period from 1 March 1986 to 29 October 1987.

v) SSI concessions allowed to ineligible units

An SSI unit in Cochin collectorate manufactured soft drinks classifiable under sub heading 2202.11 and 2201.12. The unit was not registered as a small scale industry and did not avail of exemption during 1984-85 and 1985-86 under any notification specified in para 4 of notification 175/86. Benefit of exemption under notification 148/82 dated 22 April 1982 was allowed to the assessee for 1984-85 by sanctioning a refund. The assessee availed benefit of exemption under notification 175/86 from 1 April 1986. In October 1986 the department pointed out mistakes in valuation and consequent ineligibility to exemption under notification 148/82 and therefore directed the assessee not to avail of the SSI benefit from 7 October 1986. It was pointed out in audit that since the assessee was not eligible for exemption under notification 148/82, grant of exemption from duty under notification 175/86 from 1 April 1986 was incorrect and resulted in short levy of duty of Rs.11.74 lakhs during the period from 1 April 1986 to 6 October 1986. The department replied (June 1988) that show cause notice was issued and confirmed for recovery of Rs.3,94,927 for the period from 27 May 1986 to 6 October 1986 and that the remaining amount of Rs.7,79.339 pertaining to April 1986 to 25 May 1986 was not recoverable as the clearances were made on the strength of approved classification list allowing exemption. In a further report (January 1989) it was intimated by the department that the matter was before the tribunal.

vi) Incorrect computation of value of clearances during the preceding year:

According to paragraph (3) of notification 175/86 CE dated 1 March 1986 as amended small scale concessions enunciated in the notification are not applicable to a manufacturer if the aggregate value of clearances of all excisable goods for home consumption from any factory by one or more manufacturers had exceeded Rs.150 lakhs in the preceding financial year.

An SSI unit in Cochin collectorate manufactured plywood, block boards, flush doors, veneers etc., falling under chapter 44 of Central Excise Tariff computed the aggregate value of the clearances of all excisable goods during the financial year 1986-87 at Rs.1,43,071 lakhs and availed of the exemption under Notification 175/86 CE dated 1 March 1986 (as amended) during the year 1987-88. While computing the aggregate value of clearances of all excisable goods for 1986-87 the value of commercial soft wood veneers manufactured in their factory on job work basis, out of the logs supplied by another assessee and cleared at a value of Rs.5,96,241 should have been reckoned by the assessee as required in CBEC's letter dated 24 December 1986. This was however not done. As such, a demand was confirmed for Rs.86,906 being the differential value of goods sold through consignee's agents at Bombay and Hyderabad during 1986-87. After adding these two amounts the aggregate value of clearances exceeded Rs.150 lakhs and hence the assessee became ineligible for concessions under notification 175/86 CE dated 1 March 1986 for the year 1987-88. But during the year 1987-88, the assessee enjoyed full exemption upto 8 May 1988 and effected clearances at concessional rates upto 10 September 1987. On this being pointed out in audit (September 1987) the Asst. Collector stated (May 1988) that the differential value of goods sold through consignee's agents at Bombay and Hyderabad during the year 1986-87 would come to Rs.11,355 only and the aggregate value of clearances of all specified goods during 1986-87 would work out to Rs.1,49,91,273 only. But a show cause notice demanding a duty of Rs.10,50,120 was issued by the department and the demand was confirmed on 19 July 1989. It was stated by the department (March 1990) that the amount was not paid by the assessee.

vii) Excisable goods removed in unassembled/disassembled condition so as to remain within the value limit for SSI concession:

Domestic electrical wet grinders consisting of an in built electric motor (heading 85.01) as the prime mover are classifiable under heading 85.09 attracting effective rate of duty at 20 per cent ad valorem.

In Coimbatore collectorate eleven small scale units consisting of common partners, mostly relatives, and functioning as independent units were engaged in the manufacture of wet grinders and electric motors. Out of these eleven units some units licensed for manufacture of electric motors and wet grinders cleared the electric motor meant for fitment to wet grinders as electric motors and rest of the parts of wet grinders as 'wet grinders without prime mover' separately, though clearance of all these items could be called as 'wet grinders in an unassembled or disassembled condition'. If the manufacturers cleared the goods as 'wet grinders' falling under heading 85.09, they could avail full duty concession up to a limit of Rs.15 lakhs only under notification 175/86 CE dated 1 March 1986. If, instead they clear the goods as electric motor falling under heading 85.01 and parts of wet grinder falling under heading 85.09, they could avail full duty exemption up to Rs.15 lakhs under each heading. Thus so as to avail of the full exemption upto a value of clearance of Rs.30 lakhs, the manufacturers cleared the goods as two different commodities.

Further, these manufacturers cleared the goods to another sister concern which acted as their marketing agency. The goods were in turn sent to various dealers in whose premises; the electric motors are fitted into the 'wet grinders' without the prime mover and sold in retail as 'wet grinders'. This method was adopted with a view to keeping the annual turnover of each individual manufacturer within the exemption limit and to avoid incidence of duty.

In terms of rule 2(a) of the rules for the interpretation of the schedule to the

Central Excise Tariff Act, 1985, if goods are removed in an unassembled or disassembled condition, they are required to be classified under the heading in which the complete or finished goods are classified. Moreover, with effect from 1 March 1989 as per the new note 6 of section XVI, conversion of incomplete or unfinished goods having the essential character of the complete or finished articles, into complete or finished articles, amounts to manufacture. Therefore when the goods are removed from factories as electric motor and 'wet grinders without prime mover', they should be classified as wet grinders only and appropriate duty charged. Also the various dealers who received the 'electric motors' and 'wet grinders without prime mover' from the manufacturers and assembled them as 'wet grinders' before sale should also be licenced in terms of rule 174.

Due to omission of the department in taking effective action, there had been non levy of duty of Rs.3,76,811 from April 1989 to January 1990 in respect of three cases. This was pointed out to the department (March 1990). Reply therefor has not been received (April 1990).

viii) Accumulation of credits in excess of the duty payable on the final products:

As per rule 57A of Central Excise Rules, 1944, credits of duty paid on raw material used in manufacture of final products may be utilised towards payment of duty of excise leviable on final products in manufacture of which such inputs are used.

Central Board of Excise and Customs clarified on 1 July 1986 that credits cannot be utilised for any other purpose except for payment of duty on finished products.

Some instances are given below to highlight cases of accumulation of credits even after payment of duty from RG 23 Part II account for the reason that the rate of duty leviable on final products was lesser than the rate at which duty credit was availed on inputs.

(a) In Chandigarh collectorate a small scale manufacturer of 'flexible LDPE natural printed film availed credits at 30 per cent ad valorem on LDPE granules (raw material) used as inputs. The duty on finished product was paid at concessional rate of 15 per cent ad valorem applicable to small scale manufacturers. As there was no corresponding stock of raw material and finished goods the accumulated credits amounting to Rs.8,05,472 as on 31 March 1989 could not be utilised for the purpose of payment of duty on relevant final products.

The matter was brought to the notice of the department in February 1990; reply has not been received.

(b) Another small scale manufacturer of 'Aluminium Castings' in the same collectorate availed deemed credit on aluminium which was more than the concessional rate of duty applicable on fan components (finished goods). The accumulated credits amounting to Rs.1,94,250 can not be utilised in view of the fact that there was no stock of raw material or finished goods in the factory.

Matter was brought to the notice of the department in February 1990; reply has not been received.

ix) Non clubbing of clearances of other factory belonging to the same manufacturer

A small scale unit, located in the industrial area in Jaipur collectorate was engaged in the manufacture of parts of ball and roller bearings under sub heading 8482.00 and cleared goods of a total value of Rs.14.90 lakhs during 1987-88 without payment of duty in terms of the notification of 1 March 1986. The proprietors of this unit also had interest in a unit in another area of the same collectorate in the manufacture of leaf springs

(sub heading 7320.00). This unit cleared leaf springs manufactured by it during 1987-88 on payment of the concessional rate of duty under the SSI scheme treating these clearances as distinct and separate from those effected from the former unit, notwithstanding the fact that the total value of the parts of ball and roller bearings and the leaf springs cleared from both these units exceeded the monetary ceiling of Rs.30 lakhs in the aggregate, and that the clearances of the two units should have been clubbed together for allowing the concessions and benefits under the scheme. The fact of existence of another unit was also not disclosed by the former unit.

On the irregularity being pointed out by audit in March 1989, the department issued a show cause notice to the former unit in August 1989, and held, in adjudication, that the unit had suppressed the fact about the existence of the other unit with the intention of availing of the benefits of the notification dated 1 March 1986 which were otherwise not available, and that, in this process, the small scale manufacturer had evaded central excise duty totalling to Rs.1,48,874 during the years 1986-87, 1987-88 and 1988-89. Apart from demanding the duty evaded, the department also imposed a penalty of Rs.25,000 on the unit. The position was confirmed by the department in January 1990.

x) Incorrect rate of duty adopted by an SSI unit:

A small scale unit in Baroda collectorate, which was availing Modvat credit on inputs used in the manufacture of final items, was paying duty at a rate of Rs.8.75 being 35 per cent of the tariff rate for its clearances during 1 to 8 April 1986 as per notification 175/86 CE dated 1 March 1986, though this was amended by notification 216/86 CE dated 2 April 1986 and duty at a rate of 10 per cent less than the tariff rate was payable. The incorrect rate adopted, resulted in short levy of duty of Rs.1,63,168. On this being pointed out (May 1989) the department accepted the objection (August 1989). Details of recovery are not received.

xi) Irregularity in allowing to opt out of the scheme in the middle of the financial year:

Under the notification 175/86 CE issued on 1 March 1986 as amended on notification 216/86 CE on 2 April 1986 a small scale manufacturer may either avail of Modvat credit in respect of specified goods and pay excise duty at normal rates reduced by 10 per cent during a financial year or avail full exemption upto the first clearance value of Rs.15/30 lakhs and thereafter at concessional rate (normal duty less 10 per cent) during the financial year. However, he cannot opt out of the scheme in the middle of the financial year with a view to avail of the full exemption benefit. The Central Board of Excise and Customs clarified on 15 April 1987 that a manufacturer may be permitted to opt out of Modvat scheme so as to avail of the full exemption in the same financial year only in cases where he filed a declaration but had not actually paid duty on their clearances or had not taken any credit of duty paid on inputs.

A manufacturer of welding electrodes in Patna collectorate filed declaration on 31 March 1986 for availing Modvat credit and was allowed to pay concessional rate of normal duty reduced by 10 per cent. During the months of April and May 1986 he availed of the Modvat credit and utilised the same towards payment of duty on the final product Thereafter he withdrew from availing the Modvat scheme and began to avail of the full exemption. This resulted in short payment of duty to the extent of Rs.1,56,222 during the financial year 1986-87.

xii) Acceptance of irregular payment of duty on exempted goods and consequential loss of revenue:

Three small scale units in Shillong collectorate supplied veneers to an assessee in the same collectorate who was engaged in the manufacture of commercial plywood and block board. The small scale units, although eligible for appropriate exemption in full up to Rs.15 lakhs clearance, had paid duty at 5 per cent ad valorem on the basis of which the assessee had taken Modvat credit (including deemed credit) of Rs.60,889 during 1987-88 and of Rs.76,793 during 1988-89. Acceptance of central excise duties paid by the small scale units had entailed availment of benefits not contemplated either in the SSI scheme or under the central excise rules. The irregular availment of Modvat credit of over Rs.1.37 lakhs being an avoidable one, constituted loss of revenue.

xiii) Irregularities in departmental control:

Instructions were issued in Board's letter dated 19 August 1978 requiring maintenance of a Central Registry in respect of SSI units exempted from licensing control. In Cochin collectorate it was observed that in the Range Office as well as the Divisional Office no centralised register was maintained indicating the details of SSI units availing exemption from licensing control, the code number allotted to each etc. In the absence of such a Registry it is not possible to watch the receipt of declarations from the units and ascertain the quantity/value of clearances made by each unit. It was stated (March 1990) that necessary instructions had been issued to maintain 'Central Registry' at the divisional level and range level immediately.

The registration of SSI units automatically lapses in cases where the total gross investment (i.e., without depreciation) on plant and machinery exceeds Rs.35 lakhs during a particular year. There is no machinery in the department for ensuring that the value of investment on plant and machinery in respect of registered SSI units is within the prescribed limits. It was stated by the department (March 1990) that it was the responsibility of the SSI department to verify from time to time whether the SSI units were within the exemption limits or not in respect of investment on plant and machinery and that the only requirement under notification 175/86 was to verify whether the unit had a SSI certificate from the competent authority.

As per notification 11/CE(NT) dated 15 April 1988 exemption from licensing control stands withdrawn as soon as the value of clearances by the unit crosses the limit of Rs.10 lakhs. In respect of two units in Cochin collectorate no licence was issued even though the value of clearances had exceeded the limit of Rs.10 lakhs.

The aforesaid appraisal was sent to the Ministry of Finance in October 1990; their reply has not been received (December 1990).

STATEMENT I

(See para 1)

Units with annual turnover of value of	1986-87		1987-88	
	No. of units	Amount of duty in Rs. lakhs	No. of units	Amount of duty in Rs. lakhs
i) Less than Rs.15 lakhs	17445	151.78	19034	158.65
ii) More than Rs.15 lakh but less than Rs.30 lakhs	5548	5595.50	6649	6749.82
iii) More than Rs.30 lakhs but less than Rs.75 lakhs	3901	10553.90	5015	14577.90
iv) More than Rs.75 lakhs but less than Rs.150 lakhs	1213	13648.84	1664	23802.03
Total	28107	29950.02	32362	45288.40

Units with annual turnover of value of	1988-89 No. of units	1988-89 Amount of duty in Rs. lakhs	1989-90 No. of units	1989-90 Amount of duty in Rs. lakhs
i) Less than Rs.15 lakhs	19980	175.11	18648	171.51
ii) More than Rs.15 lakhs but less than Rs.30 lakhs	7224	7880.09	5898	6374.99
iii) More than Rs.30 lakhs but less than Rs.75 lakhs	6020	19445.99	4070	11858.16
iv) More than Rs.75 lakhs but less than Rs.150 lakhs	2427	28352.68	1367	12930.54
Total	35651	55853.87	29983	31335.20

STATEMENT II (See para 6)

Sl. No.	Collectorate	Total amount of duty forgone		Cases referred in para 6.1		Cases referred in para 6.2	
		No. of cases	Amount in Rs. lakhs	No. of cases	Amount in Rs. lakhs	No. of cases	Amount in Rs. lakhs
1.	Delhi	46	323.18	27	194.20	19	128.98
2.	Chandigarh	14	103.55			14	103.55
3.	Vadodara	31	87.03	5	9.03	26	78.00
4.	Bombay II	9	59.07	8	53.22	1	5.85
5.	Ahmedabad	13	51.82			13	51.82
6.	Indore	11	49.46	8	45.70	3	3.76
7.	Bombay III	7	39.75	7	39.75		
8.	Hyderabad	3	31.82			3	31.82
9.	Bhubaneswar	4	29.53	1	1.58	3	27.95
10.	Coimbatore	6	32.96	2	10.44	4	22.52
11.	Bombay I	5	23.07	2	3.04	3	20.03
12.	Bangalore	4	19.30	3	11.43	1	7.87
13.	Tiruchirapally	1	15.65			1	15.65
14.	Jaipur	2	12.24	1	8.55	1	3.69
15.	Rajkot	7	11.59	5	8.94	2	2.65
16.	Belgaum	2	10.28	1	1.52	1	8.76
17.	Pune	2	8.63	2	8.63		
18.	Madras	2	7.49	1	2.47	1	5.02
19.	Calcutta II	1	5.07	1	5.07		
20.	Calcutta I	1	4.70	1	4.70		
21.	Kanpur	1	4.66	1	4.66		
22.	Guntur	1	4.50			1	4.50
23.	Cochin	1	2.15			1	2.15
24.	Allahabad	1	2.84			1	2.84
25.	Meerut	2	2.20			2	2.20
26.	Nagpur	1	1.75			1	1.75
	Total	178	944.29	76	412.93	102	531.36

STATEMENT III (See para 7)

Sl. No.	Collectorate	No. of cases	Earliest date of crossing the limit of Rs.15/30 lakhs	Value of clearances made after crossing the limit Rs.in lakhs	Differential duty payable:Rs. in lakhs
1.	Vadodara	5	November 1986	136.64	6.10
2.	Cochin	6	October 1986	38.10	5.17
3.	Indore	6	August 1986	164.80	1.70
4.	Bombay III	2	August 1987	13.56	1.47
5.	Allahabad	1	June 1988	8.58	0.45
6.	Kanpur	2	July & September 1988	9.65	0.71
7.	Delhi	6	March 1987	15.23	1.09
8.	Belgaum	1	July 1987	4.88	0.97
9.	Rajkot	1	March 1988	34.36	0.81
10.	Coimbatore	2	May 1986	10.40	0.79
11.	Bombay II	3	December 1987	73.11	0.70
12.	Jaipur	1	February 1987	77.05	0.55
13.	Meerut	2	October 1986	5.25	0.52
14.	Bolpur	1	July 1989	79.16	0.51
15.	Bangalore	3	June 1986	6.58	0.48
16.	Ahmedabad	1	September 1989	18.00	0.37
17.	Chandigarh	3	September 1986	5.17	0.27
18.	Bhubaneshwar	1	February 1989	18.39	0.17
	Total	47		718.91	22.83

STATEMENT IV

(See para 8)

Sl. No.	Collectorate	Amount of duty involved (Rs. in lakhs)
1.	Delhi	14.18
2.	Bhubaneswar	10.36
3.	Kanpur	6.39
4.	Shillong	4.48
5.	Meerut	3.99
6.	Cochin	1.94
7.	Chandigarh	1.40
8.	Coimbatore	0.96
9.	Madras	0.93
10.	Bombay II	0.70
11.	Indore	0.39
12.	Belgaum	0.28
	Total	46.00

STATEMENT V

(See para 9)

Sl.No.	Collectorate	No. of cases	Amt. of duty involved Rs. in lakhs
1.	Bombay I	8	3.54
2.	Delhi	19	7.34
3.	Goa	2	0.33
4.	Bombay II	4	2.11
5.	Bombay III	4	0.34
6.	Pune	1	0.44
7.	Ahmedabad	2	0.52
8.	Vadodra	1	0.29
	Total	41	14.91

STATEMENT VI

(See para 10)

Sl.No.	Collectorate	No. of cases	Amt. of duty involved Rs. in lakhs
1.	Bhubaneswar	1	19.02
2.	Coimbatore	3	2.96
3.	Hyderabad	1	1.02
	Total	5	23.00

STATEMENT VII

(See para 11)

Sl.No.	Collectorate	No. of cases	Amt. of duty involved Rs. in lakhs
1.	Shillong	6	144.83
2.	Delhi	11	31.53
3.	Jaipur	6	8.51
4.	Chandigarh	8	8.93
5.	Bolpur	1	4.53
6.	Calcutta II	1	4.31
7.	Madras	6	2.91
8.	Allahabad	1	1.79
9.	Coimbatore	1	0.81
10.	Bangalore	1	0.19
	Total	42	208.34

STATEMENT VIII

(See para 12)

Sl.No.	Collectorate	No. of cases	Amt. of duty involved Rs. in lakhs
1.	Madras	15	198.50
2.	Hyderabad	7	55.51
3.	Indore	5	46.84
4.	Bangalore	7	46.27
5.	Cochin	5	27.11
6.	Ahmedabad	2	10.06
7.	Belgaum	5	17.17
8.	Jaipur	2	4.36
9.	Baroda	1	3.86
10.	Calcutta II	2	2.39
11.	Guntur	1	1.56
12.	Bombay I	1	4.08
13.	Bombay III	1	1.21
14.	Delhi	8	111.27
15.	Pune	1	1.01
16.	Shillong	1	0.62
	Total	64	531.82

STATEMENT IX

(See para 13)

Sl.No.	Collectorate	No. of cases	Amt. of duty involved Rs. in lakhs
1.	Delhi	4	23.51
2.	Bangalore	5	7.72
3.	Indore	1	7.15
4.	Coimbatore	1	4.56
5.	Bombay III	2	1.06
6.	Madras	1	0.75
7.	Jaipur	1	0.74
8.	Bombay II	2	0.35
	Total	17	45.84

1.04 Submission and finalisation of monthly return (R.T.12)

(1) Introduction

Under self removal procedure, excisable goods manufactured are removed by the manufacturer without excise supervision or assessment by the department. The manufacturer himself determines the duty and on payment of duty, he removes the goods. Rule 173G(3) of the Central Excise Rules requires that every assessee shall file a monthly return in form R.T.12 (in quintuplicate) with the jurisdictional Superintendent of central excise showing therein quantity of excisable goods manufactured or received under bond during the month, the quantity (if any) used within the factory for manufacture of another commodity, the quantity removed on payment of duty, duty

paid on such goods, particulars of gate passes or like documents under which such quantity was removed, the quantity removed for export and such other information as may be prescribed by the Collector. This return is accompanied by duplicate copy of gate passes or like documents issued, receipted copy of treasury challan on which deposits in personal ledger account were made, original and duplicate copies of personal ledger account and also of accounts in form R.G.23 etc. This monthly return (R.T.12) is required to be filed by the assessee within 5 days after the close of each month for finalisation of the assessment by the department. The prescribed period of five days may be extended by the Collector up to 21 days. If there is no production or removal of excisable goods during any month the assessee is required to submit a nil return unless otherwise directed by the Collector. Penal provisions are also attracted if an assessee fails to comply with these provisions.

(2) Procedure

The jurisdictional Superintendent of Central Excise is responsible to keep a watch over the receipt of R.T.12 returns from the assessees under his jurisdiction and their assessment in time. On receipt of R.T.12 return, cent per cent check is exercised by the range staff. After checks have been exercised, the assessment is completed. The duty calculated and paid by the assessee is adjusted towards such assessed amount. If the amount assessed is more, the assessee is required to make good the deficiency within 10 days. Similarly, if the duty assessed is lower, the assessee is advised to take credit for the excess duty paid in his personal ledger account. The assessment memorandum is completed and signed by the Superintendent and a copy of the assessed R.T.12 is sent to the assessee for further necessary action.

(3) Scope of Audit

A review of R.T.12 returns received from the assessees and assessed by the department for the period 1987-88 to 1989-90 (up to 31 December 1989) was conducted in the range offices of 32 collectorates. The scope of the review was primarily designed to see

i) that the R.T.12 returns were filed by the assessees within the specified period;

ii) that action was taken by the department in respect of non receipt/delayed receipt of R.T.12 returns from the assessees;

iii) that the assessments of the returns were completed by the department within the prescribed period;

iv) that there was justification for the non finalisation of R.T.12 returns and for the provisional assessment of the returns.

v) that demands were raised through assessment memoranda for short payment of duty and reversal of wrong Modvat credits and that the demands were promptly honoured by the assessees;

vi) that show cause notices were issued in case of assessees who had failed to honour the demands.

(4) Highlights

A review of the procedure prescribed in the central excise rules in respect of R.T.12 returns was conducted. The results of review are contained in the succeeding paragraphs which highlight the following:-

- **Non-receipt/delay in receipt of R.T.12 returns.**
- **Non assessment/delay in assessment of R.T.12 returns.**
- **Delay in finalisation of R.T.12 returns provisionally assessed.**
- **Show cause notice cum demands for Rs.288.78 lakhs were not issued within the limitation period of six months on failure of the assessee to pay the duty short assessed.**
- **Appropriate follow up action was not taken on show cause notices cum demands resulting in delay in recovery of dues amounting to Rs.58.48 crores.**
- **Miscellaneous irregularities (Rs.5.98 crores).**

(5) Non submission and delay in submission of R.T.12 returns

As per rule 173G(3) of the Central Excise Rules, 1944 the assessee is required to submit R.T.12 within five days (which may be extended by the collector up to 21 days) after close of each month. The extension up to 21 days, as contemplated, in the rules is not automatic as the Collector has to take into account the variety, extent of the production and frequency of removals. As per rule 173Q(d), whenever any manufacturer contravenes the provisions of the rules with an intent to evade payment of duty then all the goods shall be liable to confiscation and the manufacturer is also liable to a penalty not exceeding three times the value of the excisable goods in respect of which any contravention has been committed or Rs.5,000 whichever is greater.

i) Test check revealed that 5188 R.T.12 returns relating to 1987-88 to 1989-90 (up to December 1989) were not submitted by the assessees.

Collectorate wise position of non-submission of returns is given in Statement I.

There were also delays ranging from 21 days to over a year in the submission of R.T.12 returns as indicated below :-

Period of delay	No. of returns yearwise		
	1987-88	1988-89	1989-90
21 days to 3 months	1863	1751	1226
3 months to 6 months	486	141	329
6 months to 1 year	83	174	99
over 1 year	26	59	10

ii) As per instructions issued by the Board of Central Excise and Customs in their letter No.F.22/3/69-CX(A) dated 21.4.69 a register is required to be maintained sector wise/range wise showing the date of receipt of R.T.12 returns, date of assessment, total duty paid/payable, short levy etc.

It was noticed that this register was either not maintained or where maintained the entries were incomplete.

iii) In Cochin collectorate, 2788 returns were not submitted by the automobile body builders. No action was taken by the department to obtain them.

iv) An assessee in Bangalore collectorate manufacturing crown assembly for watches falling under sub heading 9111.00 took central excise licence in September 1985. But the assessee had not submitted R.T.12 returns. On this being pointed out in audit (June 1989) the department replied (October 1989) that a case has been booked against the assessee in July 1989 for violation of Central Excise Rules and for non submission of R.T.12 returns.

(6) Non assessment/delay in assessment of R.T.12 returns

At the time of introduction of 'self removal procedure' it was stipulated that assessments on R.T.12 returns should be finalised before the receipt of the next return i.e., within one month and if for some reason it cannot be finalised within one month, its assessment should be completed within a period of three months of its submission in any case. Section 11A of the Central Excise Act requires that duty not paid or short paid should be demanded within six months from the date of submission of return. It is, therefore, necessary that assessments on R.T.12 returns should be completed in time so that the demands for differential duty, if any, may not become barred by limitation.

During a review of the records in 29 collectorates it was noticed that 8169 R.T.12 returns pertaining to 1987-88, 8077 pertaining to 1988-89 and 50201 pertaining to 1989-90 (received upto December 1989) were pending finalisation (April 1990).

Collectorate wise position is given in statement II.

There were also delays in assessments ranging from 3 months to more than one year in finalisation of 153841 returns as under:-

Period of delay	No. of returns year wise		
	1987-88	1988-89	1989-90
3 months to 6 months	52374	54378	29395
6 months to 1 year	3748	5355	2269
over 1 year	2607	2408	1307

A few cases of delay/non finalisation of returns are discussed below :-

i) Collectorate Calcutta II

The classification list and price list submitted by an assessee were approved by the department finally but the assessment from March 1986 were not completed. The department stated (June 1990) that assessments for 1986-87 and 1987-88 had since been completed and that for the year 1988-89 were in progress.

ii) Collectorate Bangalore

(a) 24 returns relating to 1987-88 in respect of two assessees (duty returned Rs.1.80 crores) were pending finalisation due to stay order of High Court/CEGAT given in March 1988/October 1988. Department had not taken any action to get the stay vacated.

(b) In another case relating to 1987-88 (12 returns), CEGAT decided the classification dispute in favour of assessee (September 1989). Although the department decided not to file special leave petition in the Supreme Court, the assessments had not been finalised so far (April 1990).

(c) Thirty five returns relating to one public sector undertaking manufacturing telephone (duty returned Rs.47.15 crores) for 1988-89 have not been assessed (February 1990). Reasons for pendency of assessment have not been received from the department (April 1990).

(d) Assessment of 13 returns for 1988-89 (Rs.20.30 crores) was held up for want of invoices, in respect of sales effected through depots by a electric motors manufacturing unit. The department had not taken adequate action to obtain the invoices.

(7) Delay in finalisation of R.T.12 provisionally assessed

Rule 9B of the Central Excise Rules, 1944 provides for provisional assessment to duty being made in certain circumstances stated therein viz., pending the production of any documents, furnishing of any information or completion of any test or enquiry, etc. The Central Board of Excise and Customs issued instructions in March 1976 which were reiterated in October 1980 that provisional assessments, both on account of classification and valuation should be finalised normally within three months and in any case not later than six months.

57694 provisional assessment cases in 32 collectorates were pending finalisation as on 31 December 1989 as detailed below :-

	due to valuation dispute	due to classification dispute
1. Less than one year	21639	5002
2. One to three years	14732	4368
3. Three to five years	3970	1505
4. Over five years	5239	1239
Total	45580	12114

Some of instances of delay in finalisation of R.T.12 returns provisionally assessed are discussed below:-

i) Collectorate Bangalore

(a) Prior to introduction of New Tariff sub item 17(4) in the Finance Act, 1982, the shells/stides/printed packets were being classified under old tariff item 68 and were eligible for exemption under a notification dated 30 April 1975. Consequent on the introduction of a new sub item 4 to tariff item 17 in the Finance Act, 1982, the assessee was informed that shells/stides/printed cigarette packets would now fall under tariff item 17(4) and were liable to duty. The court having granted stay on the case filed by the assessee in 1982, subject to the execution of B.13 bond with 25 per cent bank guarantee, all assessments from March 1982 onwards were made provisionally. The department has not taken any action to get the stay vacated. The amount of differential duty involved works out to Rs.504.51 lakhs for the period March 1982 to December 1989.

(b) In case of another unit manufacturing vegetable oils etc., falling under chapter

15, the assessments of R.T.12 returns (duty involved Rs.2.49 lakhs) relating to April 1986 to March 1987 were made provisionally during 1986-87 for want of sales invoices in respect of stock transfers to sales depots. The department had not taken any action to obtain these sales invoices and finalise the assessments.

(c) An assessee manufacturing panels, modules, switch gears etc., (heading 85.37) was provisionally assessed from January 1984 onwards as the price list filed by him in part IV contained price variation clause. There was no justification for keeping the assessments provisional from January 1984 since the assessee had paid the differential duty of Rs.3,77,099 on account of price escalation in 1984-85, 1985-86 and 1986-87.

(d) In respect of an assessee manufacturing biscuits (heading 19.05) the assessments from April 1986 to March 1987 were made provisional. From April 1987 onwards, the returns were not assessed due to a dispute in respect of a brand name owner on whose behalf the licensee was manufacturing the products. Even after the case was decided by the High Court of Karnataka in favour of the assessee in February 1986 the department had not taken action to finalise the assessments. The duty returned by the assessee from 1987-88 to December 1989 amounted to Rs.16.05 lakhs.

ii) Collectorate Jaipur

(a) An assessee manufacturing cement (sub heading 2502.20) filed the classification list with effect from 1 May 1988 for paying basic excise duty at Rs.155 per tonne in terms of a notification dated 1 March 1988 extending this rate of duty to a factory which commenced production on or after 1 April 1986. The classification list was, however, not approved by the Assistant Collector on the ground that the factory was not a new one but only an extension of the existing one. As per the adjudication order dated 15 March 1989, the duty was leviable at Rs.205 per tonne. The assessee had been paying duty at Rs.205 per tonne with effect from 1 May 1988 pending final approval of the classification list. However, with effect from 22 November 1988, the assessee unilaterally started paying duty at the concessional rate of Rs.155 per tonne. A show cause notice cum demand was issued by the department on 31 January 1989 for differential duty, but the assessee obtained an interim stay order from the Rajasthan High Court on 9 March 1989.

The interim stay order of the High Court was issued to the department, returnable within six weeks. The department was, therefore, legally required to file its reply and objections within the specified period and to ensure that the interim stay granted by the Court was vacated at the earliest. But, it was only on 15 January 1990 that the department sent its affidavit to the Central Government standing counsel and asked him to get the stay vacated or to get writ petition dismissed. The action taken by the standing counsel in this regard was not ascertainable.

Failure to initiate timely action to get the interim stay vacated and the writ petition dismissed resulted in the differential duty amounting to Rs.1.45 crores being locked up for the period from 22 November 1988 to 31 May 1989 alone.

(b) An assessee manufacturing fabrics chargeable to ad valorem duty filed price lists in respect of its products from time to time. These were approved subject to production of sales invoices for verification. Though the prices should normally have been verified with reference to the invoices at the time of assessment of the monthly R.T.12 returns, the invoices were not produced by the assessee in time. Instead of ensuring that these invoices were submitted alongwith the R.T.12 returns to facilitate their final assessment, the department assessed the R.T.12 returns furnished by the assessee from

April 1985 to March 1989, involving a total duty of Rs.184.68 lakhs provisionally on execution of B.10 bond for Rs.1,00,000 supported by a bank guarantee of Rs.25,000 only.

The non finalisation of the assessments after verification of the sales invoices was pointed out by audit in April 1988, December 1988 and November 1989. The department stated (January 1990) that a good number of invoices had been received subsequently and four demands for Rs.35.83 lakhs for the period from January 1988 to June 1989 had also been issued. The department added that the Range Officer had been directed to finalise early the pending R.T.12 returns of periods prior to January 1988. Further progress of finalisation of the R.T.12 returns from April 1985 to December 1987 and particulars of demands for duty have not been received (May 1990).

iii) Collectorate Belgaum

(a) A case of short levy of Rs.1.49 crores on account of classification of blended yarn under the erstwhile tariff item 18 III (i) instead of 18 III (ii) during the period from 1 August 1985 to 31 January 1988 was commented upon, in para 3.19 (1) of Audit Report for the year ended 31 March 1988.

Based on the above audit observation, the department issued show cause notices cum demands from April 1986 to September 1987. In 1987 the assessee got a stay order from the High Court of Karnataka, stopping further operations of show cause notices. As a result, the assessments for the periods from October 1986 to December 1989 were made provisionally. The department has not taken effective action to get the stay vacated.

(b) An assessee manufacturing a product known as SHRINKEMP 'N' AND 'H' from May 1989 classified the same under sub heading 3816.00 attracting duty at the rate of 15 per cent which was provisionally accepted by the department. Subsequent chemical examination in June 1989 revealed that the product was a special type of cement falling under sub heading 2502.90 attracting duty at the rate of 40 per cent. Based on the chemical examination report, it was open to the department to have the product classified under sub heading 2502.90 and demand duty at 40 per cent ad valorem. Instead the department continued to collect duty at 15 per cent by obtaining B.13 bonds for Rs.5 lakhs with bank guarantee for Rs.1.5 lakhs and assessed the returns provisionally from June 1989 to December 1989. The differential duty recoverable works out to Rs.20.64 lakhs.

(c) Provisional assessments relating to a unit manufacturing paper (chapter 48) were not finalised due to non receipt of final cost data in respect of ream wrapper captively consumed. Even though the licensee had finalised the accounts for 1987-88 and 1988-89; the department had not taken action to obtain cost data and finalise the provisional assessments. The differential duty payable works out to Rs.0.62 lakhs.

iv) Collectorate Calcutta II

(a) The assessments of monthly returns of an assessee, manufacturing 'Insulated wires and cables' (sub heading 8544.00), were completed finally up to December 1980. From January 1981 onwards the assessments were made provisional up to November 1989. The reason for the provisional assessment was that of price variation clause and abatement claimed on account of freight, insurance, turnover tax, sales tax and transport charges on the wholesale price. On 24 April 1985 the High Court directed the department to assess the said product afresh after allowing the abatement claimed in accordance with the decision of the Supreme Court in the case of M/s.Bombay Tyre {1983 ELT 860 (SC)}. Hence there was no valid ground for the

department for not completing the assessments finally.

(b) A manufacturer of motor cars had been submitting R.T.12 returns for I.C. engines and parts thereof (chapter 84) and assessment for which were finalised up to October 1988 without any comments being recorded in the assessment memorandum. The assessment had been made provisional from November 1988 onwards on the ground that the assessee should produce gate pass wise invoices in respect of goods sold from different zonal warehouses. Since the department had allowed the assessee to clear goods on the basis of invoice price from October 1986 the responsibility of obtaining relevant invoices lay with the department. The assessments from November 1988 were pending finalisation.

This was pointed out by audit in March 1990 and a statement of facts was issued in April 1990; reply from the department has not been received.

(c) In the case of a manufacturer of paints the assessments were pending finalisation since January 1977. The assessments of R.T.12 returns for the years 1981 and 1982 were made provisional since valuation was under dispute before the CEGAT. Since there was no dispute on valuation for the earlier period there was no reason as to why the assessments from January 1977 to December 1980 could not be finalised.

(d) In case of an assessee monthly returns relating to organic surface active agents (chapter 34) were provisionally assessed although no dispute was on record either on valuation or on availment of exemption. The assessments had been made provisional from December 1987 to August 1989.

Monthly returns relating to artificial or synthetic resin (chapter 39) captively consumed and exempted from duty under a notification dated 2 April 1986 had also not been finalised from April 1987 to November 1989 although no reason for such provisional assessment exists.

In respect of organic chemicals (chapter 29) assessments were made provisional on the ground that price lists were yet to be approved from 1 October 1975 to 28 February 1986 (under erstwhile tariff item 68) and for the period 1 March 1986 to 31 October 1989 subject to finalisation of annual accounts of the company. But the approval of price lists should have been finalised by the department on their own initiative. In respect of the period from 1 March 1986 to 31 October 1989, the department should have taken appropriate action to finalise the assessments since the annual accounts of the assessee had been finalised up to 1988-89. But no action had been taken by the department in this regard (February 1990).

Reply to the statements of facts issued in April 1990 has not been received.

v) Collectorate Indore

(a) Four manufacturers of cement in Indore division were permitted to clear the goods at concessional rate of Rs.115 per tonne, as per notification issued on 1 March 1989, even though requisite certificate from the Director of Industries had not been given.

Despite lapse of a period over six months the parties have not furnished the required certificate. Total amount of concession viz., duty leviable at normal rate less duty paid at concessional rate availed by these four manufacturers upto 31 August 1989 works out to Rs.43.98 lakhs.

(b) In six units provisional assessments were done due to non approval/provisional approval of classification lists/price list. The provisional assessment even for the period from 1983-84 and onwards have not been finalised so far. Total amount of duty involved works out to Rs.749.95 lakhs.

vi) Collectorate Bombay I

(a) In respect of one assessee R.T.12 returns from April 1988 onwards were assessed provisionally pending approval of classification list. The classification list was subsequently approved on 23 December 1988. However, no action was taken by the department to finalise the provisional assessment (September 1989).

(b) In respect of another assessee R.T.12 returns for the months of February 1989 and March 1989 were assessed provisionally pending approval of price list. Though the relevant price lists were approved in March 1989, action to finalise the R.T.12 assessment was not taken (March 1990).

(8) Failure to issue show cause notices cum demands for duty within prescribed time limit

As per rule 173 I of Central Excise Rules, 1944, the assessing officer shall on the basis of information contained in the return filed by the assessee and after such further enquiry as he may consider necessary assess the duty due on goods removed and complete the assessment memorandum and send a copy of the return so assessed to the assessee.

The duty determined and paid by the assessee under rule 173F is adjusted against the duty assessed by the proper officer under sub rule (1) of rule 173I and where the duty so assessed is more than the duty determined and paid by the assessee, the assessee has to pay the differential duty by making a debit entry in the account current within ten days of receipt of the copy of the assessed return from the assessing officer and where such duty is less, the assessee has to take credit in the account current. Where the assessee has not paid the duty demanded on the assessed R.T.12 within ten days it is necessary to issue a show cause cum demand notice within six months so that demand is not barred by limitation under section 11A of the Central Excises and Salt Act, 1944, resulting in loss of revenue to Government.

Test check revealed that in cases where the assessees did not pay the differential duty within ten days as per remarks of the assessing officers on the R.T.12s, show cause notices demanding the differential duty aggregating to Rs.288.78 lakhs in 1205 cases were not issued within the prescribed period of six months.

Collectorate wise position is given in Statement III.

A few specific instances are cited below :-

i) Collectorate Bangalore

A differential duty of Rs.2.74 lakhs was demanded at the time of assessment of R.T.12 from November 1987 to February 1988 from an assessee in Bangalore collectorate manufacturing canvas shoes (sub heading 6401.11) for a brand name owner. It was, however, observed that the demand indicated in the assessment memorandum was not followed up by the issue of a show cause notice though the assessee did not pay the duty demanded within ten days. The department replied (November 1989) that the assessee had gone in appeal before CEGAT against the orders of the Collector of Central Excise. It was, however, seen that the appeal filed by the assessee in CEGAT was on a different issue which related to the manufacture of goods without a licence. The department should, therefore, have issued a show cause notice and followed up the case.

ii) Collectorate Aurangabad

In the assessment of 24 R.T.12 returns for the year 1988-89, a total short payment of Rs.39,87,007 was noticed. Out of this a sum of Rs.36,061 had been recovered. The balance Rs.39,50,946 relates to one assessee whose assessment from January 1988 to June 1988 were initially made provisionally. The unit was subsequently closed and R.T.12 returns from January 1988 to June 1988 were finalised on 31 July 1989. The assessee did not pay the amount. No show cause cum demand notice was issued as required under section 11A. Department stated that the action under rule 230 of the Central Excise Rules, 1944, was sought to be initiated for recovery. It was further reported that no action could be taken as there was no

stock in bonded store room, no stock of raw material, as well as machinery, indicative of possible loss of revenue.

iii) Collectorate Bombay III

In respect of an assessee, short payment of duty of Rs.1,44,300 was pointed out on R.T.12s for August 1988 and September 1988. Though the assessee did not pay the amount within ten days, no show cause cum demand notice was issued. Action taken by the department for recovery has not been intimated (April 1990).

In respect of another assessee, total short payment of Rs.1,91,608 was pointed out in R.T.12 assessment from April 1988 to December 1988. The assessee did not pay the amount and no show cause cum demand notice was issued (January 1990).

Replies to the statement of facts issued in both cases (February, March 1990) had not been received (April 1990).

iv) Collectorate Indore

(a) In one unit of Gwalior Division, the assessing officer demanded a differential duty during the period from March 1987 to March 1989 on R.T.12s. The assessee did not pay the duty. But a show cause notice demanding duty was not issued by the department as required under the rules. Due to non issue of show cause notice central excise duty of Rs.18.33 lakhs was foregone.

(b) In another unit of Bhopal division no show cause notice was issued to the assessee from April 1988 to September 1988 demanding a short levy of duty of Rs.8.62 lakhs.

(c) In a unit of Bhilai division, non issue of formal show cause notice from August 1988 to September 1989 had resulted in loss of revenue of Rs.2.13 lakhs.

(d) In Ujjain division, classification lists were not approved finally by the proper officer in respect of four assessees engaged in the manufacture of copper circles during 1988-89. The R.T.12 returns, however, continued to be assessed finally as usual. At the time of approval of classification lists proper officer did not allow the benefit of concessional rate of duty and approved classification lists at normal rate of duty. Subsequently show cause cum demand notices were issued to the assessee during March 1989 demanding a differential duty of Rs.7.83 lakhs. As the show cause notices were issued during March 1989 and R.T.12 returns were assessed finally, the show cause notices for the period prior to September 1988 became time barred. Thus show cause notices on 26 returns involving a duty of Rs.4.08 lakhs were not issued within the stipulated period of six months.

v) Collectorate Delhi

In 22, 15 and 13 returns pertaining to 1987-88, 1988-89 and 1989-90 (upto December 1989) respectively show cause notices were issued after six months for Rs.16,16,878, Rs.11,00,645 and Rs.1,54,465 respectively. In six cases of 1988-89 an amount of Rs.39,272 only had been recovered.

The remaining sum of Rs.28,32,716 relating to 1987-88, 1988-89 and 1989-90 (up to December 1989) is not likely to be recovered from the various assessees where show cause notices were issued after six months.

(9) Delay in recovery

Short levies pointed out on R.T.12 returns are required to be paid within ten days by the assessees. On failure to do so, a show cause notice cum demand should be issued within six months for recovery of the amount.

Test check revealed that in 18428 cases, though show cause notices for differential duty amounting to Rs.68.79 crores were issued by the department within the prescribed period of six months, appropriate follow up action was not taken, resulting in delay in recovery of Rs.58.48 crores as indicated in statement IV.

A few such cases are given below :-

i) In case of an assessee in Calcutta II collectorate show cause notices were issued by the department on 22 July

1985 on availment of extra discount not passed on to the customers.

After a lapse of 33 months, the first hearing of the aforesaid show cause notices was fixed on 29 April 1988.

The show cause notices in question are still pending (March 1990). No reply has been received from the department.

ii) As a result of assessment of R.T.12 returns a sum of Rs.198.25 lakhs became due from assessees in respect of 258 returns relating to Bangalore collectorate and 196 returns relating to Belgaum collectorate for the period 1987-88 to 1989-90 (up to December 1989). Though show cause notices were issued within the six months period, the same had not yet been adjudicated in most of the cases thereby leading to non recovery.

iii) Out of 773 show cause cum demand notices issued within the stipulated period of six months in Indore collectorate for Rs.324.83 lakhs, a sum of Rs.50.47 lakhs alone was recovered and the remaining amount of Rs.274.36 lakhs is yet to be recovered.

Reasons for delay in recovery were not intimated by the department.

iv) A manufacturer of cement (Tariff item 23) under Allahabad collectorate purchased iron and steel slugs (Tariff item 68) being used as inputs in manufacture of cement and availed credit of duty paid on the inputs under a notification dated 4 June 1979. It was noticed during audit (November 1986) that manufacturer had taken credit amounting to Rs.29,78,123 during March, April and September 1986 in respect of duty paid on iron and steel slugs and utilised the same towards payment of duty on the final product. As the aforesaid notification had been rescinded on 1 March 1986 and the goods in question were not specified as input for grant of benefit of credit under the Modvat scheme introduced with effect from 1 March 1986, taking and utilisation of credit amounting to Rs.29,78,123 on or after 1 March 1986 was irregular. Although the department had objected to the irregular credit taken during April and September 1986 by making remarks while assessing RT.12 returns for those months, no remarks had been made for irregular credit of Rs.2,69,753 taken during March 1986. Besides on failure of the assessee to refund the amount as per remarks on RT.12 returns for April and September 1986, no show cause notice had been issued by the department for recovery of the amount.

On the matter being pointed out by audit (November 1986), the department issued a show cause notice demanding entire amount of Rs.29,78,123 in February 1987. It has been intimated (April 1990) that the demand had been confirmed in March 1990. Report on recovery of duty has not been received (June 1990).

(10) Other irregularities

i) A State Electricity Board under Chandigarh collectorate cleared electricity, without payment of duty amounting to Rs.208.35 lakhs, during August 1982 to September 1984. The mistake was pointed out by the department at the time of assessing the monthly R.T.12 returns but no show cause notice was issued. Although Rs.166.56 lakhs had been recovered from the Board in instalments during September 1984 to May 1989, yet rectificatory action was not initiated to recover the remaining amount of Rs.41.79 lakhs. (This amount had already been recovered by the Electricity Board from the consumers).

On the omission being pointed out in audit (March 1985) the department repeatedly stated (July 1986 - June 1989) that efforts were being made to recover the amount at the earliest.

The fact remains that the amount has been outstanding for a period over five years. The omission not only resulted in non realisation of government money

amounting to Rs.41.79 lakhs but also led to substantial financial accommodation to the assessee in the shape of interest of Rs.29.25 lakhs.

ii) In the case of a unit under the Bangalore collectorate manufacturing foot wear, falling under heading 64.01, assessments were made provisionally for the reason that the assessee claimed exemption under a notification dated 19 February 1986 as amended for the foot wear valued less than Rs.60 per pair whereas the value of goods under dispute were estimated by the department at more than Rs.60 per pair of foot wear. The matter is still pending at departmental level. The differential duty from April 1988 to December 1989 worked out to Rs.44.58 lakhs. The assessee however had executed bonds for Rs.29 lakhs with bank guarantee for Rs.6 lakhs only. Out of this, bonds for Rs.19 lakhs expired in December 1989. As such the duty amount is not fully covered by the bonds executed by the assessee.

iii) In the case of one unit in Belgaum collectorate manufacturing aluminium, carbon blocks, disposable masks etc., (chapters 76,85 and 63) the assessments on R.T.12 returns relating to chapter 63 were made final up to December 1989 even though the price list in part VI effective from 24 March 1988 filed by the assessee was approved provisionally. The assessee's claim of Rs.4 per piece for masks falling under chapter 63 was approved only provisionally. The assessments should also have been made provisional under rule 9B of Central Excise Rules, 1944, instead of being final.

iv) As per rule 173F of the Central Excise Rules, 1944, the assessing officer while finalising R.T.12 returns is required to assess the duty due and adjust it with the duty already paid by the licensee. The assessing officer could indicate any further dues by way of duty by making suitable entries in the assessment memorandum (R.T.12 return) and return the assessed copy to the licensee for making good the deficiency by debit in PLA or in RG23A part II as the case may be. Due to failure to return the assessed R.T.12 pertaining to the months from January 1988 to April 1988 before six months of the transaction to an assessee in Coimbatore collectorate demands for Rs.40,455 became time barred and were accordingly set aside by the Appellate Collector (May 1989). The loss of revenue was pointed out to the department in audit (March 1990); reply has not been received (April 1990).

v) Irregular grant of refund made on inappropriate return filed --

While monthly return of R.T.12 is assessed to duty under rule 173-I of the Central Excise Rules, 1944, by the proper officer (i.e., range superintendent who is competent to issue orders for adjustment by debit or credit in PLA for deficiency or excess duty paid on the return assessed) all claims for refund of duty already paid are to be made under section 11B of the Central Excises and Salt Act, 1944, to the Assistant Collector of Central Excise who alone is competent to deal with such refund.

In the case of an assessee in Baroda collectorate engaged in refining of petroleum products in respect of certain commodity on which full duty was originally paid on removal from the factory, refund of duty for quantity returned to the refinery was claimed in separate R.T.12s with the Superintendent of the range instead of filing refund claims to the Assistant Collector as required under the provisions of the Act. The refund claimed on R.T.12 returns (R.T.12 for return stream as it is called) were sanctioned from time to time by the Superintendent of the range in contravention of the provisions of the law. Such irregular grant of refund made for the period from February 1988 to April 1989 amounted to Rs.1.21 crores. Further in this case apart from the incompetency of the sanctioning authority (range superintendent) for refund, the relevant pro-

cedure as required under rules was not observed.

Similar refunds were allowed from time to time by range Superintendent in respect of two other commodities also (of the same assessee) on the basis of separate R.T.12 returns filed for the returned quantities (return streams). The total amount of refund allowed by the range Superintendent in this regard amounted to Rs.5.40 crores for the period from January 1988 to September 1989.

The range officer stated that the point that refund claims were not sanctioned by the competent authority under Section 11B of the Central Excises and Salt Act, 1944, required clarification from the departmental higher authorities.

The appraisal was sent to the Ministry of Finance in October 1990; their reply has not been received (December 1990).

STATEMENT I

Statement showing the number of Monthly Returns (R.T.12) not received

{(See para 5(i)}

Sl. No.	Name of the Collectorate	Returns not received up to 1989-90(Numbers)
1.	Ahmedabad	19
2.	Chandigarh (Punjab)	60
	Chandigarh (H.P.)	47
	Chandigarh (Haryana U.T.)	642
3.	Delhi (U.T.)	142
4.	Belgaum	30
5.	Bhubaneswar	619
6.	Nagpur	14
7.	Shillong	128
8.	Cochin	2791
9.	Trichy	79
10.	Bombay I	17
11.	Bombay II	427
12.	Bombay III	64
13.	Pune	24
14.	Aurangabad	51
15.	Goa	34
	Total	5188

STATEMENT II

Statement showing the details of Monthly Returns (R.T.12) not assessed

(See para 6)

Sl. No.	Name of the collectorate	Not assessed 1987-88	1988-89	1989-90
1.	Guntur	-	-	29
2.	Hyderabad	-	-	295
3.	Ahmedabad	-	8	3709
4.	Baroda	11	7	2569
5.	Rajkot	12	19	288
6.	Patna	-	2	27
7.	Chandigarh (Punjab)	1	24	674
	Chandigarh (H.P.)	-	-	6
8.	Delhi (Haryana)	-	36	2480
	Delhi (D.A.C.R.)	2845	3420	7199
9.	Bangalore	104	204	3619
10.	Belgaum	-	-	11
11.	Bhubaneswar	-	-	592
12.	Nagpur	16	6	49
13.	Jaipur	7	36	91
14.	Shillong	-	-	33
15.	Cochin	122	119	437
16.	Indore	311	647	2732
17.	Madras	-	-	4939
18.	Coimbatore	-	-	2128
19.	Madurai	-	-	257
20.	Trichy	-	-	933
21.	Bombay I	1124	1053	3267
22.	Bombay II	615	674	2932
23.	Bombay III	786	196	4008
24.	Pune	553	245	1660
25.	Aurangabad	346	425	1808
26.	Goa	53	44	443
27.	Meerut	396	442	2525
28.	Kanpur	865	470	416
29.	Allahabad	2	-	45
	Total	8169	8077	50201

STATEMENT III

Number of R.T.12 Returns where show cause notices-cum-demands issued either after 6 months or not issued at all

(See para 8)
(In lakhs of rupees)

Sl. No.	Name of the collectorate	No. of returns (1987-88 to 1988-89)	Amount ofduty involved
1.	Hyderabad	43	3.29
2.	Ahmedabad	10	0.32
3.	Baroda	43	0.50
4.	Chandigarh	27	0.24
5.	Delhi	50	28.72
6.	Bangalore	9	4.16
7.	Belgaum	6	0.60
8.	Jaipur	11	8.58
9.	Shillong	1	0.13
10.	Indore	67	40.31
11.	Madras	18	0.82
12.	Coimbatore	21	0.79
13.	Madurai	53	17.98
14.	Trichy	4	0.04
15.	Calcutta I	147	80.89
16.	Calcutta II	176	6.63
17.	Bolpur	134	2.99
18.	Bombay I	25	8.40
19.	Bombay II	120	19.89
20.	Bombay III	59	17.34
21.	Pune	122	4.54
22.	Aurangabad	34	39.92
23.	Goa	5	0.38
24.	Meerut	18	0.84
25.	Kanpur	2	0.48
	Total	1205	288.78

STATEMENT IV

(See para No.9)
(In lakhs)

Sl. No.	Name of the collectorate	Amount not recovered upto 1987-88	1988-89	1989-90
1.	Hyderabad	0.09	0.08	---
2.	Ahmedabad	239.47	285.36	392.69
3.	Baroda	79.99	273.22	147.03
4.	Rajkot	--	14.13	16.17
5.	Chandigarh	24.46	0.19	0.50
6.	Delhi (Haryana)	34.17	45.41	72.79
7.	Delhi (D.A.C.R.)	229.76	309.53	356.87
8.	Bangalore	10.59	53.74	74.32
9.	Belgaum	0.77	22.06	36.75
10.	Bhubaneswar	12.38	9.81	5.36
11.	Nagpur	48.94	85.84	44.18
12.	Jaipur	28.34	161.41	309.47
13.	Shillong	0.17	7.69	---
14.	Cochin	1.19	8.56	0.40
15.	Indore	39.68	104.49	113.52
16.	Madras	--	1.30	24.56
17.	Coimbatore	1.11	3.16	15.51
18.	Madurai	1.99	20.56	4.06
19.	Trichy	--	0.45	8.66
20.	Calcutta I	72.29	--	21.19
21.	Calcutta II	45.74	13.52	2.11
22.	Bolpur	10.39	20.99	5.81
23.	Bombay I	90.62	112.84	99.35
24.	Bombay II	245.98	262.62	65.41
25.	Bombay III	31.45	135.67	84.97
26.	Pune	6.09	23.80	9.80
27.	Aurangabad	9.35	--	216.04
28.	Goa	17.19	28.26	6.28
29.	Meerut	12.88	144.51	69.10
30.	Kanpur	100.40	11.63	88.64
	Total	1395.48	2160.83	2291.54

CHAPTER 2
CUSTOMS RECEIPTS

2.01 The net receipts from customs duties during the year 1989-90, after deducting refunds and drawback paid alongside the budget estimates and figures for the preceding year 1988-89 are given below:

(In crores of Rupees)

Customs Receipts from	Receipts 1988-89	Receipts 1989-90***	Budget estimates 1989-90	Revised budget estimates 1989-90
Imports*	16029.04	18416.04	18348.30	18198.18
Exports	25.49	7.50	6.75	7.55
Cess on exports	30.11	31.29	34.37	33.91
Other receipts	184.65	196.58	160.00	180.40
Total	16269.29	18651.41	18549.42	18420.04
Deduct Refunds	183.85	231.61	149.42	203.05
Deduct Drawback**	297.64	404.72	400.00	340.00
Net Receipts	15787.80	18015.08	18000.00	17876.99

*** This amount includes additional (Countervailing) duty leviable under Section 3 of the Customs Tariff Act, 1975 and auxiliary duty leviable under Section 35 of the Finance Act 1989.**

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

***** The figures are provisional pending certification**

The increase in gross revenue collection was mainly on account of larger realisation of duty than anticipated from beverages, spirits and vinegar; man-made filaments; man-made staple fibres; ceramic products; aluminium; primary materials of iron and steel; optical, photographic, cinematographic, measuring and surgical instruments; tools, implements and other miscellaneous articles of base metals and machinery. The above increases have been partly offset by reduction in the revenue from import duties in respect of coffee, tea, mate and spices; animal or vegetable fats/oil; petroleum oils and oils obtained from bituminous mineral other than crude; silk; zinc, wool and inorganic chemicals.

2.02 Portwise collection

i) Import duty collected during the years 1988-89 and 1989-90 are given below portwise as per the available information furnished by the Ministry of Finance.

Port of entry	Bills of entry (in hundreds)		Value of imports (Rs. in crores)		Import duty (Rs. in crores)	
	1988-89	1989-90	1988-89	1989-90	1988-89	1989-90
Bombay	1454	1454	8376	8503	5872	6534
Calcutta	594	1554	2240	2953	2012	2195
Madras	961	1188	2943	3988	2248	2598
Cochin	100	58	429	409	316	249
Goa	22	20	134	145	43	46
Kandla	95	75	993	944	728	672
Visakhapatnam	32	3005	734	1189	354	511
Delhi	1562	902	783	1549	935	993
OtherPorts	2232	(*)2959	5296	7428	3512	4528
Total	7052	11215	21928	27108	(a)16020	(b)18326

(a) Differs from the accounts figure of Rs.16,029.04 crores

(b) Differs from the accounts figure of Rs.18,416.04 crores

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(ii) The value of exports, export duty collected and amount of drawback paid during the years 1988-89 and 1989-90 are given portwise as per available information furnished by the Ministry of Finance.

Port of Export	No. of shipping bills (In hundreds)		Value of exports (Rupees in crores)	
	1988-89	1989-90	1988-89	1989-90
Bombay	2494	2494	5060	6956
Calcutta	871	1584	1435	1642
Madras	1470	1576	2095	2806
Cochin	408	309	1093	1304
Goa	15	15	238	298
Kandla	114	135	807	1092
Visakhapatnam	51	5701	465	770
Delhi	2023	2668	1673	2163
Other Ports	3248	(*)3944	6639	8906
Total	10694	18426	19505	25937

(*) **The figure does not include the bills of entry and shipping bills in respect of Rajkot, Bangalore, Calcutta II, Allahabad and Patna(Prev.)**

(in crores of rupees)

Port of Export	Export duty collected		Amount of drawback paid	
	1988-89	1989-90	1988-89	1989-90
Bombay	1	-	146	184
Calcutta	2	2	18	21
Madras	5	4	38	55
Cochin	14	-	3	6
Goa	-	-	-	-
Kandla	-	-	19	30
Visakhapatnam	-	-	1	-
Delhi	-	-	31	41
Other Ports	3	-	36	72
Total	(a)25	(b)6	292	409

(a) **Differs from account figure of Rs.25.49 crores**
(b) **Differs from account figure of Rs.7.50 crores**

2.03 Imports and Exports and receipts from duties thereon

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

2.04 Cost of Collection

The expenditure incurred on collection of customs duties during the year 1989-90 alongside the figures for previous year are given below:

(In crores of Rupees)

Cost of collection on	1988-89	1989-90
Revenue-cum-import export and trade control functions	22.75	28.52
Preventive and other functions	132.75	112.59
Total	155.50	141.11
Cost of collection as percentage of gross receipts	0.96	0.76

2.05 Searches and seizures

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

2.06 Exemptions

i) Exemptions Notifications under section 25(1) of Customs Act, 1962

The number of notifications issued and amount of revenue forgone during the period 1987-88 to 1989-90 are given below:

Year	No. of notifications issued under section 25(1)	Amount of revenue forgone (In crores of Rupees)
1987-88	316	N.A
1988-89	345	N.A
1989-90	308	N.A

N.A = Not made available by the Ministry of Finance (December 1990)

ii) Ad hoc exemptions

Under Section 25(2) of the Customs Act, 1962, the Central Government may, if it is satisfied that it is necessary in the public interest so to do, by special order in each case, exempt, under circumstances of an exceptional nature to be stated in the order, any goods from the payment of customs duty, where such duty is leviable. The number of such exemptions issued and availed of during the year 1989-90 and the preceding two years are given below:

		1987-88	1988-89	1989-90
(i)	Number of exemptions issued and availed of	222	N.A	N.A
(ii)	Total duty involved (in crores of Rupees)	551.21	859.64*	1073.65**
(iii)	Number of cases having a duty effect above Rs.10,000	204	N.A	N.A
(iv)	Duty involved in cases at (iii) above (in crores of Rupees)	551.20	N.A	N.A

N.A = Not made available by the Ministry of Finance (December 1990). ** For fifteen collectorates only.
* = Does not include the figures of Allahabad, Meerut, Patna and Shillong collectorates.

2.07 Verification of end use where exemption from duty was conditional

As per provisions of Section 25 of the Customs Act, 1962, the Central Government may, if it is satisfied and it is necessary in the

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

Information on value of goods exempted from duty subject to end use condition, the amount of duty involved, value of end use bond held by customs authorities and the number of cases where fulfilment of end use condition was verified during the last three years, as furnished by the Ministry of Finance, are given in Annexure 2.6.

The value of goods exempted from duty (subject to end use condition) increased from Rs.715.32 crores in 1988-89 to Rs.1969.95 crores in 1989-90. The amount of import duty forgone every year on goods exempted from duty (subject to end use condition) went up from Rs.1,106.93 crores in 1988-89 to Rs.1,521.61 crores in 1989-90.

2.08 Arrears of Customs Duty

The amount of customs duty assessed upto 31 March 1990 which was still to be realised on 31 August 1990 was Rs.50.26 crores in respect of twenty seven Custom Houses/Collectorates.

2.09 Time barred demands

Of the demands raised by the department up to 31 March 1990 which were pending realisation as on 31 August 1990, recovery of demands amounting to Rs.5.15 crores raised in twenty four Custom Houses and Collectorates was barred by limitation.

2.10 Write off of duty

Customs duties written off, penalties abandoned and exgratia payments made during the year 1989-90 and the preceding two years are given below:

Year	Amount (In lakhs of rupees)
1989-90	1.29
1988-89	22.48
1987-88	0.43

2.11 Pendency of audit objections

The number of audit objections raised in audit upto 31 March 1989 and the number pending settlement as on 30 September 1989 in the various Custom Houses and combined Collectorates of Customs and Central Excise are given below.

Number of outstanding objections and amount of revenue involved

(Rupees in lakhs)

No.	Name of Custom House/Collectorate	Raised upto 1987-88		Raised in 1988-89		Total	
		Number	Amount	Number	Amount	Number	Amount
1.	Bombay(Sea)	92	1971.88	34	62.41	126	2034.29
2.	Bombay(Air)	41	113.79	11	67.55	52	181.34
3.	Meerut, Kanpur, Allahabad	37	345.81	24	248.20	61	594.01
4.	Bangalore	12	0.79	23	2.53	35	3.32
5.	Guntur	22	0.07	5	NIL	27	0.07
6.	Madras	1536	615.20	774	572.59	2310	1187.79
7.	Tiruchirapalli	17	1.00	36	0.09	53	1.09
8.	Coimbatore	4	-	1	NIL	5	NIL
9.	Patna (Prev.)	2	9.21	-	-	2	9.21
10.	Cochin	5	19.79	12	8.49	17	28.28
11.	Bangalore & Karnataka out ports	1	0.40	3	0.15	4	0.55
12.	Hyderabad	31	12.55	18	-	49	12.55
13.	Visakhapatnam	20	44.02	4	1.37	24	45.39
14.	Chandigarh	6	11.20	1	0.03	7	11.23
15.	Jaipur	28	30.48	22	23.16	50	53.64

(Rupees in lakhs)

No.	Name of Custom House/Collectorate	Raised upto 1987-88		Raised in 1988-89		Total	
		Number	Amount	Number	Amount	Number	Amount
16.	Ahmedabad, Ahmedabad, (Prev.), Baroda & Rajkot	47	975.10	11	92.82	58	1067.92
17.	Delhi	208	75.35	34	6.81	242	82.16
18.	Calcutta, Customs (preventive) West Bengal and Shillong	247	1210.89	215	22464.19	462	23675.08
	TOTAL	**2356**	**5437.53**	**1228**	**23550.39**	**3584**	**28987.92**

The outstanding objections fall under the following categories.

Sl. No.	Categories of objections	Amount (In lakhs of Rupees)
1.	Short levy due to misclassification	877.02
2.	Short levy due to incorrect grant of exemption	1205.80
3.	Non levy of import duties	436.92
4.	Short levy due to undervaluation	77.62
5.	Irregularities in grant of drawback	93.75
6.	Irregularities in grant of refunds	351.60
7.	Irregularities in levy and collection of export duty	90.85
8.	Other irregularities	25845.49
9.	Overassessment	8.87
	TOTAL	28987.92

Ministry of Finance stated (December 1990) that the pendency is kept under constant review and the Collectors have been instructed to take urgent steps to settle pending audit objections.

2.12 Results of Audit

Test check of records in Custom Houses/ Collectorates conducted in audit during the year 1989-90 revealed short levy of duties, irregular payments of refund and loss of revenue amounting to Rs.18.57 crores. The department has accepted short levies and irregular refunds amounting to Rs.3.50 crores. Over assessments and short payments by department detected in audit and pointed out to the department also amounted to Rs.16.34 lakhs.

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

a) Short levy due to incorrect grant of exemption
b) Non levy of import duties
c) Short levy due to misclassification
d) Short levy due to undervaluation
e) Irregularities in the grant of refunds
f) Short levy due to mistakes in computation of duty
g) Application of incorrect rates of duty
h) Other irregularities

System studies on the project import was also conducted. The results of study are contained in paragraph 1.01 of this report.

This study revealed non levy/short levy of customs duty amounting to Rs.29.14 crores.

SHORT LEVY OF DUTY DUE TO INCORRECT GRANT OF EXEMPTION

2.13 Mechanical Assembly, Lamps etc.,

In terms of a notification dated 18 August 1983, certain goods as specified in the table annexed thereto, when imported into India, are exempted from basic customs duty in excess of 50 per cent ad valorem and the whole of additional duty. The goods so specified were also exempted from auxiliary duty in excess of 25 per cent ad valorem as per another notification.

It was noticed in audit (February 1988) that certain goods such as mechanical assembly, lamps, alarm buzzer, etc., imported by a public sector undertaking for use by it in the manufacture of transmission equipment, telephone instruments and parts thereof, which were kept in a customs bonded warehouse, had been assessed to customs duty on their clearance from the warehouse in January 1986 for home consumption at the concessional rates under the aforesaid notification, although the above goods were not specified under the said notification dated 18 August 1983. Incorrect grant of exemption resulted in short levy of duty amounting to Rs.30,02,920.

The department intimated (October 1988) that a demand-cum-show cause notice for recovery of differential duty and interest amounting to Rs.37,37,369, as re-calculated by it was under the process of being issued. The department subsequently issued the demand-cum-show cause notice in July 1989.

Ministry of Finance have confirmed the facts.

2.14 Coal Tar Pitch

(a) Auxiliary duty of customs is leviable under the Finance Act of each year. The maximum (statutory) rate leviable was 40 per cent ad valorem. However, by notification 108/89-Cus dated 1 March 1989 issued at the time of Budget for the year 1989 (re issued as 161/89-Cus dated 12 May 1989 later), government provided for a concessional rate of auxiliary duty at 5 per cent ad valorem in respect of certain goods which enjoyed either partial or full exemption from the basic customs duty. Coal tar pitch was one of the items eligible for the concessional rate of auxiliary duty at 5 per cent as it enjoyed a partial exemption from the basic customs duty vide exemption notification 244/88-Cus dated 8 September 1988. With effect from 1 March 1989, partial exemption of basic customs duty was withdrawn.

Nine consignments of coal tar pitch, imported during the period from April to August 1989, were classified under heading 2708.10 of the Customs Tariff Act, 1975 and assessed to basic customs duty at 40 per cent ad valorem plus auxiliary duty at 5 per cent ad valorem under the aforesaid notifications of 1 March 1989 and 12 May 1989.

It was pointed out in audit (August, September, October, December 1989 and January 1990) that since the basic customs duty on coal tar pitch was raised to 40 per cent ad valorem with effect from 1 March 1989 (41/89-Cus viz. the same as tariff rate), the concessional rate (5 per cent) of auxiliary duty on coal tar pitch was no longer applicable. It was, therefore, held in audit that the auxiliary duty was leviable at the tariff rate of 40 per cent ad valorem instead of 5 per cent. This resulted in duty being levied short by Rs.2,64,30,199.

Ministry of Finance, in reply, admitted (November 1990) that in this particular case, the statutory rate and exempted rate of basic customs duty became the same from 1 March 1989 but argued that a harmonious interpretation of the two notifications (41/89-Cus and 108/89) would imply that the benefit of exemption from auxiliary duty was available to coal tar pitch even after 1 March 1989 as no entry in the exemption notification could be rendered redundant.

The Ministry's reply is not acceptable for the reason that the exempted rate and the tariff rate became the same viz. 40 per cent from 1 March 1989 and this would tantamount to withdrawal of the exemption from the basic customs duty from that date and consequently the partial exemption from the auxiliary duty would be deemed to have been withdrawn from that date itself. Continuance of an entry in the exemption would ipso facto become redundant as soon as the conditions are not capable of being fulfilled with the eventual change in circumstances. The failure of the Ministry to amend the relevant notification at the relevant point of time could not be justified by resorting to the harmonious interpretation of notifications.

(b) Coal tar pitch falling under Chapter 27 of the Customs Tariff Act, 1975 was assessable to basic customs duty at a concessional rate of

25 per cent ad valorem and at nil rate of additional duty in terms of notification dated 3 June 1986 which was in force upto 31 May 1988. By another notification issued on 13 May 1988, Government reduced the rate of auxiliary duty on coal tar to 5 per cent. This concession was, however, admissible only till the notification dated 3 June 1986 was in force.

On import of 50 tonnes of coal tar pitch (assessable value Rs.2,45,035) through a major Custom House during September 1988, they were assessed to duties granting the benefit of the aforesaid notifications dated 3 June 1986 and 13 May 1988. This resulted in duty being levied short by Rs.2,02,766.

On the short levy being pointed out in audit in July 1989, the Custom House accepted the objection and requested the party to make voluntary payment. Report on recovery was not received (March 1990).

Ministry of Finance have confirmed the facts.

2.15 Lubricants and Greases

One consignment of 19.140 tonnes of lubricants and greases valued at Rs.8.39 lakhs imported through a Custom House in March 1989 was classified under customs tariff heading 27.10 and cleared without levy of customs duty on the strength of an adhoc exemption order issued by the Ministry of Finance in April 1988. The adhoc exemption order related to 25 items pertaining to machinery equipment, spares, accessories and raw materials for power projects. Though lubricants and greases were not covered by the list of items in the adhoc exemption order, they were cleared without payment of duty. Duty leviable on these goods worked out to Rs.12.95 lakhs.

On this non levy of duty being pointed out in audit (December 1989), the department stated (February 1990) that the consignment was covered under item 17 of the list - Balance Equipment/Systems/ materials (like compressed air systems, ventilation and air conditioning system, fire protection system, electrical equipment/systems, etc.). Obviously lubricants and greases, being consumables, would not fall under this item 17.

The matter was reported to the Ministry of Finance in May 1990; their reply has not been received.

2.16 Pharmaceutical Chemicals

(a) "Pharmaceutical Chemicals i.e. chemicals having prophylactic or therapeutic value and used solely or predominantly as drugs" are assessable to basic customs duty at the rate of 60 per cent ad valorem with reference to notification dated 17 February 1986 effective from 28 February 1986. This notification is not applicable to Propylene Glycol as this chemical is not solely or predominantly used as drug but primarily as a solvent in drugs. The Tariff Conference of Collectors of Customs held in July 1990 accepted this view of audit and also stated that the earlier decisions taken on this issue stood modified.

Therefore, Propylene Glycol USP classifiable under heading 2905.32 of the Customs Tariff is assessable to basic customs duty at 30 per cent ad valorem plus Rs.5 per kilogram in terms of notification dated 1 March 1987 with auxiliary duty at 45 per cent ad valorem and free of additional duty upto 29 February 1988 and at 5 per cent ad valorem from 1 March 1988 under Central Excise notifications dated 3 April 1986 and 1 March 1988 respectively read with the decision of the Supreme Court in the case of Gufiq Lab Pvt. Ltd. Vs. Collector of Customs (Page A 163 ELT Vol.47.3 dated 1 June 1990).

Several consignments of Propylene Glycol USP imported through a major Custom House after March 1987 were assessed to basic customs duty by extending the exemption benefits under the notification first cited. On the incorrect assessment of Propylene Glycol being pointed out in audit during the period from July to September 1988 in respect of consignments imported during the period from September 1987 to May 1988, the Custom House justified the original assessment on the basis of the certificates issued by the Assistant Drug controller of India and because these goods conform to pharmaceutical grade and are used in the treatment of a few animal diseases. The action of the Custom House is not correct in view of the aforesaid conference decision.

The short collection of duty in 28 cases, including two objections issued in June 1989, worked out to Rs.4,04,524. The Custom House had also issued 52 demands upto September 1990 aggegating to a duty of Rs.38,69,048 (including the additional duty at the rate of 15 per cent ad valorem) after audit objection.

Ministry of Finance have confirmed the facts.

(b) 'Monomethyl Aceto Acetamide' classifiable under customs tariff heading 2924.10 on import, was exempted from the levy of additional duty under a customs notification issued in November 1986. The benefit of exemption was however withdrawn from 1 November 1989 by another notification and the goods are chargeable to additional duty at 15 per cent ad valorem.

Two consignments of 'Monomethyl Aceto Acetamide' were imported/ cleared from warehouse in November/December 1989. Basic customs duty and auxiliary duty were charged at appropriate rates without charging the additional duty of 15 per cent. The irregular grant of exemption resulted in short levy of duty amounting to Rs.3,52,033.

On this being pointed out (January and February 1990), the department admitted the objection and recovered the short levied amount

Ministry of Finance have confirmed the facts.

2.17 Phenolic Resins

A consignment of 1890 kilograms of "Phendic Resin Base Material Cotton Cloth Resin - Re-inforced Micarta Grade-H 11030 sheets" commonly known as "Phenol Formaldehyde" was imported and warehoused on 9 October 1989. The goods valued at Rs.3,36,400 were classified under sub heading 3909.40 of Custom Tariff and 3909.51 of Central Excise Tariff.

The goods were cleared for home consumption on 29 November 1989 claiming exemption of custom duty under notification dated 16 June 1987. This notification related to various types of vessels falling under custom tariff heading 89.01 to 89.06 and not to parts or the materials relating to the Vessels. The goods were classifiable under customs tariff heading 3909.40 and correctly chargeable to import duty at 150 per cent ad valorem plus Rs.25 per kilogram plus auxiliary duty of 45 per cent and additional duty at 15 per cent. Incorrect grant of exemption resulted in duty being levied short by Rs.8,59,174.

On this mistake being pointed out (February 1990), the department stated (April 1990) that a show-cause notice had been issued to the party. Report on recovery has not been received (December 1990).

Ministry of Finance have confirmed the facts.

2.18 Polystyrene moulding powder

Polymers of Styrene, in primary forms, are classifiable under heading 39.03 of Central Excise Tariff. By Central Excise notification issued on 1 March 1986, polystyrene resins were exempted from payment of Central Excise duty as was in excess of 20 per cent ad valorem. The aforesaid notification was amended on 26 October 1987 inserting an explanation that the expression, "resins", wherever it occurs, shall be taken to include moulding powders of such resins also.

Four consignments of "polystyrene moulding powder" imported between March 1987 and August 1987 were assessed to additional duty equal to excise duty at the concessional rate of 20 per cent ad valorem on the basis of the said notification dated 1 March 1986 treating the subject goods as polystyrene resins.

It was pointed out in audit (July 1987 and March 1988) that polystyrene resins and polystyrene moulding powder were two distinctly different goods and hence polystyrene moulding powder was not entitled to the exemption granted in the notification prior to amendment. The incorrect grant of exemption resulted in duty being levied short by Rs.7,79,997.

The Collectorate contended (March 1990) that the amending notification of October 1987 was purely explanatory in nature and

as such the concessional rate of duty for polystyrene resin would also be applicable to polystyrene moulding powders.

Ministry of Finance stated (December 1990) that exemption notification 133/86-Central Excise dated 1 March 1986 covered 'polystyrene resins' falling under heading 3903.10 and this description with the heading would cover polymers of styrene in primary form. The Ministry added that there was no stipulation in the notification for excluding moulding powder and hence the notification would cover polystyrene in all its primary forms including moulding powder and that the explanation in the notification of 25 October 1987 was only clarificatory in nature.

The reply is not acceptable for the reason that the benefit of exemption was extended to 'polystyrene moulding powders' from 25 October 1987 only and hence the concessional rate on 'moulding powder' was available only from that date. This notification cannot be termed as clarificatory because polystyrene resin in its moulding powder form, according to the opinion of the Chief Chemist, is a compounded product and cannot be covered by the term polystyrene resin prior to 25 October 1987.

2.19 Resin

In terms of notification dated 1 March 1987, prescribing effective rates of basic customs duty to various types of resins falling under Chapter 39 of Customs Tariff (plastics and articles thereof), Polyphenylene Oxide Resin was assessable to basic customs duty at 20 per cent ad valorem with auxiliary duty at 45 per cent ad valorem. Additional duty was leviable at 20 per cent ad valorem under a Central Excise notification dated 1 March 1986. The concessional rate of duty was, however, extended to modified Polyphenylene Oxide Resin also by an amending notification dated 1 November 1988.

A consignment of "Noryl Engineering Thermo Plastic" certified as "modified polyphenylene Oxide Resin" by the chemical examiner and cleared from a warehouse (15 July 1988) was subjected to levy of customs duties with reference to the aforesaid notifications dated 1 March 1987 and 1 March 1986. It was pointed out in audit (December 1988) that, since the benefit of concessional rate of duty was extended to modified Polyphenylene Oxide Resin only with effect from 1 November 1988, the goods cleared on 15 July 1988 should have been subjected to levy of basic customs duty at 100 per cent ad valorem under the entry "All Others" in the notification first cited with auxiliary duty at 45 per cent ad valorem and additional duty at 40 per cent ad valorem under heading 3909.30 of Central Excise Tariff with reference to a Central Excise notification dated 1 March 1988. A review of all clearances from the bond upto 31 October 1988 was also suggested in audit.

The Custom House replied (January 1990) that the term Poly phenylene Oxide Resin occurring in the notification dated 1 March 1987 included all types of Polyphenylene Oxide Resins and the amending notification dated 1 November 1988 was only to make the notification more explicit to avoid any doubt.

The reply of the Custom House is not acceptable as, according to the explanatory note to the notification dated 1 November 1988, the notification was issued to extend the concessional rate of duty to chemically modified Polyphenylene Oxide Resin implying thereby that, prior to 1 November 1988, the concession was not available to the said goods. The short collection worked out to Rs.3,67,104 including bond interest.

Ministry of Finance confirmed the facts and stated (August 1990) that action had been initiated for recovering the short collection of duty.

2.20 Flat Rolled Products of Iron

According to notification dated 17 February 1986, strips of iron were assessable to basic customs duty at 60 per cent ad valorem. However, with effect from 25 November 1988, the concession was not admissible in respect of such strips if they were galvanised.

A consignment of "Galvanised iron strips (surplus) "falling under heading 72.12 of the Customs Tariff, cleared from warehouse on 30 November 1988 was assessed to basic customs

duty applying the aforesaid notification of February 1986.

It was pointed out in audit (May 1989) that the subject goods were not eligible for the said exemption and that they were liable to be assessed to basic customs duty at tariff rate of 80 per cent ad valorem plus Rs.7,000 per tonne. The incorrect grant of exemption resulted in duty being levied short by Rs.2,95,364.

The department admitted (November 1989) the mistake and stated that a demand notice for the short levied amount had been issued and subsequently confirmed.

Ministry of Finance have confirmed the facts.

2.21 Internal Combustion Engines

Note 2(e) below Section XVII the C.T.A, 1975 specifies that machines or apparatus of headings 84.01 to 84.79 or parts thereof, should not be assessed as parts of the goods falling under chapter headings 86 to 89. Tractors including agricultural tractors fall under chapter heading 88. Internal Combustion (I.C) Engines are classifiable under heading 84.09 of the Customs Tariff Act, 1975. Hence even when these I.C Engines are identifiable parts or otherwise of agricultural tractors, they are classifiable on merits under heading 84.09 ibid. These are eligible for a concessional rate of basic customs duty at 40 per cent ad valorem and auxiliary duty of 25 per cent ad valorem under notification No.281/76-Customs dated 2 August 1976.

An importer cleared certain consignments of Internal Combustion Engines between July and October 1983 from a warehouse and paid basic customs duty at the concessional rate of 25 per cent ad valorem and auxiliary duty at 15 per cent ad valorem classifying them as components of Agricultural tractors under heading 87.01 read with the exemption notification No.200/79-Customs dated 28 September 1979 as amended. This resulted in duty being levied short by Rs.32.63 lakhs.

On the incorrect exemption being pointed out in audit (March 1986), the department replied that concessional rate was allowed under the notification of 28 September 1979 (as amended) as the importer had fulfilled the conditions of that exemption notification.

Ministry of Finance, while endorsing the department's view, stated (October 1990) that there was no irregularity in according the exemption under the notification of 28 September 1979.

The fact remains that the notification of 28 September 1979 is general in nature and applicable to components of motor vehicles or tractors subject to the fulfilment of conditions therein, whereas notification dated 2 August 1976 provides specific exemption to Internal Combustion Engines for agricultural tractors. The co-existence of the two notifications of 28 September 1979 and 2 August 1976 till now imply that I.C Engines for agricultural tractors were not covered by the general notification. Also a harmonious interpretation of the said notifications would mean that a specific notification would prevail over the general notification.

2.22 Universal Milling and Boring Machine

Jig boring and milling machines are subjected to levy of basic customs duty at the concessional rate of 85 per cent ad valorem under catagory (iii) of notification No.154/86-Customs dated 1 March 1986 as amended. No auxiliary duty and additional duty are leviable.

One Mikron W.F 2.SA Jig Boring/Milling Machine imported (June 1987) through a major Custom House by a joint sector company was incorrectly assessed to basic customs duty at 35 per cent ad valorem with reference to notification 40/78-Customs dated 1 March 1978 which extended the concessional rate of duty to Jig Boring Machines only. With reference to the invoice and catologue details, it was pointed out in audit (March 1988) that the machine imported, as evidenced by the invoice and the examination report, was a universal Milling and Boring Machine i.e., Tool Room Precision Jig Boring machine adopted for use as a milling machine also. It was, therefore, held in audit that the benefit of the said notification would not be admissible to the machine in question. The incorrect application of this notification

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resulted in duty being levied short by Rs.3,99,493. Though the Custom House initially justified (October 1988) the original assessment, the Collector admitted (May 1990) the objection, while replying to the statement of facts (April 1990) and stated that the short collection of duty would be recovered through request for voluntary payment. Report on recovery was not received (May 1990).

Ministry of Finance have confirmed the facts.

2.23 Oil Pump Complete with Motor

Under notification No.59-Cus dated 1 March 1987, certain pumps for internal combustion piston engines adopted for use in aircraft other than aeroplanes falling under heading 8413.30 of the Customs Tariff are exempted from payment of basic customs duty in excess of 45 per cent ad valorem and the whole of additional duty.

A consignment of "oil pump complete with motor" (other than use in aeroplane) and "pump unit for flange lubricator" falling under heading 8413.30 of the Customs Tariff was assessed to duty (November 1988) applying the aforesaid notification.

It was pointed out in audit (March 1989), that since the subject goods were imported by Indian Railways, they were unlikely to be adopted for use in aircraft and were in all probability being used in internal combustion piston engines meant for railway locomotives. Hence, the said goods were not covered by the aforesaid notification. The incorrect grant of exemption resulted in duty being levied short by Rs.81,491.

The department accepted the mistake and recovered the short levied amount (June 1989).

Ministry of Finance have confirmed the facts.

2.24 Parts of Ammonia Refrigeration Compressor

In terms of a notification 69/87-Customs dated 1 March 1987, parts of items, specified in the table thereto, are assessable to basic customs duty at a concessional rate of 45 per cent ad valorem and free of additional duty. Parts of compressors of a kind used in refrigerating equipment are, however, not covered by the notification and attract basic customs duty at 100 per cent ad valorem and additional duty at 15 per cent ad valorem in accordance with another notification No.68/87-Customs dated 1 March 1987.

A consignment of "Seal Disc, Element" described as specially designed identifiable part of the Ammonia Refrigeration Compressor was assessed (January 1989) to customs duty applying the former notification.

It was pointed out in audit (May 1989) that the subject goods being parts of refrigeration compressor were specifically excluded from the purview of the aforesaid former notification. Incorrect grant of exemption resulted in duty being levied short by Rs.1,30,704.

The Collectorate admitted (March 1990) the mistake and stated that a demand issued to the importer for the short levied amount was confirmed by the department.

Ministry of Finance have confirmed the facts.

2.25 Parts of Bucket Shovel

Under a notification of March 1987, parts of articles falling under the headings of the Customs Tariff specified in the notification are exempted from payment of basic customs duty in excess of 45 per cent ad valorem and the whole of the additional duty. While heading 84.29 was specified in the notification, heading 84.31 was not mentioned therein. Accordingly, parts of the articles falling under heading 84.31 were not eligible for exemption under the said notification.

A consignment of "Adapter tooth, Wedge, C. Clamp" amplified as specially designed parts of bucket of shovel falling under heading 8429.59 of the Customs Tariff was classified under heading 98.06 of the said tariff and assessed to duty (July 1988) applying the above notification.

It was pointed out in audit (January 1989) that the aforesaid notification would not apply to the subject goods as they were parts of buckets falling under heading 84.31 which was not specified in the notification. The incorrect grant of exemption resulted in duty being levied short by Rs.4,98,047.

Ministry of Finance stated (November 1990) that since the notification extended concessional rate of duty to the parts of bucket shovel, the benefit would be admissible not only to the assembly or sub assemblies which are parts of bucket shovel but even to individual parts imported in unassembled condition. Hence the exemption as applicable to bucket shovel would equally cover all parts of bucket shovel, including adapter tooth, wedge, clamp etc., which themselves are parts of bucket.

The Ministry's reply is not acceptable for the reason that notification 69/87 dated 1 March 1987 specified several headings in the table thereunder and heading 84.31 was specifically excluded therein. It, therefore, follows that the intention of the Government was not to exempt parts of heading 84.31 (i.e parts of a part of machine) under the said notification. Since Harmonised System of Tariff provides different tariff headings both for machines and parts thereof separately, it would be inequitable to interpret a notification by stretching the meaning of 'parts' when the intention of the Government has been worded in the notification otherwise.

2.26 Gear Cutting Blade

According to the First Schedule of the Customs Tariff Act, 1975, Cutting blade for machine for metal working falling under heading 8208.10 is assessable to basic customs duty at the rate applicable to the machine with which the blade is designed to be used.

(a) While the rate of duty prescribed in the Customs Tariff for gear cutting machine (heading No.8461.40) was 250 per cent ad valorem, the Government by issue of a notification (March 1986) exempted the said machine from payment of duty in excess of 85 per cent ad valorem.

A consignment of "Ringtype Coniflex Cutter Blade" amplified as cutting blade for gear generation machine imported through a major Custom House in February 1989 was classified under heading 8208.10 and assessed to duty at 85 per cent ad valorem as cutting blade for gear cutting machine applying the aforesaid notification.

It was pointed out in audit (June 1989) that, since cutting blade was not exempted by the aforesaid notification, it would attract duty at the rate prescribed in the tariff for gear cutting machine i.e. 250 per cent ad valorem. The grant of irregular exemption resulted in duty being levied short by Rs.3,04,291.

The Collectorate intimated that a demand notice was issued to the importer.

(b) While the rate of duty prescribed in the Customs Tariff for gear cutting machine (heading No.8461.40) was 250 per cent ad valorem, the Government exempted the said machine from payment of duty in excess of 35 per cent ad valorem in terms of notification 40-Cus. dated 1 March 1978.

A consignment of gear cutting blade imported in October 1988 was classified under heading 8208.10 and assessed to basic customs duty at 35 per cent ad valorem as cutting blade for gear cutting machine applying the aforesaid notification.

It was pointed out in audit (March 1989) that, since gear cutting blade was not exempted by the aforesaid notification, it would attract basic customs duty at the rate prescribed in the tariff for gear cutting machine i.e 250 per cent ad valorem. The grant of irregular exemption resulted in short levy of customs duty amounting to Rs.7,98,431.

The Collectorate intimated (August 1989) that a demand notice for the amount short levied was issued to the importer which was subsequently confirmed by the department.

Even though the departmental tariff conference held at Bombay on 7 and 8 March 1990 held the view that the issue regarding 'rate applicable' would have to be interpreted in terms of the judgement given in the case of M/s Vishal Electronics Pvt. Ltd. in W.P No.2876 of 1982 (1989(44) ELT 420 (Bom)), the Ministry of Finance have not given effect to the same.

Ministry of Finance stated (December 1990) that the issue had been the subject matter of a judgment in the aforesaid cases in the High Court of Bombay, where the single judge had held that the term "rate applicable" figuring in the First Schedule to the Customs Tariff Act, 1975 would mean only the 'statutory rate' but the importers had appealed against this decision in the Division Bench of the said Court. The correct legal position would be known only after the decision in the aforesaid matter is available and till such time the judgement of the single judge would hold good. However, the intention of the Government was to charge duty at the effective rate and that they accordingly proposed to issue exemption notifications setting out the Government's intention clearly.

2.27 Coil Winding Machines

Under notification dated 19 June 1980, automatic coil or foil winding machine falling under chapter 84 of the Customs Tariff is chargeable to basic customs duty at a concessional rate of 30 per cent ad valorem. The goods covered by the above notification are fully exempted from additional duty of customs under a separate notification issued on 1 March 1979 as amended.

A consignment described as coil winding machine with interleaved insulation paper model SM 305 amplified as automatic coil winding machine was classified under heading 8479.81 and assessed (February 1989) to duty applying the aforesaid notifications.

It was pointed out in audit (June 1989) that, as per technical write up, the imported item was also equipped with insulation inserting attachment and hence the same with two fold functions i.e coil winding and insulation was classifiable under heading 8479.89 of the tariff and was not eligible for the exemption granted under the aforesaid notifications. The incorrect grant of exemption resulted in duty being levied short by Rs.1,32,806.

While agreeing with the aforementioned observation of audit regarding two fold functions, the Collectorate stated (December 1989) that the subject article with its principal function of automatic coil winding was correctly assessed to duty.

Ministry of Finance contended (October 1990) that the primary function of the machine is coil winding and the function of inter leaving of insulation paper was only incidental to the basic function of coil winding. The Ministry added that the incidental function of paper inter leaving would not take it out of the category of coil winding for purpose of exemption in terms of notification dated 19 June 1980.

Ministry'reply is not acceptable. The imported machine has two fold functions viz., coil winding and paper insulation. Paper insulation is also an important function and it is not free from doubt whether the imported machine will remain inoperative if the paper insulation did not function.

2.28 Inductance coils and A.F transformers:

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

(a) A consignment of R.F Chokes (inductance coil), classifiable under sub-heading 8504.00 was imported by a public sector undertaking. It was incorrectly classified under heading 85.36 at the time of clearance from bond in December 1988 and assessed to additional duty at the concessional rate under notification dated 17 March 1985, which exempted goods as specified therein from levy of duty of excise in excess of 10 per cent ad valorem between 1 March 1988 and 28 February 1989. As R.F Chokes (inductance coil) were not specified in the said notification, their assessment at the concessional rate thereunder was irregular. These were correctly assessable to additional duty at the rate of 15 per cent ad valorem under another notification dated 1 March 1986. The incorrect assessment resulted in duty being levied short by Rs.64,070.

Ministry of Finance confirmed the facts and stated that action had been initiated for realising the short collection of duty.

(b) A consignment of A.F transformers was imported by a public sector undertaking and was incorrectly assessed at the time of clear-

ance from bond to additional duty at the concessional rate under notification dated 17 March 1985, which exempted goods as specified therein from levy of duty of excise in excess of 10 per cent ad valorem between 1 March 1988 and 28 February 1989. As A.F transformers were not specified in the said notification, these were correctly liable to additional duty at the tariff rate of 20 per cent ad valorem. Incorrect assessment at the concessional rate resulted in additional duty being levied short by Rs.52,858.

Ministry of Finance confirmed the facts and stated that action had been initiated for realising the short collection of duty.

2.29 Parts of switch gear and control panel

(a) According to notification No.60/87-Customs dated 1 March 1987, goods falling under heading 8537.10 and parts thereof classifiable under heading 85.38 of the Customs Tariff were assessable to basic customs duty at a concessional rate of 40 per cent ad valorem. In terms of notification No.109/89-Customs dated 1 March 1989 certain articles falling under chapter 85 of the said Tariff were chargeable to auxiliary duty at a concessional rate of 30 per cent ad valorem. Goods falling under heading 85.38 were, however, not eligible for such concession of auxiliary duty.

A consignment amplified as "electrical parts of switch gear for interruption of vacuum above 400 volts" was classified under heading 8538.90 as parts of items falling under heading 8535.90 of the Customs Tariff and assessed (April 1989) to duty applying both the aforesaid notifications.

It was pointed out in audit (September 1989) that since the subject goods were parts of article falling under heading 85.35 and themselves fell under heading 85.38 they were not eligible for the benefit granted in either of the aforesaid notifications. Incorrect grant of exemption resulted in duty being levied short by Rs.1,61,100.

The department, while admitting (February 1990) the mistake relating to auxiliary duty, stated that the imported goods were classified under heading 85.38 and were assessed to basic customs duty in accordance with serial number 12 of the notification of March 1987 wherein items of headings 8537.10 or 85.38 were included.

The reply is not acceptable. In terms of serial number 12 of the notification goods for use in circuits of 400 volts and above or of 20 amperes or above or for use in 1.5 Kw or above or parts of the aforesaid goods falling under 8537.10 or 85.38 were eligible for the concession granted in the notification. Therefore, serial number 12 were meant to include certain goods falling under heading 8537.10 and their parts falling under heading 85.38 and not all the articles falling under heading 85.38.

Ministry of Finance have confirmed the facts.

(b) In terms of notification dated 13 May 1988 "goods for use in circuits of 400 volts and above" falling under heading 8537.10 of the Customs Tariff are chargeable to auxiliary duty of customs at a concessional rate 30 per cent ad valorem.

A consignment of "Magnetic Ampl for control Panel" amplified as parts of control panel falling under heading 8537.10 was classified under heading 8538.10 and assessed (February 1989) to auxiliary duty of customs applying the aforesaid notification.

It was pointed out in audit (June 1989) that the subject goods being parts of control panel were not entitled to the exemption granted in the aforesaid notification. The irregular grant of exemption resulted in duty being levied short by Rs.2,92,943.

The department admitted (December 1989) the mistake and stated that the short levied amount was realised in October 1989.

Ministry of Finance have confirmed the facts.

2.30 Parts of Fork Lift Trucks

In terms of a notification dated 26 March 1981 as amended, scientific and technical instruments, apparatus and equipment, including spare parts, component parts and accessories thereof, but excluding consumable items, imported by a Research Institution are eligible for

duty free clearance subject, inter alia, to production of a certificate by the administrative Ministry concerned stating that the imported goods are essential for and used for research purposes. Guidelines issued by the Ministry of Education in February 1966 for the issue of essentiality certificates lay down that certain equipment which is of general use and used widely for other than research would not qualify for the duty exemption.

Spare parts of Fork Lift Trucks imported through a major Custom House by a public sector undertaking in December 1988 were assessed free of duty in terms of the notification cited.

It was pointed out (March 1989) in audit that the imported spare parts of Fork Lift Trucks would not be eligible for duty free assessment and were to be assessed on merits. Reference was also made to a similar audit objection on import of Truck Tractors (para 1.32 (i) of A.R 1983-84 - Volume I - Indirect Taxes).

The Custom House justified the duty free assessment (April 1990) on the grounds that 'Fork Lift Truck' was not a motor vehicle as was the case with Truck Tractor and that it was imported for specific use in research.

The reply overlooks the fact that only scientific and technical equipment are eligible for exemption and Fork Lift Trucks or their spare parts could not be so considered in view of the guidelines cited. Further the nature of their specific use in research purposes has not been spelt out by the department.

Short collection of duty amounted to Rs.1,30,737.

Ministry of Finance have confirmed the facts.

2.31 Components of Wrist Watches

The components of wrist watches are chargeable to customs duty at the rate of 100 per cent (basic) plus 40 per cent (auxiliary) plus 15 per cent (additional) under customs chapter heading 91. However, concesional duty at 10 per cent (basic) plus 40 per cent (auxiliary) plus NIL (additional) is chargeable on these components in terms of a notification dated 28 February 1985 as amended subject, inter alia, to the fulfilment of the conditions that the components were imported under an approved programme for the manufacture of wrist watches. The importer was also required to execute a bond binding himself to pay on demand, in respect of such quantity of imported components as was not proved to have been used for the aforesaid purpose.

Two importers imported (June and April 1986) watch parts and paid duty of Rs.1,09,459 and Rs.93,973 respectively at the rate of 10 per cent (basic) plus 40 per cent (auxiliary) plus NIL (additional) under the notification ibid.

It was observed that the concessional rates of duty were allowed to the importers but there was nothing on record to show that the programme to import the goods were approved by the authorities and also whether the importers executed the bonds as required under the notification. Thus the importers were allowed the benefit of the notification despite the fact that there was no record available in the Custom House to prove that the importers fulfilled the crucial conditions at the time of clearance. This resulted in short levy of Rs.5,12,650.

The objection was communicated to the department in January 1987. In reply to the statement of facts issued in May 1990, the department stated (June 1990) that the concerned parties were being contacted.

The matter was reported to the Ministry of Finance in August 1990; their reply has not been received (December 1990).

2.32 Articles made of glass

Articles made of glass imported as parts of machinery are classifiable under heading 98.06 in view of Note 1 to Chapter 98. With effect from 1 March 1988, such goods were excluded from the purview of notification No.69/87-Customs dated 1 March 1987 which prescribed levy of basic customs duty at 45 per cent ad valorem with auxiliary duty at 45 per cent ad valorem and free of additional duty. As a consequence, they were liable to basic customs duty at 100 per cent ad valorem with auxiliary duty at 45 per cent ad valorem and additional

duty at 15 per cent ad valorem in terms of notification 68/87-Customs dated 1 March 1987 as amended.

Borosil glass condenser and glass coil being spare parts of heat exchangers imported in September 1988 through a major airport, though classified correctly under heading 98.06, were subjected to levy of duty at concessional rate under notification 69/87.

Since the imported goods being 'articles made of glass' were excluded from the purview of the notification 69/87-Cus. dated 1 March 1987 it was pointed out (November 1988) in audit that there was short levy of duty of Rs.1,08,885 due to incorrect application of exemption notification.

Ministry of Finance confirmed the facts and stated (August 1990) that action had been initiated to recover the short levied amount.

2.33 Parts of Pneumatic Conveying System

Parts of machinery are generally classifiable under heading 98.06 of the Custom Tariff. If such parts contain semi conductor devices, electronic microcircuits etc., they are chargeable to basic customs duty at 100 per cent ad valorem and additional duty at 15 per cent ad valorem in terms of notification 68/87-Customs dated 1 March 1987 as amended on 29 April 1987 with auxiliary duty at 40 per cent ad valorem.

A consignment of IBAU DICONT 0.3 KILN FEED system for feeding Raw Meal into kiln and described in the invoice as parts of pneumatic continuous conveying system imported through a major Custom House in August 1987 was classified under heading 98.06 and subjected to levy of basic customs duty at 45 per cent ad valorem and free of additional duty with reference to another notification No.69/87 customs dated 1 March 1987 and auxiliary duty at 40 per cent ad valorem.

It was pointed out (February 1988) in audit that in view of the presence of semi conductor devices etc., the goods would be liable to duty at the higher rate under the notification first cited.

The department stated (June 1988 and May 1990) that though the imported goods form part of conveyor system, they, by themselves, constitute a complete feed system and were classifiable under heading 8428.39 and that there was no change in the rates of duty with reference to yet another notification 59/87-Customs dated 1 March 1987.

The reply of the department is not acceptable in view of the following factors:

i) The view of the department that the goods, being a complete feed system, would merit assessment under heading 84.28 does not take into account the overriding scope of heading 98.06 as defined in Note 1 to chapter 98.

ii) Collectors' Conference held in April 1989 had decided that parts of machines may continue to be assessed under heading 98.06, even though they are ordinarily classifiable under some other chapter.

The imported goods being a part of a continuous conveying system would therefore be classifiable only under heading 98.06 and as they contain semi conductor devices etc., would be leviable to duty at the higher effective rate. The incorrect grant of exemption resulted in duty being levied short by Rs.14.44 lakhs.

Ministry of Finance stated (November 1990) that the prenumatic continuous conveying system was by itself classifiable under heading 84.28 and that the question of assessing it under heading 98.06 of the Customs Tariff Act, 1975 did not arise as this heading covered only parts of machinery and equipment. The Ministry also refuted that the ratio of the decision of the tariff conference would not apply in this case as it was on a specific issue regarding classification of instruments imported as parts of machinery.

The fact that the imported goods were part of a continous conveying system has not been disputed. The view that the imported goods would by itself merit assessment under heading 84.28 does not take into account the overriding nature and scope of heading 98.06 as defined in Note 1 to chapter 98.

2.34 Horological Machinery/Oil Equipment

As per notification 45/85 issued on 28 February 1985 as amended 'Horological machines and testing equipment' imported for the manufacture and assembly of wrist watches are eligible for concessional rates of basic customs duty at 10 per cent ad valorem (subsequently increased to 35 per cent ad valorem). The conference of Collectors of Customs, held in December 1989, decided that, for the purpose of the aforesaid notification, horologinal machine and testing equipments should be such that they are meant for the manufacture or assembly of wrist watches directly and are not meant for other industrial uses and further that the benefit of the exemption could only be extended to the machines which are specially designed for manufacture or assembly of watch components and not for general purposes. The Ministry of Finance have accepted the similiar view indicated in a similar paragraph (para 2.30 of C.A.G's Audit Report for the year ended 31 March 1989).

Four consignments of machines such as 'electric discharge machine meant for manufacture of tooling and die set', friction press 120 tons, machine tools, i.e., turning machine, copy milling machine, tapping machine, super finishing machine, mechanical presses within 100 tons capacity, three CNC milling machines etc., imported in May 1987, February 1988, October 1988 and June 1989 through a major Custom House were classified under different headings and incorrectly extended concessional assessment under the said notification dated 28 February 1985.

Audit objected (February 1988, April 1989, May 1989 and December 1989) to this concessional assessment since the imported goods were only general purpose machines i.e., machine tools working on metals. The Custom House justified their original assessment (March 1988/May 1989) in respect of first audit objection for short levy of duty of Rs.6,95,833 stating that the notification cited had a wider scope to accommodate all kinds of machines in question. However in respect of other three objections, the Custom House accepted (January 1990) the audit stand with reference to the decision arrived at in the Collectors' Conference and intimated that a demand (ad hoc) for Rs.94 lakhs was issued. With reference to the invoice details, the actual short collection worked out to Rs.45,76,808 in respect of these three objections and the total short collection in all four cases aggregated to Rs.52,72,641.

In reply to a statement of facts issued (June 1990), the Custom House stated that the matter was again referred to Collectors' Conference for review.

Ministry of Finance have confirmed the facts and stated that the matter would be discussed again in the next conference of Collectors of Customs.

NON LEVY OF IMPORT DUTIES

2.35 Non levy/Short levy of additional duty

i) T.V. Tuners

Notification 68/87-Customs dated 1 March 1987, under which basic customs duty was leviable at 100 per cent ad valorem on certain goods falling under heading 98.06 of the Customs Tariff, was amended by notification 182/87-Customs dated 29 April 1987 providing for levy of additional duty at 15 per cent ad valorem.

In respect of 77 consignments of T.V Tuners (parts of television receivers) imported through a major Custom House during the period from May 1987 to April 1988 and classified under heading 98.06, additional duty was not levied till 28 February 1988 and was levied at 10 per cent ad valorem from 1 March 1988 with reference to a Central Excise notification 74/85-Central excise dated 17 March 1985.

In 20 Test Audit memos issued during the period from March 1988 to October 1988, it was pointed out in audit (March to October 1988) that additional duty was leviable on the imported T.V Tuners at 15 per cent ad valorem in terms of the aforesaid amendment to customs notification of 1 March 1987 on the ground that the exemption notification could not be applied partially for the levy of basic customs duty alone while ignoring it for additional duty. Audit also pointed out that a specific notification issued under the Customs Act would pre-

vail over any other exemption notification issued on the Central Excise side. Non levy/ short levy of additional duty in these cases amounted to Rs.48 lakhs. Other similar assessments were required to be reviewed.

The matter was discussed in the Collectors' Conference held in August 1988, wherein it was decided to refer the issue to the Law Ministry for its opinion. The final action taken in this regard has not been intimated.

The matter was reported to the Ministry of Finance in September 1990; their reply has not been received (December 1990).

ii) Air Bus Engine

A consignment of 'Air bus engine', amplified in the bill of entry as 'aeroplane spare parts' and reimported in October 1988 after repairs was assessed to the basic customs duty under subheading 8803.10 of the Customs Tariff Act, 1975 at 3 per cent ad valorem with total exemption from the levy of auxiliary duty and additional duty under notifications 99/81-Cus. dated 1 April 1981 and 204/76-Cus. dated 2 August 1976.

Audit objected (May 1989) to the extension of benefit available under the aforesaid notifications on the ground that the item reimported being an aircraft engine classifiable under subheading 8407.10 was not a part/spare part of goods falling under Chapter 88 keeping in view Note 2(e) to Section XVII. The 'air bus engine' reimported was, therefore, to be charged to basic customs duty of 3 per cent ad valorem under notification 145/77-Cus. dated 9 July 1977 with additional duty at 15 per cent ad valorem. Non application of the relevant notification resulted in short levy of additional duty amounting to Rs.22,46,833.

The department did not admit the objection (August 1989). It stated that notification 99/81-Cus exempts aeroplane parts when imported for servicing of aeroplanes from basic customs duty in excess of 3 per cent ad valorem and from the whole of additional duty and the import of engine spares was for the purpose of servicing of aeroplanes.

The reply is not acceptable for the following reasons:

The notification 99/81-Cus covers aeroplane parts when imported for servicing of aeroplanes whereas the imported goods were 'Airbus engines' reimported after repairs. Such imports of aeroplane engines were correctly covered under notification 145/77-Cus which specifically extends the benefit in charging the basic customs duty only but does not provide any exemption from levy of additional duty.

Ministry of Finance stated (November 1990) that the notification 99/81-Customs dated 1 April 1989 exempted spare parts from the whole of additional duty. They added that aeroplane engines imported in this case after repairs were for servicing of aeroplanes. The Ministry cited in this context the observations of the Tariff Conference held in March 1990 to the effect that the aeroplane engine would have to be regarded as spare parts of the aeroplane and hence there would be no justification for denying the benefit of notification of 1 April 1981 to the aeroplane engine.

The reply of Ministry is not acceptable as under notification of 9 July 1977, the aeroplane engine has been specifically exempted from the basic customs duty only as in excess of 3 per cent ad valorem and no exemption from additional duty was available. The notification of 29 April 1981 is not relevant as this is meant for aeroploane spare parts for the servicing of aeroplane and not for aeroplane engines. Hence the specific notification for aeroplane engines would prevail over general notification of 29 April 1981.

iii) Parts of Cassette Players

'Parts of cassette players' are classifiable under heading 85.22 of Central Excise Tariff and chargeable to additional duty at 25 per cent ad valorem

On a consignment of 'video tape deck mechanism' (electronic parts of cassette players) imported through a major Custom House during April 1989 and cleared from bonded warehouse in June 1989, additional duty was levied at 15 per cent ad valorem under heading 8529.00 ibid instead of at 25 per cent ad valorem under 85.22. The misclassifica- tion resulted in short levy of additional duty amounting to Rs.10,52,450.

Ministry of Finance confirmed the facts and stated (October 1990) that the short levied amount had been recovered (February 1990).

iv) Cable Impregnating Compound

As per a customs notification issued on 1 January 1985, cable insulating, impregnating and filling compounds falling within Chapter 38 or 39 of the Customs Tariff, when imported into India, are exempted from the basic customs duty leviable in excess of 40 per cent ad valorem. However, additional duty is leviable at the rate based on its classification under chapter 38 or 39 of the Central Excise Tariff.

Four consignments of "Cable Impregnating Oil/Compound Grade NAPLEC-C" consisting mainly of 'Polyisobutylene' imported and cleared from bond during June, September, October and November 1988 were assessed to basic custom duty at 40 per cent ad valorem under subheading 3823.90 of the Customs Tariff Act, 1975 read with the customs notification of 1 January 1985. Additional duty was levied at 15 per cent ad valorem under subheadings 3823.90 and 3801.30 of Central Excise Tariff.

Since the imported goods consisted mainly of 'Polyisobutylene' - a polymer, it was pointed out (May and June 1989) in audit that the correct classification of the goods was under customs tariff heading 39.02 and that the additional duty was leviable at 40 per cent ad valorem under Central Excise Tariff heading 39.02.

The misclassification of the goods resulted in additional duty being levied short by Rs.5,99,048.

The Custom House did not accept the objection in three cases (January 1990) stating that the imported goods were found to be composed of 'Polyisobutylene with wax as additive'. They were not simply goods of a kind produced by chemical synthesis to fall under any of the five categories listed in Sub.Sr.Nos.(a) to (e) of Note 3 to Chapter 39 of Customs and Central Excise Tariffs, but were a physical mixture of Polyisobutylene and wax, covered by heading 38.23 ibid under the category 'Preparations of the chemical or allied Industries'. In the fourth case, the reply to the objection has not been received.

The reply of the department is not acceptable for the following reasons.

i) Sub-chapter I of Chapter 39 deals with goods in primary forms and heading 39.02 deals with polymers of propylene in primary forms. The expression 'primary forms' as defined under Chapter 39 would be applicable only to (1) Liquid and Paste (2) Powder, Granule and Flakes and (3) Blocks of irregular shape, lumps etc. The imported goods which were in paste form would be the basic polymer which required 'curing' by heat or otherwise to form the finished material or would be dispersions or solutions of the uncured or partly cured materials. In addition to substances necessary for 'curing', the liquids and pastes would contain other materials such as plasticisers, stabilisers, fillers and colouring matter, chiefly intended to give the finished products special physical properties or other desirable characteristics such as in impregnating materials. Chapter 39 would exclude only those polymers which were specially formulated as glues or adhesives. As the imported goods were neither glues nor adhesives, they would fall under Chapter 39 only. The presence of wax as additive would not remove it from the ambit of Chapter 39.

ii) Chapter 38 relates only to chemical and other miscellaneous products. As per the test report, the imported goods are only a physical mixture of Polyisobutylene and wax. As per General Interpretative Rule 3(b), the goods are assessable according to the main constituent of the mixture, which in this case is Polyisobutylene.

iii) Even considering Rule 3(C) the goods would be classifiable under Chapter 39 only.

The Ministry have not admitted the objection and reiterated the arguments of the department.

However, the fact remains that subsequent assessments were made by the customs authorities in respect of same goods imported in July 1988, February 1989, March 1989 and September 1989 under Chapter heading 39.

v) Electron Guns

As per a notification issued in April 1987, electron guns, when imported into India, were wholly exempt from additional duty. In terms of an amending notification dated 5 June 1987, this exemption was withdrawn. Hence electron guns, imported on or after 5 June 1987, became liable to additional duty at 15 per cent ad valorem under heading 85.40 of Central Excise Tariff.

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

On this omission being pointed out (October 1988) in audit, the department accepted the objection and recovered the short collection of Rs.5,65,943 in both cases (December 1988).

Ministry of Finance have confirmed the facts.

vi) Eccosorb Sheets

For purpose of levy of additional duty, articles of polyurethane foam were classifiable under subheading 3922.10 of Central Excise Tariff during 1986-87 and liable to duty at 75 per cent ad valorem.

A consignment of 'Eccosorb absorbing material' in sheets imported by a public sector undertaking through an Air Cargo Complex in April 1986 was classified under subheading 3922.90 as "articles of plastics- others", and additional duty at 15 per cent ad valorem levied.

It was pointed out (January 1987) in audit that Eccosorb sheets were made of polyurethane foam and the correct classification would be under subheading 3922.10 attracting higher rate of additional duty at 75 par cent ad valorem. A short collection of duty of Rs.2,92,586 was also pointed out in audit. The department accepted the objection (May 1990) and stated that action would be initiated to recover the short levied amount.

Ministry of Finance have confirmed the facts.

vii) Bleaching Earth

Activated clay falls under heading 38.02 of the Central Excise tariff and is assessable to additional duty at 15 per cent ad valorem.

Two consignments, described as "Tonsil AC (Bleaching earth)" and amplified as activated clay, were classified under heading 25.05 of the Central Excise Tariff and assessed (July 1987) free of additional duty by applying a notification of February 1986.

It was pointed out in audit (January 1988) that the subject goods being activated clay were assessable to additional duty at 15 per cent ad valorem under heading 38.02 of the Central Excise Tariff in terms of the Explanatory Note 1 pertaining to Chapters 1-29 on Harmonised System of Tariff and Coding Commodity (page 188). The misclassification of the goods resulted in duty being levied short by Rs.2,62,900.

The department admitted (November 1989) the mistake and stated that attempts were being made for realisation of the short levied amount.

Ministry of Finance have confirmed the facts.

viii) Tread Rubber

In terms of Central Excise notification dated 1 April 1968 (as amended), all rubber products in the form of plates, sheets and strips falling under heading 40.05 of Central Excise tariff were exempt from levy of additional duty. However products commonly known as tread rubber, cushion compound, tread gum, tread packing strips, etc., were excluded from the concessional benefits under this notification. In Tariff Advice No.24/81 dated 24 February 1981, the Board decided that splicing com-

pound used in repairing conveyor belt was classifiable as tread rubber and cushion compound and excluded from the aforesaid notification. This decision was based on the earlier Tariff Conference decision and Government of India Order in revision.

Two consignments of goods described as splicing materials and spares amplified as (i) rubber granules and (ii) rubber sheets and strips imported (March 1986) by a public sector undertaking and a Port Trust through a major Custom House were subjected to levy of additional duty at 15 per cent ad valorem under headings 4002.00 and 4018.20 respectively.

The rubber granules and rubber sheets/strips being splicing materials commonly known as tread rubber are classifiable under heading 4005.00 and 4008.11 (in the absence of details as to whether the rubber sheets/strips are in vulcanised form or not and whether or not made of cellular rubber) and chargeable to additional duty at 40 per cent ad valorem and 60 per cent ad valorem respectively and that they are excluded from the aforesaid notification. On this being pointed out (November 1986/September 1987) in audit, the Custom House did not accept (February 1987/April 1990) the audit objection stating that the imported items are splicing materials in the form of sheets, strips and granules and that they are compounded rubber, unvulcanised in primary forms or in plates, sheets or strips and therefore correctly classifiable under heading 40.05 and are eligible for nil rate of additional duty under the notification cited. The Custom House mentioned that the Tariff Advice cited would not be applicable in this case since it was issued prior to the introduction of Harmonised Tariff.

Though the department did not accept the audit objection, it had initiated recovery action through voluntary payment (December 1986) pursuant to which the short collection of duty of Rs.77,192 was realised (February 1987) from the first importer. The balance of Rs.1,16,650 due from the second importer could not be realised since the importer declined to honour the request for voluntary payment made by the Custom House.

Ministry of Finance have confirmed the facts.

ix) Solenoid Valve and Expansion Valve

According to a Central Excise notification issued on 17 March 1985, domestic refrigeration of capacity not exceeding 165 litres is subjected to additional duty at 25 per cent ad valorem, whereas parts of refrigerating and air-conditioning system are subjected to 80 per cent additional duty.

Pressure Control, EVR Solenoid valve and TF expansion valve imported in February 1986 through a major Custom House were incorrectly subjected to a levy of additional duty at 25 per cent ad valorem with 5 per cent special duty thereon under heading 29 A of the Central Excise tariff, overlooking the fact that the goods in question were refrigerating and air-conditioning system parts.

It was pointed out (November 1986) in audit that the said goods, being parts of refrigerating and air conditioning system, were assessable to additional duty at 80 per cent ad valorem plus special excise duty at 5 per cent thereon. The Customs House admitted the objection in May 1990 and stated that the importer had not paid the short levy on voluntary payment basis despite efforts. The short levy of duty worked out to Rs.1,84,465.

Ministry of Finance have confirmed the facts.

x) Computer System and its accessories

A public sector undertaking imported a computer system and its accessories of value Rs.9,52,067 in February 1988. The goods were classified under subheading 8471.99 of Customs Tariff and the importer paid basic customs duty at 60 per cent plus additional duty at nil rate of duty in terms of a notification dated 19 November 1984. Consequent on the withdrawal of this notification by notification dated 29 April 1987, the additional duty became leviable at 10 per cent ad valorem from 29 April 1987 under notification dated 1 March 1987 on the Central Excise. The incorrect application of the earlier notification dated 19 November 1984 resulted in additional duty being not levied by Rs.1,52,331.

On this omission being pointed out (September and November 1989) in audit, the

department intimated (February 1990) that the said amount was recovered in January 1990.

Ministry of Finance have confirmed the facts.

xi) 'Hyflosupercel'

In terms of a notification issued on 17 February 1986 as amended, additional duty leviable on all imported goods is fully exempted if such goods fall under specified chapters/ headings of the Central Excise Tariff. Accordingly 'mineral products' classifiable under Customs Tariff heading 25.12 are exempted fully from levy of additional duty, as goods falling under heading 25.05 of the Central Excise Tariff.

Four consignments of filter aid powder 'Hyflosupercel' imported through a major Custom House in September 1988 and January 1989 and assessable under customs tariff heading 38.02 as 'activated mineral product' and attracting additional duty under Central Excise Tariff heading 38.02 at 15 per cent, were classified under heading 25.12 as 'mineral product', without levy of additional duty, extending the benefit of the aforesaid notification.

It was pointed out (April and May 1989) in audit that the assessments of the goods under heading 25.12 were erroneous and added that the classification of the goods under heading 38.02 would be more appropriate because the imported goods were celite filter aids produced by adding fluxing agents to diatomaceous earth before calcination. As the goods were thus made 'activated' by the above process, the assessments were to be done under heading 38.02.

The short levy of the additional duty amounted to Rs.1,47,798.

On this being pointed out, the department admitted the objections in September 1989. Report on recovery was not received (March 1990).

Ministry of Finance have confirmed the facts.

2.36 Short levy/Non levy of auxiliary duty

i) Caging Machine

'Caging machine' valued at Rs.26,92,580 imported through a major Custom House during May 1989 was classified under subheading 8479.89 of the Customs Tariff and assessed to customs duty at 35 per cent ad valorem with 'NIL' auxiliary duty and 'NIL' additional duty extending the benefit of customs notification dated 1 March 1988.

It was pointed out (October 1989) in audit that the goods covered by the exemption notification were chargeable to auxiliary duty at 5 per cent ad valorem as against the total exemption from auxiliary duty granted. This resulted in duty being levied short by Rs.1,34,629.

The department accepted the objection and recovered the amount in January 1990.

Ministry of Finance have confirmed the facts.

ii) Sewing Machines

Imported sewing machines, other than book - sewing machines; furniture, bases and covers specially designed for sewing machines; sewing machine needles are classifiable under heading 84.52 of Customs Tariff. As per a notification issued in March 1987, goods falling under subheading 8452.21 are exempt from basic customs duty in excess of 35 per cent ad valorem and the whole of additional duty.

Singer sewing machine, needle with table stand and motor valued at Rs.3,34,205 imported through a major sea Custom House in March 1989, was classified under sub heading 8452.21 of the Customs Tariff Act, 1975 as 'other sewing machines - automatic units' and assessed to basic customs duty of 35 per cent ad valorem, auxiliary duty at 5 per cent ad valorem and 'Nil' additional duty extending the benefit of the aforesaid notification of March 1987. No notification was quoted for levy of auxiliary duty at 5 per cent ad valorem.

It was pointed out (September 1989) in audit that the auxiliary duty leviable was 45 per cent ad valorem as against 5 per cent levied for

the reason that the notification issued in March 1987 was not covered by notification extending partial exemption from auxiliary duty. The application of incorrect rate of auxiliary duty resulted in duty being levied short by Rs.1,33,682.

The matter was reported to the Ministry of Finance in September 1990; their reply has not been received (November 1990).

iii) Vacuum Tubes

A consignment of 'vacuum tubes', being the components for '3AF Circuit Breakers of 36 KV' valued at Rs.10,55,934 and imported in October 1988 through a major Custom House was classified under heading 8538.90 of the Customs Tariff Act, 1975 as parts of electrical apparatus for switching or protecting electrical circuits etc. and basic customs duty was levied at 40 per cent ad valorem with auxiliary duty at 30 per cent ad valorem plus additional duty at 15 per cent ad valorem.

It was pointed out in audit (May 1989) that the subject goods would attract auxiliary duty at 45 per cent ad valorem as against 30 per cent ad valorem levied by the department.

On the mistake being pointed out, the Custom House admitted the objection and recovered the short levied duty of Rs.1,82,149(June 1989).

Ministry of Finance have confirmed the facts.

iv) 'Lubricating Oils'

Lubricating oil falling under heading 27.10 of the Customs Tariff had been fully exempted from payment of auxiliary duty under notification No.206/87-Customs dated 12 May 1987. The item, however, became liable to the said duty at 5 per cent ad valorem in terms of notifications No.97/88-Customs dated 1 March 1988 and No.88/88 Customs dated 1 March 1988.

In respect of a consignment of "Cylinder Oil Gr.III Type I-Lubricating Oil", the bill of entry was presented on 1 March 1988 and no auxiliary duty was levied on these goods applying the aforesaid notification of 12 May 1987. The goods shown in the said bill of entry were cleared from the warehouse between 14 March 1988 and 21 July 1988.

It was pointed out in audit (October 1989) that, during the period of their clearance, auxiliary duty at 5 per cent ad valorem was leviable. This resulted in duty being levied short by Rs.70,989.

The department admitted the mistake (December 1989).

Ministry of Finance confirmed the facts and stated (September 1990) that the short levied amount had been realised in May 1990.

SHORT LEVY DUE TO MISCLASSIFICATION

2.37 Amino Acid

"L-Lysine Mono Hydrochloride" is classifiable under heading 2922.41 of Customs Tariff and chargeable to the basic customs duty at 70 per cent ad valorem with auxiliary duty at 40/45 per cent ad valorem and additional duty at 15 per cent ad valorem.

Two consignments of L-Lysine Mono Hydrochloride, amplified as feed additive not for medicinal use imported during August 1987 and December 1987 through a major Custom House, were incorrectly classified under heading 2309.90 and subjected to levy of basic customs duty at 60 per cent ad valorem with auxiliary duty at 40/45 per cent ad valorem and free of additional duty.

On the incorrect classification being pointed out in audit (March 1988 and May 1988), the Custom House justified the original assessment, stating that the goods were Amino acids and were one of the pre-mixes meriting classification under heading 23.09 only. The reply is not acceptable in view of the fact that the established practice in the Custom House is to classify L-Lysine Mono Hydrochloride (feed grade) under Chapter 29 only and not under Chapter 23. Further L-Lysine Mono Hydrochloride is only an Amino acid (one of the constituents in pre-mixes) and not a pre-mix which is described as a combination of substances like Amino acids, antibiotics etc. The

Assistant Drug Controller also merely indicated that the goods were used in animal feed/ pre-mix but did not state that it was a pre-mix or preparations falling under heading 23.09. Further heading 29.22 is specific to the imported goods which should be preferred.

The short collection of duty amounted to Rs.96,506.

Ministry of Finance have stated (December 1990) that this issue needs further examination and will be discussed in the next conference of collectors of customs.

2.38 Plastics and Articles thereof

(a) Certain articles of plastics and articles of materials of headings 39.01 to 39.14 of the Customs Tariff are classifiable under heading 39.26.

A consignment of various components of apparatus (Kits) for jointing power cables described as "PST Insulator, Silicone PST, EPDM PST TR6, Silicone Seath Seal, Crotch Seal EPDM, PSTTR 4" was assessed (January 1989) to basic Customs duty at 60 per cent ad valorem under heading 8547.90 of the Customs Tariff treating the subject items as different electrical insulating fittings.

It was pointed out in audit (September 1989) that the imported articles being made of resin like silicone were classifiable under heading 3926.90 of the Customs Tariff attracting basic customs duty at 100 per cent ad valorem. The misclassification of the goods resulted in duty being levied short by Rs.2,43,765.

The department admitted (December 1989) the mistake and stated that notice for voluntary payment was issued.

Ministry of Finance stated (November 1990) that, even though this issue had been discussed in the departmental tariff conferences, the matter was being taken up for further detailed emamination.

(b) Polyamides classifiable under Chapter 39 of the Customs Tariff are assessable to basic customs duty at the rate of 150 per cent ad valorem vide notification No.88/87 (serial No.1(VI) in the table).

On import of 1580 kilograms of Polyaccrylamide through a major Custom House by a State Government undertaking in January 1989, basic customs duty was levied at the rate of 100 per cent ad valorem in terms of the aforesaid notification. It was pointed out in audit (December 1989) that polyaccrylamide belongs to the group of polyamides and therefore basic customs duty was leviable at the rate of 150 per cent ad valorem as stated above. The short levy of duty amounting to Rs.87,196 pointed out in audit has not been recovered so far (July 1990).

Ministry of Finance stated (November 1990) that the goods described as 'super floc A 110 PWG Grade 155 (a floculating agent) are anionic polyaccrylamide used in the processing of Ilmenite for manufacture of titanium oxide and hence were assessed under heading 3906.90 of the Customs Tariff at concessional rate of 100 per cent ad valorem under Sl.No.11 of table annexed to the notification 88/87-Customs dated 1 March 1987.

The Ministry's contention that the said goods are classifiable under Sl.No.11 of the notification of 1 March 1987 under 'All others' category is not correct since Polyaccrylamide falls within the group of polyamides and hence were assessable to basic duty at 150 per cent ad valorem under Sl.No.1(vi) of the said notification.

2.39 Leather Articles

In terms of Customs Co-operation Council Nomenclature explanatory notes at page 622, leather articles, which are used in machinery, mechanical appliances or for other industrial purposes fall under heading 42.04. Note (1) (b) to Section XVI of the Customs Tariff Act, 1975 also supports this. It, therefore, follows that leather belts used in machinery were classifiable under heading 42.01/06 of Customs Tariff as it existed prior to 28 February 1986 and chargeable to basic customs duty at 100 per cent ad valorem with auxiliary duty at 40 per cent ad valorem and additional duty at 12 per cent ad valorem under Item 68 of erstwhile Central Excise Tariff.

A consignment of flat belts imported in February 1986 through a major airport by a public sector undertaking and made of single

ply chrome leather on the driving surface side as friction layer with single ply woven perlon on the other side was incorrectly classified under heading 59.16/17 of the Customs Tariff Act, 1975 as "Transmission and Conveyor belts of textile materials" and assessed to basic customs duty at 40 per cent ad valorem with auxiliary duty at 25 per cent ad valorem and additional duty at 12 per cent ad valorem under Tariff Item 68 of the Central Excise Tariff.

It was pointed out (October 1986) in audit that classification of the said goods would be more appropriate under the heading 42.01/06 of the Customs Tariff Act, 1975 for the reasons mentioned in para 1. The incorrect classification resulted in duty being levied short by Rs.96,949.

Ministry of Finance confirmed the facts and stated (October 1990) that efforts were being made to recover the short levy through voluntary payment.

2.40 Abrasive Balls

In terms of Explanatory Notes of Harmonised Commodity Description and Coding System, heading 68.04 of the Customs Tariff covers agglomerated grinding wheels made by mixing ground abrasive with binders which are moulded to shape, dried, heated or cured and then trimmed to size and shape, while heading 68.05 would cover articles on which crushed abrasives are coated usually by means of glue or plastics.

Goods described as 'carborundum coat balls for condenser cleaning equipment' imported through a major Custom House by a State Government Undertaking in July 1987 were classified under heading 6804.22 and subjected to levy of basic customs duty at 40 per cent ad valorem with auxiliary duty at 40 per cent ad valorem and additional duty at 20 per cent ad valorem under item 6801.10 of the Central Excise Tariff.

Based on the technical information obtained at the instance of audit (July 1988) it was suggested in audit that the imported goods were specifically covered by the heading 6805.30 and assessable to basic customs duty at 100 per cent ad valorem with auxiliary duty at 40 per cent ad valorem and additional duty at 20 per cent ad valorem under heading 6802.00 of Central Excise Tariff.

The Custom House justified (January 1990) the original assessment on the ground that agglomerated grinding balls would fall under heading 68.04 and, in their manufacture, textile fabrics were sometimes incorporated in the mixtures and further that heading 68.05 excluded grinding wheels composed of a rigid support fitted with an agglomerated layer of abrasive.

The reply of the Custom House is not acceptable for the reason that the goods are not agglomerated grinding balls under heading 68.04 but sponge balls to which fine particles of carborundum (Aluminium oxide) are bounded using a specially selected adhesive and these sponge balls are to be squeezed under water to expel air before use. As particles of abrasives are coated on a material which is not rigid, the goods would fall only under heading 6805.30.

Reference to incorporation of textile fibre in the mixtures is not relevant, since it is obtained by mixing ground abrasive or stone with binders such as ceramic materials or cementing materials which is not the position in the instant case.

Resultant short levy of duty amounted to Rs.1,18,390.

Ministry of Finance confirmed the facts and stated (August 1990) that demand notice had been issued to recover the short levied amount.

2.41 Heating/Cooling Equipment

Laboratory equipment for heating and cooling whether or not electrically heated for the treatment of materials by a process involving a change of temperature not being machinery or a plant of kind used for domestic purposes are classifiable under subheading (1) of heading 84.17 with levy of basic customs duty at 40 per cent ad valorem whereas certain machines, machinery and equipment for use in airconditioning are classifiable under subheading (2) ibid with a higher rate of basic customs duty at 60 per cent ad valorem.

A consignment of heating/cooling equipment imported in January 1986 through a major Custom House by a Government department was incorrectly assessed to basic customs duty at 40 per cent ad valorem under sub heading (1) of heading 84.17 and auxiliary duty at 30 per cent ad valorem and additional duty at 12 per cent ad valorem under tariff item 68 of Central Excise Tariff in the absence of technical details. As no details were available to justify the classification under sub-heading (1) of heading 84.17, it was suggested in audit (December 1986/April 1990) that classification under sub heading (2) ibid with levy of basic customs duty at the rate of 60 per cent ad valorem with auxiliary duty at 40 per cent ad valorem and additional duty at 12 per cent ad valorem would be more appropriate.

The Custom House admitted (February 1990) the objection and further confirmed (May 1990) the short collection of Rs.1,84,636.

Ministry of Finance confirmed the facts and stated (October 1990) that action was being taken to recover the short levied amount.

2.42 Air Filters (Jet Filters)

According to Harmonised Commodity Description and Coding System (HSN) Explanatory Notes (Page 1221), air filter used to extract the dust from the exhaust air is excluded under heading 84.37 of Customs Tariff and is classifiable under heading 8421.39 and subjected to levy of basic customs duty at 110 per cent ad valorem with auxiliary duty at 45 per cent ad valorem and additional duty at 15 per cent ad valorem. HSN Explanatory Notes (Page 1182) under heading 84.21 also support this classification.

A consignment of "reverse jet filter" imported (January 1989) through a major Custom House was incorrectly classified under heading 8479.89 and subjected to levy of basic customs duty at 70 per cent ad valorem with auxiliary duty at 30 per cent ad valorem and additional duty at 15 per cent ad valorem. Based on the write-up, which clearly stated that the "Filter" was used to extract "wheat dust particles" from the dust air-mixture, so that clean air could be let out into the atmosphere, it was pointed out (July 1989) in audit that the correct classification would be under heading 8421.39. This resulted in duty being levied short by Rs.1,34,948.

The Custom House replied (July 1989/ January 1990) that the "filter" was used for segregating ground powder and that the main function was to filter flour and not air and hence was correctly classifiable under heading 84.37 which attracted basic customs duty at 45 per cent ad valorem with auxiliary duty at 45 per cent ad valorem and without additional duty and, therefore, there was only an excess collection of duty (July 1989). The reply of the Custom House is not acceptable because it is contrary to the facts on record. Further, according to HSN Explanatory Notes (page 1219), heading 84.37 covered machines used for cleaning, sorting or grading cereal grains, dried leguminous vegetables, seeds etc., by winnowing, blowing, sieving etc., and air jet filter, which was, according to the write-up, meant for pollution control, would not fall under 84.37 but would fall under heading 84.21.

Ministry of Finance confirmed the facts and stated (July 1990) that action was being taken to recover the short levied amount by way of voluntary payment.

2.43 Ice Cream Making Machine and Polo Packing Machine

As per Rule 2(a) for Interpretation of Import Tariff "any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished provided that, as presented, the incomplete or unfinished article has the essential character of the completed or finished article. It shall also be taken to include a reference to that article complete or finished, presented, unassembled or disassembled".

A consignment consisting of "Polo-4-5-- Ice Cream Making Machine, Polo Packing Machine, its components and accessories" valued at Rs.31,71,532, imported in unassembled condition by a frozen food product company through a major Sea Custom House during February 1987 was assessed, as "packing wrapping machinery and parts of refrigerating and

freezing equipment" under different headings of Chapter 84 of Customs Tariff.

Though assessment of the packing machinery and its accessories under the heading 84.22 of the Customs Tariff Act, 1975 was in order, the assessment of the 'Polo 4/5 Machine for production of ice cream' and its accessories (assessable value Rs.26,03,911) as "parts of refrigerating equipment" under sub heading 8418.99 of the Customs Tariff Act, 1975 was objected to in audit (October 1987) on the ground that the imported goods were refrigerating/freezing equipment in CKD/SKD condition meriting classification under subheading 8418.69.

The department justified the assessment done stating that the Polo 4 machine imported was without the evaporator and, therefore, the goods viz. Basic Machine Polo 4, fillers, extractors, suckers, chocolate diptank etc., could not be considered as refrigerating unit, but as 'parts' only.

The department's reply is not acceptable for the following reasons:-

i) As per the catalogue and the department's notings the imported machine-Polo.4, is designed to receive an evaporator and the machine without the evaporator would be non-functional.

ii) The evaporator certified as not imported was invoiced among other items and the import licence of the goods showed that the importers were allowed to import the evaporator also.

iii) The goods imported, being refrigerating/freezing equipment in CKD/SKD condition, attracted customs duty at 50 per cent, auxiliary duty at 25 per cent and additional duty at 60 per cent.

iv) As per the HSN Explanatory Notes (Page 1132) on "Incomplete Machines" throughout the Section any reference to a machine or apparatus covers not only complete machine but also incomplete machine.

The goods being 'refrigerating equipment in CKD condition' was therefore not classifiable as 'parts'. The short levy amounted to Rs.12,79,848.

The matter was reported to the Ministry of Finance in September 1990; their reply has not been received (December 1990).

2.44 Photo Composing/Photo Type Setting Machine

Automatic data processing machines in the form of systems consisting of a variable number of separately housed units are classifiable under heading 84.71 of the Customs Tariff Act, 1975.

Twenty nine consignments of 'photo-composing/photo type setting systems' - computer system totally valued at Rs.55,79,315 - imported through a major air Customs Collectorate during June to September 1989 were assessed under sub heading 8442.10 of the Customs Tariff Act, 1975 as phototype-setting and composing machines at 35 per cent ad valorem (basic customs duty) plus 5 per cent ad valorem (auxiliary duty) with 'NIL' additional duty extending the benefit of notification 114/80 issued on 19 June 1980 applicable to specified machines designed for use in the printing industry.

It was pointed out (November 1989, December 1989, February/March 1990) in audit that 'phototype setting systems' comprising of editing terminals, key boards, floppy disc, drives, hard discs, printers etc. were basically computers (automatic data processing machines) classifiable under Customs and Central Excise heading 84.71 in terms of Note 5 to Chapter 84. The duty chargeable would accordingly be 35 per cent ad valorem (basic), 45 per cent ad valorem (auxiliary duty) and 15 per cent ad valorem (additional) under notifications 58/88-Cus dated 1 March 1988 and 81/89 CE dated 1 March 1989.

The misclassification resulted in duty being levied short to the tune of Rs.37.38 lakhs (approximately).

The matter was reported to the Ministry of Finance in September 1990; their reply has not been received (December 1990).

2.45 Parts of Computer Printer

(a) Parts of computer printers are classifiable under heading 8473.30 of the Customs Tariff and subjected to levy of basic customs duty at 200 per cent ad valorem with auxiliary duty at 45 per cent ad valorem and additional duty at 20 per cent ad valorem under heading 84.73 of Central Excise Tariff.

"Printer Mechanism" - parts of Computer Printers imported (August 1988) through a major Custom House were incorrectly assessed under heading 8471.92 treating it as printer proper and subjected to levy of basic customs duty at 35 per cent ad valorem with auxiliary duty at 45 per cent ad valorem and additional duty at 10 per cent ad valorem, allowing the benefit of notification No.58/88-Customs dated 1 March 1988, intended for computers and peripherals.

With reference to an earlier assessment of 'Printer Mechanism' and the value of the goods, it was pointed out (February 1989) in audit that the classification in the instant case would need to be reviewed.

The Custom House intimated (May 1989) the issue of a demand for short collection of duty of Rs.1,35,540 without the bond interest of Rs.3,164. It was further ascertained that an order confirming the demand was issued in December 1989.

Ministry of Finance confirmed the facts and stated (August 1990) that action was being taken to recover the short levied amount.

(b) A consignment of printer spare parts viz. print wheels, tractor assembly, etc., imported (June 1983) through a major Custom House was classified under heading 84.34 of the Customs Tariff as parts of printing machines and assessed to basic customs duty at 40 per cent ad valorem and auxiliary duty at 20 per cent ad valorem plus additional duty at the rate of 10 per cent ad valorem under tariff item 68.

It was pointed out (January 1984) in audit that the goods would merit assessment under heading 84.51/55 as these goods were not "parts of printing machinery" but were spares for word processor as per the examination report recorded on the bill of entry. The Custom House stated (February 1988) that, in the absence of any response from the importer furnishing catalogue and detailed technical write-up to determine the correct classification of the goods, the objection raised in audit was admitted and intimated (June 1990) that short collection worked out to Rs.79,681. Report on recovery was not received (June 1990).

Ministry of Finance have confirmed the facts

2.46 Parts of Moulding Machine

Customs Tariff heading 98.06 was deleted under notification 171/89 dated 29 May 1989 with effect from 1 June 1989. The parts of machinery, equipment, appliance etc. which were being assessed under the heading 98.06 are, therefore, assessable under the respective heading for the machinery.

A consignment of 'spare parts for plastic extruders' imported through a major Custom House during July 1988 and cleared from bond on 21 June 1989 was assessed under heading 98.06 of the Customs Tariff Act, 1975 at 45 per cent ad valorem (basic duty), 45 per cent ad valorem (auxiliary duty) and 'Nil' additional duty instead of assessing it as parts of machinery under sub heading 8477.90 ibid at 35 per cent ad valorem (basic duty), 45 per cent ad valorem (auxiliary duty) and 15 per cent ad valorem (additional duty). The misclassification resulted in short levy of duty amounting to Rs.1,11,857.

Ministry of Finance have confirmed the facts.

2.47 Crankshaft Fixtures

Unspecified machines and mechanical appliances having individual functions fall under heading 84.79 of the Customs as well as Central Excise Tariffs and attract basic customs duty at 70 per cent ad valorem and additional duty at 15 per cent ad valorem.

A consignment of "Crankshaft Fixture" imported in August 1988 was classified under heading 98.06 as parts of fixtures falling under heading 8479.89 and assessed to basic customs

duty at 45 per cent ad valorem and free of additional duty.

It was pointed out in audit (January 1989) that the imported item being a mechanical appliance having individual function and not any part of such appliances was classifiable under headings 8479.89 and 8479.00 of the Customs and Central Excise Tariffs respectively. The misclassification resulted in duty being levied short by Rs.1,10,482.

The department admitted (April 1990) the mistake and stated that demand for the short levied amount was issued.

Ministry of Finance confirmed the facts and stated (September 1990) that action was being taken to recover the short levied amount.

2.48 Transmission Shafts

Parts of articles of Chapter 84 of Customs Tariff are assessable under heading 98.06 even though they may be covered by a more specific heading elsewhere in the Tariff Schedule. By virtue of powers vested under note 7(d) of Chapter 98 of the Customs Tariff, the Government issued a notification in September 1988 excluding articles of heading 84.83 from the purview of heading 98.06.

A consignment, described as "Spindle Part No.62/83700 complete with lock nut" amplified as parts for Axle Roughing Machine for shaping, was classified (May 1989) under heading 98.06 as parts of goods falling under heading 8461.90.

It was pointed out (August 1989) in audit that as spindles were transmission shafts they fell under heading 84.83 of the Customs Tariff and were excluded from heading 98.06. They were classifiable under heading 84.83. The misclassification resulted in duty being levied short by Rs.94,993.

The Collectorate admitted the mistake and recovered the entire amount in December 1989.

Ministry of Finance have confirmed the facts.

2.49 Parts of Thrust Bearing

As per note 2(b) under Section XVI of the Customs Tariff, parts suitable for use, solely or principally, with a particular kind of machine are classifiable with the machines of that kind. Thus parts of goods, falling under heading 84.83, are classifiable under sub-heading 8483.90 and assessable to basic customs duty at 100 per cent ad valorem with auxiliary duty at 40 per cent ad valorem and additional duty at 20 per cent ad valorem under heading 84.83 of Central Excise Tariff.

A consignment of thrust collar, sleeves and key, which were parts of thrust bearing, imported through a major Custom House by a public sector undertaking, were incorrectly classified in May 1986 under sub-heading 8406.90 as parts of turbines of which they were the ultimate parts and subjected to levy of basic customs duty at 40 per cent ad valorem with auxiliary duty at 25 per cent ad valorem and additional duty at 15 per cent ad valorem under heading 84.06 of Central Excise Tariff. This resulted in short levy of duty of Rs.3,27,587.

On this incorrect classification being pointed out in audit (April 1987), the Custom House admitted the objection (May 1989) and indicated that an entry had been made in the voluntary payment due register.

Ministry of Finance have confirmed the facts.

2.50 Hydraulic Compact Drives

In terms of the explanatory notes under Chapter 84 in page 1327 of Harmonised Commodity description and Coding System (HSN), Hydraulic Torque Convertors and other "Speed Changers" are classifiable under sub heading 8483.40 of Customs Tariff and subjected to levy of basic customs duty at the rate of 60 per cent ad valorem with auxiliary duty at the rate of 45 per cent ad valorem and additional duty at the rate of 20 per cent under heading No.84.83 of Central Excise Tariff.

"Hydraulic Compact Drives" described as a combination of pump and hydraulic motor and used as a speed changer, imported (May 1989) through a major Custom House, were

incorrectly classified under heading 8412.59 and subjected to levy of basic Customs duty at the rate of 35 per cent ad valorem and without additional duty in terms of a notification dated 1 March 1987 as amended and auxiliary duty at the rate of 45 per cent ad valorem. The misclassification resulted in short levy of Rs.1,43,623.

When the misclassification was pointed out in audit (December 1989) the Custom House admitted the objection (January 1990) and stated (June 1990) that recovery particulars would be intimated.

Ministry of Finance confirmed the facts and stated that the bill of entry was provisionally assessed in this case in terms of an order of Appellate Authority in a similar case. The Ministry added that the department had gone in appeal before C.E.G.A.T against the aforesaid decision (October 1990).

2.51 Parts of Gears

While gears fall under heading 8483.40 of the Customs Tariff and attract basic customs duty at 60 per cent ad valorem, parts of gears are classifiable under heading 8483.90 ibid and are chargeable to basic customs duty at 100 per cent ad valorem.

(a) A consignment described as "spare parts for Krupp Stoeckicht Epicyclic Gear Units" was assessed (September 1988) to basic customs duty under heading 8483.40.

It was pointed out in audit (February 1989) that the said consignment consisted of five different items out of which three were declared as complete set of gears and the remaining two were individual spare parts. As such the two items were classifiable under heading 8483.90 instead of 8483.40. The misclassification resulted in duty being levied short by Rs.56,540.

The department stated (November 1989) that the subject goods were invoiced as spare parts of the gear unit. They form a complete set of gears. None of the invoiced items was independent of the gear set.

The reply of the department is not acceptable. In the invoice, three items viz. Sunwheel, Planet-wheel and Annulus gear were shown under the broad heading "complete set of gears", while two other items being Annulus Gear Sleeve and Sungear Sleeve were shown separately.

Ministry of Finance stated (November 1990) that the invoice indicated that complete gear sets had been imported and that the issue would be examined on receipt of technical details regarding 'sleeves' from the importer.

(b) A consignment described as "spare parts for Krupp Stoeckicht Epicyclic Gear Unit" was assessed (January 1989) to basic customs duty under heading 8483.40.

It was pointed out in audit (June 1989) that the said consignment consisted of five different items out of which three were declared as complete set of gears and the remaining two viz. Annulus Gear Sleeve and Sunwheel Sleeve were individual spare parts. As such the two items were classifiable under sub-heading 8483.90 instead of 8483.40. The misclassification resulted in duty being levied short by Rs.62,269.

In reply, the department stated (December 1989) that relevant documents showed that the imported items were gearing of a complete gear unit. Further, it added that sleeve was a cylindrical part designed to fit over another part.

The contention of the department that the sleeve is a gearing and at the same time a cylindrical part designed to fit over another part is self contradictory and as such not acceptable. In the invoice three items viz. Sunwheel, Planet Wheel and Annulus Gear were shown under the broad heading "complete set of gears" while two other items i.e. annulus gear sleeve and sunwheel sleeve were shown separately. They were, therefore, individual spare parts.

Ministry of Finance stated (November 1990) that the importers had been asked to furnish the technical details and that the matter would be examined further.

2.52 Worm Wheel Rims.

Parts of articles of Chapter 84 of the Customs Tariff were assessable under tariff heading 98.06 even though they might be cov-

ered by a more specific heading elsewhere in the Tariff Schedule.

By a notification issued in September 1988 articles of heading 84.83 were excluded from the purview of heading 98.06. As a result, they became assessable under heading 84.83.

A consignment consisting of different parts of coal washing machine falling under heading 84.74 imported in December 1988 was classified under heading 98.06. It was noticed that the consignment included besides other things "reduction worm wheel rims".

It was pointed out in audit (April 1989) that the subject goods being parts of gearings falling under heading 8483.40 were assessable under heading 8483.90 instead of heading 98.06. The misclassification resulted in duty being levied short by Rs.2,68,140.

In reply, the Collectorate stated (September 1989) that the worm wheel rims were specially designed parts of reclaiming machine and were not transmission parts.

The reply is not acceptable. Worm wheel is a special form of helical gearing and as such is classifiable under heading 8483.40 of the Customs Tariff. The rims being parts of such gearing are assessable under heading 8483.90. Also, the exclusion of headings notified in notification dated 21 September 1988 under clause (d) of Note 7 of Chapter 98 of the First Schedule to the Customs Tariff Act, 1975 was complete and in toto. It did not provide for classification of the same as specially designed parts under 98.06 of the Customs Tariff Act, 1975.

The matter was reported to the Ministry of Finance in July 1990; their reply has not been received (December 1990).

2.53 Accessories of Machine

Heading 98.06 of the Customs Tariff would cover only parts of machinery, instruments etc. It would not cover accessories. Instructions issued by the Board in March 1987, confirms this position.

Condenser, Swivelling Table and Electrode Rotating Device, being the accessories of a machine for the production of dies, punches and electrodes, imported through a major airport in July 1988, by a public sector undertaking, were incorrectly classified under Heading 98.06 and assessed to different rates of concessional duty applicable to that heading with reference to two notifications dated 1 March 1987.

It was pointed out (November 1988) in audit that the accessories were correctly classifiable on merits under heading 8515.90 and assessable to basic customs duty at 70 per cent ad valorem with auxiliary duty at 45 per cent ad valorem and additional duty at 15 per cent ad valorem under heading 85.15 of the Central Excise Tariff.

The department admitted the objection (April 1990) and stated that action was being taken to recover the short collection of duty amounting to Rs.51,246.

Report on recovery was not furnished (May 1990).

Ministry of Finance have confirmed the facts.

2.54 Railway Signalling Material

A consignment of 'Components-Railway Signalling Material-Contact Pin for relay over 400 Volts' valued at Rs.3,23,563 imported during December 1987 through a major Custom House was classified under heading 98.06/8538.90 of the Customs Tariff Act, 1975 and assessed to basic customs duty at 45 per cent ad valorem with 45 per cent ad valorem auxiliary duty and 'Nil' additional duty extending the benefit of notification 69 of 1987, as parts of goods falling under sub heading 8538.90.

It was pointed out (May 1988) in audit that the imported goods being parts of Electrical Signalling Equipment would merit classification under sub heading 8530.90 of the Customs Tariff Act 1975 and would be assessable to basic customs duty at 100 per cent ad valorem extending the benefit of notification 68 of 1987 with auxiliary duty at 45 per cent ad valorem and additional duty at 15 per cent ad valorem as parts of goods falling under Customs Tariff heading 8530.90/98.06. The misclassification resulted in duty being levied short by Rs.2,96,868.

The Customs House justified the assessment on the grounds:-

i) as per Note 2(a) of Section XVI of the Customs Tariff Act, 1975 parts of goods which are included in any of the headings of Chapter 84 or 85 are in all cases to be classified in their respective headings: and

ii) that the contact pins are the parts of the relay and all relays will fall under heading 85.36 and parts thereof under heading 85.38.

The stand of the Custom House is not acceptable for the following reasons:-

i) as per Note 2(b) of Section XVI of the Customs Tariff Act, 1975, parts, if suitable for use solely or principally with a particular kind of machine are to be classified with the machine of that kind; and

ii) as seen from the catalogue, imported goods 'contact pins' are meant exclusively for Railway Signalling Relays. As per Explanatory Notes of H.S.N, parts of the goods falling under heading 85.30 are to be classified under sub heading 8530.90 of the Customs Tariff Act, 1975.

The matter was reported to the Ministry of Finance in September 1990; their reply has not been received (December 1990).

2.55 Spares for Surge Arrestors

Lightning Arrestors, Voltage Limiters and Surge Suppressors are classifiable under sub heading 8535.40 of the Customs Tariff. Parts suitable for use solely or principally with the apparatus of heading 85.35 are, however, classifiable under heading 85.38 of the Customs Tariff.

On a consignment of "1500 Nos. of Metal Oxide Blocks 4.5 K.V (Spares for surge arrestors) imported in August 1989, basic customs duty was levied at 40 per cent ad valorem classifying the item under sub heading 8535.40, plus auxiliary duty at 30 per cent ad valorem with additional duty at 15 per cent ad valorem under Central Excise Tariff heading 85.38.

It was pointed out in audit (January 1990) that as the subject goods being spares for Surges Arrestors, they were classifiable under sub heading 8538.90 and chargeable to basic duty at 60 per cent ad valorem plus auxiliary duty at 45 per cent ad valorem and additional duty at 15 per cent ad valorem. The misclassification resulted in duty being levied short by Rs.1,35,365.

Reply from the department was not received (July 1990).

The matter was reported to the Ministry of Finance in September 1990; their reply has not been received (December 1990).

2.56 Parts of Oil Circuit Breakers

Parts suitabe for use solely or principally with the apparatus falling under heading 85.35 of the Customs Tariff are classifiable under heading 8538.90 of the said Tariff and chargeable to basic customs duty at the effective rate of 60 per cent ad valorem plus auxiliary duty at 45 per cent ad valorem in addition to additional duty at 15 per cent ad valorem.

A consignment of "Moving Contact DWG 424 D-134, IT 59, 516 B 683 G 01 and Lift Rod Assembly" amplified as specially designed parts of 132 KV oil circuit breakers for a voltage exceeding 1000 Volts was classified under heading 8535.29 of the Customs Tariff and assessed to basic customs duty (June 1989) at 40 per cent ad valorem plus additional duty at 15 per cent ad valorem. Auxiliary duty was levied at 30 per cent ad valorem in terms of notification dated 1 March 1989.

It was pointed out in audit (January 1990) that the subject goods being parts of articles falling under heading 85.35 were correctly classifiable under heading 8538.90 and the aforesaid notification relating to auxiliary duty was not applicable thereto. The misclassification and incorrect application of exemption notification resulted in duty being levied short by Rs.1,13,659.

The department, while admitting (May 1990) the mistake relating to auxiliary duty, stated that the imported goods being parts of circuit breakers of circuit above 400 volts were

eligible for the concessional rate of basic customs duty at 40 per cent ad valorem in terms of notification No.60/87-Customs dated 1 March 1987 (as amended).

The views of the department are not acceptable because the imported items being specially designed parts of 132 KV oil circuit breaker (i.e for a voltage exceeding 1000 Volts) are classifiable under heading 8538.90 as parts of articles of heading 85.35 and the benefit of the notification of March 1987 is not applicable to the articles falling under heading 85.35 and parts thereof. The short levied amount pointed out in audit was, however, realised in March 1990.

Ministry of Finance have accepted the audit stand.

2.57 Permaquip Overhead Machinery

"Permaquip overhead machinery" is classifable under heading 86.04 of the Customs Tariff Schedule as per Explanatory notes at pages 1193 and 1416 of Harmonised Commodity Description and Coding System (HSN) and subjected to levy of basic customs duty at 40 per cent ad valorem with auxiliary duty at 45 per cent ad valorem and additional duty at 15 per cent ad valorem.

Permaquip overhead machine imported by a Government department (December 1988) was incorrectly assessed to basic customs duty at 45 per cent ad valorem and auxiliary duty at 45 per cent ad valorem under heading 8426.49 read with notification 59/87-Customs dated 1 March 1987 instead of under heading 86.04 of the Customs Tariff Act, 1975

On this being pointed out (June 1989) in audit, the Custom House admitted the objection (July 1989) and stated that action had been taken to recover the short levied duty of Rs.2,12,796.

Report on recovery has not been received (May 1990).

Ministry of Finance have confirmed the facts.

2.58 Parts of Machinery

In terms of Note 1 to Chapter 98 of the Customs Tariff, parts of machinery, instruments etc, even though covered by a more specific heading elsewhere in the Schedule, would fall under heading 98.06.

Goods described as Electronic Temperature Regulators, Image Intensifier Tube with Caesium Iodine Screen and Electronic Position Transmitter being parts of Muffle Furnace, Industrial X-ray equipment and SADC Power Cylinder respectively and imported through a major Custom House by three different importers during May 1987, November 1987 and March 1989 were assessed to duty under headings 9032.89, 9022.30 and 9031.80.

It was pointed out (January 1988, June 1988 and June 1989) in audit that these goods being parts of machinery were correctly classifiable under heading 98.06. As these goods contained semi conductor devices etc., they were assessable to basic customs duty at 100 per cent ad valorem with additional duty at 15 per cent ad valorem, in terms of a notification dated 29 March 1987, as amended and auxiliary duty at 45 per cent ad valorem.

The Custom House, however, justified (December 1988, February 1990 and April 1990) the assessment of these goods under Chapter 90 on the ground that they were complete instruments capable of functioning by themselves and cannot be considered as parts of a machine and that there was no necessity to resort to classification under heading 98.06.

Reply of the Custom House, however, goes against the over-riding nature of the Note 1 to Chapter 98 which specifically lays down that these goods even though covered by a specific heading in the Schedule would merit classification as parts of machinery under heading 98.06.

This view has also been upheld by Collectors' Conference in April 1989 in which it was decided that the assessment under heading 98.06 of complete instruments imported as parts of machinery/instruments would continue till the heading was deleted from the Tariff Schedule.

Short collection of duty in the three cases works out to Rs.3,14,729.

Ministry of Finance have confirmed the facts.

2.59 Ribbons for Temperature Recorders

Typewriter or similar ribbons, inked or otherwise prepared for giving impressions, whether or not on spools or in cartridges, are classifiable under sub heading 9612.10 of the Customs Tariff Act, 1975, and chargeable to basic customs duty at 100 per cent ad valorem plus auxiliary duty at 40 per cent upto 19 September 1987 and 45 per cent thereafter with additional duty at 25 per cent under the Central Excise Tariff Act, 1985. According to the explanatory notes on the Harmonised Commodity Coding System, the heading 96.12 covers ribbons for calculating or any other machine incorporating a device for printing by means of such ribbons.

Eight consignments of "Ribbons in foil packs" for temperature recorders imported through a foreign post office during September 1986 to December 1987 were assessed to basic Customs duty as parts of temperature recorders under heading 90.25 at 40 per cent upto February 1987 (45 per cent thereafter) and at 40/45 per cent (auxiliary) with additional duty at 15 per cent instead of at the higher rate under sub heading 9612.10. The incorrect classification of these consignments resulted in duty being levied short by Rs.1,02,232.

On this being pointed out in audit (January/February 1988), the department, while admitting the mistake, confirmed the demand for the entire amount.

Ministry of Finance have confirmed the facts.

2.60 Hair Springs

Parts of articles of Chapters 84, 85, 86, 89 and 90 of the Customs Tariff Act, 1975 were assessable under heading 98.06 even though they might be covered by a more specific heading elsewhere in the Tariff. But, as per note 7(d) to Chapter 98 ibid read with a customs notification of September 1988, various parts of machinery, having general application including parts of general use as defined in note 2 to Section XV of base metals were excluded from being assessed under heading 98.06 ibid. Customs duty on those parts were, therefore, leviable at the rates applicable to headings of the machinery.

A consignment of 'Hair springs' (Components of measuring equipment) imported through a major Custom House during September 1988 was assessed under Customs Tariff heading 98.06 read with a notification of March 1987 at 45 per cent ad valorem (basic duty) plus 45 per cent ad valorem (auxiliary duty) with Nil (additional duty) instead of assessing them as parts of general use under subheading 7320.90 at 100 per cent ad valorem (basic duty) plus 45 per cent ad valorem (auxiliary duty) with 15 per cent ad valorem (additional duty). The misclassification resulted in duty being levied short by Rs.1,36,242.

On this being pointed out (May 1989) in audit, the department did not admit the objection stating (May 1990) that the goods would be covered by heading 91.14.

The department's reply is not acceptable in audit for the following reasons:

i) The fact that the 'Hair Springs' would find use both in watches/clocks and in instruments indicates that they are parts of general use excluded from being classified under heading 98.06 as per note 2 to Section XV.

ii) As parts of articles falling under Chapters 84, 85, 86, 89 and 90 alone are covered by heading 98.06, the goods classifiable under Chapter 91 are not covered by heading 98.06.

Ministry of Finance confirmed the facts and stated (November 1990) that the importer had been requested to pay the amount of short collection voluntarily.

2.61 Electronic Tuners

Parts of articles of Chapters 84, 85, 86, 89 and 90 of the Customs Tariff Act, 1975 are assessable under heading 98.06 even though

covered by a more specific heading. However, as per a notification issued on 21 September 1988, various parts of machinery having general application including those under heading 85.29 are excluded from assessment under heading 98.06. Customs duties on such goods are leviable at the rates applicable to the heading of the machinery concerned.

A consignment of 'Electronic Tuners-Components of Colour T.V' imported along with other dutiable goods through a major Custom House (November 1988) was classified under heading 98.06 and assessed to basic customs duty at 50 per cent with auxiliary duty at 30 per cent and additional duty at 15 per cent, extending benefit of notification 188 dated 29 April 1987.

It was pointed out (May 1989) in audit that the classification of the goods would be more appropriate under heading 85.29 with basic customs duty at 100 per cent ad valorem, auxiliary duty at 45 per cent ad valorem and additional duty at 10 per cent ad valorem. The misclassification resulted in short levy of Rs.1,29,188.

Ministry of Finance confirmed the facts and stated (November 1990) that demands had already been issued to the importers for recovering the short levy.

2.62 Parts of Instruments/Machinery

In terms of Note 1 to Chapter 98 of Customs Tariff, parts of machinery/instruments, even though covered by a more specific heading elsewhere in the Schedule, would fall under heading 98.06.

Goods described as Temperature Controller, Level Controller, Temperature Recorder and Pressure Indicator, imported through a major Custom House in September 1988 and May 1989, as spare parts of machinery were, however, assessed on merits as complete instruments under headings 9032.89 and 9026.20 of Customs Tariff.

It was pointed out (December 1988 and October 1989) in audit that the goods, being spare parts of other instruments/machinery, were correctly classifiable under heading 98.06. As these parts contained electronic circuits also they were assessable to basic Customs duty at 100 per cent ad valorem in terms of notification 68/87-Customs dated 1 March 1987 with auxiliary duty at 45 per cent ad valorem. The total amount of short levy in both these cases amounted to Rs.2,73,260.

The Custom House justified (January 1990) the original assessment on the ground that they were complete instruments by themselves and that there was no need to assess them as parts of machinery.

The reply of the Custom House does not take into account the over riding nature of Note 1 to Chapter 98. As the goods are specifically covered by heading 98.06, this heading would prevail over the classification of the goods on merits. Further, the Collectors' Conference of April 1989 had also concluded that the assessment under heading 98.06 of complete instruments imported as parts of machine/instruments would continue till that heading was deleted from the Tariff Schedule.

Ministry of Finance confirmed the facts and stated (November 1990) that the demand notices had been issued to recover the short collection

SHORT LEVY DUE TO UNDERVALUATION

2.63 Short levy due to adoption of incorrect assessable value

(a) On an import of a consignment of "crankshafts for transmission " in December 1988, the F.O.B value of the goods was considered as U.S Dollars 58,623 instead of as U.S Dollars 2,32,191 as indicated in the invoice. This resulted in duty being levied short by Rs.36,95,933.

On this being pointed out in audit (March 1989), the department admitted the mistake and realised the short levied amount (May 1989).

Ministry of Finance have confirmed the facts.

(b) In terms of Section 65(2) of the Customs Act, 1962, the owner of any private bonded

warehouse is permitted to carry out manufacturing operations in the warehouse. Scrap, arising out of the manufacturing operations, when cleared for home consumption, shall be on payment of customs duty at the rate prevailing on the date of removal.

The assessable value of scrap removed is to be fixed after taking into consideration the price prevailing in the market at the time of removal of scrap.

From a customs bonded warehouse under a major Custom House, 109.968 tonnes of steel scrap were cleared for home consumption during 1989. The assessable value fixed in October 1988 was adopted for levying customs duty on these clearances. The assessable value should have been fixed afresh at the time of removal, taking into account, the price prevailing in the local market.

In the absence of determination of assessable value as stated above, it was pointed out in audit that the actual selling price should be treated as cum-duty price and assessable value worked out accordingly. The total sale proceeds during 1989 was Rs.6,04,478. The assessable value and customs duty worked out to Rs.2,53,253 and Rs.3,51,225 respectively. As the duty charged by the department was Rs.1,84,609, a short levy of Rs.1,66,616 was pointed out in March 1990. In reply (May 1990), the department stated that the rates were revised in February 1990. But no action was taken to recover the short levy of duty for the earlier period.

Ministry of Finance have stated (December 1990) that the Custom House has been asked to examine the matter.

2.64 Short levy due to non inclusion of pre-shipment test/inspection charges in the determination of assessable value.

In accordance with Board's instructions(1972) on valuation of imported goods, charges incurred towards pre-shipment tests/ inspection of such goods, reckoned at 0.6 per cent of F.O.B value or 0.5 per cent of C & F value would form part of their assessable value. In respect of a few consignments of fertiliser imported through a minor port during the period from December 1974 to May 1980 by a public sector undertaking with the assistance of a canalising agency, the Custom House computed the assessable value without reckoning the pre-shipment test/inspection charges levied by the canalising agency, at the instance of the Internal Audit Department of the jurisdictional major Custom House.

When it was pointed out (January 1979, November 1980 and November 1981) in audit that computation of assessable value of the imported goods excluding the said charges was not in order, the Custom House contended that the said charges were in the nature of service charges levied by the canalising agency and, in terms of Board's Instructions issued in December 1973, they were not includible in the assessable value.

Audit contended (November 1988) that the charges for pre-shipment inspection of the imported goods were a pre-importation expenditure and therefore formed part of the landed cost thereof at the hands of importers. Not contesting this view, the department intimated (March, May and October 1989) that short collection of duty in respect of the imports in question was Rs.2,20,200 and also stated that the Custom House had not issued demand notices under instructions from the Internal Audit Department and therefore recovery action was now hit by time bar.

The matter was reported to the Ministry of Finance in April 1980; their reply has not been received (December 1990).

2.65 Short levy due to adoption of incorrect exchange rate.

As per Section 14 of the Customs Act 1962, the price of imported goods shall be calculated with reference to the rate of exchange determined by the Central Government as in force on the date of presentation of the bill of entry.

(a) In respect of two consignments of watch, cases and spare watch cases imported by a joint sector company and cleared through an Air Cargo Complex, the bills of entry were presented on 16 December 1988 and 15 November 1988 respectively. In computing the assessable

values, the exchange rate for conversion of Hongkong Dollars into Indian Rupees was adopted erroneously as HK Dollars 63.35 for Rs.100 instead of 53.35 for Rs.100 which was prevailing on the relevant dates. This resulted in duty being levied short by Rs.1,65,351.

On the mistake being pointed out in audit (July/August 1989), the department accepted the objection and stated (March/May 1990) that the importer had paid (October 1989) the amount voluntarily.

(b) On a consignment of dutiable goods imported through air, the bill of entry was presented on 19 December 1988. The correct rate of exchange applicable was Pound Sterling 3.6060 for Rs.100 as against the rate of exchange of Pound Sterling 3.6725 for Rs.100 applied incorrectly by the Custom House. This resulted in duty being levied short by Rs.1,39,560.

On this being pointed out in audit (July 1989), the Custom House accepted the objection and recovered the amount of short levy in August 1989.

Ministry of Finance have confirmed the facts in both the cases.

2.66 Short levy due to non-inclusion of the element of freight charges in the assessable value

As per Rule 9(2) of the Customs Valuation (Determination of price of imported goods) Rules 1988, for purposes of sub sections (1) and (1A) of Section 14 of Customs Act 1962, the value of imported goods shall be the value of such goods for delivery at the time and place of importation and shall include the cost of transport of the imported goods to the place of importation.

In respect of two consignments of photographic colour paper imported by a public sector undertaking in August 1988 through a major Custom House, the free on board (FOB) value indicated in the invoice was erroneously taken as cost and freight value resulting in non-inclusion of freight in the assessable value. This resulted in duty being levied short by Rs.1,99,214. A perusal of the purchase order also supported audit objection.

When the error was pointed out in audit (March 1989), the Custom House issued a demand notice to the importer.

Ministry of Finance confirmed the facts and stated (October 1990) that the short levied amount had since been realised.

2.67 Short levy due to non inclusion of local agency commission in the determination of assessable value

In terms of para 8 of explanatory note 2.1 of the compendium on Customs Valuation GATT Agreement and of Rule 9.1 (a) (i) of the Customs Valuation (Determination of price of imported goods) Rules, 1988, local agency commission (which is in the nature of selling commission payable by the importer to the Indian agent on behalf of the foreign supplier) is includible in the assessable value of imported goods.

On a consignment of "hot rolled stainless steel coils" imported in February 1989 by a public sector undertaking through a major Custom House, local agency commission of Deutsche Marks 14,318.45 (equivalent to Rs.1,22,249.30) payable to the Indian agent was omitted to be included in the computation of assessable value. This resulted in duty being levied short by of Rs.1,17,107.

On this being pointed out in audit (May 1989), the Custom House admitted the objection and recovered the short levied amount in June 1989.

Ministry of Finance have confirmed the facts.

IRREGULARITIES IN THE GRANT OF REFUNDS

2.68 Irregular grant of refund

(a) A consignment of 'Metal Bellows' imported through a major Air Customs Collectorate during May 1986 was initially assessed under sub heading 8307.10 of Customs Tariff at 100 per cent ad valorem (basic duty) plus 40 per cent ad valorem (auxiliary duty) with 15 per cent ad valorem as additional duty.

An amount of Rs.1,44,623 was refunded in January 1989 after reassessing the goods, as parts of circuit breakers, under subheading 8538.10 of Customs Tariff at 40 per cent ad valorem (basic duty) plus 25 per cent ad valorem (auxiliary duty) with 15 per cent ad valorem as additional duty on the basis of D.G.T.D. certificate of January 1986 for extending the benefit available under notification 364/86-Customs dated 20 June 1986.

It was pointed out in audit (January 1990) that the goods imported were not covered by Chapter 85 in view of note 1 (k) of Section XVI and were, therefore, correctly assessable under heading 83.07 of the customs tariff as assessed initially.

On the irregular grant of refund being pointed out in audit, the department admitted the objection and recovered Rs.1,44,623 (April 1990).

Ministry of Finance have confirmed the facts.

(b) As per a notification dated 3 April 1986 'Bulk Drugs' falling under Chapter 28 or 29 of the Central Excise Tariff are exempt from the whole of additional duty. 'Bulk Drugs', as explained under the notification, mean any chemical or biological or plant product, conforming to pharmacopoeial standards, normally used for the diagnosis, treatment, mitigation or prevention of diseases in human beings or animals, and used as such or as ingredient in any formulation.

Two consignments of 'Isosorbide Dinitrate' imported through a major airport in August 1986 were originally assessed under sub heading 2905.49 of the Customs Tariff Act, 1975 at 60 per cent ad valorem (basic) plus 40 per cent ad valorem (auxiliary) with additional duty at 15 per cent ad valorem under heading 29.13 of Central Excise Tariff on the basis of a certificate issued by the Assistant Drug Controller that the imported goods were not 'Bulk Drug' and were not appearing in any official pharmacopoeia.

Refund of additional duty amounting to Rs.1,01,278 was granted in July 1988, on the strength of a certificate, issued by the Drug Controller, that 'Isosorbide Dinitrate BP, 20 mg/180 mg pellets' and 'Isosorbide Dinitrate BP 40 mg/180 mg pellets' being 'Bulk Drugs' were eligible for exemption under the aforesaid Central Excise notification of 3 April 1986.

It was suggested (April 1989) in audit that the grant of refund should be re-examined for the reasons that (i) the description of goods in the invoice, bill of entry and examination report of the department did not show the imported goods as BP grade; (ii) the Assistant Drug Controller had recorded his opinion on the bills of entry that the imported goods were not 'Bulk Drugs' and were not appearing in any official pharmacopoeia; (iii) the certificate issued by the Drug Controller being one of general nature relating to 'Isosorbide Dinitrate B.P' was not for the imported goods specifically.

On this being pointed out in audit (April 1989), the department admitted the irregular grant of refund (June 1989). Report on recovery was not received.

The matter was reported to the Ministry of Finance in June 1990); their reply has not been received (December 1990).

2.69 Excess Refund

A consignment of 13 kilograms, comprising 2,70,000 numbers of Silicon diffused Chips, valued at Rs.2,32,972 and imported through a major port, was cleared in 1982-83 after being assessed to duty at 100 per cent plus 30 per cent plus 8 per cent ad valorem under the heading 85.18 of the Schedule to the Customs Tariff Act, 1975. Subsequently, the Collector (Appeals) allowed exemption in excess of 60 per cent of basic duty of customs in terms of a notification issued on 8 August 1977. Accordingly refund was made to the importer in May 1987.

89500 Chips out of those imported were re-exported in May 1984 and drawback was allowed under Section 74 of the Customs Act, 1962. An excess refund of Rs.79,576 was made in May 1987, ignoring the fact of payment of drawback on the re-exported quantity, inspite of the reduced claim preferred by the importer. Also, an excess payment of Rs.1943 was made

due to reckoning of auxiliary duty at the rate of 25 per cent against the admissible rate of 30 per cent with effect from 8 December 1982. The incorrect refund was pointed out in March 1988. The department admitted the objection and the importer voluntarily remitted the amount of Rs.81,519 (July 1989).

The matter was reported to the Ministry of Finance in July 1990; their reply has not been received (December 1990).

MISTAKES IN COMPUTATION OF DUTY

2.70 Short levy due to mistakes in computation of duty

(a) Superior kerosene oil falling under heading 27.10 of the Customs Tariff, when imported into India, is chargeable to additional duty at the rates prescribed per kilo litre of the quantity assessed in volume.

A public sector undertaking imported and warehoused in November 1989 a consignment of superior kerosene oil. When this was cleared for home consumption in December 1989, additional duty was levied on a quantity of 2120.456 tonnes of the oil without converting it into kilo litres but applying the rate prescribed per kilo litre. This resulted in duty being levied short by Rs.1,96,646.

On the short levy being pointed out in audit, the department admitted the mistake and recovered the amount in March 1990.

Ministry of Finance have confirmed the facts.

(b) In respect of a consignment of "lead frames", made of nickel iron alloy imported (October 1988) through a major Custom House, the assessable value was worked out at Rs.4,08,135 instead of at Rs.4,74,731 due to computation errors in invoice. This resulted in duty being levied short by Rs.1,21,039.

On this being pointed out in audit (April 1989), the Custom House admitted (October 1989) the objection and intimated that a request for voluntary payment had been made to the importer.

Ministry of Finance have confirmed the facts.

APPLICATION OF INCORRECT RATES OF DUTY

2.71 Short levy of basic customs, auxiliary and additional duties

i) Auxiliary duty

Certain specified goods used in the electronic industry were assessable to basic customs duty at the concessional rate of 30 per cent ad valorem in terms of a notification dated 19 June 1980 as amended by a notification dated 16 June 1986, with auxiliary duty at 30 per cent ad valorem under a notification dated 12 May 1987 as amended by a notification dated 19 September 1987 and without additional duty in terms of a notification dated 1 March 1979 as amended.

A consignment of 'Electrovert Hot Air Levelling Equipment', imported (November 1987) by a private importer through a major Custom House, was classified under heaing 8479.89 of the customs tariff and subjected to basic customs duty at the incorrect rate of 35 per cent ad valorem and without levy of auxiliary duty and additional duty. This resulted in duty being levied short by Rs.1,81,405, after adopting actual landing charges.

On this application of incorrect rates being pointed out in audit (May 1988), the Custom House admitted the objection (January/March 1989) and recovered the short levied amount.

Ministry of Finance have confirmed the facts.

ii) Basic customs duty

(a) In terms of two customs notifications issued on 19 July 1988, the effective rate of basic customs duty on 'Butachlor' classifiable under heading 2942.00 of the Customs Tariff Act, 1975 was enhanced from twenty five per cent ad valorem to forty five per cent ad valorem.

A consignment of "Butachlor Technical", warehoused after its import in a customs

bonded warehouse (July 1988), was cleared between 27 July and 11 August 1988. The same was subjected to basic customs duty of twenty five per cent ad valorem with reference to an earlier notification dated 1 March 1988.

When Audit pointed out (December 1988) the incorrect levy of duty resulting in short collection of Rs.1,35,110, the Custom House accepted the objection and recovered the amount (March 1989).

Ministry of Finance have confirmed the facts.

(b) The Chemical 'TIOC (Crude Erythromycin/Erythromycin Thiocyanate)' is chargeable to basic customs duty at the rate of 100 per cent ad valorem in terms of a notification issued on 17 February 1986.

An importer imported (March 1989) a consignment of 'Erythromycin Thiocyanate (TIOC)' valued at Rs.5,82,276. The basic customs duty was charged at the rate of 80 per cent ad valorem plus Rs.25 per kilogram. The application of incorrect rate of basic customs duty resulted in duty being levied short by Rs.1,00,120.

The objection was communicated to the department in October 1989. A statement of facts was issued in January 1990. No reply was received from the department (April 1990).

The matter was reported to the Ministry of Finance in June 1990; their reply has not been received (December 1990).

iii) Additional duty

Parts and accessories of Video racording or reproducing apparatus are classifiable under heading 85.22 of Central Excise Tariff and chargeable to additional duty at 25 per cent ad valorem.

On a consignment of 250 pieces of Video Tape Deck Mechanism (parts of VCR) imported through a major port during January 1989 and cleared from bonded ware house in May 1989, additional duty was levied at 15 per cent ad valorem under heading 85.22 of Central Excise Tariff instead of at 25 per cent ad valorem leviable. The resultant short levy amounting to Rs.1,21,152 was pointed out in audit in January 1990.

Ministry of Finance confirmed the facts and stated (November 1990) that the short levied amount had since been recovered (August 1990).

OTHER IRREGULARITIES

2.72 Unintended benefit

In the Explanatory Memorandum to the Finance Bill 1989, the Government announced reduction of customs duty on import of coke from 85 per cent to 20 per cent with a view to encouraging the production of low phosphorus pig iron. However, the said condition for end use of such coke in the manufacture of pig iron was not incorporated in the exemption notification 33/89-Customs issued on 1 March 1989.

(a) 48,812 tonnes of coke with phosphorus content of 0.035 per cent and below were imported by two importers during the period between April and November 1989 at a cost of Rs.8,46,02,554 and customs duty was paid at the rate of 20 per cent ad valorem in terms of the aforesaid notification. Both the importers used the coke in the manufacture of lime, which was further used in the manufacture of Soda Ash.

The non inclusion of the condition regarding the end use of such coke in the manufacture of pig iron in the notification as contemplated in the Explanatory Memorandum to the Finance Bill 1989 resulted in unintended benefit of Rs.5,49,91,659 to the importers.

This was pointed out to the department (March 1990). The department stated (June 1990) that only the Ministry could offer comments as to why "end use" condition was not incorporated in the notification and that, as per the wording of the notification, exemption had been granted correctly.

(b) A 'Ferro Silicon' manufacturer imported (September 1989) 12.679 tonnes of Bulk Datong Semi Coke of low phosphorus content. In the provisional assessment made (September 1989) a duty of Rs.49,12,457 at the concessional rate of 20 per cent was levied in terms of the aforesaid notification.

It was pointed out (March 1990) in audit that the importer, not being a manufacturer of pig iron, had utilised the imported goods for the manufacture of 'Ferro Silicon' and the import should have been subjected to the tariff rate of duty at 40 per cent plus additional duty at 45 per cent

The non-incorporation of the condition regarding the specified use in the notification as intended in the Explanatory Memoramdum to Finance Bill 1989 rendered such diversion of goods possible resulting in unintened benefit of Rs.1,59,65,485 to the importer.

Ministry of Finance, while admitting the fact that explanatory memorandum to this proposal in Finance Bill 1989 did mention that the partial exemption on low phosphorus coke was to encourage the domestic production low phosphorus pig iron, stated (December 1990) that the brief mentioned in explanatory memoramdum could not mean that the duty concession was exclusively for pig iron manufacturers and other actual users were excluded from the purview of such benefit.

The fact remains that the intention of the Government, while announcing the aforesaid proposals as reflected in the explanatory memorandum, was not reflected in the notification, which resulted in unintended benefit to imorters who did not utilise the same for manufacture of pig iron.

2.73 Loss of revenue due to destruction and delay in disposal of uncleared warehoused goods

In terms of Section 72 of the Customs Act, 1962, where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under Sectin 61 to remain in a warehouse, the proper officer may demand and the owner of such goods shall forthwith pay the full amount of duty chargeable on account of such goods together with all penalties, rent, interest and other charges payable in respect of such goods. If the owner fails to pay the amount demanded, the warehoused goods may be detained and sold by the proper officer.

(a) A consignment of photographic film weighing 7866 kilograms was imported and warehoused in June 1981 for a period of one year and subsequently extension was granted upto 26 December 1982. As 5775 kilograms of the goods were not cleared within the period of warehousing, the department issued demand notice in August 1983. Owing to importer's failure to clear the goods and to pay the demanded amount, the goods were detained for sale by issue of detention notice in January 1985. The assessable value of the goods remaining uncleared and customs duty on the same were Rs.6,52,676 and Rs.8,75,194 respectively. Even though there was no response from the importer, the goods were not sold in accordance with the detention notice issued in January 1985. Instead, the department issued (April 1989) another detention notice on the ground that the relevant file was not readily available. However, in response to the latter detention notice, the importer relinquished (May 1989) his title to the goods. The department decided (May 1989) to put the uncleared goods to auction sale. No action for such sale was taken as yet (May 1990).

The goods were warehoused in 1981. Since these are perishable in nature, possibility of their losing commercial value due to prolonged storage cannot be ruled out and chances for their sale appear to be very remote leading to loss of revenue of Rs.8,75,194 being the duty of customs on the uncleared goods and a further loss of Rs.6.52 lakhs being the estimated value of the goods exclusive of duty of customs.

The matter was brought to the notice of the department in March 1989 and again in June 1981. No reply was received (May 1990).

(b) A consignment of photographic film was imported and warehoused in July 1981 for a period upto July 1982 and extension was granted upto January 1983. As the goods were not cleared within the period of warehousing, the department issued demand notice in August 1984. Owing to importer's failure to clear the goods and to pay the demanded amount, the goods were detained for sale in January 1985. The department, however, allowed clearance (January 1985) of a small quantity (372 kilograms) of the goods out of total quantity of 6173 kilograms warehoused even after the expiry of warehousing period and notwithstanding issue of statutory notice for detention and sale. The

assessable value of the goods remaining uncleared and customs duty on the same were Rs.6,66,989 and Rs.9,51,250 respectively. In spite of no other response from the importer, the goods were not sold. Fresh detention notice was issued in March 1989 on the plea that relevant file was not readily available. Finding no response from the importer, the department decided (May 1989) to put the uncleared goods to auction sale. No action for such sale was taken as yet (May 1990).

It is seen from the above facts that the department delayed the issue of demand notice for over one and a half years after the expiry of validity of warehousing period in January 1983. It is also significant to note that the department, instead of selling the goods as per detention notice issued in January 1985, issued fresh detention notice in March 1989 without assigning any reason.

The goods were warehoused in 1981. Since these are perishable in nature, possibility of their losing commercial value due to prolonged storage cannot be ruled out and chances for their sale appear to be very remote leading to a loss of revenue of Rs.9,51,250 being the duty of customs on the uncleared goods and a further loss of Rs.6.67 lakhs being the estimated value of the goods exclusive of duty of customs.

The matter was brought to the notice of the department in March 1989 and again in June 1989. No reply was received (May 1990).

(c) A consignment of photographic film was imported and warehoused in August 1981 for a period of one year under Section 61 of the Customs Act. The assessable value of the goods and customs duty on the same were Rs.7,09,761 and Rs.10,14,958 respectively.

The warehousing period expired in August 1982 and as the goods were not cleared within the period of warehousing, the department issued demand notice in May 1984 for an amount twice the duty. Owing to failure on the part of the importer to clear the goods and to pay the demanded amount, the goods were detained for sale in March 1989. The importer relinquished his title to the goods in May 1989.

While considering (September 1989) the proposal for the destruction of the above goods, the department observed, "As per indication on packets, the films were required to be developed before April 1983. It therefore appears that the films have already expired and lost its photographic potentialities". The proposal for destruction of the goods was approved (November 1989) by the Collector of Customs.

It is seen from the above facts that the department delayed the issue of demand notice for over one year and eight months from the date of expiry of the validity period of warehousing and again for four years and nine months from the date of issue of demand notice at the stage of issuing detention notice for sale. Had the department, keeping in view the shelf life of the photographic films, their perishable nature and photographic potentialities, sold the goods before April 1983, destruction of the goods could have been avoided. Inordinate delay in disposal of the goods had led to their destruction and resulted in a loss of revenue of Rs.10,14,958 being the duty of customs on the uncleared goods and a further loss of Rs.7.09 lakhs being the estimated value of the goods exclusive of duty of customs.

The matter was reported to the department in March 1989 and June 1989. No reply was received (May 1990).

The matter was reported to Ministry of Finance in all the three cases in September 1990; their reply has not been received (December 1990).

2.74 Loss of revenue due to sale in auction

(a) As per the instructions issued by the Board in August 1983, electronic goods coming into possession of the department were to be disposed of through retail sales at one set each to bonafide consumers. The selling price was to be fixed at or around the market price of the goods after taking into consideration the condition of the goods. If the goods were not saleable through retail sales, they could be sold in public auction or by inviting tenders. Percentage reduction from the price originally fixed was also justifiable in such cases.

During test audit of the accounts of a customs godown in a Collectorate for the period January to December 1988, it was noticed that 928 numbers of personal computers were priced at the rate of Rs.3,500 per one number. The department, without offering the goods through retail sales, tried to auction the goods thrice and then invited tenders without giving adequate publicity with the result that response to the auction and the tender from the public was poor. Then the price was reduced to Rs.2,450 and on giving publicity through local newspapers, the department could sell in retail 177 sets within 2 months and 634 sets were sold to the co-operative sector. Had the goods been offered for sale through retail sales at the rate originally fixed, loss of revenue to the tune of Rs.9 lakhs could have been avoided. The procedure adopted for disposal of the goods was also contrary to the one prescribed.

The matter was reported to the Ministry of Finance in August 1990; their reply has not been received (December 1990).

(b) In terms of Section 61 of the Customs Act, 1962, the period of warehousing of consumable stores is 3 months. Extension upto six months could, on sufficient cause being shown, be approved by the Collector only in cases where the materials would not deteriorate. Board's permission is necessary for any further extension.

2004 drums of Aluminium Chloride weighing 50 kilograms each and valued at Rs.16.87 lakhs were imported by a public sector undertaking and warehoused during March 1985. 900 drums were subsequently cleared on payment of duty. The warehousing period of the remaining quantity of 1104 drums was extended by the Collector initially for 3 months, then six months and finally upto August 1986. The party did not clear the goods even after the extended period. By this time, the condition of the material had deteriorated. While extending the period of warehousing of the goods, the department had not ascertained the actual condition of the material.

In November 1986, the importer relinquished the ownership of the goods under Section 23(2) of the Customs Act, 1962. The department then tried to dispose of the material. After repeated attempts, the goods were sold for Rs.18,100. The irregular extension of the warehousing period without ascertaining the conditions of the goods and beyond the authorised limits has resulted in loss of revenue of Rs.9,81,900 towards customs duty after adjusting the sale proceeds.

On the loss being pointed out in audit in May 1990, the department stated that the extension was granted due to financial constraints expressed by the importer.

Ministry of Finance stated (November 1990) that despite the fact of the goods having deteriorated, the department was able to realise Rs.18,100 on their disposal, which was the maximum possible in the circumstances. The Ministry added that since goods were abandoned by the importer (November 1986) the duty could not be realised from the importer.

The fact remains that the actual condition of the goods was not verified by the customs authorities while extending the warehousing periods and the warehousing period was also extended without proper authority, which resulted in the misusing of the facility of warehousing provisions by the importer and escaping the duty liability by abandoning the goods.

2.75 Non enforcement/delay in enforcement of bonds and guarantees

(a) Goods when imported into India (i) in connection with any fair, exhibitions, demonstrations, seminar, congress and conference (ii) as samples for executing or securing export orders (iii) for fixing on or packaging of articles for export are exempt from the whole of customs duty leviable thereon subject to certain conditions as specified under notifications dated 2 August 1976, 1 June 1979 and 23 July 1980 as amended. For availing the benefits under these notifications, the importer executes a bond or an instrument to the satisfaction of the Assistant Collector of Customs to re-export the goods within the specified period (6-9 months) or within such extended period as the Assistant Collector of Customs may allow and, in the event of failure to re-export as aforesaid, to pay the duty which would have been levied thereon

but for the exemption. To ensure the recoveries in such cases, the department obtains from the importers bank guarantees which are required to be enforced before the expiry of their dates of validity if the conditions of the bonds are not fulfilled.

i) A test check, in audit, revealed that, in 16 cases, the goods imported during the period from February 1987 to Decembr 1988 were not re-exported within the stipulated period. In 9 out of 16 cases involving Rs.26.22 lakhs, the department did not take action to invoke the bank guarantees within the period of their validity and the banks did not honour the guarantee when the department invoked the same after their expiry. In the remaining 7 cases, involving Rs.0.64 lakh, letters were issued to invoke the bank guarantees within their validity period but follow up action was not taken.

The objection was communicated to the department in April 1989 and April 1990. The department stated (June 1990) that, prior to 1989, there was no separate "Bank Guarantees Monitoring Register" and that with the introduction of this register, the bank guarantees were presently being monitored regularly to avoid their lapse. The department further stated that, out of the 16 cases pointed out in audit, in 4 cases involving Rs.20.69 lakhs, show cause notices had been issued to the importers and in the remaining 12 cases involving Rs.6.17 lakhs (including 5 cases involving Rs.5.53 lakhs in which the guarantees had already expired), reminders had been issued to the banks/importers asking them to pay the amounts of the bank guarantees.

ii) In another such case of import, where the aforesaid benefit was allowed, the goods imported in March 1987 were not re-exported by the importer within the stipulated period. Although the importer had furnished bank guarantee for Rs.0.65 lakh in support of the re-export bond, the same was not invoked by the department during the period of its validity which expired on 3 April 1988. On this omission being pointed out in audit (April 1989) the department admitted the objection and recovered the amount (September 1989).

Ministry of Finance have confirmed the facts.

(b) Under Section 18(1) (b) of the Customs Act, 1962, a proper officer may direct that any imported goods or goods to be exported be subjected to any chemical or other test for purpose of assessment of duty thereon and may also direct that the duty leviable on such goods may, pending furnishing of the information for completion of such test, be assessed provisionally if the importer furnishes security (in the shape of a bond/guarantee etc.) for the payment of the deficiency, if any, between the duty finally assessed and the duty assessed provisionally.

An importer imported (20 September 1988) "Marthane Resin vashc. Vinyl Resin Solution (silicon based resin)" and submitted a Test Bond for Rs.41,930. During audit, it was observed that the bond expired on 20 October 1988 and the chemical test report was received on 10 April 1989. The test report revealed that the sample did not answer to the test for presence of silicon. Accordingly, it was decided (October 1989) to enforce the bond by raising a demand against the importer. No action was, however, taken to implement this decision.

On this being pointed out in audit in April 1990, the department intimated (June 1990) that a demand for Rs.41,930 had been raised against the importer.

The matter was reported to the Ministry of Finance in July 1990; their reply has not been received (December 1990).

2.76 Short levy of interest

Under Section 61(2) of the Customs Act, 1962, interest on warehoused goods shall be payable on the amount of duty for the period beyond the initial warehousing period of three months or one year till the date of clearance of goods.

A consignment of 986.22 tonnes of palm kernel valued at Rs.25,74,840 was imported in April 1988 and warehoused under Section 59 ibid. The importer was allowed to clear the goods subsequently for home consumption after assessment to basic duty at 60 per cent and auxiliary duty at 45 per cent under heading 12.07 in terms of an ad hoc exemption order issued under Section 25(2) of the Customs Act, 1962 on 16 September 1988. Interest on the amount of duty paid as per the ad hoc exemption order was also levied.

The term 'duty' has been defined in the Customs Act, 1962 as a duty of customs leviable. Interest would therefore be payable on the duty liability at the rate of 200 per cent plus 45 per cent ad valorem, (i.e) the rates applicable at the time of initial warehousing of the goods, since the ad hoc exemption order was issued on a later date. Short levy of interest was pointed out in audit in February 1990. The department admitted the objection, issued a demand for Rs.2,05,100 and also stated that necessary action to recover the short levy of interest of Rs.10,63,613 in respect of other clearances relating to the same bond was being initiated.

Ministry of Finance confirmed the facts and stated (November 1990) that demands for the interest had been issued.

2.77 Incorrect rate of duty vis-a-vis clearance of goods from warehouse

As per Section 15 of the Customs Act, 1962, customs duty is leviable on imported goods entered for home consumption at the rate in force on the date on which a bill of entry in respect of such goods is presented to the Customs House. But in case of imported goods stored under bond in a warehouse and subsequently cleared therefrom, duty is leviable at the rate in force on the date on which these goods are actually removed from the warehouse.

(a) On certain transmission equipments and telephone parts imported by a public sector undertaking and cleared from bonded warehouse between May 1986 and August 1986, under ex-bond bill of entries, additional duty of customs was incorrectly levied at the rate of 12 per cent ad valorem (being the rate of duty in force under item 68 of the erstwhile tariff) instead of 20 per cent ad valorem leviable under heading 85.17 as in force on the dates of clearance of the goods from the warehouse. This mistake resulted in duty and interest being levied short by Rs.5,33,481 on clearances made from the warehouse during the aforesaid period.

On the mistake being pointed out in audit (February 1988), the department issued a show cause notice cum demand in June 1989 for recovery of the short levied amount. Report on recovery was not received (April 1990).

Ministry of Finance have confirmed the facts

(b) Lubricating oil falling under heading 27.10 of the Customs Tariff was fully exempted from payment of auxiliary duty under a notification dated 12 May 1987. The item, however, became liable to the said duty at 5 per cent ad valorem with effect from 1 March 1988 in accordance with the amending notification issued on 1 March 1988.

In respect of four consignments of lubricating oil, bills of entry were presented in January, February and March 1988 and they were assessed free of auxiliary duty applying the first mentioned notification. A portion of the goods shown in the said bills of entry was cleared from the warehouse (pipe lines) in part between 1 March 1988 and 5 September 1988.

It was pointed out in audit (October 1989) that, during the period of clearance of the aforesaid portion of the goods, auxiliary duty at 5 per cent ad valorem was leviable on them. This resulted in non levy of duty of Rs.3,66,956.

The department admitted the mistakes (December 1989 and January 1990)

Ministry of Finance confirmed the facts and stated (July 1990) that the amount of customs duty not levied had since been recovered.

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

In terms of Section 15 of the Customs Act, 1962, the rate of duty applicable to im-

ported goods is the rate in force on the date on which the bill of entry in respect of such goods is presented under Section 46. If, however, a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry would be deemed to have been presented on the date of such entry inwards of the vessal.

(a) On a consignment of "Tetra Ethyl Lead" imported in September 1987, auxiliary duty was levied at 40 per cent ad valorem in force on the date of presentation of the bill of entry (14 September 1987) instead of at 45 per cent ad valorem applicable on the date of entry inwards (22 September 1987) of the vessel. This resulted in duty being levied short by Rs.2,34,668.

On this being pointed out in audit (June 1989), the department admitted (November 1989) the mistake and stated that attempts were being made for realisation of the short levied amount.

Ministry of Finance have confirmed the facts.

(b) A consignment of 'carbon steel saw pipe' imported by a joint sector undertaking through a major Custom House under cover of a bill of entry presented on 23 February 1989 under prior entry system was assessed to additional duty at the standard rate of Rs.1,500 per tonne prevalent on that date. Standard rate of additional duty on the goods was enhanced from Rs.1,500 to Rs.2,500 per tonne with effect from 1 March 1989. As the vessel, by which the goods were imported, actually arrived on 11 March 1989 only, additional duty at the enhanced rate of Rs.2,500 per tonne prevalent on the latter date should have been applied to.

On this omission being pointed out in audit (July 1989), the Custom House admitted the objection (February 1990) intimating the recovery of short collection of duty of Rs.2,20,693.

Ministry of Finance have confirmed the facts.

2.79 Non levy of duty on moveable gears, ship stores, bunkers etc. on the ship imported for breaking

As per notification 142-Cus dated 27 March 1987, ships imported for breaking are assessable to basic customs duty at a specific rate of Rs.1035 and additional duty at Rs.365 per Light Displacement Tonnage. The term 'Light Displacement Tonnage (LDT)' has been defined as equal to displacement of ship minus dead weight tonnage where:-

i) Displacement of a ship indicates total weight of the ship in tones which is equal to the under water volume of a ship upto summer load waterline.

ii) Dead Weight Tonnage is the total carrying capacity of a ship in tonnes which includes cargo, fuel oil, fresh water, stores, provisions etc.

The ships imported for breaking also contain ships' stores and other items like moveable gears etc. Such items are to be assessed to customs duty separately as they are excluded from LDT and are chargeable to duty on merits.

(a) A vessel valued at Rs.1,52,16,432 was imported for scrapping through a major Custom House in May 1987. This was assessed to basic customs duty at Rs.1,035 and additional duty at 365 per LDT extending the benefit of the aforesaid notification dated 27 March 1987. Since the ship had moveable gears and stores valued at Rs.2,72,161, pending orders of assessment of these goods, duty deposit of Rs.6,29,861 representing 5 per cent of duty was collected. The deposit was refunded in January 1989 as it was decided that those goods were also included in the LDT of the vessel and as such no separate duty was to be levied.

It was pointed out (February 1990) in audit that refund of duty without arriving at the duty leviable on merits on goods in the nature of stores, moveable gears, oil etc. was not in order. The incorrect assessment and subsequent refund resulted in loss of revenue of approximately Rs.4.79 lakhs on the assumption of average rate of basic customs duty at 100 per cent ad valorem, auxiliary duty at 40 per cent ad valorem and additional duty at 15 per cent ad valorem, as breakup values of individual goods was not available. No reply was received from the department (May 1990).

(b) A ship imported for scrapping through a major port was cleared in April 1989 after payment of duty at the rates fixed for LDT only. The purchase price of the ship was Rs.2,28,58,000.

When the non levy of customs duty on moveable gears, fuel, spare propeller etc., was pointed out in audit in April 1990, the department stated that the ship was sold on "as is where is" condition and hence the collection of the customs duty at the specific rate of duty per LDT which included everything on board till the time of delivery of the ship, was in order. The department's stand is not acceptable as duty was levied on the basis of LDT only which excludes the weight of cargo, fuel oil, stores etc.

The quantum of duty not levied could not be worked out as the department had not prepared an inventory of the goods at the time of assessment.

Ministry of Finance have stated in the aforesaid cases (December 1990) that the scope of the entry in heading 89.08 has not been elaborated either in the Chapter notes or in the explanatory notes. In the absence of any exclusion clause under the tariff heading 89.08, the said heading would include even items of stores, movable gears, and bunkers on board the vessel.

It has also been added that while effecting the budget changes in 1986-87, it was clearly intended that ships for breaking up should be assessed only to the fixed rate of Rs.1,400 per LDT and this has been adopted as the basis for levy of duty.

The reply of the Ministry is not acceptable for the following reasons:

i) While the heading 89.08 covers vessels meant for breaking up, the manner of levying duty thereon has been fixed in terms of Light Displacement Tonnage.

ii) Since the Light Displacement Tonnage is arrived at after deducting Dead Weight Tonnage as per the instructions of Budget 1986-87, the fact cannot be denied that the goods representing Dead Weight Tonnage viz. cargo, fuel oil, stores, provisions etc., would escape the duty net and hence they are assessable to duty on merits because the notification fixes specific rate of duty on Light Displacement Tonnage basis and the notification is also silent about the exemption from duty on such items.

iii) The clarification issued at the time of Budget for 1986-87 regarding manner of levy of duty on vessels for breaking up cannot substitute the legal backing needed for granting exemption on such items.

The fact remains that Board's instructions dated 21 December 1983 and 19 May 1984 along with the clarification issued during budget of 1986-87 continue to co-exist.

2.80 Non levy of duty on wastage

In terms of a notification dated 15 October 1977, as amended, certain specified goods, when imported into India for use in the manufacture of aircraft including helicopters, are exempt from the basic customs duty and additional duty subject to fulfilment of certain specified conditions. The notification, inter-alia, provides that the importer must undertake to store such imported goods separately and account for the same to the satisfaction of the Assistant Collector of Customs and agree to pay duty of customs in full on all wastages arising out of the manufacture as if the said wastages were imported in that form. Government issued instructions in August 1984 and June 1986 to the effect that, in case of a public sector undertaking manufacturing aircraft, wastage of 5 per cent in all past and future cases should be accepted on the basis of affidavit of the assessee.

During audit (December 1986), it was noticed that, in one of the units of the said undertaking under a Collectorate, although the specified goods had continuously been imported after availing exemption under the aforesaid notification, no duty had been recovered on wastages arising during manufacture of aircraft after December 1983.

On the omission being pointed out in audit (December 1986), the department recovered an amount of Rs.4,70,872 being duty on

wastages for the period January 1984 to December 1987 in September 1987 and January 1988.

Ministry of Finance have confirmed the facts.

2.81 Short levy due to adoption of incorrect weight

The duty levied on a consignment of 34 drums of Spin Finish Oil (organic surface active agent) imported during March 1989 and cleared from bonded warehouse in June 1989, was worked out on an assessable value of Rs.2,66,678.

It was pointed out in audit (December 1989) that as per the invoice the net weight of each drum of the imported goods was 180 kilograms. Accordingly, the assessable value of the 34 drums of the goods imported was to be worked out on 6120 kilograms at D.M 6,500 per tonne and not on 5,192.50 Kilograms as worked out. It was also pointed out that the rate of exchange applicable on the date of presentation of the bill of entry was D.M 11.7125 for Rs.100 as against D.M 12.820 for Rs.100 applied. The adoption of incorrect weightage and exchange rate resulted in difference in the assessable value, and duty was levied short by Rs.1,70,202 (inclusive of interest amount of Rs.2,657 for 32 days).

On this being pointed out, the department admitted the objection and furnished recovery particulars of the short levied amount of Rs.49,796 on account of adoption of incorrect exchange rate (February 1990).

Ministry of Finance confirmed the facts and stated (November 1990) that the balance amount on account of duty on shortage had since been realised (February 1990).

2.82 Irregular benefit to importer

According to para 4.7 of the Central Manual of Cash and Accounts Department, at the close of the day, the totals of credits and debits in the personal deposit accounts operated during the day are taken by the ledger clerks and the closing balances are worked out. The ledger checker then checks the totals of credits and debits and the balances, initials against the latter and sends the ledgers back to the ledger clerks.

Further, under para 4.10 of the said manual, it has been clearly stated that the closing balances of the last day of the month are to be verified with the balance worked out independently from the Merchants' Ledgers in the statement of closing balances prepared by the ledger keepers and after verification, the correctness of the account is to be verified both by the Chief Accounts Officer and the Assistant Collector in charge of the Internal Audit Department (I.A.D) in prescribed form. These provisions are meant to ensure the correctness of the accounts.

It was noticed from personal ledger account of a public sector undertaking maintained in Air Cargo Complex of a major Customs Collectorate that the closing balance of their account on 1 August 1988 was erroneously shown as Rs.17,40,145=51 instead of Rs.16,40,145=51 which was in excess of Rs.1 lakh over actual balance. The said excess balance of Rs. 1 lakh continued for over 10 months.

Scrutiny of personal ledger account of another public sector undertaking maintained in the same Air Cargo Complex revealed that a transfer of credit amounting to Rs.2 lakhs from one personal ledger account maintained at Customs House Treasury was credited initially on 4 April 1988 and again on 6 June 1988 by the Air Cargo Complex resulting in a double credit benefit to the extent of Rs.2 lakhs for a period of one year. As a result, the importer was subsequently allowed to take clearances of the imported goods under debit balances ranging from Rs.7,363=55 to Rs.1,92,648=55 on 19 occasions during the said period of one year.

Action of the department is against the financial principle inasmuch as the utilisation of credit unauthorisedly did confer substantial monetary benefit to the importer by allowing him to avail of the credit facility amounting to Rs.2 lakhs for a period of one year which would otherwise have to be borrowed from bank or other sources, attracting commercial bank interest at 18 per cent per annum amounting to Rs.36,000.

The irregularities could have been avoided, had the department exercised the checks prescribed under paras 4.7 and 4.10 of the Central Manual of the Cash and Accounts department.

The mistakes were pointed out in audit in January 1990. The department admitted the mistake (January 1990).

The matter was reported to the Ministry of Finance in August 1990; their reply has not been received (December 1990).

2.83 Non maintainability of penal action under Section 116 of the Customs Act 1962 due to defective procedure

Under Section 116 of the Customs Act, 1962, read with Section 148, if any goods loaded in a conveyance for importation into India are not unloaded at the destination or the quantity unloaded is short of the quantity to be unloaded and if the failure to unload or the deficiency is not accounted for to the satisfaction of the Assistant Collector of Customs, the Master of the vessel or the Steamer Agent is liable for penal action as provided therein. Under Section 13, the importer will not be liable to pay the duty on pilferages occurring after the stage of unloading but before customs clearance.

The Board issued instructions (August 1963) that all imported goods which are landed in unsound condition under a qualified receipt should be examined immediately by the customs staff to ascertain any shortage and that arrangements should be made with the Port Trust to keep the broken packages in locked custody.

In respect of four cases of import made during the period from May 1981 to June 1982 through a major Custom House, survey of packages unloaded in unsound condition under a qualified receipt was conducted after delay ranging from fifteen to sixty days and penalty charges aggregating to Rs.36,394 were realised (May/August/September 1983) for the shortages noticed. The penalty amount was refunded (February/ March 1986) to the Steamer Agents as the penalty orders had been set aside by Revision Authority in three cases and as a result of denovo examination conducted on orders of Collector (Appeal) in the fourth case. The Revision Authority held that the short landing could not be established since the survey was conducted much later after the landing of the goods and cited similar decisions of the Calcutta High Court (1651 of 1981 on 2 February 1983) and of Tribunal (1983 ELT 1974 CEGAT).

On this delay in conducting the survey in contravention of Board's orders, above cited, being pointed out in audit (June 1986), the Custom House replied (April 1987) that all broken packages were kept in locked enclosures after landing and that as per public notice dated 23 February 1981, the Steamer Agents were required to conduct the survey of damaged packages and they would be liable for penal action for failure or delay in this regard. The Custom House further observed (June 1987/May 1988) that it was not practicable to follow the orders of the Board effectively due to certain difficulties and that, by the issue of the said public notice, the responsibility of the Custom House ceased. The Custom House viewed the order of the Revision Authority and the Judgment of the High Court as stray instances meriting no stress.

The reply of the Custom House is not acceptable for the following reasons:

i) The Board's order clearly fixes the responsibility on the Custom House of conducting the survey immediately in order to find out whether the shortage had occurred before or after unloading particularly because under Section 116 it was for the adjudicating officer to show that the shortage had occurred before the stage of unloading, and to safeguard revenue interests.

ii) A plain reading of the public notice does not indicate that the responsibility had been shifted on Steamer Agents.

iii) Even if the said notice is meant to fix responsibility on the Steamer Agents, it does not completely reflect the spirit of the Board's order, but enabled the Steamer Agents to have the survey at their convenience with delay and conse-

quently the penalty levied was set aside by the appellete authorities on the grounds that short landing was not established due to delayed survey.

Non adherence to Board's orders resulted in loss of revenue aggregating to Rs.36,394 in four cases. The Custom House had not furnished the particulars of similar cases in spite of several requests (August and December 1987/January, July, September and November 1988/January, March and April 1989/ January 1990).

The matter was reported to the Ministry of Finance in April 1990; their reply has not been received (December 1990).

2.84 Delay in matching of Tourist Baggage Re-export forms

In terms of Rule 7 of the Tourist Baggage Rules 1978, tourists are allowed to import articles of high value free of duty on furnishing an undertaking, in writing, to the proper officer to re-export them out of India on their leaving India failing which duty shall be levied thereon. Such articles are entered in a Tourist Baggage Re-export Form (TBRE), a copy of which is given to the tourist to be surrendered by him at the port of departure. The validity of TBRE forms is six months from the date of issue which may be extended in certain cases by another six months. In order to ensure that the articles brought by tourists under TBRE procedure are re-exported, the TBRE forms are to be matched properly with those kept at the ports of arrival of the tourists.

A scrutiny of the TBRE forms and the registers at a Customs Collectorate revealed that 2327 TBRE forms issued from 1984 to 1987 were pending for matching. Duty involved in these cases amounted to Rs.91.95 lakhs in addition to gold ornaments worth Rs.1.2 crores. This was pointed out in audit in December 1989. The department did not furnish reply (July 1990).

The matter was reported to the Ministry of Finance in August 1990; their reply has not been received (December 1990).

CUSTOMS
ANNEXURE - 2.1

Value of Imports - Commodity-wise
(referred to in para 2.03)

The value of imports during the years 1988-89 and 1989-90 according to major sectional headings in the Indian Trade Classification (revised) are given below. The figures compiled by the Director General Commercial Intelligence and Statistics and given out by the Ministry of Commerce have been indicated. The figures within brackets are in respect of some of the goods included in the respective sectional headings.

(In crores of Rupees)

Sl.No.	Commodities	1988-89(P)	1989-90(P)
1.	**Food and live animals chiefly for food including**	834	699
a)	Cereals and cereal preparations	(631)	(378)
b)	Milk and cream	(78)	(57)
c)	Cashewnuts	(61)	(77)
d)	Fruits and nuts excluding cashew nuts	(64)	(90)
e)	Sugar	(-)	(97)
2.	**Crude materials inedible except fuel**	1611	1997
a)	Crude rubber(including synthetic and reclaimed)	(173)	(172)
b)	Raw cotton	(-)	(-)
c)	Synthetic & regenerated fibres	(37)	(69)
d)	Raw wool	(158)	(172)
e)	Crude fertilizer	(185)	(253)
f)	Sulphur & unroasted iron pyrites	(250)	(295)
g)	Metaliferrous ores and metal scrap	(677)	(883)
h)	Other crude minerals	(131)	(153)
3.	**Mineral fuels, lubricants and related materials**	4664	6835
4.	**Chemicals and related products not elsewhere specified**	3525	4777
a)	Organic Chemicals	(1119)	(1348)
b)	Inorganic chemicals	(813)	(787)
c)	Dyeing and tanning substances	(95)	(146)
d)	Medicinal & Pharmaceutical products	(195)	(272)
e)	Feritilizers, manufactures	(493)	(1228)
f)	Artificial resins, plastic materials	(810)	(996)
5.	**Manufactured goods**	6627	9081
a)	Pulp, paper, paper boards and manufacture thereof	(558)	(662)
b)	Textile yarn fabrics and madeup articles	(287)	(349)
c)	Pearls, precious stones and semi-precious stones	(2866)	(4242)
d)	Iron and steel	(1937)	(2304)
e)	Non-ferrous metals	(786)	(1253)
f)	Manufacture of metals	(193)	(271)
6.	**Machinery and Transport epuipment**	5019	6661
a)	Machinery other than electric	(2655)	(3213)
b)	Electrical machinery	(1598)	(1922)
c)	Transport equipmments	(766)	(1526)
7.	**Professional, scientific controlling instruments etc.**	689	886
	GRAND TOTAL : (Including others)	27693	35412

P - Provisional

CUSTOMS
ANNEXURE - 2.2

Value of Exports - Commodity-wise
(referred to in para 2.03)

The value of exports during the years 1988-89 and 1989-90 according to major sectional headings in the Indian Trade Classification (revised) are given below. The figures compiled by the Director General Commercial Intelligence and Statistics and given out by the Ministry of Commerce have been indicated. The figures within brackets are in respect of some of the goods included in the respective sectional headings.

		(In crores of Rupees)	
Sl.No.	Commodities	1988-89(P)	1989-90(P)
1.	**Food Items**	3131	4038
	a) Meat and meat preparations	(94)	(114)
	b) Marine Products	(632)	(687)
	c) Cashew Kernels	(277)	(365)
	d) Fruits and vegetables	(164)	(208)
	e) Processed fruits, juices and other items	(121)	(160)
	f) Sugar and sugar preparations (incl. mollasses)	(7)	(32)
	g) Coffee	(279)	(343)
	h) Tea	(599)	(905)
	i) Spices	(251)	(247)
	j) Oil meals	(370)	(546)
	k) Cereals	(337)	(431)
2.	**Beverages and Tobacco**	129	175
	Tobacco unmanufactured, Tobacco refuse	(103)	(143)
3.	**Crude materials inedible except fuels**	1103	1721
	a) Mica including splittings and Mica waste	(29)	(30)
	b) Raw cotton	(28)	(128)
	c) Sesame and Niger seeds	(24)	(138)
	d) H.P.S. Groundnuts	(15)	(34)
	e) Castor oil including derivatives	(5)	(43)
	f) Shellac	(16)	(14)
	g) Iron ore	(673)	(928)
	h) Ores and minerals other than iron ore and Mica	(313)	(406)
4.	**Mineral, fuels, lubricants and related materials**	518	714
5.	**Chemicals and related products**	1531	2974
6.	**Manufactured goods classified according to materials except pearls, precious, semi-precious stones and carpets, hand made leather and leather manufactures including readymade garments and clothing accessories**	3981	5699
	a) Cotton, yarn, fabrics etc.	(1131)	(1480)
	b) Man made textiles	(171)	(310)
	c) Woollen fabrics	(23)	(28)
	d) Readymade garments and clothing accessories	(2097)	(3224)
	e) Coir manufactures	(31)	(41)
	f) Jute manufatures including twist and yarn	(250)	(297)
	g) Natural silk textiles	(186)	(205)
	h) Mill made carpets	(92)	(114)
7.	**Engineering Goods**	2318	2601
8.	**Miscellaneous manufactured articles including handi-crafts, gems and jewellery**	6761	8317
	a) Gems and jewellery	(4398)	(5296)
	b) Handicrafts	(326)	(403)
	c) Carpets handmade	(470)	(586)
	d) Leather and leather manufatures	(1488)	(1951)
	e) Sports goods	(79)	(81)
	TOTAL OF EXPORTS AND RE-EXPORTS INCLUDING OTHERS:	**20281**	**27681**

P - Provisional

CUSTOMS
ANNEXURE - 2.3

(referred to in para 2.03)

Import duty collections classified according to Budget heads

The import duty collected for the years 1988-89 and 1989-90 is given below classified according to budget heads.

(In crores of Rupees)

Sl.No.	Commodities/budget heads	1988-89	1989-90
1.	Fruits, dried and fresh	77	80
2.	Animal or vegetable fats and oil and their cleavage products' prepared edible fats, animal or vegetable fats	626	249
3.	Petroleum oils and oils obtained from bituminous minerals, crude	1,917	2,149
4.	Petroleum Oils and oils obtained from bituminous mineral other than crude	396	292
5.	Other mineral fuels, oils, waxes and bituminous substances	160	165
6.	Inorganic chemicals	262	232
7.	Organic chemicals	1,134	1,374
8.	Pharmaceutical products	11	6
9.	Dyes, colours, paints and varnishes	100	131
10.	Plastic and articles thereof	869	997
11.	Rubber and articles thereof	174	210
12.	Pulp, paper, paper board and articles thereof	123	172
13.	Silk	11	3
14.	Man made filaments	182	258
15.	Man made staple fibres	36	70
16.	Primary materials of iron and steel	271	433
17.	Iron and non-alloy steel	776	754
18.	Stainless steel	131	156
19.	Other alloy steel, hollow drill bars and rods	201	264
20.	Articles of Iron and Steel	283	318
21.	Copper	431	439
22.	Nickel	99	112
23.	Aluminium	36	83
24.	Lead	46	49

CUSTOMS
ANNEXURE -2.4

Export duty and Cess
(referred to in Para 2.03)

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

(In crores of Rupees)

Sl. No.	Budget head	Export duty		Export cess	
		1988-89	1989-90	1988-89	1989-90
1.	Coffee	6	Nil	3	3
2.	De-oiled groundnut meal	Nil	Nil	Nil	Nil
3.	Tobacco (unmanufactured)	Nil	Nil	1	1
4.	Marine Products	Nil	Nil	4	5
5.	Cardamom	Nil	Nil	Nil	-
6.	Mica	2	2	1	1
7.	Hides, skins and leathers	5	4	Nil	Nil
8.	Lumpy iron ore	Nil	Nil	Nil	Nil
9.	Iron ore fines (including blue dust)	Nil	Nil	2	Nil
10.	Chrome concentrate	Nil	Nil	Nil	Nil
11.	Other articles	Nil	Nil	5	8
12.	Other agricultural produce under A.P. Cess Act, 1940	NIL	Nil	9	6
13.	Under other Budget heads	12	Nil	5	7
	TOTAL	25	6	30	31

CUSTOMS
ANNEXURE - 2.5

Searches and Seizures
(referred to in para 2.05)

Searches and seizures		1987-88		1988-89		1989-90	
		Coastal	Town	Coastal	Town	Coastal	Town
A.	Total No. of searches and seizures						
	Bombay	12	95	7	316	8	5
	Delhi	*283	504	-	(a)1116	-	603
	Madras	**820	-	69	274	88	858
	Calcutta	96	10	110	42	323	738
	Ahmedabad(P)	Nil	Nil	11	731	16	348
	Cochin	1172	50	(*)760	-	503	212
	TOTAL	**2383**	**659**	**957**	**2479**	**938**	**2764**
B.	Value of goods seized (Rs.in lakhs)						
	Bombay	178.00	0.54	150.84	51.79	26.61	17.61
	Delhi	*795.62	192.00	-	4623.00	-	616.00
	Madras	**471.29	-	39.12	193.37	32.30	1788.98
	Calcutta	513.46	129.10	1188.55	22.15	958.60	955.60
	Cochin	401.00	60.00	(*)818.40	-	175.29	107.69
	Ahmedabad(P)	Nil	Nil	3366.60	242.98	1130.60	276.70
	TOTAL	**2359.37**	**381.64**	**5563.51**	**5133.29**	**2323.40**	**3762.58**
C.	Number of seizure cases adjudicated upon and resulting in levy of duty and penalty of imprisonment						
	Bombay	4	Nil	3	-	1	2
	Delhi	*31	Nil	-	2043	-	764
	Madras	***142	13	67	201	73	148
	Calcutta	14	6	60	2	N.A	N.A
	Ahmedabad(P)	Nil	Nil	7	N.A	10	178
	Cochin	644	34	(*)11	-	1	15
	TOTAL	**835**	**53**	**148**	**2246**	**85**	**1107**

* Airports. ** Including Town, Airport and Harbour *** Includes 141 cases of Airport. (*) Includes town.
(a) Includes D.R.I figures. N.A = Not made available by Ministry of Finance (December 1990)

CUSTOMS
ANNEXURE - 2.6

(referred to in para 2.07)

Exemption from duty subject to end use verification

(In crores of Rupees)

		1987-88	1988-89	1989-90
(a)	Value of goods imported on which duty exempted			
	Bombay	148.64	226.39	1,320.49
	Delhi	28.89	41.86	46.03
	Madras	168.43	265.99	298.65
	Calcutta	35.43	14.98	16.18
	Ahmedabad(P)	0.80	166.30	288.60
	Cochin	2.50	N.A	N.A
	TOTAL	384.69	715.32	1,969.95
(b)	Amount of duty forgone			
	Bombay	247.61	372.21	425.00
	Delhi	31.61	64.80	42.45
	Madras	146.51	241.19	290.86
	Calcutta	49.64	21.07	18.76
	Ahmedabad(P)	1.30	407.66	744.54
	Cochin	1.77	N.A	N.A
	TOTAL	478.44	1,106.93	1,521.61

(In crores of Rupees)

		1987-88	1988-89	1989-90
(c)	Value for which bond taken by Custom House			
	Bombay	248.52	348.98	426.40
	Delhi	21.21	646.63	50.82
	Madras	146.56	241.19	287.32
	Calcutta	49.64	21.08	18.74
	Ahmedabad(P)	1.30	212.99	724.54
	Cochin	111.00	4.25	2.03
	TOTAL	578.23	1,475.12	1,509.85
(d)	Number of bonds in respect of which end use condition verified during the year			
	Bombay	1,575	1,953	3,230
	Delhi	381	1,666	1,420
	Madras	4,420	6,113	4,958
	Calcutta	564	758	458
	Ahmedabad(P)	19	259	194
	Cochin	54	120	119
	TOTAL	7,013	10,869	10,379
(e)	Value of bonds brought forward from previous year for verification of end use condition			
	Bombay	83.70	161.79	212.95
	Delhi	46.99	112.53	97.01
	Madras	271.85	86.82	161.45
	Calcutta	26.47	34.66	11.06
	Ahmedabad(P)	0.70	280.05	46.84
	Cochin	1.27	0.26	0.26
	TOTAL	430.98	676.11	529.57
(f)	Value of end use bonds carried forward to next year for verification of end use condition			
	Bombay	156.41	181.60	286.95
	Delhi	42.87	261.81	87.39
	Madras	86.89	159.91	185.82
	Calcutta	34.75	13.36	15.23
	Ahmedabad(P)	0.64	385.83	41.75
	Cochin	1.00	1.24	0.52
	TOTAL	322.56	1,003.75	617.66
(g)	Number of end use bonds pending cancellation			
	Bombay	1,596	2,468	3,334
	Delhi	3,197	-	2,698
	Madras	2,334	3,082	4,783
	Calcutta	365	362	425
	Ahmedabad(P)	Nil	162	144
	Cochin	57	72	119
	TOTAL	7,549	6,146	11,503
(i)	Of above number pending for adjudication or appeal			
	Bombay	Nil	Nil	Nil
	Delhi	Nil	1,496	Nil
	Madras	Nil	Nil	Nil
	Calcutta	Nil	Nil	Nil
	Ahmedabad(P)	Nil	Nil	Nil
	Cochin	Nil	Nil	Nil
	TOTAL	Nil	1,496	Nil
(ii)	Of above number pending decision in High Court			
	Bombay	Nil	Nil	Nil
	Delhi	Nil	Nil	N.A
	Madras	56	7	Nil
	Calcutta	Nil	11	11
	Ahmedabad(P)	Nil	Nil	Nil
	Cochin	4	Nil	Nil
	TOTAL	60	18	11

N.A = Not made available by the Ministry of Finance (December 1990).

CHAPTER 3
UNION EXCISE DUTIES

3.01 Trend of receipts

During the year 1989-90 total receipts from Union Excise duties amounted to Rs.22,307.25 crores. The receipts during the year 1989-90 from levy of basic excise duty and from other duties levied as excise duties are given below alongside the corresponding figures for the preceding year :-

		Receipts from Union Excise duties	
		1988-89* Rs.	1989-90**Rs.
A.	Shareable duties :		
	Basic excise duties	1,42,10,45,82,000	1,63,08,86,73,000
	Auxiliary duties of excise	2,83,000	9,58,000
	Special excise duties	6,94,69,84,000	8,52,65,49,000
	Additional excise duties on mineral products	2,000	3,000
	Total (A)	1,49,05,18,51,000	1,71,61,61,83,000
B.	Duties assigned to states :		
	Additional excise duties in lieu of sales tax	13,97,58,69,000	15,37,02,96,000
	Excise duties on generation of power	--	---
	Total (B)	13,97,58,69,000	15,37,02,96,000
C.	Non-shareable duties :		
	Regulatory excise duties	--	---
	Special excise duties	44,89,82,000	14,93,89,000
	Additional excise duties on textiles and textile articles	1,68,86,24,000	2,09,66,09,000
	Additional excise duties on T.V. sets	45,37,46,000	36,87,81,000
	Other duties	5,00,000	---
	Auxiliary duties	10,000	---
	Total (C)	2,59,18,62,000	2,61,47,79,000
D.	Cess on commodites	21,68,29,29,000	31,19,28,88,000
E.	Other receipts	18,78,11,000	2,27,84,02,000
	Total :	1,87,49,03,22,000	2,23,07,25,48,000

* Figures furnished by the Ministry of Finance in November 1989.

** Figures furnished by the Chief Controller of Accounts, C.B.E.C., New Delhi in November 1990.

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

Year	Receipts from union excise duties (Rs. in crores)	Number of tariff items/ chapters	Number of tariff sub items/headings	Number of factories paying excise duties
1985-86	12,871.08	134	416	51,824
1986-87	14,387.04	91	711	53,060
1987-88	16,345.34	91	811	60,822
1988-89	18,749.03	91	912	71,444
1989-90	22,307.25	91	903	*68880

* Figures furnised by the Ministry of Finance cover 27 collectorates out of 32 collectorates.

iii) The number of commodities each of which yielded excise duties in excess of Rs.100 crores the number of commodities which yielded receipts between Rs.10 crores and Rs.100 crores and the number of commodities which yielded less than Rs.10 crores per year, during the year 1989-90 and alongside corresponding figures for the preceding four years are given below (figures in bracket give percentage to total receipts) :-

	Number of commodities each yielding receipts		
Year	above Rs.100 crores	between Rs.10 crores and 100 crores	below Rs.10 crores
1985-86	24	95	15
	(82)	(17)	(1)
1986-87	20	130	534
	(58)	(35)	(7)
1987-88	19	142	652
	(57)	(35)	(8)
1988-89	27	157	602
	(60)	(33)	(7)
1989-90*	45	53	41
	(87)	(12)	(1)

* Figures furnished by the Ministry of Finance in November 1990 are on the basis of Budget Heads.

iv) The Budget Head wise details of commodities which yielded revenue amounting to more than Rs.100 crores during 1989-90 are as under :

Sr.No.	Budget Head	Description	*Amount Rupees crores
1.	27	Cigarettes & cigarillos of Tobacco or Tobaco substitutes	1924.82
2.	79	Synthetic filament yarn & sewing thread including synthetic monofilament and waste	1181.93
3.	34	Motor spirit	1200.51
4.	31	Cement clinkers cement all sorts	951.35
5.	119	All other falling under chapter 84	765.63
6.	36	R.D.Oil	731.11
7.	62	Tyres, tubes & flaps	628.98
8.	102	Iron and steel	774.74
9.	125	All others falling under chapter 85	540.86
10.	17	Cane or beat sugar and chemically pure sucrose in solid form	429.41
11.	130	All others falling under Chapter 87	489.27
12.	61	Plastics and articles thereof	440.94
13.	40	All other falling under chapter 27	359.13
14.	46	Pharmaceutical products	311.21
15	128	Motor cars and other motor vehicles for transport of persons	391.02
16.	106	Aluminium and articles thereof	522.87
17.	81	Artificial or Synthetic Staple Fibres and tow including waste	258.41
18.	71	Paper and paper board, articles of paper pulp or paper or paper board	313.11
19.	45	Organic chemicals	287.72
20.	103	Articles of Iron and Steel	284.77
21.	35	Kerosene	267.73
22.	80	Fabrics of man-made filament yarn	235.99
23.	84	Fabrics of man-made staple fibre	253.43
24.	124	Insulated wires, cables and other electric conductors	201.54
25.	129	Public transport type passenger motor vehiclesand motor vehicles for the transport of goods	247.89
26.	51	Essential oils and resinoids, perfumery, cosmetics or toilet preparation	187.92
27.	28	Biris	155.84
28.	44	All others falling under Chapter 28	203.53
29.	100	Glass and Glassware	184.31
30.	116	Refrigerations and airconditioners & parts thereof	179.89
31.	120	Electrical motors and generators, electric generating sets and parts thereof	192.94
32.	123	Reception apparatus for radio broadcasting television receivers (including video monitors and projectors	109.55
33.	99	Ceramic products	151.91
34.	75	Cotton and cotton yarn	146.82
35.	49	Paints and varnishes	137.76
36.	63	All others falling under Chapter 40	145.39
37.	122	Electric accumulators, primary cells and primary batteries	124.31
38.	76	All others falling under Chapter 52 (cotton fabrics)	126.17
39.	115	Internal combustion engines and parts thereof, steam and other vapour turbines, hydraulic turbines, turbojets, other engines and motors	136.72
40.	52	Soap	118.49
41.	60	Miscellaneous chemical products	116.88
42.	53	Organic surface active agents	111.99
43.	121	Electrical transformers, static coverters and inductors	108.51
44.	126	Railway or tramway locomotive rolling stock and parts thereof etc	114.73
45.	123A	Electronic components including T.V. picture tubes	106.92

* Figures furnished by the Ministry of Finance in November1990.

v) Cess is levied and collected by department of central excise on tea, coffee, tobacco, beedi, onion, copra, oil and oil seeds, salt, rubber, jute, cotton fabrics, rayon and artificial silk fabrics, woollen fabrics, man made fabrics, paper, iron ore, coal and coke, limestone and dolomite and crude oil under various Acts of Parliament in order to provide for development of respective industries and to meet organisational expenditure on welfare of workers in the respective industries. The yield* from levy of cess in the last three years and the names of commodities are given below:-

(in crores of rupees)

Sr. No.	Commodities	Receipts from cess during 1987-88	1988-89	1989-90*
1.	Crude oil	1,770.11	2,028.72	2,946.74
2.	Handloom cess on fabrics	12.20	11.69	10.31
3.	Tea	9.80	9.60	11.44
4.	Paper	2.43	2.93	4.12
5.	Sugar	117.20	133.09	133.74
6.	Beedi	12.08	12.29	12.74
7.	Jute manufactures	7.29	8.10	7.58
8.	Automobiles	6.02	7.10	8.78
9.	Cotton	0.17	0.08	0.31
10.	Vegetable oils	0.29	0.03	---
11.	T.V.sets (Additional duty)	38.65	48.11	38.25
	Total receipts from cess	1,976.24	2,261.74	3,174.01

* Figures furnished by the Ministry of Finance in November 1990.

3.02 Variations between the budget estimates and actual receipts

The budget estimates vis-a-vis actual receipts during the year 1989-90 alongside the corresponding figures for preceding four years are given below :-

*(in crores of rupees)

Year	Budget estimates	Actual receipts
1985-86	12,307.44	12,871.08
1986-87	14,066.81	14,387.04
1987-88	16,825.79	16,345.34
1988-89	18,172.37	18,749.81
1989-90	22,702.18	22,307.25

3.03 Cost of collection

The expenditure incurred during the year 1989-90 in collecting Union Excise duties are given below alongside the corresponding figures for the preceding four years :-

*(in crores of rupees)

Year	Receipts from excise duties	Expenditure on collection	Cost of collection as percentage of receipts
1985-86	12,871.08	80.85	0.62
1986-87	14,387.04	105.32	0.73
1987-88	16,345.34	112.14	0.69
1988-89	18,749.03	117.78	0.63
1989-90	22,307.25	133.93	0.60

* Figures furnished by the Ministry of Finance and Chief Controller of Accounts, Central Board of Excise and Customs in December 1990.

3.04 Exemptions, rebates, refunds and rewards etc.

(i) Exemptions

In the Central Excise Tariff, the number of sub headings (each with a rate against it) under which the excisable commodities are required to be classified was 1,749 during the year 1988-89 and 1,786 during the year 1989-90. The number of exemption notifications in force during the years 1988-89 and 1989-90 numbered 626 and 493 respectively. The largest number of exemption notifications were in force in respect of the following commodities :-

Sr.No.	Chapter	Description	Number of exemption notifications in force during	
			1988-89	1989-90
1.	28	Inorganic chemicals	43	33
2.	54	Man-made filaments	34	27
3.	40	Rubber and articles thereof	29	25
4.	84	Machinery and mechanical appliances	33	24
5.	27	Mineral fuels	34	22
6.	32	Dyes, colours, paints and varnishes	18	17
7.	85	Electrical Machinery and equipment	33	17
8.	48	Paper	28	15
9.	87	Motor vehichels and parts thereof	19	13

The amount of revenue foregone by grant of exemptions through issue of notifications by the Ministry of Finance under sub sections (1) and (2) of section 5A of the Central Excises and Salt Act, 1944 during the year 1989-90 was as under

	Estimated amount of duty involved (in crores of rupees)
Under sub section (1)	3349.54*
Under sub section (2)	25.29**

* Figures furnished by the Ministry of Finance in November and December 1990 cover 22 collectorates out of 32 collectorates.

** Cover 3 assessees in two collectorates.

(ii) Rebate

Under the Central Excise Rules the amount of rebates on excise duty paid on goods exported as also excise duty not levied on goods exported, in recent years are given below :-

*(in crores of rupees)

		1987-88	1988-89	1989-90
(a)	Rebate under Rule 12	28.20	81.35	81.71
(b)	Rebate under Rule 12A	5.78	2.10	9.35
(c)	Duty not levied under Rule 13-Revenue foregone as a result of export under bond	766.79	799.14	1067.34
(d)	Differential duty recovered on unrebated amount of goods exported under bond	N.A.	N.A.	N.A.

* Revised figures furnished by the Ministry of Finance in December 1990 cover 31 collectorates out of 32 collectorates.

(iii) Refunds

The amount of duty refunded by the department in recent years becaue of excess collection is given below :-

	1987-88	1988-89	*1989-90
Number of cases	10,243	5,686	5,960
Amount of refunds (In crores of rupees)	85.35	77.08	72.12

* Figures (provisional) furnished by the Ministry of Finance in December 1990 cover 30 collectorates out of 32 collectorates.

(iv) Reward to informers and departmental officers

The amount of rewards paid to informers and departmental officers and amount of additional duty realised as a result of payment of rewards in recent years are as under :

*(in lakhs of rupees)

		1987-88	1988-89	1989-90
(a)	Amount of rewards paid to informers	54.23	115.14	166.02
(b)	Amount of rewards paid to the departmental officers	100.92	120.37	58.10
(c)	Additional duty realised as a result of payment of rewards	424.43	1128.83	170.83

* Figures furnished by the Ministry of Finance in December 1990 cover 31 collectorates out of 32 collectorates.

3.05 Outstanding demands

The number of demands for excise duty outstanding* for collection and the amount of duty involved as on 31 March 1990 are given below :-

		Relating to			
		1988-89 and earlier years		1989-90	
		Number of cases	Amount (in crores of rupees)	Number of cases	Amount (in crores of rupees)
(a)	Pending with Adjudicating officers	8718	965.55	7767	730.52
(b)	Pending before Appellate Collectors	1345	67.73	745	31.66
(c)	Pending before Board	126	8.13	108	3.06
(d)	Pending before Government	121	2.89	12	0.21
(e)	Pending before Tribunals	2212	238.40	1394	126.29
(f)	Pending before High Courts	1886	459.74	659	127.79
(g)	Pending before Supreme Court	363	84.87	**175	**30.02
(h)	Pending for coercive recovery measures	19236	91.09	2774	819.39
	Total	34007	1918.40	13634	1868.94

* Figures furnished by the Ministry of Finance in December 1990 cover 31 collectorates out of 32 collectorates.
** Covers 30 collectorates.

3.06 Provisional assessments

The assessments to excise duties which have been done provisionally for various reasons, and the amount of estimated revenue involved are indicated below :-

		Relating to			
		*1988-89 and earlier years		*1989-90	
		Number of cases	Duty involved (in lakhes of rupees)	Number of cases	Duty inolved (in lakhes of rupees)
a)	Pending decision by Courts of Law	1264	51066.12	220	7590.40
b)	Pending decision by Govt. of India or Central Board of Excise & Customs	17	506.79	6	875.38
c)	Pending adjudication by the department	168	1702.43	186	2859.05
d)	Pending finalisation of classification lists	610	3195.54	654	7236.00
e)	Pending finalisation of price lists	4105	42266.00	761	7840.75
f)	Other reasons	583	94450.60	303	6678.63
	Total	6747	193187.48	2130	33080.21

* Figures furnished by the Ministry of Finance in December 1990 cover 31 collectorates out of 32 collectorates.

3.07 Failure to demand duty before limitations and revenue remitted or abandoned

(i) Revenue not demanded before limitation

The total amount* of demands for duty barred by limitation and not realisable owing to demands not having been raised in time during the last three years was Rs.1,841.44 lakhs as detailed below :-

Year	Amount (in lakhs of rupees)
1987-88	1270.92
1988-89	272.73
1989-90	297.79

* Figures furnished by the Ministry of Finance in December 1990 cover 31 collectorates out of 32 collectorates.

(ii) Revenue remitted or abandoned

The amount* of revenue remitted, abandoned or written off during the last two years are given below :-

		1988-89* and preceding year		1989-90*	
		Number of case	Amount (in lakhs of rupees)	Number of cases	Amount (in lakhs of rupees)
	Remitted due to				
a)	Fire	126	31.10	54	27.31
b)	Flood	12	5.89	24	34.99
c)	Theft	1	0.01	1	0.28
d)	Other reasons	690	256.81	267	164.18
Total		829	293.81	346	226.76

	1988-89* and preceding year		1989-90*	
	Number of case	Amount (in lakhs of rupees)	Number of cases	Amount (in lakhs of rupees)
Abandoned or Written off due to				
a) Assessee having died leaving behind no assets	30	9.66	24	2.04
b) Assessee untraceable	257	29.34	28	1.14
c) Assessee left India	8	1.13	1807	1.34
d) Assessee incapable of payment of duty	730	88.22	1758	78.69
e) Other reasons	352	33.63	8	5.35
Total	1377	161.98	3625	88.56

* Figures furnished by the Ministry of Finance in December 1990 cover 31 collectorates out of 32 collectorates.

3.08 Writs and Appeals

(i) Writ petitions pending in courts

Number* of writ petitions involving excise duties which were pending in courts as on 31 March 1990 are given below :-

	In Supreme Court	In High Court
Pending for over 5 years	1306	2126
Pending for 3 to 5 years	374	934
Pending for 1 to 3 years	480	1388
Pending for not more than 1 year	222	776
Total	2382	5224

* Figures furnished by the Ministry of Finance in December 1990 cover 31 collectorates out of 32 collectorates.

(ii) Appeals pending with others

The number* of appeals and petitions pending with Collectors/Board/Government as on 31 March 1990 are given below :-

		Withn Collectorates	With Tribunal	With Board	With Govt.
a)	Number of appeals instituted during 1989-90	2219	2472	12	17
b)	Pending as on 31 March 1990 {out of (a) above}	646	677	12	17
c)	Number of appeals/petitions instituted in earlier years and pending on 31 March 1989	865	3724	50	32
d)	Pending as on 31 March 1990 {out of (c) above}	336	3151	44	23
	Total (b) & (d)	982	3828	56	40

* Figures furnished by the Ministry of Finance in December 1990 cover 31 collectorates out of 32 collectorates.

(iii) Details of appeals/references disposed of

The number* of appeals and references filed before Collectors (Appeals), the Tribunals and the High Courts and Supreme Court are given below :-

		Relating to	
		1988-89 and preceding year	1989-90
1. a)	Number of appeals filed before Collectors (Appeals)	3841	2847
b)	Number of appeals disposed of during 1989-90 out of (a) above	1967	2269
2. a)	Number of appeals filed before the Tribunal by the assessees during 1989-90	2181	1934
b)	Number of appeals decided during 1989-90 in favour of the assessees	188	161
3. a)	Number of appeals filed before the Tribunals by the department during 1989-90	1079	1105
b)	Number of appeals decided in favour of the department during 1989-90	171	34
4. a)	Number of appeals filed in the High Courts by the assessees during 1989-90	208	359
b)	Number of appeals disposed of in favour of the assessees during 1989-90	40	93
5. a)	Number of appeals filed by the department before the High Courts during 1989-90	14	39
b)	Number of appeals decided in favour of the department during 1989-90 (including appeals filed by assessees)	46	72
6. a)	Number of appeals filed in the Supreme Court by assessees during 1989-90	44	49
b)	Number of appeals decided in favour of the assesses during 1989-90	22	19
7. a)	Number of appeals filed in Supreme Court by the department during 1989-90	99	89
b)	Number of appeals decided in favour of the department during 1989-90	59	10

* Figures furnished by Ministry of Finance in Decmber 1990 cover 31 collectorates out of 32 collectorates.

3.09 Seizures, confiscation and prosecution

The number of cases of seizures, confiscation and prosecution relating to the excise duties are given below :-

	*1988-89 and preceding year		*1989-90	
	Number	Amount (in lakhs of rupees)	Number	Amount (in lakhs of rupees)
(i) Seizure cases	4749	19028.90	3005	9073.18
(ii) Goods seized	2868	10402.96	8167	6001.81
(iii) Goods confiscated				
a) in seizure cases	1797	3053.94	5739	6547.81
b) in non-seizure cases	631	793.01	144	7241.96
(iv) Number of offences prosecuted				
a) arising from seizure	246	457.16	91	255.23
b) arising otherwise	325	2342.58	177	3822.49
(v) Duty assessed in respect of goods seized or confiscated	2256	4556.99	1379	4565.77
(vi) Fines levied				
a) on seizure and in confiscation cases	1707	4738.52	780	86.35
b) in other cases	327	95.18	205	168.94
(vii) Penalties levied	4746	7179.29	1700	569.02
(viii) Goods destroyed after confiscation	62	2.32	30	133.39
(ix) Goods sold after confiscation	192	24.36	40	1.45
(x) Prosecution resulting in conviction	33	34.77	9	0.31
Total	19939	52709.98	21466	38467.71

* Figures furnished by the Ministry of Finance in December 1990 cover 31 collectorates out of 32 collectorates.

3.10 Outstanding audit objections

The number of objections raised in audit upto 31 March 1989 in 32 collectorates and which were pending settlement as on 30 September 1989 was 9,567. The duty involved in the objections amounted to Rs.586.63 crores. Details are given in Annexure 3.1 to this chapter.

The outstanding objections broadly fall under the following categories :-

Sr.No.	Nature of objection	Amount (in crores of rupees)
1.	Non-levy of duty	109.70
2.	Short levy of duty due to undervaluation	42.08
3.	Short levy of duty due to misclassification	49.62
4.	Short levy of duty due to incorrect grant of exemption	34.10
5.	Exemption to small scale manufacturers	2.45
6.	Irregular grant of credit for duty paid on inputs and irregular utilisation of such credit	49.16
7.	Demands for duty not raised	95.64
8.	Irregular rebates and refunds	15.10
9.	Cess	14.78
10.	Others	173.28
11.	Internal Audit	0.72
	Total	586.63

The paragraph was sent to the Ministry of Finance in September 1990; their reply has not been received.

3.11 Results of audit

Test check of records in audit in the various Central Excise Collectorates including check of excise records of licensees manufacturing excisable commodities revealed under assessment of duty and losses of revenue amounting to Rs.82.07 crores.

System studies on the following areas of administration of the Central Excise department were also conducted. The results of those studies are contained in paragraphs 1.02 to 1.04 of this report.

i) Iron & Steel & products thereof
ii) Exemption to Small Scale Industries
iii) Submission and finalisation of monthl return (R.T.12)

Those studies also revealed non levy/ short levy of Central Excise duty amounting to Rs.101.69 crores.

The irregularities noticed broadly fall under the following categores :-

(a) Non levy of duty
(b) Short levy of duty due to incorrect grant of exemption
(c) Short levy of duty due to misclassification
(d) Short levy of duty due to undervaluation
(e) Irregular availment of Modvat credit
(f) Irregular grant of credit for duty paid on raw materials and components (inputs) and irregular utilistion of such credit towards payment of duty on finished goods (outputs)
(g) Irregular grant of refunds
(h) Non levy/Short levy of cess
(i) Delay in raising demands of duty
(j) Procedural delays and irregularities with revenue implications
(k) Other irregularities

Some of the important cases are mentioned in the succeeding paragraphs :-

NON LEVY OF DUTY

Under rule 9 read with rule 173G of the Central Excise Rules, 1944, no excisable goods should be removed from any place where they are produced, manufactured or cured whether for consumption, export or manufacture of any other commodity, in or outside such place unless the excise duty leviable has been paid.

Some of the important cases of non levy of duty noticed in audit are given below:

3.12 Non levy of duty on goods captively consumed

Section 3 of the Central Excises and Salt Act, 1944, requires levy of excise duty on all excisable goods other than salt, which are produced or manufactured in India. Rules 9, 49 and 173G of the Central Excise Rules, 1944, provide that duty shall be paid on excisable goods before their removal from any place where they are produced, cured or manufactured whether for consumption, export or manufacture of any other commodity in or outside such place. Further, as per explanation below rules 9 and 49, excisable goods produced and consumed or utilised as such or after subjection of any process or for the manufacture of any other commodity whether in a continuous process or otherwise shall be deemed to have been removed immediately before such consumption or utilisation. In an integrated factory, duty, therefore, becomes leviable at each stage of manufacture save where excisable goods produced at any stage are specifically exempted from duty or rules specifically provide for deferment of duty. It has been judicially held that any manufactured product capable of being removed would be excisable goods and not intermediate non excisable product.

i) Graphite based products

As per a notification issued on 2 April 1986, specified goods manufactured in a factory and used within the factory of production in or in relation to the manufacture of specified final products were exempt from whole of the duty of excise leviable thereon provided that the final product was not exempt from whole of the duty or chargeable to nil rate of duty. However, as per explanation below the aforesaid notification, such exemption for inputs has been prohibited in the case of machines, machinery plant, equipment, apparatus, tools or appliances used for producing or processing of any goods or for bringing about any change in any substance in or in relation to the manufacture of the final products.

A primary producer of aluminium (chapter 76) was manufacturing aluminium from bauxite ore. The extraction of metal aluminium from bauxite ore is being done in two stages. The first stage of the extraction is designed to convert the ore into pure aluminium oxide (alumina). In the second stage, the metal is extracted by electrolytic reduction of alumina. This electrolysis is carried out in carbon lined baths which act as cathode and carbon bars/blocks are used as anodes. The aluminium is deposited in the bottom of the baths from where it is syphoned before it is eventually cast into blocks, bars, ingots, etc., usually after refining.

In order to extract the metal by electrolytic reduction method, the assessee was also engaged in the manufacture of certain graphite based products namely (i) soderberg (ii) pot lining mix and (iii) tamping mix (heading 38.01).

Soderberg is inserted in the form of small blocks in the upper part of a metal container where they soften when exposed to heat. They are thus moulded inside the container to form an endless electrode for use in the furnaces. The tamping mix and pot lining mix (chapter 38) are also used for joining the carbon blocks and for lining the metal container, not covered by carbon blocks respectively. Thus all the aforesaid inputs namely metal container, graphite based mix and pastes form parts of an equipment to extract the metal. In other words metal container, soderberg, pot lining mix and tamping mix together constitute an equipment, apparatus or appliance used for extraction or proceessing the aluminium. These come under the category of "inputs" in respect of which exemption from duty is not allowable in view of the explanation below the notification dated 2 April 1986. Duty was accordingly required to be paid on the aforesaid equipment.

These equipment would merit classification under heading 85.14 of the schedule to the Central Excise Tariff Act, 1985, attracting levy of duty at 15 per cent ad valorem. Neither the assessee paid on his own nor did the department levy the duty due thereon, on the presumption that the manufacturing activity thereof was covered by the notification dated 2 April 1986. This resulted in non levy of duty of Rs.2.42 crores during the period from January 1989 to December 1989. Similar non levy for the period April 1986 to December 1988, and January 1990 to August 1990 works out to Rs.4.18 crores.

On this being pointed out in audit (February 1990), the department contended (May 1990) that the graphite based mix and paste used captively are to be considered as inputs in terms of the notification dated 2 April 1986. This contention is, however, not in accordance with the plain meaning of the explanation below the said notification as the above inputs were only used in connection with manufacture of a device or appliance for extraction of metal.

Ministry of Finance have stated (November 1990) that the matter is under examination.

ii) Mineral products

(a) Burnt dolomite

"Mineral substances not elsewhere specified" are classifiable under heading 25.05 of the schedule to the Central excise Tariff Act, 1985. Burnt dolomite obtained by burning dolomite is also classifiable under the aforesaid heading as "mineral substances not elsewhere specified" and chargeable to duty at the rate of 12 per cent ad valorem. The product is, however, exempt from payment of duty as per a notification dated 2 April 1986 if the same is used captively as input in the manufacture of final product. The Central Board of Excise and Customs, in a letter dated 21 March 1989 clarified that dolomite, if used for "fettling refractory lining in hot furnace" after each heat for upkeepment and maintenance of steel melting furnace, shall not be treated as input for the manufacture of iron and steel products. Hence the exemption notification dated 2 April 1986 shall not apply to dolomite used captively for lining in hot furnace and is chargeable to duty.

Two public sector undertakings manufactured "burnt dolomite" classifiable under heading 25.05 and cleared the same within the factories without payment of duty on the strength of the notification dated 2 April 1986. The stock taking report compiled by the cost and accounts section of the first assessee and the published records (annual statistics) of the second assessee disclosed that a part of the said burnt dolomite was used for fettling refractory lining in hot furnace for upkeepment and maintenance of steel melting furnace. As the product was not an input for the purpose of extending benefit of exemption dated 2 April 1986 as clarified by Board, duty on such product was leviable. The clearances of burnt dolomite within the factory for the above mentioned purpose without payment of duty escaped the notice of the department. This has resulted in non levy of duty of Rs.1.97 crores on the clearances made between the period April 1987 and June 1989.

On the mistakes being pointed out in audit (September 1989 and February 1990) the department admitted the audit objection in one case and stated (March 1990) that show cause-cum demand notice was being issued. The reply in the other case has not been received (November 1990).

Ministry of Finance have admitted the objections (November 1990).

(b) Light crude benzol

Rules 9 and 49 of the Central Excise Rules, 1944, require that duty shall be paid on excisable goods consumed captively or utilised for manufacture of any other commodity in or outside the factory of production. However, goods may be removed and consumed captively if they are specified under rule 56A and the output goods are not exempt from payment of the whole of duty leviable thereon or chargeable to nil rate of duty. Similar provisions also exist in a notification issued on 2 April 1986 (as amended).

An integrated steel plant manufactured 'light crude benzol' (sub heading 2709.00), which was partly consumed captively in the manufacture of the final products viz., 'Xylene (sub heading 2901.90), solvent oil and still bottom (both under sub heading 2707.90). The final products were cleared without payment of duty under a notification issued on 13 May 1986 (as amended). As such, duty at 12 per cent ad valorem up to February 1988 and at 15 per cent ad valorem thereafter was leviable on the quantity of 'light crude benzol' consumed in the manufacture of the said final product. This resulted in non levy of duty of Rs.8.01 lakhs approximately on captive consumption of 1981.720 kilolitres of 'light crude benzol' during the period from April 1987 to August 1988.

On the irregularity being pointed out in audit (October 1988), the department stated (July 1989) that a show cause notice demanding duty has been issued on 27 June 1989. The department further stated (May 1990) that a sum of Rs.3.08 lakhs has been recovered.

Ministry of Finance have admitted the objection (November 1990).

(c) As per a notification issued on 1 March 1989, excisable goods (other than blended or compounded lubricating oils and greases) falling under chapter 27 of the schedule to Central Excise Tariff Act, 1985 produced in a factory and utilised in the factory in which said excisable goods are produced for the manufacture of other goods or as fuel for such manufacture (excluding fuel used for any internal combustion engine) or both were exempted from the whole of the duty of excise leviable thereon.

A public sector undertaking manufactured light crude benzol falling under sub heading 2709.00 and cleared a portion of the same for use as fuel for generation of power without payment of duty. As the benefit under notification dated 1 March 1989 for captive use was not available up to 28 February 1989, the clearance for captive consumption without payment of duty was not in order. The duty omitted to be levied on the clearances from April 1986 to June 1986 amounted to Rs.7.90 lakhs.

This was pointed out to the department in December 1989. While accepting the audit objection, the Ministry of Finance have stated (July 1990) that the entire amount has since been recovered.

iii) Parts of Railway wagons

As per a notification dated 20 November 1986, railway wagons of certain types classifiable under subheading 8606.00 of the schedule to the Central Excise Tariff Act, 1985, were allowed concessional rate of duty subject to the condition that no credit of duty on any of the inputs used in the manufcture of the wagon had been availed of under rule 56A or rule 57A of the Central Excise Rules, 1944.

Both the chapters 73 and 86 being notified under Modvat scheme, duty paid on parts of railway wagons (inputs) whether obtained from outside or manufactured in the factory of production of wagon can be taken as credit to be utilised for payment of duty on finished products. However, by issue of notification dated 2 April 1986, "inputs" manufactured within the factory as well as got manufactured from outside on job work basis and used in the manufacture of finished goods, covered

under Modvat scheme, were fully exempted from payment of duty in order to minimise the maintenance of elaborate records for availing Modvat. Availment of such exemption, therefore, tantamounts to taking of credit under Modvat and this procedure can only place all manufacturers (whether procuring the inputs on payment of duty for taking Modvat credit or producing those for captive consumption or procuring from outside on job work basis) on the same footing. Thus concessional rate of wagons would apply only if the duty on components is paid first and no credit is availed of under rule 57A.

(a) A manufacturer of railway wagons cleared them on payment of duty at the concessional rate. The assessee also manufactured certain types of components and utilised those without payment of duty for the manufacture of wagons in terms of the aforementioned notification dated 2 April 1986, and also procured different railway wagon parts from outside without payment of duty on job work basis under rule 57F(2) of the Central Excise Rules, 1944, read with another notification dated 2 April 1986. As the above notification would not apply in the case of railway wagons or components manufactured and used in the manufacture of railway wagons on which the concessional rates of duty were prescribed, duty ought to have been levied on such components (inputs). The incorrect availment of exemption has, therefore, resulted in non levy of duty of Rs.92.38 lakhs during the period from 1 April 1987 to 28 February 1989.

(b) A public sector undertaking manufactured Railway wagons and cleared those on payment of duty at the concessional rate of Rs.23,000 per wagon. The assessee also manufactured steel casting and utilised it without payment of duty for the manufacture of wagons in terms of the notification dated 2 April 1986 ibid. The incorrect availment of exemption has, therefore, resulted in non levy of duty of Rs.5.54 lakhs on steel castings during the period from 20 November 1986 to 31 January 1987. Subsequent verification revealed that the total non levy of duty amounted to Rs.42.50 lakhs for the period from 20 November 1986 to 30 September 1989.

On the irregularity being pointed out in audit (February 1987 and December 1989) the department did not admit the audit objection and contended (September 1987 and December 1989) that the aforesaid two notifications issued under rule 8(1) of the Central Excise Rules, 1944, were very much independent and distinct and none was dependent on the other.

The contention of the department is not acceptable as the Board in a circular dated 13 July 1987 clarified that notification dated 2 April 1986 was issued with a view to solving certain problems/difficulties relating to Modvat. Obviously the availment of exemption under the said notification on the inputs captively consumed tantamounts to availment of relief under rule 57A and thus contravenes the provisions of notification dated 20 November 1986, which debars the availment of input relief under rule 57A of the Central Excise Rules, 1944.

Ministry of Finance did not admit the objection and stated (August 1990) that the concessional rate would be available only if no credit under rule 56A or rule 57A has been taken and since the assessee did not take such credit in the instant case, concessional rate was correctly allowed.

Ministry's comments are not acceptable as the availment of exemption under the notification dated 2 April 1986 on the inputs captively consumed tantamounts to availment of relief under rule 57A.

Moreover, Ministry's stand leads to different treatment given to manufacturers bringing the duty paid inputs, not eligible for concessional rate of duty and those who consume the inputs captively without payment of duty but allowed to avail concessional rate. This has never been the intention in the Central Excise Law.

iv) Sugar syrup

Sugar syrup not containing added flavouring or colouring matter is classifiable under sub heading 1702.30 of the schedule to the Central Excise Tariff Act, 1985, and is chargeable to duty at the rate of 12 per cent ad valorem. The goods falling under chapters 17 and 22 not being covered by the Modvat scheme,

the notification issued on 2 April 1986 granting full exemption to intermediate products used captively for manufacture of final products was not applicable to sugar syrup used for manufacture of aerated water and fruit pulp drink. However, these chapters were included in the Modvat scheme from 1 March 1987 but subsequently the product 'aerated water' was taken out of the purview of Modvat with effect from 1 October 1987. As a result of these changes, the duty was payable on sugar syrup for the period from 1 March 1986 to 28 February 1987 when used for the manufacture of aerated water and fruit pulp drink and again from October 1987 onwards for use in aerated water only.

Fourteen units in seven collectorates, manufactured sugar syrup from sugar and other materials with citric acid as a preservative. No duty was collected on this product captively consumed for the manufacture of aerated water and fruit pulp drink. This resulted in duty of Rs.68.28 lakhs not being recovered on different clearances during the period from Arpil 1986 to June 1988.

On the mistakes being pointed out in audit (between July 1988 and May 1989) the department accepted the objection in three cases and stated (April 1989) that the issue was under consideration and action was being taken to ascertain the correct value of aerated water. In two other cases the department did not accept the audit objection and stated (February 1989) that the product is an incomplete material obtained at the intermediate stage and is not capable of being bought and sold.

The contention of the department is not acceptable as :-

i) duty is leviable on all excisable goods specified in the schedule to the Central Excise Tariff Act, 1985, as per provisions of sections 2(d) and 3 of the Central Excises and Salt Act, 1944. As sugar syrup being specifically included in the tariff schedule it is excisable goods; and

ii) it has been judicially held by the Supreme Court in the case of J.K.Cotton Spinning and Weaving Mills Limited Vs. Union of India {Page 1280 ECR 22 December 1987) that goods manufactured at an intermediate stage and consumed for the manufacture of final product is liable to duty under the amended provisions of rules 9 and 49 of the Central Excise Rules, 1944.

Ministry of Finance did not admit the objection and stated (August 1990) that reasons for non acceptance had been spelt out in their circular issued on 25 July 1989.

Ministry's reply has not been accepted in audit vide letter dated 1 August 1989 requesting the Ministry to reexamine the case in consultation with the Ministry of Law. The final outcome has not been intimated (November 1990).

v) **Ball or** roller bearings and clutches

(a) **An ass**essee engaged in the manufacture of ball or roller bearings classifiable under sub heading 8482.00 of the schedule to the Central Excise Tariff Act, 1985, also manufactured their components, namely races, steel balls, cages, cups, cones, etc., chargeable to duty at 20 per cent ad valorem. These were used by the unit within the factory without payment of duty in the manufacture of bearings. However, bearings of a total value of Rs.3.28 crores having been cleared by the unit at nil rate of duty during the period from 1 April 1988 to 30 November 1989 under different notifications issued on 8 October 1985, 10 February 1986 and 27 May 1986, the benefit of duty exemption was not available to the components used in these bearings. No duty was, however, demanded on these components. This resulted in non levy of duty amounting to Rs.57,44,067 on the components (estimated value Rs.2,73,52,700 approximately) used in such bearings.

On the omission being pointed out in audit (February 1990), the department admitted the audit observation and stated (May 1990) that remedial action would be taken after working out the exact amount of duty non levied based on the correct assessable value.

Ministry of Finance have stated that the matter is under examination (November 1990).

(b) Two assessees engaged in the manufacture of "clutches" falling under sub heading 8483.00 of the schedule to the Central Excise Tariff Act, 1985, also manufactured "whole clutch assembly set", classifiable under sub heading 8708.00 of the schedule as parts of motor vehicles. Clutches were removed on payment of duty at the rate of 20 per cent ad valorem when cleared from the factory and without payment of duty as per the notification issued on 2 April 1986 when used within the factory for the manufacture of clutch assembly set. Whole clutch assembly set manufactured when cleared for use as original equipment parts in the manufacture of motor vehicles and tractors were removed without payment of duty in terms of another notification issued on 3 April 1986 as amended.

Exemption provided under the notification issued on 2 April 1986 from payment of duty on clutches used captively in the manufacture of clutch assembly sets, was not available as the finished products 'clutch assembly sets', were cleared as original equipment parts without payment of duty in the manufacture of motor vehicles and tractors. This has resulted in short levy of duty of Rs.3.73 lakhs on clearance during the month of March 1989 in one case and during the period from October 1988 to April 1989 in the second case.

Ministry of Finance have accepted the underassessment (November 1990).

vi) Dies and die plates

An assessee, engaged in the manufacture of motor vehicles falling under chapter 87 of the schedule to the Central Excise Tariff Act, 1985, also manufactured dies, and die plates (sub heading 8466.00) and used them captively in the same factory as well as another factory of his own, without payment of any duty. It was noticed that the assessee neither disclosed the activity of manufacturing dies, die plates in the classification list filed by him, nor paid any duty on them. Department was, therefore, requested (July 1988) to ascertain the details of duty not paid on the above goods on the basis of account/costing records maintained by the assessee.

Department intimated (November 1989) that as a result of investigation undertaken by the department (at the instance of audit) it came to light that the assessee also manufactured tools, jigs, fixtures, gauges etc., besides dies and parts of dies pointed out in audit, and excise duty payable on such goods manufactured and used within the factory, during the period from March 1986 to February 1989 worked out to Rs.27.51 lakhs for which a show cause-cum demand notice to the party was issued in September 1989. It was further stated that duty of Rs.11.59 lakhs was paid by the assessee and adjudication regarding the remaining amount of Rs.15.92 lakhs was pending.

Ministry of Finance have accepted the underassessment (November 1990).

vii) Polyester yarn

A textile mill, interalia, manufactured polyester viscose blended yarn containing more than 50 per cent by weight of viscose fibre. For the manufacture of above yarn the assessee first manufactured blended slivers and thereafter blended tops. Such tops containing more than 50 per cent by weight of viscose fibre are dutiable under sub heading 5502.00 as artificial staple fibre tops. There is no notification exempting artificial staple fibre tops falling under sub heading 5502.00 when used captively in manufacture of yarn. Therefore, duty was leviable on these tops when used captively in the manufacture of yarn. It was noticed during audit (October 1989) that the assessee manufactured and consumed 245419 kilograms of artificial staple fibre tops in manufacture of blended yarn without payment of duty during the period from April 1989 to September 1989 alone on which duty not levied amounted to Rs.22,49,802.

The irregularity was pointed out to the department in January 1990 and to the Ministry of Finance in August 1990.

Ministry of Finance have stated (November 1990) that the matter is under examination.

viii) Footwear parts

Under a notification dated 10 February 1986 parts of footwear falling under sub head-

ing 6401.91 of the schedule to the Central Excise Tariff Act, 1985 were fully exempt from duty if they were issued within the factory of production for manufacture of footwears falling under sub heading 6401.11 provided that the finished footwears were not fully exempt from duty or if exempted, the value did not exceed Rs.30 per pair. The said exemption was withdrawn from 1 March 1987 by amending the notification dated 10 February 1986. By further amendment of the said notification, full exemption was allowed to all parts of footwears used captively for manufacture of footwears (6401.11) dutiable or exempted with effect from 24 April 1987. Thus, the parts used internally during the period from 1 March 1987 to 23 April 1987 for manufacture of exempted varieties of footwears attracted levy of duty. As per rules 9 and 49 of the Central Excise Rules, 1944 duty became leviable on excisable goods on their deemed clearance for captive consumption during the instant period. With effect from 1 March 1987 footwears and parts (chapter 64) were brought under Modvat scheme and full exemption was available in case of captive consumption under a notification dated 2 April 1986 as amended on 1 March 1987. This was, however, not available where the finished product was fully exempt from duty.

A manufacturer of footwears manufactured parts of footwears (sub heading 6401.91) and consumed them captively without payment of duty during the period from 1 March 1987 to 23 April 1987 for manufacture of exempted footwears (sub heading 6401.11). The department issued two show cause cum demand notices in September 1987 and October 1987 (Rs.80.60 lakhs) covering the instant period. The assessee had already paid Rs.14.96 lakhs (May 1988) pending adjudication of the case. A scrutiny, however, revealed that the clearance of the parts during the material period had been computed on the basis of clearances of exempted footwears instead of on the basis of clearances of parts from the parts section to footwear section in terms of rules 9 and 49 ibid during the instant period. As a result of adoption of faulty method, the parts cleared prior to 24 April 1987 and contained in the closing stock of finished/semi finished exempted footwears on the forenoon of 24 April 1987 had escaped the levy of duty. The net short levy (adjusting the excess levy made on the balance of February 1989) came to Rs.11.05 lakhs during the period from 1 March 1987 to 23 April 1987.

On this being pointed out in audit (March 1989) the department stated (January 1990) that a show cause cum demand notice for Rs.7.51 lakhs for the parts contained in the closing stock of finished exempted footwears has been forwarded to the Collector for issuance under proviso to section 11A(1) of the Central Excises and Salt Act, 1944 and the parts contained in the semi finished exempted footwears were yet to be ascertained. Further development has not been intimated (March 1990).

Ministry of Finance have confirmed the underassessment (September 1990).

ix) Parts of P.D. Pumps

A manufacturer of power driven pumps manufactured, inter alia, pressure control valve (sub heading 8481.80) and strainer (sub heading 8421.00) and used them captively in the manufacture of power driven pumps without payment of duty. The captive use of these parts of power driven pumps during the period from 1 March 1986 to 21 August 1987 was not in order. The duty omitted to be levied amounted to Rs.8,09,491.

On this being pointed out in audit (September 1989), the department admitted the objection but stated (November 1989) that till a notification under section 11C of the Central Excises and Salt Act was issued for the exemption from duty for the period, no action could be taken on the general show cause notice issued.

However, as notification under section 11C has not been issued so far, the non recovery of the duty was not in order.

Ministry of Finance have accepted the underassessment (November 1990).

x) Tyre bead wire rings

As per a notification issued on 2 April 1986, specified excisable goods manufactured and used within the factory as inputs in or in relation to the manufacture of specified final

products are exempt from the whole of the duty of excise leviable thereon, provided the final products manufactured therefrom are not exempt from the whole of the duty leviable thereon.

Two assessees engaged in the manufacture of tyres falling under chapter 40 of the schedule to the Central Excise Tariff Act, 1985, also manufactured tyre bead wire rings chargeable to duty at 15 per cent ad valorem under sub heading 7308.90/7326.90. These rings were used by the unit within the factory without payment of duty in the manufacture of different types of tyres, including OE tyres for use in tractors and two or three wheeled motor vehicles and tyres for animal driven vehicles. Since these types of tyres were exempted from the whole of the duty thereon, the benefit of duty exemption was not available to the bead wire rings utilised in the manufacture of such tyres. No duty was, however, demanded on these bead wire rings. This resulted in non levy of duty amounting to Rs.5.80 lakhs on bead wire rings used in the exempted tyres cleared by the units between 1 March 1986 and 31 December 1989.

On the omissions being pointed out in audit (February and March 1990), in one case the department admitted the facts and stated (May 1990) that the exact amount of duty evaded would be worked out on receipt of the necessary cost data which had been called for from the unit. Reply in the second case has not been received (June 1990).

Ministry of Finance has admitted the objection (November 1990).

xi) Paper and paper board

An assessee manufactured wrapper paper attracting duty of excise under sub heading 4805.90 and consumed it captively without payment of duty for packing of paper containing not less that 75 per cent by weight of pulp made from bagasse, which was exempt from payment of duty. The clearance of wrapper paper without payment of duty was thus irregular. On 101.783 tonne of wrapper paper valuing Rs.9,04,232 cleared during November 1988 to May 1989, duty payable worked out to Rs.2,74,833 which was not demanded.

On this being pointed out in audit (June 1989), the assessee debited (June 1989) Rs.2,68,128 in the Personal Ledger Account. Balance duty of Rs.6,705 was not paid on the plea that it related to 2.483 tonne of wrapper paper which was wasted. The plea of the assessee was not acceptable as the duty was payable on gross weight.

The Modvat credit in respect of wrapper paper purchased from market was also being reversed on net weight instead of gross weight. Department was asked (August 1989 and March 1990) to effect recovery on gross weight. Report on recovery has not been received (May 1990).

Ministry of Finance have admitted the objection (November 1990).

xii) Interchangeable tools

Interchangeable tools for hand tools, whether or not power operated or for machine tools (for example, for pressing, stamping, punching, tapping, threading etc.) including dies for drawing or extruding metal were classifiable under heading 82.02 upto 29 February 1988 and thereafter under heading 82.07 attracting levy of duty at tariff rate of 20 per cent ad valorem.

As per a notification issued on 10 February 1986 the aforesaid tools manufactured in a factory and intended for use in the factory in which they are manufactured or in any other factory of the same manufacturer are exempted from whole of the duty leviable thereon subject to observance of procedure set out in chapter X of the Central Excise Rules, 1944.

An assessee engaged in the manufacture of watch cases and parts of watches (chapter 91) also manufactured certain tools like forming dies, punches, ejector pads (heading 82.07) and sold them to another manufacturer. The tools so cleared were neither included in the classification lists for the relevant periods nor was any duty paid for the clearances during the period from July 1988 to March 1989 even though the conditions prescribed in the aforesaid notification were not fulfilled. This resulted in non levy of duty amounting to Rs.1,72,633 during the period from July 1988 to March 1989.

On the omission being pointed out in audit (April 1989) the department stated (February 1990) that an offence case was registered for the duty evasion for the period upto 17 October 1989 and the issue of a show cause cum demand notice is under examination. Further developments of the matter have not been intimated (March 1990).

Ministry of Finance have confirmed the facts as substantially correct (May 1990).

3.13 Duty not levied on production suppressed or not accounted for

As per rule 53 of the Central Excise Rules, 1944, every manufacturer of excisable goods is required to maintain account of stock in prescribed form (RGI) wherein he is required to enter, inter alia, the (a) quantity of goods manufactured (b) quantity of goods removed on payment of duty and (c) quantity delivered from the factory without payment of duty for export or other purposes. Non-maintenance of the account correctly and non-accountal of production of excisable goods in the said account and their removal without payment of duty are offences punishable under rules 173Q and 226 of the Central Excise Rules, 1944.

Rules 9 and 49 of the said rules further provide that excisable goods shall not be removed from the place of manufacture or storage unless the duty leviable thereon had been paid. Provisions of rule 173D require that every manufacturer should furnish information regarding the principal raw materials and the quantity of such raw materials required for the manufacture of unit quantity of finished excisable goods. He is also required to file periodical returns (RT.5) to the proper officer indicating the quantity of raw material used in the manufacture of the excisable goods and the quantity of finished goods produced. As per Cement Manual, 96 to 98 tonnes of clinker crushed with 4 to 2 tonnes of gypsum produce 100 tonnes of cement.

i) A test check of the production accounts (RG-1) maintained by a manufacturer of glazed tiles and glazed pavings (sub heading 6906.10) revealed(December 1988) that actual production of the goods as mentioned in daily production reports of the assessee was more than the production accounted for in excise records (RG-1). Consequently, no duty was paid by the assessee, on the quantity of production suppressed or not accounted for in the excise records.

On the mistake being pointed out in audit (January 1989) the department carried out further scrutiny and an offence case was booked against the assessee. A show cause-cum demand notice for Rs.54,23,615 was also issued on 7 September 1989 demanding duty on the production suppressed or not accounted for in the excise records. Further reply has not been received (May 1990).

Ministry of Finance have admitted the objection and stated (November 1990) that a demand of Rs.12.11 lakhs has since been confirmed and a penalty of Rs.2 lakhs and redemption fine of Rs.50,000 in lieu of confiscation has also been imposed.

ii) A public sector corporation manufacturing cement (heading 25.02) exhibited in their Annual Financial Accounts for the year 1987-88 that the quantity of cement manufctured during the year as 1,68,703.992 tonnes as against the quantity of 1,72,930.99 tonnes of raw manterials consumed (viz. clinker; gypsum, fly ash etc). As per the aforementioned production standards, the yield fell short by 4227 tonnes involving duty of Rs.9,51,075.

On this being pointed out in audit (November 1988) the department intimated (May 1990) that a show cause notice was being issued.

Ministry of Finance have admitted the objection (November 1990).

iii) A comparison of production of plywood and sawn timber as per daily stock account (RG1) of a plywood factory with figures of production incorporated in its annual accounts (schedule 13 of the Balance Sheet) for the year 1987-88 revealed a discrepancy between the two which led to non-accountal of 3,74,352 square metres of plywood and timber on which duty liability worked out to Rs.3,95,776.

On the short accountal of production being pointed out in audit (November 1989), the department stated (March 1990) that the facts were suppressed by the assessee and,

therefore, action under section 11A was being taken.

Ministry of Finance have accepted the underassessment (November 1990).

3.14 Excisable goods cleared without payment of duty

i) Molasses

Rule 47 of the Central Excise Rules, 1944, requires that non duty paid manufactured excisable goods should be deposited in a store room or other place of storage which is to be approved by the department. The Central Board of Excise and Customs in their instruction issued on 24 November 1988 directed that permission to stock non duty paid molasses in katcha pits cannot be accorded. However, if the assessees pay duty on molasses, they can be permitted to stock such molasses in katcha pits inside the factory in accordance with the provisions of rule 173H.

Contrary to the aforesaid instructions of the Board, seven sugar factories in four collectorates were allowed to store molasses in katcha pits without payment of duty. This resulted in non levy of duty of Rs.47.81 lakhs on 33291.66 tonnes of molasses during the different period from December 1988 to April 1989.

On the omissions being pointed out in audit (between May 1989 and August 1989), the department in one case stated (November 1989) that an offence case was registered. Report on final outcome of offence case has not been received (December 1989). Department also intimated recovery of duty of Rs.12.92 lakhs in three cases; confirmation of demands of Rs.8.13 lakhs in other two cases; and raising of a demand of Rs.14.78 lakhs in the remaining case. Further position of the demand raised and demands confirmed has not been intimated.

The ministry of Finance have accepted the underassessment in four cases (July and October 1990).

ii) Steel structures

A public sector undertaking manufacturing fabricated steel structures, electrical goods, drive pulleys etc. falling under different chapters like 73, 84, 85 cleared the products to different consignees without payment of duty on the plea that those were meant for turn key project. Since the duty was leviable on the goods in the forms in which these were cleared from the factory there was non levy of duty amounting to Rs.9.29 lakhs on the clearances made in the year 1987.

On the irregularity being pointed out in audit (September 1989) the department intimated (July 1990) that the full amount of Rs.9.29 lakhs has been realised from the assessee on 15 November 1989 and 23 December 1989.

Ministry of Finance have accepted the underassessment (October 1990).

iii) Skimmed milk powder

As per rule 9A of the Central Excise Rules, 1944, the rate of duty and tariff valuation shall be the rate and valuation in force on the date of actual removal of the goods from the factory or warehouse.

Skimmed milk powder in one kilogram packing was exempt from payment of duty as per notification dated 1 March 1983. The said exemption was, however, withdrawn from 1 March 1989 and the said goods became liable to duty at the rate of 10 per cent ad valorem as basic and 5 per cent special excise duty.

An assessee engaged in the manufacture of skimmed milk powder (SMP) requested the department on 4 March 1989 for permission to clear one kilogram packing of Skimmed Milk Powder valued at Rs.74.27 lakhs lying in his stock on 28 February 1989 without payment of duty. The department allowed (March 1989) the assessee to clear the stock without payment of duty in contravention of the rules. This resulted in non payment of duty amounting to Rs.7.80 lakhs on the clearances of Rs.74.27 lakhs made during 17 March 1989 to 12 April 1989.

The omission was pointed out in audit to the department in November 1989 and to the Ministry of Finance in May 1990.

Ministry of Finance did not admit the objection and have stated (September 1990)

that the permission was granted on 4 March 1989 in terms of Board's instructions dated 17 August 1983 which was operative on the date when permission was granted. The Ministry added that the CEGAT's decision in the case of M/s.Beardshell Limited Vs. Collector of Central Excise, Madras that the exemption from payment of duty was inapplicable on goods made earlier, if it was withdrawn by the time such goods were cleared, was delivered on 8 June 1989 i.e., subsequent to the date on which permission was granted.

Ministry's comments are not tenable in view of specific provisions in rule 9A of Central Excise Rules, 1944 according to which the duty was leviable.

iv) Magnesite fine

By virtue of note 2 of chapter 25 of the schedule to the Central Excise tariff Act, 1985, headings 25.01, 25.03 and 25.05 cover products which have been washed, crushed, ground powdered etc., but not products that have been roasted, calcined or obtained by mixing.

An assessee, manufacturing dead burnt magnesite and ramming mass falling under chapters 25 and 38 respectively, was sending the crude magnesite ore obtained from the mines directly to his sister units on job work basis for crushing, clearing and sorting. The crushed ore received from the job workers was then further processed and cleared on payment of duty. During the process of crushing, magnesite in powder form was obtained and the same was cleared on behalf of the assessee directly by the job workers without payment of duty. The magnesite fine in powder form being a mineral substance powdered, was classifiable under heading 25.05, attracting duty at 12 per cent ad valorem. The duty omitted to be levied on magnesite fine cleared, on behalf of the assessee during the period from April 1986 to July 1989 amounted to Rs.7.30 lakhs.

The case was reported to the department in October 1989 and to the Ministry of Finance in June 1990.

Ministry of Finance have admitted the objection (September 1990).

v) Special lined/folded paper cartons

As per a notification issued on 28 February 1982 as amended printed paper cartons (sub heading 4819.12) are chargeable to duty at 15 per cent ad valorem.

A manufacturer of printed paper cartons converted the "imported EYL flattended printed cartons" (referred as blanks) supplied by another manufacturer into special lined/folded printed cartons on job work basis. The process of such conversion undertaken by the assessee involved the operations viz., (i) manufacture of poly coated lining paper from his own raw materials, (ii) lining of printed flattened cartons with lining paper and (iii) folding of lined cartons and packing them in deal wood boxes. The assessee also claimed substantial amounts as charges for the process of conversion into special lined printed cartons. The process of conversion thus amounted to a manufacturing activity as envisaged in section 2(f) of the Central Excises and Salt Act, 1944, resulting in emergence of a new product 'special lined/folded printed carton' chargeable to duty under sub heading 4819.12.

The duty due on the special lined/folded printed cartons was neither paid by the assessee on his own nor by the supplier of the aforesaid 'blanks'. This resulted in non levy of duty of Rs.5,46,002 on the value of Rs.34,66,684 of such cartons cleared during the period from February 1988 to February 1989.

On the omission being pointed out in audit (April 1989) the department stated (January 1990), that a show cause cum demand notice was issued and adjudicated (November 1989) demanding a duty of Rs.2,30,951 under section 11A of the Central Excises and Salt Act, 1944 covering the period from 16 January 1989 to 2 August 1989. Action taken on the non levy for the earlier period has not been intimated (February 1990).

The paragraph was sent to the Ministry of Finance in April 1990; its reply has not been received (November 1990).

Ministry of Finance have accepted the objection (September 1990).

vi) Dumpers

Dumpers are classifiable under heading 87.04 and are assessable to an effective rate of duty of 20 per cent ad valorem.

A public sector undertaking engaged in the manufacture of earthmoving equipment, dumpers etc., was permitted by the department in March 1988 under rule 56 B to remove one "bottom dumper" to another factory of the undertaking for carrying out tests. Subsequently in December 1988, the assessee was permitted by the Collector to retain the aforesaid dumper in the other factory itself. Nevertheless, the duty of Rs.4,55,070 due on the value of the dumper amounting to Rs.21,67,000 was not levied and collected by the department although the dumper was permitted to be retained in the other factory.

On the non-levy being pointed in audit (July 1989) the department stated (December 1989) (i) that the aforesaid dumper was seized on 1 September 1989 at the premises of the other factory, (ii) that action has been taken for demanding duty and (iii) that the matter is under adjudication before the Collector. Further developments have not been intimated (March 1990).

Ministry of Finance admitted the objection and have stated (July 1990) that an offence case has been registered against the party and a show cause notice issued on 23 February 1990.

3.15 Duty not levied on shortages, wastes, storage and other losses

i) Shortage of excisable goods

As per rule 223A of the Central Excise Rules, 1944, the stock of excisable goods remaining in factory shall be weighed, measured and counted or otherwise ascertained in the presence of the proper officer at least once in every year, and if the quantity so ascertained is less than the quantity of which ought to be found in such premises, the owner of such goods shall be liable to pay the full amount of duty chargeable on such goods as are found deficient.

A public sector undertaking manufacturer "P.C.mixtures" (sub heading 2708.10) and "crude benzol" (sub heading 2707.10) cleared those on payment of duty at the appropriate rate. Daily stock account maintained by the unit disclosed that actual production and clearances were not reflected therein and the internal stock verification reports submitted every year by the internal audit department of the unit showed shortage of considerable quantity. It was noticed that shortage of total quantity of 16287 tonne of "P.C.mixtures" and 109 kilolitre of "crude benzol" shown in the internal stock verification report for the periods ending on 31 March 1986, 31 March 1987 and 31 March 1988 were not reflected in the central excise records and duty not levied. This has resulted in escapement of duty of Rs.19.28 lakhs on account of shortages for the years 1985-86, 1986-87 and 1987-88.

On the mistake being pointed out in audit (February 1989) the department stated (April 1989) that steps had been taken to issue a show cause cum demand notice for Rs.19.28 lakhs by the proper officer.

Ministry of Finance have accepted the underassessment (September 1990).

ii) Waste & scrap

(a) Plastics and articles thereof

As per a notification issued on 1 March 1988 waste, parings, scrap of plastics falling under heading 39.15 are chargeable to nil rate of duty if such products arise from goods falling under chapter 39 on which duty has already been paid. If this condition is not fulfilled, waste and scraps are chargeable to duty at the rate of 40 per cent ad valorem in terms of the same notification. Under a provision made in rule 57F(4)(a) of the Central Excise Rules, 1944, any waste arising from the processing of inputs in respect of which Modvat credit has been taken may be removed on payment of duty as if such waste is manufactured in the factory.

Two assessees in a collectorate availing Modvat credit on plastics and articles thereof (chapter 39) were allowed to clear waste and scrap of plastics arising from processing of inputs without payment of duty. As duty was payable on such clearances under rule 57F(4)

there was non levy of duty of Rs.7.56 lakhs for the period from August 1988 to February 1990.

The irregularity was pointed out in audit (March 1990) and reported to the Ministry of Finance in September 1990.

Ministry of Finance did not admit the objection and have stated (November 1990) that the waste and scrap cleared in this case fulfil the condition of the notification dated 1 March 1988.

Ministry's reply is not tenable as any waste arising from the processing of inputs in respect of which Modvat credit has been taken may be removed only on payment of duty as if such waste was manufactured in the factory.

(b) Cut tyres

Note 6 of chapter 40 of the schedule to the Central Excise Tariff Act, 1985 inter alia provides that rubber goods definitely not usable as such, because of cutting up, wear or other reasons are classifiable under heading 40.04 and chargeable to duty at the rate of 15 per cent ad valorem.

A manufacturer cleared during April 1986 to August 1987 scrap of autobend cut tyres valued at Rs.13.77 lakhs without payment of duty although these clearances were liable to duty under heading 40.04. This resulted in non levy of duty amounting to Rs.2,06,613. The department was also asked to work out non payment of duty on similar clearances made by the manufacturer prior to April 1986 and after August 1987.

On this being pointed out in audit (November 1987) the department intimated (July 1989 and December 1989) that duty amounting to Rs.5,49,738 on the clearances made during the period from March 1986 to February 1989 has been recovered by debit in RG23A Part II and that duty prior to March 1986 was not recoverable.

Ministry of Finance have accepted the underassessment (September 1990).

iii) Goods destroyed by fire

Under rule 49 of the Central Excise Rules, 1944, payment of duty shall not be required to be made in respect of excisable goods made in a factory until they are about to be issued out of place or premises specified under rule 9 provided that the manufacturers shall on demand pay the duty leviable on any goods which are not accounted for in the manner specifically provided in these rules, or which are not shown to the satisfaction of the proper officer to have been lost or destroyed by natural causes or by unavoidable accident during handling or storage in such store room or other approved premises.

Two manufacturers of excisable goods viz. yarn, twine, ropes of jute, jute cloth etc. and white wares and decowares etc., falling under chapters 53, 56 and 69 of the schedule to the Central Excise Tariff Act, 1985, involving duty and cess of Rs.3,17,884 were destroyed by fire between the period 1 April 1986 and 28 February 1989. The said assessees lodged claims with the Insurance company for Rs.31,23,786 for the finished excisable goods destroyed by fire, but the central excise duty involved on the goods was neither demanded by the department nor paid by the assessees. As the central excise duty was leviable on the said goods under rule 49 of the rules ibid, non payment of duty and cess of Rs.3,17,884 was irregular.

On the mistakes being pointed out in audit (October 1987 and March 1989) the department accepted the audit objection in one case and stated (January 1989) that a show cause cum demand notice has been issued on 30 November 1988. Reply in the second case has not been received (July 1990).

Ministry of Finance have accepted the underassessment in one case. In the other case the Ministry have stated (November 1990) that the damaged portion was salvaged and was taken into process and that on the basis of report of the Cost Accountant the actual loss by fire was ascertained as 4.998 tonne on which duty and cess of Rs.3,793 has been realised and the remaining quantity of damaged goods has been reprocessed in the course of manufacturing final product and duly accounted for.

Ministry's reply is not tenable as the assessee had already lodged a claim with insur-

ance company for Rs.20.86 lakhs for the finished excisable goods destroyed by fire on which the central excise duty of Rs.1.60 lakhs was payable.

iv) Storage losses

An assessee engaged in the manufacture of clinker and cement (under chapter 25) had deducted 3400 tonnes of clinker from the stock balance as on 1 October 1988 towards storage losses. There was no proof available with the assessee to show that such loss was due to natural cause or due to unavoidable accident during handling or storage. Clinker utilised in the manufacture of cement is only exempted from payment of duty under a notification dated 1 March 1986. As the clinkers lost in storage were not utilised in the manufacture of cement, they were liable to duty. No action was taken by the department to recover duty amounting to Rs.2.57 lakhs due thereon.

On the omission being pointed out in audit (December 1989), the department stated (February 1990) that necessary action was being taken to issue show cause cum demand notice.

Ministry of Finance have admitted the objection (October 1990).

3.16 Goods cleared as non excisable or without obtaining central excise licence

Section 3(1) of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 provides for levy and collection of duty from 4 October 1978 at the rate of 10 per cent of the total amount of duty chargeable under the Central Excises and Salt Act, 1944, on specified textiles and textile articles including woollen fabrics. The rate of this additional duty was raised to 15 per cent of the total amount of excise duty so chargeable on these goods by Finance Act, 1981. By a notification issued on 17 November 1982, all excisable goods manufactured in ordinance factories belonging to Central Government and intended for consumption by members of the armed forces of the Union or by such ordnance factories were, however, exempted from the whole of duty of excise leviable thereon both under the Central Excises and Salt Act, 1944, and the Additional Duties of Excise (Goods of special importance) Act, 1957.

A Central Government ordnance factory was manufacturing woollen barrack blankets falling under the erstwhile tariff item 21 since April 1977 and was clearing the goods without payment of duty for use by armed forces and without obtaining central excise licence even though the goods were excisable and not exempted from payment of duty prior to 17 November 1982. The case of non levy of duty on clearance of the aforesaid goods made by the assessee during the period from 1 April 1977 to 16 november 1982 on being demanded by the Collector (Appeals), was finally adjudicated by the jurisdictional assistant collector on 28 March 1988 ordering levy of basic excise duty of Rs.18,30,723 in addition to additional duty leviable under the additional duties of excise (goods of special importance) Act, 1957. The duties so demanded by the department were paid by the factory on 4 April 1988.

It was, however, noticed in audit (July 1989) that additional duty of excise leviable under the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 was neither demanded by the department nor paid by the factory. This resulted in non levy of additional duty of Rs.2,18,152 on goods cleared by the factory during the aforesaid period.

On the mistake being pointed out in audit (July 1989) the department admitted (December 1989) the facts as prima facie correct. Further progress in regard to recovery of duty has not been received (April 1990).

Ministry of Finance admitted the facts as substantially correct and have stated (August 1990) that the amount involved has since been realised.

3.17 Incorrect application of rate of duty

As per a notification dated 10 February 1986 (as amended), broadcast television receiver sets of screen size exceeding 36 cms., and of a value exceeding Rs.5,000 were liable to duty at Rs.1,750 per set during March 1987 to February 1988 and at Rs.2,000 per set during March 1988 to February 1989.

A unit engaged in manufacture of broadcast television receiver sets cleared 385 broadcast television receiver sets of 51 cms. size after

payment of duty at Rs.1,500 per set during the period from 11 November 1987 to 9 July 1988. As the value of each set exceeded Rs.5,000 the payment of duty at Rs.1,500 per set resulted in short levy of duty of Rs.1,47,500.

The irregularity was pointed out in audit to the department in November 1989 and to the Ministry of Finance in June 1990.

Ministry of Finance have stated (August 1990) that an amount of Rs.1,61,700 has since been realised.

SHORT LEVY OF DUTY DUE TO MIS-CLASSIFICTION

The rates of duty applicable to excisable goods are indicated under various headings of the schedule to the Central Excise Tariff Act, 1985. Wrong classification of a product under a different heading results in incorrect levy of duty. Some of the more important cases of misclassification leading to non/short levy of duty, noticed in audit are given below :-

3.18 Petroleum products

i) Speciality oils

As per a notification issued on 11 May 1984 blended or compounded lubricating oils (chapter 27) are exempt from whole of the duty leviable thereon. Where, however, lubrication function of a mineral oil product is secondary in nature such preparations (sub heading 2710.99) are chargeable to concessional rate of duty of 15 per cent ad valorem as speciality oil under a notification dated 5 May 1986.

(a) A lube blending unit of a public sector undertaking manufactured, inter alia, two products under brand names "servo system and servo hydrex" and marketed them as hydraulic and circular system oils. The products were allowed to be cleared as blended or compounded lubricating oils without payment of duty as per the notification dated 11 May 1984. The said products had the dual characteristics of lubrication of moving components in a hydraulic and circular system as well as transmission of power through the oil. The Board clarified on 23 August 1975 that hydraulic oil is a speciality oil. Since the lubrication was not the primary function of these products but merely an extra quality for ensuring smooth upkeep of internal systems, they were appropriately classifiable as speciality oil chargeable to duty at the rate of 15 per cent ad valorem. Incorrect classification has, therefore, resulted in non levy of duty for Rs.3.47 crores on the clearances made during June 1986 to March 1988.

On this being pointed out in audit (February 1989) the department justified (September 1989 and April 1990) the assessment on the ground that the function of the products, according to end use verification, was primarily for lubrication.

Contention of the department is not acceptable due to following reasons :-

a) had the primary function of hydraulic oil been lubrication it would not have been classified by the Board as speciality oil;

b) a similar product "servo transmission oil" manufactured by the assessee having the characteristics of lubrication as well as transmission of power was classified by the Collector in his adjudication order dated 19 August 1988 as speciality oil;

c) similar type of audit objection was featured as para 3.35(i) of the audit report for the year ending 31 March 1989 (No.5 of 1990) where the Ministry had stated that the matter was under examination;

d) as long as suitable safeguard is not provided in the notification, conflict would always arise to determine the primary and secondary function of a product when it is not possible to determine the same by chemical test; and

e) It has been categorically provided in the Petroleum Products Hand Book" that basically function of a hydraulic fluid is to transmit power by applying the fundamental principles of hydraulics as they relate to fluids in motion and control of the power developed. However, a hydraulic power transmission unit is not devoid of lubrication requirements. Lubrication in that case is an auxiliary

function. Thus the petroleum in the instant case have the primary function to transmit power.

Ministry of Finance have stated (November 1990) that the objection is under examination in consultation with Chief Chemst.

(b) A lube blending unit of a public sector undertaking manufactured, inter alia, a product under brand name "servo marine CHY-D 68" and marketed the same as hydraulic and corrosion preventive oil. The product was allowed clearance as blended or compounded lubricating oils without payment of duty as per the notification dated 11 May 1984. The said products had the dual characteristics of lubrication of moving components in a hydraulic system and as corrosion preventive. The Board clarified on 23 August 1975 that hydraulic oil is a speciality oil. Since lubrication was not the primary function of these products but merely an extra quality for ensuring smooth upkeep of internal systems, those were appropriately classifiable as speciality oils chargeable to duty at the rate of 15 per cent ad valorem. The misclassification of the product has, therefore, resulted in non levy of duty of Rs.4.33 lakhs on the clearances made during March 1986 to December 1989.

The irregularity was pointed out in audit to the department in February 1990 and to the Ministry of Finance in August 1990.

Ministry of Finance have stated (November 1990) that the objection is under examination in consultation with Chief Chemst.

ii) Carbon black feed stock

Heading 27.07 of the schedule to the Central Excise Tariff Act, 1985 covers oils, other products of the distillation of high temperature coal tar and similar products in which the weight of aromatic constitutents exceeds that of non-aromatic constituents. Petroleum oils having predominance in weight of aromatic constitutents over that of non-aromatic constituents are, therefore, classifiable under sub heading 2707.90 with rate of duty of Rs.2,750 per kilolitre at 15°C as note 2 of chapter 27 specifically excludes such type of product from the purview of heading 27.10. The Board in a letter issued on 17 June 1987 and again on 13 February 1989 clarified that a petroleum product with a predominance by weight of aromatic constituents is classifiable under sub heading 2707.90.

A public sector oil refinery manufacturing a product known as 'carbon black feed stock' out of extract obtained in furfural unit was allowed to clear the product after classification under sub heading 2710.50 as furnace oil and the classification was approved as such by the department in July 1986 without ascertaining the weight of aromatic constituents in it. Even when the clarification was issued by the Board on 17 June 1987, no sample was drawn for chemical test to determine the correct classification of the product. A sample was, however, drawn in February 1989 and the chemical test revealed that it contained more than 50 per cent of aromatic constituents by weight. Duty was therefore, chargeable at the rate of Rs.2,750 per kilolitre at 15°C on all the clearances made to consignees without observing chapter X procedures (for chapter X clearance duty at concessional rate of Rs.100 per kilolitre at 15°C is payable irrespective of classification) and the handling loss representing the difference between the quantity determined under the tank discharge system and the actual quantity loaded in tank wagon/lorry (in case of chapter X clearance). But the duty was actually paid at the rate of Rs.127.10 per kilolitre at 15°C and Rs.100 per kilolitre at 15°C respectively. This has resulted in short levy of duty of Rs.67.19 lakhs for the period from March 1986 to July 1989.

This was pointed out in audit to the department in September 1989 and the matter was reported to the Ministry of Finance in July 1990.

Ministry of Finance have admitted the objection (November 1990).

3.19 Rubber and articles thereof

i) Tyres and tubes

"Pneumatic tyres of rubber of a kind used on vehicles or equipment designed for use off the road" and their inner tubes are classifiable under sub headings 4011.91 and 4013.91 of the schedule to the Central Excise Tariff Act,

1985, with a duty rate of 66 per cent ad valorem and Rs.420 per piece (Rs.400 per piece prior to 1 March 1989) respectively. Hence tyres and tubes designed for use in the aircraft/aeroplanes are correctly classifiable under the above mentioned headings since the runways are not public roads but are to be treated as 'off the road' as it was judicially held in 1978 {1978 ELT (J-15)(KAR)} and {1981 ELT 305 (GOI)} that the word 'road' would mean a public road or highway. So if any vehicle has to traverse some times on the road for reaching the destination for use off the road it does not make the vehicle designed for use on the road".

(a) A leading tyre and tube manufacturer in a collectorate manufactured "aerotyres and tubes" and cleared these on payment of duty at the rate of 28 per cent ad valorem and Rs.32 or 34 each respectively after classifying them under sub heading 4011.99 and 4013.99 of the schedule to the Central Excise Tariff Act, 1985. The above tyres and tubes were rightly classifiable under sub heading 4011.91 and 4013.91 respectively as the same were meant for use in the vehicles or equipment which were designed for use off the roads since the aeroplanes/aircraft run on the runways which would not be treated as "on the road". The misclassification has, therefore, resulted in a short levy of duty of Rs.1.64 crores on the clearances made during the period from April 1988 to December 1989.

On the mistake being pointed out in audit (February 1990) the department did not admit the audit objection and contended (April 1990) that "aero tyres and tubes" did not conform to the technical specification and end use of "off the road tyres and tubes".

The fact, however, remains that the Central Board of Excise and Customs in a letter dated 12 April 1990 clarified that "aero tyres and tubes" would be classified under sub heading 4011.91 and 4013.91 The clarification has, therefore, endorsed the views already expressed by Audit and communicated to the department earlier.

The department has further stated (August 1990) that a demand of Rs.63.27 lakhs covering the period December 1989 to May 1990 has been raised and the show cause notice for the earlier period is under process.

Ministry of Finance have admitted the objection (November 1990).

(b) An assessee manufactured tyres which were designed to be used on forklifts, used for lifting and movement of goods within factory premises, godowns, etc. The forklift, being not a vehicle or an equipment designed for use on the roads, the tyres used in them were classifiable under sub heading 4011.91, as of a kind used on vehicles or equipment designed for use off the road, and duty was payable at 66 per cent ad valorem. The assessee, however, classified the product under the sub heading 4011.99 treating them as 'other tyres' and cleared them on payment of duty at 28 per cent ad valorem. The misclassification resulted in short levy of duty of Rs.6.13 lakhs on clearances made during the period from April 1988 to October 1989.

On this being pointed out in audit (January 1990) the department accepted the objection (May 1990). Particulars of demand raised and realised have not been received.

Ministry of Finance have admitted the objection (August 1990).

ii) Hose assembly

As per rule 3(a) of rules for the interpretation of the schedule to the Central Excise Tariff Act, 1985, when goods are prima facie, classifiable under two or more headings, the heading which provides the most specific description shall be preferred to heading providing a more general description.

Excavators and compactors are classifiable under heading 84.30 of the schedule to the Central Excise Tariff Act, 1985. Parts suitable for use solely or principally with the aforesaid machinery are classifiable under heading 84.31 and are assessable to duty at a tariff rate of 20 per cent ad valorem.

Sub heading 4009.92, covers, inter alia, hoses of vulcanised rubber, other than hard rubber, with or without fittings and designed to perform the function of conveying air, gas or liquid with a duty liability of 30 per cent ad valorem.

Thus, in the case of hose assembly made from unhardened vulcanised rubber fitted with

metallic fittings and designed to perform for function of conveying air and meant for use solely or principally with excavators and compactors, sub heading 4009.92 which provides specific description has to be preferred to heading 84.31 which provides a general description. Further, the CEGAT, in the case of Collector of Central Excise Vs.Aerolax Hose Pvt. Ltd. {1989 (39) ELT 681} has held that the hose assembly made from vulcanised unhardened rubber is classifiable under sub heading 4009.92.

An assessee engaged in the manufacture of excavators and compactors also manufactured hose assembly from unhardened vulcanised rubber, with metallic fitting and partly consumed in the factory in the manufacture of excavators and compactors and partly cleared to his show rooms by stock transfer by classifying under heading 84.31 instead of under 4009.92. The incorrect classification thus resulted in short levy of duty of Rs.13,13,578 on hose assemblies cleared in 110 delivery challans during the period from November 1988 to January 1990. The short levy on another 6559 numbers of hose assemblies cleared in 78 delivery challans during the same period and similar short levy in respect of clearances before November 1988 could not be ascertained in audit due to non availability of unit value and other details.

The short levy was pointed out in audit to the department in March 1990 and to the Ministry of Finance in July 1990.

Ministry of Finance have admitted the objection (October 1990).

3.20 Miscellaneous electrical goods

i) Integrated circuits

As per a notification issued on 1 March 1968, as amended, transistors and semi conductor diodes classifiable under erstwhile tariff item 33AA were exempt from the whole of the duty leviable thereon provided they were used in the manufacture of electronic goods other than wireless receiving sets (tariff item 33AA).

A public sector undertaking engaged in the manufacture of electronic based goods also manufactured integrated circuits of different types which were classifiable under the erstwhile tariff item 68. Certain type of those circuits were, however, classified under tariff item 33AA as transistors and semi conductor diodes and were cleared without payment of duty by availing the exemption under the aforesaid notification dated 1 March 1968.

On the misclassification being pointed out in audit (November 1984), the department issued a show cause-cum demand notice on 5 December 1984. A short levy of duty aggregating to Rs.77,62,655 was accordingly worked out covering the clearances during the period from 5 December 1979 to 8 May 1985. The same was confirmed by the jurisdictional Assistant Collector in December 1985.

Ministry of Finance, to whom the irregularity was pointed out did not admit the objection on the ground that the Department of Electronics had clarified on 31 October 1984 that the subject goods were classifiable under the erstwhile tariff item 33 AA. The reply, however, did not consider the subsequent clarification dated 5 February 1985 of the Department of Electronics on the issue.

Subsequent verifications revealed that on an appeal filed by the assessee, the Collector (Appeals) remanded the case (August 1986) for de novo proceedings as the aforesaid order of the Assistant Collector had not been passed in pursuance of section 11A of Central Excises and Salt Act, 1944. Thereupon, a fresh show cause notice was issued on 5 May 1989 i.e., after about three years from the date of remand. Denovo proceedings were initiated by the Collector of Central Excise who adjudicated the case (June 1989) confirming a demand of Rs.75,61,733 attributable to the preceeding 5 years from the date of issue of original show cause notice (5 December 1984) and imposed a penalty of Rs.10 lakhs under rule 173Q(1) of the Central Excise Rules, 1944. The balance demand of Rs.2,00,922 for the period from 5 December 1984 to 8 May 1985 was held as not maintainable under law on grounds of inaccuracy and uncertainty of facts in the notice of December 1984 apart from a failure to issue any notice demanding duty for the period thereafter. Failure of the department to take appropriate timely action resulted in revenue being foregone.

The assessee preferred an appeal to the CEGAT who in their interim order issued on 1 March 1990 took note of the prima facie tenability of the charge of mis-declaration of classification against the assessee had directed the assessee to pre-deposit Rs.25 lakhs being the appropriate amount of duty payable during the period from 5 May 1984 to 8 May 1985 on or before 30 April 1990, pending appeal.

Ministry of Finance have stated (November 1990) that the case is still pending before CEGAT.

ii) Electrical valve actuators

As per the explanatory notes under heading 85.01 of Harmonised Commondity Description and Coding System (HSN), electrical valve actuators consisting of an electric motor with reducing gear and drive shaft and other devices like electrical starters, transformers, hand wheel etc. fall under the group "linear motor" classifiable under heading 85.01. Parts of such valve actuators merit classification under heading 85.03 subject to the provisions of note 2 of section XVI of the schedule to the Central Excise Tariff Act, 1985.

An assessee manufacturing valve actuators operated by built in - electric motor and having the essential characteristics of an electrically operated valve actuator as described in the explanatory notes of HSN, classified the same under the sub heading 9032.80 and their parts under the sub heading 9032.99 as 'automatic regulating or controlling instruments and apparatus and parts thereof respectively attracting duty at 15 per cent ad valorem. These valve actuators and their parts are correctly classifiable under headings 85.01 and 85.03 with levy of duty at the effective rate of 25 per cent ad valorem and 20 per cent ad valorem respectively for the reasons stated in para 1 supra. The incorrect classification of actuators and their spare parts resulted in short levy of duty of Rs.52,02,111 for the clearances made during the period from April 1988 to May 1989.

On this being pointed out in audit (June 1989), the department accepted the objection (January 1990). The department earlier reported (July 1989) that a show cause notice for Rs.24,84,965 covering the six months period was issued and that the assessee had filed a revised classification list under protest.

Ministry of Finance have accepted the underassessment (September 1990).

iii) Colour telecine-an appratus for line telephony/telegraphy

As per note 2(b) to section XVI of the schedule to the Central Excise Tariff Act, 1985, parts of machinery which are equally suitable for use principally with the goods under headings 85.17 (electrical apparatus for line telephony or line telegraphy); 85.25 (transmitting apparatus); 85.26 (radar apparatus); 85.27 (reception apparatus); or 85.28 (television receivers) are to be classified under heading 85.17 and assessed to duty at 20 per cent ad valorem.

As per explanatory notes to HSN scanners for picture transmission which are identical to those normally used in line telephony or line telegraphy, are to be classified under heading 85.17.

(a) A public sector undertaking engaged in the manufacture of electronic based goods, manufactured colour telecine, (also called CCD 16 mm/35 mm film scanner), an equipment used in television studios for converting films into video for simultaneous transmission and cleared the same on payment of duty at 15 per cent ad valorem by classifying under heading 85.25 or 85.29 as a part of transmitting apparatus. The equipment which was equally suitable for use with the apparatus for line telephony or line telegraphy was correctly classifiable under heading 85.17.

The misclassification has, thus, resulted in short levy of duty of Rs.18,95,092 on such scanners valued Rs.3,60,97,000 cleared during the period October 1988 to August 1989.

On this being pointed out in audit (December 1989) the department admitted the objection and stated (April 1990) that entire amount has been realised.

Ministry of Finance have admitted the objection (June 1990).

(b) A public sector undertaking engaged in the manufacture of electronic based goods manufactured 'S-Band-TVRO Synthesiser', a television studio equipment and cleared it on payment of duty at 15 per cent ad valorem classifying under heading 85.25 as transmitting apparatus. The aforesaid equipment, consisting, inter alia, of indoor receivers, is meant to receive signals from satellite and merits classification under heading 85.27 as reception apparatus only. HSN explanatory notes under heading 85.27 also subscribe to this view. The incorrect classification resulted in short levy of duty of Rs.14,52,493 on thirteen equipments valued at Rs.55,33,307 cleared in August 1989.

On this being pointed out in audit (December 1989), the department stated (February 1990) that the entire amount of short levy was recovered in January 1990.

Ministry of Finance have accepted the underassessment (July 1990).

iv) Switch fuses and fuse switches

Electrical apparatus for switching or protecting electrical circuits or for making connections to or in electrical circuits (for example switches, fuses, lightening arresters, voltage limiters, surge suppressors, plugs, junction boxes) for a voltage not exceeding 1000 volts and used otherwise as overload protection or thermal relays, starting relay controls for refrigerating and air conditioning appliance and machinery, are classifiable under sub heading 8536.90, attracting duty at the rate of 20 per cent ad valorem.

Boards, panels (including numerical control panels) consoles, desks, cabinets, and other bases, equipped with two or more apparatus of headings 85.35 or 85.36 for electric control or the distribution of electricity are classifiable under sub heading 8537.00 attracting duty at 15 per cent ad valorem.

An assessee engaged in the manufacture of various electrical machineries and equipments and parts thereof also manufactured switch fuses and fuse switches and classified them under sub heading 8537.00 and cleared them on payment of duty at 15 per cent ad valorem. As the switch fuses and fuse switches manufactured were meant for switching or protecting electrical circuits and they were not an assembly of apparatus falling under headings 85.35 or 85.36 they were correctly classifiable under sub heading 8536.90 attracting duty at 20 per cent ad valorem. The misclassification of switch fuses and fuse switches resulted in short levy of duty of Rs.10.73 lakhs on clearances made during the period from April 1987 to September 1987.

On this being pointed out in audit (May 1988), the department admitted the objection and intimated (June 1989 and May 1990) that three show cause-cum demand notices for Rs.33.19 lakhs for clearances made by the assessee during the period from December 1987 to March 1989 had been issued between May 1988 and April 1989. Show cause cum demand notice in respect of clearances of such goods made during the period from March 1986 to November 1987 was also stated to be under issue. Further developments have not been received.

Ministry of Finance have accepted the underassessment (November 1990).

3.21 Motor vehicles and parts thereof

Consequent on the re-alignment of chapters of Central Excise Tariff covering metals with Harmonised System of Nomenclature with effect from 1 March 1988, there is no generic heading of castings from 1 March 1988. Cast articles are classifiable in the same headings as finished articles falling under section XVI to XIX of the tariff by virtue of rule 2(a) of Interpretative Rules. However, cast articles of general use are classifiable under the respective metal chapters as per note 2(a) of section XV. Consequently, aluminium cast articles of general use are only classifiable under chapter 76.

An assessee manufacturing 'aluminium castings' and supplying them for motor vehicle manufacturers classified such aluminium castings under the sub heading 7616.90 and availed exemption with reference to a notification dated 13 May 1988. Since heading 76.16 is a general head applicable for 'other articles of aluminium', these cast articles of aluminium which are identifiable parts of motor vehicle were classi-

fiable only under the respective final heading 87.08 in view of the reasons quoted in para 1 supra. The incorrect classification resulted in short levy of duty of Rs.1.67 crores on cast articles of motor vehicle parts cleared during the period from September 1988 to July 1989.

On this being pointed out in audit (December 1989), the department reported (April 1990) issue of show cause notice in March 1990 demanding duty of Rs.90,81,440 for the period from March 1989 to September 1989. The information regarding issue of demand for the period from September 1988 to February 1989 and confirmation of demand issued has not been received.

Ministry of Finance have admitted the objection (October 1990).

3.22 Prickly heat powder - a cosmetic

Pharmaceutical products are classifiable under chapter 30 of the schedule to the Central Excise Tariff Act, 1985, while personal deodorants and anti-perspirants are classifiable under chapter 33 (sub headings 3307.00 and 3307.20 with effect from 1 March 1987). As per note 2 to chapter 33 such products falling under headings 33.03 to 33.08 are classifiable under them, even if they contain, subsidiary pharmaceutical or antiseptic constituents or are held out as having subsidiary curative or prophylactic value.

Two assessees manufacturing 'prickly heat powder' in two collectorates classified the products under sub heading 3003.19 and cleared them on payment of duty at 15 per cent ad valorem. The ingredients of the product were salicylic acid, boric acid, talcum powder and perfume. This powder when applied on human body blocks sweat glands and prevents sweating, thereby providing relief from itching sensation and eruption of rashes on body due to heat. The product, thus, was more of an antiperspirant rather than a medicament used for the treatment or prevention of an ailment. The product was, therefore, correctly classifiable under sub heading 3307.00 (sub heading 3307.20 from 1 March 1987) attracting duty at the rate of 105 per cent ad valorem. Incorrect classification of this product under heading 3003.19 resulted in short levy of duty amounting to Rs.100.52 lakhs (approx) on clearances made during the periods from April 1986 to July 1987.

On this being pointed out in audit (October 1987), the department in one case stated (March 1989) that as per the test report received from the Deputy Chief Chemist on a sample drawn of the 'prickly heat powder' the product merited classification as cosmetics and toilet preparation under chapter 33. In the second case, however, the department informed (June 1990) that product viz. 'johnson prickly heat powder' was being manufactured in accordance with a drug licence issued by the Food and Drug Administration of the state government. The opinion of the Deputy Chief Chemist to the effect that product satisfied definition of cosmetics and toilet preparation given in chapter note (2) of chapter 33 loses its weight in the face of specific 'drug licence' issued by the competent authority for the same. It was also informed that as per a decision given by the Board in December 1986 the goods were classifiable under sub heading 3003.19.

The department's reply is not acceptable for the reasons that

i) holding of a licence under the Drugs and Cosmetic Act, 1940 is not relevant as the scheme and scope of central excise classifications are quite different from those of Drugs and Cosmetics Act;

ii) the product when applied blocks the sweat glands. It is, therefore, classifiable as 'anti-perspirant' under sub heading 3307.20 as per Harmonised Commodity Description and Coding System notes at page 477 ; and

iii) as per chapter note 2, headings 33.03 to 33.08 would apply to cosmetics and toilet preparation even if they contain subsidiary pharmaceutical or antiseptic constituents.

Ministry of Finance have accepted (November 1990) the underassessment in one case. In the second case the objection is stated to be under examination.

3.23 Aluminium and articles thereof

i) Aluminium strips

As per serial No.VII of notes under chapter 76 of the schedule to the Central Excise Tariff Act, 1985, "strips of aluminium of thickness exceeding 0.15 mm but not exceeding 6 mm with length more than eight times of the width are classifiable under sub heading 7605.90 and chargeable to duty at the concessional rate of 25 per cent ad valorem under a notification dated 1 March 1986 as amended.

A manufacturer of aluminium strips (called "cable warp-30 micron copolymer" that is polycoated on either side, of 0.2mm thickness in standard reels) cleared the manufactured goods on payment of duty at the rate of 20 per cent ad valorem classifying them under sub heading 7613.90 as "other articles of aluminium." As the product conforms to the specification of "aluminium strips" its classification under sub heading 7613.90 is irregular. This has resulted in short levy duty of Rs.46.28 lakhs on the clearances made during the period from 1 March 1986 to 30 June 1987.

The irregularity was pointed out in audit (July 1987) but the department did not come up with any reply even after a lapse of three years.

However, it was made known during subsequent audit that on receipt of audit observation, the department processed the case further and ultimately issued a show cause-cum demand notice for an amount of Rs.75.70 lakhs covering the period from 1 March 1986 to 29 February 1988.

Ministry of Finance have confirmed the facts as substantially correct (July 1990).

ii) Parts of transmission tower line

Heading 73.08 of the schedule to the Central Excise Tariff Act, 1985, covers iron and steel structure and parts of structures (for example bridges and bridges sections, towers etc.) chargeable to duty at the rate of 15 per cent ad valorem (irrespective of any sub heading). Similar articles of aluminium are covered under heading 76.10 of the Act, with a duty rate of 20 per cent ad valorem upto 28 February 1989 and thereafter 30 per cent ad valorem. When any product contains two or more base metals, classification of that product is to be decided as articles of base metal predominating by weight over each of the other metals as per note 5 of section XV of the Act. Hence parts of transmission tower line made of steel and aluminium are to be classified according to the constituent materials as articles thereof under the respective metal chapters. The Central Board of Excise and Customs have also clarified the same in a letter dated 5 July 1989.

A manufacturer, interalia, of parts of transmissions tower line known as 'bundle spacer' and 'midspan compression joints' and cleared them on payment of duty at the rate of 15 per cent ad valorem under heading 73.08. The above products were manufactured as per specification given by the customer where from it was observed that the products consisted predominantly of aluminium in weight. The products therefore, ought to have been classified under heading 76.10 with a duty rate of 20 per cent ad valorem upto 28 February 1989 and 30 per cent ad valorem thereafter as per note 5 of section XV of the Act read with the clarification issued by Board on 5 July 1989. Failure to classify the products correctly has resulted in short levy of duty of Rs.10.61 lakhs on the clearances made during the period from 1 April 1988 to 30 September 1989.

The irregularity was pointed out in audit to the department in November 1989 and to the Ministry of Finance in August 1990.

Ministry of Finance have admitted the objection (November 1990).

iii) Aluminium foils for sealing of milk bottles

Caps and seals of base metals are classifiable under sub heading 8309.90 with rate of duty of 15 per cent ad valorem. But aluminium foils cleared in running length from the factory not having the shape of caps or seals are appropriately classifiable under heading 76.06 prior to 1 March 1988 and heading 76.07 from 1 March 1988 onwards.

The Central Board of Excise and Customs in a circular issued on 26 September 1989 have confirmed that aluminium foils cleared in

running length for sealing of milk bottles would be classifiable under chapter 76.

A manufacturer of aluminium foils cleared them in running length for use in sealing milk bottles. The goods were allowed clearance by approving classification under sub heading 8309.90 although the foils did not take the shape of caps/seals at the point of clearance. Incorrect classification has, therefore, resulted in short levy of duty of Rs.2.31 lakhs for the period from December 1987 to February 1988 and for March 1989.

The irregularity was pointed out to the department in July 1989 and to the Ministry of Finance in August 1990.

Ministry of Finance have stated (November 1990) that the classification of aluminium foil in question was made under heading 83.09 as per Board's clarification dated 17 June 1987; subsequently withdrawn as the correct classification was under heading 76.07

Thus, it is evident that the product was rightly classifiable under heading 76.07.

3.24 Cranes and parts thereof

i) Cranes

"Cranes" are classifiable under heading 84.26 of the schedule to the Central Excise Tariff Act, 1985, and chargeable to duty at the rate of 15 per cent ad valorem, while "crane lorries" are classifiable under heading 87.05 attracting duty at the rate of 25 per cent ad valorem. Such "crane lorries" are, however, exempt from the whole of the duty of excise by a notification dated 1 March 1986 as amended provided appropriate duty on "chassis" and equipments has already been paid.

(a) A manufacturer engaged in the manufacture, inter alia, of a few types of crane lorries called "Aeneas truck cranes", "leader truck cranes" etc, was allowed to clear the products on payment of duty at the rate of 15 per cent ad valorem after classifying the products as 'cranes' under sub heading 8426.00. The instant truck cranes consist of motor vehicle chassis on which cabs and rotating cranes are permanently mounted. As per explanatory notes to HSN (8705.10) the truck cranes are special purpose motor vehicles e.g., crane lorries, other than those principally designed for the transport of goods or persons and are classifiable correctly under heading 87.05. Failure to classify the products correctly has resulted in a short levy of duty of Rs.36.18 lakhs on the clearances made during the period from May 1986 to March 1989.

On the misclassification and consequent short levy being pointed out in audit (May 1989) the department did not admit the audit objection and contended (December 1989) that the analogy of "crane lorry" was not applicable in case of "truck cranes" manufactured by the assessee as 'crane lorry' was a commercial vehicle on which a lifting device was additionally mounted whereas in the case of "truck crane" the chassis used were specifically designed/ modified for crane. The department further argued that even if the subject product was classifiable under heading 87.05, the same was exempt from the whole of duty of excise by a notification dated 1 March 1986.

The department's reply is not acceptable because :

i) explanatory notes to HSN under heading 87.05 specifically mention the classification of "truck cranes" as "crane lorries" being special purpose motor vehicles;

ii) no duty was paid on equipments manufactured within the factory as per notifications dated 2 April 1986 and Modvat credit on the duty paid on chassis was taken by the assessee. Hence the conditions of the notification dated 1 March 1986 cited by the department were not fulfilled by the assessee to claim full exemption on 'crane lorries' under heading 87.05.

Ministry of Finance did not admit the objection and stated (November 1990) that as per the explanatory notes of HSN under heading 87.05 self propelled machines (e.g. cranes, excavators) in which one or more of the propelling or central elements, namely, propelling engine, gear box and controls for gear changing

and steering and braking factilities are located in the cab of a working machine mounted on a wheeled chassis, whether or not the whole can be driven on the road on its own power, remain clasifiable under heading 84.26, 84.29 or 84.30. Ministry added that in the instant case, the controls for gear changing and steering and braking facilities are located in the cab of the crane as such, the product has been rightly classified under sub heading 8426.00 as mobile crane.

Ministry's reply is not acceptable for the reason that the goods in question are primarily selfpropelled vehicles for special purposes and not machinery or mechanical appliance. Accordingly, the goods are correctly classifiable under chapter 87 and not 84 of the Central Excise Tariff.

(b) An assessee manufacturing hydraulic cranes fitted in chassis with cab was allowed to clear the products on payment of duty at the rate of 15 per cent ad valorem under heading 84.26 although they were appropriately classifiable under heading 87.05. Further, exemption allowed to such vehicles under the aforementioned notification was also not applicable as Modvat credit of duty paid on chassis was availed of by the assessee and no duty was previously paid on the other equipments used for the manufacture of such vehicles. The misclassification of the product has, therefore, resulted in short levy of duty of Rs.6.61 lakhs on the clearance made from August 1988 to December 1988.

The irregularity was pointed out in audit to the department in July 1989 and the Ministry of Finance in August 1990.

Ministry of Finance have admitted the objection (November 1990).

ii) Parts of cranes

"Cranes" are classifiable under heading 84.26 of the schedule to the Central Excise Tariff Act, 1985, and chargeable to duty at the rate of 15 per cent ad valorem, while the "parts of cranes" are classifiable under heading 84.31 of the said schedule attracting duty at the rate of 20 per cent ad valorem.

An assessee manufacturing "cranes" and parts thereof classified "parts of cranes" under heading 84.26 and cleared them on payment of duty at the rate of 15 per cent ad valorem instead of 20 per cent ad valorem. The misclassification of the product thus resulted in underassessment of duty amounting to Rs.7,60,180 during the period from January 1989 to January 1990.

On the mistake being pointed out in audit (January 1990), the department accepted the short levy and stated (June 1990) that the assessee had agreed to pay the differential duty within a fortnight. Further verification of the records of the assessee in July 1990 revealed further underassessment of duty amounting to Rs.5,86,614 for the period from July 1988 to December 1988 due to misclassification.

Ministry of Finance have accepted the underassessment (November 1990).

3.25 Paints and varnishes

i) Synthetic enamels in small packs

Sub heading 3208.90 of the schedule to the Central Excise Tariff Act, 1985, covers paints and varnishes including enamels and lacquers, while colours, modifying tints, amusement colours and the like for artists, students or sign-board paints, when presented in the form of tablets, tubes, jars, bottles, pans or in similar forms or packings fall under sub heading 3213.00

An assessee manufacturing synthetic enamels was clearing the product in tins of 500 ml and above on payment of duty at the rate of 20 per cent ad valorem after classifying the product under sub heading 3208.90. Simultaneously the assessee was also clearing the same product in small tins of 200 ml and below on payment of duty at the rate of 10 per cent ad valorem after classifying the clearances in small tins under sub heading 3213.00 on the ground that paints in small packs were mainly used by sign board painters.

It was pointed out in audit (November 1987) to the department that synthetic enamels and colours were two distinct commodities classifiable under sub heading 3208.90 and 3213.00 respectively and that the misclassifica-

tion of synthetic enamels in small tins under sub heading 3213.00 resulted in short levy of duty.

The amount of short levy due to misclassification of synthetic enamel cleared in small tins of 200 ml and below during March 1986 to March 1990 amounted to Rs.41,19,570.

Ministry of Finance have admitted the objection (November 1990).

ii) Ducco putty

Lacquers based on cellulose nitrate are classifiable under sub heading 3208.30 of the schedule to the Central Excise Tariff Act, 1985, and are chargeable to duty at the rate of 30 per cent ad valorem upto 29 February 1988 and 35 per cent ad valorem thereafter under the notifications issued on 1 March 1986 and 1 March 1988.

A manufacturer of paints, varnishes etc., manufactured a product called "ducco putty" and was allowed the clearance of the product as "painters fillings" under heading 32.14 on payment of duty at the rate of 15 per cent ad valorem. As per chemical examiner's reports (September 1988 and December 1989) " the sample is in the form of grey coloured thick liquid and is composed essentially of pigment, synthetic resin of cellulose nitrate, rosin, extender drier and volatile organic solvent. It gives tack free opaque adherent coating on dilution". Another assessee under the same collectorate manufactured a product "NC grey putty" which was classified under sub heading 3208.30 with duty rate of 30 or 35 per cent ad valorem. As per test result the sample is grey coloured pasty material composed of pigments, synthetic resin-nitro cellulose and alkyd type - extenders and volatile organic solvents. Thus, similar products manufactured by the two assessees under the same collectorate have been classified differently. Since the ducco putty, as per chemical examiner's report, is usable as coating composition, it ought to have been classified as N.C. lacquers under sub heading 3208.30. Incorrect classification has, therefore, resulted in short levy of duty of Rs.38.43 lakhs on clearances during the period from March 1986 to February 1990.

The irregularity was pointed out to the department in March 1988 and to the Ministry of Finance in August 1990.

Ministry of Finance have admitted the objection (November 1990).

iii) Ready mixed paints and enamels

Paints and enamels based on synthetic polymers are classifiable under heading 32.08 attracting duty at 25 per cent ad valorem with reference to a notification dated 1 March 1988.

(a) An assessee availing Modvat facilities manufactured ready mixed paints and enamels from alkyd resins and other synthetic resins, classified them under the sub heading 3210.90 and cleared them on payment of duty at 10 per cent ad valorem under a notification dated 1 March 1988 read with another notification dated 1 March 1986 as amended. The classification of the product under the residuary sub heading 3210.90 as 'other paints and varnishes' was not in order when there was a specific sub heading 3208.90 for paints and enamels of other synthetic polymers. The incorrect classification resulted in underassessment of duty of Rs.6,17,984 for the period from March 1988 to November 1989.

On this being pointed out in audit (December 1989/February 1990), the department accepted (March 1990) the objection and reported recovery of differential duty of Rs.6,30,214 relating to the period 1 March 1988 to 26 December 1989, in December 1989.

Ministry of Finance have accepted the underassessment (October 1990).

(b) An assessee manufactured ready mixed paints and enamels prepared from alkyd resins and solvents, classified them under sub heading 3210.90 and cleared them on payment of duty at 20 per cent ad valorem with reference to the notification dated 1 March 1988. The classification of the product under the residuary sub heading 3210.90 as 'other paints and varnishes' was not in order when there was a specific sub heading 3208.90 for paints and enamels of other synthetic polymers. The incorrect classification resulted in underassessment of duty of Rs.5.17 lakhs on the clearances made during the period from March 1988 to October 1989.

On the misclassification being pointed out in audit (January 1990), the department accepted (January 1990) that the product would not fall under heading 32.10 but stated that it would fall under sub heading 3208.10 attracting duty at 25 per cent ad valorem, since alkyd resin was a polyester and polyester based paints were covered under that sub heading. The department further stated that a show cause notice for six months period was issued in December 1989 and another show cause notice for Rs.3,15,916 for the extended period under section 11A was under issue. Results of adjudication and particulars of recoveries made have not been communicated (April 1990).

Ministry of Finance have accepted the underassessment (August 1990).

3.26 Mineral products

The headings of chapter 26 of the schedule to the Central Excise Tariff Act, 1985, cover various metallic ores and their concentrates. As per note 2 of chapter 26, the term 'ores' means minerals of mineralogical species actually used in the metallurgical industry for the extraction of metals of section XIV and XV. General note of chapter 26 of HSN mentions that ores of headings 26.01 to 26.17 are used commercially to obtain the metallurgical base metals of section XV (viz, iron, copper, nickel, aluminium and various other base metals).

As per note 2 under chapter 25 of the schedule to the Central Excise Tariff Act, 1985, (as it stood prior to 20 March 1990), headings 25.01, 25.03 and 25.05 did not cover products that have been roasted, calcined or obtained by mixing.

i) Calcined clay products

An assessee manufactured calcined fire clay, kynite, sillimanite both in lump and ground form. The products were classified under heading 26.01 and he was allowed exemption under a notification issued on 1 March 1986 and subsequently under another notification issued on 1 March 1988. The products being clayey substances would appropriately be classifiable under heading 25.05 which is specific heading for clay. However, note 2 of chapter 25 excludes products under 25.05 which have been calcined. The said products being calcined would fall outside the scope of heading 25.05. Hence as per tariff entries of the schedule to the Central Excise Tariff Act, 1985, for levy of duty on excisable goods, they were correctly classifiable under sub heading 3801.90 (upto 28 February 1987) and under sub heading 3823.00 (from 1 March 1987).

The incorrect classification of the products and consequent incorrect availment of exemption resulted in short levy of duty of Rs.26.59 lakhs on the clearances made during the period from 1986-87 to 1989-90 (upto January 1990).

The mistake was pointed out to the department in March 1990 and April 1990. The reply of the department has not been received (June 1990).

Ministry of Finance have given an interim reply (November 1990).

ii) Refractory products

An assessee manufactured lump calcined magnesite, ground calcined magnesite, mabour magnesia refractory assay materials, boiler lagging compounds, magnesite pea and magnesite powder and classified them under the heading 25.05, attracting duty at 12 per cent ad valorem. Since the products have been calcined, they stand excluded from heading 25.05, in view of the chapter notes cited above and were correctly classifiable under heading 38.16 as refractory products attracting duty at 15 per cent ad valorem. The incorrect classification resulted in short levy of duty of Rs.11,09,496 for the clearances made during the period from December 1988 to January 1990 alone. The underassessment of duty for the earlier and subsequent periods (upto 19 March 1990) remains to be ascertained (June 1990).

The misclassification was pointed out to the department in March 1990.

Ministry of Finance have given an interim reply (November 1990).

3.27 Articles of bedding

Articles of bedding and similar furnishing for example mattresses, quilts, cushions, pillows etc., of cellular plastics are classifiable under heading 94.04 attracting duty at 75 per cent ad valorem.

An assessee manufacturing poly-urethane foam products in primary form (sub heading 3909.60) like blocks and sheets also manufactured poly-urethane foam articles like mattresses, pillows, cushions, backrests etc. The assessee classified these articles under sub heading 3926.10 and paid duty when in block form at Rs.40 per kg. with reference to a notification dated 1 March 1988. Prior to March 1988 also he paid duty on poly urethane foam block at Rs.40 per kg. with reference to another notification dated 26 April 1987 and cleared the articles manufactured from the duty paid blocks without further duty with reference to a third notification dated 26 April 1987. As the products mattresses, pillows, cushions of cellular plastics have been specifically mentioned under heading 94.04 they were classifiable under that heading only attracting duty at 75 per cent ad valorem. This has resulted in short levy of duty of Rs.23.83 lakhs for the period from June 1987 to September 1988.

On this being pointed out in audit (December 1988) the department though initially (January 1989) justified the original classification on the ground that the term mattresses, cushions, pillows were not defined in the tariff and that the items cleared were only sheets of regular geometric shape, subsequently stated (March 1990) that a show cause notice had been issued demanding duty of Rs.3.78 lakhs for the period from June to September 1988 and for the earlier period a show cause notice was under preparation. Results of the adjudication has not been intimated (April 1990).

Ministry of Finance have accepted the underassessment (August 1990).

3.28 Plastics and articles thereof

i) Plastic sheets combined with other materials

Sheets of plastics, non-cellular, whether lacquered or metallised or laminated, supported or similarly combined with other materials or not are classifiable under heading 39.20 of the schedule to the Central Excise Tariff Act, 1985 and are chargeable to concessional rate of duty of 35 per cent ad valorem under serial No.32 of notifications dated 1 March 1986 and 1 March 1988.

An assessee manufacturing fibre glass reinforced polyester sheets classified the products under heading 39.20 from 1 March 1986. He was asked by the department in July 1987 to file revised classification list for reclassification of the product under heading 70.14 as articles of glass fibre and the revised classification was approved accordingly.

The product being plastic sheets reinforced with fibre glass in which plastic constituent predominates by weight it was pointed out in audit that it would be correctly classifiable under heading 39.20 which covers plastic sheets supported or combined with other materials. Incorrect classification has, therefore, resulted in short levy of duty of Rs.7.33 lakhs for the period from August 1987 to March 1989.

The irregularity was pointed out to the department in April 1989 to the Ministry of Finance in March 1990.

Ministry of Finance have admitted the objection (November 1990).

ii) Adhesive based on plastics

"Adhesive based on plastics" are classifiable under sub heading 3506.00 of the schedule to the Central Excise Tariff Act, 1985, with a duty rate of 40 per cent ad valorem from 1 March 1987 to 28 April 1987. The product was, however, exempted from duty in excess of 25 per cent ad valorem by virtue of a notification issued on 29 April 1987. The Central Board of Excise and Customs in a letter dated 11 August 1987 clarified that as per explanatory notes to H.S.N. heading 35.06 includes preparation specifically formulated for use as adhesive consisting either of a mixture of several plastics of chapter 39 or of plastics which apart from any permitted additions to the products of chapter 39 contain other added substances not falling under that chapter. It, therefore, follows that adhesives based on synthetic resin would be classifiable under heading 35.06.

A leading manufacturer of footwears manufactured a product known as "adhesive neoprene" (neoprene cement) and claimed the classification under heading 35.06 but the department classified the product under sub heading 3214.00 as grafting materials with a duty rate of 15 per cent ad valorem. Break up statement maintained by the assessee disclosed that the product was manufactured out of hylac resin (chapter 39), magnesium oxide (chapter 25) and solvent. A sample of the product was drawn by the department on 25 November 1988 and the chemical examiner opined that the sample was light brown viscose liquid composed essentially of synthetic resin, chlorine bearing organic elastomer, metallic oxide and volatile organic solvent high non volatile residue 21 per cent by weight which is elastic in nature". The product was, therefore, rightly classifiable under heading 35.06 as adhesive based on plastics with a duty rate of 40 per cent ad valorem upto 28 April 1987 and 25 per cent ad valorem thereafter. The misclassification has, therefore, resulted in short levy of duty of Rs.5.80 lakh on the clearances made during the period from March 1987 to December 1988.

On the mistake being pointed out in audit (March 1989) the department did not accept the audit objection and justified the classification under heading 32.14 on the ground that in the manufacture of "neoprene cement", the major ingredient poly chloroprene phenolic resin and magnesium oxide were chemically combined in solvent to tune to form the product. They added that the major ingredient being polychloroprene which was nothing but a synthetic resin the product could never be plastic based cement. It possessed the character of mastics as per chapter note to H.S.N.

The department's contention is not acceptable as it is admitted that the product is based on synthetic resin. Hence the product is rightly classifiable under heading 35.06 as per clarification issued by Board on 11 August 1987. Reference to chapter note to H.S.N. by the department is also not acceptable since chapter note below chapter 32 speicifically includes the mastics based on plastics with a high added proportion (80 per cent) of fillers. But in the instant case the percentage of non-volatile portion is only 21 per cent as certified by the chemical examiner and the product is in liquid form not conforming to 'mastics'. So the subject product cannot be classified as grafting materials under heading 32.14 as approved by the department.

Ministry of Finance have stated (November 1990) that the objection is under examintion in consultation with the Chief Chemist.

iii) Rigid plain plastic film

As per note 10 to chapter 39 of the schedule to the Central Excise Tariff Act, 1985, the expression plates, sheets, films, foil and strip occuring in the headings 39.20 and 39.21 applies to plates, sheets, film, foil and strip, etc. and to blocks of regular geometric shape, whether or not printed or otherwise surface worked. As per a decision given by the CEGAT in the case of M/s.Metographs Pvt. Ltd., Vs. Collector of Central Excise Bombay {1986(8)ECR 465 CEGAT} the printing on a packaging paper or on a wrapping paper or on a cardboard carton or on other containers is always incidental to the primary use of such containers as cartons or wrapping paper and hence it is not a product of printing industry.

An assessee engaged in the manufacture of rigid plain plastic films intended for packaging purposes and falling under sub heading 3920.31 of the schedule to the Central Excise Tariff Act, 1985 cleared such film for captive use on payment of duty at 25 per cent ad valorem for further process of printing. The assessee classified the printed films so manufactured under sub heading 4901.90 as other products of the printing industry and cleared them without payment of any duty, the tariff providing for no duty to be paid on them. The films manufactured by the assessee were intended for packaging purposes and printing on it was only incidental to its primary use. The goods, therefore, were classifiable only under sub heading 3920.31 as has been brought out by the chapter note and the CEGAT decision referred to above and duty was payable at 25 per cent ad valorem.

By treating the printed plastic film intended for packaging purposes as classifiable under sub heading 4901.90 and including the cost of printing of Rs.2 per kg (approx.) in the

value at the stage the goods were removed as product of printing industry (claiming complete exemption from payment of duty) goods were undervalued resulting in short levy of duty. The assessee having cleared 1009.162 MT of such goods during the period from April 1988 to March 1989, a sum of Rs.20.18 lakhs has been undervalued resulting in short payment of duty of Rs.5.29 lakhs.

The irregularity was brought to the notice of the department in September 1989 and to the Ministry of Finance in June 1990.

Ministry of Finance have admitted the objection (October 1990).

3.29 Reception apparatus

As per note 4 to section XVI (chapter 84 and 85) where a machine consists of individual components intended to contribute together to a clearly defined function covered by one of the headings of chapter 84 or chapter 85, then the whole falls classified under the heading appropriate to that function.

Reception apparatus for radio telephony, radio telegraphy or radio broadcasting are classifiable under heading 85.27 of the schedule to the Central Excise Tariff Act, 1985 and assessable to duty at the tariff rate of 40 per cent ad valorem. As per HSN explanatory notes to heading 85.27, the apparatus of the heading is used for reception of signals (representing speech, messages or still pictures) by means of electro magnetic waves which are transmitted through the other without any line connection.

A public sector undertaking engaged in the manufacture of electronic based goods, manufactured "receiving facility rack" - an equipment used in radio stations and cleared on payment of duty at 15 per cent ad valorem by classifying under heading 85.29 as a part of apparatus of headings 85.25 to 85.28. The equipment consisted inter alia, of a receiver used for receiving messages, speeches, etc., to be broadcast through a transmitter and for maintaining the quality of transmission or reception. Thus the aforesaid equipment, the main function of which was receiving messages, speeches etc., conformed to the function of a reception apparatus of heading 85.27 and was, therefore, appropriately classifiable under that heading, in terms of the aforesaid note 4 and the HSN explanatory note. The incorrect classification resulted in short levy of duty of Rs.14.89 lakhs on such receiving facility racks of a value of Rs.56,73,280 cleared during the period October 1983 to August 1989.

On the short levy being pointed out in audit (December 1989) the department stated (April 1990) that the assessee has paid Rs.14,85,236 in April 1990.

Ministry of Finance have accepted the underassessment (August 1990).

3.30 Other miscellaneous manufactured goods

i) Lead oxide grey

With effect from 10 February 1987 "miscellaneous products of the chemical or allied industries, not elsewhere specified or included" are classifiable under heading 38.23 of the schedule to the Central Excise Tariff Act, 1985 with rate of duty at 15 per cent ad valorem provided the goods are not separate chemically defined elements or compounds. Prior to 10 February 1987 these goods were classifiable under sub heading 3801.90 with the same rate of duty. As per explanatory notes to HSN this heading covers grey oxide being a specially prepared mixture of lead monoxide (65 to 80 per cent) and lead metal (the balance) obtained by the controlled oxidation of pure lead in a ball mill and used in the manufacture of storage battery plates.

An assessee manufactured 'lead oxide grey' for supply to battery manufacturers and was allowed to clear it by classifying under sub heading 2804.60 upto 9 February 1987 and thereafter under sub heading 2824.00 as lead oxide with rate of duty at 10 per cent ad valorem. An examination, however, revealed that lead oxide grey as manufactured by the assessee in a ball mill answered to the description of the chemical product mentioned against heading 38.23 of the explanatory notes to HSN. The product ought to have, therefore, been classified under chapter 38. Incorrect classification has thus resulted in short levy of duty for Rs.9.66 lakhs for the period from July 1986 to May 1989.

While contending that Central Excise Tariff Act was an independent self contained enactment, the department justified (November 1989) the classification under chapter 28 on the ground that the concerned sub heading specifically covered lead oxide. The department added that reference of HSN in this regard appeared to be irrelevant.

The contention of the department is not acceptable as :-

i) chapter 28 covers only separate chemical elements and separate chemically defined compounds. As per DATA sheet published by the assessee the product is composed of lead oxide and some other ingredients like free lead. This actually means that the product is not cent per cent lead sub oxide and its classification under chapter 28 is irregular due to presence of free lead in the grey oxide in measurable quantity; and

ii) although explanatory notes to HSN have no legal backing, still they have pursuasive value for the purpose of determination of classification. HSN makes it clear that the product is covered by chapter 38.

In a similar case, the Ministry of Finance had stated (November 1989) that the product was classifiable under sub heading 2804.60. Ministry's reply was not accepted as the same was contrary to the chemical test results, in terms of which the product merit classification under heading 38.23.

The paragraph was again sent to the Ministry of Finance in May 1990; its reply has not been received (November 1990).

ii) Shafts, crankshafts and shaft couplings

As per note 2(a) and 2(b) of section XVI of the Central Excise Tariff Act, 1985, 'parts' which are goods included in any one of the headings of chapter 84 (other than heading 84.81 and 85.48) are to be classified under the respective headings. Other parts if suitable for use solely or principally with a particular machine, are to be classified with the machine of that kind. Based on the above principle, crank shaft, "shaft" and "shaft couplings" being specifically included in heading 84.83, can not be classified as parts of a particular machine like power driven pumps under sub heading 84.13 even though it is suitable for use solely or principally with the pumps.

Two manufacturers of crankshafts, shafts and shaft couplings cleared them as spares for power driven pumps by paying duty at the rate of 15 per cent ad valorem under sub heading 8414.90/8413.00. The crant shafts, shaft and shaft couplings being specifically included under heading 84.83 are correctly chargeable to duty at the rate of 20 per cent ad valorem. Failure to classify the products correctly resulted in short levy of duty of Rs.3.51 lakhs on the clearances made during the period from March 1986 to August 1989.

The irregularity was pointed out in audit to the department in August and September 1989 and to the Ministry of Finance in June and August 1990.

Ministry of Finance have admitted the objection (November 1990).

iii) Wires and cables

As per note 2(a) to section XVI of the schedule to the Central Excise Tariff Act, 1985, parts of machines which are goods included in any of the headings of chapter 84 or chapter 85 are in all cases to be classified in the respective headings.

Insulated wires and cables and other insulated electric conductors whether or not fitted with connectors are classifiable under heading 85.44 and are assessable to duty at an effective rate of 25 per cent ad valorem under a notification dated 10 February 1986.

(a) An assessee manufactured insulated wires and cables, falling under sub heading 8544.00 and cleared them in running lengths varying between 500 and 1000 metres wound on wooden drums. Where such cables were to be laid for any project extending to several kilometres, they were joined at their ends by means of connectors, tee joints etc., and for this purpose the jointing kits consisting of joints and jointing materials were also supplied by the assessee.

These jointing kits were classified by the assessee under the heading 85.48 as "electrical parts of machinery or apparatus, not specified elsewhere" and were cleared on payment of duty at 15 per cent ad valorem under protest, contending that, being bought out items, no fresh duty need be paid on them.

Since these were essential parts used solely and principally with the insulated wires and cables when joined with the cables in the circuit they were classifaible under sub heading 8544.00 as "insulated wires, cables and other insulated electric conductors whether or not fitted with connectors" and chargeable to duty at 25 per cent ad valorem. The incorrect classification of accessories and kits of cables and wires, resulted in short levy of duty amounting to Rs.3.89 lakhs on the clearances made of the jointing kits and accessories of the value of Rs.38.93 lakhs during the period from April 1986 to March 1987.

On this being pointed out in audit (November 1987) the department stated (November 1989) that the assessee supplied the electric cables in running lengths and alongwith the cables, they also supplied various items to be used in a jointing kit in a separate container, if required by the buyer for the purpose of joining the cables while doing the job of laying down the cables at site. It was further contended that the process of assembly at site could not be called a process of manufacture and that these jointing kits could not be treated as essential part used solely or principally with the cables as they do not function as conductors. However, they have issued four demands for Rs.10.01 lakhs for the period from October 1987 to June 1989 to safeguard the government revenue. As regards the earlier period a draft show cause notice covering the period from march 1986 to September 1987 for Rs.5.95 lakhs was also stated to be under issue by the Collector under section 11A of the Central Excises and Salt Act, 1944.

Department's reply is not acceptble as the joints are used as connectors and the heading 8544.00 also covers "insulated electric conductors fitted with connectors. Further even if these joints themselves may not be conductors, they serve to hold both conductors and core shields. Without the "straight through joints" cables of standard length cannot be extended to the required lengths and without the 'tee joints' it is not possible to tape off main cables in electrical works. Besides, these joints, being essential parts solely used with the cables, they are rightly classifible under sub heading 8544.00 as prescribed in note 2(b) of Section XVI of the schedule to the Central Excise Tariff Act, 1985.

Ministry of Finance did not admit the objection and have stated (November 1990) that heading 85.44 covers insulated wires/cables and other insulated conductors whether or not fitted with connectors, i.e., only wires and cables are covered and connectors perse are not classifiable under the heading 85.44. They added that such fitting of jointing kits of cables (not in assembly form and comprising of some bought out items) could not be covered by the expression "fitted with the conectors" in heading 85.44 and also that the jointing kits consist of materials like bolts, nuts, plastic moulds, propolene, casting resin and resin putty etc., which are independent excisable goods as such, bringing together all these things in the form of a kit does not amount to manufacture with no further duty liability.

Ministry's reply is not acceptable, because the chapter heading 8544.00 covered even the connectors for such cables. Further, since the contract is for the supply and laying of cables running to a few kilometres and these jointing kits/accessories are used only to join the cables of standard lengths manufacturted by the concern, without which cables of longer lengths cannot be supplied. Therefore these joints are to be treated as essential parts solely used with the cables and are correctly classifiable under chapter heading 85.44.

(b) An assessee engaged in the manufacture of television receiver sets (heading 85.28) also manufactured cables with connectors from bought out inputs namely, cables, connectors, sockets and housings. The assessee was allowed to clear such cables with connectors on payment of duty at 15 per cent ad valorem by classifying under heading 85.29 as parts of television receiver sets. As heading 85.44 covers cables with or without connectors, the said cables with connectors were correctly classifi-

able under that heading in terms of the aforesaid section note and were assessable to duty at 25 per cent ad valorem. The incorrect classification resulted in short levy of duty of Rs.1,41,950 in respect of the said cables with connectors cleared during the period from December 1988 to February 1989.

On the short levy being pointed out in audit (November 1989) the department did not accept the objection and justified (April 1990) the classification as parts of T.V.sets under heading 85.29 on the ground that the cables with connectors were manufactured for exclusive use in T.V.sets.

The contention of the department is not tenable. Since there is a specific sub heading for cables with or without connectors (8544.00), the said items are correctly classifiable under that heading attracting duty at 25 per cent ad valorem. Even under the clarificatory notes issued by the Ministry regarding classification of "parts" under the Central Excise Tariff Act, 1985, it was made clear that parts which in themselves constitute an article covered by a heading of section XVI are appropriately classifiable under that heading even if specifically designed to work as "part" of a specific machine.

Ministry of Finance have stated (November 1990) that the matter is under examination.

iv) Other ceramic articles

"Refractory ceramic goods" such as bricks, blocks and tiles and similar "refractory ceramic constructional goods", retorts, crucibles, muffles, nozzles, plugs, supports, cupels, tubes, pipes, sheets and rods are classifiable under heading 69.01 of the schedule to the Central Excise Tariff Act, 1985.

A manufacturer of "ceramic sleeves" classified the products under heading 69.01 chargeable to duty at the rate of 15 per cent ad valorem. The product was neither constructional goods nor was of a type specifically mentioned under heading 69.01. These were ring like articles with one end slightly tapering. They are used in steel industry where they are arranged in a row to form pipe like device through which the handle of the ladle is inserted for handling molten metal in a furnace. The end use and the nature of the product suggests that it is appropriately classifiable as "other ceramic articles" under heading 69.11 chargeable to duty at the rate of 30 per cent ad valorem. Misclassification of the product has, therefore, resulted in short levy of duty of Rs.2.53 lakhs on clearances made during the period from April 1988 to March 1989.

The irregularity was pointed out in audit to the department in September 1990 and to the Ministry of Finance in August 1990.

Ministry of Finance have admitted the objection (October 1990).

SHORT LEVY DUE TO INCORRECT GRANT OF EXEMPTION

As per section 5A(1) of the Central Excises and Salt Act, 1944, Government is empowered to exempt excisable goods from the whole or any part of the duty leviable thereon conditionally or unconditionally. Some of the important cases of short levy of duties due to incorrect grant of exemption, noticed in audit, are given in the succeeding paragraphs :-

3.31 Nuclear fuel

As per a notification issued on 28 August 1987 as amended specified goods produced in factories belonging to Central Government and used by any department of the said Government are totally exempt from duty. By another notification dated 7 October 1988 nuclear fuel falling under heading 28.44 or 28.45 or 84.01 when supplied for use in atomic power stations is exempted from duty.

A public sector undertaking manufacturing nuclear fuel cleared the product to three atomic power reactors without payment of duty claiming exemption under the notification dated 28 August 1987. The nuclear power reactors were taken over by the Nuclear Power Corporation of India Limited, a Public Limited Company from 17 September, 1987 The duty exemption was, therefore available only from 7 October, 1988 i.e., the date of issue of notification exempting nuclear fuel from duty when supplied for use in atomic power stations and

not from 17 September 1987 as availed of under the notification dated 28 August 1987. Consequently, clearances effected from 17 September 1987 to 6 October 1988 were dutiable. The duty not levied during the said period amounted to Rs.394.53 lakhs.

On this being pointed out in audit (March 1989), the department stated (August 1989) that the matter was being referred to the Ministry by the assessee for clarification.

Ministry of Finance have admitted the objection (November 1990) and added that waiver of duty liability under Section 11C was under examination.

3.32 Textiles and textile articles

i) Thread and fibre

(a) As per note 3 to section XI of the schedule to the Central Excise Tariff Act, 1985, for the purpose of headings 52.03, 52.04, 54.02, 54.04, 55.05 and 55.06 sewing thread means multiple (folded) or cabled yarn:-

a) put up on supports (for example, reels, tubes) of a weight (including supports) not exceeding 1000 grams;

b) Dressed; and

c) With a final 'Z' or 'S' twist.

In terms of a notification dated 1 March 1987, yarn doubled or multifold falling under chapters 52, 54 and 55 are exempted from the whole of the duty of excise, if they are manufactured out of duty paid single yarn.

Law Ministry's Opinion communicated in Board's letter dated 1 September 1987 clarified that an excisable item made out of duty paid item classifiable under the same heading or sub heading again attracts duty, so long as there is manufacture of a separate and distinct commodity commercially known by a different name.

An assessee manufacturing, inter alia, sewing thread falling under chapter 52 out of duty paid cotton yarn cleared them without payment of duty based on a clarification issued by the Board on 29 April 1987 that the exemption available for multiple fold yarn is also admissible for sewing thread. The clarification issued by the Board is not tenable, since (i) doubled yarn can be considered as sewing thread if only the conditions prescribed in note 3 of section XI of the Tariff are satisfied, and (ii) sewing thread and doubled yarn are commercially different products. Thus the exemption available for one cannot be extended to the other. The incorrect exemption granted to the sewing thread cleared from one unit of the assessee during July 1987 to December 1989 resulted in loss of revenue of Rs.94.66 lakhs. The loss of revenue for the clearances made from another unit of the assessee during January 1988 to December 1989 amounted to Rs.35.15 lakhs.

On this being pointed out in audit (March 1990), the department stated (May 1990) that a show cause notice was issued to keep the issue alive but justified the exemption allowed on the ground that the duty paid doubled yarn was only twisted and wound on support material before being cleared as sewing thread and there was no transformation of yarn into a new product.

The contention of the department is not acceptable since doubled yarn and sewing thread are commercially distinct products and the exemption from duty for the former cannot be extended to the latter.

Ministry of Finance did not admit the objection and contended (November 1990) that multifold yarn would ordinarily include sewing thread unless explicitly excluded.

The reply of the Ministry is not acceptable for the reason that it is not in consonance with the provisions of note 3 to section XI the Central Excise Tariff Act, 1985. Further, 'thread' is different from yarn, (double or multifold) inasmuch as thread is not used in weaving whereas yarn is so used. The two are distinctly and differently known in the market.

(b) Synthetic staple fibres of polyesters are classifiable under sub heading 5501.20 of the schedule to the Central Excise Tariff Act, 1985 and are assessable to duty at Rs.22 per kilogram besides other duties of excise leviable thereon.

As per a notification issued on 28 August 1985 as amended, such synthetic staple fibres are exempted from whole of the duty of excise leviable thereon as are intended for the manufacture of low priced blended fabrics under a programme duly approved by the Textile Commissioner and the Ministry of Supply and Textiles. The notification stipulated that the exemption is also applicable to the synthetic staple fibres contained in the fents, rags and chindies of the fabrics, only upto an aggregate quantity not exceeding eight per cent of the total quantity of clearances of the sound fabrics.

A composite textile mill was obtaining polyester staple fibres from several manufacturers without payment of duty for the manufacture of low priced blended fabrics under a programme (production of sulabh/controlled cloth) approved by the Textile Commissioner. During the period from April to December 1988 the assessee had cleared 21,31,404 linear metres of 'sound' blended fabrics containing 1,59,458 kilogram of polyester staple fibres. During the same period the assessee had also produced fents, rags and chindies of the blended fabrics which contained 17,178 kilogram of polyester staple fibres. As per the aforesaid notification, the quantity of the polyester staple fibres contained in the fents, rags and chindies of the blended fabrics covered by the exemption was only 12,757 kilograms. The balance quantity of 4421 kilograms of polyester staple fibres was thus liable to duty amounting to Rs.1,15,390.

The irregularity was pointed out in audit (November 1989); and a statement of facts was also issued in February 1990; replies thereto have not been received (May 1990).

Ministry of Finance have stated (November 1990) that the matter is under examintion.

ii) Textile fabrics

(a) As per a notification issued on 1 March 1987, as amended, textile fabrics impregnated, coated, covered, and laminated with plastics of base fabrics of cotton and falling under sub heading 5903.19, are allowed to be removed on payment of duty at the concessional rate of Rs.6.50 per square metre plus the duty for the time being leviable on the base fabrics under chapter 52, if not already paid. Therefore, such concession is not applicable to goods in which the base fabrics fall under chapters other than that of chapter 52 of schedule to the Central Excise Tariff Act, 1985. In such cases, the rate of duty chargeable will be the duty at the tariff rate specified for the sub heading 5903.19 i.e., 30 per cent ad valorem plus Rs.7 per square metre plus the duty for the time being leviable on base fabrics, if not already paid.

An assessee engaged, inter alia, in the manufacture of PVC coated/laminated cotton fabrics, falling under sub heading 5903.19, cleared the goods on payment of duty at the concessional rate prescribed under the notification issued in March 1987, as amended. However, the base fabrics used by the assessee was cotton hosiery cloth, classifiable under chapter 60 and not under chapter 52. Therefore, the assessee was not entitled to the concession prescribed in the said notification during the incorrect availment of exemption resulted in short levy of duty of Rs.19.77 lakhs (approx) during the period from February 1988 to December 1988.

On this being pointed out in audit (March 1989) the department intimated (February 1990) that a show cause notice for Rs.6,94,765 covering the period from February 1989 to June 1989 was issued to the assessee in July 1989 and for the earlier period, a draft show cause notice for Rs.69.39 lakhs covering the period from March 1987 to January 1989 had been submitted to the Collector in July 1989 for approval.

Ministry of Finance have admitted the objection (July 1990).

(b) As per the notification issued on 1 March 1987, as amended, chindies of textile fabrics, impregnated, coated, covered or laminated with plastics and falling under sub heading 5903.19 are assessable to duty at concessional rate, if the aggregate quantity of clearances of such chindies for home consumption does not exceed 5 per cent of the total clearances of textile fabrics inpreganted, coated, covered or laminated with plastics during a financial year.

A manufacturer of textile fabrics falling under sub heading 5903.19 cleared chindies aggregating to 32835 kilograms during financial year 1988-89 on payment of duty at concessional rate, although 5 per cent of total clearances of textile fabrics during the financial year worked out to 15752 kilograms. The clearances of excess unity of chindies at concessional rate resulted in a short levy of duty of Rs.2,47,290.

On this being pointed out in audit (September 1989) the department raised a demand of Rs.2,47,290 on 21 September 1989 and accepted the objection (February 1990).

Ministry of Finance have admitted the objection (September 1990).

iii) Poly jute cement bags

"Made up textile articles" of heading 63.01 of the schedule to the Central Excise Tariff Act, 1985 include, inter alia, sacks and bags of jute chargeable to duty at the rate of Rs.660 per tonne. Such "sacks and bags of jute" are however, fully exempt from duty in terms of a notification dated 1 March 1987 if made from jute fabrics on which appropriate duty of excise has already been paid. It therefore, follows that other made up textile articles except "sacks and bags of jute" are chargeable to a duty at the tariff rate of 12 per cent ad valorem.

Two jute manufacturers manufactured poly jute cement bags (heading 63.01) out of jute fabrics with high density polyethylene and cleared those without payment of duty in terms of the notification dated 1 March 1987 as the duty on jute fabrics manufactured within the factory was paid. The benefit of exemption was granted to the product on the ground that "poly jute cement bags" and sacks and bags of jute" were the same. But in the common trade parlance the above two products were known as different articles. The department did not rely on the aspect of commercial parlance test though the same ought to have been done as envisaged in the Ministry of Law communication of 5 March 1979 in the case of poly propylene blended spun yarn. The subject product was, therefore, chargeable to duty at the rate of 12 per cent ad valorem under heading 63.01 and not at 'nil' rate of duty under notification dated 1 March 1987. Incorrect grant of exemption has, therefore, resulted in short levy of duty of Rs.8.18 lakhs on clearance made during the period from April 1986 to September 1989 after allowing the set off on duty paid on jute fabrics at the rate of Rs.660 per tonne as admissible under rule 56A of the Central Excise Rules, 1944.

The mistake was pointed out in audit to the department in October 1989 and December 1989 and to the Ministry of Finance in June and August 1990.

Ministry of Finance have admitted the objections (November 1990).

3.33 Plastics and articles thereof

i) Film labels

"Self-adhesive, plates, sheets, film, foil, tape, strip and other flat shapes of plastic whether or not in rolls" are classifiable under the heading 3919.00 of the schedule to the Central Excise Tariff Act, 1985. In terms of a notification issued on 1 March 1988, the effective rate of duty on self adhesive tapes was 25 per cent ad valorem and all goods other than self adhesive tapes were chargeable to duty at 40 per cent ad valorem.

As per a clarification issued by the Board on 25 April 1989, a "tape" is a term used for relatively narrow films of width 1/16" to 4" in continuous length (a width of 100 mm and below but more than 2mm).

An assessee manufactured, interalia, plastic self adhesive tapes, polyester electric tapes and film labels etc., and cleared all of them on payment of duty at 25 per cent ad valorem in terms of the notification issued on 1 March 1988. As per the said notification the concessional rate of duty of 25 per cent was applicable only to self adhesive tapes and all other goods falling under the sub heading 3919.00, were chargeable to duty at 40 per cent ad valorem. The product "film labels" not being in the nature of adhesive tapes, clearance of such goods on payment of duty at 25 per cent ad valorem was not in order. Duty on such clearances, was, therefore, payable at 40 per cent ad valorem. This resulted in short levy of duty amounting to Rs.87.74 lakhs (approxi-

mately) on clearances during the period from April 1988 to March 1989.

On this being pointed out in audit (November 1989) the department accepted the objection (July 1990), and added that the plastic film labels manufactured by the assessee were also self adhesive and on all self adhesive tapes of width of 1/16" to 4" duties were correctly paid at the rates prescribed in the notification issued in March 1988. In respect of plastic film labels (self adhesive) the width of which exceeded 4" as was falling outside the scope of adhesive tapes, a show cause notice demanding differential duty of Rs.37.77 lakhs was issued in March 1990 on the clearances made of such goods during the period from September 1989 to February 1990. The department also informed that the divisional Assistant Collector has been directed to take action for the recovery of demands for the past period.

The notification referred to above, prescribed the concessional rate of duty of 25 per cent ad valorem in respect of self adhesive tapes only. Duty was payable on plastic film labels (self adhesive) of all sizes, manufactured by the assessee at 40 per cent ad valorem.

Information about the demands raised for the period April 1988 to August 1989 has not been furnished.

Ministry of Finance have admitted the objection (October 1990).

ii) Cellular sheets and films

As per a notification issued on 1 March 1988 as amended, films of plastics, etc., other than of regenerated cellulose and cellular films or sheets other than of polyurethane classifiable under sub headings 3920.00 and 3921.00 respectively of the schedule to the Central Excise Tariff Act, 1985, are chargeable to a concessional rate of duty at 25 per cent ad valorem, provided that the said products are produced out of goods falling under headings 39.01 to 39.15 on which the duty of excise leviable thereon under the Central Excises and Salt Act, 1944, or the additional duty under section 3 of the Customs Tariff Act, 1975, as the case may be, has already been paid. The notification, inter alia, also prescribed nil rate of duty to the plastic materials falling under headings 39.01 to 39.14 when the same are reprocessed from or produced out of the scrap or the waste of goods falling under chapters 39, 54, 55 or 59.

An assessee manufactured cellular sheets falling under sub heading 3921.19 and rigid polyethylene films falling under sub heading 3920.31 out of duty paid LDPE and HDPE granules. During the process of manufacture of the above cellular sheets and rigid polyethylene films some waste and scrap were generated. The assessee stored such scrap and manufactured LDPE/HDPE granules out of the waste. The LDPE/HDPE granules so manufactured were classified under sub headings 3901.10 and 3901.20 claiming exemption in terms of the aforesaid notification. These granules obtained by reprocessing of scrap were used captively for the manufacture of cellular sheets and rigid polyethylene plain films which were cleared at concessional rate of duty at 25 per cent ad valorem in terms of the aforesaid notification.

Since no duty was paid on LDPE/HDPE granules used for the manufacture of cellular sheets and rigid polyethylene plain films, the finished goods should not have been removed on payment of concessional rate of duty of 25 per cent and it was required to be paid at 35 per cent ad valorem on cellular sheets and 60 per cent ad valorem on rigid polyethylene films. Incorrect availment of concessional rate on cellular sheets and rigid plain films manufactured from the granules, on which duties were not paid, resulted in short levy of duty to the extent of Rs.2.28 lakhs on the clearances made during the period from December 1988 to March 1989.

The irregularity was brought to the notice of the department in September 1989 and May 1990; its reply has not been received.

Ministry of Finance have stated (November 1990) that the matter is under examination.

3.34 Survey vessel

As per a notification dated 24 September 1985 as amended on 30 December 1986 specified goods for supply to the Oil and Natural Gas Commission have been exempted from

whole of duty leviable thereon provided that the goods have been used in connection with their exploration activity and the procedure set out in chapter X of the Central Excise Rules is followed.

A public sector undertaking cleared one "survey vessel" falling under chapter 89 to the Commission for off-shore drilling during 1987-88 without payment of duty in terms of the notification dated 24 September 1985 without observing the procedure laid down under chapter X. Since the assessee contravened one of the provisions of the notification, grant of exemption in the instant case was irregular and led to the non levy of duty to the extent of Rs.87.31 lakhs on clearance during the year 1987-88.

On the irregularity being pointed out in audit in July 1989 the department accepted the audit observation in principle and intimated (May 1990) that show cause notices were being issued.

Ministry of Finance have accepted the underassessment (November 1990).

3.35 Footwear and parts thereof

i) Footwear

In terms of a notification dated 1 March 1987, footwear classifiable under sub heading 6401.11 of the schedule to the Central Excise Tariff Act, 1985 is assessable to duty at an effective rate of 15 per cent ad valorem. Under another notification dated 10 February 1986, footwear of a value not exceeding rupees sixty per pair is exempt from payment of duty.

A leading manufacturer of footwear transferred one of the varieties (power 40) to his godowns by stock transfer for further retail sale through his showrooms. The assessee declared maximum wholesale price as Rs.79.30 per pair and worked out the assessable value as Rs.59.79 by excluding freight and insurance (Rs.3.14), discounts (Rs.7.40) and excise duty (Rs.8.97) from the maximum wholesale price and cleared the said footwears without payment of duty by availing the exemption under the aforesaid notification of 10 February 1986. The exclusion of discounts and excise duty was not correct because discounts were not allowed to any buyer but retained by the assessee as there was merely stock transfer and no sale of goods and excise duty was not payable as the ex-duty value was calculated as not exceeding Rs. sixty per pair. The correct assessable value worked out to Rs.65.80 per pair and consequently the exemption under the notification dated 10 February 1986 was not available. The incorrect grant of exemption resulted in non levy of duty of Rs.41,37,513 on 399239 pairs of the said footwear cleared during the period February 1988 to October 1989.

On this being pointed out in audit (January 1990) the department stated (February 1990) that a show cause-cum demand notice was issued (February 1990) and was under process of adjudication.

Ministry of Finance have accepted (September 1990) the underassessment.

ii) Parts of footwear

Under the notification dated 10 February 1986, parts of footwear (subheading 6401.91) were exempted from payment of duty subject to the intended use laid down therein. The exemption was withdrawn by issue of a notification dated 1 March 1987 but was again revived by issue of another notification dated 24 April 1987. It, therefore, follows that no exemption on parts of footwear removed for use in the factory of production in the manufacture of footwear was available during the period from 1 March 1987 to 23 April 1987.

A manufacturer of footwear was, however, allowed to avail the said exemption on parts of footwear during the said period. Removal of parts of footwear without payment of duty resulted in escapement of duty of Rs.3,21,440 during the period from 1 March to 23 April 1987.

On the omission being pointed out in audit (December 1989), the department stated (February 1990) that audit objection related to a particular brand of footwear which is subjudice in the Supreme Court and as such no action can be taken. 'However, on the issue being pointed out by Audit, the department on further investigation, worked out tentative non

levy of duty of Rs.33,75,083 on other various brands of footwear, for which demand-cum show cause notice was under issue.

Ministry of Finance have admitted the facts (July 1990).

3.36 Petroleum products

i) Furnace oil

(a) As per the notification dated 1 March 1984 referred to above exemption from duty is available on furnace oil intended for use as feed stock in the manufacture of fertilizers provided the procedure prescribed in chapter X is followed.

A manufacturer was permitted to clear furnace oil without payment of duty to a fertilizer factory where coal was used as feed stock, under chapter X procedure. However, in the latter factory such furnace oil was not used as feed stock in the manufacture of fertilisers but was used as fuel in running the machinery for generating steam. As such the assessee was not eligible for exemption from duty. The non levy of duty amounted to Rs.9.53 lakhs and Rs.9.72 lakhs during the period from March 1986 to March 1987 and from July 1988 to July 1989 respectively.

On this being pointed out in audit (July 1987 and September 1989) the department issued (April 1989 and March 1990) two show cause notices covering the aforesaid two periods. For the period covering the first spell a duty of Rs.9.53 lakhs has been demanded and a penalty of Rs.25,000 imposed as per the adjudication orders passed in September 1989 while the levy of duty in respect of the second spell is under adjudication.

Ministry of Finance intimated (November 1990) that the demands aggregating to Rs.29.04 lakhs covering the period April 1986 to November 1989 have since been confirmed.

(b) As per rule 196 of the Central Excise Rules, 1944, if an assessee availing the concession under chapter X procedure, has not used the goods brought under rule 192 for the intended purpose, he should, on demand, pay the duty leviable on such goods.

As per the notification issued on 1 March 1984 as amended, furnace oil and low sulphur heavy stock intended for use as feed stock in the manufacture of fertiliser are exempt from the whole of duty leviable thereon.

An assessee brought furnace oil and low sulphur heavy stock into his factory for use as feed stock in the manufacture of fertiliser. Due to the plant being shut down during the period from 8 February to 31 July 1989 and from 12 November to 19 November 1989 there was no production of fertiliser, but the said products were stated to have been used for keeping the plant in operational condition during the aforesaid periods. Since the products were not used as feed stock in the manufacture of fertiliser, the benefit of the aforesaid notification was not admissible. This resulted in short levy of duty amounting to Rs.3,28,782 on 1897.164 kilolitres of furnace oil and 245.401 tonnes of low sulphur heavy stock.

On this being pointed out in audit (December 1989), the department stated (June 1990) that a demand-cum show cause notice for payment of duty of Rs.13,78,642 for the period from March 1988 to December 1989 had been issued on the assessee in February 1990.

Ministry of Finance have stated (November 1990) that the matter is under examination.

ii) Middle oil

In terms of a notification issued on 13 May 1986 as amended by the notification dated 23 January 1987, certain specified goods including middle oil falling under heading 27.07, obtained as coal tar distillates are wholly exempt from duty, subject to certain condition.

An assessee manufacturing middle oil from lignite and using it in the manufacture of carbolic acid, xylenol, dephenolised oil, etc. cleared the same without payment of duty on the ground that it was exempt from duty, with reference to the notification cited above. As the middle oil was obtained as a lignite tar-distillate, and not as a coal tar distillate, the availment of the exemption was not in order. The fact that coal is distinctly different from lignite is also proved by the provision of separate

headings (27.01 and 27.02) for coal and lignite. The benefits of exemption notification dated 2 April 1986 as amended for captive use of middle oil is also not applicable since it falls under chapter 27 which is not covered by the said notification.

During the month of February 1989 alone, the assessee had produced and captively consumed 410 Kilolitres of middle oil, the duty liability of which worked out to Rs.11.84 lakhs (approximately). The duty liability for the earlier periods remained to be worked out (June 1990).

The irregularity was pointed out in audit to the department in February/April 1990 and to the Ministry of Finance in August 1990.

Ministry of Finance have admitted the underassessment (November 1990).

iii) Raw Naphtha

Under the Finance Bill 1988 a new sub heading 2710.14 under chapter 27 of the schedule to the Central Excise Tariff Act, 1985 was inserted from 1 March 1988 to cover raw naphtha with tariff rate of duty of Rs.2,750 per kilolitre at 15°C. By issue of a notification on 13 May 1988 the effective duty for raw naphtha was fixed at Rs.2,255 per kilolitre at 15°C. Hence for the period from 1 March to 12 May 1988 raw naphtha was chargeable to duty at the rate of Rs.2,750 per kilolitre at 15°C.

In a public sector oil refinery two types of losses occurred during storage and delivery of raw naphtha, viz., 1) draining loss 2) handling loss representing the difference between tank discharge quantity and that actually loaded in the tank lorry/wagon. While finalising assessment from March 1988 onwards the department demanded duty on draining loss of raw naphtha at the rate of Rs.2,255 per kilolitre at 15°C instead of Rs.2,750 per kilolitre resulting in short demand of duty of Rs.1.77 lakhs for the period from 1 March to 12 May 1988. For the loss in handling quantity the department accepted the payment of duty made by the refinery at the rate of Rs.5 per kilolitre at 15°C which was prescribed for use in the manufacture of fertiliser under chapter X procedures though the quantity representing handling loss was not actually used for manufacture of fertiliser. Duty was, therefore, payable at the full rate of Rs.2,750 per kilolitre. This resulted in short payment of duty of Rs.7.50 lakhs on handling loss for the aforementioned period.

The irregularity was pointed out to the department in August 1988 and to the Ministry of Finance in July 1990.

Ministry of Finance have accepted the underassessment (November 1990).

iv) Wash oil

Central Excise duty on oils and other products of the distillation of high temperature coal tar (e.g. wash oil) classified under the sub heading 2707.90 is leviable at the rate of Rs.2,750 per kilolitre at 15° centigrade. As per the notification issued on 1 March 1984 as amended, where such wash oil is required for use as solvent or absorbent in the manufacture or extraction of benzol, benzene, toluene, xylene etc., central excise duty on it is leviable at the rate of Rs.120 per tonne provided chapter X procedure is followed in respect of removal of such wash oil.

A manufacturer had cleared wash oil during 1 September 1988 to 31 May 1989 on payment of duty at aforesaid concessional rate without following the chapter X procedure. This resulted in short realisation of central excise duty of Rs.7,81,051 on clearances of wash oil made without following chapter X procedure.

The irregularity was pointed out to the department in December 1989, and to the Ministry of Finance in May 1990.

Ministry of Finance have accepted the objection (November 1990).

v) Speciality oil

Speciality oils are classifiable under sub heading 2710.99 with rate of duty of 20 per cent ad valorem plus Rs.250 per tonne. Under a notification issued on 5 May 1986 effective duty was fixed at 15 per cent ad valorem for those speciality oils which are preparations made by blending or compounding mineral oils falling under chapter 27 with other oils or additives.

Hence in order to attract concessional rate of duty mineral oils falling under chapter 27 must be blended or compounded with any other oil not falling under chapter 27 and/or additives.

An oil blending unit was manufacturing speciality oils under the brand names "Servo Therm - Medium and light" form 100 per cent mineral oils falling under chapter 27 with no other oil or chemical additives. The products were, however, allowed to be cleared on payment of concessional rate of duty under the aforementioned notification although in such cases tariff rate of duty was attracted. This resulted in short levy of duty for Rs.4.21 lakhs on the clearances made from April 1987 to December 1989.

On the mistake being pointed out in audit (February 1990) the department accepted the audit objection in principle and intimated (June 1990) that Rs.92,435 representing differential duty from March 1986 to April 1987 has been paid by the assessee on 15 February 1990 and the demand for the remaining period was being raised.

Ministry of Finance have admitted the objection (November 1990).

3.37 P.O.P. Medicaments

i) Paracetamol

Under a notification issued on 1 March 1988 all formulations of patent and proprietary medicaments (sub heading 3003.10) based on the list of bulk drugs specified in the first schedule to the Drugs (Prices Control) Order, 1987 are exempted from the whole of the duty leviable thereon. This full exemption as revealed in the Budget speech (1988-89) was linked to the use of the medicines for National Health Programme as prescribed in the said schedule.

'Paracetamol' was listed as a bulk drug in the said schedule for use in National Malaria Eradication Programme. Subsequently under an amendment made on 18 January 1989 it was omitted from the first schedule. Thus for the period from 1 March 1988 to 17 January 1989, P & P medicine based on 'Paracetamol' had to be used for National Malaria Eradication Programme to attract full exemption of duty.

An assessee manufactured a P & P medicine under the brand name of 'pyrigesic' based on 'paracetamol' and was allowed to clear the product without payment of duty under the aforesaid notification although as per printed label it was to be used as an antipyretic and analgesic medicine for treatment of common diseases like headache, common cold etc. The medicine having thus not been meant for use for prescribed National Health Programme, incorrect grant of exemption resulted in loss of revenue for Rs.16.69 lakhs for the period from 1 March 1988 to 17 January 1989.

On this being pointed out in audit (June 1989) the department did not admit the audit objection and stated (October 1989) that though the duty exemption under notification dated 1 March 1988 was linked with first schedule of the Drugs (Price Control) Order, 1987 the notification did not stipulate that the bulk drugs should be used for National Health Programme. Same view was expressed by the Ministry on 30 November 1988.

Contention of the department is not acceptable as :-

a) the very purpose for which the drug was allowed full exemption was defeated as it was not used for National Health Programme;

b) by amendment made on 18 January 1989 to the said order omitting paracetamol from the First Schedule, the Government indirectly admitted that there was misuse of the drug.

Ministry of Finance did not admit the objection (October 1990) on the plea that the exemption was allowed as per the provisions of notification dated 1 March 1988.

Ministry's plea is not acceptable. The fact remains that delay in the issue of amendment (on 18 January 1989) led to loss of revenue to the Government when the "Paracetamol" was not used in the National Malaria Eradication Programme during the period from 1 March 1988 to 17 January 1989.

ii) Clinical samples

As per a notification dated 1 April 1977 clinical samples of patent or proprietary medicines falling under chapter 30 of the schedule to the Central Excise Tariff Act, 1985 are exempted from duty subject to the condition that such samples are packed in a form distinctly different from regular trade packings and even the smallest of such packing is marked with the words "Physician's sample - not to be sold." The CEGAT, in the case of Indian drugs & Pharmaceuticals Limited, Hyderabad Vs. Collector of Central Excise, Hyderabad (ECR Page-85 of 7 October 1987) held that clinical samples not satisfying the aforementioned condition of the notification were chargeable to duty. Ministry of Finance after considering the matter in a tripartite meeting held in August 1986, re-examined the issue and directed the field formations vide circular dated 15 January 1987 that the conditions for packing the clinical samples in distinctly different form should be insisted upon.

Two manufacturers of patent or proprietary medicines were allowed to clear clinical samples without payment of duty under the aforesaid notification though such samples were not being packed in a form distinctly different from regular trade packing. In fact, trade vials were themselves being cleared as clinical samples with the superscription "Physicians's samples not to be sold." The incorrect grant of exemption resulted in non levy of duty of Rs.15.76 lakhs during the period from 15 January 1987 to October 1989.

The irregularity was pointed out in audit to the department in May 1988 and October and November 1989 and to the Ministry of Finance in March and July 1990.

Ministry of Finance have admitted the objections (July and August 1990).

3.38 Copper and articles thereof

i) Copper alloy

In terms of a notification dated 1 March 1986 (superseded by notifications dated 1 March 1988 and 13 May 1988) refined copper and copper alloys unwrought (heading 74.03) is exempt from the whole of the duty leviable thereon, provided that the goods are made from copper and articles thereof, falling within chapter 74 of the schedule to the Central Excise Tariff Act, 1985.

An assessee manufacturing certain inorganic chemicals (chapter 28) from brass ash, also extracted brass metal from over size brass ash and used the same for the manufacture of brass ingots (copper alloy). The copper alloy so manufactured was cleared without payment of duty. As the main raw material, viz., brass ash used in the manufacture of copper alloy was classifiable under chapter 26 and not under chapter 74 the exemption availed was not in order. The incorrect availment of exemption resulted in short levy of duty of Rs.21,78,000 on copper alloy cleared during the period from June 1986 to March 1989.

On this being pointed out in audit (February 1990), the department reported (March 1990) that a draft show cause notice had been sent to the Collector.

Ministry of Finance have confirmed the facts as substantially correct (October 1990).

ii) Brass rods

Brass rods were chargeable to duty at Rs.3,300 per tonne from 1 March 1986 (Rs.3,465 from 1 March 1989). By a notification dated 1 March 1986 such rods are exempted from the whole of duty of excise provided the said goods are made from copper and articles thereof falling under headings 74.01 to 74.10 on which appropriate duty has already been paid.

Two assessees manufactured brass rods on job work basis from brass scrap received from ordnance factories and other manufacturers without evidence of payment of duty. In view of the fact that the scrap received from the ordnance factories and other manufacturers were clearly recognisable as non duty paid, the brass rods were not eligible for exemption. The department, however, allowed the benefit of full exemption on such brass rods. This resulted in Short levy of duty aggregating to Rs.5,74,729 during the periods from April 1987 to July 1987 in one case and from April 1988 to October 1989 in other case.

The irregularity was pointed out to the department in March 1989 and January 1990 and to the Ministry of Finance in June 1990.

Ministry of Finance have admitted the objection (October 1990).

3.39 Television chassis

As per a notification dated 29 July 1986, television chassis (populated circuit board heading 85.29) is exempted from payment of whole of the duty of excise, provided that such television chassis is used in the manufacture of broadcast television receiver sets (monochrome) of screen size not exceeding 36 cms., and where the use is elsewhere than in the factory of production of the television chassis, the procedure specified in chapter X of the Central Excise Rules, 1944 is followed.

An assessee manufacturing television chassis sent them to his sister unit for use in the manufacture of television receiver sets (both colour and monochrome). While duty on the printer circuit board (chassis) intended for use in the manufacture of colour sets and monochrome sets of screen size exceeding 36 cms., was paid, no duty was paid on the chassis intended for use in monochrome sets of screen size not exceeding 36 cm. It was seen in audit (July 1989) that the assessee had not obtained a licence for the manufacture of the chassis for use in sets of screen size not exceeding 36 cm. and had not followed the procedure set out in chapter X (neither L6 licence nor CT2 certificate was obtained). Hence the clearance of television chassis intended for use in monochrome sets of screen size not exceeding 36 cm. without payment of duty was not in order. This resulted in non levy of duty of Rs.4,10,218 on the clearances made during the period from February 1988 to June 1989.

The matter was pointed out in audit to the department in August 1989 and to the Ministry of Finance in May 1990.

Ministry of Finance have admitted the objection (November 1990).

3.40 Machinery and parts thereof

i) Refrigeration appliances

In terms of a notification dated 1 March 1986 as amended, goods other than refrigerating and air conditioning machinery and parts thereof falling under heading 84.19 of the schedule to the Central Excise Tariff Act, 1985, attract concessional rate of duty at 15 per cent ad valorem. In terms of another notification issued on the same date, refrigerators attract specific rates of duty, according to the capacity and other refrigerating appliance and machinery attract duty at sixty per cent ad valorem.

An assessee manufacturing, interalia, ammonia handling and distribution system, condenser for ammonia refrigeration system etc. classified the products under heading 84.19 as 'goods other than refrigerating and air conditioning machinery' and cleared them in completely knocked down (C.K.D) condition on payment of duty at 15 per cent ad valorem in terms of the notification first cited. The department issued show cause notices in May, July and December 1988 for classifying them under heading 73.11 (sub heading 8612.90 prior to 1 March 1988) as containers for compressed or liquified gas of iron or steel demanding differential duty for the period from December 1987 to November 1988. Though the show cause notices were adjudicated confirming the demand, the assessee preferred an appeal before Collector (Appeals) in December 1988 and the appeal was allowed (March 1989) holding that the goods merited classification under heading 84.19 only. The department did not prefer any appeal against the order of Collector (Appeals).

It was seen during audit (March 1989) that the goods consisted of 13 parts and the function of the major parts was to maintain the temperature of ammonia at minus 33°C and the system on the whole served as a refrigerating appliance. The goods, therefore, merited classification under heading 84.19 only, but would attract duty at sixty per cent ad valorem in terms of the notification second cited in para 1 supra. The incorrect availment of exemption notification resulted in short levy of duty of Rs.12,98,304 on the clearances made from December 1987 to November 1988. The short

levy for earlier and subsequent periods remained to be ascertained (June 1990).

The irregularity was pointed out in audit to the department in March 1989 and to the Ministry of Finance in August 1990.

Ministry of Finance have admitted the objection (November 1990).

ii) Parts of mechanical appliances

As per a notification issued on 1 March 1988, mechanical appliances of a kind used in agriculture, falling under heading 84.24 were exempt from the whole of duty of excise leviable thereon. This exemption was later extended to the parts of the above mentioned mechanical appliances and machineries also, with the issue of another notification on 18 April 1988.

An assessee manufactured, inter alia, machineries and mechanical appliances and parts thereof of a kind used in agriculture falling under the heading 84.24 and cleared all of them without payment of duty in terms of the notification issued on 1 March 1988 as amended. Since such exemption was extended to the parts of such machineries and mechanical appliances, only with effect from 18 April 1988 availment of exemption in respect of parts during the period from 1 March to 17 April 1988 was not in order. In the absence of the exact value of such parts cleared without payment of duty during the above period, the value of such parts cleared was estimated at Rs.27.04 lakhs on the basis of available particulars and duty short levied due to availment of exemption was pointed out as Rs.4.26 lakhs.

On the irregularity being pointed out in audit (September 1989 and February 1990), the department admitted the objection (March 1990).

Ministry of Finance have admitted the underassessment (August 1990).

3.41 Miscellaneous manufactured products

i) Life saving equipment

As per a notification issued on 11 June 1986 life saving equipments not specified in heading A of the schedule to the notification and falling under chapter 90 were exempt from the whole of the duty leviable thereon if the authorised officer of the Directorate General of Health Services, New Delhi certified that those articles were life saving equipments. This provision of the notification was omitted under a notification dated 1 March 1989 with the result that such equipments were not entitled to exemption from 1 March 1989.

An assessee manufacturing different life saving equipments, parts and accessories thereof and availing himself of the exemption under the notification dated 11 June 1986 on the strength of the certificate issued by the Director General of Health Services continued to avail of the same exemption from 1 March 1989 onwards also even after the issue of the amending notification on 1 March 1989. Neither the assessee submitted any revised classification list as required under rule 173B(4) of the Central Excise Rules, 1944, nor did the department ask the assessee to stop availing exemption in the wake of budgetary changes. This resulted in short levy of duty of Rs.13.78 lakhs on the clearances made during the period from March to December 1989.

On the mistake being pointed out in audit (January 1990) the department admitted the audit objection in principle and intimated (May 1990) that the assessee submitted a fresh classification list effective from 1 March 1989 on 6 February 1990. The products were being cleared on payment of duty from 1 February 1990 and for the past period the assessee had been asked to pay the appropriate duty.

Ministry of Finance have accepted the underassessment (November 1990).

ii) Motor vehicles

As per a notification dated 1 March 1986 as amended, three axled motor vehicles other than articulated vehicles and chassis therefor falling under headings 87.02, 87.04 or 87.06 attracted concessional rate of duty at 15 per cent ad valorem. Motor chassis (heading 87.06) fitted with engines, whether or not with cab for vehicles of heading 87.02, 87.04 or 87.05, attracted duty at 20 per cent ad valorem under the said notification.

An assessee manufacturing, inter alia, chassis for motor vehicles of heading 87.06 (sub heading 8706.50) cleared the same at the concessional rate of duty at 15 per cent ad valorem in terms of the notification cited above. As the concessional duty at 15 per cent was applicable to three axled motor vehicles (87.02 or 87.04) and chassis therefor (sub heading 8706.20 or 8706.40) only and as the chassis meant for special purpose motor vehicles (sub heading 8706.50) attracted concessional rate of duty at 20 per cent of the said notification, the availment of concessional duty at 15 per cent was not in order. The duty short levied for the clearances made from May 1988 to May 1989 alone amounted to Rs.12,38,266. The duty for the earlier and subsequent periods remains to be ascertained (March 1990).

On this being pointed out in audit (July 1989), the department accepted (March 1990) the objection and reported issue of a show cause notice for Rs.9,07,570 covering six months period on 31 August 1989 and that the possibility for invoking the extended period under section 11A of the Central Excises and Salt Act, 1944 was being examined.

Ministry of Finance have accepted the underassessment (August 1990).

iii) Cinematograph films

In terms of a notification dated 16 November 1988, black and white cinematograph films, unexposed (sub heading 3702.20) attract concessional rate of duty at 40 paise per metre and other cinematograph films, unexposed falling under the same sub heading attract duty at 80 paise per metre.

An assessee manufacturing cine films (chapter 37) manufactured, interalia, cine sound negative films (sub heading 3702.20) and cleared them on payment of duty at 40 paise per metre with reference to the notification cited in para 1 supra. As the rate of duty of 40 paise per metre was applicable to black and white cinematograph films only and since sound negative films are not known as black and white films in the market, the lower rate of duty adopted was not in order. The incorrect adoption of rate of duty of 40 paise per metre instead of 80 paise per metre applicable to 'other cinematograph films unexposed' resulted in short levy of duty of Rs.10,90,802 on the quantity cleared during the period from April 1989 to August 1989. The short levy for the earlier and subsequent periods remains to be ascertained.

On this being pointed out in audit (November 1989), the department justified (January 1990) the rate of duty collected on the ground that cine sound negative films and black and white cinematograph films are one and the same since the sound negative films could also be used for recording images, which will be black and white and quoted a customs notification dated 2 August 1976 as amended in support of their contention wherein same rate of duty has been prescribed for black and white positive/negative and sound film.

The reply is not acceptable since (i) sound negative film and black and white film are two different commercially known products, and (ii) the fact that sound negative and black and white films have been separately mentioned in the custom notification indicates that these two are different products.

Ministry of Finance have stated (November 1990) that the matter is under examination.

iv) Vegetable oil

As per a notification issued on 24 April 1986, processed fixed vegetable oil falling under sub heading 1503.10 is exempt from the whole of the duty of excise leviable thereon provided that, among other things, the manufacturer produces within such period as the Assistant Collector of Central Excise may allow in this behalf, a certificate from an officer not below the rank of a Deputy Director in the Directorate of Vanaspati, Vegetable Oils and Fats to the effect that the said processed fixed vegetable oil was manufactured from fixed vegetable oil extracted by the solvent extraction method.

During July 1988 to September 1989, an assessee manufactured and cleared 1215.988 tonne of processed fixed vegetable oil without payment of duty. However, the assessee did not produce a certificate from the competent au-

thority of the aforesaid Directorate specifying the method employed for the extraction of fixed vegetable oil, nor did the Assistant Collector of Central Excise fix any period for the production of the prescribed certificate. This resulted in incorrect grant of exemption leading to non levy of duty of Rs.9.12 lakhs.

On this being pointed out in audit (December 1989), the department accepted the audit objection (May 1990) and also recovered duty of Rs.5,52,891 (March 1990) relating to 737.188 tonne oil. A demand of Rs.3,59,100 was raised (March 1990) for the remaining quantity of 478.800 tonne.

Ministry of Finance have admitted the underassessment (August 1990).

v) Tyres

Pneumatic tyres of rubber of a kind used on three wheeled motor vehicles are classifiable under sub heading 4011.39 and assessable to duty at tariff rate of Rs.1,650 per tyre. However, as per a notification issued on 1 March 1989 such tyres of sizes, namely 3.50-10-6 PR (PR-plyrating), 4.00-8, 4.50-8 and 4.50.10 were chargeable to duty at a concessional rate of Rs.84 per tyre.

A manufacturer of tyres, interalia, manufactured tyres for three wheeled motor vehicles of size 3.50-10 8 PR (PR-plyrating) and was allowed to clear 467 numbers of such tyres at the concessional rate of duty of Rs.84 per tyre in terms of the aforesaid notification during the period from 1 March 1989 to 17 June 1989.

As the tyres of size 3.50-10-8 PR were not covered under the aforesaid notification duty was leviable at tariff rate of Rs.1,650 per tyre. The incorrect grant of exemption, thus resulted in short levy of duty of Rs.7,67,888 during the aforesaid period.

On the short levy being pointed out in audit (November 1989), the department replied (February 1990) that denial of concession to 8 PR tyres would lead to anomalous interpretation of statute. From the minutes of the combined Regional Advisory Committee Meeting, held on 20 December 1989, it, however, transpired that a show cause-cum demand notice had been issued in this regard.

Ministry of Finance admitted the underassessment (November 1990).

vi) Cement clinkers

Cement clinkers are classifiable under subheading 2502.10 of the schedule to the Central Excise Tariff Act, 1985, and were assessable to duty at 12 per cent ad valorem. As per a notification issued on 1 March 1986, cement clinkers are exempted from whole of the duty if used in the manufacture of cement falling under the sub headings 2502.20, 2502.30, 2503.50 and 2503.90 and if such use is elsewhere than in the factory of production the procedure set out in chapter X of the Central Excise Rules, 1944, is followed. As per another notification issued on 25 March 1986, as amended, specified excisable goods, (goods of chapter 25 included from 1 March 1987) manufactured in factory as a job work and used in or in relation to the manufacture of specified final products are exempt from duty subject to fulfillment of certain conditions. Further, the Ministry of Finance in the letter dated 20 June 1986 have prescribed certain accounts records to be maintained in this regard.

An assessee engaged in the manufacture of cement (sub heading 2502.20) supplied raw materials, namely limestone, coke breeze, and clay to a neighbouring factory of his (a mineral unit) for manufacture and supply of cement clinkers to him on payment of conversion charges. Accordingly the mineral unit manufactured 5736.100 tonnes of cement clinkers valued at Rs.33,92,319 and supplied to the assessee during the period from January 1987 to July 1988 without payment of duty under the notification dated 25 March 1986 although the assessee did not follow the procedure set out in chapter X of the Central Excise Rules, 1944, nor did he fulfill the conditions prescribed in the notification dated 25 March 1986. The exemption contained in the notification dated 25 March 1986 was, therefore, not allowable. The incorrect grant of exemption resulted in non levy of duty of Rs.4,15,032 on such clinkers cleared during the period from January 1987 to July 1988.

On this being pointed out in audit (August 1988) the department stated (November 1988)

that two show cause-cum demand notices were issued in September 1988 to the aid mineral unit demanding a duty of Rs.4,36,265 covering the period upto September 1988 and added (February 1990) that out of two show cause cum demand notices issued in September 1988, one has been adjudicated and demand of Rs.2,85,540 confirmed.

Ministry of Finance have intimated (October 1990) that the second show cause notice cum demand for Rs.1,25,725 had also been confirmed, and that the assessee had filed an appeal before CEGAT whose decision was awaited.

vii) Aluminium wires

As per a notification dated 1 March 1986 as amended, aluminium wire rods conforming to the specification in IS 5484-1978 of the Indian Standards Institution, manufactured by any primary producer from hot aluminium metal and required by the Central Government to be sold or supplied in terms of the provisions contained in the Aluminium (Control) Order 1970 read with the notifications issued thereunder attracted concessional rate of duty at thirteen per cent ad valorem.

An assessee manufacturing aluminium standard wire falling under heading 76.12 (76.14 with effect from 1 March 1988) declared aluminium rods (sub heading 7603.10) as one of the inputs for availing Modvat benefits under rules 57A of Central Excise Rules, 1944, and cleared a portion of this input as such under rule 57F(1)(ii) ibid on payment of duty at the concessional rate of 13 per cent ad valorem under the above mentioned notification. As the assessee was not a primary producer and as the wire rods were not manufactured by him, the clearances of the inputs as such at the said concessional rate of duty was not in order. Duty at the effective rate of 18 per cent ad valorem under a notification dated 1 March 1986 as amended/superseded was leviable on the clearances of these inputs. The irregular availment of exemption resulted in short levy of duty amounting to Rs.1,46,366 on clearances made during the period from April 1987 to June 1988.

On this being pointed out in audit (January 1989), the department accepted the objection and reported (April and December 1989) recovery of the amount by debit in proforma account/personal ledger account.

Ministry of Finance have admitted the underassessment (September 1990).

SHORT LEVY DUE TO UNDERVALUATION

As per the provisions of section 4 of the Central Excises and Salt Act, 1944, where goods are assessable to duty ad valorem, the normal price at which such goods are ordinarily sold by the assessee to a buyer in the course of the wholesale trade for delivery at the time and place of removal, would be the assessable value provided the price is the sole consideration for sale.

3.42 Price not the sole consideration for sale

Where price is not the sole consideration for sale, as per provisions of rule 5 of the Central Excise (Valuation) Rules, 1975, the assessable value of the goods shall be based on the aggregate of such price and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee. If the assessee arranges sale of goods in the course of wholesale trade to or through a related person the normal price of such goods sold through a related person shall be deemed to be the price at which these are ordinarily sold by the later in the wholesale trade to the independent buyer.

i) Escalation charges

As per the instructions issued by the Board in their letter dated 4 October 1980, in the case of running contracts, where there is a price variation clause, the goods should be provisionally assessed at the time of clearance and final assessment made as soon as the assessee submits his bills for the escalated value, without waiting for the final acceptance of the increased invoice value by the customers.

(a) A public sector undertaking manufacturing transmission equipment, telephone instruments and parts thereof, falling under sub heading 8517.00, supplied its products to the Department of Telecommunications under an

agreement, which provided for a price variation clause over and above the rate list in force on 1 April of every year. Till the new rate list was worked out and approved by the Department of Telecommunications, invoices were raised and duty paid on the basis of the old rate list, but the new rate list after approval was to be effective from 1 April of the year to which it related.

It was noticed in audit (January 1989) that although the rate list effective from 1 April 1986 had been approved by the Department of Telecommunications in February 1987, yet duty was continued to be paid on the basis of the old rate list effective from 1 April 1985 in respect of supplies of telephone instruments and parts till 1987-88 and of transmission equipment till 1988-89 and differential duty for the period from April 1986 till date of adoption of new prices had neither been paid by the assessee nor demanded by the department. Approximate short levy of duty for the period April 1986 to July 1988 amounting to Rs.4.18 crores was accordingly pointed out by Audit (January 1989).

The department, while intimating that differential duty amounting to Rs.5,59,64,119 for the years 1986-87 and 1987-88 had been recovered (between February 1989 and July 1989), had stated (January 1990) that the price agreement effective from April 1986, though signed in February 1987 was adopted much later and that the assessee paid duty on the basis of old rate list but at the end of the year calculated and paid the differential duty on account of price variation, escalation charges, etc. It has also been contended that since assessments were provisional there was no chance of loss of revenue. The reply is not correct because the differential duty for 1986-87 and 1987-88 had not been recovered from the assessee till it was pointed out by Audit in January 1989 and differential duty for 1988-89 was yet to be recovered. Moreover, there was no justification in not adopting the new price list effective from April 1986 immediately after the agreement was signed in February 1987. Also in case of provisional assessments, the Central Government had issued instructions in March and December 1972 to the effect that any obvious shortfall or incorrect assessment discovered could be set right and the amount collected without waiting for finalisation of the assessment.

Ministry of Finance have admitted the objection (November 1990).

(b) Another public sector undertaking entered into a contract in December 1982 with a Railway Diesel Loco Works for manufacture and supply of 'turbo charger disc and bucket assembly' (parts of railway locomotives-heading 86.07) at the rate of Rs.41,537 per set subject to a price variation clause. In pursuance of the contract, the assessee was required to supply initially 650 sets during the period 1984-88 and another 1850 sets during the period 1988-96 at the option of the buyer in a phased manner. The contract also stipulated that the price would include the material and machining cost and related profit element but exclude the cost of tooling (estimated at Rs.344.57 lakhs) and capital investment (estimated at Rs.50 lakhs) payable to the assessee.

As against the initial order for supply of 650 sets, the assessee had supplied 142 sets to the end of November 1989. In this context he filed a price list in Part II declaring the assessable value as Rs.41,537 per set and paid the duty accordingly. The said price list was also approved by the department (March 1989).

While determining the assessable value as declared in the price list the additional consideration of Rs.394.57 lakhs receivable by the assessee in a phased manner in terms of the contract was not taken into account. Since such additional charges would go into the cost structure of the aforesaid product that should have been included in the assessable value as an additional consideration flowing from the buyer to the assessee. Omission to include the additional consideration had thus resulted in undervaluation of goods by Rs.15,783 per set on a pro rata basis (i.e. Rs.394.57 lakhs for 2500 sets) and consequential short levy of Rs.4,67,966 on the 142 sets supplied up to November 1989. The potential short levy on the balance of 508 sets to be supplied against the initial order would be of the order of Rs.16.93 lakhs.

On the short levy being pointed out in audit (January 1990), the department stated

(June 1990) that the assessee had not been able to furnish all the required information and that assessments were made provisional under rule 9B of the Central Excise Rules, 1944. It was further stated that the unit being in public sector had assured to file the correct price lists and pay all the differential duty once the deal was finalised.

The reply of the department is not acceptable. The provisional assessment made in the context of the price variation clause does not by itself justify not taking into account the substantial additional value of consideration already quantifiable under the terms of contract, and assurance of the assessee to pay the duty cannot be a substitute for raising demands.

Ministry of Finance have admitted the objection in principle (November 1990).

ii) After sale service charges

The Supreme Court in its judgment dated 7 October 1983 in the case of Union of India Vs. M/s. Bombay Tyre International held that the charges for other services after delivery to the buyer, namely after sales services promote the marketability of the article and thus enter into its value in the trade and as such these charges are includible in the assessable value.

(a) An assessee engaged in the manufacture of motor vehicles falling under chapter 87, sold the vehicles to the buyers through dealers at various places. The dealers' margin which varied from Rs.316 to Rs.963 per vehicle depending upon the type and size of vehicle sold was, however, not included in the assessable value.

As per the agreement entered into between the assessee and the dealers it was the responsibility of the dealer to maintain a workshop equipped with general and special tools and trained staff as recommended by the assessee, and they were responsible for the sale and servicing of the vehicles. Such expenses towards after sales services included in the dealers' margin were required to be included in the assessable value as has been held in the case of Union Of India Vs. M/s Bombay Tyre International Ltd. Non inclusion of the dealer's margin which resulted in under assessment of duty, the exact amount of which could not be worked out for want of details with the assessee. Commission collected by the dealers on different vehicles sold during the period from April 1987 to March 1988 amounted to Rs.13.8 crores (approximately), and short levy due to undervaluation had been worked out to Rs.1.12 crores assuming the after sales service charges to be 50 per cent of the commission collected.

On this being pointed out in audit (September 1988), the department did not accept the objection and stated (August 1989) that none of the dealers incur expenses on account of after sales services, nor was there any flow back from the dealer to the assessee on account of such expenses. In this connection, the department referred to the Supreme Court's judgment in the case of M/s Moped (India) Ltd. Vs. Asstt. Collector of Central Excise, Nellore (1986 (7) ECR 333 (SC)) wherein it has been held that the dealers are not the relatives of the manufacturer and have no direct or indirect interest in each others business.

The above reply of the department is not acceptable because a scrutiny of the warranty card given by the assessee to his customers revealed that the assessee was giving them free service coupons for use during the warranty period and the dealers were responsible for such after sales services. Since the expenses incurred by the dealers on behalf of the assessee in consideration of which dealers margin was paid, actually promoted the marketability of the product, such expenses are includible in the assessable value in view of Supreme Court's judgment in the case of Union of India Vs. M/s Bombay Tyre International Ltd.

In a similar case featured as para 3.27(i)(a) in Audit Report for the year ending 31 March 1988 (1987-88), the Ministry of Finance had admitted the objection.

Ministry of Finance did not admit the objection and have stated (August 1990) that the dealers do not undertake free aftersale services but issue service coupons to the customers for service during the warranty period. These coupons are returned by the dealers to the manufacturer who in turn pays the amount as a compensation for such services.

The reply of the Ministry is silent on non inclusion of expenses incurred for such services towards the assessasble value.

(b) A public sector undertaking engaged in the manufacture of tele communication equipment entered into a contract for manufacture and supply of 300 micro earth stations (chapter 85) to Central Government. The said public sector undertaking had entrusted the work of manufacture and supply of these equipment to another company. More than 25 per cent of the paid up share capital of the latter company was held by the public sector undertaking. In terms of the aforesaid provisions of section 4, the normal price of goods manufactured by the manufacturing company shall be deemed to be the price at which the goods are ordinarily sold by the public sector undertaking in the wholesale trade to independent buyers. The manufacturing company assessee cleared 255 micro earth stations during the period from October 1988 to September 1989 after payment of duty on the cost of such earth stations.

The aforesaid purchase order interalia provides for payment of after sales service charges (warranty and maintenance for one year at 15 per cent of the cost). The assessee, however, excluded the after sales services charges while determining the assessable value which was also accepted by the department. In respect of 255 micro earth stations supplied during the aforesaid period, the warranty and after sales charges receivable amounted to Rs.84,22,650. The exclusion of the after sales service charges from the assessable value in respect of sales made during the above period resulted in short levy of duty of Rs.13,26,567.

This omission was brought to the notice of the department in January 1990 and to the Ministry of Finance in September 1990.

Ministry of Finance have admitted the objection (November 1990).

iii) Technical know-how charges

According to the advice of the Ministry of Law communicated by the Central Board of Excise and Customs in December 1983, where contracts stipulate supply of designs and drawings for the purpose of erecting plant and machinery, these services form part of technical know-how and so the consideration collected therefor, being part of the value of technical know-how should be taken into account for determining the assessable value for the purpose of levy of duty.

(a) A public sector enterprise 'A' manufacturing rubber V belts (erstwhile tariff item 16A and now chapter 40) entered into a contract with a private company 'B' for assisting in the manufacture of products. 'B' would provide specification, technical know how and the services of a qualified technician for which he was to be compensated as under :

i) paying royalty of 1 per cent of value of sale to all buyers except sales made to B; and

ii) selling 50 per cent of the goods produced after embossing them with the trade mark of B at a price 25 per cent below the price at which these goods were ordinarily sold in the wholesale market.

In determining the assessable value of sales made to 'B' the department applied the lower rate of 25 per cent below the wholesale value ignoring the value of other concessions. This resulted in short levy of duty of Rs.29.05 lakhs for the period from September 1985 to September 1987.

On the irregularity being pointed out in audit (November 1987), the department did not accept the objection and stated (June 1988) that reduction of price to the extent of 25 per cent of wholesale price was in the nature of quantitative discount allowable under section 4(4)(d)(ii) of the Act.

The reply of the department is not acceptable as :-

i) the company in buying the goods embossed with its own trade name acquired market identity; and

ii) the discount in question arose out of collaboration contract for developing a product and it was a compensation.

Ministry also did not accept the audit objection on the ground that special discount of 25 per cent was granted to the company as bulk buyer and not for services rendered by the buyer.

The reply of the Ministry contradicts the stand circulated under a letter issued on 20 September 1989 under which supply of technical know-how, design etc., free of cost, among others, should be taken to prove that brand name owners are related persons. The Collector had also issued show cause-cum demand notice on 27 June 1989 for differential duty of Rs.59.36 lakhs for the period from August 1984 to March 1988 on the same grounds as pointed out by Audit. Further developments have not been reported.

Ministry of Finance have stated (November 1990) that the matter is under examination.

(b) A public sector undertaking engaged in the manufacture of electronic based excisable goods (chapter 85) entered into an agreement in July 1985 with a buyer for sale of goods manufactured by it and for setting up of a factory in the premises of the buyer for the manufacture of monochrome television picture tubes-14". The agreement, apart from providing payment to the buyer towards the goods manufactured and supplied by the assessee and other payments, also provided for payment of Rs.70 lakhs towards technical know-how, assistance, drawings and designs besides Rs.30 lakhs towards inspection, installation and commissioning of equipment.

The goods contracted for were manufactured and supplied by the assessee during the years 1986-87 and 1987-88 but duty was collected only on an assessable value of Rs.227.13 lakhs excluding the aforesaid sum of Rs.70 lakhs as well as the technical know-how charges included in the balance of Rs.30 lakhs. The duty leviable on the said sum of Rs.70 lakhs itself amounted to Rs.10,50,000. The said duty was neither paid by the assessee nor demanded by the department.

On the short levy being pointed out in audit (October 1987) the department issued a show cause-cum demand notice (April 1989) and adjudicated (July 1989) the case demanding a duty of Rs.13,05,000 after determining the value of additional consideration as Rs.87 lakhs and also imposed a penalty of Rs.1,00,000.

On an appeal filed by the assessee, the CEGAT remitted (March 1990) the issue to the original authority for reconsideration on the ground that the adjudication order did not spell out as to how the nature of charges collected could be considered as extra consideration for inclusion in the assessable value of the goods. Report of action taken has not been received (July 1990).

Ministry of Finance have stated (November 1990) that the show cause notice for denovo adjudication proceeding is being issued.

(c) An assessee manufacturing, inter alia, ammonia handling and distribution system (heading 84.19) manufactured certain parts of the plant and machinery at his factory and assembled and erected the plant at the site. The assessee filed price list under Part II after deducting the value of technical know-how charges (Rs.45.53 lakhs) and value of imported components including the duty thereon (Rs.21.10 lakhs) from the contract value and paid duty accordingly. The omission to include the technical know how charges and the cost of bought out components in the assessable value was not in order for the following reasons:-

i) the contract entered into with the buyer was for the supply and erection of ammonia handling and distribution system which included the technical know-how charges and the value of bought out components. Though the assessee manufactured only certain parts of the system, the plant came into existence only at the site of erection and hence clearance of the parts manufactured by the assessee as well as the boughtout items is to be treated as clearance under CKD condition;

ii) classification list filed by the assessee and approved by the department was for the 'plant' (heading 84.19) which came

into existence at the site of erection only and not for component parts of the plant (manufactured by the assessee in his factory);

iii) assembly and erection of manufactured parts with bought out items amounted to manufacture, as a new product distinctly different from the parts has emerged at the site;

iv) plants, though fixed to earth and became immovable property are chargeable to duty, as heading 84.19 recognises the same as excisable goods.

v) the technical know-how charges were for the imported design and drawing for the plant and the machinery as disclosed by the assessee for obtaining approval of Government for import of the same (vide assessees letter dated 4 June 1986).

Due to omission to include these charges in the value, there was under assessment of duty of Rs.9,99,369 in respect of one contract alone. Though the department issued a show cause notice in August 1986 for inclusion of technical know how charges in the value, further proceedings were dropped accepting the contention of the assessee that the charges related to erection work. However, since the charges related to design and drawing of equipment, engineering details, material requirements, etc., as disclosed by the assessee himself, the omission to include them in the value was not in order.

On this being pointed out in audit (March 1989), the department contended (September 1989) that the imported goods were not brought to the factory for further manufacture or assembly and hence their value was not includible and that the benefits of Modvat facility would be available (even, if their value was includible) and hence inclusion of their value does not arise.

The contention of the department is not acceptable for the reasons stated above. Further, the benefits of Modvat facility was also subject to fulfilment of the conditions prescribed in the Modvat rules.

This was pointed out in audit to the department in April 1990 and to the Ministry of Finance in September 1990.

Ministry of Finance have stated (November 1990) that the matter is under examination.

(d) Another assessee engaged in the manufacture of machinery entered into contracts with two buyers for supply of emission ageing conveyor (heading 84.28) and emission ageing system (heading 84.75) on turnkey basis. The contracts with the buyers provided for payment of charges by the buyer towards designing, engineering, erection, commissioning as also testing (at the work spot) apart from payment towards the cost of equipment. The assessee manufactured and supplied the aforesaid equipment to the buyer and paid duty only on the value of the equipment. Although the assessee collected designing, installation commissioning and testing charges from the buyers, no duty was levied and collected on such charges in terms of Board's instruction issued in September 1977, and the Ministry's clarification dated 23 December 1983. This resulted in short levy of Rs.2,33,529 on such charges amounting to Rs.13,32,150 and Rs.6,88,200 realised during the years 1987-88 and 1988-89 respectively.

The short levy was pointed out in audit in February 1990.

Ministry of Finance while admitting the objection stated that an amount of Rs.69,089 has been recovered (October 1990).

iv) Free gift

An assessee manufacturing talcum powder (heading 33.04) cleared the product on payment of duty with reference to a price list filed under part I. During May-June 1989, the assessee offered a gift scheme, viz., a soap free with every 400 grams pack of talcum powder and filed another price list, claiming in addition to usual deductions, a 'cash discount' from the price which resulted in the reduction of assessable value of 400 grams powder tin by Rs.15.16 per dozen.

It was noticed during audit (February 1990) that the assessee recovered the cost of

'free soap' from the dealers through separate invoices and that the amount recovered was equal to the reduction in the price charged for the talcum powder supplied to dealers.

It was pointed out (February/April 1990) to the department that the reduction in the price of talcum powder was not admissible because (i) two different prices for the same product, one with free gift and the other without gift was not in order and (ii) the assessee should have met the additional expenditure on account of free supply of soap out of his profits and should not have reduced the price of the talcum powder on that account.

The department contended (April 1990) that (i) as per section 4, there can be more than one normal price for a single product and the sale of the product with and without gift offer being two different trade situation two values could exist (ii) the retail price of the final product was the same even after the gift offer and (iii) no additional consideration flowed from the dealers to the assessee.

The contention of the department is not acceptable for the following reasons:

i) since the soap was to be supplied free, recovery of this cost from the dealers did not arise. Hence the amount recovered towards cost of soap represents additional consideration for supply of talcum powder at reduced price and hence includible in the value of the talcum powder.

ii) the expenses incurred towards value of the gift represents the expenditure on promotion of sale of the product and hence they cannot be deducted from the value.

iii) the intrinsic value of the talcum powder remained the same whether it was offered with a free gift or not. The department has also admitted that the retail price of the talcum powder remained the same, even after the gift offer.

iv) the deduction claimed as 'cash discount' is a conditional one, since it was allowed only to those dealers who were supplied with soap and not to other dealers who were not supplied with soap. Hence the discount is not an admissible deduction.

Due to the incorrect adoption of assessable value, there was an underassessment of duty of Rs.16,77,173 on 1,00,346 dozens of 400 grams of talcum powder cleared during May/June 1989.

Ministry of Finance have admitted the objection (November 1990).

v) Commitment charges

A manufacturer of decorative laminates, falling under sub heading 3920.31 filed the price list in respect of such goods in part I. A perusal of the annual accounts of the company for the period ended 31 March 1989 revealed that the assessee collected an amount of Rs.22.73 lakhs as commitment charges on account of recoveries effected at fixed rates per sheet from the customers in cases where goods were not lifted within the stipulated time for the year ended 30 June 1988. Since the charges were additional consideration, flowing directly from the buyers to the assessee, those should have been included in the assessable value. The department had issued show cause notices to the assessee demanding duty payable on such recoveries made during the years ended June 1985 and June 1986 in July 1989. No show cause notice, however, was issued for the commitment charges of Rs.22.73 lakhs received during the year ended June 1988 leading to short levy of Rs.8.35 lakhs. Similar short levy of Rs.7.40 lakhs related to the period July 1986 to June 1987.

On this being pointed out in audit (December 1989), the department informed (January 1990) that they were collecting details from the assessee for issuing the show cause notice in this regard.

Ministry of Finance have admitted the audit objection (September 1990).

vi) Interest charges

(a) A public sector undertaking (psu), engaged in the manufacture of telecommunication equipment, entered into a contract in

November 1987 with a buyer (B) for supply of micro earth stations with spares at a cost of Rs.11.47 crores. The entire contract for manufacture and execution of the aforesaid supply was entrusted to another company (assessee). More than 25 per cent of the paid up share capital of the assessee company was held by the public sector undertaking.

As per contract 60 per cent of the basic cost amounting to Rs.5.61 crores was payable as advance to the public sector undertaking. In terms of the agreement between the psu and the assessee company, the advances received by the psu are payable with interest to the assessee as and when required by him. The interest payable to the assessee in this behalf was being worked out on the basis of daily closing balance of the advance at 11 per cent. The Annual Reports of the assessee for the years 1987-88 and 1988-89 disclosed that such interest received by him amounted to Rs.58,28,886. The interest so received are actually in respect of charges attributable to the manufacture of excisable goods contracted for sale. These receipts thus have an indirect nexus with the excisable goods. The price including the interest amount so received by the assessee ought to have been the value as per section 4 ibid read with the aforesaid judicial pronouncements and duty should have been levied accordingly. Neither the assessee on his own paid the duty on such value nor did the department levy the same. This resulted in short levy of duty of Rs.9,18,048 on the amount of interest received by the assessee.

The omission was pointed out to the department in January 1990; and to the Ministry of Finance in September 1990.

Ministry of Finance have admitted the objection (November 1990).

(b) An assessee engaged in the manufacture of electric motors, transformers and generating sets (chapter 85) was collecting interest from his customers for delayed payments on credit sales by raising debit notes.

It was noticed in audit (December 1989) that the assessee had realised such interest charges aggregating to Rs.28,26,426 during the period from November 1988 to October 1989. The department, however, did not initiate action to redetermine the assessable value and demand duty in accordance with the Board's circular dated 4 May 1988. This resulted in short levy of duty of Rs.4,54,612 during the aforesaid period.

On the omission being pointed out in audit (December 1989), the department stated (April 1990) that action was being taken to quantify the amount for issue of show cause notice.

Ministry of Finance have admitted the objection (October 1990).

vii) Trade discount

As per section 4(4)(d)(ii) of the Act, value does not include trade discount (such discount not being refundable on any account whatsoever) allowed in accordance with the normal practice of wholesale trade at the time of removal in respect of such goods sold or contracted for sale.

A manufacturer of photo copy machine (classifiable under sub heading 9009.00) while submitting the price lists for approval of assessable value under rule 6(a) of the Central Excise (Valuation) Rules, 1975, had claimed deductions on account of trade discount from the value of goods. Assessable value was also approved by the proper officer after allowing deductions of trade discount. Goods were, however, sold by him without allowing any trade discount and, therefore, deduction of trade discount claimed by him from value of the goods was inadmissible. Incorrect determination of assessable value by undervaluing the goods in aforesaid manner, had resulted in short levy of duty of Rs.8,53,499 in respect of 841 photo copy machines cleared between 3 March 1988 and 31 March 1989.

On the short levy being pointed out in audit (August 1989), the department stated (January 1990) that the concerned range superintendent had directed the assessee to pay the differential duty.

Ministry of Finance have accepted the undervaluation (July 1990).

viii) Transportation charges and transit insurance

As per clarification dated 25 April 1988 issued by the Ministry of Finance in consultation with the Law Ministry, for purposes of section 4(2), average freight or equalised freight based on previous year's actual transportation charges could be allowed as a deduction from the wholesale price provided such averages do not finally exceed the actual expenses incurred on transportation in the current year. In other words, deduction on account of transportation charges shall eventually be restricted to actual expenses.

A state public sector undertaking engaged in the manufacture, inter alia, of transformers, assessable to duty at 20 per cent ad valorem entered into contracts with the Electricity Board and the Railways and supplied them through its sale depots located in various places in the country. The assessee was allowed to pay duty on value, determined under section 4(2) ibid by excluding transportation charges and transit insurance from the negotiated sale prices. A review of the sale invoices, however, disclosed that the transportation charges and insurance collected from the buyers as per the terms of the agreement and deducted from the sale price was neither actual expenditure incurred by the assessee nor was it based on the average expenditure of the previous year. Documents in proof of expenditure having been incurred towards transportation and insurance were also not forthcoming thereby rendering the deduction inadmissible and consequently duty was payable on the entire contract price.

During the period June 1988 to March 1989, transportation charges and insurance collected from the buyers amounted to Rs.29,24,063 and were excluded from the assessable value. This resulted in short payment of duty of Rs.5,14,053.

On the short levy being pointed out in audit (October 1989) the department stated (March 1990) that the assessee had been directed to pay the duty.

Ministry of Finance have stated (August 1990) that certificates to the extent of Rs.7,12,420 have been produced by the assessee and concerned officers have been instructed to expedite the recovery particulars for the remaining value of Rs.22,11,643.

ix) Special service charges

An assessee manufacturing flush doors (Chapter 44), charged towards cost of special services made at the request of the customers, such as rebate cutting, kick-plate fixing, painting, external lipping, vision-hole cutting etc., but the cost of these special services was not included in the assessable value of the flush doors. The department, based on Collector (Appeal)'s decision dated 30 December 1978 that these charges were not includible in the assessable value, allowed the assessee to clear the goods without inclusion of cost of these special charges in the assessable value. As the 'special services were in the nature of processes incidental or ancillary to the process of manufacture and since the processes were carried out in the licenced premises of the assessee before the removal of the goods, the cost of such special charges was includible in the assessable value of the flush doors. The argument that a major portion of the flush doors was cleared without the special services is not relevant, in view of the Supreme Court's decision in the case of M/s.Bombay Tyre International.

In the light of the above, the department ought to have reviewed the instant case after the Supreme Court's decision in 1983 and initiated action to recover the duty due on such special service charges. Omission to revise the assessable value resulted in under assessment of duty of Rs. 2,14,586 for the year 1987-88 alone. The duty involved for the earlier and subsequent years remains to be ascertained.

This was pointed out to the department in August 1989.

Ministry of Finance have admitted the objection (August 1990).

x) Publicity charges

A manufacturer engaged in the production of cement products, falling under chapter 69 of the schedule of the Central Excise Tariff Act, 1985, recovered Rs.4,76,870 from the dealers

as cost of publicity material supplied from July 1987 to February 1989, but did not include the same in the assessable value of the goods sold in terms of rule 5 of the Central Excise (Valuation) Rules, 1975. This resulted in non payment of duty amounting to Rs.1,93,319.

On the mistake being pointed out in audit (May 1989), the department stated (January 1990) that a show cause notice cum demand for Rs.2,01,784 for the period July 1987 to July 1989 has been issued to the assessee.

Ministry of Finance have accepted the facts (November 1990).

3.43 Excisable goods assembled out of duty paid parts/components

Section 2(f) of the Central Excises and Salt Act, 1944, defines 'manufacture' to include any process incidental or ancillary to the completion of a manufactured product. In the cases of M/s.Dayaram Metal Works (P) Limited {1985 (20) ELT 392), and M/s. Indo Paint Enterprises {1988 (36) ELT 513 (T)} the CEGAT had observed that once completely manufactured goods were supplied to the customer, the simple fact that the manufactured articles were supplied, not after assembly but in CKD condition, would not make any difference to the question and that the value of entire raw material or all parts which go into the making of manufactured article shall have to be taken into account. The Supreme Court, in the case of M/s. Narne Tulaman Manufacturers Private Limited {1988 (38) ELT 566} had held that assembling of duty paid components would amount to manufacture if it brings into existence a new product known to the market and the mere fact that the manufacturer bought out certain parts and manufactured certain parts and paid duty on the manufactured parts would not change the position because parts and end products are separately dutiable.

Ministry of Finance have clarified (September 1977) that the value of goods in assembled condition would also include value of all parts, viz., supplied from the factory of the assessee as well as those boughtout from outside.

i) Transportable remote area control terminal

A public sector undertaking entered into a contract with a customer for supply, installation and commissioning of containerised uplink and transportable remote area control terminal (TRACT) together with spares thereof at a total cost of Rs.4.36 crores. The assessee manufactured the aforesaid equipments partly out of goods manufactured in his factory and partly out of boughtout and imported goods and supplied between September 1987 and February 1989 in CKD condition. The assessee however, paid duty (20 per cent ad valorem) only on the value of the goods manufactured in his factory by classifying under heading 85.17 without taking into account the value of boughtout and imported goods. Non inclusion of the cost of boughtout and imported goods in the assessable value of the equipment resulted in undervaluation and consequential short levy of duty of Rs.45,62,568.

The short levy was pointed out in audit (October 1989). Reply of the department has not been received (May 1990).

The matter was reported to the Ministry of Finance in July 1990; their reply has not been received (November 1990).

ii) Rectified Spirit plant

An assessee engaged in undertaking project works such as supply, erection and commissioning of chemical plants, inter alia, agreed to supply and erect 13,500 litre capacity rectified spirit plant for a sugar factory. The project work included supply of equipment (Rs.25.43 lakhs) freight charges (Rs.0.3 lakh) and dismantling (of old plant) and erection charges (Rs.1.2 lakh). The assessee paid (January 1989) duty for the various components valued Rs.21.51 lakhs manufactured in his factory, but omitted to pay duty on the boughtout components valued at Rs.4,91,300, which were also used in the construction of the plant. Similarly, in respect of six other projects, the assessee omitted to include the value of boughtout components (valued Rs.11.74 lakhs) in the assessable value and to discharge the duty thereon. The non-inclusion of the value of

Rs.16.65 lakhs in respect of the seven projects resulted in under assessment of duty of Rs.2,62,282.

On this being pointed out in audit (September 1989), the department initially stated (November 1989) that action was being taken to invoke the extended provision of section 11A of the Central Excises and Salt Act, 1944, to demand the duty but later (March 1990) justified the exclusion of the value on the ground that the boughtout components were brought to the site directly (and not in CKD condition) and, therefore, the case law quoted by Audit was not relevant; that the assembly of these parts at site did not result in emergence of a new product to attract duty and that the plant being immovable property did not attract any duty, as clarified by the Board in their letter dated 21 April 1989.

The contention of the department is not acceptable since heading 84.19 specifically covers machinery or plant for rectifying and hence the entire plant assembled/erected at site attracts duty. Further, the plant comes into existence only after assembly of all parts, including bought out components at site and, therefore, the contention that the plant is an immovable property which does not attract duty is not acceptable. Issue of a notification on 20 March 1990 specifically exempting structures falling under heading 73.08 fabricated at site of construction work also support the views of Audit.

Ministry of Finance have repeated (October 1990) the reply already given by the department, which is not acceptable for the reasons stated above.

iii) Power supply systems

A manufacturer of electrical machinery (Chapter 85) manufactured uninterruptible power supply systems (sub heading 8537.00) and supplied them at the agreed price to various customers. The assessee manufactured the aforesaid product in his factory partly out of the goods manufactured in his factory namely rectifiers/inverters and partly out of boughtout goods, like batteries. The process of manufacture and emergence of the identified final excisable goods was complete only on assembly and supply of the goods to the customers. While the value attributable to the goods manufactured in his factory was included in the assessable value and duty was collected on such clearances, the value attributable to boughtout goods used in the goods manufactured in his factory was not included in the assessable value of the finished goods. On goods cleared under different supplies aggregating to the value of Rs.1,08,37,598, duty was collected on the value of Rs.91,77,966 only. This resulted in under valuation of goods by Rs.16,59,632 and consequent short levy of duty of Rs.2,54,590 on the clearances during the period from January 1988 to March 1989.

On the short levy being pointed out in audit (April 1989), the department stated (November 1989) that a demand of Rs.11,44,329 covering the period from March 1989 to August 1989 was confirmed. Action taken by the department on the short levy for the period from January 1988 to February 1989 has not been intimated (February 1990).

Ministry of Finance have stated that the demand for the period March 1989 to August 1989 has been confirmed by the department (November 1990).

3.44 Mistakes in computing costed value

Where excisable goods are wholly consumed within the factory of production, the assessable value is to be determined under Section 4 (i) (b) of the Central Excises and Salt Act, 1944 read with Rule 6(b) of the Central Excise (Valuation) Rules, 1975 on the basis of comparable goods or cost of production including reasonable margin of profit if the value of comparable goods is not ascertainable.

i) An assessee manufacturing cigarettes and smoking mixtures also manufactured shells and slides which were wholly consumed for use as packing of machine rolled cigarettes. While computing the assessable value of the product, on the basis of cost of production, the profit element was not taken into account. Assuming the notional gross profit at 10 per cent, the short levy of duty on this account amounted to Rs.27,15,281 on shells and slides cleared for captive use during the period from March 1988

to June 1989. Assessments during this period were made provisional on account of non approval of price list.

On the omission being pointed out in audit (August 1989), the department stated (February 1990) that the matter had already been taken up as per Collector's inspection note dated 28 September 1989. The contention of the department is not correct as Audit had already pointed out the objection to the Range superintendent in audit memo on 8 August 1989. Moreover no action was taken by the department to raise demands till that date.

Ministry of Finance have admitted the objection (August 1990).

ii) A manufacturer of metal containers (chapter 73) cleared the products to another unit of his own for packing of calcium carbide on payment of duty at the appropriate rate on the value determined on costing method. Relevant records of the assessee revealed that drums packed with calcium carbide sold to the customers were not received back in many cases though the same were returnable as per price lists of calcium carbide and accordingly the assessee raised debit notes on the customers at Rs.140 for 100 Kg drums and Rs.70 for 50 Kg drums against the declared price (on the basis of costing) of Rs.78.34 for 100 Kg and Rs.41.75 for 50 Kg. drums. As comparable prices were available, adoption of less value in costing method was totally unacceptable. The price of such metal containers, therefore, ought to have been determined as per section 4 (1)(b) of the Act read with rule 6(b)(i) of Central Excise (Valuation) Rules, 1975. The clearances of metal containers at a lower value has, therefore, resulted in short levy of duty of Rs.4.89 lakhs during the period from April 1989 to August 1989.

On the mistake being pointed out in audit (October 1989) the department admitted the audit observation and stated (May 1990) that show cause notice cum demand was being issued for the earlier period and directives have been issued to obtain revised price lists for current period to regularise the issue.

Ministry of Finance have accepted the facts (November 1990).

3.45 Undervaluation of goods consumed captively

Where excisable goods are partly sold to outsiders and partly consumed captively within the factory of production, the normal price determined under section 4(i)(a) of the Central Excises and Salt Act, 1944, is taken to be the assessable value both in respect of goods sold as well as in respect of goods captively consumed. Where excisable goods, however, are wholly consumed within the factory of production, the assessable value under section 4(i)(b) read with the Central Excise (Valuation) Rules, 1975, is to be determined on the basis of the value of comparable goods manufactured by the assessee or by any other assessee or on the cost of production including a reasonable margin of profit if the value of comparable goods is not ascertainable.

i) I.C. engines

An assessee cleared some I.C.. engines to his own plant situated elsewhere for captive consumption and filed price list in respect of such goods under rule 6(b) of the Central Excise (Valuation) Rules, 1975, at a price lower than that cleared to his spares department for sale to customers. The model numbers of these engines cleared to his own plants situated elsewhere for captive consumption and those cleared to the spares department were the same though different part numbers were given by the assessee for the purpose of identification at the time of clearance. Since the factory gate price in Part I was available for such I.C. engines, which was a comparable price, the same should have been adopted even for the clearances of such I.C., engines meant for captive consumption. The under valuation of such goods, by filing a price list in part VI(b) has resulted in short levy of duty to the extent of Rs.11.86 lakhs (approx) on clearances during the period from November 1987 to October 1988 alone.

The irregularity was reported in audit to the deprtment in May 1989 and to the Ministry of Finance in June 1990.

Ministry of Finance have admitted the objection (August 1990).

ii) Alkylates

An assessee, inter alia, engaged in the manufacture of different types of alkylates falling under sub heading 3817.00 of the schedule to the Central Excise Tariff Act, 1985, removed them for captive use on payment of duty. These were used in further manufacture of lubricant oils in the same factory, which were exempted from payment of duty as per a notification issued in May 1984, as amended.

A scrutiny of the price list filed in part VI (A) and approved by the department in January 1989 revealed that the value of alkylate, shown therein at Rs.7.85 per litre was based on comparable price adopted on the basis of purchase price shown in the invoice issued by the supplier of raw materials which represented the price of raw materials alkylate (HA-51460). The finished products heavy, light and extra heavy alkylate manufactured by the assessee were, however, different from the alkylate brought as raw material. As different types of ackylates manufactured by the assessee and again used for the manufacture of blended lubricants were different from the raw material alkylate, the price of alkylats manufactured by the assessee were not comparable. Value of the goods should, therefore, have been adopted on cost basis as provided in rule 6(b)(ii) of the Central Excise (Valuation) Rules, 1975. On the basis of cost data the same would work to minimum value of Rs.10.05 per litre.

The incorrect determination of the price of goods captively consumed resulted in undervaluation to the extent of Rs.2.20 per litre (minimum) on 26,98,477 litres of different types of alkylate removed during the period from April 1988 to November 1989 for their captive use, the undervaluation worked out to Rs.59,36,649. Duty payable on this would work out to Rs.9.35 lakhs.

The irregularity was brought to the notice of the department in December 1989; and to the Ministry of Finance in August 1990.

Ministry of Finance have stated (November 1990) that the matter is under examination.

iii) Sulphuric acid

As per section 4(1)(a) of the Central Excises and Salt Act, 1944, if an assessee sells his goods at different prices to different classes of buyers, (not being related persons), each such price is to be deemed to be the normal price of such goods in relation to each class of buyer. The Tribunal, in the case of M/s. Orient Paper Mills {1987 (27) ELT 272 (T)} held (August 1986) that if two normal prices are available and of which one is applicable to industrial consumer, then the same price has to be adopted in respect of goods consumed by the assessee for his own industrial use also.

An assessee manufacturing, inter alia, sulphuric acid (heading 28.07) captively used major quantity of the same in the manufacture of viscose staple fibre and rayon yarn and also sold the rest to other industrial consumers. The assessee adopted a value of Rs.1,000 per tonne in respect of the acid captively used by him with reference to a part I price list approved in September 1986. However, the assessee was selling the acid at higher rates to industrial consumers from August 1988. Due to non revision of price list for the acid captively consumed by him at least to the minimum of the prices charged to industrial consumers, there was an underassessment of duty of Rs.5,56,306 for the period from August 1988 to November 1989.

On the incorrect adoption of assessable value being pointed out in audit (March / April 1989), the department did not accept (March 1990) the objection on the ground that the Tribunal's decision quoted in para 1 supra would not apply in this case, since in the CEGAT case there were two different prices at the same time and the genuine factory gate price was held to be applicable.

The reply was not acceptable as the question to be decided in the CEGAT case was, of the two prices, one for industrial consumer and the other for dealers, which one was to be adopted for the captively consumed goods, and the Tribunal held that the one adopted for industrial consumer should be made applicable in respect of captively consumed goods also.

This was again pointed out to the department (April 1990). It was also, seen during

subsequent audit (February 1990) that the department had issued (July 1989), show cause notice demanding differential duty of Rs.5,15,900 for the period from February 1989 to June 1989, adopting the highest value charged to industrial consumers. Action taken for the periods, prior to January 1989 and after July 1989 has not been intimated by the department.

Further progress regarding confirmation of demand and particulars of recovery have not been received (May 1990).

Ministry of Finance have admitted the objection (November 1990).

3.46 Undervaluation of output goods to the extent of duty element on input goods

Where excisable goods are wholly consumed within the factory of production, the assessable value under section 4(1)(b) of the Central Excises and Salt Act, 1944, read with rule 6(b) of the Central Excise (Valuation) Rules, 1975, is to be determined on the basis of the value of comparable goods or cost of production if the value of comparable goods is not ascertainable. The Attorney General of India opined on 3 October 1985 that raw material/component parts continued to retain their duty paid character even after duty paid thereon is taken as credit in the proforma account. It, therefore, follows that the element of duty paid on input goods is to be included in the cost of the output goods.

As per a notification issued on 2 April 1986, specified goods manufactured in a factory (inputs) and used within the factory of production in or in relation to the manufacture of specified final products are exempt from payment of duty provided the said final products are not exempt from duty or are not charged to nil rate of duty. Thus if the final product does not suffer duty, the inputs will have to be assessed to duty.

Nine assessees in four collectorates engaged in the manufacture of different excisable goods (viz. ferro alloys, machineries, mechanical appliances, copper and aluminium coils and A.C.S.R.conductors) took Modvat credit of duty paid on the inputs such as aluminium powder, multistation transfer machine, copper and aluminium wires, kraft paper etc. and utilised the same towards payment of duty on finished goods. All the finished goods were used captively. While determining the assessable value of the finished products, the element of duty paid on raw materials was not taken into consideration. Non inclusion of the element of excise duty paid on inputs in the cost data, led to undervaluation of assessable value of goods. Consequently duty of Rs.18.26 lakhs was levied short on the clearances made during the periods from April 1987 to August 1989.

On the irregularities being pointed out in audit (between May 1989 and February 1990) the department recovered the amount in one case; issued show cause cum demand notices in the four cases; but did not accept the objection in the two cases and stated (September 1989 and January 1990) that exclusion of duty paid on inputs (aluminium powder) was in accordance with the Ministry's instructions issued on 25 September 1976 and clarification issued on 1 July 1986 and that Section 4 also permits such exclusion. No reply has been received in two cases.

The department's contention is not acceptable because (i) exclusion of duty paid on aluminium ingots for working out the assessable value of aluminium powder was against the opinion of the Attorney General dated 3 October 1985 and Board's clarification of September 1976 is not valid after the Attorney General's opinion, and (ii) Section 4 as also Ministry's clarification dated 1 July 1986 do not contemplate exclusion of duty paid on input goods from the value of output goods.

Similar cases were reported to the Ministry of Finance in June and August 1989. In one case the Ministry has admitted (November 1989) the audit objection. In remaining two cases, it has been reported (September and November 1989) that the opinion of the Attorney General of India has been sought in the matter.

Ministry of Finance have stated (November 1990) that it is proposed to seek Attorney General's opinion in the matter again.

3.47 Excisable goods not fully valued

As per provisions of section 4 of the Central Excises and Salt Act, 1944, where the goods are assessable to duty ad valorem, the normal price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place or removal would be the assessable value provided the price is the sole consideration for sale.

i) Hot pressed napthalene

Prices of hot pressed napthalene (sub heading 2707.40) manufactured by a public sector undertaking were fixed by its central marketing organisation separately for (a) long term contracts and (b) non long term contracts on the basis of contract executed between the public undertaking and respective buyers. Price lists (in part I) were also submitted by the manufacturer for the clearances made against non long term contracts which were also approved by the departmental officers. Central excise duty was, however, paid by the manufacturer at prices lower than the contract price fixed in the aforesaid manner. This resulted in short levy of duty amounting to Rs.5.13 lakhs in respect of clearances made between 20 September 1988 and 21 June 1989.

While admitting the objection the Ministry of Finance have stated (July 1990) that the entire amount has been realised.

ii) Ground starting aggregate

As per Harmonised commodity coding system (HSN) explanatory notes under heading 87.10, the heading excludes lorries of conventional type, lightly armoured vehicles or vehicles equipped with subsidiary removable armour and these goods are correctly classifiable under heading 87.05 as 'special purpose motor vehicles'. In terms of a notification, dated 1 March 1986 as amended, special purpose motor vehicles falling under heading 87.05 attract 'Nil' rate of duty, if the appropriate duty of excise has been paid on the chassis of such vehicles and the equipments used in the manufacture of such vehicles.

An assessee manufacturing goods falling under chapters 85 and 87, interalia, manufactured 'Ground starting aggregate' (G.S.A.) for supply to Defence Department, by fabricating and assembling certain components on the duty paid TATA chassis supplied free of cost by the defence department. The assessee classified the goods under heading 87.10 as 'other armoured fighting vehicles' and paid duty on the value of components manufactured by him including labour charges and profit margin. The goods merit classification under heading 87.05 in view of the explanatory notes cited. The benefit of notification cited was also not available since the components were assembled on the chassis and a separate equipment did not come into existence prior to its mounting on the chassis. Due to non inclusion of the value of chassis in the assessable value, there was underassessment of duty of Rs.2,16,750 in respect of five units cleared during the period from August 1987 to March 1988.

On the omission being pointed out in audit (July 1988), the department initially justified (August 1988), the exclusion of the value of chassis on the ground that the assessable value was based on the contract price, but later claimed (March 1989) that the assessee would be eligible for full exemption with respect to notification cited, as the correct classification of the goods should be under heading 87.05 and not 87.10 as approved by the department.

The arguments of the department are not acceptable since the exemption is available only when duty paid equipment like cranes, drilling rigs, etc., are mounted on a chassis and not when individual duty paid components are assembled/fabricated on a chassis.

Ministry of Finance have stated that the matter is under examination (November 1990).

iii) Aluminium conductors

Two manufacturers of all aluminium conductors (AAC) and aluminium conductors steel reinforced (ACSR) conductors (chapter 76) claimed deductions of Central Sales Tax at the time of determining the assessable value for the purpose of levy of excise duty. Actually the C.S.T. was paid at concessional rates, as applicable to small scale manufacturers, but abatement from assessable value was claimed at full rates which resulted in allowing undue benefits

amounting to Rs.6,42,734 on account of taxes realised but not paid to Government. But in terms of rule 5 ibid duty amounting to Rs.1,28,546 on additional consideration could not be realised during the period from 1 April 1985 to 31 March 1988.

On the omissions being pointed out (March and May 1989), the department recovered (June 1989) Rs.41,354 in one case. While not admitting the objection in the second case, the department contended (May 1990) that as the assessable value was based on contract price, the provisions of rule 5 of the Central Excise (Valuation) Rules, 1975, were not applicable in the case. It was further added that the assessee had not claimed deductions of excise duty and C.S.T. for arriving at the assessable value.

The reply of the department is not acceptable as section 4 of the Central Excises and Salt Act, 1944, allows deduction of the sales tax payable. If the assessee collects more sales tax than that paid to government the assessable value is required to be redetermined after adding such excess to the original assessable value. Central Board of Excise and Customs in its circular of February 1981, have clarified that excise duty realised by the assessee but not paid to government, forms a part of the assessable value.

Ministry of Finance have admitted the objection (November 1990).

3.48 Valuation of goods manufactured on behalf of others

According to section 4 of the Central Excises and Salt Act, 1944, value for the purpose of assessment of duty shall be the normal price at which the goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade, provided where the goods are sold by the assessee at different prices to different classes of buyers (not being related persons), each such price shall be deemed to be the normal price of such goods in relation to each class of buyer.

A proprietory concern having three factories manufacturing structural items falling under chapter 73 of the schedule to the Central Excise Tariff Act, 1985, entered into contracts with customers for fabrication and supply of structural items. The factories fabricated the items and cleared them to the proprietory concern on payment of excise duty on the value approved under Part VI(b). This action was not in order as the items were manufactured on behalf of the customers on contract basis and hence the value as per the agreements with the customers should have been adopted as the assessable value for levy of excise duty. The incorrect adoption of assessable value in respect of a few contracts (in one unit) alone resulted in short levy of duty of Rs.1,36,822.

On this being pointed out in audit (May 1988), the department reported (June 1989) issue of three show cause notices amounting to Rs.9,86,847 (to the three assesses).

Ministry of Finance admitted the objection and stated (September 1990) that six show cause notices demanding duty of Rs.11,07,527 have been issued.

3.49 Valuation of goods cleared from sales depots

Mattresses, cushions, pillows, etc., whether or not covered, attract duty at 60 per cent ad valorem under heading 94.04 of Central Excise Tariff. In terms of section 4 of Central Excises and Salt Act, 1944, value for the purpose of assessment of duty on ad valorem basis is the normal price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal. It, therefore, follows that where the mattresses, pillows, etc., are sold with cover to the buyers, the cost of such covers is also includible in the assessable value.

An assessee manufacturing mattresses and pillows of cellular rubber cleared his goods from the factory partly with covers and a major quantity without covers to the duty paid godown of the assessee. The covers were subsequently stitched through job workers and the goods with covers were despatched to the various sales depots. There was no gate sales of the product and the actual sales to the buyers took place only at the sales depots. While in respect

of goods cleared with covers from the factory the cost of the covers was included in the assessable value, in respect of goods cleared without covers from the factory but sold with covers at the sales depots, the same was not included in the assessable value. The assessee filed price lists separately for clearances with covers and without covers. The omission to include the cost of covers in the assessable value of goods was not in order for the following reasons:-

i) value for the purposes of assessment is the normal price at which the goods are ordinarily sold to the buyers. The mattresses and pillows were ordinarily sold with covers from the depots and therefore the cost of covers also form part of the assessable value;

ii) there was no gate sale of the products. Sales took place at the depots after providing covers at the duty paid godowns.

iii) the materials for covers were purchased and supplied to the job worker at the duty paid godown by the assessee;

iv) the covers were supplied with the mattresses and pillows on one to one basis and therefore the normal practice of sales in the wholesale trade was with covers only;

v) the covers enrich the marketability of the goods.

The short levy of duty on this account amounted to Rs.8,17,713 for the clearances made during the period from April 1988 to February 1989 alone. The under assessment for the earlier and subsequent periods remains to be ascertained (February 1990).

On this being pointed out in audit (April 1989), the department contended (April 1989/ July 1989/January 1990) that as the covers were not provided at the time of clearance from the factory, the cost of covers was not includible in the value and that the covers were provided only at the instance of customers subsequent to the clearance from the factory and it would not amount to manufacturing activity.

Ministry of Finance did not admit the objection and stated (August 1990) that the mattresses and pillows were cleared without covers and were to be assessed as such. The reply of the Ministry is not acceptable as there was no sale at the factory gate and the entire production was sold through sales depots. Therefore, the assessable value is to be determined on the basis of sale price at which sales depots sell the goods, in terms of section 4 of the Central Excises and Salt Act, 1944.

3.50 Undervaluation of goods cleared as such

The inputs in respect of which credit of duty has been allowed under rule 57A may be removed, as such, as if such inputs have been manufactured in the said factory, provided that such duty in no case is less than the amount of credit that has been allowed under rule 57A.

(a) An assessee manufacturing parts of internal combustion engines (chapter 84) and availing 'Modvat credit, purchased the input aluminium ingots and aluminium alloy ingots from different sources at varied rates, and cleared certain quantity out of it as such to his sister unit under rule 57F(1)(ii). The assessee adopted a lower value for purpose of payment of duty of inputs cleared as such while the average value of the inputs received from different sources was much higher. This resulted in short levy of duty on inputs cleared as such.

On this being pointed out in audit (November 1989/December 1989) the department stated (February 1990/April 1990) that Rs.2,32,192 was expunged from the proforma account in December 1989 by adopting the actual value with reference to the separate bin cards maintained by the assessee.

Ministry of Finance have stated (November 1990) that the assessee has adjusted the amount of Rs.2,32,192 in RG23A part II Account on 6 December 1989.

(b) A leading footwear manufacturer in a collectorate took credit of countervailing duty on inputs brought into the factory for use in the manufacture of final products. The assessee cleared a portion of inputs as such for home consumption on payment of basic excise duty on lower assessable value as compared to the

prices indicated in the bills of entry as assessed by the customs authority. As the payment of duty shall in no case, be less than the amount of credit that was allowed in respect of the inputs as per rule 57F(1)(ii) of the Central Excise Rules, 1944, the payment of duty on inputs cleared as such on a lower assessable value was incorrect. Moreover, the assessee did not pay special excise duty on such clearances from 1 March 1988 though the same was leviable as per the Finance Act. This has resulted in short payment of duty of Rs.1.61 lakhs on the clearances made during the period from 15 December 1988 to 23 February 1990.

On the mistake being pointed out in audit (February 1990), the department stated (April 1990) that efforts were being made to ascertain the exact short payment of duty as pointed out in audit.

Ministry of Finance have stated (November 1990) that duty amounting to Rs.1,61,775 has since been recovered.

3.51 Undervaluation of goods sold through related persons

Under the Central Excises and Salt Act, 1944, where the duty of excise is chargeable on any excisable goods with reference to value, such value, shall be deemed to be the normal price at which excisable goods are ordinarily sold to a buyer in the course of wholesale trade, where the buyer is not a related person and the price is the sole consideration for the sale. In case the assessee arranges sale of goods in the course of wholesale trade to or through a related person (which includes a holding company) the normal price of such goods sold through related person shall be deemed to be the price at which these are ordinarily sold by the latter.

An assessee engaged in the manufacture of footwear transferred to its holding company the goods so manufactured during the years 1986-87 to 1988-89 on a price approved by the department and paid the duty on such value. The holding company, however, sold the goods to independent buyers at a value of Rs.91,07,168 instead of the value of Rs.55,23,822 charged by the subsidiary company. The actual price charged from independent buyers ought to have been the value and duty should have been charged accordingly. Omission to do so resulted in short levy of duty of Rs.1,99,034.

On the mistake being pointed out in audit (January 1989) the department issued a show cause notice cum demand (September 1989). Further progress of the case has not been intimated (March 1990).

Ministry of Finance have admitted the objection (August 1990).

3.52 Undervaluation of physician's samples

As per a notification issued in September 1983 as amended, patent or proprietary medicines falling under heading 30.03 of the schedule to the Central Excise Tariff Act, 1985, are allowed to be cleared on payment of duty calculated on the basis of the value of the said medicines arrived at after allowing a discount of 15 per cent on the retail price of the said medicines specified in the price lists referred to in the Drugs (Price Control) Order, 1979, or the Drugs (Price Control) Order, 1987 as the case may be. The above exemption, however, can be availed of by a manufacturer provided, he claims exemption under this notification in respect of all the medicines cleared by him.

Rule 6(b)(i) of the Central Excise (Valuation) Rules 1975 read with section 4(i)(b) of the Central Excises and Salt Act, 1944, permits determination by the proper officer of the value of goods for which no wholesale trade exists, on the basis of value of comparable goods after making such adjustments as considered necessary. As per a trade notice issued in May 1985 and followed by the trade, such value in case of physicians sample packs are to be worked out on prorata basis on the prices of regular trade packs.

An assessee manufacturing various medicines filed price lists in part III in respect of three medicines 'Lydin 150 mg' 'Lydin 300 mg' and 'Anquin 400 mg' for clearances made on regular trade packs on payment of duty after claiming discount of 15 per cent on the retail price shown therein. For physicians' samples cleared of the same medicines in smaller packing for supply to hospitals, nursing homes or

medical practitioners, the assessee filed price lists in part VII on the basis of their cost prices which were approved by the department and the samples were allowed to be cleared on payment of duty at those prices.

Filing separate price lists in part VII in respect of physicians sample was not in order, as the notifications referred to above prescribes that the discount of 15 per cent to be availed by the assessee in respect of all medicines cleared and when the values of comparable goods (medicines in regular trade packs) are available, the value of the sample packs should have been worked out on prorata basis from the prices of regular trade packs.

Incorrect adoption of prices filed in part VII on clearances of physicians' samples of the three medicines referred to above during the period from February 1989 to June 1989 resulted in underassessment of the value of goods of Rs.8,89,784 involving short payment of duty Rs.1,14,935.

On the irregularity being pointed out in audit (September 1989), the department recovered short levy of duty amounting to Rs.10.52 lakhs in February 1990.

Ministry of Finance have admitted the objection (September 1990).

MODVAT (MODIFIED FORM OF VALUE ADDED TAX) SCHEME

3.53 Irregular availment of duty paid on goods, other than inputs

As per clause (b) of explanation below rule 57A of the Central Excise Rules, 1944, input does not include machines, machinery, plant, equipment, tools or appliances used for producing or processing of any goods or for bringing about any change in any substance in or in relation to the manufacture of final products.

i) Graphite/power feeding electrodes

(a) An assessee manufacturing graphite electrodes (heading 85.45) took credit of duties paid on inputs (Power Feeding Electrodes) which were actually used as appliances for bringing out a change in the substance in relation to manufacture of final products although these were not inputs for purposes of rule 57A of Central Excise Rules, 1944. Availment of Modvat credit in respect of these electrodes was not in order. Total credits taken during 1 March 1986 to 31 October 1989 amounted to Rs.39,64,547.

On the irregularity being pointed out in audit (November 1986, January and November 1989), the department accepted the objection and reported (May 1990) the confirmation of the demand. Particulars of recovery have not been intimated (June 1990).

Ministry of Finance have accepted the underassessment (October 1990).

(b) As per CEGAT decision dated 29 August 1985 {1986 (26) ELT 581}, an electrode is merely a device for the delivery of electric current into the material for reaction.

An assessee unit manufacturing polyvinyl chloride resin (heading 39.04) brought into factory duty paid graphite tapping electrodes for use in the electric arc furnace and took credit of duty paid on those electrodes. These were used for tapping out molten carbide from the electric arc furnace. Graphite electrodes used as equipment/appliances for electric arc furnaces are not eligible for Modvat credit under rule 57A of the rules. The irregular credit availed of by the unit from 2 March 1987 to 11 August 1988 amounted to Rs.1,09,625.

The irregularity was pointed out in audit to the department in September 1988 and to the Ministry of Finance in September 1990.

Ministry of Finance have stated (October 1990) that a demand of Rs.73,979 has been confirmed and recovered besides issue of another show cause notice for Rs.67,400 for the period January to December 1987.

(c) Two assessees manufacturing steel ingots, billets, steel castings, etc. and calcium carbide respectively availed Modvat credit on graphite electrodes and carbon paste/electrode paste as inputs used in the manufacture of the final products. As the graphite electrode was used in the electric arc furnace to strike an arc between electrodes and as the carbon paste was

essentially used as an equipment for the manufacture of calcium carbide, the graphite electrode could only be considered as part of the equipments used for producing the goods and therefore the Modvat credit availed was not in order. The credit availed on carbon paste during the period from September 1986 to February 1988 alone amounted to Rs.1,65,813 and the credit availed on graphite electrode remained to be ascertained.

On this being pointed out in audit (September 1986/March 1988), the department, in one case reported (October 1986) issue of a show cause notice for an amount of Rs.6,05,357 for the period from 24 February 1986 to 19 September 1986, but later (July 1987/February 1988) justified the availment of the credit on the ground that Modvat credit was available with reference to Board's clarification dated 21 October 1986. In respect of the other case also, the department justified (April 1988) the availment of the credit on the same grounds.

The contention of the department is not acceptable in view of the fact that the Board's clarification dated 21 October 1986 is at variance with the decision given by the Tribunal in the case of Messrs. Muthu Chemicals Madurai {1986 (26) ELT 581 (Tri)} that electrodes used in electrolyte cell are not eligible for input credit under rule 56A of the erstwhile tariff item 68. Further the graphite electrode/carbon paste was used only as a device or appliance for delivery of current in the manufacture of the final product and hence not eligible for Modvat credit as per explanation under rule 57A.

Details of adjudication of the case and confirmation of demand have not been reported (July 1990).

Ministry of Finance have not admitted the objection on the ground that the CEGAT decision was delivered prior to introduction of Modvat and has no application to the present case. But, in the similar other case mentioned in preceding para the Ministry have already accepted the objection.

ii) Copper wire for welding

Four assessees in three collectorates engaged in the manufacture of metal containers falling under sub heading 7310.00 availed of credit of duty paid on various inputs, which included copper wire falling under sub heading 7408.19 which was used for welding purposes. The copper wire was used for imparting heat to the tin contents, contained in the tinned sheets for the purpose of melting tin and welding the two ends together. The copper wire was so used for repeated operations till it lost its shape or hardness and could not any longer be used for welding the two ends of the containers. The copper wire, thus, used for repeated operations being in the nature of appliances used for precessing goods in or in relation to the manufacture of final product, credit of duty paid on it was not available to the assessees, as stipulated in the explanation below rule 57A of the Central Excise Rules, 1944. The credit availed of on copper wire was, therefore, irregular and required to be reversed. The total amount of Rs.22.69 lakhs (approx.) having been availed as credits on such inputs during the period between March 1987 and November 1989, duty to that extent was short paid.

The irregularity was pointed out to the department between December 1988 and April 1990 and to the Ministry of Finance in May, July and August 1990.

Ministry of Finance have admitted the objections (August, September and November 1990).

iii) Welding electrodes

The Board under a letter dated 15 July 1988 clarified that "spot welding electrodes" being non consumables and more in the nature of tools or appliances, cannot be treated as inputs for the purpose of rule 57A.

Three manufacturers of steel structure and other machinery parts were allowed to avail of Modvat credit on welding electrodes and to utilise the credit for payment of duty on finished products. This resulted in irregular availment of credit of Rs.15.92 lakhs during different periods between March 1987 and March 1989.

On the irregularity being pointed out in audit (November 1988, April 1989 and January

1990) the department did not admit the audit contention in two cases and stated (October 1989) that the assessees used welding electrodes which were not spot welding electrodes and the grant of Modvat credit was correct as the electrodes in question were consumable products. In the third case the department stated (January 1989 and May 1989) that graphite/carbon electrodes were eligible for Modvat benefits as per Ministry's letter dated 21 October 1986.

Department's contention is not acceptable as "spot welding electrodes" and "welding electrodes" are one and the same and are used for the same purpose. The products are always treated as tools and appliances and as such non consumables. Ministry of Finance have already accepted the audit contention in a similar case.

The department's reply in the third case is also not acceptable for the reason that as per the Ministry's letter dated 21 October 1986, graphite/carbon electrodes are eligible for Modvat credit when used in the electric arc furnace for the manufacture of iron and steel/aluminium products whereas in the instant case the welding electrodes were used not in electric furnace but for welding of component parts in the manufacture of the final products and, therefore, did not qualify for Modvat credit as per Board's clarification dated 15 July 1988.

Ministry of Finance did not admit the objection and have stated (November 1990) that welding electrodes in question are different from the spot welding electrodes and get consumed in the process of manufacture of final product, as such, these are neither non consumables nor can be treated as tools or appliances and Modvat credit can accordingly be availed.

Ministry's coments are not tenable as the 'welding electordes' and the spot welding electrodes are used for the same purpose. Moreover the Ministry of Finance have already accepted the audit contention in a similar case proposed for Audit Report proposed for the year ending 31 March 1989 (No.5 of 1990).

iv) Mercury

According to instructions issued by the Ministry of Finance on 23 September 1987, duty paid on mercury used as cathode not being an input in the manufacture of sodium hydroxide (caustic soda) did not qualify for Modvat credit.

A manufacturer of caustic soda (sub heading 2815.00) declared mercury (sub heading 2806.90) as an input which was used as cathode in the manufacture of caustic soda and availed Modvat credit of Rs.8,63,601 during the period from March 1987 to April 1989 on account of duty paid on mercury. As the mercury was used as cathode in the manufacture of caustic soda, which is produced through electrolytic process, it cannot be considered as an input in relation to the manufacture of aforesaid final product. The Modvat credits allowed were, therefore, not in order.

The irregularity was pointed out in audit to the department in July 1989 and to the Ministry of Finance in June 1990.

Ministry of Finance have admitted the audit objection (October 1990).

v) Moulds

A public sector undertaking manufacturing 'turbo electric generating sets' (chapter 85) took credit of the duty paid on the inputs used in the manufacture of moulds for metal castings which were subsequently used for castings in the manufacture of final products. Moulds are in the nature of equipment and, therefore, do not qualify as inputs in terms of the explanation below rule 57A. The irregular credits availed of amounted to Rs.7,83,118 for the period from February 1988 to March 1989.

On this being pointed out in audit (June 1989) the department accepted the objection and stated (April 1990) that action was being initiated to recover the amount.

Ministry of Finance have accepted the underassessment (October 1990).

vi) Storage tank and welding torch

A public sector undertaking, manufacturing turbo electric generating sets (chapter 85) took credit of the duty paid on storage tanks

installed in the factory and also on welding torch used for gas welding which did not qualify as inputs in terms of the explanation. The inadmissable credits availed of amounted to Rs.5,10,079 for the months of December 1988 and March 1989.

On this being pointed out in audit (June 1989) the department accepted the objection and stated (April 1990) that action was being initiated to recover the amount.

Ministry of Finance have accepted the underassessment (October 1990).

vii) Tools and testing equipments

A public sector undertaking engaged in the manufacture of telecommunication equipment (chapter 85) took credit of countervailing duty paid on (i) electro acoustic telephone transmission measuring system (Rs.4,49,923) (ii) electric screw driver with transformers and tool bits (Rs.28,437) and (iii) adjustable quick grip production vices (Rs.12,729) during April 1989 and July 1989. The first mentioned equipment was meant for testing the printed circuit boards manufactured by the assessee and was thus only an appliance and the other two were tool and tool holder used in the course of manufacture of final product. All the three items did not, therefore, qualify as an input in terms of clause (b) of explanation below the aforesaid rule 57A. Hence the credit of duty of Rs.4,91,089 availed on the aforesaid inputs was irregular and was required to be expunged or recovered.

The irregularity was pointed out in audit to the department in October 1989 and to the Ministry of Finance in June 1990.

Ministry of Finance have stated (August 1990) that the entire amount has since been reversed.

viii) Molybdenum wire

An assessee who was availing the facility of Modvat credit, had declared moly wire as one of the inputs for the manufacture of tungsten filaments. During the manufacturing process, tungsten wire was initially wound around moly wire and then treated in acid medium in which moly wire got dissolved leaving behind tungsten filaments. Moly wire was thus used merely as an aid in the manufacture of the final product and as such credit availed of on Moly wire amounting to Rs.2,30,824 during June 1988 to March 1989 was incorrect. Similar incorrect credit for the period prior to June 1988 was also required to be worked out.

The irregularity was pointed out to the department in February 1990 and to the Ministry of Finance in August 1990.

Ministry of Finance have admitted the objection (November 1990).

3.54 Irregular availment of credit on inputs/ output goods not covered by declaration

According to rule 57G of the Central Excise Rules, 1944, every manufacturer intending to take credit of the duty paid on inputs under rule 57A ibid is required to file a declaration with the Assistant Collector of Central Excise having jurisdiction on his factory indicating the description of the final products manufactured in his factory and the inputs intended to be used in each of the said final products and obtain the acknowledgement of such declaration. Thereafter he may take credit of the duty paid on the inputs received by him.

i) Aluminium wires and wire rods

An assessee, engaged in the manufacture of aluminium conductors (chapter 76), declared wire rods, wires and ingots of all grades of aluminium falling under heading 76.01 as inputs, in the declarations filed by him on 19 September 1987 and 11 August 1989. The aforesaid inputs were of unwrought aluminium. The assessee's records, however, disclosed that credit of duty paid was being availed of on unwrought aluminium bar and rods (sub heading 7604.10) and on aluminium wires of cross sectional dimension exceeding 6 mm (sub heading 7605.11) even though they had not been declared as inputs. This resulted in irregular availment of credits aggregating to Rs.61,73,634 during the period from April to December 1989.

The irregularity was pointed out in audit

to the department in (February 1990) and to the Ministry of Finance in June 1990.

Ministry of Finance have admitted the objection (October 1990).

ii) Electrical apparatus

A public sector undertaking declared electrical apparatus for line telephony or line telegraphy including such apparatus for carrier current line system classifiable under heading 85.17 as the final product for availing Modvat credit in respect of certain duty paid inputs intended to be used in the said final product. A scrutiny of the assessee's records disclosed that the said inputs had not been used in or in relation to the manufacture of the final product declared against those inputs. Instead they were used in the manufacture of other final products not indicated in the declaration. Hence availment and utilisation of credit of duty on the said inputs was irregular in terms of rule 57F(3) ibid and was required to be either expunged or recovered. During the period from October 1988 to August 1989, the assessee had availed of such irregular credits aggregating to Rs.10,73,130.

The irregularity was pointed in audit to the department in October 1989 and to the Ministry of Finance in July 1990.

Ministry of Finance have admitted the objection (October 1990).

iii) Aluminium bars

An assessee engaged in the manufacture of aluminium conductors was availing the credit of duty paid on a declared input namely 'aluminium bars and wire rods' falling under sub heading 7603.10 which covered wrought bars, rods including wire rods of aluminium upto 29 February 1988. Consequent upon the revision of tariff structure of chapter 76 from 1 March 1988, the assessee filed a revised declaration (6 December 1988) indicating the description of the input as 'aluminium bars and wire rods' falling under sub heading 7604.10 which covered wrought aluminium wire rods only.

The assessee's records, however, disclosed that the credit of duty on another input namely wire rods of unwrought aluminium falling under sub heading 7601.30 was also being availed of by him from December 1988 even though it was not declared by him under rule 57G ibid. Hence the credit availed thereon was irregular and such irregular availment during the period from December 1988 to September 1989 amounted to Rs.6,94,603.

The irregularity was pointed out in audit to the department in November 1989 and to the Ministry of Finance in May 1990.

Ministry of Finance have admitted the objection (July 1990).

iv) Aluminium wire rods

An assessee manufacturing 'AAC' and 'ACSR' conductors (chapter 76) took Modvat credit in respect of aluminium ingots (sub heading 7601.10), got them converted into aluminium wire rods (sub heading 7601.30) which were subsequently used in the manufacture of the final product and utilised the credit towards payment of duty on final products. This item of input (wire rods) was not included in the declarations filed by the assessee from time to time. The irregular availment of Modvat credit during the period from August 1988 to August 1989 amounted to Rs.6.16 lakhs.

The irregularity was pointed out to the department in audit in December 1989 and to the Ministry of Finance in June 1990.

Ministry of Finance did not admit the objection and have stated (November 1990) that the assessee had already declared aluminium ingot as input for the final product. The fact remains that aluminium wire rods used which were not declared.

v) Unwrought aluminium

A manufacturer of aluminium conductors (final product) took credit of Rs.5,80,422 during the period April to December 1989 on account of duty paid on unwroght aluminium wire rods (sub heading 7601.30) which was not declared as an input in the declaration filed with the jurisdictional Assistant Collector.

On the irregularity being pointed out in audit (February 1990), the department intimated (March 1990) that a show cause-cum demand notice issued in this regard was adjudicated on 15 March 1990 confirming the demand of Rs.5,80,422 as well as imposing a nominal penalty of Rs.400. Details of realisation have not been received (May 1990).

Ministry of Finance have accepted the underassessment (July 1990).

vi) Miscellaneous goods

An assessee manufacturing goods falling under chapters 84, 86 and 87 and availing Modvat credit for the duty paid on inputs had utilised the credit towards clearances of goods which were not specified as final products in the declaration already filed. The credit incorrectly utilised during the period from February 1988 to January 1989 alone amounted to Rs.4,90,424.

On this being pointed out in audit (March 1989), the department accepted the objection and reported (July/September 1989) that the amount was realised by debit in Personal Ledger Account.

Ministry of Finance have accepted the underassessment (July 1990).

3.55 Irregular availment of Modvat credit on inputs used in exempted output goods

Rule 57C of the Central Excise Rules, 1944, provides that no credit of duty paid on specified inputs shall be admissible if the final product is exempt from payment of duty or charged to nil rate of duty.

i) Tyres and tubes

Tyres and tubes used in the manufacture of tractors of engine capacity not exceeding 1800cc. are exempt from payment of duty under a notification dated 10 February 1986, as amended, if the clearances are effected as per the procedure laid down in chapter X of the Central Excise Rules, 1944.

A manufacturer engaged in the production of tractors and I.C.engines falling under chapter 87 and 84 respectively, manufactured 5806 tractors with engine capacity not exceeding 1800cc, during the period from January 1988 to July 1989. As the stock of tyres and tubes received under notification dated 10 February 1986 was not sufficient to complete the production, 7325 front and rear wheel tyres and 7124 tubes of these tyres in respect of which credit of duty of Rs.25,11,408 had been availed under rule 57A of the Central Excise Rules were used but the credit so availed was not reversed. Similar credit availed prior to January 1988 and after July 1989 was also to be worked out and recovered.

On the irregularity being pointed out in audit (October 1989) the department reported that duty amounting to Rs.25,11,408 was recovered by debit in RG 23A Part II account (January and March 1990). Recovery particulars for the period prior to January 1988 and after July 1989 and action taken against the assessee as stipulated in rule 173 Q(bb) of the Central Excise Rules, 1944, has not been intimated (June 1990).

Ministry of Finance have accepted the underassessment (November 1990).

ii) Nylon filament yarn

An assessee manufacturing, inter alia, nylon filament yarn falling under chapter 54 of the schedule to the Central Excise Tariff Act, 1985, was availing Modvat credit on 'caprolactum' used in the manufacture of nylon chips (chapter 39). As more than 90 per cent of the chips were used captively in the manufacture of nylon filament yarn, without payment of duty with reference to a notification dated 1 March 1986, superseded by another notification dated 1 March 1988 the assessee was expunging the proportionate Modvat credit periodically as per a formula adopted by him. During audit of the unit in November 1987, it was suggested that as most of the credit taken had to be expunged subsequently, the assessee could be allowed only proportionate credit on inputs used in final product cleared on payment of duty.

During subsequent audit (November 1989) it was noticed that while the procedure

suggested by Audit was followed from February 1988, the correctness of the credits availed earlier was not examined by the department. A test check of the credits availed during the period from April 1986 to June 1986 revealed that the assessee had availed a credit of Rs.11,30,708 in excess of the actual credit admissible as per the procedure suggested by Audit.

On this being pointed out in audit (November 1988) the department stated that the jurisdictional Assistant Collector, was asked to work out the excess credit. Later, the department stated (June 1990) that the actual excess credit to be expunged for the period from March 1986 to June 1986 worked out to Rs.7,93,902 only and that action was being taken to recover the same.

Ministry of Finance did not admit the objection and have stated (November 1990) that in the instant case it was ensured that proportionate credit availed on the exempted final products were expunged before the clearance of the said final products.

But the fact remains that inspite of precautionary measures taken by the department there was short reversal of Modvat credit on which the Ministry of Finance have not given any coments.

iii) Medical and surgical instruments

A manufacturer of medical and surgical instruments and apparatus falling under sub heading 9018.00 took credit amounting to Rs.4,19,715 in respect of duty paid on inputs under Modvat scheme during the period from December 1986 to May 1988. Since medical and surgical instruments and apparatus were exempt from duty in terms of classification list filed by the manufacturer on 11 August 1986 and adjudication order passed by the Assistant Collector on 16 May 1988, Modvat credit of Rs.4,19,715 was not admissible.

On this being pointed out in audit (March 1989), the department accepted the objection (May 1990) and confirmed that the incorrect Modvat credit had been withdrawn in April 1989.

Ministry of Finance have accepted the underassessment (August 1990).

iv) Polyethelane granules

An assessee engaged in the manufacture of rigid plain polyethelene films and polyethelene sheets also manufactured cellular polyethelene sheets and polyethelene liners falling under headings 39.21 and 39.23 respectively availing of Modvat credit of duty paid, inter alia, on inputs like low density polyethelene granules, high density polyethelene granules. The assessee cleared some quantities of the cellular polyethelene sheets and polyethelene liners to 100 per cent export oriented units without payment of duty. Proportionate credit of duty paid on inputs used in the manufacture of such final products cleared to 100 per cent export oriented units without payment of duty, however, was neither reversed by the assessee nor disallowed by the department. This resulted in irregular availment, by the assessee of credit of Rs.3.54 lakhs on goods cleared of the value of Rs.11.81 lakhs during 1987-88 and 1988-89 without payment of any excise duty.

The irregularity was brought to the notice of the department in September 1989 and to the Ministry of Finance in June 1990.

Ministry of Finance have admitted the objection (August 1990).

v) Aluminium wires

A manufacturer availed credit for duty paid on aluminium wires of thickness above 3.25 mm (rate of duty 30 per cent ad valorem) which were used for manufacture of aluminium wires of thickness less than 3.25 mm. Though these final products were cleared without payment of duty claiming exemption under a notification issued on 13 May 1988, the credit availed by the assessee on input was not reversed. Clearance of such final products under exemption was, therefore, irregular and resulted in non levy of duty of Rs.3,18,655 on final products valued at Rs.10,61,603 cleared between 29 June 1989 and 19 October 1989.

On the irregular availment of credit being pointed out in audit (January 1990) an amount of Rs.57,191 on account of credit availed on

inputs used in the manufacture of final products cleared in the month of June 1989 was recovered on 12 January 1990. Action for recovery of the balance amount has not been initiated by department (July 1990).

Ministry of Finance have admitted the objection (November 1990).

3.56 Availment of credit not restricted

As per rule 57A of the Central Excise Rules, 1944 credit for duty paid on inputs used in or in relation to the manufacture of final products is allowed to a manufacturer which can be utilised by him towards payment of duty leviable on such final products.

i) Spent sulphuric acid

As per a clarification issued by the Board on 29 July 1988, spent sulphuric acid, a by-product arising in the manufacture of organic surface active agents from concentrated sulphuric acid and alkyl benzene, was not a manufactured product and no duty was payable on it. Modvat credit on the concentrated sulphuric acid was to be restricted to the amount of acid actually consumed in sulphonation reaction which was to be arrived at by deducting the duty equivalent of spent acid from the duty paid on concentrated sulphuric acid or oleum initially charged. This position was further confirmed by a clarification issued on 21 March 1989.

A licensee manufacturing detergent powder falling under chapter 34 was availing Modvat credit in respect of sulphuric acid and oleum used as inputs. As per Boards' instructions issued on 29 July 1988 Modvat credit should be restricted to the duty element on the concentrated sulphuric acid actually consumed in sulphonation reaction, by deducting the duty equivalent of spent acid obtained during the process of manufacture from the duty paid on concentrated sulphuric acid or oleum initially charged. This was not done.

When the desirability of restricting the credit taken by the licensee to the duty element on sulphuric acid and oleum actually consumed was pointed out in audit (December 1988) the department accepted (May 1990) the objection and raised demands aggregating to Rs.32,69,098 for the period from March 1986 to December 1989.

Ministry of Finance have accepted the underassessment (October 1990).

ii) Printed wrapper paper

In terms of notification issued on 1 March 1986 under rule 57A of the Central Excise Rules, 1944, as amended, Modvat credit on inputs, namely paper and paper board (other than paper and paper board falling under heading Nos.48.03, 48.06, 48.09, 48.10 or sub heading Nos.4802.91 or 4811.40 of the schedule to the Central Excise Tariff Act, 1985), shall be restricted to Rs.800 per tonne or the actual duty paid, whichever is less.

(a) A manufacturer of toilet soap in a collectorate availed of Modvat credit on printed wrapper paper brought into the factory for packing soap cakes, in excess of the prescribed limits. This resulted in availment of excess Modvat credit to the extent of Rs.7,03,202 during September 1988 to September 1989.

On this being pointed out in audit (December 1989) the department stated (January 1990) that the restriction applied only to paper and paper board and not to articles of paper and paper board. The department also added that printed wrapper paper was classified by the manufacturer under sub heading 4823.90 and quantified by him in the form of numbers and not on the basis of weight.

The department's reply is not acceptable for the reason that the subject goods (inputs) were classified and suffered duty under heading 48.23. This heading has not been excluded from the purview of notification dated 1 March 1986.

Ministry of Finance have stated that the matter is under examination (November 1990).

(b) An assessee engaged in the manufacture of paper bags falling under heading 48.18 of the schedule to the Central Excise Tariff Act, 1985, used R.M. sack paper (classified under sub heading 4804.29) as inputs and took credit of duty paid thereon at full rate i.e., 10 per cent ad valorem plus Rs.500 per tonne and 10 per

cent plus Rs.1800 per tonne in some cases instead of at Rs.800 per tonne and utilised the same towards payment of duty on final product under Modvat scheme. This resulted in irregular availment of Modvat credit to the extent of Rs.2.42 lakhs during the period from December 1987 to December 1988.

The irregularity was pointed out in audit to the department in May 1990 and to the Ministry of Finance in August 1990.

Ministry of Finance have admitted the objection (October 1990).

3.57 Clearance of "inputs" as such at lower/ nil rate of duty

As per a notification dated 20 May 1987 issued under rule 57A of the Central Excise Rules, 1944, Modvat credit of duty paid on paper and paper board has been restricted to Rs.800 per tonne or the actual amount of duty paid whichever is less. Under the provisions made in rule 57F(1)(ii) ibid the inputs in respect of which credit has been allowed under rule 57A may be removed from the factory for home consumption on payment of appropriate duty of excise as if such inputs have been manufactured in the said factory.

i) Paper and paper boards

(a) The inputs 'paper and paper board' for which restricted credit at the rate of Rs.800 per tonne has been availed of will have to pay duty at the appropriate effective rate of duty if these are cleared for home consumption.

Three assessees availing themselves of restricted Modvat credit on paper (sub heading 4802.99) at the rate of Rs.800 per tonne were allowed to clear the paper to their second unit on payment of some rate of duty although the appropriate rate of duty was 10 per cent ad valorem plus Rs.1400 or Rs.1470 per tonne. This has resulted in short payment of duty of Rs.18.62 lakhs (approximate) during the period from August 1987 to June 1989.

On the irregularities being pointed out in audit (July 1989, October 1989 and November 1989) the department did not admit the audit objection in two cases and contended (March 1990) that the rule did not provide for discharging duty at the full rate. It added that as per section 2(f) "manufacture" includes any process incidental or ancillary to the completion of a manufactured product. In the instant case no manufacture was involved on inputs and the question of payment of duty at the higher rate in case of transfer of goods under rule 57F(1)(ii) did not arise.

Ministry of Finance have stated (November 1990) that the matter is under examination.

ii) Zinc and articles thereof

An assessee manufacturing zinc and articles thereof chargeable to duty under chapter 79 took Modvat credit of Additional Duty paid under the Customs Tariff Act, 1975, in respect of inputs falling under heading 39.06 imported for use in the manufacture of zinc. Out of these 33.975 tonnes of inputs (Magnafloc E351 and E155) were removed from the factory during the period between 14 November 1986 and 3 January 1990 without payment of duty. This resulted in non levy of duty amounting to Rs.14,35,443.

On the irregularity being pointed out (April 1990) in audit, the department admitted the facts and intimated (June 1990) that the entire amount had been recovered in May 1990 by debiting the amount in the Personal Ledger Account maintained by the unit.

Ministry of Finance have accepted the underassessment (September 1990).

iii) Nickel catalyst

An assessee engaged in the manufacture of soap (heading 34.01) availed of during the year 1988-89 credit of duty paid under Modvat scheme on 20,500 kilograms of nickel catalyst (sub heading 3815.00) being an input used in the manufacture of soap towards payment of duty on final product viz. soap. Nickel catalyst was, however, sent to a job worker without payment of duty under rule 57F(2) read with notification dated 25 March 1986 for manufacturing hardened rice bran oil (HRBO heading 15.04). The job worker instead of sending back HRBO so manufactured to the

assessee, subjected the HRBO to further processing and sent soap noodles (heading 34.01) on payment of duty which the assessee took credit in RG23A Part II. This led to taking of credit twice - once on nickel catalyst and again on soap noodles. The credit of duty on nickel catalyst to the extent of Rs.4.47 lakhs for the year 1988-89 should have been reversed.

On this being pointed out (January/ February 1990 and April 1990), the department stated (April 1990) that a show cause-cum demand notice for Rs.5,19,514 has been issued.

Ministry of Finance have admitted the procedural irregularity (October 1990).

iv) Vegetable oil

(a) An assessee manufacturing biscuits (heading 19.05) declared vanaspati falling under heading 15.04 as one of the inputs under rule 57G and availed Modvat credit at Rs.900 per tonne as per the notification cited though duty had been paid at Rs.1900 per tonne on the inputs. The assessee cleared a portion of the above input as such under rule 57F(1)(ii) on payment of duty at Rs.900 per tonne i.e., the rate at which credit was availed on that input, instead of discharging the duty at Rs.1,900 per tonne which was normally payable on the inputs. The omission to pay duty on vanaspati at Rs.1,900 per tonne for the clearances made during the period from September 1987 to October 1989 resulted in short recovery of duty of Rs.1,26,991.

On this being pointed out in audit (February 1988/February 1989), the Additional Collector (Audit) accepted (April 1990) the audit contention and reported issue of show cause notice for the period from 29 July 1989 to 13 January 1990 demanding duty of Rs.47,291.

Further progress regarding confirmation of demand and action taken for recovery of duty short paid for the period September 1987 to 28 July 1989 has not been received (May 1990).

Ministry of Finance have stated that the matter is under examination (November 1990).

(b) An assessee took Modvat credit on vegetable products at the rate of Rs.900 per tonne being the maximum available credit for the manufacture of biscuits in terms of a notification dated 19 June 1987 and subsequently transferred a portion of the inputs to his second factory on payment of duty at the same rate at which credit had been taken thereon, though as per rule, duty was payable at the rate of Rs.1900 per tonne. This having not been done there was a short payment of duty to the extent of Rs.1,13,125 during the period from April 1988 to June 1989.

On the irregularity being pointed out in audit (August 1989) the department did not admit the audit objection and contended (January 1990) that rule does not provide that duty should be discharged at the full rate, i.e., Rs.1900 per tonne.

Department's contention is not acceptable to audit inasmuch as rule 57F(1)(ii) provides for payment of duty on inputs removed as such as if such inputs have been manufactured in the said factory. Hence inputs cleared as such will attract duty at the effective rate of Rs.1900 per tonne and not at the concessional rate of Rs.900 per tonne.

Ministry of Finance have stated that the matter is under examination (November 1990).

3.58 Iregular availment of Modvat credit due to procedural irregularities

i) Credit availed without filing detailed declaration

As per rule 57G of the Central Excise Rules, 1944, a manufacturer intending to avail the input relief under rule 57A shall file a declaration indicating the description of the inputs intended to be used in the manufacture of final products and take credit of the duty paid on the inputs received by him after obtaining dated acknowledgement for such declaration. The Board in their order dated 14 November 1986 also clarified that rules permit credit of duty only in respect of those inputs which have been included in the declaration.

A manufacturer took credit of Rs.9.84 lakhs being the duty paid on different inputs without filing any detailed declaration of inputs

and outputs required under the rules mentioned above. The assessee only submitted an application to the jurisdictional Assistant Collector of Central Excise stating that Modvat credit would be availed of from 1 April 1986. The credit so taken without any detailed description of inputs and outputs resulted in irregular availment of Modvat credit of Rs.9.84 lakhs during the period from September 1986 to March 1989.

On the irregularity being pointed out in audit (June 1989) the department confirmed the audit observation but argued (January 1990) that instead of treating the case as "irregular availment of credit" this could at best be treated as technical omission.

Ministry of Finance have however admitted the objection in principle (November 1990).

ii) Credit availed before obtaining acknowledgement

As per rule 57G(2) of the Central Excise Rules, 1944, the credit of duty paid on inputs may be taken under rule 57A after obtaining the dated acknowledgement of the declaration filed under rule 57G(1). Credit of duty paid on such inputs received immediately before obtaining the dated acknowledgement of the declaration may, however, be allowed by the department, subject to fulfilment of prescribed conditions, under rule 57H ibid.

An assessee in the public sector, manufacturing, interalia, oil rigs (sub heading 8479.00) had filed a declaration under rule 57G on 18 February 1987 for availment of Modvat credit of duty paid on inputs used in the manufacture of the rigs. The department acknowledged the same on 20 February 1987. The assessee, however, took credit of duty of Rs.9,67,387 paid on these inputs between 12 February 1987 and 19 February 1987. No permission of the department was also obtained under rule 57H. Credit of duty taken before the dated acknowledgement was, therefore, irregular and required to be expunged.

On the irregular availment of credit being pointed out in audit (June 1988) the department stated (June 1988) that the matter would be examined. Reply to the factual statement issued in May 1990 has not been received (July 1990).

Ministry of Finance have admitted the objection (November 1990).

iii) Incorrect availment of Modvat credit on goods cleared to job workers

Under rule 57 F(2) of the Central Excise Rules, 1944, a manufacturer may, with the permission of the Collector of Central Excise and subject to such terms and conditions and limitations as he may impose, remove partially processed inputs in respect of which credit of duty paid thereon has been availed under rule 57A of the rules *ibid*, to a place outside the factory for the purpose of test, repairs, refining, re-conditioning or carrying out any other process necessary for the manufacture of final product. However, such goods should be received back in the factory within sixty days from the date of removal or such extended period as the Collector of Central Excise may allow.

Three manufacturers in a collectorate removed during the period May 1986 to June 1989 inputs on which credit of duty paid thereon had been availed under rule 57A to a place outside their factory for further process under rule 57 F(2). Although the goods were required to be received back within a period of sixty days, yet those had neither been received back nor the credit of duty availed thereon had been reversed. The credit of duty involved amounted to Rs.8,01,453. No extension of the time limit was sought for by the assessee or granted by the department in this case.

On the mistakes being pointed out in audit (between March 1989 and March 1990) the department reported (December 1989 and May 1990) that an amount of Rs.5,13,315 had been got debited (October 1989 and March 1990) in RG 23A Part II account of the assessees and that in case of one of these assessees the balance inputs had been received back and have been accounted for by the assessee. Subsequent verification of records of the assessee revealed a further recovery of Rs.65,481 by debit in RG 23A Part II account in February and April 1990.

Ministry of Finance have accepted the underassessment (December 1990).

iv) A partnership firm manufacturing laminated sheets was availing Modvat credit on paper and chemicals used as inputs, based on a declaration filed on 5 March 1986. Consequent on the dissolution of the firm on 31 December 1986, the factory was taken over by a private limited company. The new manufacturer did not file a declaration under rule 57G. Nevertheless, the new manufacturer not only took credits amounting to Rs.4,94,556 being duty paid on the inputs received during January 1987 to March 1987 but also took a credit of Rs.41,574 which was lying unutilised in the account of the previous manufacturer as on 31 December 1986.

The irregularity was pointed out to the department in June 1988 and to the Ministry of Finance in August 1990.

Ministry of Finance have admitted the objection (Octoer 1990).

3.59 Credit of duty paid on inputs not reversed

i) Inputs contained in wastes not reversed

As per rule 57F(4) of the Central Excise Rules, 1944, any waste arising from the processing of inputs in respect of which credit had been taken may be removed on payment of duty as if such waste is manufactured in the factory.

An assessee engaged in the manufacture of travel goods falling under sub heading 4201.10 of the schedule to the Central Excise Tariff Act, 1985, availed of credit of duty paid on aluminium channels etc., falling under chapter 76 and plastic materials falling under chapter 39 under rule 57A of the rules *ibid* and utilised the same towards payment of duty on the finished products. The aluminium and plastic waste and scrap arising in the manufacture of finished goods were removed without payment of any duty in terms of exemption notifications issued in August 1984 and in March 1986 respectively and as further amended. As the assessee had availed Modvat credit the exemption on waste/scrap was not admissible.

When audit called for details in respect of the waste and scrap cleared by the assessee (March 1989) during the period from April 1986 to July 1988, the department initiated action for reversal of credit of inputs contained in the waste and scrap by issue of show cause-cum demand notices for Rs.23.02 lakhs for the period from March 1987 to April 1989.

The department informed (April 1990) that duty of Rs.4.95 lakhs was paid on 5 March 1990 by debit to his Personal Ledger Account and show cause-cum demand notice for Rs.18.07 lakhs was pending adjudication.

Ministry of Finance did not admit the objection and have stated (November 1990) that waste and scrap of plastics are liable to nil rate of duty as per notification dated 1 March 1988 if manufactured from duty paid goods falling under chapter 39. Ministry added that the waste and scrap cleared in this case fulfil the condition of the said notification and as such were cleared on payment of nil rate of duty.

Ministry's comments are not acceptable as any waste arising from the processing of inputs in respect of which Modvat credit has been taken may be removed only on payment of duty as if such waste was manufctured in the factory.

In similar circumstances the clearance of waste of iron & steel at 'nil' rate of duty is admissible if credit under rule 56A or 57A on the inputs used is not availed of. The absence of similar provision in the notification dated 1 March 1988 has led to non levy of duty on clearance of waste at nil rate of duty even after the assessee has already availed credit on inputs under rule 57A.

ii) Surplus credit not expunged

As per rule 57A of the Central Excise Rules, 1944, credit of duty paid on specified inputs is allowed if such inputs are used in or in relation to the manufacture of specified final products and the same may be utilised towards payment of duty of excise leviable on the final products. In terms of clarifications issued by the Central Board of Excise and Customs on 1 July 1986 and another on 5 October 1989 surplus credit arising out of input going into manu-

facture of a particular product cannot be utilised for discharging duty on another product.

Two manufacturers in a collectorate producing different commodities were allowed to utilise excess credit arising out of inputs used in the manufacture of specified final products towards payment of duty on other products in the manufacture of which inputs were not used at all. Hence utilisation of such excess credit was irregular as per Board's clarification dated 5 October 1989 and had resulted in an irregular availment of credit of Rs.1.08 lakhs during the period from April 1988 to February 1990.

The mistakes were pointed out in audit to the department in March 1990 and to the Ministry of Finance in August 1990.

Ministry of Finance have admitted the objection (November 1990).

3.60 Irregular availment of additional credit

As per rule 57E of the Central Excise Rules, 1944, if duty paid on any inputs in respect of which credit has been allowed under rule 57A, is varied subsequently due to any reasons resulting in payment of refund to or recovery of more duty from the manufacturer or the importer of the inputs, the credit allowed shall be varied accordingly by adjustment in the credit account maintained, and if such adjustment is not possible for any reason, by cash recovery from or refund to the manufacturer. There was no such provisions up to 28 February 1987 for adjustment of credit where additional duty was demanded and paid later. The Board also in a circular dated 30 June 1989 clarified that retrospective effect to amended rule 57E could not be granted.

A manufacturer was allowed to take Modvat credit (28 May 1988) on account of differential duty paid by another manufacturer on 30 December 1986 from whom inputs were received due to enhancement of assessable value during the period from 18 March 1986 to 30 December 1986. As rule 57E was amended from 1 March 1987 and 15 April 1987 permitting credit on such occasion, grant of additional credit prior to that date was irregular. This had resulted in availment of inadmissible Modvat credit of Rs.12.84 lakhs.

On the mistake being pointed out in audit (October 1989) the department did not admit the audit objection and contended (February 1990) that rule 57A read with a notification dated 1 March 1986 clearly allowed any duty of excise paid on the goods to be taken as credit. It added that credit was allowed on the basis of an order passed by the Collector (Appeals) of central excise.

Department's contention is not correct inasmuch as the amendment of rule 57E on 1 March 1987 itself speaks of the admissibility of such type of credit only from 1 March 1987. Moreover, the department's reply runs counter to the clarification issued by Board on 30 June 1989. The grant of credit by Collector (appeals) in the instant case related to the period from 1984 and again from 1 March 1986 to 17 March 1986 which was prior to the introduction and amendment of Modvat scheme. Hence the order passed by Collector (Appeals) has no bearing on the present issue.

Ministry of Finance did not admit the objection and have stated (November 1990) that as held by the CEGAT {1990 (47)/ELT-394 (TBL)} the specific provision of rule 57E after its amendment from 1 March 1987 does not go against the substantive provisions of rule 57A which is the basic authority for the Modvat scheme and amended provisions are in the nature of clarification only and, therefore, benefit in question would be available right from 1 March 1986.

Ministry's reply is not acceptable as it runs counter to the Board's clarification dated 30 June 1989 referred above.

3.61 Incorrect availment of credit on inputs not covered under Modvat scheme

In terms of rule 57F(I), Modvat credit on inputs can either be utilised for payment of duty on the final product for which such inputs have been brought into the factory or for payment of duty on inputs cleared as such for home consumption or for export, as if such inputs have been manufactured in the said factory. As such, where the credit taken on inputs has already been utilised by a manufacturer for payment of duty on final product (aerated water)

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prior to 1 October 1987 without utilising the said inputs, duty will have to be collected in respect of such inputs as the final product (aerated water) was no longer covered under Modvat scheme under a notification dated 9 September 1987 effective from 1 October 1987.

i) Two manufacturers of aerated waters and sweet drinks under chapter 22, had stock balances of different inputs as on 1 October 1987 involving Central Excise duty to the tune of Rs.6.23 lakhs. As the manufacturers utilised the inputs lying in stock after 1 October 1987 in the manufacture of aerated waters which ceased to be under Modvat scheme, the central excise duty amounting to Rs.6.23 lakhs was to be levied in respect of the inputs, for which credit had already been taken and utilised.

On the mistake being pointed out in audit (February 1990), the department while accepting the audit objection stated (April 1990) that show cause cum demand notice is being issued invoking section 11A of Central Excise Act, 1944.

Ministry of Finance have accepted the underassessment (September 1990).

ii) An assessee engaged in the manufacture of switch gears and parts thereof falling under heading 85.37 and 85.38 respectively of the schedule to the Central Excise Tariff Act, 1985, availed credit of duty paid on input transformer oil falling under heading 27.10, under rule 57A of the Central Excise Rules, 1944. Since chapter 27 was not mentioned in the table under the notification issued in March 1986 under rule 57A of the said rules, availment of Modvat credit of duty paid on transformer oil and utilisation of the same towards payment of duty on switch gears and parts thereof was not in order. Incorrect availment of credit of Rs.5.22 lakhs of duty paid on ineligible inputs during the period from November 1987 to February 1989 resulted in excess credit to the assessee.

The irregularity was pointed out in audit to the department in March 1990 and May 1990 and to the Ministry of Finance in August 1990.

Ministry of Finance have admitted the objection (November 1990).

3.62 Irregular availment of notional higher credit

i) Higher notional credit of basic excise duty

As per rule 57A of the Central Excise Rules, 1944, credit for duty paid on inputs used in or in relation to the manufacture of final product is allowed to a manufacturer which can be utilised by him towards payment of duty leviable on such final products. As per rule 57B of the said rules, where duty on inputs has been paid under a notification exempting them from a part of duty on the basis of value of clearances of such inputs during any specified period, credit shall be allowed at a rate otherwise applicable to such inputs (higher notional credit). As per a notification issued on 1 March 1986, as amended, the credit in respect of inputs received in a factory from 1 April 1988, shall be allowed under rule 57B at the rate of duty aplicable under the said notification plus an amount calculated at the rate of 5 per cent ad valorem or at the rate of duty otherwise applicable whichever is less.

The Central Board of Excise and Customs in consultation with the Ministry of Law, clarified on 12 September 1988 that whenever credit of duty actually paid on the inputs was availed by an assessee even though he was entitled to notional higher credit under rule 57B, he shall not be entitled to take such notional higher credit at a later date. In other words, if the notional credit is not availed at the time of receipt of inputs, it cannot be availed at a later date.

Four assessees in three collectorates were allowed to avail notional higher credits under rule 57B of the Central Excise Rules, 1944, aggregating to Rs.4,59,919 at subsequent dates on the ground that these credits had not been availed by the them at the time of receipt of inputs when original (actual) credits were taken. As the notional credits were not allowable at a later stage, in terms of Board's clarification dated 12 September 1990 this resulted in irregular availment of Modvat credit of Rs.4,59,919 in the aforesaid cases.

On the irregularities being pointed out

in audit (March 1989, June 1989, January 1990 and February 1990), the department stated (August 1989) that action was being initiated for issue of a show cause notice in the first case. Results of adjudication thereon and report of action taken in the other cases have not been received (June 1990).

Ministry of Finance have admitted the objections (October and November 1990).

ii) Higher notional credit of special excise duty

As per provisions made in para 5 of a notification dated 1 March 1986 (issued under rule 8(1) of Central Excise Rules, 1944) the credit of duty paid on specified goods at concessional rate shall be allowed under rule 57B of the rules at the rate otherwise applicable but for the notification.

Under Finance Act 1988, special excise duty was imposed on certain commodities from 1 March 1988. But the benefit of higher notional credit under rule 57B read with notification dated 1 March 1986 is limited to basic excise duty alone since the said rule refers to a notification issued under rule 8(1) and not under any clause of the Finance Act. Hence, if higher notional credit is allowed in respect of special excise duty also it will tantamount to allowing more credit than what is leviable as special excise duty under the Finance Act, 1988.

Ministry of Finance in a letter dated 14 June 1988 also held that credit of special excise duty is to be allowed at the actual rate of duty paid on inputs obtained from small scale units and the benefit of higher notional credit for special excise duty shall not be allowed.

Four manufacturers brought inputs from small scale units on payment of concessional rate of basic excise duty and special excise duty and were allowed credit at the rate otherwise applicable without limiting the amount of credit of special excise duties actually paid. Since the benefit of higher notional credit of special excise duties was not allowable as per Ministry's clarification dated 14 June 1988, the utilisation of such credit towards the payment of duty on final products was irregular. This has, therefore, resulted in irregular availment of special excise duty credit of Rs.1.19 lakhs during the period from March 1988 to October 1989.

On the mistakes being pointed out in audit (December 1988 to October 1989) the department stated (February 1989 and May 1990) that demands were being raised to recover the excess credit availed of in two cases while in another case the amount had been realised. No reply has yet been received from the department in respect of the remaining case.

Ministry of Finance have accepted the underassessment (November 1990).

3.63 Irregular availment of deemed credit

As per the first proviso to rule 57G(2) of the Central Excise Rules, 1944, no Modvat credit shall be taken, unless the inputs are received in the factory under the cover of a duty paying document evidencing payment of duty. In terms of the second proviso, Government may direct that with effect from a specified date, that all the stocks of specified inputs in the country, except such stocks as are clearly recognisable as non duty paid, may be deemed to be duty paid and credit of duty in respect of such inputs may be allowed at specified rates without production of documents evidencing payment of duty.

An assessee manufacturing goods falling under chapter 84 and 85 and availing Modvat benefits inter alia, availed deemed credit on aluminium alloy ingots for use in the manufacture of manual typewriters (heading 84.69) in terms of Government of India orders dated 2 November 1987. As the aluminium alloy ingot manufactured out of aluminium ingots were exempt from payment of duty in terms of a notification dated 1 August 1984, as superseded by notification dated 13 May 1988, the availment of deemed credit without production of duty paying documents was not in order. The credit availed during the period from September 1987 to September 1988 amounted to Rs.1,78,320.

On this being pointed out by audit (March 1989), the department accepted the objection and intimated (October 1989), that the amount was expunged from the proforma account in March/June 1989.

Ministry of Finance have accepted the underassessment (July 1990).

3.64 Other Irregularities

i) Inputs not used in declared final products

(a) Rule 57F(3) of the Central Excise Rules, 1944, provides that credit of specified duty allowed in respect of any inputs may be utilised towards payment of duty on the final product, in or in relation to the manufacture of which such inputs are intended to be used as per declaration filed under sub rule (1) of rule 57G ibid.

An assessee manufactured mopeds of 50 cubic centimetres engine capacity and availed credit of duty paid on inputs intended to be used in the manufacture of mopeds only. The unit also held in stock scooters of 150 cubic centimetres engine capacity manufactured prior to 1 March 1986 when production of scooters had been suspended. Duty on scooters out of this stock cleared by the unit during the period from April 1988 to June 1989 was to be paid in cash. It was noticed in September 1989 that duty amounting to Rs.4,75,663 on these clearances of scooters was, however, adjusted against the Modvat credit of duty paid on inputs intended for use in the mopeds. This resulted in the irregular utilisation of Modvat credit and non payment of duty on scooters in cash to this extent.

The irregularity was pointed out in audit to the department in November 1989 and to the Ministry of Finance in June 1990.

Ministry of Finance have admitted the objection (August 1990).

(b) As per rule 57A of the Central Excise Rules, 1944, a manufacturer can avail credit for duty paid on inputs used in or in relation to the manufacture of specified final products in his factory. Rule 57I of the said rules further provide that if any of the inputs on which credit has been taken are not duly accounted for as having been disposed of for the specified purpose viz., for the manufacture of final products, the manufacturer is liable to pay the duty leviable on such inputs.

A manufacturer of colour television sets was availing Modvat credit for duty paid on picture tubes. Out of 1322 picture tubes issued for manufacture during the period from 1 April 1989 to 31 July 1989, only 926 picture tubes were used in the manufacture of television sets. Production in assessee's factory was stopped from 1 August 1989. But no picture tubes were lying in stock on that date. Duty was, therefore, leviable on the remaining quantity (396 numbers) of picture tubes which were not apparently used in the manufacture of the final product. Credit of duty irregularly availed of amounted to Rs.3,83,880.

Non levy of duty was pointed out in audit to the department in February and May 1990 and to the Ministry of Finance in August 1990.

Ministry of Finance have admitted the objection (October 1990).

(c) Rule 57F ibid further provides that if any input in respect of which credit under rule 57A was taken is not used in or in relation to the manufacture of final products the credit so availed on such inputs shall be reversed. It is well settled that an accessory not being the component part of the cost thereof would not form part of assessable value of the finished products vide decision of CEGAT in the case of Macneill and Magor Limited, Calcutta {1986 (25) ELT 556 (Tribunal)}.

An assessee took Modvat credit of duty paid on printer ribbon (heading 96.12) purchased from outside and utilised the said credit towards payment of duty on 'dot matrix printer' (heading 84.71). Such printer ribbons were cleared by the assessee simultaneously with the said finished product as necessary for operating the printer and not used as inputs in or in relation to the manufacture of the finished product. The Modvat credit was, therefore, not admissible and resulted in irregular utilisation of credit of Rs.2,96,687 during the period from November 1988 to September 1989.

The irregular was pointed out in audit to the department in January 1990 and to the Ministry of Finance in August 1990.

Ministry of Finance have admitted the objection (November 1990).

(d) As per instructions issued by the Ministry in April 1987, the manufacturer who maintains the account of credit chapter wise should submit a statement alongwith monthly return (RT-12) indicating separately for each of the final product details of inputs, duty credit availed of etc., to ensure that there is no misuse of Modvat credit.

An assessee engaged in the manufacture of sensitised paper and developer for developing semi dry paper falling under sub heading 3703.10 and 3707.00 respectively had filed (December 1988) classification list for the manufacture of sensitised film or lacquered film falling under sub heading 3702.90. He had also filed (February 1988 and August 1989) declarations that he would be availing of credit of duty paid on inputs 'sensitised film' and 'photopolymer film' used in the manufacture of 'sensitised film' or 'lacquered film'. Though the products sensitised film or lacquered film were not at all manufactured as seen upto November 1989, credit of duty paid on the inputs were availed and utilised by the assessee towards payment of duty payable on other products namely 'sensitised paper' and 'chemical preparation' for developing semi dry paper. This has resulted irregular utilisation of such credit of Rs.2.55 lakhs during the period from February 1988 to July 1989.

On the irregularity being pointed out in audit (November 1989), the department accepted the objection and intimated (March 1990) recovery of it by debit to Personal Ledger Account and RG 23 account in February 1990.

Ministry of Finance have accepted the underassessment (July 1990).

ii) Packaging material

Rule 57A of the Central Excise Rules, 1944, provides for allowing credit of duty paid on specified inputs used in or in relation to the manufacture of specified final products and for utilising the credit so allowed towards payment of duty on such final products. As per clause(b) of explanation below the aforesaid rule inputs include packaging materials, if such packaging materials were brought in a ready-to-use condition. This position was confirmed by the Central Board of Excise and Customs on 3 March 1988. The Board had further clarified in September 1988 that Modvat credit on the inputs used in the manufacture of packaging material can be used for payment of duty on such packaging material whether consumed captively or otherwise and that the duty paid on such packaging material can then be taken for payment of duty on final products.

An assessee manufacturing razor sets and shaving blades (chapter 82) brought certain inputs namely P.V.C. foils, sheets (chapter 39) and anti-rust tissue paper (chapter 48) and availed credit of duty paid on them. These goods were converted into packaging material partly in his factory and partly through job workers for packing the final products, namely, razor sets and shaving blades. The credit of duty availed on the aforesaid inputs was, however, utilised towards payment of duty on the said final products without observing appropriate central excise procedure for the manufacture of packaging materials, viz., filing of classification list, price lists, filing of declaration under rule 57G, ibid, indicating the packaging material as input etc.. Moreover, the packaging material manufactured from the inputs falling under chapter 39 are themselves exempt from duty as articles of plastics in terms of notification issued on 1 March 1986 and 1 March 1988. Consequently, no credit of duty on the aforesaid inputs would be allowable, even otherwise. This resulted in irregular availment of credit aggregating to Rs.7,21,765 during the period from April 1986 to June 1988.

On the irregularity being pointed out in audit (August 1988) the department stated (March 1989) that a show cause notice issued in August 1988 demanding duty of Rs.6,43,006 covering the period from March 1988 to April 1988 had to be withdrawn after an adjudication in January 1989. An appeal under section 35E of the Central Excises and Salt Act, 1944, had, however, been preferred before the Appellate Collector; two show cause notices covering further demand of Rs.4,83,630 for the period from May 1988 to April 1989 were also issued in June 1989/July 1989.

Ministry of Finance have admitted the objection (May 1990).

iii) Irregular availment of credit on railway wagons

"Railway or tramway goods vans and wagons" were classifiable under heading 86.06 of the schedule to the Central Excise Tariff Act, 1985, and chargeable to duty at the rate of 15 per cent ad valorem. By a notification issued on 20 November 1986, bogies of open eight-wheeler wagons of payload not exceeding 60 tonnes were exempted from the duty of excise in excess of Rs.23,000 per unit provided no credit of the duty paid on the inputs used in the manufacture of such bogies had been taken under rule 56A or 57A of the Central Excise Rules, 1944. This implies that the credit corresponding to the final products cleared under the aforesaid notification should be expunged.

An assessee unit, engaged in the manufacture of wagons, irrigation gates and cement plants, was availing of Modvat credit of the duty paid on the inputs used in their manufacture. The unit opted to pay the concessional rate of duty under the aforesaid notification on bogies of open eight wheeler wagons from 20 November 1986 and cleared 547 bogies between December 1986 and May 1988. Instead of reversing the Modvat credit of duty already availed of on all the inputs used in the manufacture of these bogies, credit amounting to Rs.2,73,500 only, calculated at the rate of Rs.500 per bogie was reversed. Computed on the basis of the credit actually availed of in respect of only two of the inputs, a credit of Rs.4,77,257 should at least have been reversed. This resulted in short reversal of credit to the extent of Rs.2,03,757 in respect of the two inputs alone used in the manufacture of the bogies, besides, the credit taken on all other inputs which was also reversible.

On the irregularity being pointed out in audit (November 1987) the department stated (January 1990) that out of the Modvat credit totalling Rs.10.41 lakhs availed of by the unit of the inputs used in 1818 bogies, the proportional credit of Rs.3.14 lakhs in respect of 547 bogies was required to be reversed and the remaining amount of Rs.40,000 was accordingly debited in July 1989. The basis adopted by the department is not correct. Out of 1818 bogies, 906 bogies were already cleared prior to the introduction of Modvat scheme from 1 March 1986. Therefore, the credit availed of from March 1986 onwards was not meant for bogies already cleared but for remaining 912 bogies only. Accordingly, out of total credit of Rs.10.41 lakhs taken for 912 bogies proportionate credit amounting to Rs.6,24,371 for 547 bogies was to be reversed.

In reply to the Statement of Facts issued in January 1990, the department admitted (July 1990) the fact that the quantum of credit reversed was not correct and stated that action was being taken for ascertaining the extra amount of credit to be reversed and recovery thereof.

Ministry of Finance have accepted the underassessment (October 1990).

iv) Irregular availment of special excise duty credit

As per a notification dated 1 March 1986, as amended on 1 March 1988, credit of special excise duty paid on the inputs in terms of Finance Bill 1988 could be allowed to be taken by a manufacturer of final products under rule 57A of Central Excise Rules, 1944, but utilisation of such credit towards payment of special excise duty on the final products was not permissable till the notification dated 1 March 1986 was further amended on 8 April 1988.

Eleven manufacturers of different final products under three collectorates, who had been availing of the benefit of credit under rule 57A, had irregularly utilised credits aggregating to Rs.6,07,062 towards payment of special excise duty on the final products during the period from 1 March 1988 to 7 April 1988.

On the irregularities being pointed out in audit (July 1988 to April 1989), the department recovered the irregular credit amounting to Rs.3,14,038 in six cases under three collectorates between January 1989 and October 1989. In one case a show cause notice is reported (April 1989) to have been issued while in the remaining four cases department's replies have not been received (May 1990).

Ministry of Finance have accepted the underassessment (September and November 1990).

v) Availment of credit after utilisation of inputs

As per rule 57G of the Central Excise Rules, 1944, a manufacturer intending to avail of Modvat credit under rule 57A should file a declaration indicating the description of the inputs intended to be used in the manufacture of final products and he may take credit of duty paid on the inputs received by him after obtaining dated acknowledgement for such declaration, provided the inputs at the time of their receipt in the factory are accompanied by a gate pass, an A.R-1, a bill of entry or any other document, as may be prescribed by the Board evidencing the payment of duty. He should also submit a monthly return indicating the particulars of the inputs received during the month and the amount of duty taken as credit, alongwith extracts of quantity and duty credit accounts in Part I and II of form RG23A.

A manufacturer of dyes and chemicals, received between August 1986 and October 1986 eight consignments of an input named "Direct Black E-HE Conc" involving duty of Rs.4,97,000. After the consignments were utilised, they were entered in Part I and II of RG23A and credit availed of during November 1987. There is no provision in the rules to allow credit after utilisation of the inputs.

On the irregularity being pointed out in audit (March 1988), the department accepted the objection (July 1989). The amount of Rs.4,97,000 was also realised (June 1988).

Ministry of Finance have accepted the underassessment (July 1990).

vi) Availment of credit of basic customs duty and cess

As per Rule 57A of the Central Excise Rules, 1944, read with a notification issued on 1 March 1986, credit for (i) duty of excise under the Central Excises and Salt Act, 1944, (ii) Special duty of excise under the Finance Acts, 1984 and 1985 and (iii) Additional duty under Section 3 of the Customs Tariff Act, 1975 paid on input used in or in relation to manufacture of final product is allowed to a manufacturer who can utilise the same towards payment of duty leviable on the final products.

Two manufacturers of aluminium wires and cables, irregularly availed Modvat credits in respect of basic custom duty and the cess paid on inputs, amounting to Rs.2,59,532 during the period from January 1988 to July 1988.

On the mistake being pointed out in audit (May 1989), the department intimated (November 1989) that the entire amount was realised in June, August and September 1989.

Ministry of Finance have accepted the underassessment (July 1990).

vii) Under transitional provisions

As per rule 57H(1) of Central Excise Rules 1944, as amended on 5 May 1989, Modvat credit of duty paid on inputs is allowed provided such inputs were lying in stock or are received in the factory after filing the declaration made under rule 57G.

An assessee manufacturing linear alkyl benzene (heading 38.17) was permitted to avail the Modvat credit of duty of Rs.3,05,283 paid on the two inputs (viz. cation/anion resins and nitrogen) under rule 57(H) in September 1989 and November 1989 respectively, received and utilised prior to the date of declaration (September 1989/November 1989). The permission granted was not in order since there was no stock of the above two inputs on the date of declaration as they had been consumed in the manufacture of finished products prior to the date of declaration.

On this being pointed out in audit (January 1990/February 1990), the department admitted (March 1990) the mistake and reported that the credit of Rs.3,05,283 has been expunged in February 1990.

Ministry of Finance have accepted the underassessment (October 1990).

viii) Availment of credit twice

Rule 57A of the Central Excise Rules, 1944, provides the facility of Modvat credit in respect of duty paid on specified inputs used in the manufacture of specified final product. The credit so allowed is on the basis of documents evidencing payment of duty. Rule 57I of the

rules ibid provides that where credit of duty paid on inputs has been taken due to an error, omission or misconstruction, the amount of credit so availed shall be recovered.

Rule 173Q further provides that if a manufacturer takes credit of duty or money in respect of inputs for being used in the manufacture of final products wrongly then all such goods shall be liable to confiscation and the manufacturer shall be liable to a penalty not exceeding three times the value of excisable goods in respect of which any contravention has been committed, or five thousand rupees, whichever is greater.

(a) A manufacturer engaged in the manufacture of excisable goods falling under chapter heading 90.30 availed during April 1988 to January 1989, Modvat credit of Rs.1,79,213 twice. The credit was first availed on the basis of original bill and again on the basis of duplicate copy of the same bill resulting in availment of double credit amounting to Rs.1,79,213.

On the irregularity being pointed out (December 1989) in audit, the department stated that the assessee had debited the amount of Rs.1,79,213 in RG 23A Part II register in December 1989. However, report on action taken against the assessee for the lapse has not been intimated (April 1990).

Ministry of Finance have accepted the underassessment (November 1990).

(b) A public sector undertaking engaged in the manufacture of watches classifiable under chapter 91 imported certain watch components on which Modvat credit of Rs.1,10,770 towards countervailing duty suffered by the inputs was admissible. Credit thereof was, however, afforded against the same bill of entry twice once on the quadruplicate copy and again on the duplicate copy, in the assessee's credit account (RG 23A) on 1 September 1989 resulting in availment of excess credit of Rs.1,10,770 by the assessee.

On the irregularity being pointed out in audit on 8 February 1990, the department accepted the mistake and got the excess credit reversed by the assessee (8 February 1990).

Ministry of Finance have accepted the underassessment (July 1990).

ix) Availment of credit without filing a refund claim

As per rule 173 I of Central Excise Rules, 1944, an assessee can take credit in his account current of duty paid in excess than that assessed by the proper officer as per assessment order on the RT 12 return of the relevant month filed under sub rule (3) of rule 173 G. For any earlier period, the assessee can claim refund of duty paid in excess by filing a refund claim with the jurisdictional Assistant Collector of Central Excise within six months from relevant date under section 11 B of Central Excises and Salt Act, 1944.

Steel tubular poles manufactured by an assessee which were earlier classified under sub heading 7326.90 attracting duty on ad valorem basis, was classified under sub heading 7306.90 attracting duty at specific rates under a notification dated 13 May 1988 as per classification list approved by department effective from 7 November 1988; duty being paid earlier was higher than paid with effect from 7 November 1988. It was noticed during audit (August 1989) that the assessee took a credit of Rs.2,87,652 in February 1989 on account of duty paid in excess on clearances of steel tubular poles during the period from 11 August 1988 to 22 October 1988, for which no refund claim had been submitted with the Assistant Collector of central excise as required under section 11 B. The credit which had been taken without any authority under the Central Excises and Salt Act had also been utilised towards payment of duty. RT 12 return upto February 1989 had already been assessed by the department without any remark with regard to irregular availment of credit and no demand for recovery of the amount irregularly taken as credit and utilised had been raised by the department.

The irregularity was pointed out in audit to the department in August 1989, and to the Minitry of Finance in August 1990.

Ministry of Finance have admitted the objection (November 1990).

x) Modvat credit availed against adjustment of demand

Modvat rules permit a manufacturer to utilise credit of specified duty paid on inputs towards payment of duty on final products in or in relation to the manufacture of which such inputs are intended to be used in accordance with declaration filed under the rules.

An assessee who became entitled to utilise Modvat credits, with effect from June 1987 irregularly utilised the credit in adjustment of demand relating to final products manufactured and cleared in January 1987. Since none of the inputs, on which the assessee had taken credit of duty in RG 23A Part II account from June 1987 onwards, were used in or in relation to the manufacture of final products which were cleared from factory in January 1987, the assessee was not entitled to use Modvat credits taken subsequently on inputs for the first time by it in June 1987.

On the mistake being pointed out in Audit (December 1987) the department intimated (April 1989) that the amount of Rs.2,00,000 had been recovered by debit to the Personal Ledger Account of the assessee in March 1989.

Ministry of Finance have accepted the underassessment (September 1990).

xi) Clearance of excisable goods under debit balance

As per sub rule 3(b) of Rule 57G of the Central Excise Rules, 1944, sufficient credit balance should be maintained by an assessee in his Personal Ledger Account for the purpose of clearing excisable goods. The balance should cover the duty payable on the goods intended to be removed at any time.

RG23A part II Personal Ledger Account of a manufacturer disclosed the following facts :-

i) the assessee cleared excisable goods under minus balance in the months of October 1988, January 1989 and June 1989;

ii) the assessee utilised excess deemed credit on lead ingot from 1 March 1989 to 31 May 1989 though the rate of deemed credit on lead ingot was actually enhanced from 1 June 1989 as per an order issued by the Ministry of Finance; and

iii) as per rule 57C of the Central Excise Rules, 1944, credit of duty on inputs is inadmissible if the final products are exempt. The assessee instead of expunging the duty credit taken on inputs in respect of the goods manufactured and subsequently cleared at nil rate, utilised the same upto the month of June 1989.

Taking into account all these irregular availments of credit, there was a minus balance of Rs.2.48 lakhs at the end of June 1989. The credit balance available in the Personal Ledger Account of the assessee on 30 June 1989 did not cover the aforesaid debit balance in the RG23A Part II Account.

The irregularities were pointed out in audit to the department August 1989 and to the Ministry of Finance in March 1990.

Ministry of Finance admitted the objection and have stated (May 1990) that offence cases have been booked against the assessee.

IRREGULAR GRANT OF CREDIT FOR DUTY PAID ON RAW MATERIALS AND COMPONENTS (INPUTS) AND IRREGULAR UTILISATION OF SUCH CREDIT TOWARDS PAYMENT OF DUTY ON FINISHED GOODS (OUTPUT)

3.65 Irregular availment of credits under rule 57K

i) Vegetable products

(a) As per a notification dated 1 March 1987 as amended, issued under the provisions rule 57K of the Central Excise Rules, 1944, credit of the money taken, on specified fixed vegetable oils used as inputs in the manufacture of vegetable products falling under sub-heading 1504.00, is allowable for payment of duty on clearance of such vegetable products and the credit has to be utilised for payment of

duty on the said final product. As per clause (iii) of the notification, the amount of credit utilised for payment of duty on any individual clearance of the said final products shall not exceed Rs.1,000 per tonne of vegetable products cleared and the excess credit, if any, available in the credit account shall not be refunded to manufacturer or adjusted against or utilised for payment of duty on any excisable goods under any other circumstances.

Three manufacturers produced certain batches of vegetable products which did not contain any of the specified fixed vegetable oils. The manufacturers, however, availed set off of the duty payable on such vegetable products at the rate of Rs.1,000 per tonne from the credit account, where surplus credit was available. This resulted in irregular utilisation of money credit of Rs.286.80 lakhs, during the period from 5 May 1987 to 31 December 1989.

On the matter being pointed out in audit (October 1989), the department did not admit the objection and stated (January 1990 and April 1990) that it was not necessary that the final product should contain the inputs.

The contention of the department is not acceptable in terms of rule 57K read with rule 57N and notification dated 1 March 1987 which, inter alia, prescribed that money credit could only be utilised for payment of duty on clearances of such vegetable products in which specified oils were actually used.

Ministry of Finance did not admit the objection and have stated (November 1990) that the credit taken under rule 57K can be utilised for payment of duty on the final product specified under rule 57K even if the particular batch of the goods being cleared does not contain the specified goods.

Ministry's reply is contrary to the express provisions of the rules and notifications issued in this regard as already explained above.

(b) As per a notification dated 1 March 1987 as amended, issued under the provisions of rule 57K of the Central Excise Rules, 1944, credit may be allowed for payment of duty on vegetable products falling under sub heading 1504.00 at Rs.6,500 per tonne of specified minor oils used in the manufacture of vegetable products. As per rule 57O manufacturers intending to avail of the credit on the inputs should file a declaration indicating the description of the inputs intended to be used in the manufacture of the final product and take credit of money on such inputs received by him and used in the manufacture of the final product after obtaining the acknowledgement for the said declaration.

A manufacturer of vegetable products (sub heading 1504.00) filed the declaration on 7 March 1987 under rule 57-O which was acknowledged by the department on 9 March 1987 for taking credit on the minor oils used in the manufacture of vanaspati. The department allowed the credit of Rs.7,78,895 for the period from 1 March 1987 to 8 March 1987 on the quantity of minor oil which was in process prior to the date of acknowledgment of declaration. As credit on inputs intended to be used in the manufacture of final products was admissible only after obtaining a dated acknowledgement of the declaration, the credit of Rs.7,78,895 allowed on the input in process prior to that date was irregular.

On the irregularity being pointed out (April 1988) in audit, the department did not admit the objection and contended (March 1990) that the credit was correctly allowed on the said quantity of oil which was in process from 1 March 1987 and was subsequently hydrogenated.

The contention of the department is not acceptable as rule 57K (read with rule 57-O) does not provide for grant of credit on inputs which were in process prior to the date of acknowledgement of the declaration.

Ministry of Finance stated (November 1990) that the matter was under examination.

(c) Under the notification issued on 1 March 1987, credit at specified rate for use of palm oil in the manufacture of vegetable product is admissible subject to the condition that the manufacturer shall, within 5 months from the date of taking credit or within such extended period as may be allowed, produce a certificate from an officer not below the rank of the Dep-

uty Director in the Directorate of Vanaspati, vegetable oil and fats to the effect that the said oil is of indigenous origin.

An assessee manufacturing vegetable product availed himself of credit on palm oil without producing the aforementioned certificate within the prescribed time limit. The credit taken on palm oil during the period from March 1989 to May 1989 for Rs.2.86 lakhs was, therefore, irregular.

On this being pointed out in audit (October 1989) the department intimated (June 1990) that the audit objection was correct and steps had been taken to realise the irregular credit.

Ministry of Finance have admitted the objection (November 1990).

ii) Polyvinyl chloride resins

As per rule 57K of Central Excise Rules, 1944, read with a notification dated 1 October 1987 as amended, credit at specified rates on ethyl alcohol used in the manufacture of products (listed in the table annexed to the notification cited) is admissible and the same could be utilised for payment of duty on the said final products subject to the provisions of chapter VAAA and the conditions laid down under the above notification.

(a) An assessee manufacturing polyvinyl chloride resins (39.04) using ethyl alcohol as a raw material availed the benefit of the credit of money scheme with reference to the provisions in para 1 supra. It was noticed in audit (December 1989) that as on 7 December 1989, the credit of balance in proforma account of RG 23 was 'Nil' whereas there was a balance of 4025.609 kilo litres of ethyl alcohol in stock on that date. While under the Modvat scheme credit could be taken and utilised for the quantity of input received but under the money credit scheme, credit could be utilised only for the quantity issued for manufacture of final product and hence there was irregular utilisation of credit of Rs.20.93 lakhs, being the credit taken on ethyl alcohol held in stock as on 7 December 1989.

This was pointed out to the department in January/March 1990 and to the Ministry of Finance in August 1990.

Ministry of Finance did not admit the objection and have stated (November 1990) that neither the provisions of chapter V AAA nor the conditions of notification dated 1 October 1987 stipulate that the credit can be utilised only after ethyl alcohol has been issued for manufacture of final products and that the provisions of rule 57N provide that the credit can be utilised for payment of duty on final products in or in relation to manufacture of which such inputs are intended to be used. The Ministry added that credit has been utilised for payment of duty on the declared final products.

Ministry's comments are not tenable as in the substantive part of chapter V AAA and also in notification dated 1 October 1987 there is a clear provision that the credit is allowable on inputs (ethyl alcohol) used in the manufacture of final products. Rule 57N prescribes the manner of utilisation of credit of inputs intended to be used. The intention is fulfilled when inputs are actually used as per the requirements of rule 57K read with notification ibid.

(b) The credit taken under the provisions of the above notification during any calendar month shall be utilised for payment of duty on the final products, only after the commencement of the succeeding month.

An assessee manufacturing polyvinyl chloride falling under heading 39.04 of the schedule to the Central Excise Tariff Act, 1985 took credit of duty paid on the input ethyl alcohol under the provisions of the above mentioned notification, but utilised the credit so taken in the same calendar month in which it was taken, during the months of June, July and August 1988.

On this irregular utilisation of a total credit of Rs.5,84,112 being pointed out in audit (February 1989), the department accepted the objection and reported (August/December 1989) that the amount was recovered by debit to the personal ledger account on 28 February 1989.

Ministry of Finance have admitted the facts (September 1990).

iii) Ethyl Alcohol

As per a notification issued on 1 October 1987 as amended by a notification dated 3 May 1988, where 'ethyl alcohol' is used in the manufacture of specified final products, a credit of money at the rate of Rs.258 per kilolitre of ethyl alcohol is to be given subject to other conditions specified therein.

An assessee manufacturing 'polystyrene' (sub heading 3903.10) using 'ethyl alcohol' which was manufactured from molasses took credit on the quantity of molasses used in the final product at Rs.60 per tonne with effect from 1 October 1987 instead of taking credit of money on the quantity of 'ethyl alcohol' used as per the aforesaid notification. The incorrect credit so availed of during the period from October 1987 to January 1989 amounted to Rs.14,75,091.

On this being pointed out in audit (February 1989) the department stated (February 1990) that a show cause notice was issued to the assessee. Further developments in the case have not been intimated (June 1990).

Ministry of Finance have stated (November 1990) that the matter is under examiantion.

NON LEVY/SHORT LEVY OF CESS

3.66 Non levy of cess on jute products

i) Jute yarn consumed captively

As per section 3(1) of the Jute manufactures Cess Act, 1983 (effective from 1 May 1984) cess is leviable on every article of jute manufacture specified in the schedule to the aforementioned Act.

Rule 3 of the Jute Manufactures Cess Rules, 1984 (notified on 15 September 1984) further lays down that consumption within the country would attract cess. The words "consumption within the country" cover captive consumption also; thus jute yarns and fabrics captively consumed for further manufacture of jute manufactures are liable to levy of Cess.

As per Board's clarification dated 29 October 1986, issued in consultation with the Ministry of Law, whenever exemption from levy and collection of cess is intended to be given, a specific exemption shall have to be made. Accordingly cess shall have to be levied both at captive consumption stage and at the time of final clearance of finished goods as there is no exemption notification issued in this regard.

(a) Eight jute mills in Calcutta II collectorate did not pay cess on jute yarns consumed within the factory for manufacture of jute products. Cess amounting to Rs.2.35 crores on captive consumption during the period from March 1986 to October 1989 was not demanded by the department. This had resulted in loss of revenue of Rs.2.35 crores during the above mentioned period.

On the mistake being pointed out in audit (June 1988 to January 1990) the department did not admit the audit objection and contended (January 1988 to April 1990) that cess on jute yarns consumed captively for manufacture of jute products was not levied as per a clarification issued by the Board on 30 January 1986.

(b) Another composite jute mill in Calcutta I collectorate did not pay cess on jute yarns consumed captively for manufacture of jute products. Accordingly the department issued show cause cum demand notices on the assessee for non payment of cess on jute yarns consumed captively. Subsequently the demands were dropped by the adjudicating authority on 18 June 1987 on the strength of the clarification issued by the Board in a telex message dated 30 January 1986 that cess on manufacture should be collected only on the final products sought to be cleared from the manufacturer's premises. Action taken by the department on the basis of the above clarification has gone against the aforesaid clarification issued by the Board on 29 October 1986 and has resulted in loss of revenue due to non levy of cess on jute yarn consumed within the factory for production of jute products to the extent of Rs.48.80 lakhs (approx.) during the period from 1 May 1984 to 29 January 1986.

On the irregularity being pointed out in audit (August 1988) the department did not

accept the audit objection and contended (January 1989) that action taken by the department was correct since the clarification had been issued by the Board on 30 January 1986 in this regard.

The contention of the department is not acceptable on the grounds that

a) in the absence of any notification under the Jute Cess Act/Rules ibid, cess was leviable on jute yarns consumed captively;

b) the Supreme Court in their judgment delivered on 30 October 1987 in the case of M/s.J.K.Spinning and Weaving Mills Vs. Union of India upheld the validity of levy of duty on yarn used captively for manufacture of fabrics. Since the Central Excise Act and Rules would apply for levy of cess on jute products also, the Supreme Court's aforesaid judgment would be applicable to levy of cess for the captive consumption of jute yarn also; and

c) the view expressed by the Board on 30 January 1986 in regard to levy of cess is at variance with the opinion of the Ministry of Law communicated by the Finance Ministry in their letter dated 29 October 1986 stating that a notification issued under the Central Excise Act does not automatically become an exemption notification under the Cess Act. Whenever exemption from levy and collection of cess is intended to be given, a specific exemption has to be made.

Ministry of Finance have stated (November 1990) that the note of Law Ministry is being examined in consultation with the Department of Textiles.

ii) Jute bags

Under the Jute Manufactures Cess Act, 1983 there shall be levied and collected by way of cess on every article of jute manufactures containing jute of more than 50 per cent by weight and specified in the schedule to the Act. Laminated jute bag containing more than 50 per cent by weight of jute shall, therefore, be leviable to cess at the rate of Rs.61.35 per tonne as per serial No.10 of the schedule.

An assessee in Calcutta II collectorate got the laminated jute bag manufactured by processors from the jute fabrics on which the central excise duty and cess at prescribed rate had been paid. Two other factories in the same collectorate manufactured the jute bags out of jute fabrics purchased from the market. In all the cases, the laminated jute bags were cleared for sale without payment of central excise duty availing exemption granted under a notification issued on 20 March 1965 as amended on 10 February 1986. But no cess was levied on the clearances resulting in non levy of cess of Rs.1,53,558 during the period from April 1986 to March 1989.

On the omission being pointed out in audit (March and April 1989) the department justified (December 1989) the non levy of cess on the ground that under a clarification issued by the Board on 9 August 1988 laminated jute bags are not liable to pay cess again if they were manufactured from jute fabrics which have already discharged the liability of cess.

The contention of the department is not acceptable as :-

i) Board's clarification is in contravention of the Law Ministry's opinion circulated on 29 October 1986 that though a product is exempt from central excise duty under a notification, cess is leviable unless specifically exempted;

ii) under rule 3 of the Jute Manufactures Cess Rules, 1984, cess is leviable on finished jute products removed for sale or for consumption within the country. Cess is, therefore, leviable both on jute fabrics and laminated jute bags.

Ministry of Finance did not admit the objection and have stated (November 1990) that the Jute Manufacturers Cess Act, 1983 did not provide for collection of cess at multiple points and that a clarification on this point had been issued on 9 August 1988 in consultation with the administrative ministry.

The contention of the Ministry is not tenable even within the meaning of the clarifi-

cation referred to as it provides for the avoidance of multiple stage levy of cess on items manufactured only for captive use and categorically stipulates that cess is to be determined only on the final product sought to be cleared from the manufacturer's premises. The manufacturer in the present case had purchased (cess paid) jute from outside and had cleared jute bags only from his premises. Therefore, cess was leviable on the jute bags on clearance, irrespective of the cess paid character of the raw material used.

3.67 Non levy of cess on automobiles

As per Industries (Development and Regulation) Act, 1951, read with an order issued by the Ministry of Industry on 22 December 1983 cess at the rate of 1/8th per cent ad valorem is leviable on automobiles (motor cars, buses, trucks, motor cycles and the like) from 1 January 1984.

As per rule 3 of the Automobile Cess Rules, 1984, the provisions of the Central Excises and Salt Act, 1944, and the rules made thereunder including those relating to refund of duty shall apply in relation to the levy and collection of the cess as they apply in relation to the levy and collection of duty of excise on the manufacture of automobiles.

Consequent on the introduction of the Central Excise Tariff Act, 1985, with effect from 28 February 1986, central excise duty is leviable on chassis as well as bodies of motor vehicles under chapter 87 of the schedule to that Act as body building tantamounts to manufacture. As such, cess is leviable not only on the chassis but also on the value of the bodies built on such chassis.

Three hundred and six assessees in sixteen Collectorates engaged in the body building activity were allowed to clear motor vehicles with bodies (chapter 87) without levying automobile cess of Rs.41.04 lakhs during different periods between March 1986 and April 1990.

On this being pointed out in audit (between November 1987 and June 1990) the department stated (between August 1988 and June 1990) that on the basis of the clarification issued by the Board on 31 August 1988 on this issue, no cess was leviable again in cases of bodies built by independent body builders, if cess amount was already paid on chassis. It was further stated that as per the provisions of Industries (Development & Regulation) Act, 1951, the cess is leviable provided that the rate of cess shall not in any case exceed one eighth per cent of the value of the goods. Therefore, if the cess was levied in accordance with the provisions of Central Excise Tariff Act, 1985, it would result in cess being levied in excess of the maximum rate of one eighth per cent prescribed in the said Act.

Ministry of Finance did not accept the objections and stated that as clarified by the Board the intention behind the notification levying the cess is to realise such levy from the vehicle manufacturers and not from the body builders.

Ministry's reply given earlier was not accepted when it was informed (June 1989) that the intention of the Ministry of Industry behind the levy of cess as explained in Board's circular dated 31 August 1988 is not reflected in the enacted law and accordingly their reply need reexamination.

3.68 Short levy of cess due to undervaluation

Section 9(1) of the Industrial Development and Regulation Act, 1951 provides for levy and collection as a cess, on all specified goods manufactured or produced, a duty of excise at such rate as may be specified. As per the explanation in the sub-section, the expression "value" refers to the wholesale cash price for which such goods of the like kind and quantity are sold or are capable of being sold for delivery at the place of manufacture and at the time of removal therefrom without any abatement or deduction whatever, except trade discount and the amount of duty (cess) payable.

As per a decision given by the CEGAT in the case of M/s.Telco Limited V/s. Collector of Central Excise, Patna, the central excise duty and the sales tax leviable were; however, to be excluded from the wholesale cash price for determination of value for the purpose of levy of cess. The department not having accepted

the above decision has gone in appeal to the Supreme Court and pending disposal of it, demands for duty were to be issued in all cases on the basis of value inclusive of excise duty and sales tax as decided by the Board vide their letter dated 8 December 1987.

i) Motor vehicles

(a) An assessee engaged in the manufacture of motor car falling under heading 87.03 paid cess at the rate of 1/8 per cent of the assessable value approved by the department under section 4 of the Central Excises and Salt Act, 1944, which permitted central excise duty and sales tax to be excluded from the price. Cess being leviable under Industrial Development and Regulation Act, 1951 and this Act having not provided for exclusion of central excise duty and sales tax from the wholesale cash price in arriving at the value, determination of the value in accordance with Central Excises and Salt Act, 1944 was not in order. The incorrect determination of the value of motor vehicles resulted in short levy of cess to the tune of Rs.46.76 lakhs (approx) on goods cleared by the assessee during the period from March 1986 to March 1989. No action had also been taken to raise demand for any part of the above period for the amount of cess paid short.

This was pointed out in audit to the department in (July 1989) and to the Ministry of Finance in June 1990.

Ministry of Finance have stated (October 1990) that the Collector of Central Excise is being asked to raise the demands.

(b) An assessee, engaged in the manufacture of trucks, bus chassis, etc. falling under chapter 87, paid cess at the rate of 1/8 per cent of the assessble value approved by the department under section 4 of the Central Excises and Salt Act, 1944, which permitted the central excise duty and sales tax to be excluded from the price. Cess being leviable under Industrial Development and Regulation Act, and this Act not providing for exclusion of central excise duty and sales tax from the wholesale cash price in arriving at the value, determination of the value in accordance with Central Excises and Salt Act was not in order.

Though the department had issued show cause-cum demand notices pointing out the short levy of cess due to deduction of central excise duties from the assessable value, no demand was raised for the element of sales tax excluded from the value. This omission resulted in short levy of cess amounting to Rs.1.48 lakhs on motor vehicles cleared during the year 1988-89.

This was pointed out in audit to the department in July 1989 and to the Ministry of Finance in August 1990.

Ministry of Finance have admitted the objection (November 1990).

ii) Paper

As per notification dated 27 October 1980 cess at the rate of 1/8 per cent ad valorem became leviable on paper with effect from 1 November 1980.

Cess on paper was realised from four paper mills on the value arrived at after excluding the duties of excise and sales tax. The exclusion of these duties of excise and sales tax from the value for the purpose of cess was irregular since they were not duties leviable under the Industries (Development and Regulation) Act and resulted in short levy of cess amounting to Rs.1.95 lakhs during the periods ranging between July 1988 and June 1989.

On this being pointed out in audit (July 1989), the department intimated (April 1990) that show cause notices to the parties had been issued (December 1989) and the demand will be confirmed at the time of final assessment of RT-12 Returns. It added that the CEGAT, in the case of M/s. Tata Engineering & Locomotive Company Limited, had decided that for the purpose of calculating cess, the Central Excise duty and sales taxes leviable were to be excluded from the wholesale cash price for determination of the assessable value. The department, however, has gone in appeal to the Supreme Court against the decision of the CEGAT.

Similar cases were highlighted in para 3.46 of Audit Report for the year ended 31 March 1989. The Ministry of Finance had stated (August/September 1989) that further

action by the Ministry of Industry to redefine the 'value' for the purpose of cess was not received.

Ministry of Finance have stated (September 1990) that the decision of the Supreme Court on the appeal filed was awaited.

3.69 Short levy of cess due to application of incorrect rate

As per section 3(i) of the Jute Manufactures Cess Act, 1983 every article of jute manufactures specified in the schedule to the aforementioned Act is leviable to cess at prescribed rates. The Central Board of Excise and Customs clarified on 9 August 1988 that the cess is leviable on the final product sought to be cleared at exit point for sale from jute manufacturers' premises.

An assessee had cleared "Sacks and bags" of jute (heading 63.01) on payment of cess at the lower rate of Rs.52.65 per tonne applicable to "Sacking" instead of Rs.61.35 per tonne applicable to other articles of jute manufactures. This resulted in cess being levied short by Rs.2.16 lakhs during the period from December 1986 to June 1989.

On the irregularity being pointed out in audit (December 1989), the department did not accept the objection and stated (March 1990) that "sacking" includes sacking bags and sacks and bags of jute attract cess at the rate of Rs.52.65 per tonne.

The reply of the department is not tenable because sack bags are different from sackings; the former being produced from the latter. Further, cess has to be levied on goods at the time of their clearance from the factory in the form in which they are cleared.

Ministry of Finance have stated (August 1990) that the matter has been referred to the administrative Ministry whose reply is awaited.

3.70 Non levy of handloom cess

As per section 3 of the Khadi and other Handloom Industries Development (Additional Excise Duty on cloth) Act, 1953, as amended from 13 May 1986, additional duty (also called handloom cess) is leviable at the rate of 2.5 paise per square metre of textile fabrics falling under headings 52.05 and 55.11 of the schedule to the Central Excise Tariff Act, 1985. In terms of rule 2 of Khadi and other Handloom Industries Development (Exemption from payment of Excise Duty) Rules, 1975 introduced by a notification on 1 March 1975 all varieties of cloth which are for the time being exempted from the duty of excise leviable thereon under the Central Excises and Salt Act, 1944, are exempted from the aforesaid additional duty.

The exemption is, however, not applicable to unprocessed cotton fabrics, by virtue of the proviso under rule 2 of the notification. It, therefore, follows that handloom cess was leviable on all unprocessed cotton fabrics, whether leviable to duty or not.

i) Unprocessed cotton fabrics falling under heading 52.05 and man made fabrics falling under headings 55.07 to 55.12 are chargeable to 'nil' rate of duty after the enactment of the Central Excise Tariff Act, 1985. It was held by the Gujrat High Court in the case of M/s.Darshan Hosiery Works Vs. Union of India {1980 ELT 390 GUJ} that exemption from payment of duty under a notification issued is very much different basically and qualitatively from the exemption granted under the statute. As exemption from duty is not the same as chargeable at 'nil' rate under an Act, the fabrics did not stand exempted from handloom cess.

A composite textile mill manufactured and cleared 22,25,862 square metres of unprocessed cotton fabrics (including fents and rags) falling under heading 52.05 and 18,05,532 square metres of man made fabrics falling under heading 55.11 during the period from April 1988 to August 1989 without payment of the handloom cess on the ground that the aforesaid fabrics were chargeable to 'nil' rate of duty. This resulted in non levy of handloom cess of Rs.1,00,785 during the period April 1988 to August 1989.

The irregularity was pointed out in audit (November 1989); reply thereto has not been received (June 1990).

Ministry of Finance have stated that the matter is under examination (November 1990).

On a similar case featured as para 3.68(iii) of Audit Report for the year ended 31 March 1989, the Ministry of Finance had stated that the matter was under examination in consultation with the Ministry of Law and Industrial Development. Further progress in the matter had not been reported.

ii) An assessee manufacturing unprocessed cotton fabrics (falling under headings 52.67 and 52.09) was clearing the same after cropping only i.e., removing all protruding fibres from the surface of the fabric (without payment of handloom cess) based on the orders of Collector (Appeals) dated 12 August 1987 passed in respect of his sister unit that cropping was a process of manufacture and hence handloom cess was not leviable in terms of the orders quoted above. However, as processes like cropping, calendering, stentering (mentioned in notification dated 8 November 1982) do not amount to manufacture and cannot also be equated with processes like bleaching, dyeing, mercerising,etc. (mentioned in heading 52.06) and as the fabrics remain as unprocessed (grey) fabrics even after cropping, the exemption from payment of handloom cess was not in order. Non filing of appeal against the orders of Collector (Appeals) has, therefore, resulted in omission to levy handloom cess amounting to Rs.1,38,967 in respect of the clearances made during the period from 12 August 1988 to 30 June 1989. The cess omitted to be levied for the subsequent periods remains to be ascertained (July 1990).

On this being pointed out in audit (September 1989) the department contended (March 1990) that 'cropping' was recognised as a process of manufacture in the notification dated 8 November 1982 and hence the fabrics were processed fabrics only. It was further stated that as per the notification first cited, cess is leviable on Medium A, Medium B and Coarse varieties of unprocessed wearable fabrics whereas the fabrics manufactured by the assessee were non wearable varieties and hence not includible under the above category.

The contention of the department is not acceptable since processes mentioned in note 2 of Chapter 52 and incorporated in heading 52.06 alone would amount to manufacture and the processes mentioned in the notification dated 8 November 1982 do not result in the manufacture of processed fabrics and the fabrics remain as unprocessed fabrics even after these processes. Further, Supreme Court in the case of M/s. Mafatlal Fine Spinning and Manufacturing Company Limited {1989 (40) ELT 218 SC} also held that where no lasting changes are brought about, the fabrics remain as unprocessed (grey) fabrics only and that cropping, calendering, etc., mentioned in the notification are only such processes. Moreover, the varieties Medium A, Medium B and Coarse do not refer to wearable varieties of cloth only.

Ministry of Finance have stated that the matter is under examination (November 1990).

DEMANDS FOR DUTY NOT RAISED

3.71 Delay in adjudication resulting in financial accommodation

The Public Accounts Committee in the recommendations made in its 84th Report (1981-82) had adversely commented on the inordinate delays in finalisation of adjudication proceedings in demand cases. Accordingly the Central Board of Excise and Customs issued instructions (January 1983) requiring earnest efforts on the part of the adjudicating officers to adjudicate demand cases expeditiously. It was also stressed therein that demand cases should be adjudicated within a maximum period of six months from the date of issue of show cause-cum demand notices and delays beyond that period should be brought to the notice of the Collector who would discuss the matter with the adjudicating officers to examine the possibility of their expeditious disposal.

i) A leading manufacturer of cigarettes {erstwhile tariff item 4(II)(2)} assessable to duty ad valorem cum specific rates filed price lists in form I during the period from March 1979 to February 1983 for determination of assessable value of cigarettes under section 4 of the Act. On a writ petition filed in the High court by the manufacturer for non approval of the said price lists, the High Court in their interim order dated 21 November 1985 directed the department to finalise the assessments keeping in view the Supreme Court's

judgement in the case of Bombay Tyre International Limited. Before implementation of High Court's direction the department detected (February 1987) large scale evasion of duty allegedly ascribable to undervaluation of goods and consequently a show cause cum demand notice for Rs.143.22 crores was issued in September 1987 covering the period of undervaluation from April 1980 to February 1983. The demand has not been adjudicated so far.

The delay in adjudicating the demand which resulted in locking up substantial government revenue was pointed out in audit (June 1990), and the department stated (July 1990), that the adjudication proceedings were assigned to the Collectorate where the head office of the manufacturer was located and that the matter was still pending adjudication (July 1990).

The fact, however, remains that the delay in adjudication is resulting in unintended financial accommodation in shape of interest at 17.5 per cent per annum for the period from April 1988 to July 1990 (excluding the normal period of six months allowed for adjudication proceedings by the Board).

Ministry of Finance have stated (November 1990) that the adjudication proceedings are in progress.

ii) An assessee engaged in the manufacture of textile machinery parts falling under chapter 84 of the schedule to the Central Excise Tariff Act, 1985, availed of proforma/Modvat credit on certain inputs used in the manufacture of non excisable goods which were sent to his sister concern under rule 56B of the Central Excise Rules, 1944, for further processing and clearance. The department, therefore, issued three show cause notices in May 1985, October 1987 and August 1988 for a total amount of Rs.10.05 lakhs covering the period from January 1984 to July 1988. It was seen during audit (February 1989) that the show cause-cum demand notices were not adjudicated even though substantial amount of duty were involved and demand of Rs.6.25 lakhs were pending for more than 15 months.

On the non compliance of Board's instructions regarding expeditious adjudication of demands being pointed out in audit (February 1989), the department accepted the audit objection and stated that the show cause-cum demand notice could not be decided due to non completion of verification of certain facts and certain administrative difficulties and the case could be taken up for disposal on 'priority basis'.

The fact, however, remains that duties aggregating to Rs.10.05 lakhs demanded in May 1985, October 1987 and August 1988 have not been adjudicated as yet (May 1990).

Ministry of Finance have confirmed the facts (November 1990).

3.72 Non raising of demands of duties resulting in loss of revenue

i) As per the explanation to rules 9 and 49 of the Central Excise Rules, 1944, goods which are produced or manufactured in an intermediate stage and then consumed or utilised in the integrated process for the manufacture of another commodity even when not actually removed are deemed to have been removed and duty is payable on such goods before such removal. However, as per the third proviso to rule 9 and sub-rule 4 of rule 49, such goods may be removed without payment of duty if they are utilised in the same factory either as a raw material or component part for manufacture of any other commodity which (i) is an excisable item, specified under rule 56A, (ii) is classifiable under heading/sub heading of the schedule to the Central Excise Tariff Act, 1985, as may be specified in the notification issued under sub rule (1) of rule 56A and (iii) is neither exempt from the whole of the duty leviable thereon nor is chargeable to nil rate of duty.

An assessee manufactured high density polypropelene para pro ropes falling under sub heading 5607.90 and cleared them on payment of duty. During the process of manufacture an intermediate product named polypropelene tape, falling under sub heading 3920.32 came into existence which was captively used by the assessee for manufacture of the final product, ie., ropes. As per a notification issued on 1 June 1989, the ropes manufactured out of duty paid polypropelene tapes were exempt from duty. Prior to 1

June 1989, the assessee was paying duty on ropes but was not paying any duty on polypropelene tapes used captively under rule 9 and 49 of the Central Excise Rules, 1944, in terms of rule 56A. Since the sub heading 3920.32 under which the tapes were classified was not specified under rule 56A, as per a notification issued in March 1987, the exemption from payment of duty on goods captively consumed under rule 9 and 49 was not available to the assessee. The department issued and confirmed show cause notice for Rs.24.96 lakhs on such polypropelene tapes manufactured and captively consumed in the manufacture of polypropelene para pro ropes during the period from May 1988 to November 1988. No action, however, to recover the duty for the earlier period from April 1987 to April 1988 was taken by the department as the same was already time barred. This resulted in loss of revenue to government to the extent of Rs.5.81 crores (approx).

On this being pointed out in audit (February 1990) the department informed (June 1990) that the point was already noticed by the divisional Assistant Collector at the time of approval of the classification list effective from March 1988 and a show cause notice had been issued in November 1988. No action was taken by them for the period from April 1987 to April 1988 as the same was hit by time bar and there being no malafide intention on the part of the assessee, demand for longer period under section 11A of the Central Excises and Salt Act, 1944, also could not be invoked.

The notification issued under rule 56A in March 1987 exempted from payment of duty of goods captively consumed only of those goods falling under heading/sub heading specified thereunder. Action for recovery of duties on polypropelene tapes could have been taken earlier and failure to do so has resulted in loss of revenue of Rs.5.81 crores.

Ministry of Finance have stated (November 1990) that the government have since waived the duty liability on tapes/strips falling under sub heading 3920.32 and captively consumed in the manufacture of ropes falling under sub heading 5607.90 for the period from 1 March 1987 to 31 May 1989 by issue of notification dated 9 October 1990 under section 11C of the Central Excises and Salt Act, 1944.

ii) Under rule 173B of the Central Excise Rules, 1944, an assessee is required to file with the proper officer for approval, a classification list in the prescribed form with the Collector, showing the full description of all excisable goods manufactured by him, the chapter heading under which each of the goods fall, the rate of duty leviable on them, etc., and unless otherwise directed by the proper officer determine the duty payable on the goods intended to be removed in accordance with such list.

As per a notification issued on 1 March 1986, as amended, aluminium wire rods produced by manufacturers, other than primary producers were chargeable to duty under sub heading 7603.10 during the financial year 1986-87, at Rs.258.50 per tonne where Modvat credit was being availed and at Rs.2,900 per tonne on the goods manufactured out of ingots or billets in respect of which no credit of duty paid was taken under rule 56A or 57A of the said rules.

An assessee engaged in the manufacture of aluminium wire rods, filed a classification list effective from 24 October 1986 in respect of such goods indicating the basic excise duty payable at Rs.2,900 per tonne and it was approved by the department on 28 December 1986. The assessee cleared 439.708 tonnes of such goods during the period from 24 October 1986 to 31 December 1986 but on payment of duty of Rs.258.50 per tonne. Having filed a classification list effective from 24 October 1986, the assessee should have cleared these products on payment of duty at the rate specified therein as required under rule 173B of the Central Excise Rules, 1944. This has resulted in short levy of duty of Rs.11.61 lakhs (approx.) on clearance during the aforesaid period.

On this being pointed out in audit (October 1987) the department stated (January 1988) that it had already noticed the objection prior to audit and that the range Superintendent had issued two show cause notices in March 1987 and July 1987. A scrutiny of the said show cause notices issued revealed that in the first show cause notice differential duty payable on clearances made for the period

from 15 October 1986 to 30 November 1986 was demanded. In the second show cause notice differential duty payable for the period from January 1987 to March 1987 was demanded. However, differential duty payable on clearances made in the month of December 1986 was not raised.

On the omission being pointed out again in audit (January 1989) the department issued a corrigendum (March 1989) to the order in original indicating that the amount of duty raised and confirmed in May 1988, may be read as Rs.11.88 lakhs (as against Rs.6.73 lakhs). Differential duty of Rs.5.15 lakhs relating to clearances made in December 1986, thus, was got confirmed only at the instance of audit.

Ministry of Finance have stated (November 1990) that on an appeal filed by the assessee against the orders of Assistant Collector confirming demand of Rs.11.88 lakhs the Collector (Appeals) in his order dated 6 October 1989 had directed that demand should be reworked out for the period from 27 November 1986 (the date of acknowledgement) onwards and that action is being taken to rework out the demand accordingly.

iii) As per note 2(b) of section XVI of the schedule to the Central Excise Tariff Act, 1985 parts of machines falling under chapters 84 and 85 if suitable for use solely or principally with a particular kind of machine will fall under the same heading as the machine.

An assessee engaged in the manufacturer of plastic caps for primary cells and primary batteries classified such plastic caps under sub heading 3922.90 with effect from 1 March 1986 and cleared them without payment of duty claiming exemption under a notification issued on 1 March 1986. The primary cells and primary batteries being classifiable under subheading 8506.00 the department issued two show cause notices for payment of duty of Rs.10.43 lakhs (one in March 1987 in respect of clearances made during the period from September 1986 to 20 January 1987 and the second in April 1987 for the period from 21 January 1987 to 28 February 1987) asking the assessee to classify these plastic caps for primary cells and for primary batteries under heading 85.06. The goods were being classified by the assessee under that heading from 1 March 1987.

No demand, however, was raised by the department for duty payable in respect of clearances made during the period from 1 March 1986 to 31 August 1986. Omission on the part of the department to take prompt action in correcting the classification of these goods, from sub heading 3922.90 to sub heading 8506.00 has resulted in loss of revenue to Government to the extent of Rs.11.28 lakhs, on clearances during the period from 1 March 1986 to 31 August 1986.

On this being pointed out in audit (March 1989) the department accepted the objection (January 1990).

Ministry of Finance have accepted the underassessment (July 1990).

iv) Section 11A of the Central Excises and Salt Act, 1944, prescribes that where any duty of excise has been short levied or short paid a demand cum show cause notice may be issued within six months from the relevant date, to the person chargeable with the duty requiring him to show cause as to why he should not pay the amount specified in the notice.

An assessee engaged in the manufacture of "dipped nylon belting fabrics" classified them under the erstwhile tariff item 68 upto 27 February 1986 and under sub heading 5409.40 thereafter upto September 1987. From October 1987 the assessee reclassified such goods under sub heading 5905.20 as rubberised textile fabrics as per the directions of the department. As per a clarification issued by the Board on 29 July 1987 "dipped fabrics" were classifiable under sub heading 5905.20 as rubberised textile fabrics. The assessee had consequently filed a revised classification list of the product in October 1987 when differential duty payable for the period of six months prior to October 1987 could have been raised by the department. Failure to issue a show cause notice for the differential duty recoverable from the assessee for the period from April 1987 to September 1987 as required under Section 11A of the Central Excises and Salt Act, 1944, resulted in short levy of duty amounting to Rs.2.04 lakhs.

On this being pointed out in audit (December 1989) the department accepted the objection and stated (May 1990) that the differential duty payable for the months of August and September 1987 amounting to Rs.37,734 was effected through the concerned RT 12 and that there were no clearances in July 1987, thus, leaving the short levy amount to be raised to Rs.1,66,567 on clearances made during the period from April 1987 to June 1987.

Ministry of Finance have accetped the underassessment (October 1990).

3.73 Delay in recovery of Central Excise duty

In order to facilitate prompt recovery of Central Excise duty owing from a manufacturer, the authorised Central Excise Officers are empowered under rule 230 of the Central Excise Rules, 1944, to order detention of all excisable goods, raw materials and all plant and machinery in the custody of the manufacturer, until such duties are paid or recovered. As per instructions of the Central Board of Excise and Customs issued on 20 April 1985 whenever the facility of paying arrears of Central Excise dues in instalments is accorded, interest at 17.5 per cent per annum from 20 April 1985 would be chargeable on monthly basis. Subsequently the Board clarified on 1 October 1985 that interest would be chargeable from the date of initial confirmation of the demand.

On 6 June 1986, an Assistant Collector of Ahmedabad Collectorate confirmed two demands aggregating to Rs.12,89,257 and directed the manufacturer to pay the aforesaid amount within 10 days from the receipt of the order. The manufacturer, however, paid an amount of Rs.8,46,000 in 31 instalments of varying amounts between November 1986 and September 1988 leaving the remaining amount of Rs.4,43,257 as outstanding as on 30 September 1988. Due to delayed payments interest liability calculated at the rate of 17.5 per cent per annum worked out to Rs.3,16,355.

The irregularity was pointed out in audit to the department in September 1988 and to the Ministry of Finance in June 1990.

Ministry of Finance have confirmed the facts as substantially correct.

IRREGULAR REFUNDS

3.74 Irregular grant of refund

Section 11C of the Central Excises and Salt Act, 1944 empowers the Central Government to issue notification directing non-recovery of excise duty not levied or short levied as a result of general practice. There was, no provision in the said section of the Act to refund duty if paid. Section 11C was however amended from 1 July 1988 to provide for refunds also provided that the incidence of such duty had not been passed on to any other person.

(a) A manufacturer was sanctioned a refund of duty of Rs.13.02 lakhs in respect of duty paid on bare copper wire finer than 14 SWG during the period from 7 April 1979 to June 1979. The refund claim arose owing to the issue of a notification dated 16 February, 1985 under section 11C of the Act to regularise the non-levy of duty during the aforesaid period. The assessee submitted a refund claim but the same was not initially sanctioned by the department.

The assessee thereafter moved the CEGAT for getting the desired refund. The CEGAT in their orders dated 21 November, 1986 allowed relief to the assessee and on the basis of such order the refund was sanctioned. The department should have preferred an appeal to the higher court under section 35L(b) of the Act against the orders of the CEGAT before granting the refund as the relevant section of the Act did not provide for such refund till 30 June 1988. The opinion of the Law Ministry, subsequently conveyed by the Board in their letter dated 24 February, 1988 also corroborates the above contention of audit. The refund allowed has resulted in fortuitous benefit to the manufacturer.

The paragraph was sent to the Ministry of Finance in September 1990; their reply has not been received (November 1990).

(b) Three body builders of motor vehicles paid duty amounting to Rs.4.34 lakhs on bodies of motor vehicle (chapter 87) between March 1986 and March 1987 in respect of goods cleared between March 1986 and June 1986. Subsequently, a notification was issued on 4 November 1987 allowing non-recovery of duty not

levied or short levied during March 1986 to June 1986 under the un-amended section 11C. The assessee submitted refund claims between March 1988 and May 1988 and the refunds were granted in November 1989 and December 1989. As the refund cases related to the pre amended period of Section 11C, those were inadmissible and had resulted in irregular refunds of duty amounting to Rs.4.34 lakhs.

The irregularity was pointed out in audit to the department in March 1990 and to the Ministry of Finance in August 1990.

Ministry of Finance have admitted the objection (November 1990).

3.75 Incorrect grant of refund without expunging the Modvat credit availed by the buyers

According to the procedure prescribed by the Board in their letter dated 15 April 1988, grant of refund of duty in respect of raw materials/component parts on which proforma credit had been availed under rule 56A or Modvat credit under rule 57A, the concerned Assistant Collector of central excise, after sanctioning the refund but before making payment, should intimate to the officer incharge of the factory, in which the proforma/Modvat credit has been taken about the amount of refund sanctioned in respect of inputs and only after ensuring that necessary debit of the refund amount had been made in the accounts of the consignee factory from all concerned Central Excise Officers, should make the payment of refund sanctioned by him.

An assessee manufacturing welding electrodes (heading 83.11) paid duty provisionally without claiming abatement on account of certain discounts etc., and subsequently preferred refund claims on account of the abatement of those discounts. The refund of Rs.1,50,227 on account of the above, relating to the period from January 1987 to March 1988 was made in June 1988 without ascertaining the expunction of credit from the concerned Central Excise Officers of Consignee's factory.

On this being pointed out in audit (December 1989) the department stated (January 1990) that action was being initiated to expunge the excess Modvat credit taken by the buyers. Report of recovery particulars has not been received so far (May 1990).

Ministry of Finance have stated (October 1990) that out of Rs.1.50 lakhs pointed out in audit, the actual payment by cash was Rs.1.41 lakhs only. The assessee has adjusted an amount of Rs.36,476 in RG23A on 12 February 1990 and for remaining supplies verification is in progress.

PROCEDURAL IRREGULARITIES INVOLVING DUTY IMPLICATIONS

3.76 Non vacation of stay orders from the court

The Public Accounts Committee (Seventh Lok Sabha) in para 1.37 of their 170th Report recommended that there should be a separate Directorate in the Central Board of Excise and Customs as also suitable cells in all the major Collectorates to pursue and keep a watch on all cases of litigation relating to excise and customs and to ensure that departmental cases are not allowed to fall through because of default or inadequate presentation. The Supreme Court in its judgment pronounced on 30 November 1984 in the case of Assistant Collector of Central Excise, West Bengal Vs. Dunlop India and others regarding stay of excise dues to Government, observed that the practice of passing interim orders would be an exception and not a rule. The court further observed that no Government business can be carried on merely on bank guarantee and liquid cash is necessary for running the Government. Accordingly the Committee in para 1.9 of their 9th Report (Eighth Lok Sabha) desired that the Government should review all cases pending in courts in the light of the aforesaid judgment and take all steps to get the stay orders vacated and dues collected immediately.

i) An assessee entered into contracts with parties for supply of machinery namely mini cement plants and material handling equipment. The contracts were for the project as a whole which included manufacture, supply, testing, packing, forwarding etc. The items to be supplied were those manufactured in the assessee's factory as also bought out items.

Though the assessee charged the full value of that contract in the invoices, he paid duty only on items manufactured in his factory without considering the value of bought out items and other charges. The Collector of central excise issued a show cause-cum demand notice in February 1986 requiring the assessee to state why duty should not be demanded on boughtout items, consumables, service charges, insurance, forwarding and transportation charges for the period 19 June 1984 onwards. Thereupon the assessee obtained a stay order on 1 December 1986 from the High Court refraining the department from acting on the show cause demand notice. The department continued to raise further demands periodically and in all ten demands involving duty of Rs.1,51,32,463 covering the period from 19 June 1984 to 31 October 1989 were issued. The department did not, however, take action to get the stay vacated and to realise the duty. This resulted in blocking of Rs.1.51 crores.

The issue was brought to the notice of the department in February 1990 and to the Ministry of Finance in July 1990; their replies have not been received (November 1990).

ii) Cement classifiable under sub heading 2502.20 is assessable to duty at a tariff rate of Rs.225 per tonne and an effective rate of Rs.205 per tonne upto 28 February 1989 and at Rs.215 per tonne thereafter.

Two manufacturers of cement (A and B) filed writ petitions in the High Court of Karnataka on the issue regarding the legality of levy of duty on cement at full rate and obtained an interim stay on 18 August 1987 and 19 April 1988 respectively refraining the Central Government from collecting Central Excise duty on cement manufactured and cleared from their factories at a rate in excess of 50 per cent of the rate of duty specified in the schedule to the Central Excise Tariff Act, 1985.

Pursuant to stay orders, assessee (A) started paying duty on cement manufactured and cleared by him at Rs.112.50 per tonne (at 50 per cent of the tariff rate of Rs.225 per tonne) whereas the assessee (B) started paying duty at Rs.102.50 per tonne (at 50 per cent of effective rate of Rs.205 per tonne). The assessees' records, however, revealed that they collected excise duty at Rs.205 per tonne (effective rate) from their customers.

The matter was reported (December 1987 and January 1989) to the department for taking remedial action. The department while confirming the facts in first case stated (September 1989) that all steps were taken to get the stay vacated and the court would take its own course to decide the case. It added that show cause-cum-demand notices are issued at six monthly intervals to safeguard the revenue.

The fact remains the stay order could not be got vacated; thereby enabling the assessee to retain Rs.102.55 lakhs on account of duty collected from the customers in excess of that paid by them during the period from 18 August 1987 to 30 April 1989.

Ministry of Finance have stated (August 1990) that all efforts are being made for obtaining an early vacation of stay.

iii) The High Court of Delhi in the case of M/s. Bombay Conductors and Electricals Limited Vs. Government of India {1986 (23) ELT 87 - Delhi} held that the object of the promissory estoppel is to enforce contractual obligations; the principle of contracts apply only to relationship under private law and cannot therefore be invoked to taxes. The court also held that if the Central Government in the public interest decided to grant exemption at one moment and decides to withdraw it at another, the court cannot compel government to continue the exemption beyond the time it thinks necessary in the public interest to do so. The High Court of Calcutta in the case of M/s.Black Diamond Beerates Limited Vs. Union of India {1988 (36) ELT 225.336 (a)} held that (i) there cannot be any legal right to enjoy a concession for any particular period as law can be passed and can be repealed at any time according to the policy of the government and similarly (ii) notifications issued can be revoked and/or modified at any time.

As per a notification issued on 1 March 1987 under rule 57A of Central Excise Rules, 1944, the facility of availing credit of duty paid on raw materials (Modvat scheme) was ex-

tended to aerated waters (chapter 22). By another notification issued on 9 September 1987, such availment of credit of duty in respect of inputs used in manufacture of aerated waters was withdrawn from 1 October 1987. With this withdrawal of Modvat facility in respect of aerated waters, not only such availment of credit of duty was not available from 1 October 1987 but also credit relatable to the unutilised quantity of inputs lying in stock on that day should have lapsed.

An aerated water factory, availing the Modvat facility from 1 March 1987 had obtained an interim stay order from High Court in September 1987 restraining the department from giving effect to the said notification dated 9 September '1987 and continued to avail such Modvat facility from 1 October 1987. The Modvat credits thus availed amounted to Rs.33,61,389 during the period from 1 October 1987 to 30 November 1989; of this, a credit of Rs.31,66,996 had also been utilised for payment of duty due on the aerated waters.

In the light of the aforesaid judicial pronouncements, the department should have taken requisite steps to get the stay orders vacated and dues collected. However, the department is yet to get the stay order vacated (June 1990).

The matter was brought to the notice of the department in January 1990 and to the Ministry of Finance in August 1990.

Ministry of Finance confirmed the facts and have stated (November 1990) that the High Court of Karnataka had been moved (April 1990) for vacation of stay.

3.77 Proof of export wanting

Under rule 13 of the Central Excise Rules, 1944, read with notification issued under rule 12 ibid, excisable goods can be exported without payment of duty under bond, but the proof of export is required to be furnished to the Assistant Collector, Central Excise, within a period of six months from the date on which the goods were first cleared from the producing factory or such extended period (not exceeding two years) as might be allowed by the Collector of Central Excise in any particular case. According to rule 14A, an exporter who fails to furnish proof of export within the prescribed period, shall upon a written demand, forthwith pay the duty leviable on such goods and shall also be liable to pay penalty subject to a maximum of rupees two thousand.

It was noticed in audit that necessary proof of export involving duty of Rs.2,51,93,494 had not been furnished by an assessee within the stipulated period.

On the omission being pointed out in audit (September 1989), the department stated (March 1990) that a demand cum show cause notice has been issued (February 1990) and that the realisation particulars are awaited. The reply is, however, silent on the imposition of penalty.

Ministry of Finance have stated (August 1990) that the show cause notice for Rs.2,51,93,494 has been adjudicated and a penalty of Rs.2,000 has also been imposed.

3.78 Delay in approval of price lists

The Central Board of Excise and Customs issued instructions in March 1976, to the effect that provisional assessments both on account of classification and valuation should be finalised normally within a period of three months and in any case not later than six months. These orders were reiterated in their subsequent instructions issued in October 1980.

An assessee manufactured, inter alia, organic surface active agents falling under sub heading 3402.90 of the schedule to the Central Excise Tariff Act, 1985 and cleared them without payment of duty under a notification issued in June 1966, as amended. In respect of some of these goods which were used captively by the assessee for the manufacture of other final products, the assessee filed price list in part VI(b) on provisional basis. Later, based on the final accounts, the assessee filed final price list for the years 1983, 1984, 1985 and 1986 in February 1985, September 1985 and September 1986 respectively. It was seen at the time of audit (December 1988) that these final price lists had not been approved by the department so far, and the differential duty payable worked out to Rs.33.44 lakhs for the years 1983 to 1986.

The inordinate delay in approval of these price lists resulted in blocking of Government revenue leading to financial accommodation to the assessee.

On the irregularity being pointed out in audit (December 1988) the department stated (September 1989) that after the detailed scrutiny of the case, a show cause notice for payment of differential duty on enhanced value of Rs.11.34 crores (as against Rs.9.83 crores declared by the assessee) has since been issued in September 1989.

Ministry of Finance while admitting the delay in finalisation of price lists have stated (November 1990) that the reasons for delay are being ascertained.

3.79 Clearance of goods at lower rate leading to financial accommodation

As per section 35F of the Central Excises and Salt Act, 1944, in the matter of appealing against any decision or order demanding duty or any penalty levied under the Act, unless specifically dispensed with by the Collector (Appeals) or the Appellate Tribunal the duty or penalty involved in such cases should, pending appeal, be deposited with the adjudicating authority.

As per provisions of rule 173B(3) of the Central Excise Rules, 1944, where the assessee disputes the rate of duty approved by the proper officer in respect of any goods, he may, after giving an intimation to that effect to such officer pay duty under protest at the rate approved by the officer.

A manufacturer of air conditioners etc., inter alia, was manufacturing 'gear reducer' and clearing the same as "spare" on payment of duty at the rate of 15 per cent ad valorem. The product was classified by the Assistant Collector of Central Excise under sub heading 8483.00 chargeable to duty at the rate of 20 per cent ad valorem through an adjudication order dated 19 May 1988. The assessee filed an appeal to the Collector (Appeals) and continued to pay duty at the lower rate though no stay order was granted to the assessee by the competent authority. Failure of the department to charge duty at the higher rate resulted not only in substantial financial accommodation but also in short payment of duty of Rs.9.39 lakhs for the period from August 1988 to September 1989.

On the mistake being pointed out in audit (November 1989) the department stated (December 1989) that the differential duty would be recovered at the time of final assessment which had been started.

The fact, however, remains that the department's reply is relevant for the period prior to the issue of the adjudication order. It has not been stated why the approved rate was not charged under rule 173B(3) of the Central Excise Rules, 1944, after the issue of adjudication order in the absence of any stay order. This also led to blocking of substantial Government revenue.

Subsequently (June 1990) the department accepted the objection in principle and instructed the Range officer to realise the differential amount of duty.

Ministry of Finance have admitted the objection in principle (November 1990).

3.80 Non observance of the procedure of provisional assessment

As per section 4(1)(b) of the Central Excises and Salt Act, 1944, read with the Central Excise (Valuation) Rules, 1975, where excisable goods are wholly consumed within the factory of production, the assessable value is to be determined on the basis of value of comparable goods or cost of production including a reasonable margin of profit, if the value of comparable goods is not ascertainable. The Central Board of Excise and Customs issued instructions in December 1980 that the data for determining the value on cost basis should be based on the cost data relating to the period of manufacture and if such data are not available at the time of assessment, duty should be levied provisionally and finalised when data for relevant period becomes available.

A manufacturer of electric motors produced components of electric motors and used the products in the manufacture of electric motors after payment of duty on the value declared in price lists effective from 1 July 1982.

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The prices declared by the manufacturer were based on the value determined on the estimated cost of production including profit of 4.9 per cent. The price lists filed in this regard had, however, been approved finally by the department in April 1984/August 1984, instead of in a provisional manner. Subsequently, on determining the value of cost of production including the profit working out to 10.31 per cent on the basis of cost and other records relating to the period of manufacture, a demand of Rs.1,30,129 covering the clearances of components of electric motors from 1 July 1982 onwards was raised (September 1984/Ocotber 1984) by the department. The demand so raised by the department was paid by the manufacturer who also filed an appeal to the Appellate Collector against such demand. On such appeal the Appellate Collector set aside the demand (February 1986) on the ground that the department should have followed the procedure laid down in Section 35E ibid as the Assistant Collector cannot by himself review his order after the finalisation of the price list. Consequently, the duty already paid had to be refunded in August 1987.

On the non observance of the procedure of provisional assessment in terms of the aforesaid Board's letter issued in December 1980 being pointed out in audit (October 1988) while checking refund claims, the department stated (February 1989) that an appeal was filed with CEGAT during June 1986. The fact, however, remains that irregular refund could have been avoided by resorting to provisional assessment as envisaged in the aforesaid Board's letter issued in December 1980.

Ministry of Finance have stated (November 1990) that the issue whether the Assistant Collector was correct in issuing show cause notice within six months from the date of approval of price list is being considered by CEGAT with whom an appeal has been filed against the orders of Collector (Appeals).

OTHER TOPICS OF INTEREST

3.81 Clearance of excisable goods without discharging full duty liability

As per section 3 of the Central Excises and Salt Act, 1944, duty of excise is leviable on all excisable goods produced or manufactured in India. As per rules 9, 49 and 173G of the Central Excise Rules, 1944, duty shall be paid on excisable goods before their removal from any place where they are produced, cured or manufactured. Sub rule 1 of rule 173G of the said rules, requires that every assessee shall keep an account current (P.L.A.) with the Collector and shall periodically make credit in such account current sufficient to cover duty due on the goods intended to be removed at any time and every such assessee shall pay the duty for each consignment by debit to such account current before removal of the goods. By virtue of powers delegated under proviso (iv) to rule 173G(1) ibid, the Collector may in circumstances of exceptional nature and by an order in writing require an assessee manufacturing excisable goods to determine the duty and debit the account current in such manner as may be specified by him in such order. The Collector derived similar powers from rule 173PP of the aforesaid rules to decide the manner and time of debiting duty in respect of goods which were classifiable under erstwhile tariff item 68.

The Central Board of Excise and Customs clarified on 1 October 1985 that interest at 17.5 per cent is chargeable in all cases of deferment of duty from the date of confirmation of demand.

i) In terms of the aforesaid rule 173PP, the Collector of a Central Excise collectorate permitted (November 1982) an assessee in the Public Sector to pay duty on the goods manufactured and cleared by him (erstwhile tariff item 68) by making weekly debit entries in the account current (P.L.A.) on the basis of average weekly duty paid in the preceding year on the aforesaid goods and to adjust the final duty due on such goods cleared in a month by the 20th of the following month on the basis of computerised statements. With the introduction of the Central Excise Tariff Act, 1985, the goods manufactured by the assessee became classifiable under different headings and sub heading of various chapters (mainly chapter 85). By issue of a notification on 1 February 1986, rule 173 PP was also rescinded with effect from 28 February 1986. Thus the permission granted by the Collector in November 1982 under rule 173PP became otiose. The assessee

was, therefore, not entitled to the benefit of making weekly debits as before and was required to discharge the full duty liability on all the clearances from 1 March 1986. The assessee was, however, allowed to continue to make weekly debits which were always less than the actual duty payable on the goods. The Collector granted a fresh permission on 20 September 1989 under the provisions of rule 173G(1)(iv) ibid for making weekly debits. Thus during the period from 1 March 1986 to 19 September 1989, making weekly debits in the account current was without authority and was, therefore, irregular. The difference between the duty payable and the duty paid (weekly debits) ranged from Rs.3.30 lakhs to Rs.6.53 crores and was made good only in subsequent month/months.

Further, based on the actual amount of duty paid during the years 1987-88 and 1988-89 the assessee was required to debit Rs.60.33 lakhs every week during 1988-89 and Rs.87.12 lakhs every week during 1989-90 in the account current in terms of the permission granted by the Collector in November 1982. It was, however, noticed in audit that on several occasions the assessee did not debit duty at the beginning of the week and the amount debited fell short of the average debit that was required to be made. The monthly shortfall which was made good only in subsequent month/months ranged from Rs.41 lakhs to Rs.330 lakhs during the period April 1988 to August 1989.

The irregular clearance of goods without discharging full duty liability resulted in deferment of duty and notional loss of interest of Rs.1.11 crores on monthly average shortfall of Rs.1.82 crores for the period from March 1986 to August 1989.

The irregularities were pointed out in audit in November 1989.

Ministry of Finance have admitted the objection in principle (November 1990).

ii) A manufacturer of inorganic chemicals was allowed clearance of goods on the basis of cheques deposited from time to time beginning from September 1988 without waiting for their clearance and eventual credit to the exchequer. This procedure was allowed by the Collector on the request from the assessee as a special case. The time lag between the date of issue of cheques and the date of their collection was ranging from one day to twenty one days. This practice of taking advance credits and their utilisation for payment of duty resulted not only in debit balance ranging from Rs. 10 to Rs.12 lakhs but also in substantial financial accommodation to the assessee.

The irregularity was pointed out in audit to the department in January 1990 and to the Ministry of Finance in August 1990.

Ministry of Finance have admitted the objection (November 1990).

3.82 Goods cleared after reprocessing

As per rule 96 ZV of the Central Excise Rules, 1944, cement which has been damaged, after its delivery may be returned to the same or any other cement factory for reprocessing or for further manufacture and where duty had been paid on such cement its equivalent to the recoverable weight of the re-processed cement based on the chemical analysis of the damaged cement may be delivered without payment of duty subject to certain conditions.

A manufacturer of cement during July 1987 to September 1987 received in his factory 3450.7 tonnes of duty paid defective/damaged cement which were initially manufactured and sold by the sister unit to Defence and some Central Government organisations. The assessee without sending samples of damaged cement for determining the percentage of recoverability started reprocessing immediately by blending it with the normal cement being manufactured by it. An equivalent quantity of 3450.7 tonnes of cement having duty effect of Rs.7,07,394 was simultaneously cleared from the factory without payment of duty during the period from July 1987 to September 1987. As required under rules, no information of the receipt of the damaged cement into the factory was given by the assessee to the proper officer twenty four hours before such receipt.

On the omission being pointed out in audit (January 1988) the department contended (August 1988 and July 1989) that reprocessing of damaged cement was covered under rule

173H and not under rule 96 ZV and as such there was no need for drawing samples. The reply of the department is not acceptable as duty paid goods brought back under rule 173H can be cleared without payment only if not subjected to any process amounting to manufacture. In this case damaged cement brought back was reprocessed and therefore the procedure laid down under rule 96 ZV was to be followed.

The paragraph was sent to the Ministry of Finance in September 1990; their reply has not been received (November 1990).

3.83 Irregular grant of permission under rule 56B

Rule 56B of the Central Excise Rules, 1944, permits removal of semi finished goods to premises outside the factory for completion of process involved in the manufacture of final product and return to the factory, without payment of duty. As per clarification issued by the Central Board of Excise and Customs in March 1988, such permission could be granted, provided the sub heading under which the semi finished goods were classifiable remain unchanged even after completion of the process.

An assessee engaged in the manufacture of tyre valves falling under the sub heading 8479.00 of the schedule to the Central Excise Tariff Act, 1985, sent out defective tyre valves arising in the manufacture under rule 56B to premises outside the factory and brought back brass metal recovered from them after burning out the rubber portion contained in the valves, without payment of duty. The process carried out at the premises outside the factory was not a process on semi finished goods to transform them into final product but was only a process carried out for recovery of metal from defective valves and the tyre valves manufactured as finished goods falling under sub heading 8479.00 and brass rods, brass tubes recovered falling under the sub heading 7403.11 (7407.12 from March 1988). The goods sent for processing and goods received after completion of processing falling under different sub headings, permission granted for following the procedure under rule 56B in this case was not in order. The defective type valve sent out should, therefore, have been treated as goods cleared. The assessee having taken credit of duty paid on the inputs used in the manufacture, duty should have been paid at the rate applicable to goods classifiable under sub heading 8479.00, as if such waste was also manufactured in the factory. The assessee having cleared such defective valves of the value of Rs.37.54 lakhs during the period from April 1987 to April 1988, duty amount of Rs.5.63 lakhs was payable.

The irregularity was pointed out in audit to the department in July 1988 and to the Ministry of Finance in August 1990.

Ministry of Finance have accepted the objection in respect of wrong permission under rule 56B (November 1990).

3.84 Provisional assessment made without obtaining sufficient bond

As per rule 9B of the Central Excise Rules, 1944, an assessee is required to execute a bond with such surety or sufficient security in such amount as the proper officer may deem fit for the purpose of provisional assessment. While determining the amount of the bond the proper officer should take into consideration the following:-

a) the amount of the general bond in form B-13 (General Surety) or B-13 (General Security) should be equal to the duty difference between the highest and the lowest rate of duty on the basis of past clearances of one month and the total multiplied by three;

b) the amount of the general bond in Form B-16 (General Surety/Security) should be equal to the aggregate total value of the individual bonds which are proposed to be replaced by the general purpose bond calculated in the manner laid down in respect of the individual bonds. Where the value so calculated exceeds Rupees ten lakhs, the bond may be executed for an amount of ten lakhs only unless otherwise permitted by the Collector.

A leading manufacturer of foot wear executed a B-13 (General Security) bond in February 1968 for Rupees One lakh only.

Provisional assessment in respect of goods covered by at least nine chapters of the Central Excise Tariff Act, 1985, involving huge amount of duty was being made on the strength of the said bond. It was, therefore, pointed out in audit that the amount of the bond was quite insufficient and the assessee should have executed B-13 bond for appropriate amount or B-16 General purpose bond for an amount of ten lakhs as prescribed under the rules.

On the irregularity being pointed out in audit (Decmeber 1987) the department admitted the audit observation and intimated (May 1990) that the assessee had since executed a B-16 bond for rupees ten lakhs.

Ministry of Finance have admitted the objection (November 1990).

ANNEXURE ... 3.1

Number of outstanding objections and amount involved

(in crores of rupees)

Sl. No.	Collectorate	Raised upto 1986-87 including the year 1986-87		Raised in the year 1987-88		Total	
		Number	Amount	Number	Amount	Number	Amount
1.	Hyderabad	1096	8.61	762	8.89	1858	17.50
2.	Guntur	133	0.85	109	0.12	242	0.97
3.	Patna	86	9.91	29	4.87	115	14.78
4.	Shillong	22	0.58	19	1.79	41	2.37
5.	Bombay I	142	1.69	78	1.23	220	2.92
6.	Bombay II	151	83.56	164	2.41	315	85.97
7.	Bombay III	277	4.01	207	8.79	484	12.80
8.	Poona	83	1.53	82	2.50	165	4.03
9.	Aurangabad	40	0.72	56	0.54	96	1.26
10.	Goa	6	0.08	12	0.22	18	0.30
11.	Calcutta I	254	21.25	124	11.35	378	32.60
12.	Calcutta II	621	151.14	223	36.99	844	188.13
13.	Bolpur	152	28.04	66	29.31	218	57.35
14.	Chandigarh						
	AG Punjab	66	1.60	42	0.64	108	2.24
	U.T. Chandigarh	16	0.72	7	0.05	23	0.77
	H.P. Shimla	48	1.50	36	0.56	84	2.06
	J & K	Nil	Nil	Nil	Nil	Nil	Nil
15.	Ahmedabad	116	2.41	51	0.61	167	3.02
16.	Baroda	195	6.30	58	4.05	253	10.35
17.	Rajkot	12	1.76	5	0.15	17	1.91
18.	Delhi U.T.	141	3.00	51	0.32	192	3.32
	A.G.Haryana	168	4.76	164	7.31	332	12.07
19.	Bangalore	111	6.56	119	34.36	230	40.92
20.	Belgaum	47	6.49	38	5.64	85	12.13
21.	Cochin	3	0.05	6	0.05	9	0.10
22.	Indore	301	6.54	262	11.20	563	17.74
23.	Nagpur	33	0.60	18	7.33	51	7.93
24.	Bhubneswar	27	2.78	28	4.16	55	6.94
25.	Jaipur	80	1.95	83	0.65	163	2.60
26.	Coimbatore	82	3.73	144	0.99	226	4.72
27.	Madras	282	5.42	584	3.99	866	9.41
28.	Madurai	10	0.25	5	0.08	15	0.33
29.	Trichy	7	0.81	19	1.21	26	2.02
30.	Allahabad	190	5.00	50	0.24	240	5.24
31.	Kanpur	147	3.12	108	2.22	255	5.34
32.	Meerut	446	7.44	167	7.05	613	14.49
	TOTAL	5591	384.76	3976	201.87	9567	586.63

CHAPTER 4

RECEIPTS OF THE UNION TERRITORIES WITHOUT LEGISLATURES

4.01 Tax and non-tax receipts of Union Territories without legislatures

The trend of tax and non-tax revenue receipts of the Union Territories which do not have a legislature, is indicated below :-

			Delhi	Chandigarh	Dadra and Nagar Haveli	Andaman and Nicobar Islands	Minicoy and Lakhsdweep	Daman and Diu	Total
A.	Tax Revenue								
	Sales tax	1987-88	431.82	29.29	0.46	Nil	Neg.	0.77	462.34
		1988-89	524.59	36.12	0.37	Nil	Nil	13.24	574.32
		1989-90	597.96	43.07	0.70	--	--	16.13	657.86
	State Excise	1987-88	131.43	14.03	0.08	1.81	Nil	Nil	147.35
		1988-89	159.40	18.18	0.10	1.45	Nil	1.17	180.30
		1989-90	145.07	23.86	0.11	1.51	--	2.61	173.16
	Taxes on	1987-88	~33.26	0.80	Nil	Nil	Nil	Nil	34.06
	goods and	1988-89	~34.73	0.78	Nil	Nil	Nil	0.05	35.56
	passengers	1989-90	34.85	0.96	Nil	Nil	--	0.05	35.86
	Stamp duty	1987-88	24.73	4.96	0.06	0.10	0.02	Nil	29.87
	and registration	1988-89	32.72	5.98	0.07	0.11	0.04	0.37	39.29
	fee	1989-90	34.85	7.70	0.04	0.13	0.04	0.36	43.12
	Taxes on	1987-88	18.58	1.02	0.21	0.03	Nil	Nil	19.84
	motor vehicles	1988-89	27.07	2.35	0.24	0.03	Nil	0.64	30.33
		1989-90	31.59	3.02	0.36	0.04	--	0.89	35.90
	Land revenue	1987-88	0.01	Neg.	0.14	0.05	0.01	Nil	0.21
		1988-89	0.02	Nil	0.09	0.06	0.01	0.76	0.94
		1989-90	0.03	Nil	0.06	--	0.01	0.20	0.30
	Other taxes and duties	1987-88	13.45	0.83	Nil	0.04	Nil	Nil	14.32
	on commodities and	1988-89	14.36	0.74	Nil	0.03	Nil	0.04	15.17
	services	1989-90	15.41	0.69	Nil	0.02	--	0.02	16.14
Total A. Tax		1987-88	653.28	$52.74	0.95	2.03	0.03	0.77	709.80
revenue		1988-89*	792.89	#66.33	0.87	1.68	0.05	16.27	878.09
		1989-90@(A)	865.20	82.03	1.27	2.06	0.05	20.38	970.99
Total B.		1987-88	23.91	39.42	6.17	19.18	1.81	Neg.	90.49
Non-tax		1988-89*	20.37	43.92	11.38	21.53	1.91	3.18	102.29
revenue		1989-90(A)	33.04	53.24	14.51	23.08	2.31	4.82	131.00
Total - Tax and		1987-88	677.19	92.16	7.12	21.21	1.84	0.77	800.29
Non-tax		1988-89*	813.26	110.25	12.25	23.21	1.96	19.45	980.38
revenue		1989-90(A)	898.24	135.27	15.78	25.14	2.36	25.20	1101.99

Neg. - Negligible receipts.

* - Information furnished by the Controller General of Accounts.

~ - Levied and collected by Municipal Corporation of Delhi as agent of Delhi Administration as per provisions of Section 178 of the Delhi Municipal Corporation Act, 1957.

$ - Includes Rs.1.81 crores on account of Taxes and Duties on Electricity relating to Chandigarh Union Territory.

- Includes Rs.2.18 crores on account of Taxes and Duties on Electricity relating to Chandigarh Union Territory.

@ - Total A.Tax Revenue comprises all other major heads not specified above.

(A) - The figures given in the Statement are provisional as stated by Controller General of Accounts.

Results of test check of the records of the revenue department of the Union Territory of Delhi conducted during the year 1989-90 are included in the Report of the Comptroller and Auditor General of India; No.3 of 1991 for the year ended 31 March 1990 - Union Government (Delhi Administration). Some of the important cases noticed as a result of test check of the records of revenue department of the other Union Territories without legislatures are mentioned in the succeeding paragraphs.

SECTION - A UNION TERRITORY OF CHANDIGARH

SALES TAX

4.02 Suppression of purchases

Under the Punjab General Sales Tax Act, 1948 as applicable to the Union Territory of Chandigarh, if a dealer has maintained false or incorrect accounts with a view to suppressing his sales, purchases or stock of goods or has concealed any particulars of his sales or purchases or has furnished to, or produced before any authority under this Act or the Rules made thereunder, any account, return or information which is false or incorrect in any material particulars, he is liable to pay by way of penalty in addition to the tax to which he is assessed or is liable to be assessed, a sum not exceeding one and a half times but not less than twenty five per cent of the amount of tax assessed or assessable.

During the audit of Assistant Excise and Taxation Commissioner, Chandigarh it was noticed (January 1986) that a dealer of Chandigarh purchased without payment of tax, goods valuing Rs.25.58 lakhs from other registered dealers during the year 1979-80 but accounted for purchases amounting to Rs.18.19 lakhs only in his account books. The short accountal of purchases of Rs.7.39 lakhs led to suppression of corresponding sales amounting to Rs.8.12 lakhs (including element of profit and other incidentals at 10 per cent). This resulted in under assessment of tax amounting to Rs.66,268. Besides minimum penalty of Rs.16,567 was also leviable for suppression of purchases/sales.

The above case was reported to the Chandigarh Administration in November 1989 and followed up by reminder in March 1990; their reply has not been received (November 1990).

The matter was reported to Ministry of Home Affairs in March 1990; their reply has not been received (November 1990).

4.03 Incorrect grant of exemption

Under the Punjab General Sales Tax Act, 1948 as applicable to the Union Territory of Chandigarh, tax is levied on the taxable turnover of a dealer at such rates as may be prescribed by the Chandigarh Administration from time to time. Goods specified in schedule B of the Act are exempt from levy of tax. Goods mentioned at item 15 of the schedule B viz. husk of all food grains and pulses was omitted from the exempted list on the issue of notification of Chandigarh Administration dated 19 April 1978. Accordingly, rice bran which is under the category of husk was taxable at the rate of 4 per cent.

While finalising (July 1986 and February 1988) the assessments of three dealers of Chandigarh for the year 1980-81 to 1985-86, the assessing authority did not levy tax on the sale of paddy husk and rice bran valued at Rs.41.94 lakhs under the impression that both these items were exempt from tax being items of schedule B. The incorrect grant of exemption resulted in non levy of tax amounting to Rs.1.71 lakhs including surcharge at the rate of 2 per cent.

On this being pointed out between June 1988 and September 1989 in audit, the department contended that rice bran is a fodder and is exempt from tax. The contention of the department is not tenable as rice bran and paddy husk do not fall under the definition of fodder in terms of notification dated 19 April 1978.

The matter was reported to the Chandigarh Administration in February and March 1990 followed up by reminder issued in September 1990; their reply has not been received (November 1990).

The matter was reported to the Ministry of Home Affairs in August 1990; their reply has not been received (November 1990).

STATE EXCISE

4.04 Short recovery of assessed fee

Under the Punjab Liquor Licence Rules, 1956, as applicable to the Union Territory of Chandigarh on grant or renewal of a licence for retail vend of foreign liquor in a hotel, a fee is charged which is based on probable or actual sales made during the previous calendar year. The fee is recoverable in three instalments (50 per cent by 30 April, 25 per cent by 30 June and the remaining 25 per cent by 30 September). The fee so recovered is subject to adjustment at the end of each quarter on the basis of actual sales of foreign liquor during that quarter and by the 7th day of the month of March, on the basis of the average sales during the first three quarters which shall finally be adjusted on the basis of actual sales at the end of the fourth quarter.

In Chandigarh, licences for sale of foreign liquor for the year 1988-89, were renewed in respect of a hotel of Chandigarh Administration by collecting fee on the basis of sales of liquor for the previous calendar year but final adjustment of the fee was not made with reference to actual sales during the year 1988-89. The omission resulted in short recovery of fee amounting to Rs.21,781.

On the omission being pointed out (October 1989) in audit, the department recovered (November 1989) the entire amount.

The case was reported to Chandigarh Administration in February 1990.

The matter was reported to Ministry of Home Affairs in May 1990.

4.05 Non recovery of loss on re-auction of vend

Under the Punjab Excise Act, 1914, as applicable to the Union Territory of Chandigarh, licences for vending country liquor and Indian Made Foreign Liquor are granted by auction. A successful bidder is required to deposit by way of security an amount equal to 15 per cent of the annual license fee (bid money) of which 10 per cent is payable at the fall of hammer and balance 5 per cent within seven days from the date of auction. The remaining amount of licence fee is payable in ten equated monthly instalments by the seventh of each month beginning from the month in which the licensee starts his business. In the event of failure to pay any instalment by the due date, the licence for vending is liable to be cancelled and re-auctioned at the risk and expense of the defaulting licensee and any deficiency will be recovered from the licensee as arrears of land revenue.

In Chandigarh, licence for sale of Indian made foreign liquor was auctioned (March 1983) for Rs.2.83 lakhs. The licensee after paying instalments and security aggregating to Rs.1.14 lakhs, stopped making further payments. The department cancelled his licence on 13 October 1983 and re-auctioned the vend on 19 October 1983 for Rs.1.50 lakhs which was, however, not confirmed and only the earnest money of Rs.1,000 of the bidder was forfeited. The vend was again auctioned for the third time on 26 October 1983 for Rs.90,000 at the risk and cost of the original defaulting licensee. The re-auction resulted in loss of licence fee of Rs.77,782 which was recoverable from the defaulting licensee along with expenses incurred on re-auction. No recovery was, however, effected (June 1990) by the department.

On the omission being pointed out (May 1986) in audit, the department stated (March 1990) that the matter regarding recovery was referred (September 1988) to the legal rememberance whose advice was still awaited. Further report in the matter has not been received (November 1990).

The matter was reported to the Ministry of Home Affairs in August 1990; their reply has not been received (November 1990).

TAXES ON VEHICLES

4.06 Non levy of token tax

As per provisions of the Punjab Motor Vehicles Taxation Act, 1924, as applicable to Union Territory, Chandigarh, tax is leviable on every motor vehicle as may be prescribed by the Chandigarh Administration from time to time and is recoverable in equal quarterly instalments. Any broken period in a quarter is considered as

a full quarter for the purpose of levy of tax. Further, under the Act ibid, no vehicle, unless exempted by a specific order, can be put on road without payment of tax at the prescribed rate. On the failure of an owner to pay tax within the prescribed period, a penalty not less than 2 per cent, but not exceeding two times, of the amount of tax in default is leviable for each month or part of a month for which the payment of tax is delayed by him.

It was noticed in audit (September 1988 and October 1989), that a transport undertaking at Chandigarh did not pay token tax in respect of 263 vehicles in 1987-88 and 301 vehicles during 1988-89 though these vehicles continued to ply during these years. Neither was the token tax paid by the transport undertaking nor was it demanded by the Registering Authority. This has resulted in non payment of token tax amounting to Rs.23.31 lakhs. In addition, penalty upto Rs.46.62 lakhs would be leviable for non payment of tax.

The case was reported to the Chandigarh Administration in February 1990; their reply has not been received (November 1990).

The matter was reported to the Ministry of Home Affairs in May 1990; their reply has not been received (November 1990).

4.07 Non levy of additional fee

Under the Punjab Motor Vehicles Act, 1939, and rules framed thereunder as applicable to Chandigarh Administration, a permit for plying a motor vehicle granted by the State/Regional Transport Authority of any one region in the State, shall not be valid in any other State unless the permit has been countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned. In addition, annual fee for each State is levied at the rates prescribed in the Punjab Motor Vehicles Rules, 1940.

It was, however, noticed in audit that on 128 permits issued in respect of 20 vehicles of other States for operation in the Union Territory of Chandigarh, during 1988-89 additional fee leviable thereon was no charged. This resulted in non recovery of additional fee of Rs.29,440.

The omission was pointed out to the Chandigarh Administration in December 1989; their reply has not been received (November 1990).

The matter was reported to the Ministry of Home Affairs in August 1990; their reply has not been received (November 1990).

4.08 Short recovery of composite fee

Under the Punjab Motor Vehicles Act, 1939 and instructions issued by the Government of India under the National Permit Scheme introduced in 1975, as applicable to Chandigarh Administration, the States and Union Territories are authorised to grant permits to the owners of public carriers, for carriage of goods throughout the territory of India. The main purpose of the scheme is to facilitate speedy and economical inter State transportation of goods throughout the country for the benefit of the public at large. Under the provisions of the scheme a vehicle registered in a State can ply in other States on payment in advance, in the home State, of a composite fee of Rs.1,000 per annum for Zonal Permits and Rs.1,500 for National Permit, except in the case of Delhi and other Union Territories where the fee payable is Rs.500 and Rs.250 per annum respectively. The fee can however, be paid in two equal half yearly instalments by 15 March and 15 September. The fee is initially collected by the home State in the form of demand drafts and then remitted to the States in which the permit holders are permitted to ply their vehicles.

In the Office of the State Transport Authority, Union Territory of Chandigarh, in respect of 22 National Permits issued between 1987-88 and 1988-89 composite fee from operators authorised to ply their Vehicles in other States, was not realised for the second half of the year.

This resulted in short realisation of composite fee amounting to Rs.0.92 lakhs. similarly in respect of 196 National/Zonal permits issued by other States during the same period, to transport operators for plying their vehicles in the Union Territory of Chandigarh, composite fee of Rs.0.79 lakh, for the second

half of the year was neither remitted by the States concerned nor was it demanded by the Transport Authority, Chandigarh.

The omission was pointed out (December 1989) in audit to the Chandigarh Administration; their reply has not been received (November 1990).

The matter was reported to the Ministry of Home Affairs in August 1990; their reply has not been received (November 1990).

4.09 Non recovery of Goods Tax

Under the Punjab Passenger and Goods Taxation Act, 1952 and the rules framed thereunder, as applicable to the Union Territory, Chandigarh, lumpsum goods tax at the rates prescribed for different types of vehicles is payable in equal quarterly instalments within thirty days of the commencement of the quarter to which the payment relates.

However, it was noticed that on 916 vehicles registered at Chandigarh, Goods tax amounting to Rs.2.95 lakhs was not charged during various quarters of 1987-88 and 1988-89.

On the omission being pointed out (November 1988 and November 1989) in audit, the department recovered Rs.24,490 and stated that action to recover the balance amount of Rs.2.70 lakhs was being taken. Further progress has not been received (November 1990).

The matter was reported in Chandigarh Administration in May 1990 and Ministry of Home Affairs in August 1990; their replies have not been received (November 1990).

4.10 Non assessment of Passenger Tax

Under the Punjab Passengers and Goods Taxation Act, 1952, as applicable to the Union Territory, Chandigarh, tax is leviable on all fares and freights in respect of passengers carried and goods transported by Motor Vehicles at the rate of thirty five per cent of the fares or freights, as the case may be.

In respect of 48 vehicles belonging to private transport companies plying in the Union Territory of Chandigarh for carrying passengers, assessment for the year 1988-89 was not made by the department. This resulted in non levy of passenger tax amounting to Rs.58,510.

On this being pointed out (September 1989) in audit the assessing authority did not furnish any reply. The matter was also reported to the Chandigarh Administration in November 1988 and reminder issued in November 1989; their reply has not been received (November 1990).

The matter was reported to the Ministry of Home Affairs in August 1990; their reply has not been received (November 1990).

STAMP DUTY AND REGISTRATION FEE

4.11 Short levy of Stamp Duty/Registration Fee

Under the Indian Stamp Act, 1899 as applicable to Union Territory Chandigarh, lease deeds are chargeable to 'Stamp Duty' and 'Registration fee' on the basis of the average rent and the period for which the property is leased. The stamp duty is leviable at the rate of 1.5 per cent upto a period of 5 years and 3 per cent upto 10 years after which it is chargeable at double the rate. Besides, registration fee at the rate of one per cent is chargeable on consideration value subject to a maximum of Rs.1,000 as per schedule of rates.

In 34 cases of leases which were registered with the Registering Authority, Union Territory Chandigarh, between April 1987 and March 1988 Stamp duty and Registration fee at prescribed rates were not charged. This resulted in short levy of stamp duty and registration fee of Rs.76,384.

The case was reported (July 1987) to the department and to Chandigarh Administration in March 1990; their reply has not been received (November 1990).

The matter was reported to the Ministry of Home Affairs in July 1990; their reply has not been received (November 1990).

OTHER TAX AND NON TAX RECEIPTS

4.12 Short levy of Audit Fee

As per the Punjab Co-operative Societies Act, 1961, and rules framed thereunder as applicable to the Union Territory, Chandigarh, every Co-operative Society is liable to pay to the Government a fee for the audit of its accounts for each co-operative year in accordance with the scale fixed by the Government. From the Co-operative year 1963-64, Audit Fee was prescribed at 5 per cent of the net annual profit subject to a minimum of Rs.20,000 in respect of State Co-operative Bank Limited.

During the course of audit of the Office of the Assistant Registrar, Co-operative Societies, Union Territory Chandigarh, it was noticed that Audit Fee in respect of Chandigarh State Co-operative Bank Limited for the Co-operative years 1979-80 to 1987-88 was charged at the rate of Rs.3,000 per annum as against the prescribed minimum rate of Rs.20,000 per annum. This resulted in short realisation of audit fee amounting to Rs.1.53 lakhs.

On this omission being pointed out (November 1986 and November 1988) in audit, the department initiated action (April 1990) to recover the amount. Report on recovery has not been received (November 1990).

The case was reported to Chandigarh Administration in November 1989; their reply has not been received (November 1990).

The matter was reported to the Ministry of Home Affairs in August 1990; their reply has not been received (November 1990).

SECTION - B UNION TERRITORY OF DAMAN AND DIU

4.13 Short recovery of licence fee

Under the provisions of Goa, Daman & Diu Excise Duty Act, 1964, fee is payable for grant of licence to hotels to sell by retail sales of Indian Made Foreign Liquor (IMFL) and country liquor on the basis of classification of City/Town/Village in which licensed hotels are located. According to the notification issued by the Government on 25 March 1976 the retail vendors of IMFL and country liquor were required to pay a licence fee of Rs.800 if the hotel is situated in a city or Rs.600 in a town or Rs.400 in a village. The licence fee was revised by the Government by issue of a Gazette Notification on 27 March 1985 and accordingly for retail sale of IMFL and country liquor, a fee of Rs.3,000 was prescribed for 'A' category hotels and Rs.2,000 for 'B" category hotels registered under the Goa, Daman and Diu Registration of Tourist Trade Act. General guidelines for registration of hotels under the Goa, Daman and Diu Registration of Tourist Trade Act, 1982 and rules made thereunder were issued by the Government of Union Territory of Daman in October 1988.

During the course of audit of the Excise Department it was noticed (March 1989) that the hotels in Daman were not classified as per the guidelines issued by the Tourist Department for the purpose of levy and recovery of higher licence fee for retail sale of IMFL and country liquor. On the omission being pointed out in audit (March 1989) the licensing authority had classified only 3 hotels as class 'B' attracting higher licence fee of Rs.2,000 per year as against Rs.450 or Rs.325 per year (above rates are lower than that prescribed in March 1976) being levied. Classification of five other hotels was under the examination of the department. Failure to classify the hotels according to the guidelines issued by the Tourist Department of the Government and non levy of fees at higher rates as prescribed for retail sale of IMFL and country liquor by the hotels, resulted in short levy of licence fee of Rs.50,600 during the period from 1 April 1985 to 31 March 1989, assuming that the remaining 5 hotels are classifiable as class 'B'.

The case was reported to the Union Territory Administration in August 1989. The Administration replied in September 1989 that recovery of licence fee at the rate of Rs.2,000 per year leviable in class 'B' hotels had already been made in two cases and action was in progress in respect of the third case. In the case of five other hotels, matter regarding registration was still pending finalisation (September 1989). Further progress has not been intimated (November 1990).

The matter was reported to the Ministry of Home Affairs in September 1989 and reminder issued in May 1990; their reply has not been received (November 1990).

10 MAY 1991

NEW DELHI
The

(R.RAMANATHAN)
Pr. Director of Receipt Audit (INDT)

Countersigned

10 MAY 1991

NEW DELHI
The

(C.G.SOMIAH)
Comptroller and Auditor General of India

GLOSSARY OF TERMS

CUSTOMS RECEIPTS :

Adhoc exemption : Exemption granted by the Government under circumstances of an exceptional nature in individual cases under section 25(2) of the Customs Act, 1962.

Additional Duty (countervailing duty) : Duty levied under section 3 of Customs Tariff Act, 1975 equal to excise duty leviable for the time being on like article produced or manufactured in India.

Adjudicating Authority : Authority competent to pass any order or decision under the Customs Act but does not include the Board, Collector (Appeals) or Appellate Tribunal.

Assessment : Determination of amount of customs duty by the department on goods imported/exported.

Auxiliary Duty : Duty leviable in addition to basic customs duty in terms of the provisions of the Finance Act each year.

Basic customs Duty : Duty levied under the Customs Tariff Act, 1975.

Bill of entry : A document required to be presented by the importer for assessment of Customs duty on goods imported.

Board : The Central Board of Excise and Customs constituted under the Central Board of Revenue Act, 1963.

CCCN : Customs Cooperation Council Nomenclature.

C.I.F. : Cost, insurance and freight.

Concessional rate of Duty : Duty leviable in terms of any concession notified under an exemption notification issued by the Government.

Customs Area : The area of customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by customs authorities.

Dutiable goods : Goods which are chargeable to duty.

Export : Taking out of India to a place outside India.

Export goods : Goods which are to be taken out of India to a place outside India.

Examination : In relation to any goods, includes measurement and weighment thereof.

Effective rate of duty : Rate of duty as per tariff read with any exemption notification issued thereon.

FOB : Free on Board.

Home consumption : Goods cleared for consumption in India.

Import : Means bringing into India from a place outside India.

Inventory : Detailed list of goods.

Import manifest or import report : The Manifest or report required to be delivered under section 30 of the Customs Act, 1962.

Imported goods : Goods brought into India from a place outside India.

Major Customs House : A Custom House notified as a major Custom House by the Government of India.

Market Price : The wholesale price of the goods in the ordinary course of trade in India.

Provisional assessment : Assessment made pending completion of chemical or other test or production of information/documents to the satisfaction of proper officer for final assessment.

Project Imports : means import of all items of machinery including prime movers, instruments, apparatus and appliances, control gear and transmission equipment, auxiliary equipment as well as all components required for the initial setting up of a unit/project or the substantial expansion of an existing unit/project.

Proper Officer : The officer of Customs who is assigned any function to perform under the Customs Act, 1962.

Rate of Exchange : Rate of exchange determined by the Central Government or ascertained in such manner as the Central Government may direct for the conversion of Indian currency into foreign currency or foreign currency into Indian currency.

Replenishment Licence : Licence issued to provide replenishment of the imported materials required in the manufacture of the products exported.

Shelf Life : Period during which goods do not lose potency and retain utility.

Stores : Goods for use in a vessel or aircraft and includes fuels and spare parts and other articles of equipment.

Shipping Bill : Document presented by an exporter to the Customs authorities for clearance of goods meant for export.

Statutory Rate : Rate authorised by statute (Tariff rate).

Short levy : Duty levied less that the actual duty due.

Time barred demand : Demand not made within the time limit as provided under section 28 of the Customs Act, 1962.

Voluntary Payment : Payment of customs duty made voluntarily by an importer/exporter on a request by the department.

Value : in relation to any goods means the value thereof determined under the provisions of section 14 of the Customs Act, 1962.

Warehouse : A public or private premises in India licensed under the Customs Act, 1962 for storage of imported goods.

Warehoused goods : Goods deposited in a warehouse.

UNION EXCISE DUTIES :

Additional Duty of Customs : Duty levied under section 3 of the Customs Tariff Act, 1975 equal to excise duty leviable for the time being on a like article manufactured in India.

Adjudication : The process of passing any order or decision by any competent authority (adjudicating authority) under the Central Excises and Salt Act, 1944; such authority does not include the Central Board of Excise and Customs, the Collector of Central Excise (Appeal) or the Appellate Tribunal.

Ad valorem : Duty dependent on value of goods as arrived at by application of section 4 of the Central Excises and Salt Act, 1944.

Additional duties of Excise (Goods of Special Importance) Act, 1957 : Provides for the levy and collection of additional duties of excise on certain goods and for the distribution of a part of the net proceeds thereof among the States in pursuance of the principles of distribution formulated and the recommendations made by the Finance Commission in its report dated 30 April 1984.

Aggregate Value : This is the sum total of values of individual units of goods cleared in order to arrive at a whole.

Appellate Order : Order of the Appellate Collector which should be a speaking order, stating the points of determination, the decision thereon and the reasons for the decision.

Assessee : Any person who is liable for payment of duty assessed and includes any producer or manufacturer of excisable goods or licensee of a private warehouse in which excisable goods are stored.

Appeal : Where the assessee disputes the assessment order, he may go in appeal against such order.

Board : The Central Board of Excise and Customs constituted under the Central Board of Revenue Act, 1963 (54 of 1963); empowered to issue order and instructions in the interest of uniformity of classification or levy of duties on goods and the officers and other persons employed in the execution of this Act shall observe such orders or instructions.

Brand Name : 'Brand Name' or 'trade name' means a brand name or trade name, whether registered or not, that is to say a name or a mark, such as symbol, monogram label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

Band Reconciliation : Reconciliation of receipts as booked by Pay and Accounts Officer with those reported by Departmental officers.

Bought out items : Excisable goods which are bought from the market or from another manufacturer.

Central Excise Laws (Amendment and Validation) Act, 1982 (58 of 1982) : This Act provides for the amendment of laws relating to Central Excise and to validate duties of excise collected under such laws.

Cess : Cesses are leviable as excise duties on certain products at the rates specified. The levy and collection of such cess in some cases happened to be entrusted to the Central Excise Department.

CEGAT : means the Customs, Excise and Gold (Control) Appellate Tribunal constituted under Section 129 of the Customs Act, 1962.

Chapter Heading, Sub heading and Notes : The Central Excise Tariff Schedule introduced by the Central Excise Tariff Act, 1985 contains 96 chapters grouped into 20 sections. Each of these sections relate to a broader class of goods. Each Chapter has been further divided into various headings depending upon different types of goods belonging to the same class of products. These headings have further been divided into sub headings. The Section/Chapter Notes give detailed explanation as to the scope and ambit of the respective Section/Chapter. These notes have been given statutory backing and have been incorporated at the top of each Section/Chapter.

Chemical Examiner : An authority incharge of the chemical laboratories set up by the department for chemical analysis of goods in order that their correct classification is determined.

C.K.D. condition : Completely Knocked Down condition where component parts of excisable goods are cleared from he factory for assembling at site, the goods are said to be cleared in Completely Knocked Down condition. As a result of assembly of the parts elsewhere, a new excisable goods is deemed to have emerged.

Collector : In the field administration, the Collector of Central Excise is the Chief Administrator and Judicial Officer.

Collector (Appeals) : The Collector (Appeals) hears and decides appeals arising from a decision below the level of collectors in his jurisdiction.

Commodities : General term for excisable goods.

Concessional Rate : Duty leviable in terms of any concession under an exemption notification issued by the Government.

Consumed Captively : Refers to excisable goods produced in a factory and used within the factory in the manufacture of other excisable goods.

Classification List : This list is filed by the assessee with the proper officer with the full description of all excisable goods manufactured by him alongwith the classification of such goods in the tariff schedule and the rate of duty leviable on each such goods.

Clearances : Excisable goods that are cleared by the manufacturer for captive consumption/home consumption/export.

The Central Excises and Salt Act, 1944 : This was enacted as Act No.1 of 1944 to consolidate and amend the law relating to Central duties of excise on goods manufactured or produced in India.

The Central Excise Rules, 1944 : Rules framed in exercise of powers under the Central Excises and Salt Act, 1944 to provide for the assessment and collection of duties imposed by that Act.

Chapter X Procedure : A procedure prescribed to be followed by a manufacturer who desires to avail remission of duty on goods used for special industrial purposes.

Department : The department of Central Excise.

Drug (Price Control) Order 1987 : These orders are made under the powers conferred by section 3 of the Essential Commodities Act, 1955 (10 of 1955), defining the terms 'bulk drug', 'formulation' etc. It fixes the sale price of indigenously manufactured bulk drugs as well as the method of calculation of retail price of formulations.

Drugs and Cosmetics Act, 1940 (23 of 1940) : This Act has been enacted to regulate the import, manufacture, distribution and sale of drugs and cosmetics.

Deemed credit : The second proviso to Rule 57G(2) of the Central Excise Rules, 1944, empowers the Central Government to allow Modvat credit on the inputs without production of documents evidencing payment of duty. The input items so declared will be deemed to be duty paid and credit of duty will be allowed at such rate and subject to such conditions as may be provided in the order.

Duty : Amount leviable under the provision of Section 3 of the Central Excises and Salt Act, 1944.

Discount : Trade discount, not being refundable on any account whatsoever, allowed in accordance with the moral practice of the wholesale trade at the time of removal in respect of such goods sold or contracted for sale, is not includible in the value of the goods leviable to duty.

Exemption : Under section 5A of the Central Excises and Salt Act, 1944, the Central Government may, in public interest, by notification in the official gazette, exempt excisable goods from the whole or any part of the duty of excise leviable thereon either absolutely or subject to fulfillment of conditions.

Explanatory Notes : Explanatory Notes to the Harmonised Commodity Description and Coding System indicate the scope and content of certain sub-headings of the Harmonised system.

Effective Rate of duty : Rate of duty as per tariff read with any exemption notification issued thereon.

Excisable goods : Goods specified in the Schedule to the Central Excise Tariff Act, 1985 as being subject to a duty of excise.

Export : Clearance of goods produced or manufactured in India to a place outside India.

Financial Year : The year beginning from the month of April of a calender year to the end of the month of March in the next calendar year.

Final Product : The excisable goods manufactured and actually cleared by the assessee from the factory.

Factory : Any premises, including the precincts thereof, wherein or in any part of which excisable goods are manufactured.

H.S.N. (Harmonised System of Nomenclature) : The new Excise Tariff as introduced by the Central Excise Tariff Act, 1985 is based on a system of classification derived from international convention of Harmonised Commodity Description and Coding System with such contractions and modifications as are necessary to fall within the scope of levy of Central Excise Duty.

Inputs : Excisable goods used within the factory in or in relation to the manufacture of final products.

Intermediate products : This item refers to such excisable goods, having distinct name, character and use and which are capable of being removed from the factory, and emerge in the process of manufacture of final products.

Indian Standard Institution : Now "Bureau of Indian Standards". The Bureau specifies the standards for goods to be sold under its mark.

Industries (Development and Regulation) Act, 1957 : This is an Act to provide for the development and regulation of certain industries.

Interpretative Rules : These rules are designed to aid classification of excisable goods under the various chapter headings and sub headings of the schedule to the Central Excise Tariff Act, 1985.

Job work : Means processing of raw materials or semi finished goods supplied to the job worker by the principal manufacturer so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for such process.

Licence : Every manufacturer, trader or person is required to take out a licence and shall not conduct his business in regard to such goods otherwise than by the authority, and subject to the terms and conditions of a licence granted by a duly authorised officer of the department.

Levy : Duties of excise levied under section 3 of the Central Excises and Salt Act, 1944. Absence of levy is referred to as non levy and levy which falls short of what is legally leviable is referred to as short levy.

Modvat : (Modified form of value added tax) Scheme introduced from 1 March 1986 wherein the duty paid on inputs which are used in or in relation to the manufacture of final products, is allowed to be utilised towards payment of duty on the final products.

Misclassification : The excisable goods are to be classified under the proper chapter heading and sub headings of the Central Excise Tariff Schedule. Any wrong classification of goods amounts to misclassification and results in the application of incorrect rate of duty.

Manufacture : This includes any process :- (i) incidental or ancillary to the completion of manufactured product and (ii) which is specified in relation to any goods in the Section or Chapter notes of the schedule to the Central excise Tariff Act, 1985 as amounting to manufacture.

Marketability : The capability of the excisable goods being sold, ordinarily, in the wholesale trade to a buyer at arms length.

Proforma credit : A special procedure for utilising the duty paid on raw material or component part in payment of duty on finished excisable goods under rule 56A of the Central Excise Rules. The credit of duty paid on the raw material or component parts is maintained in a proforma account for utilising such credit towards payment of duty on final product.

Price List : Every assessee who produces, manufactures or warehouses excisable goods chargeable with duty at a rate dependent on the value of goods is required to file price list with the proper officer.

Principal Manufacturer : Generally, a manufacturer who gets the goods manufactured on his account by supply of raw materials and/or specifications is referred to as principal manufacturer. Sometimes referred to as primary manufacturer also.

Personal Ledger Account (PLA) : This is an account current maintained by every assessee with the department for keeping an account of deposits made by him and the payments of duty on goods cleared.

Patent or proprietary medicaments : Any drug or medicinal preparation, in whatever form, for use in the internal or external treatment of, or for the prevention of ailments in human beings or animals, which bears either on itself or on its container or both, a name which is not specified in a monograph, in a pharmacopoea, formulary or other publications, or which is a brand name or a trade mark.

Packaging : Where the excisable goods are delivered at the time of removal in a packed condition; cost of such packing is includible in the value of the goods except where the packing is of a durable nature and is returnable by the buyer to the assessee.

Related Person : A person who is so associated with the assessee that they have interest, directly or indirectly in the business of each other and includes a holding company, a subsidiary company, a relative and a distributor of the assessee and any sub distributor of such distributor.

R.G.23 : An account required to be maintained by a manufacturer working under the special procedure prescribed under rule 56A of the Central Excise Rules, 1944. Part I of Form RG 23 is the stock account of material or component parts for the manufacture of finished excisable goods and part II is the Entry Book of perform credit and its utilisation towards payment of duty on final product.

R.G.23A : Is an account form (similar to RG 23) required to be maintained by a manufacture under the Modvat scheme/Money credit scheme. part I of this account is the stock account of inputs used in or in relation to the manufacture of final products and Part II is Entry Book of duty credit and its utilisation towards payment of duty on finished products.

R.T. 12 : A monthly return of excisable goods manufactured/received (without payment of duty), cleared and duty paid thereon; submitted by the assessee working under Self Removal Procedure for finalisation of assessment by the department.

Show cause cum demand notice : In cases of non payment of short payment of duty, by the assessee, the proper officer of the department is required to demand the duty, differential duty and afford an opportunity to the assessee to show cause why the demand should not be enforced. This is done in the interest of natural justice and due process of law.

Small Scale Industry : A factory which is an undertaking registered with the Directory of Industries in any State or the Development Commissioner (Small Scale Industries) as a Small Scale Industry under the provisions of Industries (Development and Regulation) Act, 1951 (65 of 1951).

Specific rate of duty : Rate of duty based on weight, number, length, area, volume or other unit measure with reference to which duty is leviable; but not with reference to value.

Time bar : Demand not raised within the time limit prescribed under Central Excise Act.

Tariff Item : Items mentioned in the First Schedule to the Central Excises and Salt Act, 1944 prior to introduction of Central Excise Tariff Act, 1985.

Turn Key Project : Goods in completely knocked down condition brought and assembled at site resulting in the emergence of new excisable goods.

Underassessment : Quantum of duty short paid.

Warehouse : means any place or premises appointed or licensed under the Central Excise Rules for storage of goods.

Wholesale Price : Price at which the excisable goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale. This is the normal price and is the value for determination of duty on ad valorem basis.

E R R A T A

Page No.	Para No.	Column No.	Line No.	For	Read
ix	Overview (I)	1	25 from bottom	1988-90	1988-89
xvii	Overview	1	6	Insert the word Rs. between was....8.37 crores.	
xviii	Overview XV(c)	2	17	the	The
xviii	Overview XV(e)	2	2 from bottom	wroks	works
xxii	Overview (XXII)	2	11	preceeding	preceding
2	1.01	2	11	discrepacny	discrepancy
10	1.01	1	5	as	at
10	1.01	2	16	form	from
28	1.02(11) (i)(e)	2	1 from bottom	Reply....	Reply has not been received.
53	1.03(16)(ii)	1	3	proprietory	proprietary
81	2.22	2	10 from bottom	Catologue	Catalogue
87	2.33	2	18 from bottom	prenumatic	pneumatic
88	2.34	1	11	horologinal	horological
95	2.38	1	21	seath	sheath
112	2.72	1	12	unintend	unintended
130	3.04(i)		16	vehichels	vehicles
138	3.12(v)(a)	2	4 from bottom	non	not
145	3.15(i)	1	2 from bottom	Manufacturer	manufactured
147	3.16	2	12	demanded	remanded
149	3.18(i)(b)	1	15 from bottom	chemst	chemist
155	3.23(i)	1	22	short levy duty	short levy of duty
157	3.25(i)	2	20 from bottom	sign board paints	sign board painter's colours
161	3.28(ii)	1	25	lakh	lakhs
163	3.30(ii)	2	11	crantshaft	crank shaft
166	3.32(i)	1	21	cabled	doubled
179	3.41(vi)	1	2	aid	said
194	3.48	1	3 from bottom	proprietory	Proprietary
194	3.48	2	4	proprietory	Proprietary
201	3.54(iv)	2	10 from bottom	used which were	used, were
202	3.55(i)	1	2 from bottom	production	manufacture

Page No.	Para No.	Column No.	Line No.	For	Read
210	3.62(i)	2	21	aplicable	applicable
210	3.62(i)	2	8 from bottom	by the them	by them
218	3.65(i)(a)	1	11 from bottom	countain	contain
218	3.65(i)(b)	2	2	570	57-O
241	4.05	2	16 from bottom	rememberance	remembrancer
242	4.07	1	3 from bottom	no	not
242	4.08	2	5 from bottom	similarly	Similarly

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