REPORT
OF THE
COMPTROLLER
AND
AUDITOR GENERAL
OF INDIA

FOR THE YEAR
1974-75

UNION GOVERNMENT (CIVIL)

REVENUE RECEIPTS
VOLUME I
INDIRECT TAXES

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Union Government (Civil)

Revenue Receipts

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PREFATORY REMARKS

As in the last year, the Audit Report on Revenue Receipts (Civil) for the Union Government for the year 1974-75 is presented in two volumes—one relating to indirect taxes and the other relating to direct taxes.

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

Chapter I—mentions (i) the figures of collection budget estimates and the actuals of Customs revenue and Foreign Travel Tax; (ii) points of interest which came to the notice of Audit in the audit of these receipts.

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

Chapter III—sets out the results of audit of Sales Tax, and State Excise receipts of the Union territory of Delhi.

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

VOLUME I

CHAPTER I

CUSTOMS RECEIPTS AND FOREIGN TRAVEL TAX

1. Under the changed system of classification of receipts and expenditure in Government accounts from the 1st April, 1974, customs receipts have been accounted for under the head '037-Customs'. The other changes are:

(i) Minor head 'Additional duties' has been abolished and the figures, formerly booked under this head, now stand merged with 'Import duties'.

(ii) Minor head "Deduct refunds and drawback" has also been abolished. "Deduct refunds" and "Deduct drawback" are opened as two distinct sub-heads under each of the minor heads. Hence net figures, after deducting figures of refunds and drawback*, are shown under each of the minor heads, namely Imports, Exports, Cess on exports and Other Receipts.

2. The total receipts under 'Customs' for the years 1973-74 and 1974-75 are given below:—

	1973-74	1974-75
	Rs.	Rs.
Customs Imports . . .	8,30,57,82,683	11,87,91,67,298
Additional duties . . .	1,21,20,62,460	—
Customs Exports . . .	84,00,62,087	83,38,93,550
Cess on Exports . . .	4,03,02,368	23,50,51,980
Miscellaneous/other Receipts .	20,39,50,350	38,09,04,650
Fees, fines, forfeiture, and miscellaneous penalties .	6,18,644	—@
Gross Revenue . . .	10,60,27,78,592	
(*Deduct*) Refunds and drawback	*63,84,35,114*	
Net Revenue . . .	9,96,43,43,478	13,32,90,17,478

*Rs. 36,66,81,123; Rs. 6,73,46,697; Rs. 5,32,349; and Rs. 2,41,74,686 respectively, totalling Rs. 45,87,34,855.

@Included under Miscellaneous/Other Receipts.

Receipts during 1974-75 have shown a substantial increase of Rs. 336.47 crores over those for the year 1973-74.

3. The auxiliary duties of customs were continued during the year. The rates of duty which were 20 per cent, 10 per cent, and 5 per cent were changed to 20 per cent, 15 per cent and 5 per cent *ad valorem* respectively to net an additional revenue of Rs. 16 crores in a full year. The basic customs duty on whisky, brandy, gin and certain other spirits was increased from Rs. 60 per litre to Rs. 80 per litre. Including the anticipated additional revenue of Rs. 20.05 crores from these changes the budget estimate of customs receipts was placed at Rs. 936.05 crores. In July, 1974, the Finance Minister, while introducing the second Finance Bill for 1974 had also stated:

> "The inflationary trends in international prices to which I had referred in my budget speech in February, 1974 continue. In these circumstances, I have decided to leave unchanged customs duties proper though additional revenue to the extent of Rs. 1 crore is expected from countervailing duties consequent on the changes proposed in Central Excise Duties."

The actual receipts have exceeded the anticipated revenue by Rs. 395.85 crores.

4. Test audit of records of various Custom Houses/Collectorates revealed under-assessments, over-payments and losses of revenue amounting in all to Rs. 68.94 lakhs. Over-assessments and short payments amounting to Rs. 24.31 lakhs were also noticed during audit.

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

(*a*) Non-levy/Short levy of additional duty.
(*b*) Mistakes in the levy of regulatory duty.

(*c*) Non/Short levy of duty due to misclassification of goods.

(*d*) Mistakes in determination of assessable value.

(*e*) Irregular/excess payment of drawback claims.

(*f*) Irregular/erroneous refunds.

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

5. *Non-levy/Short levy of additional duty*

(*i*) By executive instructions issued in February, 1965 and in March, 1972 the Central Board of Excise and Customs clarified that polyvinyl chloride compounds were not leviable to central excise duty and only PVC resins in pure and straight form were liable to be assessed to duty under item 15A(I)(ii) of the Central Excise Tariff.

In a major Custom House a product having trade name "LP Biscuit Material in the form of granules" composed of 99 per cent PVC resin and 1 per cent colour, stabiliser and lubricant was being imported for use as raw material in the manufacture of gramophone records. The goods were assessed to basic duty as artificial or synthetic resin and plastic material under item 82(3) of the Indian Customs Tariff. No additional duty was levied in the light of instructions.

The non-levy was questioned in audit on the following grounds :—

(*a*) Board's order in 1965 was intended to apply in respect of PVC resin transformed into PVC compound on modification and was issued with the object of preventing indigenous PVC compound from two-stage taxation first at the resin stage and again on the compound stage. In the instant case, addition of 1 per cent colouring, stabilising and lubricating material does not transform 99 per cent

PVC resin into another chemical compound or change its identity, as to justify exempting the finished product from levy of additional duty at both the stages.

(*b*) Section 2A(2) of the Indian Tariff Act, 1934 enables Central Government to frame rules providing for levy of additional duty on raw material of a particular finished product in order to fully countervail the excise duty chargeable on a like article if manufactured in India including the excise duty chargeable on the raw material used in manufacture of such article. *"LP Biscuit material", if it were to be manufactured in India, would attract excise duty at the resin stage. If, therefore, the subject goods are not leviable to additional duty under Section 2A(1) of Indian Tariff Act, 1934, Government by not making use of the power given under Section 2A(2) *ibid* has allowed an unjustified concession in respect of a raw material imported for manufacture of an item without levy of duty at either of the two stages *i.e.* as raw material or as finished product.

Non-levy of additional duty during the period from 31st August, 1973 to October, 1974 amounted to loss of revenue of Rs. 32 lakhs (approximately).

The Ministry of Finance have replied that the subject goods were a compounded material and were not liable to countervailing duty under the instructions of 1965 and 1972; the question whether these instructions require reconsideration is under examination in consultation with the Law Ministry.

(ii) In terms of notification 82–Customs dated 6th August, 1960, component parts of any machinery, when imported for the purpose of initial setting up of that machinery or for its assembly or manufacture were exempt from so much of the duty of customs

*Base material for manufacture of gramophone records.

as was in excess of the rate applicable to the said machinery leviable under the Indian Tariff Act, 1934. The exemption covered customs duty as well as countervailing (additional) duty subject to certain conditions. This gave rise to an anomalous situation; where machinery was not subject to excise duty, the component parts indigenously produced suffered excise duty while imported components escaped such levy. The imported components had thus an advantage over the indigenous components and this acted as a disincentive to import substitution.

The Central Government on consideration of the matter, issued notification No. 37 Customs dated 10th March, 1973 withdrawing the exemption from countervailing (additional) duty so far enjoyed by imported components.

During the intervening period from 6th August, 1960 to 9th March, 1973, a number of new items were added to the Central Excise Tariff, out of which many could have been liable to countervailing (additional) duty but for the notification dated 6th August, 1960. The duty forgone during the period from 1969 to 1972 amounted to Rs. 8,77,087.

The Ministry of Finance have stated that the exemption from additional duty granted by notification of 6th August, 1960 and its withdrawal in the subsequent notification dated 10th March, 1973 were in pursuance of policy decision of Government and that there was no loss of duty.

(iii) Petroleum Coke, a product derived from refining crude petroleum, was assessable to basic customs duty under item 87 of the Indian Customs Tariff and countervailing (additional) duty @ 20 per cent *ad valorem* under item 11-A of the Central Excise Tariff.

The Central Board of Excise and Customs issued executive instructions on 18th November, 1969 that 'Petroleum Coke' was to be assessed to customs duty under item 27 of the Indian

Customs Tariff. With this revised classification, this imported product automatically became entitled to the benefit of exemption from countervailing duty, on the strength of an existing general exemption notification of 12th December, 1964. This unintended benefit was withdrawn only on 16th January, 1971 by another notification. The non-levy of countervailing duty during the period from 18th November, 1969 to 15th January, 1971 resulted in a loss of revenue to the extent of Rs. 3,47,579 on one consignment of 'Calcined Petroleum Coke' alone, imported on 26th November, 1969 in a major Custom House.

The Ministry of Finance have stated (February, 1976) that calcined petroleum Coke was not excisable under the Central Excise Tariff, till a new item was introduced in the year 1971 and therefore, customs countervailing duty was not leviable on it prior to this date. This explanation overlooks the fact that by a ruling issued in November, 1969 the Central Board of Excise and Customs had classified calcined petroleum coke as coke for assessment purposes as the process of calcination does not contribute to any material change in the goods.

(iv) Hardened glass laminated sheets composed of several layers of fabric woven from glass fibre with epoxy synthetic resin reinforced and laminated were imported through a major Custom House. These were classified as plate glass and assessed to customs duty, basic duty at 100 per cent *ad valorem*, auxiliary duty @20 per cent *ad valorem* under item 60(6) of the Indian Customs Tariff and additional duty at 20 per cent *ad valorem* under item 23A(1) of the Central Excise Tariff. Audit pointed out that the goods should be classified as laminated plastic sheets under a departmental tariff advice of 18th September, 1971 and assessed to duty under item 82(3) of the Indian Customs Tariff at 100 per cent *ad valorem* with auxiliary duty at 20 per cent *ad valorem*. The countervailing duty would be leviable at 40 per cent *ad valorem* under item 15A of the Central Excise Tariff

instead of 20 per cent *ad valorem* levied. Accepting this, the Custom House recovered the short levied additional duty of Rs. 34,764 in June, 1975. While confirming the facts, the Ministry of Finance have stated that the Internal Audit Department had, through inadvertance, forwarded the Bill of Entry to Customs Revenue Audit without its being finally audited in Internal Audit.

6. *Mistakes in the levy of regulatory/auxiliary duty*

(i) By a notification issued on 17th March, 1972 the regulatory duty leviable on imported goods was raised from 2.5 per cent to 5 per cent *ad valorem*. In a minor port, a consignment of 'muriate of potash' imported in July, 1972, long after the revised rate came into force, was charged to regulatory duty at 2.5 per cent *ad valorem*. When the short levy was pointed out in Audit in March, 1973, an amount of Rs. 2,45,605 was recovered in February, 1974.

(ii) Auxiliary duty of customs is leviable at the rate of (a) 20 per cent *ad valorem* where the basic customs duty leviable is at 100 per cent *ad valorem* or more, (b) 15 per cent *ad valorem* on the goods in respect of which the basic customs duty is at the rate of 60 per cent *ad valorem* or more but less than 100 per cent *ad valorem* and (c) 5 per cent *ad valorem* where the rate of basic customs duty is less than 60 per cent *ad valorem*. In relation to any article liable to two or more different rates of basic customs duty the highest rate should be taken into account while determining the rate of auxiliary duty.

In a major Custom House, a consignment of vanadium pentoxide, imported in November, 1974 was assessed to basic customs duty @ 30 per cent *ad valorem*. Based on this, auxiliary duty was levied at 5 per cent *ad valorem*. It was pointed out in audit in April, 1975 that in respect of the goods, the rate of 30 per cent adopted for basic customs duty was conditional, namely

when the vanadium pentoxide was for use in the manufacture of ferro alloys. In view of this, the basis for levy of auxiliary duty should be the tariff rate which was 60 per cent *ad valorem* and on this basis the auxiliary duty should have been levied at 15 per cent *ad valorem.*

Admitting the objection, the Custom House recovered an amount of Rs. 47,218 in June, 1975.

(iii) Under a notification issued in July, 1974,'Ethion' was allowed to be assessed at a concessional rate of 20 per cent *ad valorem,* if imported in a commercially pure form.

In a major Custom House a consignment of commercially pure Ethion imported in November, 1974 was assessed to duty at the rate of 20 per cent *ad valorem* (basic) plus 5 per cent *ad valorem* (auxiliary). As the commodity 'Ethion' was liable to be assessed at two different rates of duty namely 60 per cent and 20 per cent *ad valorem* depending upon its purity, the higher rate of duty should be the basis for adoption of the rate of auxiliary duty. It was pointed out in audit in March, 1975 that auxiliary duty should have been levied at 15 per cent *ad valorem.* The levy of auxiliary duty at the rate of 5 per cent *ad valorem* instead of 15 per cent *ad valorem* resulted in an under-assessment of Rs. 13,817.

The Ministry have stated that the matter is not entirely free from doubt and that it is proposed to place the matter before the next tariff conference of Collectors of Customs.

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

(i) In a major Custom House 'Glazed mechanical printing paper and white printing paper' imported in July, 1972 and August, 1972 and liable to duty at 60 per cent *ad valorem* plus regulatory duty and countervailing duty as applicable was allowed to be cleared free of these duties by treating the goods as

'newsprint'. The goods were neither described as 'newsprint' in the customs documents nor did the examination report of Customs Officers indicate them as 'newsprint'. The suppliers' invoices did not also describe the goods as 'newsprint'. The import licence issued by the licensing authorities indicated the goods as 'Glazed mechanical printing paper' in two cases and not as 'newsprint'. Further, the certificate given by the importers did not also clearly indicate that the supplies were 'newsprint'.

In four cases of imports noticed in audit, the under-assessment involved worked out to Rs. 2,08,917. The Ministry of Finance have stated that though the Import Trade Control licence was issued in respect of 'glazed mechanical printing paper', according to technical opinion, such paper having 70 per cent or more mechanical wood pulp content and imported in reels, 'is nothing but newsprint'.

(ii) Goods described as 'fibre glass', for electrical insulation imported through an outport were assessed to duty under item 73 of the Customs Tariff at 60 per cent *ad valorem* plus 10 per cent auxiliary duty.

Audit questioned the assessment of the goods under item 73 and suggested classification under item 53, relying on the examination report on the bill of entry, which showed that the goods were glass textolite sheets. According to a tariff advice of July, 1971, fibre glass manufactures were textile manufactures. The Collector of Customs thereupon examined a sample of the goods and decided that the goods would merit assessment at 100 per cent *ad valorem* plus 20 per cent auxiliary duty under item 82(3) of the Indian Customs Tariff with countervailing duty at 40 per cent *ad valorem* under item 15A of the Central Excise Tariff.

The reassessment of the goods resulted in an extra levy of Rs. 1,01,715. Particulars of recovery are awaited (February, 1976). The Ministry of Finance, while confirming the facts,

have stated that the bill of entry covered by a contract was assessed provisionally without obtaining and scrutinising the documents and the correctness of the classification would have been verified at the final assessment.

(iii) A consignment of 'Tungsten wire' in running length valued at Rs. 60,873 was assessed to duty in a Custom House under item 70(1) of Indian Customs Tariff at 60 per cent *ad valorem* plus regulatory duty at 5 per cent *ad valorem*. The goods however, were classifiable under item 73 (23) of the Indian Customs Tariff attracting duty at 100 per cent *ad valorem* plus regulatory duty at 10 per cent *ad valorem*. On this being pointed out by Audit on 3rd February, 1973, the department admitted the objection and stated that all efforts were being made to realise the short levy of Rs. 27,393 from the party. The Ministry of Finance, while confirming the facts have stated that the amount has not yet been recovered; a request for voluntary payment was issued on 20th March, 1973 as the time limit of six months had expired on 25th February, 1973.

(iv) Connecting rods, bolts and nuts of internal combustion engines for motor vehicles imported through a major Custom House were assessed to duty under item 75(12) of the Indian Customs Tariff. These assessments were revised under orders of Deputy Collector to reassess them under item 63 (12) as "Iron or Steel bolts and nuts, not otherwise specified" based on a ruling issued by the Board in January, 1958. This ruling is, however, applicable only in respect of connecting rods, bolts and nuts of internal combustion engines for machinery.

It was pointed out by Audit in December, 1973 that it would be more appropriate to assess the articles under item 75(9) to (12) as "motor vehicle parts" based on rulings of the Board issued in December, 1947 and October, 1952 read with a ruling issued in August, 1955. The Collector of Customs, on further examination, accepted the audit view and also promised review of all other

cases as requested by Audit. Results of review of all such imports indicated a short levy of Rs. 21,386 in eight cases of imports during the period from May, 1971 and this amount was recovered in August-September, 1975.

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

(i) According to instructions contained in the Central Appraising Manual (a departmental guide) an *ad hoc* addition of 20 per cent of F.O.B. value towards freight and insurance should be made, if the actual charges incurred are not available. The Custom Houses are required to maintain registers to record the actuals of freight and insurance so as to safeguard against adoption of *ad hoc* percentages which might be lower than actuals. This is intended to ensure that the importers do not get lower assessments by not declaring the actuals.

Two consignments of "perlite rock" weighing 708.5 m.t. and 668 m.t. with values of Rs. 3,54,250 and Rs. 3,35,000 F.O.B., respectively, imported through an outport were assessed to duty in April, 1974 initially by adding 20 per cent of F.O.B. value towards freight and $1\frac{1}{8}$ per cent *ad valorem* towards insurance. Subsequently these were re-assessed in August, 1974 by adopting *ad hoc* addition of 20 per cent only to value and consequential refunds were made in September, 1974. As the goods were heavy, the Custom House was requested by Audit to examine the adequacy of the *ad hoc* percentage adopted for assessment *vis-a-vis* the actuals. On further verification, the Custom House admitted that the quantum of *ad hoc* percentage adopted was inadequate and the actual freight paid by the importers was considerably more. There were six such cases, including the two pointed out in audit. A total short collection of duty amounting to Rs. 3,28,963 was recovered in February, 1975 in respect of all these cases. The Ministry have accepted the objection.

(ii) Stevedoring charges form an element of freight and thus form part of the assessable value.

In a Custom House, it was noticed that the stevedoring charges on the import of "magnesia clinker" were adopted at the rate of Rs. 4 per metric tonne in two cases of imports made in July, 1971 and at the rate of Rs. 13.50 per metric tonne in two other cases in November, 1971. When the basis for the variation was enquired in audit, the Custom House stated that the correct rate to be adopted was Rs. 13.50 per metric tonne and recovered the short collection of duty amounting to Rs. 32,892 in October, 1974. The Ministry of Finance, while admitting the facts, have explained that the stevedores did not, earlier, include certain charges. The Ministry have added that importers are now being asked to furnish receipts from their stevedores and the assessing officers are instructed to keep a watch on the rates and make comparisons, if necessary.

Results of review of similar cases are awaited.

9. *Irregular/Excess payments of drawback*

(i) A company exported from a major port 'white printing paper' and obtained drawback on the consignment at the rates prescribed for 'articles of paper-made from printing and writing paper'. As the rate of drawback was applicable only to articles in the manufacture of which printing and writing paper is used and not to export of printing and writing paper as such, the payment of drawback was not admissible.

The total irregular payment involved in 15 cases relating to the period from October, 1967 to October, 1969 amounted to Rs. 1,08,198. This is still pending realisation (February, 1976).

The Ministry of Finance have stated that further action to recover the duty drawback is being taken.

(ii) In a major Custom House, an exporter preferred a claim in October, 1973 for drawback under Section 75 of the Customs Act, 1962, on export of a consignment of 48,008 kgs. (net weight)

of metallic conductors, made of aluminium and steel. The aluminium content in the conductors was 29,328 kgs. and steel was 18,680 kgs. On the export document the exporter indicated the amount of drawback payable as Rs. 58,520. The departmental test report indicated the percentage composition of aluminium and steel as 78 and 32 respectively (the total working upto 110 per cent). Acting on the test report, the department paid in June, 1974 an amount of Rs. 71,316 as drawback, on a quantity of 52,802.80 kgs., 10 per cent in excess of the weight declared by the exporter. On Audit pointing out the error in December, 1974, the excess payment of drawback of Rs. 12,796 was recovered in May, 1975.

The Ministry, while admitting the facts of the case, have stated that information has been called for to examine the lapses on the part of individuals and whether there is any weakness in the organisational and procedural systems.

(iii) A drawback rate for bicycle components and spare parts was notified at 15 per cent F.O.B. under item 52 of the 1st Schedule to the Customs and Central Excise Duties Export (Drawback) General Rules, 1960. Bicycle spokes, nipples and washers were, however, specifically excluded from the scope of this item. During the course of audit of drawback claims in a major Custom House, it was noticed that drawback was erroneously paid on bicycle nipples under this item treating them as bicycle component parts.

When this was pointed out in audit, the Custom House reviewed all claims relating to payment of drawback on nipples and recovered an amount of Rs. 23,151. The Ministry of Finance while confirming the recovery, have stated that the party does not appear to have raised or pursued the issue with the Ministry. They have added that the rate structure in respect of bicycle spokes, nipples etc. has since been rationalised from 22nd February, 1972.

10. *Irregular refund*

In an outport, two imports were assessed in October, 1973 based on the value of the goods shown in Deutsche Marks in the invoices (which were derived from the value in U.S. dollars shown therein). While making refunds in these cases on some other grounds in September, 1974, the value of the goods shown in the invoices in U.S. dollars was adopted even though the actual payment for the supply was in Deutsche Marks. This incorrect revaluation resulted in an excess refund of Rs. 2,70,011. After this was pointed out in audit in December, 1974, the amount was recovered from the importers in October, 1975.

The Ministry of Finance have stated in reply that the error arose out of difference in interpretation of earlier instructions.

Other Topics of Interest

11. *Rebate on export of Tea*

Rebate of central excise duty paid on tea is allowed under a notification dated 15th April, 1970 on tea exported outside India, except to Nepal and Bhutan. According to the instructions issued by the Central Board of Excise and Customs, in respect of exports of tea on consignment sale or on consignment account basis for the London Auction, a provisional payment of rebate, based on the average price at which the tea of the particular garden was sold during the previous year, is made immediately on export. The exporter is required to execute a bond for the purpose and the provisional payment so made is required to be adjusted against the rebate admissible on the basis of actual sale accounts submitted by the exporter.

A review of the payments of provisional rebate on tea in a major Custom House revealed the following:—

(*i*) In 16 cases, where provisional rebate amounting to Rs. 2,70, 197 was paid, sale accounts were not furnished

by the exporters within the stipulated time of 6 months and the amounts remained unadjusted for periods ranging from 7 to 16 months. When the accounts were finally settled, it was found that the final payment admissible was less than the provisional payment by Rs. 70,000.

(*ii*) During the 3 years, 1970-71, 1971-72 and 1972-73, the provisional payments exceeded the final payments by Rs. 24,11,321, Rs. 11,67,146 and Rs. 2,38,768 in the case of 16,13 and 12 tea companies respectively.

The Ministry of Finance have stated that in the 16 cases, the tea initially stated to have been exported on consignment basis for the London Auction was not sold in London Auction but on the basis of contract, in the United Kingdom. The Ministry have also stated that according to the Custom House, the provisional payments during the years 1970-71, 1971-72 and 1972-73 exceeded the final payments, 'because of the declined trend in tea price'. The Ministry have added that the reasons for the provisional payment being in excess of the final amounts 'are being thoroughly investigated'.

12. *Delay in the recovery of customs dues on unclaimed goods from the Bombay Port Trust*

The Bombay Port Trust is responsible for periodical auctioning of imported goods remaining uncleared and abandoned in the port. From the sale proceeds, customs dues are required to be credited. Until January, 1950, the practice was to pay customs duty leviable on such goods to the department on a priority basis; but subsequently when penalties imposed under the Import Trade Control Regulations also became payable alongwith it, the Port Trust disputed that the Import Trade Control fines

should not be treated on par with customs duty for a preferential charge on the sale proceeds. This controversy led to heavy accumulation of arrears due to Government, aggregating Rs. 29.61 lakhs (at the end of July, 1961) remaining unpaid by the Port Trust.

The Public Accounts Committee expressed concern on these heavy outstandings in their 6th Report (Para 7), 21st Report (Para 77) and 28th Report (Para 82) and desired that the dispute should be settled quickly. Pursuant to the recommendations of the Public Accounts Committee, the Government of India agreed on a formula, duly concurred in by the Ministries of Finance and Transport, for deciding on the priorities for the allocation of sale proceed of such goods. This was circulated by the Board of Excise and Customs to the Collectors of Customs to decide all future cases on the basis of the formula.

The Custom House, Bombay have, so far, issued demands aggregating Rs. 1,24,10,635 (Rs. 72,86,426 customs duty and Rs. 51,24,209 Import Trade Control fines) covering 904 sale lists for the period from 1949-50 onwards. However, they have received till date (September, 1975) only provisional 'on-account payments' working up to Rs. 29,02,236 in 5 varying instalments from August, 1968 to July, 1971. The specific demands against which the payments have been made have not been allocated by the Custom House. The balance of Rs. 95,08,399 is still pending settlement.

The Ministry of Finance have stated that to safe-guard the Government revenue, the Custom House has requested the Port Trust to make *ad hoc* payment of Rs. 1,96,07,625 as tentatively worked out until the sale accounts in respect of all the sales held during the period are appropriately scrutinised, audited and finally accepted.

13. *Delay in the finalisation of assessment under the 'Note Pass' procedure*

Under the "Note Pass" procedure imports by Government departments and Public Sector Undertakings are permitted to be cleared without payment of duty pending production of invoices and other related documents required for assessment. The goods are cleared on the undertaking that the documents would be produced within six months from the date of clearance of each consignment. In cases where documents are not produced within the stipulated time, *ad hoc* assessments are contemplated.

In para 1.81 of their 72nd Report (4th Lok Sabha), the Public Accounts Committee had taken adverse note of delays in finalisation of 'Note Pass' cases and the resultant heavy outstandings against Government departments and expressed hope that the position would improve in subsequent years.

A review made by Audit of cases assessed under the 'Note Pass' procedure in a major Custom House showed that 671 cases were pending finalisation at the end of February, 1975. Of these, 358 items were over 3 months old and 192 items had been pending for more than 2 years. Cases numbering 159 were for value exceeding Rs. 10,000 each and related to the period 1964 to 1973. The aggregate value of goods which remained to be assessed to duty was about Rs. 3.58 crores. The Custom House stated that finalisation of these cases was held up due to non-receipt of the requisite documents.

In another major port under the same Custom House, about 700 cases relating to the clearances made during 1967 to March, 1975 were outstanding at the end of June, 1975. Of these, 320 had been pending finalisation for more than two years. In 95 cases, the value of each clearance exceeded Rs. 10,000 and the aggregate value of goods cleared in these cases was about

Rs. 1.70 crores. The Custom House explained that finalisation of these cases was held up on account of non-receipt of the requisite documents.

The Ministry, while accepting the facts relating to the first port, have stated that from August, 1969 the concession is available only to the Defence Department and since October, 1974, steps have been taken to assess, on an *ad hoc* basis, the imports by Departments other than Defence.

In respect of the second port, the Ministry of Finance have stated that bulk of the imports are from U.S.S.R. and the importers are unaware even of the nature of the goods, and that usual formalities like opening and examining of the goods are also waived. Further, the Ministry of Finance have said that the details that are available to the Custom House are inadequate and do not facilitate even *ad hoc* assessments.

In the view of the Ministry, one of the reasons for the pendency is the system of invoicing in the U.S.S.R., under which one value covers not only all the goods covered by one bill of entry but also all the items covered by several bills of lading imported from different ports. The Ministry have stated that methods have been evolved to determine individual values for the items which are capable of different classifications in the tariff.

14. *Delay in the collection of duty on ships' stores.*

In the event of foreign going vessels reverting to coastal trade, the ships' stores consumed during the coastal run, are liable to duty. An inventory of the stores on board is taken at the time of reversion to coastal trade and again at the time of resumption of foreign run for levying duty on stores consumed. Under the executive instructions issued by the Board in 1969, the Steamer Agents are required to file a bill of entry detailing the stores likely to be consumed during the coastal voyage as also

to give an undertaking to pay the duty due on the stores so consumed. The executive instructions also lay stress on the need for speedy collection of duty in respect of these stores.

The Public Accounts Committee in para 29 of their 27th Report (Third Lok Sabha) observed as under :

"The Committee are surprised to learn that there has been a delay of four to five years, and in some cases even nine years, in the filing of bills of entry by steamer agents in respect of ships' stores, whereas the time allowed for the purpose is three months. No convincing reasons have been advanced to explain such abnormal delay; on the other hand, there is an admission by the representatives of the Central Board of Excise and Customs that the delay is indefensible. From a note furnished at the instance of the Committee (Appendix VII*) it is observed that the Board has asked the Director of Inspection (Customs and Central Excise) to investigate in detail the circumstances in which this delay occurred. The Committee regret that until these cases were brought to the notice of the Board specifically by Audit, the Board were not even aware of them. This is a case in which there seems to have been a failure of machinery all along the line. It reveals the ineffectiveness if not the absence of a system of following up cases of dutiable stores for the purpose of levy of duty. The fact that the amounts involved were petty is hardly a justification either for the Department's showing indulgence to the Steamer Agents in spite of their persistent failure to file the bill of entry, or for the Department's acquiescence in the chronic delay in doing so."

"The Committee desire that (i) action should be initiated forthwith, if it had not already been done, against the defaulting steamer agents; (ii) effective steps should be taken

*Not reproduced.

to ensure that duty on ships' stores is levied in all cases promptly and properly; (iii) the feasibility of raising the demand on the basis of the stores list furnished with the export manifest should be examined; (iv) the investigation reported to have been ordered by the Board should be conducted expeditiously and responsibility for the delay fixed, so that suitable action may be taken against those at fault; and (v) an effective system should be devised whereby the Collectors of Customs and the Central Board of Excise and Customs would automatically come to know of such delayed cases."

A review by audit of assessments of ships' stores pending in various Custom Houses revealed the following position :

Name of Custom House	No. of cases of coastal reversion	No. of cases in which duty is yet to be determined	No. of cases in which duty is determined but not yet collected	Amount of duty involved in cases mentioned in col. (4)	Period after which assessment had been made in cases mentioned in Col. (4)	
(1)	(2)	(3)	(4)	(5)	(6)	
				Rs.	Period	Cases
Madras .	29	16	2	1,37,294	1 year	1
					3 years	1
Bombay .	323	130	28	15,05,194	1 to 3 years	19
					3 years and above	9
Cochin .	37	10	15	2,46,092	1 to 3 years	8
					3 years and above	7
Calcutta .	230	96	6	5,92,000	1 to 3 years	6

In connection with the pending cases of one Custom House reported to the Ministry of Finance, the Ministry replied that delay in collection of duties is due to the time taken by the steamer agents in filing bills of entry and in furnishing documents to enable the Custom House to finalise the bills of entry. The delay is also due to the time taken in furnishing necessary particulars by the Custom Houses at other ports where the vessels had initially reverted to coastal run.

15. *Delay in disposal of seized diamonds, precious stones and semi-precious stones etc.*

In September, 1966 the Government of India issued orders that confiscated rough and uncut diamonds for disposal should be sold in auction by the Department to the holders of incentive licences. In December, 1972, the Government of India further decided that cut and polished diamonds and precious and semi-precious stones should also be sold in auction or by sealed tenders at the discretion of the Department.

The seized diamonds, precious/semi-precious stones etc. are stored in a strong room of the Customs Warehouse pending disposal. A review (May, 1975) of the Warehouse registers of a major Custom House, for the years 1959 to 1973, revealed that diamonds, precious/semi-precious stones etc. seized during the period from 1959 to 1973 were lying in the Warehouse undisposed of (August, 1975) in 76 cases, although disposal orders had been passed by the competent authorities in many cases. The total value recorded in the register in respect of 31 cases amounted to Rs. 57,91,556. In the remaining 45 cases neither the value nor the exact description of the precious stones were indicated.

The Ministry have stated that the disposal of diamonds could not be taken up since 1970 as the available staff was utilised for the disposal of bulk consignments like

textiles and electronic goods. The total value of diamonds and semi-precious and precious stones lying undisposed of, excluding 'a few cases where the value particulars are not available' is given as Rs. 1,08,77,888 by the Ministry. They have added that now the disposal of diamonds has been taken up on priority basis and efforts are being made to dispose of all cases upto 1971.

16. *Fraud in a Custom House*

Commenting on the fraudulent alterations in the bills of entry and consequential loss of customs revenue the Public Accounts Committee, in their 4th Report (Third Lok Sabha) had observed as under:—

"2.83 The fraud had taken place due to defective procedure of presentation of bills of entry for payments of duty. A fraud involving a case of non-payment of customs duty was brought to the notice of the Department in 1954 as a result of which Audit suggested to Government certain measures to prevent recurring of such cases. Again in 1964, Audit made certain other suggestions as a result of this case. The Committee regret to note that in spite of the cases, no effective system was devised to eliminate their recurrence.

2.84 They are also surprised to find that once the Bills of Entry had been appraised these were given to and remained in the possession of the clearing agents and the customs authorities did not have any means to check or detect any alteration or fraud.....It reveals that the whole appraising and depositing system prevailing in the Custom House is defective.

2.85 The Committee would like the Central Board of Excise and Customs to adopt such a procedure early whereby chances of prepetrating frauds could be eliminated".

Again in their 2nd Report (Fourth Lok Sabha) the Public Accounts Committee observed :

"2.55 They hope the authorities will take necessary safeguards against the possibility of such frauds.

2.56 The Committee hope that the improvement in the system which was proposed to be introduced and the other measures which the Ministry intended to take would eliminate opportunities for fraudulent alterations in bill of entry. They desire that a proper watch should also be kept on the new system so that cases of fraud are altogether eliminated".

The Department did not agree to the suggestion of Audit that the movement of import documents in the Custom House should be in locked boxes before the payment of duty and clearance of the goods, on the plea of likely delay in the clearance of goods. However, a procedure was introduced whereby the amount of duty was perforated by pin pointing machine on the duplicate bills of entry to avoid erasement or deletion.

A consignment of nine drums of "Citrus Bioflavonoid Compound" was cleared in a major Custom House during 1974-75 involving duty of Rs. 91,044 through a clearing agent without crediting the duty. This was detected by the Custom House on a complaint by the importer. The case is reported to be under police investigation but from the facts made available to Audit it was observed that the clearance was effected on document which contained the following:—

(*i*) oval rubber stamp on the bill of entry indicating the cash voucher No. and date and the amount of cash recovered from the party,

(*ii*) perforation seal on the duplicate bill of entry, and

(*iii*) signature of the Customs Appraiser (Docks) on the 'out of charge' order on the duplicate bill of entry.

The original bill of entry is not traced in the Custom House. It is further reported that the duplicate bill of entry was obtained from the Port Trust authorities by the Custom House agent, after the clearance of the goods, and was not returned to the Port Trust authorities.

The Custom House has since seized four out of the nine drums of imported goods. The licence issued to Customs clearing agent has been suspended. A demand for duty of Rs. 91,044 was issued to the importers in November, 1974 ; and the amount is yet to be recovered.

The Ministry of Finance have stated that the fraud was perpetrated by forging the duty stamp, the perforation seal and out of charge order on the bill of entry, and the duplicate copy of the bill of entry was obtained by the Custom House Agent from the Port Trust with the connivance of a Port Trust employee. The Ministry have reported that the investigation of the case was handed over to the C.I.D., with whom the case is pending. The Ministry have added that the suggestion of departmental transit of bills of entry could not be accepted as it would lead to unnecessary bottlenecks.

17. *Unauthorised imports of Marine Diesel Engines*

Import of goods to India without a licence or customs clearance permit is an offence under Section 3(2) of the Import and Export (control) Act and Section 111(d) of the Customs Act, 1962. The importer is also required to obtain permission from the Reserve Bank of India for financing the purchase. The term 'goods' as per definition in the Customs Act, 1962 [Section 2(22)] includes vessels.

Two sailing vessels of Indian Registry which sailed from a minor port in India in March, 1970 and March, 1972 to Persian Gulf Ports returned to the same port in November, 1970 and

December, 1972 respectively. Diesel engines valued at over Rs. 1 lakh each were installed in those vessels. Neither permission from the Reserve Bank of India nor any licence from the Import Trade Control authorities was obtained for the purchase and import of the engines. The owner or tindals of the vessels did not also specifically inform the Customs Department about the installation of the engines and they did not pay duty on them.

The first vessel which came back in November, 1970 after installing the diesel engine, carried on trading operations for three years touching the same port. Similarly, the other vessel also came and left the port three times upto October, 1973. However, the customs authorities seized both the vessels in December, 1973 and initiated action for the unauthorised import of the engines. In their explanations the owner and tindals stated that:—

(*i*) no permission from the Reserve Bank of India was obtained as the payment was to be made in instalments from freight earnings abroad and no Indian currency was involved in the transactions;

(*ii*) several vessels plying between Gujarat and Bombay and the Gulf Ports had been fitted with foreign engines and no action had been taken against the owners or tindals of such vessels;

(*iii*) the port authorities were intimated about the installation of engines and it was shown in the Import Manifests.

The Additional Collector of Customs, after considering the explanation offered by the owner and tindals of the vessels, confiscated the vessels with option to redeem them on payment of redemption fine of Rs. 2 lakhs each and imposed personal penalties of Rs. 15,000 each on the owner and Rs, 5,000 each on the tindals. The redemption fine and the penalties were recovered in December, 1974 and January, 1975.

The case discloses the following deficiencies in the Customs Administration namely:—

(*i*) want of proper rummaging operations by the customs officers;

(*ii*) want of careful scrutiny by the Department of the documents presented by the parties, as the manifest filed disclosed that the vessels were Motor Sailing vessels;

(*iii*) lack of coordination between customs officers and port authorities, as the vessels which sailed as sailing vessels returned as motor sailing vessels. The fact of increased tonnage and fitment of engines was made known to the port authorities by the owner/tindals, yet the customs officers were apparently not aware of these.

While confirming the facts, the Ministry of Finance have stated that the Board have allowed the appeal in the case as 'there is no offence under the Customs Act', but the Directorate of Enforcement have been addressed to take suitable action under the Foreign Exchange Regulation Act.

18. *Non-recovery of duty on ship's stores disposed of clandestinely*

Rummaging of a vessel by Customs officers in August, 1968, after port clearance was given, revealed that Customs' seal affixed to bonded store rooms were tampered with. Further search of the vessel revealed some deficiencies in the bonded ship's stores. In the process, Indian currency to the value of Rs. 6,480 and United States currency to the value of 180 dollars (equivalent to Rs. 1,350) stated to be the sale proceeds of the deficient goods were also seized.

An offence case was booked and the case was adjudicated by the Collector of Customs in May, 1969 with the imposition of penalties as under:—

(*i*) Rs. 6,000 under Section 116(a) of the Customs Act, 1962 for unauthorised disposal of bonded ship's stores without filing an import manifest as required under section 32 *ibid.*

(*ii*) Rs. 5,000 for the attempt to export the currency clandestinely, under Section 114(1) of the Act.

Besides, confiscation of the Indian and the United States currency for attempting to export them clandestinely under the provisions of Section 113(d) of the Act read with Section 121 *ibid* for breach of provisions of section 11 of the Act read with section 8(2) of the Foreign Exchange Regulation Act, 1947 was also ordered.

However, duty on the stores found to have been disposed of in a clandestine manner was not recovered. When this was pointed out in audit in November, 1971 the Collector of Customs contended that the duty was, in full, covered by the penalties imposed. This stand is, however, contrary to the instructions contained in Board's circular letter of 23rd October, 1968 that clandestine removal of goods from a vessel and subsequent disposal would constitute an import and such goods are leviable to duty without prejudice to any action that may be taken under Section 112 of the Customs Act, 1962 for any act of omission or commission against the delinquents.

The total duty leviable on the deficient goods worked out to Rs. 12,432 calculated with reference to 9th May, 1969, the date of adjudication order.

The Ministry of Finance have stated that in cases of adjudication under Section 116, no separate action is initiated to recover duty on the deficient goods.

19. *Non-levy of duty on imported goods not re-exported within the stipulated time*

One 'Cine Theodolite K 400 Equipment', imported in three consignments for re-export after demonstration, was cleared in September and October, 1972 on recovery of 30 per cent

of the total import duty leviable thereon, on the basis of an *ad hoc* exemption order issued by the Government of India in July, 1972. The exemption order stipulated execution of a bond by the importer undertaking to re-export the goods within one year from the date of importation and to pay the balance of duty in case of failure. This order was superseded in January, 1973 by another order which reduced the period of re-export to 6 months and the duty to 15 per cent.

Scrutiny of the relevant documents revealed that one of the three consignments valued at Rs. 1,41,386, imported on 7th September, 1972, was actually re-exported only on 9th July, 1973 well after the stipulated period of six months. As the party had failed to fulfil the condition of re-export, the balance amount of duty amounting to Rs. 64,331 was recoverable. On this being pointed out by Audit, the Department initiated action for realising the amount.

The Ministry of Finance, while admitting the facts, have stated that action to recover the amount has been initiated, but there is no effective loss of revenue as 70 per cent of the duty would have become refundable by way of drawback at the time of re-export of goods within one year.

20. *Cases of over-assessment.*

(i) According to the instructions issued by the Central Board of Excise and Customs in April, 1966 current transformers designed for the protection of switch gears are assessable to duty at 35 per cent *ad valorem* under item 72(3) of the Indian Customs Tariff read with item 72(d) *ibid.*

In a major Custom House, 220 k.v. transformers imported by a State Electricity Board in August, 1970 and certified by their Chief Engineer, as for protection purposes in various 220 k.v. sub-stations, were assessed to duty under item 73 of the Customs

Tariff at the rate of 60 per cent *ad valorem*. This rate, however, is applicable only to transformers used for metering purposes. A claim for refund by the importer seeking re-assessment at 35 per cent *ad valorem* as against 60 per cent *ad valorem* was rejected by the Custom House in January, 1971 on the ground that the transformers could also be used for metering.

The over-assessment of Rs. 1,12,425 was pointed out in audit in August, 1971 quoting Board's instructions of 5th April, 1966 that the assessing officer should be guided by the design and accuracy as seen from the name plate or manufacturer's literature. The Custom House, on further examination admitted the wrong classification in March, 1974. However, refund of the excess collection was reported to be time-barred.

(*ii*) In a major Custom House, a consignment of 'Atrazine Technical' imported from the United Kingdom and valued at Rs. 4,17,156 was assessed to basic customs duty at the standard rate of 60 per cent *ad valorem* instead of the preferential rate of duty of 50 per cent *ad valorem* under item 28 of the Customs Tariff. The assessment was done even when the certificate of origin including the value of the goods was produced to the Custom House at the time of initial assessment. This resulted in excess collection of Rs. 41,715.

On this being pointed out by Audit in January, 1975, the Custom House agreed to refund the amount.

(*iii*) In a major Custom House a consignment of 'Carbon Bricks' was imported in September, 1974 by a Government Company. The value of the consignment was United States dollars 37,800. The Custom House, however, reckoned this as pound sterling and levied duty on the value arrived at by applying the exchange rate applicable to pound sterling, resulting in an excess collection of Rs. 1,63,533. The mistake was pointed out by Audit in February , 1975. The amount was refunded to the company in April, 1975.

The Ministry of Finance have stated in reply that in the bill of entry, the company had declared the value in pounds while the invoice was in U. S. dollars. According to the Ministry the error escaped notice because of the following circumstances, namely :

(*a*) The actual currency indicated on the copy of invoice was not clearly legible.

(*b*) The goods were consigned from the United Kingdom and the value was indicated in the invoice as F.O.B. London. Hence the correctness of the value declared in pound sterling was not re-checked.

It is, however, not clear how in such situations the appraisers proceeded with final assessments without making adequate enquiries.

(*iv*) In respect of bills of entry assessed prior to entry of a vessel, the rate of exchange is required to be recalculated on the grant of 'entry inwards'.

In a major Custom House the invoice value of goods imported from United States of America given in United States dollars was converted by applying the exchange rate of United States dollars 11.50 to Rs. 100 under prior entry system. The vessel carrying the goods entered finally on 16th March, 1974, when the rate of exchange prevailing was United States dollars 12.17 to Rs. 100. The recalculation was, however, not made. On this omission being pointed out in audit, the Custom House admitted the objection involving excess levy of Rs. 3,55,422.

The Ministry have stated that *suo motu* refund could not be granted to the importers because of time-bar.

21. *Remissions and abandonment of Customs Revenue**

(*i*) The total amount of Customs revenue remitted, written off or abandoned during the year 1974-75 is Rs. 10.87 lakhs.

*Figures furnished by the Ministry of Finance in January and February, 1976.

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

Years	Amount (Rs.)
1971-72	24,76,649
1972-73	12,19,636
1973-74	3,41,361

(*ii*) During the year 1974-75, a total of 266 exemptions were issued under section 25(2) of the Customs Act, 1962 by the Central Government, having revenue effect of Rs. 10,21,03,106. Of these in 111 cases involving exemptions in each case exceeding Rs. 10,000 the revenue forgone amounted to Rs. 10,16.41,761.

22. *Arrears of customs duty**

The total amount of customs duty remaining unrealised for the period upto 31st March, 1975 was Rs. 76.17 lakhs on 31st October, 1975 as against 58.16 lakhs for the corresponding period in the previous year. Out of this, an amount of Rs. 67.39 lakhs has been outstanding for more than one year.

In addition, the department has requested for voluntary payment of customs duty amounting to Rs. 34.03 lakhs in cases where demands have become time-barred. This amount is pending realisation. Last year the amount of such demands was Rs. 34.31 lakhs.

Foreign Travel Tax

23. *Pending demands*

A tax on foreign travel was imposed by the Finance (No. 2) Act, 1971 from 15th October, 1971. Receipts on account of this tax are classified under the head "045 Other taxes and duties on commodities and services—foreign travel tax."

*Figures furnished by the Ministry of Finance in January, 1976.

The budget figures and actual receipts pertaining to Foreign Travel Tax during the four years are given below :—

Year	Budget figures (in crores of rupees)	Receipts
1971-72	—	0.18
1972-73	8.00	3.77
1973-74	5.50	3.71
1974-75	4.50	6.07

Receipts under Foreign Travel Tax have recorded an increase over the years.

Under the Foreign Travel Tax Rules, 1971, when any tax due has not been paid wholly or partly by the Carrier, or has been refunded erroneously, the Assistant Collector, Customs is required to initiate action within the stipulated time limit of 6 months to determine the actual amount of tax due and issue less charge demand notices.

A test check conducted in July, 1975, of the less charge demand notices issued by a major Custom House to the Carriers, for recovery of short payment of tax revealed the position of outstandings as tabulated below :—

Year	Total No. of D/Notices issued	Amount of the demand (Rs.)	D/Notices finalised. Cases	D/Notices finalised. Amount (Rs.)	D/Notices pending Cases	D/Notices pending Amount (Rs.)
		(A) AIRLINES				
1972-73	111	51,90,971	2	11,57,140	109	40,33,831
1973-74	126	98,89,204	1	8,80,173	125	90,09,031
1974-75	204	1,09,75,695	3	3,72,270	201	1,06,03,425
		(B) SHIPPING LINES				
1972-73	33	4,33,987	1	1,932	32	4,32,055
1973-74	22	1,61,782	1	495	21	1,61,287
1974-75	87	11,05,880	8	62,301	79	10,43,579

Figures in respect of other Custom Houses are awaited.

The Department stated that a large number of the pending demands pertained to journeys exempted from the levy of the tax because of the payment of the fare having been made out of foreign exchange inward remittances; the demands were kept pending for want of certificates of encashment of foreign exchange by the Carriers.

The Ministry of Finance have stated that vigorous steps are being taken to finalise the demands. They have pointed out that certain decisions have been taken to finalise the demand notices. As for demands relating to encashment certificates, the Ministry have stated that the matter is being sorted out on representation from the Airlines.

CHAPTER II

UNION EXCISE DUTIES

24. Reclassification of budget and accounting heads for receipts and expenditure came into effect from 1st April, 1974 and central excise receipts are accounted under the head "038—Union Excise Duties". Receipts under this head during the year 1974-75 were Rs. 3,230.51 crores. Receipts for the last five years along with the corresponding number of commodities on which excise duty was leviable under the Central Excises and Salt Act, 1944 are given below :—

Year	Receipts under union excise duties	Number of commodities subjected to excise levy
	(In crores of rupees)	
1970-71	1,791.44	91
1971-72	2,061.10	116
1972-73	2,324.25	120
1973-74	2,602.13	124
1974-75	3,230.51	128

Receipts have recorded substantial increases from year to year.

25. The break-up of the receipts for the year 1974-75 with the corresponding figures for 1973-74 is given below :—

038—Union Excise Duties	Actuals 1973-74 Rs.	1974-75 Rs.
A. Shareable duties		
Basic excise duties . . .	22,03,52,36,908	26,67,49,32,434
Special excise duties . . .	—	(—)6,08,308
Additional excise duties on Mineral Products	1,38,08,44,778	1,35,02,95,385
Total (A) . . .	23,41,60,81,686	28,02,46,19,511

B. Duties assigned to States:		
Additional excise duties in lieu of Sales Tax.	1,74,57,88,866	1,86,18,79,470
Total (B)	1,74,57,88,866	1,86,18,79,470
C. Non-Shareable duties:		
Regulatory excise duties . .	19,74,55,885	5,25,793
Auxiliary duties of excise . .	61,06,15,739	2,00,04,64,677
Special excise duties . .	40,51,879	2,36,126
Other duties	16,47,96,807	1,80,78,784
Excise duty on Newspaper and all other printed periodicals .	8,371	—
Total (C)	97,69,28,681	2,01,93,05,380
D. Cess on Commodities: . . .	32,82,94,049	63,15,70,805
E. Miscellaneous	2,65,31,554	—
Other receipts	—	(—)23,22,38,488
Total-Major Head: .	26,49,36,24,836	32,30,51,36,678
F. Deduct-Refunds and Drawbacks:		
A. Shareable Duties:		
Basic excise duties	(—)17,19,52,055	—
Additional excise duties on Mineral Products	(—)77,569	—
Total A—Refunds etc. .	(—)17,20,29,624	—
B. Duties assigned to States:		
Additional excise duties in lieu of Sales Tax	(—)58,01,527	—
Total B-Refunds etc. . .	(—)58,01,527	—
C. Non-shareable duties namely, regulatory excise duties, special excise duties, auxiliary duties and other duties	(—)24,27,378	—
Total C—Refunds etc. .	(—)24,27,378	—

D. Cess on commodities . .	(—)15,86,178	—
Total D—Refunds: . .	(—)15,86,178	—
E. Miscellaneous:	(—)29,05,09,378	—
Total E—Refunds . .	(—)29,05,09,378	—
Total Refunds and Drawbacks . .	(—)47,23,54,085	—
Net receipts	26,02,12,70,751	32,30,51,36,678

Note : The minor head 'Deduct—Refunds' is now a subhead in the accounts for 1974-75 and hence there are no figures against these under 1974-75. The figures under other minor heads for 1974-75 are net after deducting refunds.

26. *Salient features of the budget for* 1974-75

There were two Finance Acts in the year.

By the first Finance Act, effective from 1st March, 1974, six new commodities were added to the schedule expected to bring in an additional revenue of Rs. 8.20 crores. Duties on existing items were rationalised with multiple objects of curbing consumption, mopping up fortuitous gains and raising revenue. In view of the continuing need for exercising restraint and economy in consumption of a number of other petroleum products, and to prevent their misuse, the basic duties in respect of "special boiling point" spirits and raw naphtha intended for certain chemicals, were increased substantially. This was expected to yield an additional revenue of Rs. 22.48 crores.

Auxiliary duties of excise introduced by Finance Act, 1973 were continued with a coverage of a number of additional items. These proposals were expected to raise Rs. 62.38 crores in a year.

Proposals in the second Finance Act, which were effective from 1st August, 1974 were expected to yield an additional

revenue of Rs. 166 crores in a full year. The principal features of these were :—

(*i*) imposition of 50 per cent *ad valorem* duty on caprolactum;
(*ii*) imposition of 25 per cent *ad valorem* duty on DMT;
(*iii*) enhancement of duty rates on copper and copper alloys, zinc, cement and other commodities.

The objective, as stated by the Finance Minister, was—"to raise duties on those items where the middleman is today retaining a large margin, to the detriment of both the consumer and the primary producer. These duties will help to mop up unintended gains accruing to the trade."

27. The following sixteen commodities fetched excise duties more than Rs. 50 crores each during the year 1974-75. Collectively they account for more than 70 per cent of the net receipts.*

	In crores of rupees
1. Sugar including khandsari	195.86
2. Unmanufactured tobacco	95.56
3. Cigarettes	296.24
4. Motor spirit	388.66
5. Kerosene	139.48
6. Refined diesel oil and vaporising oil	309.62
7. All petroleum products, not otherwise specified	51.31
8. Fertilisers	58.66
9. Artificial synthetic resins and plastic materials and articles thereof	77.14
10. Tyres and tubes.	129.10
11. Rayon and synthetic fibres and yarn	121.37
12. Cotton twist, yarn and thread, all sorts	55.94
13. Cotton fabrics	106.96
14. Cement, all varieties	88.58
15. Iron or steel products	205.85
16. Motor vehicles	64.88
Total :	2385.21

*Figures provisional intimated by the Ministry of Finance in February, 1976.

28. *Variations between the budget estimates and the actuals*

The budget figures, actual realisation and variations for the year 1974-75 together with the corresponding figures for the last three years are given below :—

Year	Budget Estimates	Actuals	Variations	Percentage
	(in crores of rupees)			
1971-72 . . .	2071.56	2061.10	(—)10.46	(—)0.5
1972-73 . . .	2464.75	2324.25	(—)140.50	(—)5.7
1973-74 . . .	2741.05	2602.13	(—)138.92	(—)5.07
1974-75 . .	3184.34	3230.51	(+)46.17	(+)1.45

29. *Cost of collection*

The expenditure incurred in collecting revenue on account of Union Excise duties during the year 1974-75 along with the corresponding figures for the preceding three years are furnished below :—

Year	Collections	Expenditure on Collection
	(In crores of rupees)	
1971-72	2061.80	15.57
1972-73	2324.32	16.91
1973-74	2602.13	19.04
1974-75	3230.51	23.52

30. *Applicability of Self Removal Procedure*

All the commodities were assessed to excise duty under 'Self Removal Procedure' during 1974-75 except 'unmanufactured tobacco' and 'matches' which continued to be assessed under 'Physical Control Procedure'.

31. *Valuation provisions in the Act*

Central Excises and Salt Act, 1944 contains in Section 4 provisions for valuation of goods assessable to duty *ad valorem*. As mentioned in para 28 of the Audit Report for 1973-74, this section was amended by Act 23 of 1973. During the year the revised provisions were not given effect to. These provisions, however, came into effect from 1st October, 1975.

32. *Test audit results*

Test audit of the records maintained in the offices of all the central excise collectorates and basic excise records of licensees revealed under-assessments and losses of revenue to the extent of Rs. 28.06 crores.

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

Evasion of duty

In the Audit Report for 1973-74, a few instances of evasion of central excise duties were reported. More instances of evasion of duty have since come to the notice of audit.

33. *Matches*

Matches, falling under tariff item 38, are assessable to central excise duty on the basis of the following slab rates :—

Clearances during the financial year	Rate of duty
(*i*) Not exceeding 75 million matches.	Rs. 3.75 per gross
(*ii*) Exceeding 75 million but not exceeding 100 million matches.	Rs. 3.75 per gross up to 75 million and Rs. 4.30 per gross in excess of 75 million up to 100 million.
(*iii*) Exceeding 100 million matches.	Rs. 4.30 per gross on the entire quantity cleared.

This commodity also came under 'Self Removal Procedure' along with many other commodities in June, 1968. Apart from a few major units, matches are produced in a number of small or medium-sized units. The wide demand for the article and the nature of the units producing it make it particularly prone to evasion of duty, and as the instances cited below show, the introduction of Self Removal Procedure for this commodity appears in a way to have helped such evasion :—

(*a*) Potassium chlorate is one of the principal ingredients for the manufacture of safety matches. The match industry generally account for the quantities of chlorate issued to them direct by the chlorate manufacturers or through various dealers. On a study undertaken by audit during November-December, 1974 correlating quantities of potassium chlorate supplied to the match industry by the manufacturers directly or through their dealers, the following irregularities came to notice :—

(*i*) In two collectorates, a quantity of 11,79,795 kgs. of potassium chlorate stated to have been issued to the match industry through the various dealers was not brought to account by the match units during the period of 1968—73. This quantity of potassium chlorate was capable of producing 1,47,47,437 gross boxes of matches involving a duty of Rs. 5.53 crores.

(*ii*) In one of the collectorates, a quantity of 11,765 kgs. of potassium chlorate issued to 27 match units during 1971—73 was not brought to account by the match industry involving a revenue loss of Rs. 5.62 lakhs.

"The Ministry of Finance have stated that during the period 1969 to 1971 there was some laxity in the control over the distribution of chlorate by dealers which rendered possible malpractices

such as the dealers entering in their books certain quantities as sold to certain match units, but diverting the quantities to other uses. In that context the Ministry have referred to instructions issued by the Home Ministry for tightening up control over distribution of chlorate, requiring endorsement of the purchasers in their books to confirm the actual receipt of chlorate. The Ministry have added that in the absence of any evidence to prove that these quantities were actually received by the match factories, no charge can lie against the match factories in regard to manufacture of matches from the quantities of chlorate and their removal without payment of duty.

As regards sub para (ii), the Ministry of Finance have stated that in one unit, proceedings were initiated and a penalty of Rs. 250 was imposed in June, 1975. The demand is pending realisation. In respect of other units, receipts of chlorate are reported to have been accounted for in subsequent periods.

These replies show that with the introduction of SRP, excise control on match factories was not adequate and even though there were malpractices in distribution of chlorate during 1969-71, no positive steps were taken to prevent abuses in the match industry.

(*iii*) A Research Institute produced and supplied 4050 kgs. of potassium chlorate and supplied it to five match factories in a Collectorate between March and December, 1974. It was noticed in audit that two factories (out of the five) did not account for 2050 kgs. of the chlorate. Further scrutiny showed that one of the match factories wrote to the Research Institute in May, 1974 that since their holding capacity of chlorate under the Arms Act would be exceeded if 2000 kgs. was supplied, further supplies might be made to the Director of the factory who was also a chlorate dealer. The 2050 kgs. of chlorate was capable of producing matches on which excise duty of Rs. 98,243 could have been levied.

The Ministry replied that the quantity of 2000 kgs. was duly accounted for by the chlorate dealer. The reply does not show whether the chlorate was sold by the dealer again and if so, proper receipts were traced in match factories. As for the balance of 50 kgs. of chlorate relating to the second factory, the Ministry stated that this was transferred to another factory without making proper entry in its books.

(*b*) A comparison of potassium chlorate consumed *vis-a-vis* the quantity of matches produced by a factory during the period June, 1968 to January, 1970 when Self Removal Procedure applied, with the corresponding figures of consumption of chlorate and production of matches during the period June, 1967 to May, 1968, when Self Removal Procedure was not introduced, disclosed that there was a heavy shortfall in production of matches recorded during the period when Self Removal Procedure was in vogue. On this being pointed out in audit in February, 1970, the department, after investigation, fixed the shortage in production as 10,431 gross match boxes and raised a demand for Rs. 44,853 against the licensee. The department also imposed a penalty of Rs. 250 on the licensee.

The Ministry of Finance, while admitting facts of the case, stated that the Appellate Collector in his order of November, 1974, had set aside the original order of the Assistant Collector.

(*c*) Matches of the type known as 'Bengal lights' have also to be taken into account wherever a factory produces and clears both safety matches as well as 'Bengal lights' for the purpose of arriving at the prescribed ceiling.

It was, however, noticed that two factories situated in two different collectorates paid duty between 1968-69 and 1974-75 at the lower rate of Rs. 3.75 per gross even though the total

On a request by audit, the Collector of Central Excise concerned ordered a special check of the accounts on a depot of the Oil Corporation, where evasion of duty was noticed and reported. As a result, a short levy of duty amounting to Rs. 4,18,905 was brought out for which demands are stated to have been raised by the department.

(*iii*) The Oil Corporation is permitted the facility of payment of central excise duty by issuing 'letter of authority' on the State Bank of India (in lieu of cheque) and taking credit in the personal ledger account on that basis. The Chief Accounts Officer of the central excise collectorate is required to verify credits in the personal ledger account from the letters of authority.

In one unit of this corporation it was noticed that a credit of Rs. 14,363 was taken in the personal ledger account on 17th March, 1973 without actual issue of the necessary letter of authority. The irregular credit was not detected by the Chief Accounts Officer. When this omission was pointed out by audit in January, 1975, the Assistant Collector of Central Excise stated in April, 1975 that the corporation had made adjustment of this sum in its personal ledger account on 10th March, 1975. The Ministry of Finance have reported that an offence case is being booked against the party.

(*iv*) Mineral oils, namely superior kerosene, refined diesel oil, motor spirit, etc. are assessed to excise duty on volume reduced to 15° centigrade of the thermometer. For this purpose, quantity of oils cleared from a storage tank is calculated by record of dip measurements and applying necessary corrections for temperature and density.

Four warehouses belonging to the corporation, however, adopted incorrect volume reduction factor/calibration chart. This resulted in short-assessment of quantity of oils by 80.275

kilolitres involving central excise duty of Rs. 34,264. When this was pointed out in audit, the department stated that duty amounting to Rs. 7,247 had been recovered in February—April, 1975. Recovery of the balance amount is awaited.

The draft paragraph was sent to the Ministry of Finance in November, 1975; reply is awaited (February, 1976).

35. *Rayon and Art silk fabrics*

Rule 55, read with rule 173-G of the Central Excise Rules, 1944, requires every manufacturer of excisable goods to maintain a daily account of important raw material (in form IV) and also to submit monthly and quarterly returns in form RT 12 and RT 5, respectively. These returns, *inter alia*, show the quantity of excisable goods manufactured and cleared as per figures of production recorded daily in the Register of goods produced (RGI). As the records/returns are inter-linked, the figures of quantity manufactured as shown in form IV and RT 5 should tally with those available in RT 12 and RGI.

In the assessment records of a factory manufacturing "rayon and art silk fabrics", assessable to duty *ad valorem* under tariff item 22, there was a discrepancy of 1,00,002 metres of fabrics in the figures of "excisable goods manufactured" as per records maintained in form IV, RT 5, RGI and RT 12 during the period from September, 1971 to December, 1973. On this being pointed out in audit in February, 1974 the department reconciled discrepancy of 42,005 metres in January, 1975 leaving a balance of 57,997 metres unexplained. On further investigation the department issued a show cause notice on 5th January, 1976 to the factory for evasion of duty of Rs. 8,41,669. Further developments are awaited. The draft paragraph was sent to the Ministry of Finance in November, 1975. Reply of the Ministry is awaited (February, 1976).

36. *Medicinal grade oxygen*

Medicinal grade oxygen is classifiable under tariff item 14 E introduced in the excise tariff in the year 1961. By a notification issued on 21st June, 1969, it was exempted from payment of duty.

In two collectorates, two factories owned by one licensee manufactured medicinal grade oxygen without obtaining a licence and removed it outside the factory without payment of duty during the period from commencement of its manufacture in 1962 and 1964 respectively till 20th June, 1969.

When this was pointed out in audit, the department accepted the omission but expressed its inability to raise the demand in one case as the records for the period were destroyed by the licensee. A case for non-payment of duty of Rs. 24,392 for the clearances between 1st April, 1964 and 20th June, 1969 has been registered in respect of the other factory.

The Ministry of Finance have stated that oxygen being a specific item in the tariff under item 14 H cannot be classified under item "14 E as patent or proprietary medicines." The fact, however, is that the Government of India issued a notification in June, 1969, exempting medicinal grade oxygen falling under item 14 E from the whole of the duty, thus holding that such oxygen was classifiable under that item.

37. *Fertilisers*

The assessable value of urea falling under tariff item 14 HH, is derived from the consumer price fixed by the Government of India from time to time. A licensee manufacturing urea was paying duty on its clearances based on 'plant gate price.' But two of the firms to whom urea was sold were using part of the material for making mixed fertilisers for sale. As there was no

statutory price control on such mixtures, substantial profits accrued to the mixers. The licensee, therefore, negotiated a deal with the two firms by which they could use 30 per cent of the supplies of urea for making mixtures on payment of an extra price of Rs. 72 per metric tonne. The amount charged extra, escaped the notice of the department and was not considered in arriving at assessable value for levying duty.

The Ministry of Finance have stated that a sum of Rs. 2,12,826 being the duty on the extra amount of Rs. 72 per m.t. for the clearances from November, 1973 to July, 1974 was paid by the assessee in December, 1974 and a further sum of Rs. 48,513 in February, 1975 for clearances upto January, 1975.

38. *Articles of plastics*

According to a notification issued by the Central Government on 23rd May, 1971, articles made from plastics are exempted from duty, if they are manufactured out of artificial or synthetic resins or plastic materials, on which central excise duty or countervailing duty has been paid.

One unit in a collectorate had declared that certain articles of plastics produced by it were manufactured out of duty paid plastic materials and claimed exemption on the finished goods in terms of the notification. This was accepted by the department and the articles were being allowed to be removed without payment of duty. An examination of the documents relating to raw materials used in the manufacture of the articles of plastics revealed that no countervailing duty had been paid on the raw materials. Under the tariff, duty should have been realised on the granules/powder/resin going into the production of the articles. This was not done. Therefore the articles of plastics made out of non-duty paid plastic materials are not eligible for exemption. An under-assessment of Rs. 63,078 had occurred in this case during the period from 1968 to September, 1974.

On the matter being brought to their notice, the department issued show cause notices demanding duty of Rs. 63,078 in respect of clearances during the period referred to above.

The Ministry of Finance have stated that two show cause notices were issued to the party. Action for misdeclaration in the classification list for availing of exemption under notification of May, 1971 is reported to be under consideration of the department.

39. *Steel Castings*

(i) Under executive instructions issued by the Government of India in January, 1969, a manufacturer could remove excisable goods which are in the nature of semi-finished goods, without payment of duty, to the premises of another person for completion of certain manufacturing processes, and bring back such goods to his factory for final clearance on payment of duty.

In a collectorate, an assessee who sent semi-finished goods under special procedure to another factory for completion of certain manufacturing process, did not bring back all the goods. The goods not brought back thus escaped payment of Rs. 70,007 as duty during the period November, 1973 to February, 1975.

When this was pointed out in audit, the department recovered the amount from the assessee in April, 1975.

(ii) Steel castings manufactured with the aid of electric furnace out of old iron or steel melting scrap are liable to basic excise duty at Rs. 50 per metric tonne from 1st March, 1973 plus auxiliary duty of excise at 75 per cent of the basic duty.

Steel castings produced by a factory with the aid of electric furnace from old steel melting scrap did not pay the duties from March, 1973. This was pointed out in audit in April, 1973

requesting the department to survey other licensees manufacturing steel castings manufactured similarly but not subjected to payment of excise duty. Demands for Rs. 36,137 were issued by the department for the period from 1st March, 1973 to 20th March, 1974 to two licensees. These demands were realised in June, 1973 and April, 1974. The Ministry of Finance stated in November, 1974 that penal action against the assessee was under examination. Further developments are awaited (February, 1976).

40. *Motor vehicle parts*

Motor vehicle parts like brake linings, clutch facings, engine valves, pistons, shock absorbers, gaskets and filter elements falling under tariff item 34A are assessable to excise duty at 20 per cent *ad valorem*. Under notifications issued in May, 1971 and July, 1971, such parts are exempt from duty, if intended to be used as original equipment parts by manufacturers of motor vehicles, falling under tariff item 34, or if they are used in the manufacture of assembled components of motor vehicles such as automobile engines, piston assemblies and brake assemblies which are utilised as original equipment by manufacturers of motor vehicles.

A manufacturer of motor vehicles obtained such parts duty-free for use as original equipments. He did not, however, use all of them as original equipment parts but sold some of them as spares and used some in sub-assemblies. However, he did not pay duty on such diversions as per rules. When this was pointed out in audit, duty due thereon amounting to Rs. 57,254 was demanded by the department in February, 1975.

The Ministry of Finance stated that a show cause notice was issued in this case on 29th March, 1973 but it could not be finalised before February, 1975. The Ministry have added that a penalty of Rs. 250 imposed on the factory was also realised.

Prepared or preserved foods (Tariff item 1B)

41. *Under-assessment of duty due to incorrect determination of assessable value*

Under Section 4 of the Central Excise and Salt Act, 1944, duty on goods assessable on *ad valorem* basis is determined with reference to the price prevailing in the wholesale market existing at the factory gate or at the nearest place where such market exists.

A unit in a collectorate, manufacturing 'prepared or preserved foods' was selling its products 'A' and 'B' through a firm at an outstation. The firm acted as 'sole distributors' for product 'A' and as 'sole selling agent' for product 'B'. In the case of 'B', Delhi was stated by the manufacturer as the nearest wholesale market. The assessing officer, however, did not make a distinction in the channel of sale and distribution of the two products but approved the selling prices of both the products as at Delhi for levying excise duty. This was contested by the assessee before the Appellate Collector. The Appellate Collector confirmed the orders of the assessing officer but the assessee went in revision to the Government of India, and the orders were set aside in July, 1973. According to the Revisionary Authority, the prices charged by the manufacturers from their sole-distributors were to be accepted as assessable value. Thereupon, the department re-determined the assessable value of both the products at ex-factory rates. Since the sale of product 'B' through the sole selling agent was on behalf of the manufacturers and not an outright sale to the firm, the orders passed in revision were not applicable to this product. The assessable value of product 'B' was determined again by the department and demand of Rs. 5,76,518 for the period from 13th July, 1973 to 1st October, 1974 was raised in September-December, 1974. It was noticed in audit that the department did not take similar action for the

earlier period from 1st March, 1970 to 12th July, 1973, which involved an under-assessment of Rs. 75,388. This was pointed out to the department in January, 1975. Report about recovery is awaited.

The paragraph was sent to the Ministry of Finance in November, 1975; reply is awaited (February, 1976).

Aerated waters (Tariff item 1 D)

42. *Assessment of aerated waters*

Aerated waters, commonly known as "soft drinks", were first brought under excise from 1st March, 1969 under the tariff item 1 B. Effective from 1st March, 1970, a distinct item 1D, was created in the tariff for "aerated waters, whether or not flavoured or sweetened and whether or not containing vegetable or fruit juice or fruit pulp". The rate of duty was fixed at 10 per cent *ad valorem*. By virtue of a notification dated 1st March, 1970, duty under this item became leviable only if the aerated waters—

(*i*) were sold under a brand name, *i.e.*, a name or a registered trade mark under the Trade and Merchandise Marks Act, 1958; and

(*ii*) in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power.

With effect from 17th March, 1972 the tariff rate of duty on aerated waters was enhanced to 20 per cent *ad valorem*. By issue of a notification on 17th March, 1972, the effective rate of duty of 10 per cent *ad valorem* was retained in respect of aerated waters other than those in the manufacture of which blended flavouring concentrates in any form were used.

The enhancement of the rate of duty and the conditional duty exemptions had the result of encouraging manufacturers in one collectorate to avoid duty on aerated waters produced by them. Out of 17 units engaged in the manufacture of aerated waters in two collectorates paying duty of Rs. 11.90 lakhs in 1970-71 and Rs. 14.13 lakhs in 1971-72, 13 units owned by two manufacturers sought exemption from levy of duty in March-April, 1972 by de-registering their brand names. These units, however, continued to produce and sell their products under the same names even after de-registration. As a consequence, duty to the extent of Rs. 25.91 lakhs for the period from 1st April, 1972 to 31st December, 1973 was avoided.

The notification dated 1st March, 1970 was amended on 1st March, 1974, dispensing with the criterion of registration of brand name for levy of duty. An auxiliary duty of 50 per cent of basic excise duty was also levied with effect from 1st March, 1974. Consequently, the 13 units which went out of excise control from March-April, 1972, were brought again under excise. In May, 1974, the Government exempted aerated waters from central excise levy, if—

(*i*) in or in relation to the manufacture of which no process is ordinarily carried on with the aid of power;

(*ii*) in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power, the total equivalent of power so used by or on behalf of a manufacturer in one or more factories does not exceed 10 Horse Power.

The two manufacturers, referred to above, re-arranged their manufacturing operations as under:—

One manufacturer having seven factories spread over two collectorates and marketing his aerated waters under a common brand name was paying duty in respect of one factory

only, where power equivalent to 130 HP was used, and took away the remaining six units from excise control by disconnecting power used therein for manufacture.

The other manufacturer having ten factories spread over two collectorates and marketing his aerated waters under the same brand name paid excise duty for aerated waters manufactured and cleared from one factory only, although the aggregate power used by him in all his ten factories exceeded 10 HP.

In terms of the notification of May 1974, the sum total of power used by these manufacturers in all their units being in excess of 10 HP for each manufacturer, the aerated waters manufactured in all their units should have been charged to duty. Omission to do so resulted in escapement of duty amounting to Rs. 8.62 lakhs on products manufactured in units which went out of excise control.

The paragraph was sent to the Ministry of Finance in October, 1975 and their reply is awaited (February, 1976).

Tea (Tariff item 3)

43. *Under-assessment of tea—all varieties*

Tea classified under tariff item 3, is assessable to duty at specific rates. By a notification issued in May, 1970, tea-growing areas in India have been divided into five zones for the purpose of levy of duty on loose tea and different rates of duty ranging from 25 paise to Rs. 1.50 per kg. were fixed for the tea grown in different zones. These rates were revised from 1st March, 1975, *inter alia* increasing the lowest rate applicable to zone I from 25 paise to 40 paise per kg.

Between 1972 and 1974, 100 tea factories spread over four ranges in a collectorate filed several batches of writ petitions in a High Court challenging the validity of the notification issued in May, 1970 and the levy of duty on zonal basis, as discriminatory

and illegal. Pending decision on the writ petitions, interim orders of the High Court were obtained by the petitioners between September, 1972 to October, 1974 for payment of duty at different rates, ranging from 15 paise to 55 paise per kg., which were lower than that applicable under the notification. The following irregularities were noticed in audit:—

(*a*) Subsequent to the filing of the writ petitions in High Court, two factories did not pay any duty on the clearances of tea, all varieties, except package tea and instant tea, during the period from May to October, 1972. On the High Court fixing the rate of duty payable by them as 15 paise per kg. on 28th September, 1972, they started paying duty from November, 1972 only. Duty due on the clearances made between May and October, 1972 at 15 paise per kg. amounting to Rs. 1,38,662 was not demanded by the department.

(*b*) After the increase in the lowest rate from 1st March, 1975, the factories continued to pay duty at the rates originally fixed by the court. The department, however, did not move the High Court for enhancing the duty rates fixed in the context of changes. Consequently 72 factories are paying duty at rates lower than the lowest rate of 40 paise per kg. applicable to Zone I from 1st March, 1975. The differential duty due in respect of these factories for the period from 1st March, 1975 to 31st May, 1975 amounted to Rs. 8,38,278.

The paragraph was sent to the Ministry of Finance in October, 1975; reply is awaited (February, 1976).

44. *Loss of revenue on clearance of loose tea at concessional rate of duty*

By a notification dated 2nd June, 1970, Government of India exempted tea cleared from a factory during the period 2nd June, 1970 to 31st March, 1971 from excise duty in excess of 70 paise

A test check of records of seven, out of 46 ranges, in a collectorate relating to the years 1968-69 to 1972-73, revealed that out of a total number of 2479 such cases, only 77 cases (3.1 per cent) were investigated within the prescribed period. Out of the remaining 2402 cases, 62 cases (2.6 per cent) were investigated within one year after the completion of the final accounting of the crop season, 597 cases (24.7 per cent) were investigated with delays ranging from one to four years thereafter and 1743 cases (72.7 per cent) were yet to be investigated in September, 1974. In all the five seasons taken together, against an estimated yield of 75,69,789 kgs., the actual yield in these 2402 cases worked out to 49,29,821 kgs., resulting in a shortfall of 26,39,968 kgs., the percentage of shortfall being 34.9.

These seven ranges comprised 31 sectors. The table below shows the number of sectors where investigations were not at all done in any of these cases of reduced yield.

TABLE

Season	*No. of sectors in which investigations were not done in any individual case.*	*No. of cases of reduced yield in those sectors*
1968-69	10	202
1969-70	11	288
1970-71	11	143
1971-72	14	85
1972-73	15	117
	TOTAL	835

In 313 of the 835 cases the duty forgone comes to Rs. 17,66,202.

The total duty effect of the shortfall in yield of 26,39,968 kgs. in the 2402 cases which were either not investigated or investigated long after the disposal of the harvested tobacco during the years 1968-69 to 1972-73 amounted to Rs. 91,08,870 (calculated at the lower rate applicable to tobacco, not otherwise specified). Similar information in respect of all the collectorates is awaited.

In another range where a grower-cum-curer accounted for 4289 kgs. of Virginia flue-cured tobacco as against the estimated quantity of 8206 kgs. in 1969-70 season, investigation into the low yield by the field officer revealed that the grower raised a good crop, and the officer recommended summary assessment under the rules. No action was taken on the officer's report. This was brought to the notice of the department by audit in November, 1972. The low yield was accepted by the Superintendent of the range in November, 1973 on the basis, as reported, of enquiries "by contacting the local people". The revenue involved in this case amounted to Rs. 13,475.

Reply of the Ministry of Finance to whom the paragraph was sent in September, 1975 is awaited (February, 1976).

Mineral fuels, lubricants and related materials (Tariff items 6 to 11C)

46. *Loss of duty due to declaration of a place as warehouse*

Raw Naphtha classified as motor spirit under tariff item 6 is received in a warehouse from a refinery located in a neighbouring State through pipe line. Superior kerosene is used in flushing the pipe line preceding and following the pumping through pipe line of 'raw naphtha'. In such pumping operations superior kerosene gets mixed up with raw naphtha. Kerosene received in its pure form is supplied in the market, whereas

the quantity of superior kerosene mixed up with 'raw naphtha' is pumped to be stored in raw naphtha storage tank. The entire quantity of raw naphtha received at the unit is supplied to a factory for manufacturing fertilisers after paying central excise duty at the concessional rate of Rs. 4.15 per kilolitre under Government of India notification dated 7th May, 1971. Superior kerosene attracts higher rate of duty. These operations contravene Rule 143 of the Central Excise Rules, as they amount to blending of mineral oils. This apart, declaration of this particular place as a warehouse has resulted in loss of duty of Rs. 50,10,091 on kerosene used in flushing.

The Ministry of Finance have stated that the small quantity of kerosene which gets mixed with raw naphtha is cleared as raw naphtha and therefore there is no question of any loss of duty. The Ministry have added that lower rate of duty was incidentally charged on raw naphtha because of an exemption notification dated 23rd December, 1961 and but for the notification there could have been actually a gain in duty.

The fact, however, remains that owing to the pumping operations undertaken by the licensee, Government has to forgo revenue on the superior kerosene oil thus mixed up which bears a higher rate of duty.

47. *Loss of revenue on account of incorrect calibration of oil tank*

Mineral oils falling under tariff items 6 to 10 are assessable to duty on their volume, expressed in kilolitres at 15 degrees centigrade. The volume of the oils in storage tanks is determined at normal temperature with reference to calibration charts of the tanks. A volume reduction factor to bring the volume to 15° C on the basis of the American Society of Testing Materials (ASTM) Tables is applied thereafter with reference to the density of the product at normal temperature.

Two oil installations in one collectorate were adopting the volume at natural temperature as indicated in the charts prepared by the Mercantile Marine Department. These charts, though purporting to indicate the volumetric contents at natural temperature, were, in fact, measured with the aid of a strapping tape, which was corrected to show the measurements at 20° C only. The calibrating agency made a correction factor between the tape temperature and the temperature of the tank shell at the time of calibration. This correction was introduced only in respect of four tanks of the two installations. In the remaining 17 cases examined by audit, the correction carried out was between the tape temperature of 20° C and the product temperature of 15° C at which the mineral oils are finally assessed to central excise duty. The divergent practice followed in calibrating the tanks was explained to be due to non-adoption of the Indian Standard Specification in this behalf.

As day to day readings with reference to the calibration charts were taken as the volume of the mineral oils cleared at natural temperature, an attempt made by audit to correlate the clearances at natural temperature between those adopted for assessment and the quantity for which sales invoices were made out in one oil installation, disclosed a shortage of 397 kilolitres at natural temperature which was equivalent to 391 kilolitres at 15° C approximately, involving a duty of Rs. 2,06,955 for the period from April, 1970 to March, 1971 only.

In the same oil installation, for three tanks with uneven water bottom, the volume of the product was worked out by introducing measured quantities of water upto the dip point. The calibration chart was drawn up for the water bottom with reference to the quantity introduced, treating it as mineral oil at natural temperature and this volume was reduced to 15° C by introducing a correction factor based on the density of the water and adopting a volume reduction factor applicable to mineral oil and the

reduced volume was incorporated in the calibration chart. Such a calibration was incorrect since the calculated volume in the chart for the portion above the water-bottom was at natural temperature, while the calculated volume of the water bottom was at 15°C and the co-efficient of volume expansion of water was not equal to the co-efficient of volume expansion of mineral oils. It was seen that these tanks had mineral oils stored in the water bottom also, which were emptied seven times during the period from 1970-71 to 1973-74. Every time the tank was emptied, the quantity cleared from the water bottom (already reduced to 15° C) was taken as at natural temperature and a volume reduction factor was applied for a second time. This resulted in an under-assessment of duty of Rs. 1600 approximately for each clearance. In respect of seven clearances during the specified period, the loss of duty is estimated at Rs. 11,200.

The department agreed in February, 1974 that the *modus operandi* of calibration followed by them earlier was not uniform and was not in keeping with the provisions of Indian Standard Specifications either and that a uniform procedure of calibration of tanks would be followed in future, by revising the charts during the next quinquennial recalibration.

Reply to the paragraph sent in October, 1975 is awaited from the Ministry of Finance (February, 1976).

48. *Non-recovery of duty on calcined petroleum coke*

Item 11A of the Central Excise Tariff covers all products derived from refining of crude petroleum or shale, not otherwise specified, the rate of duty is *ad valorem* and this item includes coke. What is normally produced in a refinery is raw petroleum coke. Calcined petroleum coke is a product obtained by controlled heat treatment and further processing of raw petroleum coke and this finds use in the manufacture of electrodes, batteries, carbon black, aluminium etc.

On the scope of the item, the Central Board of Excise and Customs, in consultation with the Law Ministry, clarified in 1965 that the use of the word 'including' in tariff item 11A was significant and enlarged its scope. According to the opinion of Law Ministry, in addition to covering the various products that are derived directly from refining crude petroleum or shale, this item could also attract various finished products specifically enumerated therein, for example, coke, notwithstanding the fact that it is produced elsewhere than in a refinery whether or not derived by straight or direct refining of crude petroleum or shale. In other words, coke wherever it was produced as a product of petroleum crude, was deemed as excisable under this item.

In a collectorate a manufacturer was purchasing raw petroleum coke at prices ranging between Rs. 100—125 p.m.t. from nearby refineries and after calcining it, was selling the calcined coke at Rs. 400 p.m.t. The Collector of Central Excise reported the matter to the Central Board of Excise and Customs in January, 1969 and expressed the view that, if calcination was done within the refinery premises,duty would have been charged on the calcined coke and simply because the calcination was reported to be done in a place outside such premises, it should not make any difference in the dutiability of the product. He also directed the manufacturer to take out a licence. Demand of duty for Rs. 3.32 crores for the product removed during July, 1962 to March, 1969 was issued to the manufacturer in April, 1969. The manufacturer did not honour the demand but started paying duty under protest.

On the reference of the Collector, the Board consulted the Chief Chemist, and the Law Ministry about the excisability of the product and the scope of the tariff item. In the opinion of the Chief Chemist, calcination rendered the petroleum coke specially suitable for manufacture of electrodes. He viewed that, as it did not figure in any exclusions under item 27.14

of the Brussels Tariff Nomenclature, it should fall within the scope of the term 'coke' in item 11A of Central Excise Tariff. The Law Ministry revised their earlier view of 1965 and held that calcined petroleum coke not being derived by the process of refining crude petroleum , would not come within the scope of item 11A.

The Board, thereupon, issued a ruling in September, 1969 that calcined petroleum coke was outside the scope of item 11 A and was hence not excisable. It was suggested that all demands issued should be withdrawn.

In the case of the particular unit, the demand, having already been confirmed by the Collector, was set aside by the Board on appeal in November, 1969.

The commodity was brought under excise net by Finance Act, 1971 by introduction of item 11 C in the tariff. If this inclusion had been made earlier, there could have been gain in revenue not only in regard to this factory but also in similar other cases.

The Ministry of Finance have stated that the decision to treat calcined petroleum coke as not liable to excise duty under item 11A of the tariff was based on the advice of the Ministry of Law. The Ministry have added that on receipt of reports from the concerned collectors and after consulting the Chief Chemist, a new item was introduced in the budget of 1971.

Synthetic Organic dyestuff (Tariff item 14D)

49. *Incorrect assessment of central excise duty*

In two collectorates of central excise 'oil and spirit soluble colours' were treated as exempted from central excise duty up to 14th March, 1966 under a notification issued by the Government of India on 29th April, 1955. These were charged to duty

as "pigments, colours, paints, enamels not otherwise specified' from 15th March, 1966 to 10th August, 1970. From 11th August, 1970 they were classified as "synthetic organic dyestuffs" by virtue of an executive instruction issued by the Central Board of Excise and Customs. Thus the same commodity was assessed to duty differently, although the descriptions of the two tariff items did not undergo any change justifying the classification differently. This happened owing to varying instructions regarding the classification of the commodity given by the Board. In August, 1970 instructions were issued for correct classification of the commodity as "synthetic organic dyestuff", even though this classification was introduced in Customs for levy of additional duty under section 2A of the Indian Tariff Act, 1934 as early as in March, 1966, on import of similar goods.

Thus incorrect assessments of "oil and spirit soluble colours" resulted in under-assessment of revenue of Rs. 2,96,750 from 15th March, 1966 to 10th August, 1970 and Rs. 25,513 from 11th August, 1970 to 14th October, 1970.

The central excise department stated that show cause notices for payment of duty of Rs. 51,764, were issued of which a demand of Rs. 13,112 was vacated on 6th May, 1971 and a demand for Rs. 13,139 was under appeal with the appellate authorities. Further information on similar cases of incorrect assessment of duty from other collectorates is awaited.

The paragraph was sent to the Ministry of Finance in July, 1973. The Ministry have stated that the position is being reviewed (February, 1976).

Cosmetics and toilet preparations (Tariff item 14 F)

50. *Irregular refund*

A factory manufacturing, *inter alia*, "Vaseline Hair Tonic" classified it as a "toilet preparation" under tariff item 14F and

was paying duty thereon at 25 per cent *ad valorem* from 1967. The item "perfumed hair oil", was specifically inserted in the tariff with effect from 29th May, 1971. When this specific insertion came, the licensee preferred a claim in August, 1971 for refund of Rs. 7.78 lakhs paid by him prior to that date treating it erroneously as a "toilet preparation".

The refund allowed by the department was, however, restricted to the duty paid for a period of one year preceding the date of claim and the claim for the earlier period was rejected as time-barred. However, on appeal, the Appellate Collector, in September, 1973, allowed the entire claim, holding that since the product was non-excisable, the normal time limit of one year prescribed in the Rules would not apply. Even granting that the article did not fall under excise prior to 29th May, 1971 the refund of Rs. 1,38,290 relating to the period prior to August, 1968 is barred by limitation and is extra-legal. The refund also resulted in a fortuitous benefit to the manufacturer to the tune of Rs. 7.78 lakhs, since the manufacturer would have already collected the duty from dealers/customers.

The Ministry of Finance have stated that duty prior to 29th May, 1971 was collected from the manufacturer erroneously owing to misconception. They have added that the branch secretariat of the Ministry of Law had stated that though strictly the party would be entitled to refund of duty only for a period of three years from the date of original payment, it would be inequitable for the Government to stand on such a "technicality" and refuse payment of the amount employing defence of bar of limitation. In this case, however, as the manufacturer paid the amount without protest, he would have passed on the duty to the consumers and hence it would not have been inequitable, if refund of the amount collected earlier to the period of limitation had been refused.

Gases (Tariff item 14 H)

51. *Loss of duty due to incorrect assessment*

A factory was manufacturing ammonia and using it in the manufacture of ammonium chloride (non-fertiliser). Ammonia is excisable, while non-fertiliser ammonium chloride is not dutiable. Ammonia has to pay duty under tariff item 14H before it is taken for use in accordance with Rule 49 of the Central Excise Rules. The records of the factory indicated that for the period from July, 1973 to September, 1974, 3505·972 metric tonnes of ammonia was issued in the factory for manufacture of ammonium chloride. Duty was not collected on this quantity but the factory paid duty on the amount of ammonia contained in the ammonium chloride manufactured by it on the basis of chemical formula. Such a method of assessment is not authorised by Central Excise Act or Rules. Besides, under this method the quantity of ammonia lost in the process owing to any cause does not suffer excise duty and hence the method is defective. If ammonia has to be assessed on its content in ammonium chloride, a valid exemption order should have been issued for the losses in the process of manufacture. It was pointed out by audit that because of the defective method of calculation the factory did not pay the amount of duty due on the difference between the quantity of ammonia cleared for manufacture and the quantity of ammonia contained in the ammonium chloride resulting in loss of duty of Rs. 1,00,114.

The Ministry of Finance's reply to the paragraph which was sent to them in August, 1975, is awaited (February, 1976).

Artificial or synthetic resins and plastic materials (Tariff item 15 A)

52. *Irregular assessment*

A manufacturer of synthetic resins, cleared free of duty, a variety of resin commercially known as polylite, classifying

it as alkyd resin which is exempt from duty. Intelligence reports received from another collectorate in March and September, 1969, however, indicated that these resins were sold and used as polyester resins which were not exempt from duty. Fresh samples of the product were, thereupon, drawn in April, 1970 and on the basis of the results of retest, proving that they were polyester resins, duty was collected on the resins from June, 1970. In respect of the duty due on past clearances for the period from November, 1965 to May, 1970 a show cause notice was issued in September 1970, followed by a demand for Rs. 4,66,295 in March, 1972; on appeal, the Appellate Collector decided in February, 1973, that under the rules, the demand should be restricted to a period of one year from the date of notice. Consequently the demand was revised to Rs. 1,06,781 but this could not be enforced as the licensee filed a revision petition with the Government of India.

The Ministry of Finance have stated that samples of the products drawn in June and November, 1969, showed on test that they were of alkyd type. The retest of the samples in May, 1970 showed them to be of polyester type and thereafter show cause notice was issued in September, 1970. The Ministry have added that the case has been remanded to the Appellate Collector for consideration *de novo*. The Ministry is ascertaining the reasons for the delay in drawal of fresh samples upto April, 1970.

There was, however, a delay of over a year in issuing demand in March, 1972, after issue of show cause notice in September, 1970.

53. *Irregular grant of provisional assessment*

Plastic materials and synthetic resins are assessed to duty *ad valorem*. According to a provision introduced in the Central Excise Rules, all clearances should be made only after the approval of the price list by the proper officer. In case the proper officer is of the opinion that on account of any inquiry to be made in the

matter or any other reason to be recorded in writing there is likely to be delay in according the approval, he shall, on a written request made by the assessee, allow such assessee to avail of the procedure for provisional assessment.

A unit manufacturing formaldehyde moulding powders in a collectorate executed a bond in the prescribed form in November, 1973 for Rs. 50,000 and requested the department for provisional assessment of duty. Thereafter the unit submitted price lists to the department, which were approved in February and March, 1974. In July, 1974 the unit submitted fresh price lists containing reduced prices for approval of the department. The department approved the revised price lists provisionally subject to the condition that there was balance in the running account of the bond. It was noticed in audit in August, 1974 from the records of the unit that there was no balance in the running account of the bond, when the facility of provisional assessment to duty was granted to the unit in July, 1974. It was further noticed that the unit continued to sell its products at higher prices approved earlier in March, 1974. The factory also charged excise duty on such higher prices but paid duty to Government, calculated on the reduced prices approved later in July, 1974.

On this being pointed out, the department withdrew the facility of provisional assessment of duty and realised differential duty of Rs. 6,74,420 (September, 1974) for the period from 13th July, 1974 to 7th September, 1974.

Reply of the Ministry of Finance to whom the paragraph was sent in November, 1975 is awaited (February, 1976).

54. *Short levy of duty due to incorrect assessment of resins*

(i) Polyvinyl chloride (PVC) resins falling under tariff item 15A are assessable to duy at 40 per cent *ad valorem*. However, where a list showing the prices at which the resins would be sold

to consumers is available, assessment is made on such prices after allowing an *ad hoc* discount of 12.5 per cent.

An assessee utilised a portion of the PVC resins manufactured within the factory for manufacture of PVC pipes and fittings. Resins retained for captive consumption were packed in returnable cloth bags. The licensee had declared two sets of prices, one for packing in paper bags and the other for captive consumption within the factory. The latter prices were lower. In assessment, discount at 12.5 per cent was allowed to be deducted even in respect of resins consumed internally. This was not correct, because the prices declared for resins used internally were different and lower. Besides, these prices were not listed as consumer prices. The incorrect grant of discount resulted in short levy of duty of Rs. 1,77,655 during the period from June, 1972 to March, 1973.

The paragraph was sent to the Ministry of Finance in August, 1975; reply is awaited (February, 1976).

(ii) In another factory manufacturing phenolic resins for its own consumption , the value declared was on the basis of costing and no list price was available. Even then, *ad hoc* discount at 12.5 per cent on 'cost price' was deducted and duty was collected on the net value. When this was pointed out, differential duty amounting to Rs. 14,253 was recovered. The Ministry of Finance have stated that short levy occurred owing to misinterpretation of the relevant notification by local officers.

55. *Short levy of duty*

By virtue of a notification issued by the Central Government on 1st June, 1971, phenolic resins falling under item 15A of the central excise tariff are eligilble for assessment to duty at a concessional rate of 18 per cent *ad valorem* against the tariff rate of 40 per cent *ad valorem*. One unit in a collectorate was manufacturing phenol formaldehyde moulding powder, in which

phenol formaldehyde resin was a raw-material. This moulding powder was being assessed to duty at the concessional rate applicable to phenolic resins. However, the same product produced by other units in the same collectorate was being assessed to duty at the full tariff rates. When this discrimination in assessment was brought to notice, the department issued show cause notices to the licensee for demands amounting to Rs. 2,49,070 on clearance of phenol formaldehyde moulding powder during the period from April, 1973 to October, 1974.

The Ministry of Finance have stated that because the two factories were under different ranges, this could not be detected. It is, however, not explained why the classification cell at the collectorate could not detect this divergence in practice.

56. *Refund on account of incorrect fixation of value*

A company manufacturing two types of copolymers (DVB Beads and Edma Beads) was consuming the entire production in the manufacture of special resins. While the copolymers attract duty under tariff item 15A, the special resins do not. As the copolymers are not sold by the factory, their assessable value is to be determined on the basis of the cost of production plus a reasonable margin of profit, under Section 4(b) of the Central Excises and Salt Act, 1944.

Up to November, 1967 in the case of DVB beads and up to December, 1967 in the case of Edma beads, the assessable values were fixed taking into account the fair margin of profit as declared by the company which was more than 10 per cent.

The company represented that no profit element should be added to the works cost of these products. The department rejected the request, but partly accepting the same, ordered in November, 1968 addition of 10 per cent to the cost as the margin of

profit. According to the Government of India instructions, the margin of profit to be added should be what a manufacturer would have ordinarily made to his cost of production, had he chosen to sell the articles to others. These instructions envisage correlation of the profit to be added to the gross profits as revealed in the accounts and not an *ad hoc* addition of 10 per cent.

As a result of the orders of the department, the company was granted a refund of Rs. 1,42,141 for the period from March, 1966 to January, 1968. Further, under-assessment on account of the incorrect fixation of the assessable value amounted to Rs. 1,30,000 approximately for the years 1968 and 1969.

The Ministry of Finance have stated that the margin of profit shown in the costing statement and included in the assessable value was as under :—

DVB Beads 35.31 per cent

EDMA Beads 14.46 per cent

The Ministry have added that it was clarified subsequently that these percentages did not relate exclusively to the cost of the above mentioned intermediate products but were in proportion to the profit earned on the final products in which these two intermediates were used. In the opinion of the Ministry, this essentially involves a best judgment determination by the assessing officer and though Government orders of November, 1968 lay down certain guidelines, a certain amount of discretion has to be left with the assessing officer as regards the actual addition to be made.

The Ministry have, however, not explained how the assessing officer came to the conclusion that the addition of 10 per cent was reasonable.

Rubber Products (Tariff Item 16A)

57. *Short levy due to adoption of incorrect discount*

Rubber products falling under tariff item 16A are assessable to excise duty on *ad valorem* basis.

A factory manufacturing rubber products in a collectorate, claimed, in the price list filed by them, a trade discount of 20 per cent and this was allowed by the department to be deducted from the wholesale prices declared. It was noticed in audit that the assessee had actually allowed a discount of 17.5 per cent only to the buyers. When it was brought to the notice of the department in October, 1971 that discount of 17.5 per cent only should have been allowed as deduction from prices and not 20 per cent as earlier permitted, the department issued a show-cause notice for the short levy of duty of Rs. 32,117 attributable to the incorrect computation of assessable value.

The Ministry of Finance stated that the demand for Rs.32,117 was confirmed and a penalty of Rs. 250 was also imposed on the party. They added that the factory had gone into liquidation and the official liquidator had been addressed for realisation of the amounts.

Paper (Tariff item 17)

58. *Under-assessment of duty due to misclassification*

Excise duty payable on 'cover paper' is higher than that payable on 'wrapping and packing paper'. However, a unit in a collectorate declared 'cover paper' manufactured by it as 'wrapping and packing paper' and paid duty accordingly. This misclassification was detected by the department and the unit was asked in December, 1972, to pay duty at the correct rates. The unit started paying duty at higher rates from January, 1973. Demand for differential duty amounting to Rs. 1,92,945 in respect of

'cover paper' cleared during the year 1972 was also raised in February, 1973 and it was confirmed by the Assistant Collector in January, 1974. However, demand for short assessment prior to 1972 was not raised. During audit it was pointed out that short assessment for the period from August, 1969 to December, 1971 worked out to Rs. 2,25,847.

Similarly, 'coloured wrapper' on which duty was paid as for 'wrapping and packing paper' was also used as 'cover paper'. Short assessment of duty on this account for the period from January, 1970 to March, 1974 amounted to Rs. 2,11,228.

On these being pointed out in audit, demands for the total amount of Rs. 4,37,075 were raised by the department. Recovery particulars are awaited.

The Ministry of Finance have stated in January, 1976 that in respect of coloured wrapper, a demand for Rs. 2,11,228 raised in August, 1974 was confirmed in September, 1975.

59. *Under-assessment due to misclassification*

According to a departmental clarification issued in April, 1967 the classification and assessment of paper should depend on the major end-use, the trade nomenclature and the result of chemical analysis. A paper mill manufactured "M.F. absorbent Kraft Natural Shade Paper" and classified it as "wrapping and packing paper" under sub-item (3) of this item. On this basis duty was paid at the lower rate applicable thereto, though the paper was used mainly in the manufacture of plastic sheets. Based on the usage, the paper should have been classified as paper, not otherwise specified, under sub-item (4) and charged to duty at higher rate of rupee one per kilogram.

This was pointed out by audit in December, 1973. The under-assessment for the period January to October, 1973 worked out to Rs. 3,65,576.

The Ministry of Finance have stated that three show cause notices have been issued in May, June and July, 1975 for amounts totalling Rs. 11,05,776. The Ministry have added that the Collector has reported that the demands for Rs. 11,01,536 have become time-barred.

Woollen Yarn (Tariff item 18B)

60. *Under-assessment due to incorrect application of concessional rates*

Woollen yarn is assessed to duty at tariff rates ranging from 10 to 30 per cent *ad valorem* depending on the count of yarn contained in the worsted yarn. Excise duty on wool tops was introduced for the first time by the Finance Act, 1969 by inserting item 43 in the central excise tariff. By issue of a notification in July, 1969, as amended from time to time, certain concessional rates of duty on worsted yarn of different counts were fixed by the Government of India. In fixing the rates of duty on woollen yarn and tops, the Government of India took into consideration the large scale evasion of duty prevailing in woollen yarn and therefore, shifted substantially the quantum of duty from yarn to wool tops. In July, 1969, the Central Board of Excise and Customs explained that though combing was most essential for making wool tops, it could be made without combing by extra gilling. Wool tops were, therefore, liable to duty under tariff item 43 irrespective of the fact whether they had undergone the process of combing or not. The assumption underlying the levy of concessional rate for worsted yarn was that such yarn would be made from fibre only after it had passed the 'top' stage.

Subsequently, Government revised their earlier stand and confirmed in August, 1973, that combing was essential for making wool tops. By virtue of a notification issued on 11th August, 1973, concessional rates of duty were made applicable to worsted woollen yarn, only if it was made from wool tops. The effect

of this amending notification followed by a clarificatory order dated 18th August, 1973, was that worsted yarn which could also be manufactured from wool slivers after gilling, but without passing through the stage of wool tops became chargeable to duty at tariff rates and not at concessional rates. It was observed in audit that in two collectorates 58,140 kgs. of worsted yarn made out of carded wool not spun from wool tops was cleared at the concessional rate instead of at tariff rate of 30 per cent *ad valorem* for the years 1971-72 and 1972-73. The loss of revenue on account of short levy of duty was Rs. 2,39,956.

The Ministry of Finance have stated that as assessments of other worsted yarn manufactured from wool slivers had been correctly done as per notification of 17th March, 1972, there has been no short levy. They have also stated that to avoid the possibility of worsted yarn manufactured from carded and gilled wool sliver not satisfying the revised definition of wool top availing of the concessional rate of duty, notification of 17th March, 1972 was amended on 11th August, 1973. This shows that earlier assumptions proved to be wrong resulting in unintended benefits to some manufacturers.

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

61. *Non-levy of duty*

"Fenoplast yarn" manufactured by twisting imported spun nylon, nylon filament and duty paid cotton yarn is correctly classifiable under tariff item 18E and is liable to central excise duty at Rs. 10 per kilogram.

A manufacturer of fenoplast yarn cleared such yarn without payment of central excise duty treating it as non-excisable as per the classification list approved by the department on the ground that fenoplast yarn was not manufactured from fibres cotton and

nylon (manmade fibre) but out of yarn which had already discharged the duty liability. In November, 1973, it was pointed out in audit that the fenoplast yarn produced out of different yarns was quite different in characteristics and value from the basic yarns and was, therefore, to be treated as a new product correctly classifiable under item "18E-Yarn all sorts-not elsewhere specified", introduced with effect from 17th March, 1972, to cover the wide range of mixed yarn varieties. Further, in a similar case, the Central Board of Excise and Customs clarified in September, 1974 that the yarn obtained by doubling of duty paid yarn would be liable to duty under tariff item 18E, as it would be a yarn distinct from its constituents. On the quantity of 2,92,468kgs. of fenoplast yarn cleared incorrectly by the licensee free of duty during the period October, 1972 to October, 1973, duty of Rs. 29,24,685 is recoverable.

The Ministry of Finance have stated that the assessment in question was governed by Board's instructions of 30th April, 1963, which were revised on 3rd September, 1974, the latter advice being in favour of Government, had to be given effect to from the date of issue.

It is, however, not clear how the instructions of April, 1963 could be applied after the tariffs were amended in March, 1972.

Cotton fabrics (Tariff item 19)

62. *Short levy due to adoption of incorrect machine length*

Embroidery is assessable to central excise duty under the respective tariff items from 19 to 22, depending on the kind of fabrics used for the purpose. By a notification issued on 1st March, 1969 the Government fixed compounded rates of duty on embroidery based on metre length of the machines employed for manufacture of embroidery. The rate of duty per metre was Rs. 9.50, if the machine was employed for manufacturing

embroidery in piece, in strips or in motifs from cotton fabrics falling under sub-item 1(2) of item 19 of the central excise tariff. By an amending notification issued on 18th November, 1969 'length of embroidery machine' was explained as 'the distance between the first and the last needles of the rollers on such machine.' Prior to the issue of the amending notification, there was no specific provision in the notification for computation of the machine length. In some cases, however, the actual embroidery length was adopted for assessment. This resulted in less collection of duty amounting to Rs. 71,743 in two collectorates. Out of this amount, demand for Rs. 1937 was set aside under appellate orders, while a sum of Rs. 9,537 was realised. In respect of the balance, show cause notices were issued but these are reported to have been withdrawn in most of the cases, on appeal.

The Ministry of Finance have stated that an amount of Rs. 9,634 has been realised and demands for Rs. 4,066 have been confirmed. Further, according to the Ministry, one more show cause notice demanding Rs. 2,747 is pending decision.

63. *Non-levy of duty*

Rubberised cotton fabrics, falling under tariff item 19, were liable to processing duty on account of rubberisation in addition to the duty leviable on the base fabrics. In a circular of December, 1966, the Central Board of Excise and Customs clarified that frictioned cloth and other unvulcanised rubberised cotton fabrics would not be liable to processing duty prescribed for rubberisation of cotton fabrics provided these were not marketable.

A leading footwear factory obtained duty paid cotton fabrics and processed them with rubber compound. No processing duty was charged on the rubberised fabrics on the ground that these were intermediate products used in the manufacture of footwear

and not marketable. However, when such unvulcanised rubberised cotton fabrics were despatched outside the factory for use elsewhere, the department charged duty on the ground that the products changed hand for valuable consideration and were, therefore, marketable. It was held by audit that since the unvulcanised rubberised fabrics were actually marketed on payment of processing duty, identical fabrics used internally by the factory should also be charged to processing duty. Non-levy of processing duty on the products internally consumed worked out to Rs. 34,53,521 during the period April, 1966 to March, 1974.

Reply of the Ministry of Finance to whom the paragraph was sent in August, 1975 is awaited (February, 1976).

64. *Non-levy of additional excise duty on excess clearance of dhoties*

Under Section 4 of the Dhoties (Additional Excise Duty) Act, 1953, if any mill or group of mills issues dhoties in any quarter, in excess of the permissible quota of dhoties fixed by the Government of India, it has to pay additional excise duty on the excess quantity at the prescribed rates. During the quarter ending March, 1975, a cotton textile mill cleared 5,46,325 linear metres of dhoties in excess of the permissible quota of 2,45,346 fixed for that mill. This excess clearance was neither debited against the dhoti quota fixed for the mills nor additional duty paid on the ground that the excess quantity represented clearance of controlled cloth which was not to be included in the total clearance as per the orders of the Textile Commissioner. The Orders of the Textile Commissioner are, however, not in conformity with the statutory requirement mentioned above. The additional excise duty involved in this clearance was Rs. 2,60,300.

When this mistake was pointed out by audit, the department issued a show-cause notice to the mill in June, 1975.

The Ministry of Finance have stated that the mill cleared dhoties in excess of the permissible quota under an erroneous interpretation of Textile Commissioner's notification of December, 1971. The Ministry have added that the show-cause notice is under process of confirmation by the Assistant Collector (January, 1976).

Chinaware and Porcelainware (Tariff item 23B)

65. *Short levy of duty on lightning arresters*

Electrical porcelain insulators falling under tariff item 23B(4) are assessable to central excise duty on *ad valorem* basis, the effective rate being 10 per cent by virtue of a notification issued by Government in July, 1971. The pattern of assessment of electrical insulators fitted with metal parts has not been uniform. Under clarificatory orders issued by the Central Board of Excise and Customs in September, 1961, the insulators were to be assessed to duty on the value of the finished goods (inclusive of the value of metal parts) presented for assessment. In November, 1967 the Board, in supersession of their earlier orders, clarified that,

(*i*) wherever porcelain portions of electrical insulators were cleared separately they should be assessed as porcelain-ware;

(*ii*) where they were cleared in a fully assembled condition with metal parts fitted thereto and, if the value of the porcelain portion was less than 50 per cent of the total value, they need not be assessed to duty;

(*iii*) if the value of the porcelain portion was more than 50 per cent of the total value, they should be assessed as porcelainware under tariff item 23B(4).

These orders were again rescinded in January, 1974, when the Central Board of Excise and Customs held that electrical insulators, whether with or without metal parts, should be

assessed to duty on the value of the goods at the point of clearance under tariff item 23B(4), regardless of the proportion of the metal part content.

A factory engaged in the manufacture, *inter alia,* of 30 different types of lightning arresters made out of porcelain, created, with the approval of the department, a "Delicensed Zone" within its precincts to which the porcelain shells manufactured were removed after payment of duty. After fitting other metal components procured from outside to the porcelain shells, the factory was clearing lightning arresters in a fully assembled condition without any further payment of duty. Consequently, duty leviable on the value of the metal portion of the arresters escaped assessment. This procedure was continued to be followed even after the issue of the Board's clarificatory orders in January, 1974 on the plea that the clearance for sale of the fully assembled units was effected from the delicensed zone. The incorrect procedure followed by the factory leading to recurring loss of revenue to Government was pointed out in audit in July, 1974.

Had the correct method of assessment been followed, additional revenue of Rs. 4,09,969 would have accrued in respect of three major types of lightning arresters alone (out of about 30 types of lightning arresters) cleared during the period from April, 1974 to February, 1975.

The draft paragraph was sent to the Ministry of Finance in October, 1975; reply is awaited (February, 1976).

Copper and Copper alloys (Tariff item 26A)

66. *Loss of revenue due to incorrect exemption*

By virtue of a notification dated 1st May, 1965 manufactures of copper and copper alloys namely plates, sheets, circles, strips and foils manufactured from duty paid copper ingots in combination with zinc were eligible for payment of central excise duty

at Rs. 500 per metric tonne. This concession introduced a divergence in assessment of such manufactures between primary producers and secondary re-rollers. The primary (ore-based) producers were paying duty on the finished products, while re-rollers were getting duty paid ingots of copper and zinc and paid differential duty as per the notification referred to above.

Thus composite units produced copper ingots within the factory and added duty paid zinc for manufacture of the final products which were cleared on payment of tariff rate of duty of Rs. 2,000 per metric tonne. The re-rollers received copper ingots on payment of excise duty at Rs. 1,500 per metric tonne and on zinc ingots they paid duty at Rs. 500 per metric tonne. The alloy of these two, paid duty at Rs. 500 per metric tonne of finished products. Thus the re-rollers gained in duty to the extent of Rs. 1,000 per metric tonne on the portion of zinc added in the alloy. This concession to re-rollers was subsequently withdrawn by a notification dated 29th September, 1973. As a result of the adoption of different modes of assessment, an unintended benefit accrued to the re-rollers (private sector) over that of primary producers of alloys.

Audit scrutiny revealed that while the re-rollers under five collectorates derived advantage to the extent of Rs. 571 lakhs, during the period from 23rd March, 1968 to 28th September, 1973, a public sector undertaking had, however, to pay more duty to the extent of Rs. 1,23,28,431.

Reply of the Ministry of Finance to the paragraph referred to them in November, 1975 is awaited (February, 1976).

Aluminium (Tariff item 27)

67. *Loss of duty due to incorrect fixation of prices*

In pursuance of clause (4) of the Aluminium (Control) order, 1970, the Central Government fixed the sale price of aluminium and its products with effect from 20th March, 1970

and revised it from time to time. The sale price fixed on 20th March, 1970 for aluminium sheets of 20 SWG (1219 mm) was the same as that of aluminium sheets 20 SWG (914mm). The price of the former was fixed lower as compared to that of the latter in subsequent revisions made on 24th May, 1971, 13th December, 1971 and 17th March, 1972. The prices of both the types of sheets were, however, again brought at par from 12th March, 1973 by issue of a corrigendum.

Central excise duty on aluminium sheets is levied *ad valorem.* Consequent on lower prices fixed in respect of aluminium sheets 20 SWG (1219 mm) during the period from 24th May, 1971 to 11th March, 1973, there was loss of duty of Rs. 80,263 on 969.88 metric tonnes of sheets cleared by four factories in three central excise collectorates. On a reference by audit, the Ministry of Finance stated in August, 1974 that there was a mistake in the fixation of the sale price for 1219mm sheets by the 'working group' constituted under the Chairman, Bureau of Industrial Costs and Prices to look into the pricing policy of aluminium and its products.

68. *Non-levy of duty*

(a) A factory was bringing in aluminium bars classifiable under tariff item 27(a)(i) for conversion into wire rods classifiable under tariff item 27(a)(ii). The converted wire rods were removed without payment of duty. It was pointed out by audit in September, 1971, that the rate of duty being *ad valorem* with effect from 26th March, 1970, differential duty was recoverable, as the value of wire rods was higher than that of bars.

The department, thereafter, issued two show cause notices in December, 1971 for Rs. 75,082 for the period from 26th March, 1970 to 4th October, 1971. A sum of Rs. 53,912 in respect of one notice was realised on 29th December, 1973.

The Ministry of Finance have stated that of the balance demand for Rs. 21,170, an amount of Rs. 2069 was realised and the balance of Rs. 19,101 is barred by limitation under rule 10 of the Central Excise Rules.

(b) Another factory, in the same collectorate, manufactured aluminium wire rods during the period 14th April, 1970 to 27th October, 1970, without obtaining a central excise licence and excise duty on these goods was also not paid. The duty not paid amounted to Rs. 34,21,295.

When this was pointed out by audit, the department issued a show-cause notice for a demand of Rs. 34,21,295 on 18th January, 1973. The demand was later confirmed by the Assistant Collector who also imposed a penalty of Rs. 250 on the manufacturer.

The Ministry of Finance have reported that an amount of Rs. 2,05,978 has been paid by the party.

69. *Non-levy of duty*

An aluminium company manufacturing aluminium 'C' clamps from January, 1962 used them internally as clamps to keep the "anode pots" in position. These 'C' shaped clamps are castings, not otherwise specified, assessable to duty under central excise tariff item 27(a)(ii). The company did not account for these clamps either in their own records or in the central excise records maintained by them. No duty was levied and collected on the clamps. The omission to levy duty was brought to the notice of the Collector by audit in February, 1970 for investigation. The Collector agreed in August, 1970 to levy duty on the clamps and the company was also instructed in August, 1970 to maintain proper accounts of production and consumption of the product. A demand for Rs. 40,685 being the duty on 66.584 metric tonnes of clamps consumed

during the period January, 1962 to February, 1970 was issued to the company in April, 1972. Another demand for Rs. 56,741 being the duty on the clamps consumed from March, 1970 to June, 1973 was also issued in August, 1973. There was, however, no manufacture and use of 'C' clamps from July, 1973 to October, 1973.

The department reported in November, 1974 that the company had paid the demand of Rs. 40,685 under protest and the demand for Rs. 56,741 raised in August, 1973 is pending recovery. Particulars of recovery of the balance amount are awaited.

The Ministry of Finance have stated that a penalty of Rs. 250 was imposed on the company and that the amount of Rs. 56,741 is pending realisation.

Electric batteries and parts thereof (Tariff item 31)

70. *Loss of revenue due to low rates of compounding duty*

Plates of electric storage batteries cleared by a manufacturer who employs or had employed during the preceding twelve months less than 5 workers are assessable to duty at the rate of 12 per cent *ad valorem*. The Central Excise Rules provide for an alternate basis for collection of duty, known as the compounded levy. Under this system, the Government of India fix a monthly rate of duty on payment of which the full liability of the manufacturer for his entire production during that month is deemed as discharged. According to Rule 96 YY, of the Central Excise Rules, the rate of compounded levy has to be notified by the Government of India having regard to the average production. Under a notification issued in March, 1972, a monthly compounded rate of Rs. 700 per unit was fixed for those manufacturers who did not employ or had not employed during the previous calendar year more than 5 workers.

A manufacturer who had opted for the special procedure, had cleared electric storage battery plates, valued at

Rs. 15,23,054 during the period from June, 1973 to February, 1975. The actual duty paid by him at the compounded rate amounted to Rs. 14,700. The duty payable at the standard rate would have been Rs. 1,82,766, had the manufacturer been required to pay duty according to the normal procedure. Fixation of a low rate of compounded levy without regard to the average production of parts of electric storage batteries in each unit and their values resulted in less realisation of revenue to the extent of Rs. 1,68,066 for the period from 1st June, 1973 to 28th February, 1975. Loss of revenue in similar other units is being ascertained (January, 1976). The paragraph was sent to the Ministry of Finance in November, 1975. Reply is awaited (February, 1976).

Electric fans (Tariff item 33)

71. *Avoidance of duty*

According to a clarification issued by the Central Board of Excise and Customs in October, 1971, regulators are integral parts of ceiling fans and their prices should be included in determining the assessable value of such fans, when these are sold alongwith the fans. In a factory in one collectorate, even though the fans were sold along with the regulators manufactured by them, the price of the regulators was not included in determining the assessable value of the fans. This resulted in an avoidance of excise duty of Rs. 1,09,350 (approximately) by the factory during the period from March to December, 1974. The draft paragraph was sent to the Ministry of Finance in November, 1975 and reply is awaited (February, 1976)

In another factory in a different collectorate the under-assessment of duty for the period 20th September, 1973 to May, 1975 on the same grounds worked out to Rs. 2.13 lakhs. The Ministry of Finance have replied that a show cause notice has since been issued.

Office machines (Tariff item 33 D)

72. *Non-levy of duty*

Computers falling under tariff item 33D are liable to central excise duty at 15 per cent *ad valorem* (10 per cent till the end of February, 1974).

A company manufacturing 'analog' and 'real time digital' computers from March, 1971 did not pay duty on the plea that they did not fit into the description of the tariff item. The Central Board of Excise and Customs rejected in December, 1971 a representation made by the company in September, 1970 that the computers manufactured by it might be exempted from duty. However, the Collector of Central Excise passed orders in January, 1972 that these computers did not fall under the aforesaid tariff item and were, therefore, not liable to pay any central excise duty. Thereupon, the Central Board of Excise and Customs called for and examined the records leading to this decision by the Collector and observed that the Collector's decision was neither "correct nor legal". Accordingly, it was held that the computers were excisable. Though the factory is now paying duty on computers cleared from November, 1974 under protest, the department has not so far realised (January, 1976) excise duty amounting to about Rs. 35 lakhs on the clearances from March, 1971 to October, 1974.

Reply of the Ministry of Finance to the paragraph sent in October, 1975 is awaited (February, 1976).

73. *Short levy on account of incorrect adoption of assessable values.*

A manufacturer of office machines, in a collectorate, appointed in November, 1973, four area distributors, for the sale of his products. Central excise duty was collected on the basis of the ex-factory prices charged by the manufacturer to the four

area distributors. It was noticed in audit in January, 1975 that:—

(*i*) a special relationship existed between the manufacturer and the area distributors, with four of the Directors of the manufacturing company, holding responsible positions in three out of the four agency institutions;

(*ii*) there was a wide difference between the prices charged by the area distributors and the ex-factory prices of the manufacturer; there was a margin of 50 per cent at the area distributors' level in the prices charged.

The adoption of manufacturer's ex-factory prices (that is, prices charged by manufacturer to area distributors) as assessable values in this case was not correct as the transactions were not at 'arms length.' Thus a short levy of duty of Rs. 9,56,150 for the period from November, 1973 to January, 1975 was indicated to the department.

The Ministry of Finance have stated that there is no special relationship between the manufacturer and the four distributors. As for the wide difference in the prices charged by the area distributors and the ex-factory prices of the manufacturer, the Ministry have stated that this is related to the nature of goods, the initial outlay required to be made by the distributors/dealers.

It is, however, seen in this case that there is a substantial increase in prices at the middle level to the detriment of the consumer and Government revenue.

Photographic apparatus and goods (Tariff item 37C)

74. *Under-assessment due to adoption of incorrect value*

Photocopying machines are assessable to central excise duty as office machines and apparatus under tariff item 33D. In the manufacture of these machines photographic cameras falling under another tariff item 37C are used.

In a collectorate, two factories manufacturing photocopying machines, did not pay central excise duty on the full cost of the photographic cameras. The price of the lens etc., forming an integral part of the cameras used in the manufacture of photocopying machines was excluded, while determining the assessable value of the photographic cameras.

The revenue involved in respect of the two units works out to Rs. 46,576 (approximately). Recovery particulars are awaited (July, 1975).

The paragraph was referred to the Ministry of Finance in November, 1975; reply is awaited (February, 1976).

Metal containers, not elsewhere specified (Tariff item 46)

75. *Short levy of duty on drums for packing asphalt*

Drums for packing asphalt are assessable to *ad valorem* duty under this item from 1st March, 1970. When these drums are used entirely within the factory of production for packing asphalt, the value arrived at on the basis of 'cost' loaded with a suitable addition towards margin of profit is adopted for assessment of drums.

The price of asphalt in drums is fixed by Government of India from time to time based on cost data of manufacture of drums. Consequent on the imposition of duty on drums under item 46, Government of India allowed an increase in the price of asphalt of Rs. 17.57 p.m.t.

It was noticed during audit of an oil refinery in a collectorate that the assessable value of drums produced in the refinery and used for packing asphalt was not determined on the basis of cost as required. During the period from 1st March, 1970 to 9th March, 1970, the assessable value was determined by deducting the filling cost of Rs. 8.52 per m.t. from the cost of drums and

without making any addition towards profit. From 10th March, 1970, the assessable value was computed backwards from the increased element of Rs. 17.57 p.m.t. allowed by Government to be included in the price of asphalt. The effect of this backward computation of value from the excise duty element was that excise duty on drums happend to be levied and collected only to the extent as provisionally added by Government to the price of asphalt, instead of assessing such drums on value determined under Section 4 of the Act. This was brought to the notice of the department first in September, 1973. The incorrect computation of assessable value resulted in short levy of duty to the extent of Rs. 5,11,083 approximately, on 23,64,584 drums cleared during the period from 1st March, 1970 to 31st March, 1974. Reply of the Ministry of Finance to the paragraph sent in August, 1975 is awaited (February, 1976).

The cost data of drums for the year 1973 as furnished by another licensee on 1st July, 1974 and adopted by the department for assessment to duty did not represent the correct cost, as the cost of plates of steel, a raw material for manufacture of drums, was understated. On the under-assessment of central excise duty of Rs. 1,01,592 in respect of drums cleared during the year 1973 being pointed out in audit, the amount was recovered by the department in February, 1975.

Other Topics of Interest

76. *Loss of revenue due to low tariff values*

(i) Sub-section (2) of section 3 of the Central Excises and Salt Act, 1944 empowers the Government of India to fix tariff values of any articles for the purpose of levying excise duty on goods chargeable to duty *ad valorem*. In the sixties the work of fixing tariff values was entrusted to the Economic Adviser in the Ministry of Industrial Development. The values recommended by him after examination were notified by the Ministry of Finance.

Defects in fixing tariff values were pointed out through audit reports in earlier years and the Public Accounts Committee had also made certain recommendations in this connection. While considering the audit report 1964 the Public Accounts Committee observed in paragraph 61 of their 27th report that the system of tariff values amounted to circumventing the Parliament's intention by executive fiat, apart from the loss of revenue suffered. The Committee also felt that "it is inequitable that the burden of tax should be shifted by an executive order from one party to another, thus frustrating the declared intention of Parliament."

The Public Accounts Committee expressed concern over "huge losses of revenue due to unscientific and *ad hoc* fixation of tariff values, which results in dilution of authority of Parliament in the field of taxation" (paragraph 3.216 of their 44th Report, Third Lok Sabha).

The Public Accounts Committee also had occasion to comment on the delays in fixation of tariff values. In regard to a case of fixation of tariff values for winding wires, the Committee felt that the period of 21 months taken by Government was inordinate (paragraph 1.68 of 111th Report, Fifth Lok Sabha).

The Committee desired that Government could consider whether the responsibility for determination of tariff values should be centralised in one agency of Government, instead of being distributed between two agencies as at present. The Committee also emphasised that the tariff values should, in future, be revised once in a year in accordance with the decision taken by Government in December, 1967.

Subsequently in late 1970, the Ministry of Finance took over the function of collecting statistics and making proposals for tariff values and the function was entrusted to the Directorate

of Statistics and Intelligence attached to the Board of Excise and Customs (*vide* M.F. O.M. No. F-11/43/70-CX.7 dated 18th November, 1970).

The procedure for review of tariff values and the main principles governing such fixations were explained in detail by the Ministry of Finance to the Public Accounts Committee *vide* Annexure—1 to Appendix XIV of the Committee's 44th Report (3rd Lok Sabha). In explaining the main features, it was stated that :—

"(*i*) tariff values are normally evolved by taking into account overall production and/or clearances and prices of goods and the All India weighted average price is arrived at as far as possible;

(*ii*) the above ensures realisation of the normal revenue expectations;

(*iii*) it is not normally possible to revise tariff values with every change in prices announced by individual manufacturers, but these are normally reviewed once a year. During such review, the price fluctuations since the last fixation of tariff values are taken into account and tariff values are revised accordingly;

(*iv*) in case of violent and appreciable fluctuation in prices affecting the industry and trade on the one hand and the Government on the other, efforts are made to review the tariff values at less frequent intervals."

A general review of the tariff values was undertaken by audit, in the light of the recommendations of the Public Accounts Committee and the steps taken by Government with a view to finding out how far the recommendations had been acted upon and how the tariff values fixed,affected the revenues of Government. The results of review are summarised in the following paragraphs.

There were 128 commodities subject to excise duty in 1974, of which 93 were subject to duty *ad valorem*. Tariff values were fixed for 13 major commodities. The review in respect of six commodities in 19 central excise collectorates revealed the following main features, namely—

(1) Though the tariff values were required to be worked out on the basis of weighted average thus conforming to the theory that the loss in assessments of some is made good by gain in those of others, in actual practice, there were rarely any cases in which the tariff values fixed were higher than the actual sale prices.

(2) Considerable delay had occurred in fixing the tariff values and in notifying them.

(3) By and large, reviews of tariff values had not kept pace with the upward trends in market prices.

(*a*) Thus in the case of woollen yarn and woollen fabrics the tariff values fixed on 1st September, 1973 and 21st July, 1973 respectively were revised only on 10th July, 1974 and 9th November, 1974. The total revenue forgone consequent on delay in revision in the case of woollen yarn alone works out to Rs. 63,89,708 and in the case of woollen fabrics to Rs. 2,80,117 during the period 1st March, 1973 to 28th February, 1975 due to higher prices prevailing. In respect of sulphuric acid the tariff value of Rs. 260 per metric tonne was ruling from 28th November, 1970, till it was revised to Rs. 385 from 14th December, 1974. The revenue forgone owing to delay in this case is computed to be Rs. 46,44,807. In the case of electric wires and cables the tariff values prevailing from 1st April, 1972, were revised from 20th April, 1974, the revenue forgone in this case being Rs. 96,90,672. The tariff value of electric stampings was fixed on 1st March, 1974 and since then no revision has taken place; the revenue forgone in this case as a result of market price

fluctuations comes to Rs. 32,18,182. For art silk fabrics the tariff values fixed on 5th March, 1973 were revised on 21st December, 1974, the revenue forgone amounting to Rs. 1,53,70,345.

(*b*) In the case of telecommunication cables of some varieties, there was only one producer and one buyer and, although it was not at all necessary in this case to fix any tariff values, Government of India still fixed tariff values which were lower. The consequence was a loss of revenue of Rs. 1,45,99,592.

(*c*) In the tariff values notified on 12th September, 1970 for telecommunication wires and cables, the value for paper covered quad trunk PCQT cables of size of 1.27 mm was shown as Rs. 21.80 per metre. The correct value should have been Rs. 13.40 per metre. This was rectified by a correction notified on 29th May , 1971. In the intervening period, there was excess collection of Rs. 48,021 from a public sector unit.

The points mentioned above were brought to the notice of the Ministry of Finance in November, 1975; reply is awaited (February, 1976).

(ii) Certain sophisticated asbestos cement products like "arc chutes" "arc chambers" "arc quenching chambers" with certain metallic parts intended for use as component parts in heavy duty switch gears for high tension electric supply were manufactured in a factory and were assessed to excise duty based on tariff value fixed for moulded asbestos cement products.

The tariff value fixed for moulded products was Rs. 1,990 per metric tonne, while the real value of the products manufactured and cleared ranged from Rs. 15,500 to more than Rs. one lakh per metric tonne. By assessing these products on the basis of tariff values instead of on real values Government

lost revenue to the extent of Rs. 1,14,118 during the period from July,1969 to May, 1975. The Ministry of Finance stated that 'arc chutes' were moulded products. They added that the language of the notification is so worded as to include all moulded products, whether standard or otherwise and sophisticated or not and irrespective of the price factor. Further, the Ministry stated that the issue was examined subsequently and 'arc chutes' were excluded from the tariff values by issue of notification on 27th September, 1975.

77. *Fortuitous benefit on refund of duty*

Central excise duty of Rs. 8,49,412 paid on the clearance of a variety of plywood called, "compreg" from a factory during the period from 1st April, 1971 to 4th January, 1974 was refunded to the assessee on the ground that "compreg" was not covered by the tariff item 16B relating to plywood, block board etc.

An exemption notification issued in July, 1963 prescribed effective rates of duty on "compreg". This position continued even in subsequent notifications relating to effective rates of duty for plywood. In a clarificatory letter dated 3rd December, 1973 the Board stated that "compreg" is only a type of improved wood and is, therefore, not covered by any type of wood specified under tariff item 16B and that 'compreg' is not excisable. A notification was issued on 8th December, 1973 deleting reference to 'compreg' in the earlier notification relating to rates of duty.

These notifications indicate that it was the intention of Government to levy duty on 'compreg', but the tariff item left it uncovered. The Ministry of Finance have stated that the notifications referred to laid down effective rates of duty for 'compreg' which was construed to be already covered by the existing tariff item 16B and when it was realised that this product was not covered by the tariff item reference to this product in the notification was deleted.

The fact, however, remains that this resulted in fortuitous benefit to a manufacturer.

78. *Exemption of duty on furnace oil used by Power Plants-Revenue forgone*

A thermal power station in a State, initially coal based, switched over to oil firing because of its proximity to a refinery and consequent availability of furnace oil. Owing to failure of power supply received by the State Electricity Board from other sources, the thermal station had to be geared up for additional power production, for which enhanced supply of oil was required. To meet this requirement, it was proposed by the Ministry of Irrigation and Power to the Ministry of Finance in January, 19[illegible] that furnace oil (known as L.S.H.S.) should be exempted from excise duty. Furnace oil produced from indigenous crude and used for production of power was, however, already exempt. As the refinery from where the oil was to be drawn was already committed to supply the oil to other power stations, the additional requirement had to be met from imported crude or direct import.

The Ministry of Finance issued an order under Rule 8(2) of the Central Excise Rules, exempting a quantity of 28,950 kilolitres from basic and additional duty. This exemption which was for a specified period was extended and additional quantity was also allowed exemption similarly on request.

This, however, involved transport of furnace oil from a port and in order to avoid criss-cross movement of such oil from the port to the power station and of similar oil from the refinery to another power station near the port, the Railway Board suggested that the exemption might be approved in favour of the second power station at the port so that haulage from refinery to this

power house could be avoided and oil supplied from the refinery to the thermal station. While initially it was rejected, orders were subsequently issued in 1973 exempting imported furnace oil from countervailing duty in exercise of the powers under Section 25(2) of the Customs Act, 1962. This was on the condition that:—

(*a*) no adventitious gain would accrue to the second power station;

(*b*) a corresponding quantity would be supplied from the refinery to the first mentioned thermal station.

These conditions were, however, not incorporated in the orders issued. The exemptions which were initially intended to be of short duration were continued to be given from time to time involving a revenue of Rs. 1.5 crores (approximately).

The Committee of Economic Secretaries decided in November, 1972 that while duty exemption for L.S.H.S. might continue irrespective of whether it was produced from indigenous or admixture of imported crude, exemption for light diesel oil and furnace oil should be withdrawn immediately. The exemption granted in respect of this power station for furnace oil imported or produced from imported crude was thus not justified.

Secondly, the Ministry of Finance did not also go into the cost structure of producion of power by this unit to justify the exemption.

Moreover, while granting the exemptions, it was decided by the Government of India that the Power plant should switch over to coal firing by the end of March, 1974. This was not done but exemptions continued to be granted.

The Ministry of Finance in their reply to the draft para have stated :—

(*i*) While the orders dated October, 1973 and April, 1974 issued under section 25(2) of the Customs Act did not specifically indicate the arrangement (diversion of contractual quantities of L.S.H.S.) both the conditions were duly brought to the notice of the Ministry of Petroleum and Chemicals who were to ensure compliance. No barter arrangement was envisaged in the order of May, 1974. Both the orders (under Customs Act and Central Excise Rules) being inter-related, have to be read together.

(*ii*) Failure of monsoon in the State and consideration for the need for conserving the rail capacity in the region also weighed in favour of the grant of the exemption.

(*iii*) The cost structure in respect of another thermal plant was ascertained. For the same heat value of fuel, furnace oil will have to pay Rs. 281.63 as against Rs. 165 payable on two tonnes of coal. Since the cost of the fuel is the major item in the operating cost of thermal power station, the power station has to bear an extra burden on this account and this obvious fact required no verification as such.

(*iv*) Coal availability is short of requirement for the units which can be converted to coal. It was only due to non-availability of coal to the extent required even for the coal based units, use of fuel oil has been resorted to.

(*v*) The exemption orders being applicable to isolated cases of exceptional nature could not be issued under any rule other than rule 8(2) of the Central Excise Rules, 1944 which empowers the Central Board of Excise and Customs to exempt from payment of duty by special order in each case, under circumstances of an exemptional nature.

In the opinion of audit, the exemptions are not justified because :—

(*i*) the overall revenue impact was not known, when the exemptions were initially conceded;

(*ii*) the cost structure of one unit would not be the same as for the other; besides the cost data is also meant to show the absorbing capacity of the thermal plant of the increased cost and if necessary to pass it on to the consumer;

(*iii*) rule 8(2) of the Central Excise Rules enables the Board of Excise and Customs to exempt in each case under circumstances of an exceptional nature. It is not clear whether circumstances of exceptional nature could continue over a period of years.

79. *Loss of Revenue*

'Tyres for motor vehicles' are excisable under item 16 of the central excise tariff at 50 per cent *ad valorem*. By virtue of a notification issued on 11th September, 1967 as amended, such tyres, if intended to be used as original equipment tyres in the manufacture of motor vehicles and prominently marked as 'O.E.' on every such tyre are chargeable to duty on the actual cash price. These tyres marked as 'O.E.' were of the same kind and quality as other tyres. Therefore, in the absence of the exemption notification, such tyres could have been charged on real values applicable to tyres of like kind and quality, The concessional rate of assessment is allowed with a view to providing the motor car industry with tyres at lower costs. However, the manufacturers of motor vehicles obtained higher prices for the cars manufactured by them through court orders and thus the need for providing tyres at lower prices did not apparently exist. Further, even after the control on passenger cars was removed, the concessional rate was not withdrawn. The continuance of the concessional assessment in the circumstances does not appear to be

justified. The revenue forgone as a result of clearances of 'O.E.' tyres at lower rates amounted to Rs. 1.08 crores in respect of four units during the period March, 1973 to 10th May, 1974. Reply of the Ministry of Finance to the paragraph sent in September, 1975 is awaited (February, 1976).

80. *Avoidance of excise duty at higher rate*

Rule 9 of the Central Excise Rules envisages clearance of excisable goods from the place of manufacture on payment of duty for consumption, export or manufacture of other commodities in or outside such place.

A factory manufacturing refrigerators and other refrigerating appliances cleared the goods for self on the eve of the budget day in February, 1973 and again in February, 1974 and deposited them in the motor cycle stand of the factory and other nearby places for eventual despatch to the destinations. This despatch, however, took upto one year in some cases. The unusual procedure was adopted by the factory only during February for pre-budget clearances.

The removal of the goods without any intention to despatch them immediately to their destinations was evidently to avoid payment of duty at the higher rate anticipated in the budget proposals.

The duty thus avoided during the years 1973 and 1974 amounted to Rs. 1,44,908.

The paragraph was sent to the Ministry in September, 1975 and reply is awaited (February, 1976).

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

The total amount of revenue forgone by Government owing to non-issue of demands before the prescribed time limit in

*Figures received from the Ministry of Finance in February, 1976.

respect of assessments during 1974-75 was Rs. 10,96,164 as detailed below:—

	No. of cases	Loss of revenue involved Rs.
(*a*) demands not issued due to operation of time-bar. . . .	2	1,53,981
(*b*) demands withdrawn due to operation of time-bar. . . .	17	9,42,183

Duty on cotton fabrics falling under tariff item 19 and manufactured on powerlooms is payable under the compounded levy system, based on the number of looms employed by a manufacturer in producing the goods, instead of on actual production. A composite mill having proprietary interest in two or more manufacturing activities such as spinning, weaving or processing is not, however, entitled to avail itself of the compounded levy system of payment of duty. It was found that in two cases the licensees constituted composite mills but paid duty at the concessional rates. The resultant loss of revenue was Rs. 1,66,251 as detailed below:—

(*a*) A licensee started a powerloom factory in 1944 and added a spinning unit in 1952. The licensee informed the central excise department in September, 1963 that theirs was a public limited company having two separate business activities, spinning and weaving, but continued to pay duty at concessional rates. Only on 13th November, 1966, the department, holding the licensee as a composite mill, raised a demand under rule 10A for differential duty of Rs. 18,832 for the period from 12th August, 1966 to 5th November, 1966. The department also raised a demand for Rs. 1,21,485 on 4th July, 1967 covering the period from 1st March, 1964 to 11th August, 1966.

The first demand of Rs. 18,832 was set aside in June, 1973 by the High Court on a writ filed by the licensee on the ground that Rule 10A was *ultra vires* of the provisions of the Act in the absence of rule making power conferred on the Board under the Act. The second demand of Rs. 1,21,485 was set aside by Government in July, 1972 under the revisionary powers, holding that the demand raised was covered by rule 10 and not rule 10A and was, therefore, time-barred. The omission to demand differential duty in time and subsequently under the correct rule resulted in loss of revenue of Rs. 1,40,317.

(*b*) Another licensee started a powerloom factory in April, 1963. In March, 1965, though a spinning mill was added, the licensee continued to avail itself of the concessional rate of duty. In September-October, 1966, the department raised demand under rule 10A for the differential duty of Rs. 30,028 for the period from 9th March, 1965 to 31st August, 1966. On a writ filed by the licensee, the High Court held in March, 1972 that the demand could be raised only under rule 10 and not under rule 10A. The department revised the demand to Rs. 5,094 in December, 1972 covering a period of three months, which was met by the licensee. The belated issue of original demand in September-October, 1966 resulted in loss of revenue of Rs. 24,934 due to time- bar.

In regard to the case at (a) the Ministry of Finance have stated that the order of the Board dated 29th April, 1966 was communicated to field formations on 19th July, 1966 and this was received in range office on 12th August, 1966. The Ministry have added that on obtaining further clarifications from the Assistant/Deputy Collector, demands were issued in November, 1966 and July, 1967.

As for the case at (b) the Ministry of Finance stated that range officer received orders on 30th August, 1966 and demand was issued on 5th September, 1966.

82. *Arrears of Union excise duties**

The total amount of demands outstanding without recovery on 31st March, 1975 in respect of Union excise duties as reported by the Ministry of Finance was Rs. 2970.61 lakhs, as per details below:—

Commodity	Amount (in lakhs of rupees)
Unmanufactured tobacco	263.42
Motor spirit including solvent raw naphtha & benzene, food grade hexane	221.88
Refined diesel oil and vaporising oil	8.95
Paper	61.45
Rayon yarn (including synthetic fibre yarn)	236.49
Cotton fabrics	214.29
Iron or steel products	113.97
Tin plates	10.94
Refrigerating and air conditioning machinery	31.92
All other items	1807.30
TOTAL	2970.61

*Figures furnished by the Ministry of Finance in February, 1976 and stated to be provisional.

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

The total amount remitted, abandoned or written off during 1974-75 was stated by the Ministry of Finance to be Rs. 11,40,311 The reasons for remissions and writes off were stated to be as follows:—

	No. of cases	Amount Rs.
I. Remissions of revenue due to loss by:—		
(*a*) Fire	46	8,07,913
(*b*) Flood	—	—
(*c*) Theft	7	2,917
(*d*) Other reasons	5	4,154
II. Abandonment or written off on account of :—		
(*a*) Assessees having died leaving behind no assets	312	37,409
(*b*) Assessees being untraceable	453	53,973
(*c*) Assessees having left India	9	6,617
(*d*) Assessees being alive but incapable of payment of duty	764	1,94,516
(*e*) Other reasons	1103	32,812

Irregular remission of duty

The Government of India have by issue of notifications, laid down concessional or nil rates of duty for use of mineral products for industrial purposes. In such cases, the Central Excise Rules prescribe the movement of the product under bond for storage at the receiving ends. The bond is intended to ensure that the entire quantity so removed is received and stored.

In January, 1967, the Board of Excise and Customs clarified in a letter to an Oil Company that no transit loss would be permissible in case of transfers of mineral oils for use for industrial purposes. However, an amendment made in the Central

*Figures received from the Ministry of Finance in February, 1976 and stated to be provisional.

Excise Rules in March, 1967 enabled the officers of the Central Excise department to write off losses in duty in transfer of oil in these cases also. Duty written off on transit losses in exercise of such powers amounted to Rs. 3,90, 300 during the period 1970 to 1974 in three central excise collectorates. The Ministry have stated that condonation of transit losses subsequent to amendment of rule 196 is legally correct and hence there has been no irregularity.

84. *Frauds and evasions**

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

(1) Total number of offences under the Central Excise Law prosecuted in courts	15
(2) Total number of cases resulting in convictions . . .	12
	Rs.
(3) Total value of goods seized including value of transportation	2,30,37,319
(4) Total value of goods confiscated	87,15,302
(5) Total value of penalties imposed	10,10,984
(6) Total amount of duty assessed to be paid in respect of goods confiscated	30,89,793
(7) Total amount of fine adjudged in lieu of confiscation	9,62,936
(8) Total amount settled in composition	27,261
(9) Total value of goods destroyed after confiscation . .	26,111
(10) Total value of goods sold after confiscation . . .	60,770

*Figures received from the Ministry of Finance in February, 1976.

CHAPTER III

OTHER REVENUE RECEIPTS

MINISTRY OF HOME AFFAIRS

RECEIPTS OF THE UNION TERRITORY OF DELHI

SECTION 'A'

GENERAL

85. *Variation between the budget estimates and actuals*

The figures of budget estimates and actuals for the three years 1972-73 to 1974-75 in respect of some principal sources of revenue receipts are given below to show the variation and its magnitude in each case:—

Principal source of revenue	Year	Budget estimates	Actuals	Variation (+)increase (—)decrease	Percentage of variation
				(In crores of rupees)	
State Excise . .	1972-73	6.36	8.05	(+)1.69	26.57
	1973-74	9.80	10.25	(+)0.45	4.60
	1974-75	10.93	11.24	(+)0.31	2.83
Sales Tax . .	1972-73	29.76	34.21	(+)4.45	14.95
	1973-74	35.53	39.80	(+)4.27	12.01
	1974-75	44.07	52.43	(+)8.36	18.96
Taxes on vehicles .	1972-73	2.90	3.04	(+)0.14	4.83
	1973-74	3.45	3.31	(—)0.14	4.06
	1974-75	3.57	3.55	(—)0.02	0.56
Entertainment Tax .	1972-73	4.00	3.53	(—)0.47	11.75
	1973-74	4.10	3.83	(—)0.27	6.60
	1974-75	4.20	4.12	(—)0.08	1.90
Stamps . . .	1972-73	3.59	3.31	(—)0.28	7.79
	1973-74	4.22	3.45	(—)0.77	18.25
	1974-75	3.50	3.61	(+)0.11	3.14
Registration Fees .	1972-73	0.21	0.16	(—)0.05	23.81
	1973-74	0.21	0.16	(—)0.05	23.81
	1974-75	0.17	0.16	(—)0.01	5.88

As stated by the Sales Tax Department, the increase in actuals of sales tax receipts during the year 1974-75 was attributable mainly to 'considerable rise in prices of almost all commodities, including the price-hike effected in the petroleum products.'

86. *Arrears in assessments* (*Sales tax*)*

On 31st March, 1975, 1,48,616 cases were pending assessment as against 1,20,964 cases at the end of the year 1973-74 and 95,974 cases at the end of the year 1972-73. The position regarding pendency of assessments for 3 years ending March, 1975 is indicated below:—

Year	As on 31st March, 1973			As on 31st March, 1974			As on 31st March, 1975		
	Local	Central	Total	Local	Central	Total	Local	Central	Total
1969-70 . . .	6,226	5,441	11,667						
1970-71 . . .	14,010	12,127	26,137	7,623	7,566	15,189			
1971-72 . . .	31,376	26,794	58,170	19,781	17,114	36,895	13,551	11,137	24,688
1972-73 . . .				37,505	31,375	68,880	26,777	22,453	49,230
1973-74 . . .							39,533	35,165	74,698
TOTAL. .	51,612	44,362	95,974	64,909	56,055	1,20,964	79,861	68,755	1,48,616

*Figures are as furnished by the department.

The number of assessments completed out of arrears and current cases during 3 years ending 31st March, 1975 is given below:—

Year	Total number of assessments for disposal			Total number of assessments completed			Percentage of disposal	Total number of assessments pending at the end of the year
	Arrear	Current	Total	Arrear	Current	Total		
1972-73								
Local	41,283	44,055	85,338	21,047	12,679	33,726	39.50	51,612
Central	35,851	35,109	70,960	18,283	8,315	26,598	37.48	44,362
								95,974
1973-74								
Local	51,612	43,866	95,478	28,597	1,972	30,569	32.01	64,909
Central	44,362	36,104	80,466	22,645	1,766	24,411	30.33	56,055
								1,20,964
1974-75								
Local	64,909	45,994	1,10,903	26,816	4,226	31,042	27.99	79,861
Central	56,055	38,343	94,398	22,147	3,496	25,643	27.16	68,755
								1,48,616

87. *Frauds and evasions during Ist April,* 1974 to 31*st March,* 1975 (*Sales-Tax*)*

	Under Seetion		Total
	11(2)	11(A)	
(*a*) Number of cases pending on 31st March, 1974 . . .	3,090	3	3,093
(*b*) Number of cases detected during 1974-75 . . .	1,797	8	1,805
TOTAL .	4,887	11	4,898
(*c*) Number of cases in which assessments were completed :			
(*i*) Out of cases detected prior to Ist April, 1974 .	912	—	912
(*ii*) Out of cases detected during Ist April, 1974 to 31st March, 1975 . .	281	5	286
TOTAL . .	1,193	5	1,198
Amount of concealed turnover detected and amount of tax demands raised in cases mentioned at (c) above	Rs.	Rs.	Rs.
Concealed turnover . . .	4,68,68,459	2,02,645	4,70,71,104
Tax demand raised . . .	23,08,797	13,934	23,22,731
Penalty imposed	22,384	—	22,384
(*d*) Number of cases pending on 31st March, 1975 . . .	3,694	6	3,700
(*e*) Number of cases in which—			
(*i*) penalties were imposed in lieu of prosecution . .	156	—	156
(*ii*) Prosecutions were launched for non registration. . or	1	—	1
(*iii*) offences were compounded	28	—	28

*Figures are as furnished by the department.

88. *Searches and seizures during Ist April, 1974 to 31st March, 1975**

(*a*)	Number of cases pending on 31st March, 1974 .	518
(*b*)	Number of cases detected during 1974-75 . .	408
	TOTAL . .	926
(*c*)	Number of cases in which assessments were completed	
	(*i*) Out of cases detected prior to Ist April. 1974 .	185
	(*ii*) Out of cases detected during 1974-75 . .	39
	TOTAL	224
(*d*)	Number of cases pending on 31st March, 1975 . .	702
(*e*)	Number of cases in which prosecutions were launched or offences were compounded	16
(*f*)	(*i*) Amount of concealed turnover detected . .	Rs. 6,11,65,484
	(*ii*) Demand raised for tax out of cases mentioned at (c) above.	Rs. 62,38,657
	(*iii*) Penalty imposed	—

89. *Recovery certificates (Sales tax) pending with the department as on 31st March, 1975**

The position of recovery certificates pending as on 31st March, 1975 with the department is indicated below :

		Number of cases	Amount (Rs. in lakhs)
I.	(*i*) Number of cases pending on Ist April, 1974	1,861	63.48
	(*ii*) Number of cases received during the period Ist April 1974 to 31st March, 1975 . .	6,822	406.07
	(*iii*) Number of cases returned after recovery of tax during 1974-75	4,094	81.25
	(*iv*) Number of cases returned wothout effecting recovery of tax for certain reasons . .	2,701	269.94
	(*v*) Total number of cases pending on 31st March, 1975.	1,888	118.36

*Figures are as furnished by the department.

II. Out of 1,888 cases pending recovery on 31st March, 1975, in 250 cases the amount involved was Rs. 10,000 or more in each case. The yearwise breakup of such cases is given below :

Year	Number of cases
1970-71	5
1971-72	14
1972-73	23
1973-74	92
1974-75	116
TOTAL	250

SECTION 'B'

SALES TAX

90. *Results of test audit in general*

Test audit of the assessments made under the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi, and under the Central Sales Tax Act, 1956, conducted during 1974-75 revealed under-assessment of tax to the extent of Rs. 52.08 lakhs in 691 cases, and over-assessment of tax to the tune of Rs. 7,860 in 22 cases.

The details of the under-assessment are enumerated below:

Reasons	Under-assessment	
	Number of cases	Amount in rupees
1. Incorrect determination of taxable turnover .	91	11,37,483
2. Grant of irregular exemption	161	18,93,145
3. Application of incorrect rate of tax . . .	142	16,75,077
4. Incorrect concession under the Central Sales Tax	252	3,28,132
5. Other reasons	45	1,74,288
TOTAL . . .	691	52,08,125

A few important cases noticed in test audit are mentioned in the following paragraphs:—

91. *Under-assessment of tax due to incorrect determination of turnover*

A restaurant owner returned his sales during 1968-69 at Rs. 2.57 lakhs against the sales turnover of Rs. 4.00 lakhs determined for the purpose of assessment of sales tax on the basis

of certain adverse reports against the dealer. But while assessing him for the year 1969-70 his gross turnover was determined at Rs. 3.50 lakhs. On a-suggestion made by audit (February, 1975) the department re-examined the accounts of the dealer for the year 1969-70 and as a result thereof the assessment order was revised *suo motu* (May, 1975) enhancing the turnover to Rs. 5.50 lakhs and creating an additional demand of Rs. 10,000. Report regarding recovery is awaited (February, 1976).

The Ministry have accepted the objection.

92. *Incorrect determination of taxable turnover under Central Sales Tax Act*

Under the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi, the gross turnover returned by a dealer also includes turnover relating to inter-State sales. The assessing authority, while assessing the dealer, deducts the turnover relating to inter-State sale from the gross turnover for the purpose of assessment under the Central Sales Tax Act, 1956 separately.

It was, however, noticed in audit that the assessing authority, while assessing a dealer under the local Sales Tax Act, allowed deduction of Rs. 54,93,687 on account of inter-State sales, but assessed to tax inter-State sales worth Rs. 44,82,109 under the Central Sales Tax Act, 1956. This resulted in exclusion of inter-State sales worth Rs. 10,11,578 involving an under-assessment of tax of Rs. 10,116.

On this being pointed out in audit, the department rectified the mistake and created an additional tax demand of Rs. 10,116 against the dealer.

The Ministry stated that the entire demand had since been recovered.

93. *Local sales treated as sales in the course of export*

Under the Central Sales Tax Act, 1956, sales in the course of export of goods out of the territory of India are exempt from the payment of sales tax.

In two cases, dealers who sold goods worth Rs. 7,14,983 in foreign currency to foreign tourists visiting India were not assessed to tax, these sales being treated as in the course of export out of the country on the ground that the goods were ultimately taken out by the foreign tourists at the time of their leaving the country. These sales, however, were not in the course of export in terms of Section 5(i) of the Central Sales Tax Act, 1956 and did not therefore, qualify for exemption from tax.

On the matter being reported in audit (September, 1975), Ministry stated that the assessment orders had since been revised creating tax demands of Rs. 35,749. Report regarding recovery is awaited (February, 1976).

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

Under the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi, sale made by a registered dealer to another registered dealer is allowed as deduction, provided a declaration in prescribed form is obtained by the selling dealer from the purchasing dealer and is produced to the assessing authority in support of his claim for deduction.

A dealer was allowed deduction of Rs. 16,92,052 representing sales of pure ghee to other registered dealers though the selling dealer did not produce the requisite declarations. On this being pointed out in audit (December, 1974), the department revised the assessment of the dealer *suo motu* and created an additional tax demand of Rs. 50,762.

The Ministry, while accepting the audit objection, stated that the demand had since been recovered from the dealer.

95. *Incorrect exemption from payment of sales tax*

Under the Central Sales Tax Act, 1956, where a sale in the course of inter-State trade and commerce occasions the movement of goods from one State to another or is effected by a transfer of document of title to such goods during their movement from one State to another, any subsequent sale to a registered dealer is not subjected to sales tax.

It was, however, noticed that exemption from sales tax was granted on subsequent sales of goods worth Rs. 6,16,690 made by a dealer during the year 1970-71 to various Government Departments which were not registered dealers.

This resulted in an under-assessment of tax of Rs. 18,501.

When this was referred to the Ministry, the Ministry stated that an additional demand of Rs. 18,501 had been raised against the dealer for the year 1970-71. The department is also reported to have created (September, 1975) an additional demand of Rs. 1,21,362 on a turnover of Rs. 40,45,397 for the year 1971-72 which had earlier been exempted in similar circumstances. Report regarding realisation of the amount is awaited (February, 1976).

96. *Concealment of sale and consequent under-assessment of tax*

Under the Bengal Finance (Sales Tax) Act, 1941, registered dealers can purchase goods from other registered dealers free of tax provided the purchasing dealers furnish a declaration that the goods are required for resale. Such sales are allowed as deduction from the turnover of the selling dealer and taxed in the hands of the purchasing dealer. A dealer was allowed

deduction of Rs. 2,28,022 during 1969-70 on account of sales made to another registered dealer. However, on scrutiny of the case of the purchasing dealer, it was noticed that the dealer's total purchases during 1969-70 from all sources were for Rs. 91,339 and the dealer's sales tax assessment was completed on his returned sales worth Rs. 96,140 only. Thus, sales worth Rs. 1,36,683 escaped assessment having a tax effect of Rs. 13,668.

On this being pointed out in audit (February, 1975), the department agreed (April, 1975) to revise the assessments of the dealers *suo motu.*

The Ministry, while accepting the objection, stated that revision proceedings would be finalised expeditiously.

SECTION 'C'

STATE EXCISE

97. *Duty free supply of spirit for medicines not falling under Medicinal and Toilet Preparations (Excise Duties) Act.*

Medicines which do not contain alcohol as an ingredient in the final form, although alcohol might be used in the process of their production, are not covered by the Medicinal and Toilet Preparations (Excise Duties) Act, 1955. Therefore, no licence under this Act can be granted for the preparation of such medicines for availing of the benefit of the concessional rate of duty on the alcohol used and wasted in their preparation. It was noticed in audit that licence had been granted in one case for manufacture of a medicinal preparation which did not contain alcohol as an ingredient in its final form, resulting in the issue of duty free rectified spirit. The duty leviable on issue of such spirit, amounted to Rs. 11,946 during the period February, 1969 to March, 1974.

The Ministry, while accepting the audit objection, stated that issue of duty free spirit to the licensee had since been discontinued. The Ministry have also reported that the amount of Rs. 11,946 has since been recovered from the licensee.

98. *Loss of revenue due to non-levy of duty on medicines containing barbiturates*

The definitions of "narcotic drug" and "opium" under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955

were amended so as to bring the medicines containing barbiturates also within the ambit of the Act from 1st March, 1964 for the purpose of levy of duty. It was ,however, observed that duty on the medicines containing barbiturates was not levied and collected up to 24th August, 1967 from any of the licensed manufacturers in Delhi. This omission on the part of the department resulted in loss of revenue to Government to the extent of Rs. 1,10,981 during the period 1st March, 1964 to 24th August, 1967. Even after 24th August, 1967, timely action was not taken to levy and collect the duty amounting to Rs. 14,397 on medicines containing barbiturates manufactured by one pharmacy during the period 25th August, 1967 to 19th August, 1971. The manufactory was stated to have gone into liquidation. (November, 1972).

The matter was referred to the Ministry in October, 1975; reply is awaited (February, 1976).

99. *Loss of revenue due to irregular exemption from payment of duty on medicinal preparations*

According to the Medicinal and Toilet Preparations Rules, 1956, the duty on medicinal preparations containing alcohol manufactured by the bonded manufactories could be exempted only when the medicines were supplied direct from the manufactories to the recognised hospitals and dispensaries against the orders booked by the manufactories themselves.

It was, however, noticed that in certain cases exemption from payment of duty was also allowed in respect of the medicines supplied to dispensaries against the orders booked through third parties. In two such cases during the period April 1973 to July 1974, duty amounting to Rs. 9,582 had not been recovered.

The Ministry to whom the matter was referred in October, 1975 stated that issue of duty free medicines through third parties had been stopped.

NEW DELHI
The 31-3-1976

(V. GAURI SHANKER)
Director of Receipt Audit

Countersigned

NEW DELHI
The 31-3-1976

(A. BAKSI)
Comptroller and Auditor General of India

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