REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

FOR THE YEAR ENDED 31 MARCH 1989

No. 5 of 1990

UNION GOVERNMENT

(REVENUE RECEIPTS - INDIRECT TAXES)

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PREFATORY REMARKS

This Report relates to results of audit of Indirect Taxes of the Union Government for the year ended 31 March 1989 and is arranged in the following four chapters:-

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

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

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

CHAPTER 4 - refers to volume of receipts of Union Territories without Legislatures and results of audit of sales tax in the Union Territory of Chandigarh. The results of test check of the records of Revenue Departments of the Union Territory of Delhi are included separately in the Audit Report of the Comptroller and Auditor General of India - Union Government (Delhi Administration).

OVERVIEW

I. Introduction

This Audit Report of the Comptroller and Auditor General of India presents the results of test audit of the levy, assessment and collections of the receipts of the Union relating to Indirect Taxes viz, Customs Receipts and Union Excise duties as also of the Union Territories of Chandigarh; Dadra and Nagar Haveli; Andamans and Nicobar Islands and Minicoy and Lakshdweep for the year ended 31 March 1989, and of the adequacy of the regulations and procedures in the Revenue department to secure an effective check in levy, assessment and collection of taxes, as enjoined in the Audit Act.

The administration of Indirect Taxes viz. Customs Receipts and Union Excises duties is vested in the Central Board of Excise and Customs under the Ministry of Finance, Department of Revenue.

II. Trend of receipts

The Central Government collected following revenues under Indirect Taxes during the years 1987-88 and 1988-89. The Budget Estimates 1988-89 and Revised Estimates 1988-89 in respect of Customs Receipts and Union Excise duties are also shown against them:

(Rupees in crores)

	Receipts 1987-88	Receipts 1988-89	Budget Estimates 1988-89	Revised Estimates 1988-89
Customs Receipts	13,702	15,788	15,626	15,812
Union Excise duties	16,345	18,749	18,089	18,548

Cost of collection of customs receipts as percentage of receipts is 0.96 during 1988-89 as against 0.94 during 1987-88, whereas on the central excise side this percentage is 0.85 during the year 1988-89 as against 0.90 in the preceding year (Paras 2.04 & 3.02).

The total tax and non-tax receipts of the union territories without Legislatures during the year 1988-89 were Rs.980.38 as against Rs.800.29 crores during the year 1987-88 (Para 4.01).

III. Results of audit

Results of test audit of post assessment records of the Customs and Central Excise departments during the period from 1 April 1988 to 31 March 1989 revealed underassessment of tax and loss of revenue of Rs.221.17 crores as under. The Ministry of Finance/Customs and Central Excise Collectorates have already accepted underassessments and losses of revenue amounting to Rs.45.05 crores.

(Rupees in crores)

Nature of tax	Under assessment/Losses
Custom Receipts	66.80
Union Excise duties	154.37

The number of objections raised in audit upto 31 March 1988 and pending settlement as on 30 September 1988 was 11,215 having revenue effect of Rs.684.30 crores (Paras 2.11 & 3.10).

The high pendency of audit objections suggested that there was room for augmenting the resources.

Systems appraisal

System studies on five vital areas of administration of indirect taxes were also conducted. These studies revealed that the desired objectives have not been achieved, the rules framed and procedures prescribed had not been properly applied and the internal controls were inadequate.

IV. Non disposal/delay in disposal of seized andconfiscated goods

If a Customs Officer has reason to believe that any goods are liable to confiscation under the Customs Act 1962, he may seize those goods. Before confiscating the seized goods a notice in writing should be given to the concerned person informing him about the grounds on which it is proposed to confiscate those goods or impose a penalty. On confiscation, the goods vest with the government and the officer adjudging confiscation takes and holds possession of the confiscated goods. Where confiscation is unauthorised, the Adjudicating Officer may give an option to the owner of the goods to pay in lieu of confiscation a fine which shall not exceed the market price of the confiscated goods. This fine is known as redemption fine, i.e., fine of payment of which the owner could redeem the goods. The fine is in lieu of confiscation and is in addition to the duty, if any, payable on the goods.

An appraisal of the procedure for disposal of seized and confiscation goods in the various custom houses/collectorates revealed the following :-

- Non-disposal of perishable goods such as drugs, chemicals and medicines costing Rs.19.16 crores in Customs Houses/ Collectorates at Bombay, Delhi, Trichy, Patna and Jaipur.

- Failure to invoke Section 110(IA) and (IB) of Customs Act, 1962 resulting in delay in disposal of liquor, wrist watches and their parts, electronic goods, primary cells and batteries etc., worth Rs.4.84 crores at Bombay, Madras, Ahmedabad, Indore and Rajkot.

  Loss of revenue of Rs.3.48 crores in Bombay, Calcutta and Patna collectorates on account of failure to deposit the foreign and Indian currency bank drafts etc. currency, into Reserve Bank of India.

- Delay in sending the confiscated gold and silver of value of Rs.46.68 lakhs, which was ripe for disposal, to the Government Mint by the Custom Houses / Collectorates, Patna, Ahmedabad, Kanpur, Trichy and Patna (Preventive).

- Non-disposal of 334 motor vehicles seized between 1964 and 1988 till 31 December 1988. Besides, 29 motor vehicles were sold in Bombay, Patna and Jaipur Collectorates, for Rs.8.22 lakhs as against their value of Rs.19.04 lakhs resulting in loss of Rs.10.82 lakhs.

- Accumulation of seized revolvers (522 Nos.), pistols (93 Nos.), rifles and guns (246 Nos.) and cartridges (1,12,034 Nos.) due to their non disposal in the Customs Collectorate, Delhi.

- Adjudication proceedings were pending in 2,070 cases in ten Customs Houses/ Collectorates on 31 December 1988. The value of goods in 1,195 of these cases was Rs.63.34 crores. As regards the remaining 875 cases, pertaining to Collectorates Delhi and Bombay, the value was not available.

- Loss of Rs.39.16 lakhs on account of theft, destruction irregular release etc., of goods.

- Non conducting of periodical stock verification of seized/confiscated goods.

- Non maintenance/defective maintenance of prescribed records/registers, relating to seized/confiscated goods leading to lack of coordination between the executive department and the custodian of ware houses.

- Non production of 21 files relating to confiscated goods worth Rs.56.25 lakhs to audit (Para 1.01).

V. **Ships' stores' - levy and collection of duty**

The Customs Act 1962 permits consumption of imported stores on board a foreign going vessel/aircraft without payment of duty. It, therefore, follows that when such a vessel reverts to coastal trade, customs duty should be collected on the imported stores consumed during such coastal run. Goods taken on board in a foreign going vessel/aircraft are deemed as exported out of India and if any duty had been earlier paid on them at the time of their import, payment of drawback should be made in full. The Act also provides that indigenously produced goods taken as 'stores' on a foreign going vessel/aircraft can be exported free of duty in such quantities as the proper officer may determine. Such goods are also eligible for drawback in case central excise duty had already been paid on them. The Act also allows that in respect of supply of stores to Indian naval vessels, such stores shall be deemed to be 'exports'.

An appraisal of the procedure for levy and collection of duty on stores on a vessel/ aircraft reverting from foreign run to coastal run revealed the following :

- In Madras Custom House, eight vessels which reverted to coastal run during 1987-88 and which were accounted for by the preventive department, were not accounted for by the Import department. Similarly, the reversion of another vessel which was accounted for by the Import department was not accounted for by the Preventive department.

  No correlation of the records regarding reversion of vessels to coastal run was done by the Import and Bond departments of the Cochin Custom House.

- There was inordinate delay in the submission of bills of entry in a large number of cases by the steamer agents to the Customs department for assessment during the year 1985-86; 1986-87 and 1987-88. The bills of entry were submitted in time in 41, 32 and 18 per cent cases, the submission of bills of entry was delayed in 57, 65 and 75 per cent cases and no bills of entry were submitted in 2, 3 and 7 per cent cases in those years respectively.

- There was delay in finalisation of assessments by the custom department in a large number of cases after the receipt of bills of entry from the steamer agents during the years 1985-86, 1986-87 and 1987-88. Assessment was done in time in 40, 33 and 16 per cent cases, it was delayed in 38, 33 and 22 per cent cases and it was not done in 22, 34 and 62 per cent cases during those years respectively.

- Assessment was not found done in any of the 97 cases pertaining to Bombay Custom House records relating to which were made available to Audit. In another 128 cases of reversion of vessels to coastal run at Bombay Port, files were not produced to Audit.

- At Madras port, 16 vessels reverted to coastal run between March 1987 and March 1988. Files relating to ten of those vessels were not made available to audit. In the remaining 6 cases duty of Rs.20.40 lakhs was not recovered.

In 32 out of 59 cases of reversion of vessels to coastal run prior to the year 1985-86, assessments were not finalised.

- At Cochin port, 21 vessels reverted to coastal run between 29 May 1980 and 10 January 1985. In 20 out of those 21 cases assessments were not finalised. Bills of entry relating to the remaining one case which pertained to the year 1980, was not filed.

- The test reports of samples of fuel and lubricating oils were received from the laboratory in time in 22, 28 and 19 per cent cases; there was delay in the receipt of test reports in 64, 48 and 31 per cent cases and no test reports were received in 14, 24 and 50 per cent cases during the years 1985-86, 1986-87 and 1987-88 respectively.

- An amount of Rs.122.53 lakhs on account of duty on fuel and other stores was pending recovery on 31 March 1988. Rs.59.71 lakhs out of this amount had been outstanding for more than 3 years.

- The number of guarantees obtained from the steamer agents in respect of private property of the crew and lying uncancelled on 31 March 1988 in all the Custom Houses other than Bombay Custom House was 236. Of those 64 guarantees were more than one year old and another 137 were more than three year old. (para 1.02)

VI. Man made filaments and man made staple fibre and products thereof

Central Excise duty for the first time was imposed on rayon and artificial silk fabrics on 1 March 1954 by adding item 12A to the first schedule to the Central Excise and Salt Act, 1944, through the Finance Act, 1954. Rayon and synthetic fibres and yarn was brought under the central excise net with effect from 1 December 1956. Thereafter in March 1972 and June 1977, the scope of excise duty on these fibres and fabrics was further extended. After the introduction of Central Excise Tariff Act, 1985 replacing schedule I ibid with effect from 28 February 1986 man made filaments, yarns and products thereof are classifiable under Chapters 54 and 55 of the schedule to that Act.

An appraisal of the system of levy, assessment and collection of central excise duty on goods falling under Chapters 54 and 55 ibid disclosed the following :

- Twenty two units did not pay duty of Rs.53.82 crores on the goods produced by them and used captively for further manufacture of other products.

- Incorrect availment of concessional rates of duty leading to underassessment of Rs.4.94 crores.

- Incorrect classification of excisable goods resulting in short levy of duty of Rs.3.94 crores.

- Short accountal of production of excis-

able goods leading to the escapement of duty of Rs.2.92 crores.

- Short recovery of additional duty of Rs.9.69 lakhs under the Additional Duty of Excise (Textile & Textile Articles) Act, 1978.

- Short levy of duty of Rs.4.74 lakhs on account of shrinkage and shortages of fabrics.

- Other irregularities involving duty of Rs.35.68 lakhs.

- Incidence of additional exise duty on cheaper cloth like 'sulabh' became more than that on costlier cloth due to re-structuring of duty done on 25 November 1987 and again on 9 December 1987.

V. **Clearance of goods for industrial use**

Chapter X of the Central Excise Rules, 1944 sets out a procedure to be followed by the manufacturers for obtaining certain excisable goods where duty remissions have been given for such uses. In these cases, the Central Government has been sanctioning the exemption from the whole or part of the duty payable on excisable goods subject to their being used in specified industrial processes. Such exemptions invariably provide the conditions :

i) that the Collector of Central Excise is satisfied that the goods are intended for use in the specified industrial process mentioned in the notifications; and

ii) the procedure set out in Chapter X of the Central Excise Rules, 1944 is followed.

An appraisal of the aforesaid procedure regarding movement of excisable goods at concessional rate of duty for industrial purposes revealed the following :

- Seventy one assesses in fifteen central excise collectorates brought excisable goods valuing Rs.14.71 crores into their factories for special industrial purpose, but did not use them for that purpose resulting in short levy of duty of Rs.3.80 crores.

- Eighty one manufacturers in fifteen collectorates did not account for excisable goods valuing Rs.32.55 crores brought into their factories at concessional rate of duty under Chapter X procedure during the years 1986-87 and 1987-88. The short levy of duty in those cases amounted to Rs.2.08 crores.

- Short levy of duty of Rs.91.47 lakhs was noticed on account of procedural irregularities.

- Twenty two manufacturers in six collectorates, who were not holding valid licences, were allowed to bring excisable goods valuing Rs.225 lakhs involving duty of Rs.62.27 lakhs into their factories for use in specified processes during the period of three years ended March 1989.

- Excisable goods in excess of the bond amount were procured by a number of assessees in the various central excise collectorates during the years 1986-87 and 1987-88. The duty involved was Rs.35.17 crores.

- The stock of such goods exceeded Rs.8.58 crores in sixteen collectorates and Rs.12.57 crores in seventeen collectorates during the years 1986-87 and 1987-88 respectively.

- Other irregularities involving nonlevy/ short levy of duty of Rs.35.41 lakhs were noticed.

VIII. **Irregular refunds**

Refunds of central excise duty may be allowed due to amounts paid through inadvertence, error or misclassification or rebate of central excise duty paid on goods exported out of India; or claims arising as a result of adjudication orders; or duty paid on goods returned to the factory for being remade, reconditioned etc., or licence fees paid on applications which are rejected by the Central Excise department; or unused central excise revenue stamps/labels; or initial deposits of money made by the units working under compounded levy system or money remaining in the Personal Ledger Account (PLA) on closure of the business. Fines and penalties imposed in the course of adjudication may be ordered for refund during appellate proceedings.

An appraisal of refunds made by the various central excise collectorates during the years 1985-86, 1986-87 and 1987-88 revealed the

following :

- There were delays ranging from six weeks to more than a year in making refunds of Rs.155.39 crores in 24,416 cases during the years 1985-86, 1986-87 and 1987-88.

- Neither did the divisions in sixteen central excise collectorates receive back weekly statements of refunds from the Chief Accounts Officers duly verified, nor did those divisions take any action to obtain those statements back from the Chief Accounts Officers.

- There was a loss of Rs.10.76 crores on account of nonredetermination of assessable value of excisable goods on account of grant of refunds to 599 assessees in twenty central excise collectorates, who did not pass on those refunds to the customers.

- Amount of Rs.1.35 crores on account of credit of duty already availed of by the buyers of the finished goods under Rule 57A/Rule 56A was not recovered before granting refunds of duty to five manufacturers from whom the excisable goods were purchased by those buyers.

- Loss of revenue of Rs.5.78 lakhs on account of irregular refunds of cess, was incurred.

- Refunds of Rs.11.51 crores in 254 cases had to be made even before the cases were finally decided as the department did not pray for the grant of stay for refund of duty already paid by the assessees while going in appeal before the appellate authorities.

- Cases of unjust enrichment of Rs.33.21 lakhs owing to grant of refunds to the assessees who had already recovered duty from the customers, were noticed.

- Non reporting of 886 cases involving refunds of Rs.37.36 crores to the Income Tax authorities, were noticed.

- Non-submission of cases of refunds of Rs.78.50 lakhs to the Collectors of Central Excise for their review, were noticed.

- Other irregularities in granting refunds resulted in loss of revenue of Rs.3.82 crores in seven collectorates.

CUSTOMS RECEIPTS

IX. Non levy/short levy of import duties

Goods on their import are leviable to duty under Section 12 of the Customs Act, 1962. Non levy/short levy of import duties amounting to Rs.2,232.43 lakhs were noticed in a number of cases of imports in audit. Out of this, the Ministry of Finance/Customs Collectorates have already accepted short levy/non levy of duty of Rs.24.84 lakhs. Some of these cases are given below :

Auxiliary duty

- 'lube base stock' and 'bright stock', are unfinished raw material for producing lubricating oil and are assessable to auxiliary duty at the rate of 40 per cent ad valorem under heading 27.10(1) of the first schedule to the Customs Tariff Act, 1975. Those stocks were, however, treated as lubricating oils, misclassified under heading 27.10(8) and cleared without payment of auxiliary duty. This resulted in non levy of auxiliary duty of Rs.2,204.75 lakhs {Paras 2.13(i) and 2.13 (ii)}

Additional (Countervailing) duty

- Tubeless tyres for dumpers are pneumatic tyres of rubber and are assessable to additional (countervailing) duty at the rate of 66 per cent ad valorem under heading 40.11 of the schedule to the Central Excise Tariff Act, 1985. However, such tyres imported in January and April 1988, were treated as solid rubber tyres and assessed to countervailing duty at the lower rate of 15 per cent ad valorem under sub heading 4012.90 ibid. This resulted in short levy of additional duty of Rs.12.09 lakhs. The Ministry of Finance have accepted the short levy {Para 2.14(i)}.

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

As per Section 25 of the Customs Act, 1962 Central Government can grant exemption from customs duties unconditionally or subject to fulfilment of certain conditions before or after

the import of goods. The short levy of import duty amounting to Rs.149.59 lakhs due to incorrect grant of concession was noticed in a number of cases. The Ministry of Finance have already accepted audit objections amounting to Rs.37.23 lakhs. Some of these cases are given below :

- Five consignments of component parts of brakes imported for use in the manufacture of Maruti Vans between January 1986 and March 1987, were incorrectly assessed to import duty at the lower rate applicable to components parts of fuel efficient motor cars under a notification of October 1984. This resulted in short levy of duty of Rs.14.90 lakhs. At the instance of Audit, the department reviewed other similar cases of imports and detected a further short levy of duty of Rs.124 lakhs (Para 2.15).

- Three consignments of spare parts of bucket shovel (excavator) imported in March, April and August 1988 were assessed to import duty at the lower rate applicable to buckets under a notification dated 1 March 1987. This resulted in short levy of duty of Rs.30.76 lakhs {Para 2.16(i)}.

- A consignment of spare parts of shearing machine for working on metals imported in January 1988, was assessed to import duty at a lower rate applicable to component parts of machine tools for working on metals in terms of a notification of March 1986. As spare parts could not be considered as components parts, it resulted in short levy of duty of Rs.23.35 lakhs {Para 2.17(i)}.

- Under a notification dated 31 March 1981, scientific and technical instruments, apparatus and equipment imported by a research institution not engaged in any commercial activity, are exempt from the whole of import duty. It, therefore, follows that raw materials imported by such an institution as also scientific equipment imported by the Research and Development (R&D) Unit of a commercial organisation are not eligible for the aforesaid exemption from import duty. In disregard of these provisions scientific instruments imported by a R&D Unit of commercial organisation in March 1987 and raw materials imported by a research organisation in August 1988, were cleared without payment of duty. This resulted in non collection of import duty of Rs.8.31 lakhs (Para 2.20).

- Capacitors other than paper capacitors, power capacitors and disc capacitors are assessable to import duty at concessional rate under a notification dated 18 August 1983 as amended on 12 September 1986. However, four consignments of fixed ceramic capacitors imported in February and April 1987 by a Public Sector Undertaking, were assessed to duty at the concessional rate under the aforesaid notification. This resulted in short levy of duty of Rs.7.40 lakhs, which has since been recovered {Para 2.18(i)}.

- Two consignments of tartaric acid importedin January and May 1987, were assessed to duty at lower rate applicable to dicarboxylic acids under a notification of July 1986. This resulted in short levy of duty of Rs.6.64 lakhs. The Ministry of Finance have confirmed the facts {Para 2.21).

- Three consignments of unalloyed aluminium sheets imported in April and June 1988 and one consignment of unalloyed aluminium strips imported in April 1988, were treated as alloyed aluminium sheets and strips and assessed to import duty at lower rate applicable to the latter in terms of a notification dated 17 February 1986 as amended. The grant of incorrect exemption resulted in short levy of duty of Rs.6.59 lakhs (Para 2.22).

- Specified testing machines and instruments are assessable to import duty at concessional rate under a notification of March 1978 as amended. Universal testing machine ZWICH which was not specified testing machines and which was imported in October 1985, was assessed to duty at the concessional rate applicable to specified testing machines. This resulted in short levy of duty of Rs.6.38 lakhs. The Ministry of Finance have accepted the facts and reported recovery of short levied amount (Para 2.23).

XI. **Short levy of duty due to misclassification**

The rates of customs and countervailing

duties are given under various headings and sub headings of the schedules to Customs Tariff Act, 1975 and Central Excise Tariff Act, 1985 respectively. The short levy of duty amounting to Rs.97.42 lakhs due to misclassification of imported goods was noticed in a number of cases. Out of this, under assessment of duty of Rs.49.85 lakhs has already been accepted by the Ministry of Finance/Collectors of Customs. Some of these cases are given below :

- Screws, bearings, washers etc., on their import between July 1983 and December 1984, were misclassified as parts of aeroplanes under sub headings 88.01/03(2) of the Customs Tariff Act, 1975 and the Central Excise Tariff Act 1985 instead of assessing them on merits under the relevant headings of the said Tariffs. This resulted in underassessment of Rs.29.20 lakhs. The Ministry of Finance have accepted the facts (Para 2.38).

  Thirty consignments of millstones, grindstones imported as parts of machinery between April 1988 and September 1988 were classified on merits under heading 68.04 of the Customs Tariff Act, 1975 instead of heading 98.06 ibid as parts of machinery. This resulted in short levy of import duty of Rs.18.89 lakhs. The Custom House has accepted the objection {Para 2.39(i)}.

  A consignment of 'impact extrusion machine' (automatic flow forming) for use in the manufacture of 'rigid copper tubes complete with tools' on its import in December 1987, was classified under sub heading 8462.99 of the Customs Tariff Act, 1975. Audit pointed out that the imported tools were correctly classifiable on merits under heading 82.07 ibid. This resulted in short levy of duty of Rs.16.15 lakhs {Para 2.40(i)}

  Fifty one thousand sets of imported stepper motors for manufacture of wrist watches, on their clearance from a bonded warehouse between December 1986 and April 1987, were misclassified under sub heading 9110.90 of the Customs Tariff Act, 1975 instead of heading 85.01 ibid. This resulted in short levy of Rs.11.15 lakhs. The Ministry of Finance have accepted the facts (Para 2.41).

XII. **Irregularities in the payment of drawback**

A number of cases of excess/irregular payments of drawback amounting to Rs.14.69 lakhs were pointed out in audit. Two of these cases are given below :

- As per the drawback schedule effective from 1 June 1986 draw back is admissible on boxes and cartons exported as such. But no drawback is admissible on such boxes, cartons etc., if they are used as packing material for packing export goods. Drawback was, however, claimed and allowed on boxes, cartons etc., used as packing materials on goods exported on and after 1 June 1986, resulting in excess payment of drawback of Rs.3.48 lakhs. The Ministry of Finance have accepted the facts and reported the recovery of the amount {Para 2.61(i)}

- The brand rate of drawback for shoe uppers was fixed at the rate of Rs.9.70 per pair after taking into account the element of duty paid on 'PU foam', 'manmade fabrics' and 'shoe lace tape' shown to have been used in the manufacture of those uppers. It was noticed in audit that 'PU foam' and 'shoe lace tape' were not actually used in the manufacture of shoe uppers exported in July 1985. This resulted in excess payment of drawback of Rs.3.28 lakhs. The Ministry of Finance have accepted the excess payment (Para 2.62).

XIII. **Short levy due to mistakes in computation**

Following four cases of short levy of duty amounting to Rs.12.38 lakhs were noticed in audit. The Ministry of Finance have accepted the whole amount.

- In three cases the import duty was short paid by Rs.11.4 lakhs mainly due to mistakes in computation {Paras 2.66 (i) to (iii)}.

- In the fourth case the short levy of import duty of Rs.0.98 lakh occurred owing to taking the weight of imported steel sheets as 116.826 tonnes instead of 134.036 tonnes {Para 2.66(iv)}.

XIV. **Other irregularities**

Other irregularities involving non levy/ short levy of import duty of Rs.14.45 crores were pointed out in the Audit. Out of this, non levy/ short levy of import duty of Rs.2.06 crores has already been admitted by the Ministry of Finance/Customs department. Some of these cases are given below :

- An Export House at Madras was issued (February 1985) duty free replenishment licences for the import of polyester filament yarn to the extent of 50 per cent of the free on board (F.O.B.) value of nylon fabrics exported (January 1985) in accordance with the export contracts registered in March 1978. No actual user condition was also imposed.

  It was pointed out in audit that under the I.T.C. Policy for the year 1984-85, import of nylon filament yarn to the extent of 40 per cent of the F.O.B. value of the nylon fabrics exported in January 1985 was permissible. Import of polyester filament yarn made in February 1985 to the extent of 50 per cent of the F.O.B. value of the nylon fabrics exported in January 1985 was, therefore, irregular. It was also pointed out in audit that the grant of duty free replenishment licences for the import of polyester filament yarn against the export of nylon fabrics was not in accordance with the objective of the I.T.C. Policy 1977-78. This resulted in the grant of excess exemption of custom duty of Rs.73.24 lakhs in 1984-85 and Rs.6.74 crores in 1985-86. Further, in the absence of actual user condition in those licences the said export house sold them to a manufacturer exporter at a premium and earned unintended profit (Para 2.68)

  It was noticed by a customs collectorate that the challans produced by the importers of colour films in token of payment of import duty of Rs.4.50 crores at the various branches of authorised banks in respect of nineteen bills of entry presented between May and July 1988, were forged. Afterwards, the documents filed with the department between January and December 1987, were scrutinised in audit and it was noticed that challans in token of payment of duty of Rs.27.26 lakhs on four more consignments were not on record in the Collectorate. The department confirmed the fradulent clearances in these four cases also (Para 2.69).

- Customs duty amounting to Rs.3.61 crores was not levied on moveable gears, stores and fuel oil, etc., which were brought into the country alongwith the ships imported for breaking from March 1986 and onwards (Para 2.70).

- Component parts imported by two manufacturers for use in the use in the manufacture of fuel efficient motor vehicles, were assessed to import duty at concessional rate during the period August 1983 to December 1985, however, in one case, the components were found damaged and were, therefore, not used in the manufacture of such vehicles. In the other case, the requisite certificate in regard to their use in fuel efficient vehicles was not obtained from the concerned Central Excise collectorates as required in the exemption notification. This resulted in short levy of import duty of Rs.82.89 lakhs (Para 2.71).

- A textile manufacturer imported 47,512 kilograms of partially oriented filament yarn without payment of import duty between June and August 1985, for using it in the manufacture of export goods. He did not, however, export the manufactured goods namely textured yarn. Instead he cleared the same for the domestic market. This resulted in evasion of import duty of Rs.62.92 lakhs (Para 2.72).

- Three cases of short levy of duty amounting to Rs.33.51 lakhs raised by the Internal Audit were closed incorrectly by that department (Para 2.73).

- A cement manufacturer imported (June 1982) machinery for modernisation and replacement of his cement plant. The machinery was assessed provisionally at concessional rate of duty applicable to project imports subject to production of additional documents and cleared between September 1982 and December 1982. As the importer did not produce these additional documents, the machinery was assessed on merits and differential duty was demanded from him. After

exhausting various channels of appeal, he approached the Supreme Court who granted interim stay subject to the payment of 50 per cent of the demand amounting to Rs.19.78 lakhs within two months and on furnishing a bank guarantee for the balance amount with payment of interest at 12 per cent ad valorem. Accordingly, the importer deposited the amount and executed the bank guarantee. Subsequently, the Court dismissed the case in March 1984. Although the department invoked (March 1989) the bank guarantee for collecting the duty, it did not recover the interest amounting to Rs.13.25 lakhs (para 2.77).

- A public sector undertaking was allowed to clear warehoused goods on the expiry of warehousing period without recovering interest of Rs.7.10 lakhs (Para 2.83).

CENTRAL EXCISE DUTIES

XV. Non levy of duty

As per Rule 9 read with Rule 173G of the Central Excise Rules, 1944, excisable goods can be removed from the place of their production, manufacture or curing on payment of duty only. A number of cases where excisable goods were removed without payment of duty were noticed in audit. The duty not levied amounted to Rs.26.01 crores. The Ministry of Finance/the Central Excise collectorates have already accepted non levy of duty to the extent of Rs.10.88 crores. Some of these cases are given below :

(a) Excisable goods captively consumed

- Fifty one mills manufactured cotton yarn in the form of cones, cheese, cops and bobbins and converted it into hanks without payment of duty of Rs.6.04 crores. The Supreme Court in the case of M/ S.J.K.Cotton Spinning and Weaving Mills Limited as well as the Law Ministry have upheld the view of Audit {Para 3.12(i)(a)}.

- A sugar manufacturer produced denatured rectified spirit and used a part thereof for the manufacture of acetone within the factory of production without payment of duty of Rs.5.16 crores during the period from January 1983 to July 1988 {Para 3.12(ii)}.

- A manufacturer of cosmetic produced white petroleum jelly and used it captively for the manufacture of cosmetics without payment of duty of Rs.1.01 crores from March 1986 to 31 May 1989 {Para 3.12(iii)}.

- A manufacturer imported rock phosphate in lump form, crushed it into powder and utilised powdered rock phosphate within his factory for the manufacture of sodium tripolyphosphate without payment of duty of Rs.65.48 lakhs from 1 March 1986 to 28 February 1987 {Para 3.12(iv)(a)}.

- An assessee manufactured internal combustion (I.C) engines & other parts and accessories of motor vehicles and consumed them captively in the manufacture of motor vehicles without payment of duty of Rs.32.30 lakhs during the period from 1 March 1986 to 1 April 1986 {Para 3.12(v)}.

- An assessee manufactured various parts of bulbs viz. filaments, lead in wire and alubipin caps and utilised them within his factory of production for manufacture of bulbs. This resulted in non levy of duty of Rs.26.32 lakhs from August 1987 to November 1988. The Ministry of Finance have accepted the objection {Para 3.12(vi)}.

- A footwear manufacturer produced printed shoe boxes of paper and paper board and used them captively within his factory for packing shoes without payment of duty. Similarly, a manufacturer of package tea produced printed paper boxes and used them captively for packing tea without payment of duty. There was non levy of duty of Rs.25.08 lakhs from March 1986 to February 1987 in both these cases {Para 3.12(vii)(a)&(b)}.

- Waste liquor which was obtained as a by product in the manufacture of caprolactum, was captively consumed in the factory of its production for producing steam without payment of duty of Rs.21.44 lakhs from 1 March 1986 to December 1988. The Ministry of Finance have admitted the facts {Para 3.12(viii)}.

(b) **Duty not levied on transit losses, storage losses, handling losses, shortages and wastes**

- Duty amounting to Rs.50.96 lakhs was not demanded on raw naphtha, high speed diesel and furnace oil lost in the course of movement under bond from an oil refinery to outside warehouses during the periods from April to October 1985 and May to July 1986. The Ministry of Finance have admitted the objection {Para 3.13(i)}.

- Duty amounting to Rs.44.93 lakhs was not collected on the shortages of cold rolled sheets, steel ingots, noticed in the course of stock verification of a steel plant during the year 1985-86 {Para 3.13(ii)}.

- A cement manufacturer was bringing into his factory clinker for the manufacture of cement without payment of duty. A shortage of 15,300 tonnes of clinker was noticed during the period from September 1982 to June 1984, on which duty amounting to Rs.31.95 lakhs was not collected {Para 3.13(iii)}.

(c) **Duty not demanded on production suppressed or not accounted for**

- A steel plant did not account for 3807.550 tonnes of cold rolled sheets manufactured during the year 1985-86. This resulted in non collection of duty of Rs.27.22 lakhs. The Ministry of Finance have accepted the objection {Para 3.14 (i)}.

(d) **Irregular clearances of excisable goods without levying duty**

- Five manufacturers cleared excisable goods (namely machinery parts, oxygen, iron and steel products and terry towel) produced by them without payment of duty of Rs.20.47 lakhs (Para 3.15).

XVI. **Short levy of duty due to incorrect grant of exemption**

As per Section 5A(1) of the Central Excises and Salt Act, 1944, Government is empowered to exempt excisable goods from the whole or any part of the duty leviable thereon conditionally or unconditionally. A number of cases of short levy of duty of Rs.18.24 crores were noticed in audit. The Ministry of Finance/Central Excise Collectors have already accepted objections of short levy of duty of Rs.17.28 crores. Some of these cases are given below :

(a) **Paper made out of chemi-mechanical pulp**

- Paper containing mechanical wood pulp amounting to not less than fifty per cent of the fibre content and intended for printing news papers, text books or other books of interest, is assessable to duty at concessional rate. The chemi-mechanical pulp and chemical pulp used in the manufacture of paper by an assessee in Cochin collectorate, was treated mechanical wood pulp and the paper so produced was cleared on payment of duty at concessional rate during the period from April 1986 to February 1988. This resulted in short levy of duty of Rs.15.03 crores. The Ministry of Finance shave admitted the underassessment (Para 3.18).

(b) **Polyester staple fibre**

- An assessee in Jaipur collectorate manufactured polyester staple fibre and acrylic fibre from indeginious and imported inputs viz monoethylene glycol and acrylonitrile. The rate of excise duty on indigenous inputs was more than the rate of countervailing duty on imported inputs. As he utilised the credit of duty paid on indigenous inputs towards payment of duty on fibres produced from imported inputs, it resulted in short levy of duty of Rs.43.25 lakhs during the period from March 1987 to February 1988. The Ministry of Finance have accepted the underassessment (para 3.20).

(c) **Iron and steel products**

- Four manufacturers of iron and steel products in Bombay III collectorate, were allowed to clear forged products manufactured by them without payment of duty of Rs.35.16 lakhs in terms of a notification dated 1 August 1983. It was irregular because those forged produces were not manufactured from the inputs specified in that notification. The Ministry of Finance have admitted the objections in two cases and have reported

that other two cases are under examination {Para 3.19(i)}.

- Seven assessees in Ahmedabad and Bombay II collectorates manufactured stainless steel pattas and pattis from unspecified inputs and irregularly cleared them without payment of duty of Rs.28.18 lakhs under a notification dated 17 November 1986 {Para 3.19(ii)(a)&(b)}.

- Three manufacturers engaged in ship breaking activity imported 3 ships (one each) prior to 28 February 1986 and cleared the material obtained by breaking those ships without payment of duty in terms of a notification dated 27 March 1987. As the assessees did not pay import duty on the ships at specified rates, they were not entitled to the said concession in duty. This resulted in short levy of duty of Rs.16.02 lakhs during the period from April to November 1987. The Ministry of Finance have stated that the matter is under examination {Para 3.19(iii)}.

(d) **Drilling rigs**

- A manufacturer in Hyderabad collectorate, who cleared 13 drilling rigs mounted on motor vehicle chassis claimed and was irregularly allowed exemption from payment of duty of Rs.24.55 lakhs leviable on the value of chassis and compressors used in this manufacture of rigs. The Ministry of Finance have admitted the objection (Para 3.23).

(e) **Mineral substances - burnt lime**

- An assessee in Hyderabad collectorate, cleared burnt lime produced by him without payment of duty of Rs.17.53 lakhs during the period from December 1984 to 28 February 1986. This was irregular because the burnt lime was not produced without the aid of power. The Ministry of Finance have admitted the objection (Para 3.21).

XVII. **Short levy of duty due to misclassification**

The rates of central excise duties are given under various headings and sub headings of the schedule to the Central Excise Tariff Act, 1985. The short levy of duty of Rs.5.20 crores due to misclassification of excisable goods in a number of cases was noticed in audit. Out of this the Ministry of Finance/Collectors of Central Excise have already accepted short levy of duty to the extent of Rs.2.29 crores. Some of these cases are given below :

- A manufacturer of 'robin blue' in Calcutta-I collectorate cleared his product in small packs for domestic use after classifying it under sub heading 3206.19 (10 per cent ad valorem) instead of under sub heading 3212.90 (20 per cent ad valorem) resulting in short levy of duty of Rs.1.06 crores on clearance during the period from March 1986 to December 1988 {Para 3.29(i)}.

- An assessee in Calcutta-II collectorate, produced grey oxide meant for supply to battery manufacturers. He paid duty at lower rate treating it as 'lead oxide' instead of 'miscellaneous products of chemical or allied industries'. This resulted in short levy of duty of Rs.40.82 lakhs during the period from May 1986 to July 1988 {Para 3.29(ii)(a)}.

- A manufacturer in Bombay-III collectorate manufactured 'the-rmocol' and cleared it in the form of sheets/slabs of various sizes without payment of duty (sub heading 3922.90/3926.90) instead of on payment of duty at the rate of 35 per cent ad valorem (heading 39.21). This resulted in short levy of duty of Rs.39 lakhs on clearances during the period from March 1986 to February 1988. The Ministry of Finance have admitted the objection (Para 3.31).

- A public sector steel plant in Orissa collectorate produced burnt lime and burnt dolomite and classified them under headings 28.05 and 68.07 respectively instead of under heading 25.05 and paid duty at lower rate. This resulted in short levy of duty of Rs.37.05 lakhs on those products consumed captively during the period from April 1986 to February 1987 {Para 3.32(i)}.

- A manufacturer of motor vehicles and textile machinery parts in Coimbatore collectorate, treated some of the machinery parts of cast aluminium as rough castings of aluminium and cleared them without payment of duty after classify-

ing them under sub heading 7601.90. As those parts were identifiable machinery parts, they were rightly classifiable under Chapters 84, 85 or 87. This resulted in short levy of duty of Rs.34.25 lakhs during the period from March 1988 to July 1988. The Ministry of Finance have admitted the objection {Para 3.33(i)}.

- A manufacturer of electric L.T. air brake contactors in Calcutta I collectorate, classified his product under sub heading 8538.00 carrying rate of duty of 15 per cent ad valorem instead of under sub heading 8536.90 carrying rate of duty of 20 per cent ad valorem. This resulted in short levy of duty of Rs.29.47 lakhs on clearances made during the period from March 1986 to December 1988 {Para 3.30(i)}.

- A manufacturer of stampings and laminations in Calcutta - II collectorate classified scraps in punched sheets of steel under sub heading 7203.20 as steel melting scraps and cleared the same on payment of duty at the rate of Rs.365 per tonne instead of at the rate of Rs.715/ Rs.500 per tonne under sub heading 7211.31/7211.39. This resulted in short levy of duty of Rs.21.21 lakhs during 1986-87 and 1987-88. The Ministry of Finance have admitted the objection {Para 3.34(a)}.

- A manufacturer of flame proof fittings and increased safety fittings in Calcutta I collectorate, classified his products under sub heading 8536.90 with duty at the rate of 15 per cent ad valorem instead of under heading 94.05 carrying duty at the rate of 35 per cent ad valorem. This resulted in short levy of duty of Rs.20.19 lakhs during the period from April 1986 to October 1986 {Para 3.30(ii)}.

XVIII. **Short levy of duty due to undervaluation**

In cases where rates of central excise duty depend upon the value of excisable goods, such value is required to be determined under Section 4 of the Central Excises and Salt Act, 1944 and Central Excise (Valuation) Rules, 1975 framed thereunder. Short levy of duty of Rs.4.41 crores on account of incorrect valuation of goods was noticed in audit. The Ministry of Finance/ the Central Excise Collectorates have already accepted the short levy to the extent of Rs.3.51 crores. Some of these cases are given below :

(a) **Excisable goods not fully valued**

- A manufacturer in Hyderabad collectorate, did not include the value of truck chassis in the value of mobile drilling rigs cleared from the factory during the period from 1 March 1986 to 3 December 1987. This resulted in short levy of duty of Rs.68.40 lakhs. The Ministry of Finance have accepted the underassessment {Para 3.42(i)}.

- A manufacturer of glass bottles in Meerut collectorate, did not include the cost of cortons in the assessable value of those bottles resulting in short levy of duty of Rs.23.05 lakhs for the year 1984. The department has confirmed the demand of Rs.23.05 lakhs and imposed a penalty of Rs.6 lakhs {Para 3.44(i)}.

(b) **Mistake in computing invoice price**

- A public sector undertaking in Bolpur collectorate paid duty on the basis of invoice price of excisable goods. It was noticed in audit that the invoice price of goods sold within the country was computed short by Rs.5.18 crores, which resulted in underassessment in Rs.76.01 lakhs. The Ministry of Finance have accepted the underassessment (Para 3.43).

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

- A public sector undertaking in Madras collectorate engaged in the manufacture of boiler components and spares, sold the same under various contracts and paid duty based on invoice prices provisionally. Subsequently, the undertaking raised supplementary invoices on account of esclation cost against its customers, but it did not pay duty thereon on the grounds that claims were not normally accepted in full by the customers. This resulted in short levy of duty of Rs.39.6 lakhs in respect of 157 supplementary invoices during the period from August 1987 to March 1989. The Ministry of Finance have admitted the objection {Para 3.41(i)(a)}.

- A leading manufacturer of motor vehicles in Calcutta-II collectorate did not

pay duty after including in the assessable value the 'dealers margins' realised from the customers on direct sale from the factory. This resulted in short levy of duty of Rs.23.81 lakhs on clearances during the period from April 1986 to March 1988 {Para 3.41(ii)(a)}.

(d) Undervaluation of goods manufactured on behalf of others

- A manufacturer of organic chemicals in Bombay-III collectorate, manufactured dioctyle phthalate on behalf of a customer who supplied the raw material to the former. The goods were undervalued due to adoption of lower cost of the material supplied by the customer. This resulted in short levy of duty of Rs.22.50 lakhs on clearances during the period from April 1987 to March 1988. The Ministry of Finance have accepted the underassessment {Para 3.46(i)}.

XIX. **Irregular exemption to small scale manufacturers**

There are many duty reliefs, exemptions and special facilities available to small scale manufacturers of specified goods. These concessions can be availed of subject to fulfilling the conditions given in the various related notifications. It was noticed in audit that some manufacturers availed concessions of Rs.1.93 crores in duty without fulfilling the said conditions. One of these cases is given below :

- Twenty two small scale manufacturers in six collectorates manufactured intermediate excisable goods on job work basis on behalf of the principal manufacturers who supplied raw materials and cleared the same at concessional rate of duty available to small scale manufacturers. As the principal manufacturers on whose behalf of the goods were produced, were not eligible to the concession in duty admissible to small sale manufacturers, it resulted in non levy of duty of Rs.1.60 crores during the period from March 1986 to March 1989 (Para 3.52).

XX. **Irregular grant of credit for duty paid on raw materials and components (inputs) and irregular utilisation of such credit towards payment of duty on finished goods (Outputs)**

Under Modified Value Added Tax (MODVAT) scheme as well as under Rule 56A of the Central Excise Rules, 1944, the credit of duty paid on specified inputs is allowed to be utilised towards payment of duty on specified output subject to fulfillment of certain conditions. Irregular credits of Rs.7.62 crores taken under Modvat scheme and Rule 56A procedure were noticed in audit. The Ministry of Finance/ the Central Excise Collectorates have already accepted the availment of excess credits to the extent of Rs.4.09 crores. Some of these cases are given below :

(a) Modvat (Modified form of value added tax)

i) Irregular availment of duty paid on goods other than inputs.

- Six manufacturers of iron and steel products in four collectorates brought into their factories graphite electrodes for use in the electric arc furnace and took Modvat credit of Rs.1.22 crores on account of duty paid thereon. As graphites are appliances/equipments used in electric arc furnace, taking of aforesaid credit of Rs.1.22 crores was irregular {Para 3.56(i)(a)}.

- Two other manufacturers of fused alumina grains and alluminium oxide abrasive grains in a fifth collectorate irregularly availed of Modvat credit of Rs.18.50 lakhs paid on graphite electrodes towards payment of duty on the final products during the period from March 1986 and September 1988 {Para 3.56(i)(b)}.

ii) Irregular availment of Modvat credit without filing a declaration

- An assessee intending to avail Modvat credit should file a declaration indicating the description of specified inputs and outputs with the central excise department and obtain dated acknowledgments for the same. It, therefore, follows that Modvat credit can be availed after filing such declaration only.

- A manufacturer of shock absorbers availed Modvat credit of Rs.31.84 lakhs on account of duty paid on inputs during the period from March 1986 to March 1988 without filing any declaration {Para 3.57(i)(a)}.

- A manufacturer did not declare cold rolled strips and scrap as final products in the declaration filed by him on 23 November 1987. He, however, utilised the credit of duty of Rs.29.22 lakhs paid on inputs utilised in the manufacture of undeclared final products. The Ministry of Finance have admitted the objection {Para 3.57(ii)(a)}.

- A public sector undertaking availed Modvat credit of Rs.18.03 lakhs on the inputs received during the period 4 August to 9 September 1987 before filing the declaration on 30 September 1987 {Para 3.57(i)(b)}.

(b) Rule 56A procedure

- Hot pressed naphthalene (sub heading 2704.40) and beta naphthalene (sub heading 2942.00) are not specified as inputs and outputs under Rule 56A of the Central Excise Rules, 1944. An assessee was irregularly allowed to avail credit of duty of Rs.14.56 lakhs paid on hot pressed naphthalene used in the manufacture of beta naphthalene under that rule (Para 3.65).

XXI. **Non/Short levy of cess**

Cess is a tax imposed on specified goods for the purpose of carrying out measures for the development of production of those goods and matters connected therewith. Non levy/short levy of cess amounting to Rs.31.86 lakhs was noticed in a number of cases in audit. Some of these cases are given below :

- Six manufacturers of motor vehicles and seven manufacturers of paper and paper board did not include basic excise duty, special excise duty, sales tax etc. for working out the value of manufactured products for determination of the amount of cess leviable on those goods. This resulted in short levy of cess of Rs.16.15 lakhs. The matter is still under examination with the Ministry of Industry {Para 3.67(i)&(ii)}.

XXII. **Delay in raising demands for duty**

(a) Demands pending adjudication

- Three demands for duty amounting to Rs.5.88 crores were raised against a resin manufacturer in Pune collectorate between January and October 1983. They have not been adjudicated. The Ministry of Finance have reported (November 1989) that the matter is under examination (Para 3.69).

(b) Loss of revenue due to time bar

- The central excise collectorate at Bangalore delayed the issue of show cause-cum demand notices against a watch manufacturer resulting in loss of revenue of Rs.1.24 crores {Para 3.70(i)}.

XXIII. **Procedural delays and irregularities having revenue implications**

- The Central Board of Excise and Customs has clarified (March 1976) that all provisional assessment cases on account of classification of excisable goods as well as their valuation should be finalised within a period of three months and in any case not later than six months.

  Delay in final approval of the classification lists in respect of goods manufactured by an assessee in Pune collectorate has resulted in financial accommodation of Rs.1.64 crores of duty payable during the period from March 1983 to February 1987 upto July 1987. The Ministry of Finance have admitted the delay (Para 3.72).

- There was a loss of Rs.22.08 lakhs on account of not demanding of interest recoverable on excise duty paid in instalments during the period from 15 January 1984 to 29 September 1985 from an assessee in Vadodara collectorate (Para 3.73).

XXIV. **Other irregularities**

Other irregularities involving non levy/short levy of duty of Rs.74.70 lakhs were pointed out in audit. Out of these non levy/short levy of duty of Rs.2.48 lakhs has already been admitted by the Ministry of Finance/Central Excise collectorates. Some of these cases are given below

:- As per provisions of the Central Excise Rules, 1944, no excisable goods shall be removed from the place of manufacture until excise duty leviable thereon has been paid. For this purpose the assessee has to deposit sufficient amount of cash in the personal ledger account (PLA) to cover the amount of duty payable on goods intended to be removed.

A cigarette manufacturer in Calcutta II collectorate, paid excise duty by cheques which were realised late between one to 66 days. This resulted in clearance of goods without actual payment of duty as there was no sufficient (actual) credit balance in the PLA. An amount of Rs.24.44 lakhs on account of interest became due from the assessee on account of his utilising Government money from October 1987 to July 1988. The same was not recovered (Para 3.77).

A jurisdictional Assistant Collector in Madras collectorate allowed exclusion of turn over discount and incentive discount from the assessable value and ordered refund of duty of Rs.23.11 lakhs on this account. As those orders were not in accordance with the provisions of Section 4 of the Central Excises and Salt Act, 1944, the department should have filed appeal against those orders. This was not done and there was total loss to Government {Para 3.78(i)}.

A manufacturer in Trichy collectorate raised 221 supplementary invoices involving duty of Rs.464.61 lakhs from January 1987 to February 1989 but paid duty of Rs.413.25 lakhs (covering 170 invoices) after delays ranging from 5 to 15 months. Out of the balance amount of Rs.51.36 lakhs, demand for Rs.20.67 lakhs was withdrawn and Rs.30.69 lakhs have not been recovered from the assessee (Para 3.79).

CHAPTER 1

1.01 Non disposal/delay in disposal of seized and confiscated goods

1. Introduction

(a) As per Section 110 of the Customs Act, 1962, the proper officer of the Customs department, if he has reason to believe that any goods are liable to confiscation under this Act, may seize such goods but in respect thereof, he has to give notice under Clause (a) of Section 124 within six months of the seizure of the goods or such extended period as the Collector may allow as per the provisions of that Act. The seized goods are required to be confiscated and disposed of in accordance with the provisions of the Customs Act, 1962.

(b) Section 111 of the Customs Act, 1962 empowers the Customs authorities to confiscate the goods improperly brought into the country from a place outside India. Thereupon the property vests in the Central Government under Section 126 of the Act. The Customs Officer, adjudging confiscation, shall take and hold possession of the confiscated goods for final disposal.

(c) On the recommendations of the Collectors' conference held in June 1983, the Central Board of Excise and Customs issued (22 May 1984) instructions for classifying the confiscated goods under the following four categories and prescribing the period of retention for each category as noted there against.

Category	Nature of goods	Maximum period of retention
I.	Goods prone to rapid decay or requiring special arrangement for their preservation and storage/requiring high cost of maintenance	Immediately after seizure
II.	Goods having short life time involving risk, heavy expenses for storage/maintenance	Six months
III.	Goods liable to rapid depreciation, if unclaimed and abandoned	Immediately after adjudication
IV.	All other goods	To be disposed of after completing all formalities.

2. Scope of Audit

The scope of audit of the records relating to seizure, confiscation and disposal of goods was designed to see the efficiency of the Customs Houses and Collectorates in their timely disposal as also the proper maintenance of records relating to those goods from the time of seizure till the time of disposal according to Section 110 of the Customs Act as amended with effect from 5 February 1986. In particular, following points were seen:

i) The adjudication of seizure cases was done and completed without delay.

ii) Particulars of the goods which were confiscated, became ripe for disposal and actually disposed were properly recorded in the concerned registers and records maintained in the godowns, warehouses, and disposal units, etc..

iii) There was proper correlation between the relevant entries made in the various records in the godowns, werehouses, disposal units etc.

iv) The verification of stock was conducted at the prescribed periodical intervals.

v) Adjudication proceedings were initiated and finalised without delay for confiscation of valuables such as gold, silver, foreign currency etc., and their disposal by despatch to Mint and Reserve Bank of India.

vi) Existence of efficient inventory through

a) storage for minimum possible period;
b) quickest possible disposal;
c) avoidance of loss; deterioration owing to prolonged storage, theft etc..

3. Highlights

An appraisal of the procedure for disposl of the seized and confiscated goods has been conducted. The results of the appraisal are in succeeding paragraphs which highlight the following:

Non-disposal of perishable goods such as drugs, chemicals and medicines costing Rs.19.16 crores in Custom Houses/ Collectorates at Bombay, Delhi, Trichy,

Patna and Jaipur

- **Failure to invoke Section 110(IA) and (IB) of Customs Act, 1962 resulting in delay in disposal of liquor, wrist watches and their parts, electronic goods, primary cells and batteries etc., worth Rs. 4.84 crores in Bombay, Madras, Amedabad, Indore and Rajkot collectorates.**

- **Loss of revenue of Rs.3.48 crores in Bombay, Calcutta and Patna Collectorates on account of failure to deposit the Indian and foreign currency, bank drafts etc., into Reserve Bank of India.**

- **Delay in sending the confiscated gold and silver of value of Rs.46.68 lakhs, which was ripe for dispoal, to the Government Mint by the Custom Houses/ Collectorartes, Trichy, Patna, Ahmedabad, Kanpur and Patna (Preventive).**

- **Non-disposal of 334 motor vehicles seized between 1964 and 1988 till 31 December 1988. Besides, 29 motor vehicles were sold in Bombay, Patna and Jaipur Collectorates, for Rs.8.22 lakhs as against their value of Rs.19.04 lakhs resulting in loss of Rs.10.82 lakhs.**

- **Accumulation of seized revolvers (522 Nos.) pistols (93 Nos), rifles and guns (246 Nos) and cartridges (1,12,034 Nos.) due to their non disposal in the Customs Collectorate Delhi.**

- **Adjudication proceedings were pending in 2,070 cases in ten Custom Houses/ Collectorates on 31 December 1988. The value of goods in 1,195 of those cases was Rs.63.34 crores. As regards the remaining 875 cases pertaining to Colletorates Bombay and Delhi, the value was not available.**

- **Loss of Rs.39.16 lakhs on account of theft, destruction, irregular release etc. of goods.**

- **Non-conducting of periodical stock verification of seized/confiscated goods, omission to conduct periodical stock challenges.**

- **Non maintenance/defective maintenance of prescribed records/registers, relating to seized/confiscated goods leading to lack of co-ordination between the executive department and the custodian of warehouses.**

- **Non production of 21 files relating to confiscated goods worth Rs.56.25 lakhs to audit.**

4. Statistical data

(i) Following table shows the value of goods seized and value of goods confiscated out of those seized goods during the years 1985-86, 1986-87, 1987-88 and 1988-89 (December 1988). It would appear therefrom that seizures outpaced confiscations in each of those four years with the result that book value of seized goods awaiting confiscation/release at the end of each year was more than their value at the beginning of the year:

(Rupees in crores)

	Particulars	1985-86	1986-87	1987-88	1988-89
1.	Seized goods held at the beginning of the year	182.04	255.39	276.47	315.17
2.	Goods seized during the year	170.60	237.10	273.70	293.23
3.	Seized goods confiscated during the year	67.47	93.19	120.79	217.76
4.	Seized goods held at the end of the year	285.17	399.30	429.38	390.64

(ii) Following was the book value of confiscated goods which became ripe for disposal and sale proceeds of the goods actually disposed during the years 1985-86, 1986-87, 1987-88 and 1988-89 (December 1988):

(Rupees in crores)

	Particulars	1985-86	1986-87	1987-88	1988-89
1.	Confiscated goods ripe for disposal held at the beginning of the year	26.62	31.59	27.29	55.69
2.	Confiscated goods becoming ripe for disposal during the year	101.49	185.61	232.85	293.76
3.	Goods disposed during year	130.19	454.25	418.93	383.41
4.	Goods ripe for disposal held at the end of the year	31.48	27.69	55.69	34.61

The above table shows that the value of confiscated goods which became ripe for disposal during each of the four years, was not fixed realistically in as much as they fetched more value than that fixed.

5. Non-disposal/Delay in disposal of perishable goods

(A) Drugs, medicines and chemicals

The Public Accounts Committee in Paras 2.32; 2.35; 2.36 and 2.37 of its 44 Report (Seventh Lok Sabha) (1980-81) specifically invited attention to the instructions of Government to the Custom Houses from time to time relating to disposal of perishable goods and recommended that utmost care/precaution should be exercised to ascertain from the Drugs Control authorities not only the identity, purity, potency of the chemical/drugs at the time of seizure, but also the life expectancy of seized drugs/chemicals. The Committee expected that those instructions would be scrupulously followed. The Committee also observed that the valuation of seized goods should be realistic so that there was no undue disparity between the value of goods at the time of seizure and that at the time of their final disposal.

As a result of the aforesaid recommendations, Government in their instructions dated 1 October 1981 invited the attention of all the Collectors of Customs/Central Excise to their earlier instructions of 21 December 1978, 27 December 1979, 27 April 1981 and 2 May 1981 on the urgency for disposal of perishable goods such as drugs/chemicals. Government reiterated the aforesaid instructions in their letter dated 22 May 1984, providing for the disposal of the seized drugs, medicines and chemicals within six months from the date of seizure or, where the date of expiry is indicated regarding its efficacy, well before that date.

Some of the cases of non disposal of seized and confiscated goods are given below:

(i) Collectorate Jaipur

309.450 kilograms of yellow and white powders and silica beads were seized in February 1986 as unclaimed treating them to be heroin valued at Rs.18.24 crores. When their samples were tested in the Central Revenues Chemical Laboratory (C.R.C.L), New Delhi, the goods were found to be 'thiamine hydrochloride' and 'tetracycline hydrachloride' and the beads were composed of silica. Those goods were absolutely confiscated in October 1988 and the disposal unit was directed to send samples from each packet again to Chief Chemist C.R.C.L., New Delhi for retesting them. That unit was also directed not to dispose of the goods till the receipt of retest results of each sample. But samples were not sent (June 1989) to Chief Chemist, C.R.C.L. for retesting them, leading to the non-disposal of the goods.

(ii) Bombay Custom House

On 31 December 1988 chemicals, vitamins and drugs valued at Rs.78.75 lakhs, which

were seized in the years 1978, 1987 and 1988, were in stock in the following godowns.

	Particulars of warehouse	Value (In lakhs of rupees)
1.	Sewree warehouse	72.56
2.	Lower Parel godown	4.90
3.	Todi godown	1.29
4.	S.M.C. warehouse	value not available

Information about their potency and dates of their expiry were not available in the warehouse registers. Despite the existence of clear Government instructions on the suoject, no action was initiated to dispose them.

(iii) Collectorate Delhi

A consignment of 83 kilograms of medicine powder (Gentamycin - 82 kilograms and Dexamethasone - 1 kilogram) valued at Rs.10.19 lakhs which was seized on 7 November 1985 and warehoused at Palam Airport was lying undisposed (June 1989). In this connection following observations are made:

(i) A publicsector undertaking approached (December 1985) the customs authorities to sell the drug to it at the rate of Rs.11,750 per kilogram. This was not done.

(ii) The customs authorities issued a show cause notice to the importer in the matter on 1 May 1986, which was not adjudicated (August 1989).

(iii) Although the court permitted the customs department to dispose of the goods as early as February, 1987, yet they were not disposed of (August 1989).

(iv) Although the dates of expiry of the medicines were not availble from the departmental records, they were seized more than three and a half years back and must have, therefore, expired by now. Had those medicines been sold to the public sector undertaking @ Rs.11,750 per kilogram, they would have fetched Rs.9.76 lakhs.

(iv) Collectorate Trichy

(a) Tetracycline (Wet) and riboflavin (Wet) weighing 254 Kilograms and valued at Rs.1.68 lakhs were seized during February and March 1988 by the Preventive department of the collectorate of customs and Central Excise, Trichy at Ramanathapuram and sent (13 July 1988) for disposal to seizure godown at Trichy.

The Assistant Collector (Customs Division), Trichy invited tenders on 14 February 1989 for disposal of drugs and accepted one of them on 14 March 1989. However, the Commissioner, Food and Drugs Administration, Maharashtra, on seeing the notice inviting tender, asked the Central Drug Control Organisation (South Zone), Madras to examine the moist conditions of the drugs and the advisability of their sale to the drug manufacturers. Pending such examination, the sale was kept in abeyance.

A scrutiny of the file on this subject revealed the following:

(i) At the time of seizure, the drugs were in moist state and should, therefore, have been deemed to be misbranded drugs under the Drugs and Cosmetics Act as per Government instructions dated 18 December 1981. The seizure unit should have taken samples and sent them to Drugs Standard Control Organisation (South Zone), Madras for ascertaining their quality, value and fitness for human consumption. This was not done.

(ii) Before proceeding with the sale by auction, the Assistant Collector (Customs Division), Trichy did not obtain the certifiate of the competent authority regarding valuation, quality and fitness of the drugs for human consumption.

(iii)But for the intervention of Commissioner, Food and Drugs Administration, Maharashtra, the drugs would have been released to the successful bidder in public auction without adhering to the procedure prescribed for 'Misbranded Drugs' and would have proved a health hazard.

(b) In the Customs preventive Unit of Cuddalore Division of Trichy Collectorate, yellow colour powder weighing 99.7 Kilograms and valued at Rs.0.50 lakh was seized on 10 September 1986 and samples were sent to Chemical Examiner, Madras on 19 September 1986 for identification. The Chemical Examiner certified (October 1986) that the samples answered the test for tetracycline hydrochloride and suggested that Drugs Controller, Calcutta be consulted for further verification. The samples were received by the Chief Controller of Drugs, Calcutta in November 1986. After several reminders, the Assistant Drugs Controller, Calcutta suggested (November 1988) that Director, Central Drugs Laboratory, Calcutta, might be able to conduct pharmacopoeial test on those samples. There-

upon the seizure unit at Cuddalore asked (December 1988) the Chief Controller of Drugs, Calcutta to transfer the samples to the Central Drugs laboratory, Calcutta for identification of the chemical.

In this connention following observations are made:

(i) The Customs department should have sent the sample of the chemical to the Central Drugs, Standard Control Organisation (South Zone) Madras for identification of chemical and not to the Chief Conroller of Drugs, Calcutta.

(ii) Even though the seizure unit sent the sample to the Chief Controller of Drugs, Calcutta for certification of chemical as early as November 1986, it took the Chief Controller of Drugs, Calcutta two years to advise the Customs department that the Director Central Laboratory might be able to conduct pharmacopoeial test.

(v) Collectorate Patna (Preventive)

A scrutiny of the godown register in a customs division of this collectorate revealed (January-March 1989) that perishable items like chemical powder, hydropowder, chromophenical powder and ascortic powder seized during the years 1970 and 1986 and valued at Rs.1.11 lakhs were lying in stock without disposal.

Since these chemicals have limited shelf life with specific dates of expiry before which they are to be used, their non-disposal for a long period has resulted in a total loss of Rs.1.11 lakhs.

The department stated (July 1989) that the chemical test/analysis report and the report of Drugs Inspector were called. These reports were not received.

(B) Other perishable goods

As per subsection (IA) of Section 110 of the Customs Act, 1962, the Central Government may, having regard to the perishable or hazardous nature of any goods and other goods the value of which is likely to depreciate with the passage of time, by notification in official gazette, specify the goods or class of goods which shall, as soon as may be, after their seizure, be disposed of. Accordingly, by issue of notification 31/86-Cus (AS) dated 5 February 1986, Government have specified the following goods in this regard:

i) Liquor
ii) Primary cells and primary batteries including rechargeable batteries
iii) Wrist watches including electronic wrist watches, watch movements, parts or components thereof
iv) All electronic goods including television sets, video cassette recorders, tape recorders, calculators, computers, components and spares thereof including diodes, transistors, integrated circuits, etc;
v) Dangerous drugs and psychotropic substances.

These goods can be disposed of immediately after their seizure under the aforesaid subsection by drawing samples of seized goods in the presence of 'any magistrate'.

(i) Custom House Bombay

According to the procedure prescribed in Bombay Custom House in its standing order No.10/86-Cus. dated 1 September 1986, the Assistant Collector in charge of disposal unit should submit a monthly report in the first week of each month beginning from October 1986, indicating the quantity and value of such goods disposed of during the preceding month.

A review of the registers maintained in the disposal units revealed that neither were any steps taken to invoke the provisions of sub-section 110(IA) ibid for expediting the disposal of specified seized goods, nor were monthly reports submitted by the disposal units. It was also noticed that watches and liquor valued at Rs.1.54 crores seized during the period from 1976 onwards were not disposed till 31 December 1988.

(ii) Custom House Madras

(a) In the customs warehouse, Madras, 482 cases of wrist watches valued at Rs.33.56 lakhs, which were seized in 1982 and earlier years, were not disposed till 31 December 1988.

Similarly, 874 items of electronic goods such as T.Vs, and V.C.Rs valued at Rs.86.34 lakhs were not disposed till that date.

(b) A test audit of the cases of the goods specified in the notification dated 5 February 1986 and dealt with in prosecution cell revealed that 62 cases valued at Rs.42.82 lakhs were disposed of, invoking the provisions of the aforesaid amended Section 110. On the delay in their

disposal being pointed out in audit, the department cited reference to a Gujarat High Court judgement dated 9 October 1987 and stated that a 'Judicial Magistrate' could not perform the functions envisaged under Section 110(1B) and (1C) of the Customs Act. The department added that a separate cell would be required to be constituted in the disposal unit itself for this purpose.

In this connection it is observed that even though the channels of disposals were widened by classifying the goods under four categories and by amending Section 110 of Custom Act, 1962 on 5 February 1986, to enable the department to quicken the pace of disposal, effective action was not initiated in this regard. Because of the prolonged storage of specified goods (like electronic goods, watches, photographic goods, integrated circuits etc.) valued at Rs.118.87 lakhs, the possibility of their becoming unsaleable due to consumers' preference, advancement in technology etc, or fetching negligible amount in sale cannot be ruled out.

(iii) Collectorate (Preventive) Ahmedabad

In the Jamnagar Division of this collectorate, electronic goods valued at Rs.68.43 lakhs seized during 1987-88 were not disposed of by the end of December 1988.

(iv) Collectorate Indore

It was noticed that seized electronic goods, watches and liquor valued at Rs.19.63 lakhs were not disposed of till 31 December 1988. When this was pointed out in audit in April 1989, the department stated (June 1989) that the matter regarding observance of the procedure prescribed under Section 110 (1A) and (1B) ibid was under consideration.

It was also noticed in audit that during the period from 31 March 1985 to 31 December 1988 goods having book value of Rs.21.58 lakhs were disposed for Rs.11.53 lakhs only. Obviously due to long duration between the dates of seizure and disposal, goods had become old and out of fashion resulting in loss of Rs.10.05 lakhs.

(v) Collectorate Rajkot

It was noticed in audit that watches, liquor, electronic goods and synthetic textiles, valued at Rs.3.14 lakhs and seized during the period from 1984 to 1988, were not disposed till 31 December 1988.

6. Delay in disposal of non perishable goods:

A) Indian and foreign currency, travellers' cheques, drafts, etc

As per the existing instructions, adjudication of the seized bank drafts, travellers' cheques, or other instruments of exchange should be completed sufficiently ahead of the expiry of validity period of those documents which is normally between three to six months from the date of their issue. The currency and other instruments of exchange confiscated in the course of adjudication should be sent to the Reserve Bank of India immediately for affording credit of their proceeds to Government. Test audit of records maintained in the various Custom Houses and Colectorates revealed the following:

(i) Collectorate Bombay

Adjudication proceedings in cases relating to foreign currency, travellers' cheques and bank drafts seized from the year 1978 onwards, were not finalised (June 1989). In the circumstances it was not be possible for the department to arrange for the encashment of those instruments, valued at Rs.2.98 crores and seized between 1978 and 1988, as they would have become invalid by June 1989.

(ii) Custom House Calcutta

Indian currency, amounting to Rs.46.28 lakhs in 313 cases, was seized between April 1985 and December 1988. It was noticed in audit that it was lying in the warehouse and was not deposited into the Reserve Bank of India (June 1989).

(iii) Collectorate Patna

In one of the customs divisions under this collectorate, foreign currency worth Rs.4.45 lakhs seized in August 1985 was deposited into a bank after more than three years in December 1988. But the credit of this currency was not given in Government accounts till March 1989. When this was pointed out in audit in April 1989, the department stated that the matter was under correspondence with the concerned bank. Further developments were not reported (July 1989).

(iv) Collectorate Delhi

As per the Central Board of Excise and Customs instructions of 19 June 1965, cases of seizure of Indian currency should be reported to

the State police as well as to the Central Bureau of Investigation besides reporting them to the Director of Revenue Intelligence.

(a) Indian currency notes of Rs.1,000 denomination each were seized on 17 January 1978 (7 No.) and 19 January 1978 (45 No.). As per the observations of Director of Preventive operations in the concerned files, Indian currency notes of the denomination of Rs.1,000 and above were demonetised from the midnight of 16 January 1978. Any person who possessed those notes could apply for their exchange to the Reserve Bank of India by 24 January 1978. As per records, those currency notes were deposited with the State Bank of india, Airport Branch, New Delhi on 16 March 1989. However, the relevant deposit receipt of those notes with the said bank was not made available to audit. In the circumstances the deposit of those notes into the Bank could not be verified. It could also not be verified whether the prosecution/adjudication proceedings were pending in those cases (March 1989). The department did not give any reply to audit (June 1989).

(b) Indian currency amounting to Rs.2.00 lakhs and representing the sale proceeds of foreign goods was impounded and deposited with the godown for valuables. Subsequently, the amount was seized in December 1988. It was, however, seen in audit that the matter was neither reported to the Delhi Police nor to the CBI as required under the aforesaid instructions dated 19 June 1965. The seized currency was not also deposited into bank (June 1989).

(B) Gold, silver, diamonds and other precious stones, etc;

Sub section (1) of Section 11 of the Customs Act, 1962, empowers the Central Government to prohibit importation or exportation of any goods for purposes mentioned in subsection (2) of that Section. Further, the restrictions imposed on the import of gold under Section 13 of the Foreign Exchange Regulations Act, 1973 shall be deemed to have been imposed under Section 11 of the Customs Act, 1962. Thus action for illegal import of gold would attract the penal provisions of Customs Act, 1962 as also those of Gold Control Act, 1968 and Foreign Exchange Regulations Act, 1973.

In the circumstances, apart from the extensive powers bestowed upon the Custom authorities for seizure, adjudication and confiscation of goods and for levy of penalty under Customs Act, 1962, they have powers to get the offenders, contravening the Customs and other Cognate Acts, prosecuted in a court of law.

The value of gold which was seized, confiscated, became ripe for disposal and was actually disposed during the years 1985-86, 1986-87, 1987-88, and 1988-89 (December 1988) was as follows:

(Rupees in crores)

Sl. No.	Value of gold	years			
		1985-86	1986-87	1987-88	1988-89
1.	Seized	43.90	40.57	59.08	141.59
2.	Confiscated	22.31	26.92	43.83	80.67
3.	Ripe for disposal	12.83	31.69	50.60	117.47
4.	Actually disposed	3.52	6.90	11.01	56.28

According to the prescribed procedure, the confiscated gold which becomes ripe for disposal should be sent to Mint immediately after the finalisation of adjudication proceedings.

Similarly, confiscated silver should also be sent to the Mint where it is melted, assayed and cast into bars. These bars are then handed over to the Reserve Bank of India (RBI), Bombay for sale in the open market through their brokers. The sale proceeds after deduction of the mint charges and the RBI's brokerage charges, are credited to Government.

Confiscated diamonds, ripe for disposal, have to be sold by auction to the holders of import licences or those eligible under existing Import Policy.

A scrutiny of the relevant records maintained at various Custom Houses/Colectorates revealed:

(i) Custom House Bombay

On 31 December 1988 gold, silver, diamonds and precious stones valued at Rs.32.80 crores seized between 1970 and 1988 were lying in stock in the Central godown, Church Gate and Custom House warehouse (R&I). This amount represented their values on the dates of their seizure. The reasons given for their non disposal were pendency of adjudication and court proceedings

(ii) Collectorates Madras and Trichy

(a) As per register of seized and detained goods of the customs werehouse Madras, gold and golden jewellery valued at Rs.10.60 crores was in stock on 31 December 1988. As there were no entries regarding orders of adjudication, confiscation and other appellate orders in the appropriate columns in the register, the reasons for their nondisposal and the stage of pendency of the cases could not be ascertained in audit.

(b) In the seized goods godown at Trichy, gold valued at Rs.10.34 lakhs in ten cases became ripe for disposal between the years 1979 and 1988, but it was not sent to the Government Mint, Bombay till June 1989. Besides, adjudication proceedings in another 18 cases of valuables (Rs.20.7 lakhs), which were started in the year 1986 and onwards, were not finalised (June 1989).

Gold valued at Rs.14,000 was deposited by the various courts with the same godown at Trichy during the years 1974-76. The department neither gave any reasons for these deposits, nor was in a position to state whether the proceedings in the courts in those cases had been finalised or were still pending (June 1989).

c) In 2 cases, gold and precious stones valued at Rs.5.87 lakhs which were absolutely confiscated in the adjudication proceedings in May-June 1976 were kept in the State Bank of India, Trichy in the year 1978. Those were still with the bank (June 1989). The reasons for the continued detention of the valuables and keeping them in the Bank's custody were not made known to audit.

(iii) Collectorate Patna (Preventive)

(a) As per the registers of valuables maintained in the Customs Divisions Patna, gold (Rs.16.93 lakhs) and silver (Rs.2.57 lakhs) which were seized 3 to 5 years back were lying in stock on 31 December 1988. Reasons for not sending the gold and silver to Mint were not furnished to audit.

(b) As per the register of valuables, 110.095 kilograms of silver (Rs.2.58 lakhs) was in stock on 28 February 1989, whereas in statement for February 1989 sent to the Director Preventive Operation, New Delhi, 87.087 kilograms of silver (Rs.1.88 lakhs) were shown in stock on that date. The reconciliation of difference was not reported to audit.

(iv) Collectorate (preventive) Ahmedabad

In Surat division under this collectorate, 2770.909 kilograms of silver, valued at Rs.16.07 lakhs and seized in August 1968, the adjudication orders in respect of which were passed in February 1976, were not sent to the Mint till April 1989. Reasons therefor were not intimated to audit (June 1989).

(v) Collectorates Kanpur and Allahabad and Customs Collectorate, Patna

In 24 cases under these collectorates, 6363.161 grams of gold and 23.955 kilograms of silver as also diamonds and Nepal currency with aggregate value of Rs.10.03 lakhs confiscated between 1971 and 1988 were lying in the bank lockers on 31 December 1988. In 11 other cases, silver coins and gold ornaments valued at Rs.15,236 confiscated between 1969 and 1973 were lying in the godown of customs collectorate Patna. Another 8 cases of gold weighing 4748 grams valued at Rs.61,990 confiscated in Kanpur and Patna Collectorates between 1973 and 1981 were lying deposited in treasuries and Police Malkhana. On this being pointed out (February to March 1989) in audit, the collectorate Kanpur admitted the facts as correct in respect of one division; in other cases, the reply of the department was not received (June 1989).

(C) Motor vehicles

The Central Board of Excise and Customs, in its letter F.30/43/64-LCI dated 1 January 1965, observed that vehicles and vessels used

for conveying smuggled goods and seized by customs officers, were in some cases being detained pending enquiries and adjudication takes such a long time that by the time such vehicles were finally confiscated, they deteriorated without benefit to any one. The Board also felt that continued storage of such vehicles may mean considerable expenditure on garaging facilities and maintenance charges. The Board, therefore, issued the following instructions to the Collectorates:

(i) Every attempt should be made to finalise the adjudication proceedings for motor vehicles and vessels within one month.

(ii) Where the party does not clear the motor vehicles or the vessels by paying the fine in lieu of confiscation, a final notice of a week or 10 days should be given to the party after which the goods should be disposed.

(iii) Where the motor vehicles or vessels have been confiscated absolutely, steps should be taken to dispose of the confiscated motor vehicles/vessels straightaway, if they were not found suitable for the departmental use.

The Central Board of Excise and Customs added that those vehicles should be sold at the best available market price so as to avoid any loss to the owners in the event of the adjudicated order being set aside on appeal or revision and to avoid any possible dispute with the owners regarding the adequacy of the price at which the vehicle or vessel has been sold. The Board maintained that in case the owner succeeds in appeal or revison he can claim the sale proceeds as the restoration of the seized/confiscated cars/vessels which may not be of much use to him after lapse of considerable time.

334 motor vehicles seized on various dates starting from the year 1964 in Bombay, Delhi, Madurai, Trichy, Madras, Patna (Preventive), Kanpur, Allahabad, Jaipur, Patna (Customs), Ahmedabad (Preventive) and Chandigarh Collectorates were lying undisposed on 31 December 1988. Of these, the value of 193 vehicles was Rs.163.07 lakhs; the value of the remaining 141 vehicles could not be ascertained. The Collectoratewise details of these vehicles are given below:

Sl. No.	Collectorate	No. of vehicles seized	Value (Rs. in lakhs)	Remarks
1.	Delhi	87	44..33.63 43...N.A	The oldest seizure was made in 1964. 55 of these vehicles were seized upto 1985.
2.	Bombay	80	N.A	The oldest seizure was made in the year 1978.
3.	Ahmedabad (preventive)	24	30.20	The oldest was seized in February 1983.
4.	Madurai	14	3.92	The oldest was seized in April 1982.
5.	Madras	7	N.A	The oldest was seized in the year 1984.
6.	Trichy	9	1.34	The oldest seized in September 1982.
7.	Patna (preventive)	49	14...17.27 11... N.A 14...11.96 10...9.40	Seized between 1974 and 1989.

Sl. No.	Collecto-rate	No. of vehicles seized	Value (Rs. in lakhs)	Remarks
8.	Patna (Customs)	10	14.59	Seized between October 1987 and July 1988.
		8	8.11	Seized between March 1974 and December 1987.
9.	Kanpur	1	0.10	Seized in August 1972.
10.	Allahabad	4	0.39	Seized in April 1980
		1	0.07	Seized in September 1970
11	Jaipur	13	5.27	Six seized between 1983 and September 1988; seven confis-cated between 1979 and February 1989
12.	Chandigarh	27	26.82	Seized between 1980 and 1989 (March);

N.A. - not available

(i) Collectorate Patna (Preventive)

57 motor vehicles were seized between March 1974 and July 1988. In this connection following observations are made:

a) 10 vehicles were absolutely confiscated and 4 vehicles which were not claimed were also confiscated.

b) Adjudication proceedings were pending with the department in 25 cases and disposal of 10 cases pending with the court.

c) The remaining 8 vehicles were sold at prices lower than their values fixed at the time of seizure and this resulted in loss of Rs.5.50 lakhs.

(ii) Collectorate Jaipur

a) Disposal of 20 vehicles, valued at Rs.8.91 lakhs at the time of seizure, could fetch Rs.4.28 lakhs only on their sale resulting in loss of Rs.4.63 lakhs. In 7 cases, final disposal was pending (April 1989) even though they were already confiscated.

b) In 15 cases adjudication proceedings took nine months to five years. Adjudi-cation proceedings in six cases were not finalised (April 1989).

(iii) Collectorate Chandigarh

a) 8 motor vehicles valued at Rs.5.50 lakhs, which were absolutely confiscated, were finally disposed of in auction during July 1988 to September 1988, after delays ranging between 14 months and 88 months. In the case of 19 vehicles confis-cated between 1980 and 1988, confisca-tion proceedings were finalised after delays between 3 months to 28 months. In the cases of 8 vehicles, seized between February 1988 and March 1989, the adjudication proceedings have not been finalised (April 1989).

b) One vehicle, which was surrendered by a foreigner on 28 February 1984, was sold for Rs.45,000 after a delay of 51 months. In the absence of its value at the time of surrender, the loss of revenue could not be determined.

c) It was noticed in audit that there were neither any garages nor any temporary sheds provided to park the 22 seized vehicles which were in the custody of the Custom House, Amritsar on 31 March 1989 and those vehicles were parked in the open. It was also noticed in audit that 6 vehicles were sold for prices less than their book value resulting in loss of Rs.2.34 lakhs. One of the factors for this loss was parking of these vehicles in open space.

(iv) Collectorate Bombay

Only nine out of 80 seized/confiscated vehicles, which were in stock at the Customs warehouse at Currey Road on 31 December 1988, became ripe for their disposal. Even these 9 vehicles were not disposed(June 1989). As regards the remaining 71 vehicles disposal orders have not been received from the seizure units.

One Mazda Sports Car Model 1978 (value Rs.1.20 lakhs), which was seized on 1 March 1980, was finally disposed in March 1989 for Rs.51,000 only resulting in loss of Rs.69,000.

(v) Collectorate Delhi

A test check of 29 cases revealed that adjudication proceedings had been completed in 18 cases and they were in progress in other 11 cases.

Out of 18 cases adjudicated, 13 vehicles were absolutely confiscated, 7 during the years 1975 to 1980 and 6 during the years 1981 to 1989. The reasons for non disposal of the absolutely confiscated vehicles were enquired in audit, but the reply of the department was not received (June 1989).

As regards the expenditure incurred on hiring of the godown for parking vehicles, the department stated (November 1988) that the said amount was not ascertainable as the godown with an area of 7,790 square feet hired on a monthly rent of Rs.46,740 was being utilised not only for parking the motor vehicles but for keeping other seized goods also.

It was also seen in audit that no physical verification of the vehicles in stock was done during the years 1985-86 to 1988-89.

(vi) Collectorate Trichy

Adjudication proceedings in the case of six seized vehicles (Value Rs.1.17 lakhs) were completed after the expiry of prescribed period.

(vii) Collectorate Madras

Following points were noticed in the test check of the records of a warehouse in this collectorate:

a) Seven motor vehicles seized during the period from 1984 to 1989 were in stock (April 1989). Details of the action taken to dispose those vehicles were not noted in the register.

b) Three vehicles were seized and kept in the custody of the vehicles officer, but they were not taken on record in the register of warehouse till April 1989.

c) One motor cycle was absolutely confiscated in December 1986 and, therefore, became ripe for disposal; entry regarding the action taken to dispose it was not made in the register.

(viii) Collectorate Madurai (Seized goods godown)

a) Three vehicles, valued at Rs.1.04 lakhs, which were seized in April 1982, November 1985 and August 1986, became ripe for disposal in January 1988, April 1987 and July 1987 respectively after the completion of adjudication proceedings. These vehicles were auctioned for Rs.53,250 only. This resulted in loss of revenue of Rs.0.51 lakh.

b) Eleven other motor vehicles valued at Rs.2.88 lakhs were seized between December 1985 and March 1988. It could not be ascertained in audit whether any adjudication proceedings had been initiated in those cases.

(ix) Collectorate Allahabad

Out of 5 cases of seizure of vehicles, 3 cases were reported as pending in appeal, whereas the disposal proceedings in the fourth case could not be initiated owing to the jurisdictional dispute. In the fifth case, action would be taken after the expiry of six months from the date of absolute confiscation.

Non disposal of the motor vehicles within the time schedule prescribed by the Board not only results in deterioration in their condition thereby fetching lower sale proceeds, but leads to huge avoidable expenditure on their upkeep and parking in the shape of godown rent and watch and ward also.

(D) Arms and ammunition

The procedure for disposal of confiscated arms and ammunitions has been prescribed by the Central Board of Excise and Customs in its letter dated 12 March 1973, 31 January 1981, 26

March 1985 and 11 July 1985. According to this procedure, the customs department has to make suitable references to Central Reserve Police, Border Security Force, State Conservator of Forests etc. for their use, if any. All weapons of prohibited bores and their ammunition may be disposed of by transfer to the ordnance factories and crude weapons by public auction. Besides, as per instructions issued on 2 November 1974, arms and ammunition may be sold to officers (including M.Ps/M.L.As) who require them for self protection.

(i) Collectorate Madras

A scrutiny of the register of seized/confiscated goods in audit revealed that 29 cases of arms and ammunitions seized from November 1969 to November 1983 were not disposed (June 1989).

(ii) Collectorate Delhi

Huge quantities of confiscated arms and ammunitions, as detailed below, were in stock on 31 March 1989:

(in numbers)

	Year of confiscation				
	upto 1985	1986	1987	1988	Total
Revolvers					
Custom Hdqrs.	232	31	210	2	475
Airport	NA*	38	8	1	47
Pistols					
Custom Hdqrs.	59	21	7	-	87
Airport	NA*	1	5	-	6
Rifles/Guns					
Custom Hdqrs.	78	94	26	-	198
Airport	NA*	4	43	1	48
Ammunition					
Custom Hdqrs.	70,674	31,398	9,510	452	1,12,034
Airport	NA *	--	--	--	---

NA - Not available

The value of those goods was not available on record. In reply, the department stated (June 1989) that valuation was done by the valuation committee as and when required. It was also noticed in audit that one revolver confiscated in 1963, two pistols confiscated in 1967 and 1,897 cartridges etc., confiscated between 1962 and 1970 were in stock on 31 March 1989 at Customs Headquarters. Similarly, 149 revolvers, 31 pistols, 38 rifles/guns and 45,677 cartridges, etc; confiscated during the years 1971 to 1980 were not disposed till 31 March 1989 and were lying at the Customs Headquarters.

Regarding physical stock taking of the goods, the department stated (June 1989) that, the physical verification of armoury in stock at Customs Headquarters, was carried out at the time of handing/taking over charge and the last stock taking was done on 23 June 1987.

The arms and ammunition seized/confiscated at the Airport during 1986 to 1988 were lying undisposed pending their transfer to the Headquarters.

Reasons for retention of such a huge stock at the various godowns without following the prescribed procedure were not intimated to audit.

7. Non disposal of seized/confiscated goods pending disposal for five years and more beyond the period of retention

(i) Collectorate Bombay

On 31 December 1988, seized/confiscated goods were lying undisposed for more than 5 years beyond the period of detention at the following warehouses/godowns:

Unit	No.of packages	Value (Rs. in lakhs)
1. Sewree Warehouse	415	18.50
2. Custom House(R&I) godown	376	14.18
3. Central godown Churchgate	97	0.58
4. Tody godown	97	6.40
5. Lower Parel godown	74	74.46
6. S.M.C. Warehouse	4784)	Value not shown
7. Custom House godown (General)	107)	in stock taking report

As per the stock taking reports these goods consisted of electronic goods, wrist watches and their parts, T.Vs, V.C.Rs, textiles, dangerous drugs, mercury, snake skin, chemicals, polyester yarn, calculators, binoculars, camera, films etc. Reasons for their nondisposal were not made available to audit.

(ii) Collectorate Delhi

On 24 April 1989, 948 cases of goods seized till the year 1985 were lying with the custodian of the Central Warehousing Corporation Safdarjung Flyover, New Delhi. Similarly 3 cases of goods seized till that year were lying in stock of the Inland container Depot, Pragati Maidan, New Delhi on 1 May 1989.

The seized goods at the C.W.C Safdarjung flyover upto 1985 consisted of 98 cases registered during 1961 to 1970 (19 to 28 years ago) 143 cases during 1971 to 1980 (9 to 18 years ago) and the remaining 707 cases during 1981 to 1985. Reasons for the prolonged detention of goods without disposal have not been furnished to audit (July 1989).

(iii) Collectorate Ahmedabad (Preventive)

(a) **In the Jamnagar division, seized/confiscated goods valued at Rs.28.67 lakhs had been lying undisposed since long as under:**

Year of confiscation	Value (Rs. in lakhs)
1980-81	15.05
1982-83	0.02
1983-84	13.60
	28.67

(b) In the customs godown at Ahmedabad, goods valued at Rs.78.58 lakhs had been lying undisposed for periods ranging beyond 5 years and more.

(c) **In the Bhavnagar Division, 899.53 carats of diamonds valued at Rs.1.25 lakhs seized on 17 September 1974 were absolutely confiscated on 28 January 1984. They were sent to Surat godwon for disposal on 24 October 1985 and were lying there undisposed since then. Thus diamonds seized about 15 years back were not disposed (July 1989).**

Precious stones (863 carats) worth Rs.0.30 lakh were seized on 30 July 1978 and adjudicated on 25 June 1981. Even though orders declaring them ripe for disposal were given in 1983, they were also lying in the same godown undisposed (July 1989).

(d) **In the Ahmedabad division, one packet of precious stones valued at Rs.12.95 lakhs and seized in 1984 was lying in the godown (July 1989) even though orders declaring them ripe for disposal were issued prior to 1988.**

(iv) Custom House Calcutta

Following 8 cases of goods valued at Rs.10.46 lakhs which were seized/confiscated in the years 1985 and 1986 were lying undisposed (July 1989).

Sl.No. in Master Register	Description of goods	Value (rupees in lakhs)
339/85	Electronic goods	0.36
340/85	-do-	0.36
68/85	-do-	2.11
154/86	-do-	1.03
155/86	-do-	0.87
226/86	Miscellaneous goods	1.75
346/86	-do-	2.77
534/86	Synthetic fabrics	1.21
	TOTAL	10.46

(v) **Collectorates Kanpur, Allahabad, Patna and Meerut**

(a) In four collectorates, there were 150 cases of goods valued at Rs.16.63 lakhs, which were lying undisposed for considerable time from the date of their seizure (July 1989).

Period	No. of cases	Value (Rs. in lakhs)
More than 15 years	29	0.78
10 years to 15 years	15	0.45
5 years to 10 years	15	1.38
Less than 5 years	91	14.02

(b) In one custom warehouse of Meerut collectorate, nine cases of goods involving duty of Rs.3.76 lakhs seized due to receipt of goods in excess of the quantity mentioned in the bills of entry in 1983 and 1984 and confiscated in June/July 1984 were lying undisposed (July 1989).

8. Non finalisation of adjudication cases of seized goods:

A test check of the records in following ten Collectorates revealed that 2,070 cases of seized goods were not adjudicated. Value of goods in 1,195 of those cases was Rs.63.34 crores. Value of goods in other 875 cases was not available with the Collectorates.

(i) **Collectorate Delhi**

(A) 792 cases of seized goods (value Rs.47.80 crores) were not adjudicated on 31 March 1989. Their year-wise analysis was as under:

Year	Cases pertaining to				Total	
	Delhi Airport		Custom House Hqs.		No.	Value
	No.	Value	No.	Value		
Upto 1985	23	202.15	14	134.21	37	336.36
			20	N.A*	20	N.A*
1986	7	8.72	29	286.77	36	295.49
			2	N.A*	2	N.A*
1987	6	47.45	89	868.17	95	915.62
			6	N.A*	6	N.A*
1988	182	697.68	195	1992.78	377	2690.46
			2	N.A*	2	N.A*
1989	114	144.64	92	397.88	206	542.52
(upto March 1989)			11	N.A*	11	N.A*
Total	332	1100.64	460	3679.81	792	4780.45

N.A* = Not available

(a) Twenty three pre-1985 cases pertaining to the Delhi Airport were registered 4 to 9 years ago between 1980 and 1985. Similarly out of 34 pre-1985 cases pertaining to Custom House Headquarters, 5 cases were registered for adjudication in the year 1969 (20 years back), 10 cases during 1971 to 1980 (9 to 18 years back) and 19 cases during 1981 to 1985 (4 to 8 years back).

(b) 332 cases pertaining to Delhi Airport included 21 cases of unclaimed goods (value 42.71 lakhs) which pertained to the years 1986 to 1988. These 21 cases consisted of 2 cases of perishable goods (value Rs.21.05 lakhs) and 19 cases of non perishable goods (value Rs.21.66 lakhs). These unclaimed goods included chemicals, colour films, gold, watches, electronic items, motor parts etc. These were not disposed in accordance with the aforesaid Government instructions.

(c) Scrutiny of the files relating to seized goods pending adjudication at Delhi Airport (upto 1988) showed that no follow up action was taken in most of the cases after issue of show cause notices. The inordinate delay in the adjudication of the seized goods resulted in delay in their disposal as also deterioration in their condition due to prolonged storage/detention.

(d) Details of unclaimed cases at the Cus-

toms Headquarters were not found recorded in the register of adjudication cases.

(B) On 31 March 1989, 680 prosecution cases were pending finalisation. The yearwise details of these cases together with brief reasons for their pendency are given below:

Reasons for pendency	No.of cases	Year-wise analysis upto				
		1984-85	1985-86	1986-87	1987-88	1988-89
For want of accused	76	7	9	14	21	25
Due to stay admitted by the courts	2	-	-	-	-	2
Due to detention of the party	3	-	-	-	1	2
Due to adjournment of cases	302	105	20	27	39	111
Pending at final stage	115	81	2	2	3	27
Pending examination	145	-	-	-	10	135
Other reasons	37	-	-	3	8	26
Total	668	193	31	46	82	328

Ninety three of the 193 cases pertaining to the years upto 1984-85 related to the Delhi Airport. Twenty four of the remaining 100 cases relating to Custom House headquarters pertained to the years from 1970 to 1980 (i.e. 9 to 19 years old) and 76 cases pertained to the years 1982 to 1985 (4 to 7 years old).

(ii) Custom House Calcutta

On 31 December 1988, 324 cases of motor vehicles, watches, gold, Indian and foreign currencies valued at Rs.517.74 lakhs were pending in the courts. Their yearwise analysis was as under:

Year	No. of cases	Value(Rs.in lakhs)
upto end of 1984-85	5	3.87
1985-86	96	*262.67
1986-87	64	*109.38
1987-88	106	*95.92
1988-89 (upto December 1988)	53	*45.90
Total	324	517.74

(*) This value does not include the value of foreign currency like U.S Dollars, Deutsche Marks, French Francs, South Arabain Rials etc. involved in the aforesaid court cases).

(iii) Custom House Bombay

834 prosecution cases were pending finalisation on 31 December 1988 and their period of pendency was as follows:

Period of pendency	No. of cases
More than 3 years	55
1 to 3 years	192
6 to 12 months	254
1 to 6 months	333
	834

(iv) Custom House Madras

Complaints in 28 cases (value Rs.338.56 lakhs) which were filed in the courts in the years 1984 and 1985 were not decided till 31 Decemeber 1988. It was noticed in audit that the Custom House did not move the courts to expedite permission for the disposal of the goods. The Custom House stated (April 1989) that delay was due to paucity of staff in the Customs department. It added that complaints relating to airport cases were being handled by the court in Poonamallee which had allotted only a day in a week for attending to customs cases and that it has suggested to the Ministry of Finance and the State Government for constituting a separate court for dealing with Customs airport cases.

(v) Collectorate (preventive) Ahmedabad

Twenty seven cases involving goods valued at Rs.666.09 lakhs, in which seizures were effected between December 1985 and December 1987, were pending adjudication on 31 December 1988.

(vi) Collectorate Nagpur

Twenty nine cases of goods seized during 1987-88 (value Rs.2.38 lakhs) and 1988-89 (value Rs.8.92 lakhs) were pending due to non-issue of confiscation order (December 1988). When the reasons for the delay were enquired (January 1989) in audit, the department stated that one case (1987-88) involving Rs.2.16 lakhs and 6 cases (1988-89) involving Rs.2.40 lakhs were decided in January and February 1989. The remaining 22 cases were still pending for non-issue of confiscation orders (June 1989).

(vii)In the following collectorates, the position of pending cases in Patna, Kanpur, Hyderabad and Jaipur collectorate is given below. In many of these cases, action to move the court for permission to dispose of the goods was either not taken or taken after a considerable length of time only after the issue was raised in audit.

Collectorate	No. of cases	Value (Rs.in lakhs)	Period of seizure	Period of pendency in the courts
Kanpur & Patna	14 (Textiles & wrist watches)	8.38	Between 1973 and 1984	1984
Hyderabad	13 (various articles)	2.10	1974 to 1979 & 1985 & 1986	Not available
Jaipur	6 (Watches) 3 (Calculators)	9.62	April 1972 & July 1986	1986

9. Other irregularities

A. Losses

(a) Irregular release of seized polyester yarn

261 cartons of polyester yarn weighing 8050 Kilograms and valued at Rs.19.80 lakhs were seized on 1 October 1985 from a unit in the Surat division of Ahmedabad (preventive) Collectorate. The department released those goods provisionally on 10 October 1985 before starting the adjudicatiion proceedings and after obtaining cash security of Rs.50,000. Subsequently, the adjudicating authority in his order dated 25 June 1986, levied a personal penalty of Rs.40,000 and forfeiture of cash security of Rs.50,000 as the goods were already released. This resulted in loss of revenue of Rs.19.30 lakhs. As the relevant file was not made available to audit, it could not be ascertained why the goods were released provisionally before finalisation of adjudication and whether the penalty of Rs.40,000 was actually recovered.

(b) Improper acceptance of tender

In Rajkot Collectorate, 69,300 watch movements and 22 packets of parts of watch movements were put to auction in April 1986. The highest bid of Rs.38.50 lakhs was not accepted.

At the time of subsequent auction held in July 1986, the highest bid offered by a party for Rs.54.01 lakhs was accepted (the next below offer was Rs.54 lakhs).

As per the conditions stipulated in the notice for auction, the highest bidder was required to deposit 25 per cent of the bid amount on the fall of hammer and the balance of 75 per cent within 15 days of the communication of the acceptance. But, the Customs department accepted Rs.5 lakhs instead of Rs.13,50,250.

The bidder lifted part of the goods after depositing Rs.24 lakhs in August 1986. As the balance quantity was not lifted, the department

forfeited the initial deposit of Rs.5 lakhs in September 1986.

The balance quantity of goods was put to auction again in June 1987, when the offer of Rs.20 lakhs by the same bidder was accepted by the department. The Ministry of Finance also ordered (December 1988) to refund 70 per cent of forfeited deposit of Rs.5 lakhs given by him previously.

Thus there was a loss of revenue of Rs.8.51 lakhs.

(c) Destruction of confiscated goods

(i) In Delhi Customs Collectoratre, goods consisting of battery cells, amidopyrine powder, gentamycin sulphate and unlabelled chemical powder (dexamethasone) valued at Rs.6.03 lakhs were detained for 7 to 18 years from the date of seizure and then destroyed on 21 March 1986 as they had become unsuitable for use.

Even though the Colector ordered (January 1986) that responsibility for negligence in the timely disposal of battery cells and gentamycin sulphate should be fixed, no action in this regard was taken (June 1989). As regards amidopyrine powder, test report of 3 June 1977 of the State Drugs Laboratory, Chandigarh showed that the medicine was capable of being used but the date of expiry of the goods was not on record. However, the powder was not disposed till 26 February 1982 when the Drugs Controller of India, New Delhi suggested the destruction of the medicines on the ground that they had since been banned due to toxicity. Dexamethasone, seized on 9 February 1979, was destroyed on the basis of report dated 19 August 1980 of the Drugs Controller of India, New Delhi stating that the medicine was non-standard and was not dexamethasone. In this case also, the date of expiry of the drug was not on record.

As regards gentamycin sulphate valued at Rs.1.5 lakhs it was noticed that it was put to auction six times between 20 August 1981 and 31 October 1982 but each time it was withdrawn from the auction at the following value shown against each auction.

Date of auction	Value at which withdrawn
	(Rupees)
20 August 1981	No bid
27 November 1981	10,100
16 April 1982	6,000
27 January 1982	5,000
27 July 1982	10,000
October 1982	14,000

The department did not take any action to dispose the medicine from November 1982 till 31 December 1983 (date of its expiry). Consequently, the medicine had tobe destroyed. Action was also not taken in terms of the Central Board of Excise and Customs instructions dated 13 June 1961. As per these instructions if the goods put to auction are not likely to fetch the fair price, the auction committee may recommend to the Collector for disposal of such goods by tender.

(ii) It was seen from the records of disposal unit of Bombay Custom House that perishable goods (film rolls, chocolates, perfumes, cosmetics, dry fruits, cigarettes etc;) valued at Rs.2,82,564 were destroyed at Sewree warehouse, Tody godown Lower Parel, S.M.C. Warehouse, and Custom House godown between 1985 to 1988 after considering their deteriorated condition.

The delay in taking action for the disposal of these perishable items resulted in loss of Rs.2.83 lakhs.

(d) Theft

In his stock verification report on Delhi Collectorate Customs godowns and disposals 1988, the Directorate of Preventive Operations pointed out theft of goods valued at Rs.16.04 lakhs in the following months.

Sl.No.	Month/Year of theft	Value (Rs. in lakhs)
1.	June 1979	0.004
2.	May 1981	0.020
3.	February 1982	0.050
4.	July 1982	1.000
5.	August 1983	0.007
6.	January 1984	12.470
7.	December 1984	2.490

It was intimated by the Custom House that goods valued at Rs.14.99 lakhs had already been recovered by the police, and, out of the recovered goods, goods valued at Rs.13.97 lakhs were still in the custody of Police (April 1989). The Customs department added that one of the seven cases was recorded as the thief was not

traceable, in 3 other cases the accused were convicted and the remaining three cases were under trial in the Court. A scrutiny of the case files produced to audit revealed that the Customs department did not approach the Police authorities for handing over the recovered goods to the former. Further, the cases of theft at serials No.3, 4, 6, and 7 which were required to be reported to the Central Board of Excise and Customs (cases of Value exceeding Rs.5,000 to be reported) under para 14 of Chapter XII- Customs Preventive Manual (Central) and to the Audit Officer under Rule 16 (1) of General Financial Rules 1963, were not so reported.

B. Non accountal of goods returned to Delhi Airport

Twelve cases of goods valued at Rs.3.12 lakhs, which were originally received at the Customs headquarters for final disposal, were shown as returned to the Delhi Airport in godown registers maintained at the headquarters. However, corresponding entries regarding receipt of the returned goods could not be traced in the records of the disposl unit at the airport. The Custom House could not also intimate the mode of final disposal of those goods to audit (July 1989).

C. Non accountal of samples of seized V.C.Rs, V.C.Ps, etc

Samples of V.C.Rs., V.C.Ps., car stereos, video cassettes, textiles, etc., in respect of 6 cases seized between March 1984 and Septemebr 1985 in the Surat Division of Ahmedabad (Preventive) Collectorate were lying undisposed, but the relevant entries in the godown register had already been closed. Those samples valued at Rs.1.07 lakhs were unaccounted in the books of the godown. It was stated by the departmental authorities that the samples were lodged duly sealed under a panchnama in the godown and were, therefore, not susceptible of physical verification without opening of containers.

D. Non recovery of penalty

In Nagpur collectorate, an amount of Rs.5.03 lakhs on account of penalty which was imposed under Section 112 of Customs Act, 1962 in 78 cases in adjudication proceedings during April 1980 to December 1988, was not recovered (June 1989).

E. (a) Delay in fixation of prices for seized/confiscated goods resulting in their non-disposal/loss of revenue

As per Government instructions issued from time to time electronic items such as televisions, V.C.Rs., R.C.Rs., etc., should be sold in retail to bonafide consumers apart from bulk sales to National Consumers Cooperative Federation. The prices of most of the categories of these goods are fixed by a Joint Pricing Committee (JPC) after conducting market survey and with due regard to prevailing market prices. Copies of approved price lists (Bombay) are also sent to other Collectorates in the country for their comparison and information.

It was observed from the godown register in Trichy Collectorate that eleven items of seized electronic goods valued at Rs.1.52 lakhs which became ripe for dispoal and had been lying in the Customs retail shop since 1987 were not disposed due to non fixation of their prices by the Joint Pricing Committee. The scrutiny of relevent files revealed that the necessity to fix the prices was also not brought to the notice of the Joint Pricing Committee in 9 cases (value Rs.1.01 lakhs). In the remaining two cases (value Rs.0.51 lakh), even though the goods became ripe for disposal in October 1987, the items were placed before the Joint Pricing Committee for fixation of prices in November 1988 only, but no price was fixed by the Joint Pricing Committee (June 1989). Reasons for not fixing the price were not on record.

(b) Sale of wrist watches at lower prices

In Porbander Division under Ahmedabad (preventive) Collectorate, 17,791 pieces of wrist watches were sold in 3 lots at prices ranging between Rs.2 and Rs.8 per piece as against the price of Rs.15 originally fixed by the Joint Price Committee, Bombay. This resulted in loss of Rs.1,43,882.

F. Non disposal/Delay in disposal of other goods

(a) Under Section 48 of the Customs Act 1962, if imported goods are not cleared within 45 days from the date of their unloading or if the title to any imported goods is relinquished, such goods may be sold by the person having the custody of the goods.

It was noticed in audit that 25464 lots/ cases containing 51,052 packages of goods received in Delhi Collectorate upto 31 December 1988 were lying undisposed (April 1989).

A scrutiny of the concerned registers revealed that these lots/cases pertained to the year 1985 and onwards and their yearwise details were not available. The aforesaid lots/cases included 564 packages, entries in respect of which could not be linked in those registers. The reasons for the prolonged detention of these uncleared goods without putting them to auction were not made available to audit.

(b) Under Section 80 of Customs Act 1962, where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which the declaration has been made under Section 77 of Customs Act, 1962, the proper officer may, at the request of the passenger, detain such articles for being returned to him on his leaving India. As per the instructions printed on the format of the Detention Receipt (D.R) issued to the passengers at the time of detaining such goods for non-payment of duty/reexport, such goods will be released to the owner or his authorised representative on production of the detention receipt within 15 days from the date of detention, failing which the goods will be disposed of.

It was seen from the registers of detained valuable and non valuable goods maintained at the Madras airport warehouse, that in 297 cases, goods valued at Rs.17.14 lakhs, were detained either for non payment of duty or non production of detention receipt by the passengers from the year 1984 onwards. It was also noticed (April 1989) in audit that final notices in respect of 23 cases of goods valued at Rs.0.65 lakh, were issued to the passengers in 1985/1986 itself, but no follow up action was taken for their disposal after the expiry of the prescribed period of detention.

Non disposal of goods for long periods not only puts pressure on the space in the warehouse, but also results in realisation of lower value on their sale leading to loss to Government in either case.

G. Lack of co ordination between executive department and ware house office

While prescribing the procedure for disposal of confiscated goods, the Central Board of Excise and Customs in its instructions No.1/ Confis goods/56 dated 10 September 1956, also prescribed the responsibilities of the warehouse officer and the executive department. As per those instuctions the warehouse officer should normally be kept informed by the executive department of the developments in each case such as passing of an order of adjudication, receipt of an appeal in department and passing of an order for disposal. For this purpose a simple memo in cyclostyled form should be issued to him to enable him to keep a note to this effect in the warehouse register. The executive department should also have a system by which it will be able to watch the disposal of all cases of confiscated goods through their departmental register. The results of audit in this regard are indicated below:

(a) Custom House Madras

(1) A scrutiny of the register of offences and penalties maintained in the adjudication department (RD unit), revealed that in 51 cases of goods valued at Rs.21.92 lakhs, the fact of passing of orders of adjudication/appeal was not made known to the warehouse officer for initiating action for early disposal of the consfiscated goods.

(2) It was seen in audit from the register maintained in the prosecution unit that in 10 cases of goods valued at Rs.13.20 lakhs, although the prosecution action was completed, they could not be disposed due to lack of coordination among the prosectuion unit, RD unit and the warehouse (March 1989).

(3) Orders for disposal of goods valued at Rs.2.91 lakhs in 43 cases were passed by the Assistant Collector (Airport) between July 1988 and February 1989. Althougth those goods became ripe for disposal on the passing of those orders, no action was initiated to dispose them (March 1989).

(b) Collectorate Trichy

It was seen from the register of Offences and penalties maintained in the adjudication unit of the seized goods godown that adjudication orders confiscating absolutely goods valued at Rs.0.50 lakh were passed during August 1987 and May 1988. The period for filing of appeal in those cases was also over by December 1987 and September 1988. As the fact of completion of adjudication proceedings was not communicated to the custodian of the goods, no action was initiated by him to dispose them (April 1989).

H. Non depositing of cheques taken from the strong room for verification by the Assistant Collector

In the Madras Customs warehouse, two cheques dated 2 October 1982 and 25 September 1982 for Rs.800 and Rs.200 respectively were taken from the strong room for verification by the Assistant Collector (Postal Appraising Deartment). They were neither deposited in the strong room nor were they remitted to Government This was originally pointed out in audit in October and November 1985, but the reply of the department was not received (June 1989).

10. Stock verification/stock challenges:

1. As per Central Board of Excise and Customs instructions dated 13 June 1961, the Assistant Collector (Preventive) or an Assistant Collector nominated by the Collector shall conduct a complete stock taking of all valuables once in every six months. As regards goods other than valuables, the Chief Inspector (Preventive) or any other officer nominated by the Collector shall conduct a complete stock taking once in every six months. The officer who conducts physical verification of stock should particularly examine whether packages stored show signs of deterioration, substitution or pilferage. If noticed in cases of goods awaiting adjudication, the matter should be brought to the notice of the adjudicating authority for a quick decision in the matter. If noticed in cases of appeal or revision petition etc. appellate authority or the Government, as the case may be, should be informed immediately so that prior attention is given to the disposal of the relevant case. Where goods are involved in court proceedings, it will be necessary to bring the matter to the notice of the court and seek permission for the disposal of goods pending finalisation of the proceedings in the court. Particulars of cases, where deterioration is noticed, should also be entered in the register maintained in respect of perishable articles.

(i) Custom House Bombay

It was seen from the stock verification reports of the various disposal units that no certificate was endorsed by the stock taking officers to the effect that no deterioration in the condition of goods was ascertained. Only number and sealed condition of the packages were certified.

As the outstanding items consisted of perishable goods like liquor, film rolls, vitamins, chemicals and polyester yarns which have short life span and start deteriorating in quality after few days of storage, the stock taking officers ought to have examined the physical condition of the goods and recorded it in their certificates for the early disposal of the goods. Such certification was not found done in any of the stock verification reports of the disposal units. Thus the very object of stock verification was not fulfilled.

(ii) Custom House Madras

The Central Board of Excise and Customs in its letters dated 30 June 1965 and 4 January 1968 emphasised the need for carrying out physical checks like stock taking, stock challenges etc. in the customs retail shops. It was enjoined that stock challenge on random basis with reference to the balance of goods as per case file and actual balance of goods in retail shop should be carried out to ensure proper acounting of the goods received from the warehouse. It was noticed in audit that stock challenge in the retail shop at Madras Custom House was carried out only for the half year ending 31 December 1987. The department stated (May 1989) that such verifications were done periodically in respect of goods becoming ripe for disposl. Specific reports relating to such periodical stock verifications were, however, not furnished to audit.

(iii) Collectorates Rajkot and Ahmedabad (Preventive)

In the case of Bhavnagar, Ahmedabad, Porbandar and Jamnagar Divisions under the Ahmedabad (Preventive) collectorate and also in the Rajkot collectorate, no stock challenges

were conducted between 1 April 1985 and 31 December 1988 except for valuables in respect of which stock challenge for the year 1988 was conducted in February March 1989.

(iv) Collectorate Jaipur

In the Jodhpur customs division, physical verification of stock was conducted once in 1986 and 1987. In the subsequent verifications conducted in July and October 1988, shortages of 34.333 kilograms of heroin and 59.370 kilograms of charas were found. Those shortages were stated to be under investigation. Results of investigation were not reported (June 1989).

(v) Collectorates Allahabad, Meerut and Kanpur

While in one customs godown of Meerut collectorate, halfyearly stock taking was done only on two occasions, August 1987 and May 1988, between the years 1985 and 1988, in the customs godown in Allahabad collectorate it was not done since 1964 except in 1988. In both the cases, no detailed report was available except giving remarks of verification in godown register. As regards Kanpur collectorate, no periodical stock taking was done in any of the customs godowns.

(vi) Collectorate Delhi

The position of the stock challenges in the customs warehouses/godowns at the Delhi Airport (Terminal II) and the Custom House Headquarters was as follows:

Year	Total No.of godowns/ warehouses	No. of godowns/warehouses covered by stock taking	
		Valuables	Other than valuables
1986-87	11	1	7
1987-88	11	-	3
1988-89	11	2	5

In the stock verification report of the Directorate of Preventive operations for the year 1988 following discrepancies were pointed out in the stock as on 1 September 1988 against each godown:

Name of godown	Difference
Quick disposal	+63
Auction	+1150
'A' godown	-64
'B' godown	-309
Retail sale	-15

The collectorate was requested to intimate whether the aforesaid discrepancies pointed out by the Directororate of Preventive Operations had been reconciled and, if so, to make the relevant files available to audit. Neither the relevant files were made available to audit nor was any reply in this regard furnished to audit (June 1989)

2. Thus it will be seen that in almost all the custom houses/collectorates, the stock taking was not conducted at the prescribed periodical intervals even though the Public Accounts Committee in para 1.171 of its 54th Report (Sixth Lok Sabha) stressed the importance of observance of uniformity in the periodicity for the stock taking and the Estimates Committee also in their 33rd Report (1978-79) (Sixth Lok Sabha) emphasised the importance of conducting the periodical stock verification.

In the absence of periodical stock verification, the department was neither in a position to ascertain the shortages, if any, nor could assess the quantum of goods ripe for dispoal.

11. Improper maintenance of registers of seized and detained goods

As per Para 3 of Customs Preventive Manual, whenever goods are seized or detained, a complete inventory of the goods together with the identification marks, serial numbers etc, should be made in triplicate in the proper form (Form 1). This should be done at the earliest opportunity and if possible, immediately after seizure. Separate inventories should be made out in respect of (i) valuables and (ii) non-valuables. The

goods along with the duplicate and triplicate copies of inventory should be forwarded to the custodian without delay and in any event within 24 hours after seizure/detention. Immediately on receipt of the goods in the warehouse, the custodian should enter the full particulars and details of the inventory in the register of seized/detained goods (Master warehouse register). Whenever the goods are disposed, a note to that effect should be given against the relevant entry in the master warehouse register by the disposal officer.

The scrutiny of the records of the warehouses in the various Custom Houses/Collectorates in audit revealed the following:

(i) Custom House Bombay

The warehouse registers at S.M.C. warehouse had 19 columns for recording particulars regarding receipt of goods in the warehouse and their disposal, but four or five columns only had been filled. Rest of them including columns such as 'date of receipt of goods', 'nature of sealing of the package', 'case file reference number', 'description of goods', etc. had not been filled. However, the total number of packages was indicated in column 9.

It was also noticed in audit that note of disposal of goods was not made against the relevant entries in the master warehouse register. It was observed that handing over reports showing full details of the packages in the custody of the disposal officers were not obtained before they were relieved of their duties from S.M.C warehouse. As per the Stock Verification report dated 30 June 1988 (copy of the report as on 31 December 1988 was not made available to audit), packages from 1977 onwards were shown in the custody of the disposl officers who were not working in the warehouse on that date. The very fact that handing over reports showig the packages in the custody of the disposal officers were not obtained at the time of transfer of officers showed that there was no effective control over the custody and dispoal of the goods and realisaton of revenue. It appears that the Internal Audit Department of the Custom House did not also conduct any check of the warehouse as its report on such check was not made available to audit.

(ii) Custom House Madras and Collectorates Trichy and Madurai

(a) While the registers of seized/detained goods were being maintained in the prescribed proforma at custom warehouse at Madras and Airport Customs Madras, the registers maintained at godown and retail shops at Trichy and Madurai were not in the prescribed proforma. At all the three places, details such as passing of order of adjudication, filing of appeal, etc. were not noted in the registers.

(b) In the custom warehouse at Madras, the nature of the goods seized was not mentioned in the register, in the absence of which, the categorywise statement could not be prepared for initiating action for their dispoal according to their prescribed period of detention. Though such details were availabe in the registers at warehouse godowns at Madurai and Trichy, no categorywise statement of goods was prepared for initiating action for the disposal of the goods.

(c) As per the prescribed procedure, the custodian of the goods should prepare a monthly list of all goods becoming ripe for disposal. This monthly list is required to be sent to seizure unit for obtaining 'no objection certificate' for expediting the disposal of the goods. No such monthly lists were made out in the warehouses at Madras, Trichy and Madurai. As a result there was likelihood of the goods becoming ripe for disposal, remaining unnoticed by the custodian, leading to delay in initiating action for disposal.

(d) As per intructions of the Board, as and when foreign currencies are encashed through Reserve Bank of India and Indian currencies are deposited into Government Account, the cash memo no.and date of remittances should be entered in the appropriate columns of the register of seized/detained goods and the entries made under the attestation of the Superintendent (Preventive) in charge of warehouse or disposal unit prior to audit by the Internal Audit Department. However, it was noticed during test audit that 25 entries in the register were not attested by the Superintendent(disposal unit) in token of their correctness.

(e) In the goods godown at Trichy, the complete details regarding transfer of

goods from the seizure unit to disposal unit/retail shop were not entered in the register of seized /detained goods. It was, therefore, not possible to correlate the relevant entries relating to those goods in the master warehouse and disposal registers.

(iii) Collectorate Delhi

In Delhi collectorate also, the officer in charge of the warehouse did not prepare the monthly list of all goods ripe for disposal and send it to the seizure unit for obtaining the 'no objection certificate'. Following other irregularities were also noticed.

(a) Under the procedure of 'spot adjudication order' in respect of baggage goods, the 'spot adjudication order' should contain the particulars of detention receipts.

In test audit of 90 out of 200 cases at the Delhi Airport, the relevant detention receipts could not be correlated with the relevant entries in the warehouse register and, therefore, the accounting of the goods adjudicated at the spot could not be verified in those cases.

(b) As per the prescribed procedure, a copy of the detention receipt along with the goods should be sent to Disposal Unit (airport) for final disposal of goods at the Custom House. For this purpose, the particulars as given in the detention receipt should be entered in despatch (inventory) register of the disposal unit.

Detention receipts in 56 out of 100 cases of confiscated goods received in the disposal unit for sending them to Custom House, selected for test audit, were not produced. In the circumstances, the correctness of accountal of the goods in the despatch (inventory) register from the detention receipts in those 56 cases could not be checked.

(c) In the Air Cargo unit also, the records/ registers were not found to have been maintained properly. 9,605 adjudication orders were issued by the Import Branch I during the period from 1 April 1985 to 31 December 1988. Their year-wise analysis was as under:

	Years				
	1985-86	1986-87	1987-88	1988-89*	Total
(i) cases where redemption fine/ fine/penalty imposed was shown as realised & goods released	1	3	1,371	871	2,246
(ii) cases where goods re exported but no particulars of re-exportation (flight no.& date) indicated	23	17	26	36	102
(iii) cases where imposition of redemption fine/ fine/penalty was not indicated and whereabouts of the goods not explained in the register	306	207	160	312	985

	Years				
	1985-86	1986-87	1987-88	1988-89*	Total
(iv) cases where goods shown as absolutely confiscated but with no number of DR or disposal shown	19	14	9	3	45
(v) cases where goods released on caution or warning or where adjudication orders cancelled but no reasons therefor recorded against these entries	54	76	131	43	304
(vi) cases where redemption fine/ fine/penalty imposed but entries regarding recovery, or release of goods or goods still under detention not made	2,864	2,828	189	42	5,923
Total	3,267	3,145	1,886	1,307	9,605

(d) The Import Branch (II) of Air Cargo issued 1,120 adjudication orders during the period from 1 April 1985 to 31 December 1988. In 663 cases, redemption fine/personal penalty amounting to Rs.25.13 lakhs was imposed, but the particulars of recoveries were not noted in the register. 147 cases of goods valued at Rs.16.63 lakhs were adjudicated but the records did not indicate whether redemption fine/personal penalty was imposed or the goods were confiscated absolutely. In 310 cases, goods valued at Rs.19.54 lakhs were absolutely confiscated out of which 28 cases of goods valued at Rs.1.98 lakhs were shown as disposed of and the remaining 282 cases valued at Rs.17.56 lakhs as lying in stock on 31 March 1989. In the absence of reference to (i) the number and date of adjudication order, (ii) detention receipts, (iii) baggage declarations, (iv) baggage receipts, etc. in the relevant registers/ records, satisfactory accountal of the goods could not be verified in audit.

(e) At the airport, copies of the adjudication orders in respect of adjudicated cases, were not placed in the files. Further, in 20 of these cases, even the original detention receipts were not available in the files.

(f) A review of the registers maintained at the inland container depot during the period from 1 April 1985 to 31 December 1988 showed that the adjudication orders were not noted in 171 out of 216 cases registered in the register of penalties and offences. Goods valued at Rs.10.11 lakhs in 6 cases only (3 cases during 1985-86 and 3 cases during 1986-87) were shown as absolutely confiscated. In 16 cases, except for the description and value of goods, no other particulars such as adjudication order No. and date, details of deposit entries, etc; were given.

Cases of undervaluation/overvaluation etc., were also entered in the said register.

(iv) **Collectorate Jaipur**

Although adjudication orders had been passed in 25 cases of goods valued at Rs.12.08 lakhs as seen from the register of offences and penalties, the entries relating to confiscation proceedings and further disposal of goods were not made in the valuable and malkhana registers. In the absence of those details, the cases becoming ripe for disposal would not be noticed by the custodian leading to delay in initiating action for disposal.

(v) **Collectorates Kanpur, Meerut, Allahabad and Patna**

(a) In four divisions, one each under the aforesaid collectorates, the essential particulars relating to deposit of goods in godown, goods becoming ripe for disposal, etc., were not noted in certain cases in the register of seizures and offences. In the absence of those details, the goods ripe for disposal would not be noticed by the custodians leading to delay in initiating action for disposal.

(b) In the registers of valuables maintained under Patna and Meerut collectorates, in some cases the essential details, such as description and weight of valuables, place of deposit, adjudication order, etc., were absent. In the absence of those details it could not be verified whether all the seized valuable goods were properly accounted for and whether timely action for their disposal was taken.

(c) The register kept in customs godown of Kanpur collectorate for watching receipt and disposal of seized/confiscated goods was not maintained in the prescribed proforma. The essential details relating to description of goods, case file numbers, adjudication order numbers, etc., were not recorded properly in some cases.

(d) In a godown in Patna collectorate, the particulars of cross references relating to entries of disposal register were not given in the godown register maintained between 1973 and 1986. Even though remarks such as 'goods transferred to 'disposal unit' were made against entries in the godown register, the records of 'disposal unit' were not shown to audit to check the veracity of the aforesaid remarks.

(e) In Meerut collectorate also, the entries in the godown register maintained at one godown could not be correlated with the relevant entries in the register of offences and penalities to ensure that all seized goods had been accounted for and disposed of properly.

(f) The cash book of a customs godown of the Meerut collectorate was not maintained in the prescribed form. Neither was the cash book closed daily nor was the monthly abstract found prepared. The entries in the cash book were not verified by the superior officer. It was also noticed that more than one receipt book were used simultaneously and, in one case, the receipt of Rs.15.70 was accounted for in cash book after a lapse of more than one year. In another case, an amount of Rs.300 realised in March 1987 was not accounted for till it was pointed out in audit in April 1989.

12. Non production of records to audit:

It was noticed in audit in Trichy Collectorate that on 31 December 1988, valuable and non-valuable goods in 251 cases were lying in stock for disposal as departmental prosecution proceedings were stated to be in progress. In order to ascertain the stage of pendency and the reasons for delay in initiating the proceedings, 21 files relating to goods valued at Rs.56.25 lakhs were requisitioned in audit. Those files were not made available to audit on the grounds that under the Ministry's letter No.F.240/15/88-CX.7, dated 29 April 1988, files leading to the passing of the adjudication/appellate orders need not be made available. However, as per the Ministry's subsequent letter No.F.240/15/88/CX.7 dated 29 June 1988, such adjudicaton files were required to be made available to audit. In the absence of those files, the reasons for the inordinate delay in disposal of goods could not be ascertained in audit.

The aforesaid appraisal was sent to the Ministry of Finance in September 1989; their reply has not been received (November 1989).

1.02 Ships' stores levy and collection of duty

1. Introduction

Section 2(38) of the Customs Act 1962 defines stores' as goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitment. Section 85 of the Act permits warehousing of stores without being assessed to duty. In accordance with Section 87 of the Act, imported stores may be consumed on board a foreign going vessel/aircraft without payment of duty. As a corollary, when such a vessel reverts to coastal trade, customs duty is payable on the imported stores consumed during such coastal run. Goods taken on board in a foreign going vessel/aircraft are deemed as exported out of India and if any duty had been paid on them at the time of their import, drawback is admissible in full. Section 89 ibid also provides that indigenously produced goods taken out as 'stores' on a foreign going vessel/aircraft can be exported free of duty in such quantities as the proper officer may determine; such goods also are eligible for drawback in case central excise duty had already been paid. Section 90 ibid allows that in respect of supply of stores to Indian naval vessels, such stores shall be deemed to be 'exports'.

2. Procedure for collection of duty

As per the procedure existing prior to 1 March 1985, when a foreign going vessel reverted to coastal trade, an inventory of stores was taken indicating the description of the goods and quantity. This inventory was sent to the Customs preventive Officer and its duplicate copy was handed over to the steamer agent. When the vessel completed discharge of foreign cargo at the first Indian port of call, a copy of the inventory of stores was sent through the master of the vessel himself to successive ports of call in India, so as to have a record of stores consumed while the ship was on coastal trade (i.e it was not a foreign going vessel). No deposit of duty was taken on reversion of the vessel to coastal trade. When the vessel became a foreign going vessel again, at the request of the steamer Agent, a preventive officer in the first port of call in India, prepared a similar inventory in duplicate. Duty on the stores consumed while the ship was not a foreign going vessel was demanded when the ship again became a foreign going vessel.

As a result of an adverse comment on the delay in assessment and collection of duty on ships' stores in para 1.13 of the Audit Report for the year 1982-83, the Ministry of Finance examined the then existing procedure and came to the conclusion that delay in realisation of duty was inherent in that procedure itself as the assessment and collection of duty was postponed till the vessel reverted to foreign run again. The Ministry of Finance found that even after the second reversion was completed, finalisation of assessment was kept pending for want of the inventory list of ships stores consumed from the last port of call at which the vessel reverted to foreign run. This resulted in assessments either remaining unfinalised or even when finalised the steamer Agents did not show urgency to discharge duty liability despite the execution of bonds by them.

After discussing the matter with the Collectors of Customs, Government evolved a revised procedure for expediting the collection of duty on ships' stores with effect from 1 March 1985. This procedure was circulated in Ministry's letter No.F.433/1/89 -Cus IV dated 22 January 1985.

Under the revised procedure, the duty should be collected on the entire stores lying on board the vessel as soon as she reverts to coastal trade. If the steamer agent did not desire to pay duty on the entire quantity of bonded stores carried by the ship, he could take some quantity out of the bonded stores on payment of duty. The balance could be kept in bond under customs seal. Under this procedure, the steamer agent should be asked to file the bill of entry within 5 days of the reversion of the ship to coastal run, the assessment completed within the next 5 days and lastly duty collected within a further period of 5 days (i.e. total period of 15 days). An additional period of 7 days is allowed in case the goods are to be tested.

3. Scope of audit

The scope of audit was designed to see how far the revised procedure achieved its object of expeditious collection of duty on ships' stores. In particular the audit checks were prescribed to see the efficacy of the:

- procedure followed for levy collection and refund of duty on ships' stores.
- procedure followed for payment of drawback of duty on the quantity of stores remaining unutilised at the time of reversion of vessel to foreign run.
- procedure followed in adjustment of duty

leviable on imports during a month against the total drawback payable on exports during that month by way of set off.

- procedure of obtaining guarantees from the steamer Agents to safeguard revenue in regard to clearance of baggage of crew members with reference to the private property declarations and cancellation of such declarations.

- procedure for the supply of imported goods as stores to vessels/Aircraft and the procedure for the grant of concessions in respect of imported stores supplied to the crew of Indian Navy.

- preventive control over coastal goods and coastal vessels.

4. Highlights

The results of review are contained in the succeeding paragraphs which highlight the following:

(i) In Madras Custom House, eight vessels which reverted to coastal run during 1987-88 and which were accounted for by the Preventive department, were not accounted by the Import department. Similarly, the reversion of another vessel which was accounted by the Import department was not accounted by the Preventive department.

No correlation of the records regarding reversion of vessels to coastal run was done by the Import & Bond departments of the Cochin Custom House (Para 5)

(ii) There was inordinate delay in the submission of bills of entry in a large number of cases by the steamer agents to the Customs department for assessment during the years 1985-86; 1986-87 and 1987-88. The bills of entry were submitted in time in 41, 32, and 18 per cent cases, the submission of bills of entry was delayed in 57, 65, and 75 per cent cases and no bills of entry were submitted in 2, 3, and 7 per cent cases in those years respectively (para 6).

(iii) (a) There was delay in finalisation of assessments by the Customs department in a large number of cases after the receipt of bills of entry from the steamer agents during the years 1985-86, 1986-87 and 1987-88. Assessment was done in time in 40, 33 and 16 per cent cases, it was delayed in 38, 33 and 22 percent cases and it was not done in 22, 34 and 62 per cent cases during those years respectively.

Assessment was not found done in any of the 87 cases pertaining to Bombay Custom House which were made available to audit.

(b) At Madras port, 16 vessels reverted to coastal run between March 1987 and March 1988. Files relating to ten of those vessels were not made available to audit. In the remaining 6 cases duty of Rs.20.40 lakhs was not recovered.

In 32 out of 59 cases of reversion of vessels to coastal run prior to the year 1985-86, assessments was not finalised.

(c) At Cochin port, 21 vessels reverted to coastal run between 29 May 1980 and 10 January 1985. In 20 out of those 21 cases assessments were not finalised. Bill of entry relating to the remaining one case which pertained to the year 1980, was not filed (Para 7).

(iv) The test reports of samples of fuel and lubricating oils were received from the laboratory in time in 22, 28 and 19 per cent cases; there was delay in the receipt of test reports in 64, 48 and 31 per cent cases and no test reports were received in 14, 24 and 50 per cent cases during the years 1985-86, 1986-87 and 1987-88 respectively (Para 8).

(v) An amount of Rs.122.53 lakhs on account of duty on fuel and other stores was pending recovery on 31 March 1988. Rs.59.71 lakhs out of this amount had been outstanding for more than 3 years (Para 9).

(vi) The number of guarantees obtained from the steamer agents in respect of private property of the crews and lying uncancelled on 31 March 1988 in all the Custom Houses other than Bombay Custom House was 236. Of those 64 guarantees were more than one year old

and another 137 were more than three years old (para 11).

(vii) **128 files pertaining to reversion of vessels to coastal run at Bombay port, were stated to have been misplaced and were, therefore, not produced to audit (Para 12)**

5. Reversion of foreign going vessels to coastal run - Non maintenance of records and discrepancies in the records

Whenever a vessel in the foreign run reverts to coastal trade at any port, the steamer agent should present an application in duplicate to the Assistant Collector, Preventive department intimating such reversion to coastal trade and requesting him for the services of a preventive officer for making an inventory of the bonded stores.

For proper accountal of the foreign going vessels reverting to coastal run, the Docks preventive section should send a statement of vessels reverting to coastal run to the Import department under Para 6 of the Preventive Manual. In case there is no reversion, a 'nil' report should be sent to the Import department. This is necessary to enable the latter to initiate action for assessment and realisation of duty.

During the years 1985-86, 1986-87 and 1987-88; 143, 139 and 151 foreign going vessels respectively reverted to coastal run at the following ports:

	Port	Year of reversion		
		1985-86	1986-87	1987-88
1)	Bombay (including Marma Gao (Custom House)	65	59	91
2)	Calcutta	13	29	16
3)	Gujarat ports (Ports under C.C (Prev.) Ahmedabad, C.C. Rajkot	53	41	20
4)	Madras	4	4	13
5)	Vizagpatnam	5	5	11
6)	Tuticorin	2	-	-
7)	Cochin	1	1	-
	Total	143	139	151

Madras

(i) The registers pertaining to Preventive department of the Custom House for the period prior to the year 1987-88 were not made available to audit. In their absence, correlation between the two sets of registers maintained by the Import and Preventive departments could not be made in audit.

(ii) During the year 1987-88, twenty vessels were shown to have reverted to coastal run in the records of Dock (preventive) department whereas the number of such vessels, as per records of the Import department, thirteen only. The discrepancy of seven vessels was on account of the following:

(a) Eight vessels which were recorded as reverted to coastal run by the Preventive department in its records were not found recorded in the records of the Import department.

(b) One vessel (M.T Prem Doot reverting on 30 September 1987) accounted for by Import department, was not found entered in the records of Preventive department.

The aforesaid discrepancies indicate non-implementation of the prescribed procedure and need for their reconciliation. Owing to the absence of inventory records, it could not be ascertained whether duty on ships' stores in respect of eight vessels was recovered and, if so, the amount so recovered was assessed correctly.

Cochin

(iii) The names of the vessels which reverted to coastal trade after 10 January 1985, have not been entered in the registers of ships' stores maintained in the Import and Bond departments of the Custom House. It was, therefore, neither possible to ascertain the number of vessels which reverted to coastal run since the year 1985 and onwards nor the correctness of the duty collected.

6. Delay in submission of bills of entry by steamer agents for assessment of duty on ships' stores

At the request of the steamer agent the preventive department will make an inventory of the stores and if the request from the steamer agent is for taking out only a portion of such stores, the Preventive Officer should certify the quantity of stores taken out and make an inventory of the same. In that inventory he should show separately the quantitites of high speed desiel (HSD), furnace oil, lubricants etc. which remain unutilised. Similar inventory of the private property of the crew should be made separately.

The inventory so made by the Preventive Officer should be signed by the Master of the vessel/representative of steamer agent and the Preventive Officer in token of its correctness. One copy of the inventory and declaration would be kept in the preventive department, another copy would be sent to the Import/Export department and the third copy would be handed over to the steamer agent. On receipt of the copy of the inventory, the steamer agent will prepare the bill of entry and submit it to the Appraising department for assessment of duty within a period of 5 days.

The Position regarding the submission of the bills of entry by the steamer agents to the Appraising department for assessment at various Custom Houses during the years 1985-86, 1986-87 and 1987-88 was as under.

	Bills of entry	Years		
		1985-86	1986-87	1987-88
i)	due	87	110	108
ii)	submitted within 5 days	36(41%)	35(32%)	19(18%)
iii)	submitted beyond 5 days	49(57%)	71(65%)	81(75%)
iv)	Not submitted till the end of the year	2(2%)	4(3%)	8(7%)

The analysis of 201 bills of entry which were submitted for assessment beyond the prescribed period of 5 days during the years 1985-86, 1986-87 and 1987-88 is given below:

Custom House/ Collectorate	Period within which bills of entry were submitted between			
	6 days to 1 month	1 to 3 months	3 to 6 months	beyond 6 months
Custom House, Bombay including Marmagao	14	1	32	25
Custom House, Calcutta	16	5	4	2
Custom (prev), Ahmedabad	5	2	11	14
Custom Collectorate, Rajkot	21	1	1	NIL
Custom House, Madras & Customs Collectorate, Trichy	3	5	4	8
Custom House, Vizag	1	5	6	3
	60	31	58	52

Thus about 70 per cent of the bills of Entry out of the aforesaid 201 bills of entries were submitted beyond the period of one month.

Some of the cases where abnormal delay in the submission of bills of Entry was noticed are given below:-

Name of vessel	Date of the reversion of the vessel to coastal trade	Date of taking invent-ory of stores	Date of submis-sion of Bill of entry	Period of delay
1. Custom House Bombay				
(i) M.T.Ratna Abha (IGM NO.1636)	- 1985	5 July 1895	16 Sept-ember 1988	more than 3 years
(ii) M.R.Naik Jadhunath Singh PVC (IGM No.2801 dated 20/11/85)	-	13 Nove-mber 1985	19 May 1988	More than 2 years
2. Custom House Calcutta				
Not Known	In two cases pertaining to the year 1986-87 the bills of entry were not submitted by the steamer agents in June 1989.			
3. Custom House Madras				
(i) M.T.Jag Prati	7 January 1988	-	Bill of entry was not submitted (May 1989)	
(ii) 21 vessels	3 January 1975 to 22 May 1988	-	All the bills of entry were filed in March 1989	
4. Custom House Cochin				
M.T. Cherry Baron	29 May 1980	-	Bill of entry not submitted (May 1989).	

Even though steamer agents gave undertaking to file the bills of entry within 5 days under the revised procedure, the Customs Authorities did not enforce those undertakings leading to delay in realisation of duty.

7. Delay in assessment to duty

As per revised procedure outlined in Government letter dated 20 January 1985 the Customs department should complete assessment within five days from the date of receipt of the bill of entry from the steamer agent and return the same to the later for payment of duty.

The position regarding the period taken in assessment of bills of entry from the dates of their receipt in the various Custom Houses is given below:

		Years		
		1985-86	1986-87	1987-88
i)	Bills of entry submitted by the steamer agents	87	106	101
ii)	Bills of entry assessed within 5 days	35(40%)	35(33%)	16(16%)
iii)	Bills of entry assessed beyond 5 days	3(38%)	35(33%)	22(22%)
iv)	Bills of entry not assessed at the end of the year	19(22%)	36(34%)	63(62%)

Thus out of 294 cases where bills of entry were submitted during the years 1985-86 to 1987-88, only 86 cases were assessed within the prescribed period of five days while in 90 other cases assessments were furnished beyond the prescribed period of 5 days. Following table indicates that the delay in those 90 cases ranged from 6 days to more than 6 months. In fact assessments in 70 per cent of those 90 cases were completed after a month of submission of bills of entry.

	Custom House/ Collectorate	Period within which assessments were made			
		6 days to 1 month	Between 1 month and 3 months	Between 3 months & 6 months	Beyond 6 months
1.	Bombay (including Marmugao)	NIL	NIL	NIL	NIL
2.	Calcutta	14	6	3	2
3.	Custom(Prev.)	7	4	6	4
4.	Customs, Rajkot	6	11	14	2
5.	Custom House Madras	NIL	3	NIL	1
6.	Customs, Trichy	NIL	NIL	NIL	NIL
7.	Custom House Vizag	1	6	-	-
	Total	28	30	23	9

A few illustrative cases are enumerated below:

(i) Custom House Bombay.

In none of the 87 cases in which bills of entry were submitted by the steamer agents in the years 1985-86, 1986-87 and 1987-88 assessments have been finalised (May 1989).

(ii) Custom House Calcutta

The delay in assessment of bills of entry resulted in postponement in the collection of revenue by Rs.14.15 lakhs during 1985-86, Rs.17.39 lakhs during 1986-87 and Rs.1.60 lakhs during 1987-88.

(iii) Custom House Madras

(a) Duty on ships' stores in respect of 16 vessels which reverted to coastal run during the years 1985-86, 1986-87 and 1987-88, was not assessed. Files relating to only 6 of those vessels, which reverted to coastal run between March 1987 to March 1988 were made available to audit. The duty not collected in those six cases worked out to Rs.20.4 lakhs (approximately). The amount of duty due from the steamer agents in respect of remaining ten vessels could not be quantified as the relevant files were not made available to audit.

(b) Apart from the aforesaid cases, 59 vessels had reverted to coastal run prior to the year 1985-86. Assessments in 32 of those cases have not been finalised (May 1989). The year-wise pendency of those 32 cases was as follows:

S.No.	Year	No. of cases pending
1.	1975	3
2.	1976	2
3.	1977	3
4.	1978	1
5.	1979	5
6.	1980	3
7.	1981	1
8.	1982	4
9.	1983	5
10.	1984	3
11.	1985	2
TOTAL		32

The reasons for their pendency were recorded as (i) non-receipt of closing inventory (ii) non-availability of original inventory (iii) court cases.

Due to the non-availability of the relevant files in those cases, the duty amount payable on ships' stores could not be quantified.

(iv) **Custom House Cochin**

Twenty one cases of reversion of vessels from foreign to coastal run, relate to the period from 29 May 1980 to 10 January 1985. Although bills of entry in 20 of those 21 cases were submitted by the steamer agents, yet assessment was not finalised in any of those 20 cases (May 1989). Action was not taken to obtain the bill of entry in the remaining one case.

8. Delay in assessment of fuel oil and lubricating oil, etc,. to duty due to non receipt of test reports

Samples of fuel oils for tests should be taken and forwarded to the chemical labortory as soon as the inventory of fuel oil is taken and results should be obtained by the assessing officers within a week.

The position of samples of fuel and lubricating oils sent for testing to the laboratories and the receipt of the test reports in respect of those samples from those laboratories in the various Custom Houses during the years 1985-86 to 1986-87 was as under:

	Year			
	1985-86	1986-87	1987-88	Total
Samples sent for testing to the laboratories	72	98	84	254
Samples in which test reports were received within the prescribed period of 7 days	16(22%)	27(28%)	16(19%)	59(23%)
Samples in which test reports were received beyond the prescribed period of 7 days.	46(64%)	47(48%)	26(31%)	119(47%)
Samples in which test reports were not received at the end of the financial year	10(14%)	24(24%)	42(50%)	76(30%)

Out of 254 cases pertaining to the period 1985-88, the test reports in 59 cases only were received within the prescribed period of 7 days. In 119 cases, test reports were received between 8 days and more than 6 months.

In the remaining 76 cases, test reports were not received till the end of those respective years.

In this connection following observations are also made:

(i) **Custom House Bombay**

A test audit of 87 cases revealed that test reports were not received in72 cases (May 1989). In the remaining 15 cases in which test reports had been received, the assessments were not completed (May 1989). The amount of duty which could not be recovered in those 87 cases worked out to Rs.9.30 lakhs.

(ii) **Vadinar and Veraval ports (under the collectorate of Custom (prev) Ahmedabad**

Delay in assessment in 12 cases involving duty of Rs.7,08,852, was attributed to non receipt of test reports from chemical laboratory. The delay ranged from one month to more than 6 months.

In 5 out of those 12 cases the assess-

ments were further delayed by periods ranging between one to more than six months even after receipt of test reports from chemical laboratory. The duty involved in those five cases was Rs.6,51,114.

(iii) Custom House Kandla (Collectorate of Customs, Rajkot)

The delay in finalisation of assessments in 14 cases involving duty of Rs.13,10,691, was attributed to non-receipt of test reports from chemical laboratory. The delay renged between 1 to 6 months. In 9 out of those 14 cases the assessments were delayed between one to more than six months after the receipt of test reports from the chemical laboratory. The duty involved in those 9 cases was Rs.11,67,427.

9. Non-recovery of duty

The steamer agents should make arrangements for payment of duty within 5 days from the date of completion of assessment. The procedure envisages that the process of filing of bill of entry for assessment to duty of the stores mentioned therein and the actual payment of duty should be completed within a span of 15 days from the date of receipt from the steamer agents of the inventory of stores duly signed by the preventive officer.

An amount of Rs.122.53 lakhs on account of duty on fuel oil and other stores was pending recovery on 31 March 1988. Its analysis was as under:

	Amount of duty on	
	Fuel	Otherstores
	(Rs. in lakhs)	
Less than 1 year	35.20	9.22
Between 1 year and 3 years	18.40*	-
More than 3 years	49.10	10.61
Total	102.70	19.83

*Includes other stores also.

In this connection following further observations are made:

(i) Custom House Madras

(a) Bills of entry in respect of ship stores of 20 vessels had been filed by 1985-86. However, duty had been collected after completing assessment in four cases only two in 1986-87, one in October 1986 and one in May 1987. Further delay in Collection of customs duty ranged from 3 months to 1 year. The correctness of these assessments could not be acertained in audit because the relevant files were not made available. No duty was found collected after May 1987.

(b) In respect of a vessel "M.T.Jag Jyoti" which reverted to coastal run on 28 April 1982 the assessment was preaudited by I.A.D on 16 January 1985, the duty of Rs.3.02 lakhs has not been recovered (May 1989).

(c) In respect of 27 vessels where duty had been collected, the delay in collection ranged from 2 years to 9 years. The correctness of assessments in these cases also could not be checked in audit as the relevant files were not available.

(ii) In the customs ports under the Collector of Customs (preventive) Ahmedabad, delays ranging between one month to more than a year was noticed in audit in collection of duty of Rs.81.46 lakhs after finalisation of assessment in 57 cases.

(iii) In Cochin custom House also delays ranging between 3 to 7 years in collection of customs duty was noticed in audit.

The delay on the part of customs authorities in recovering duty even after completion of assessment amounts to financial accommodation to the steamer agents by the Custom Houses.

The amount of duty involved was as under:

Collector of Customs	Year 1985-86		Year 1986-87		Total	
	No. of cases	Amount (Rs. in lakhs)	No. of Cases	Amount (Rs. in lakhs)	No. of Cases	Amount (Rs. in lakhs)
1. Ahmedabad						
a) Sikka Port	11	47.55	5	23.95	16	71.50
b) Vadinar Port	8	32.37	5	22.88	13	55.25
2. Rajkot (Kandla Port)	1	0.89	-	-	1	0.89
Total	20	80.81	10	46.83	30	127.64

10. Irregularities in the assessment

(i) In two cases of vessels 'M.V. Nirvan Rohini' and 'M.V. Avaminti' which reverted to coastal run at the port of Mundra (Under the control of C.C (prev), Ahmedabad on 28 October 1986 and 5 April 1987 respectively, lubricating oil imported into India was not subjected to additional duty at the rate of Rs.3,675 per tonne under subheading 2710.60 of the schedule to the Central Excise Tariff Act 1985. This resulted in duty being levied short by Rs.44,365.

(ii) Custom House Madras

Discrepancies between the quantities shown in the inventory and the relevant bills of entry were noticed in the following two cases.

(a) Vessel "M.T. Prem-Doot" - Date of reversion (31 March 1988)

The quantity of fuel oil on 31 March 1988 as per original inventory was 296.40 tonnes. In the relevant bill of entry filed on 31 March 1989, 101.5 tonnes (which was the quantity as per closing inventory) was taken incorrectly as the quantity liable to duty. Further 30.1 tonnes of diesel oil and 2,395 litres to lubricating oil, as per the inventory, were not noted in the bill of entry and they, therefore, escaped assessment of duty. The total loss of revenue was Rs.0.67 lakhs.

(b) Vessel "Jag Lakshmi" - Date of reversion (6 March 1987)

101.9 tonnes of diesel oil, as per inventory was omitted to be included in the bill of entry which was filed on 31 March 1989 (i.e. after the lapse of more than two years). Duty not levied on this account worked out to Rs.0.40 lakhs.

(iii) Custom House Tuticorin

(a) Two vessels 'M.V. DIGLIPUR' and 'M.V. CHENNAI NERMAI, reverted to coastal run on 17 March 1985 and 12 February 1986. Although the concerned bills of entry for assessmemnt of duty on furnace and diesel oils were filed on 20 April 1985 and 11 March 1986 respectively, yet those bills of entry were not assessed (May 1989). The amount of duty involved was Rs.5.97 lakhs.

(b) In respect of the vessel 'M.V. Diglipur' which reverted to coastal run on 17 March 1985, 11.17 kilolitres of lubricating oil (value Rs.89,360) and foreign provisions (value Rs. 2932), which figured in the inventory, were not included in the bill of entry filed by the ship agent on 17 March 1985. The short levy of duty on the omitted items amounted to Rs.77,920.

(c) In respect of the vessel 'M.V. Channai Nermai, which reverted to the coastal run on 12 February 1986, the quantities of furnace oil and interfuel oil were shown in tonnes in the inventory, those quantities were adopted as kilo litres as such in the bills of entries without converting them into kilolitres for the purpose of assessment of duty. The amount of differential duty could not be worked out for want of details.

(iv) Custom Houses at Madras and Tuticorin

It was noticed that in both the Custom Houses at Madras and Tuticorin inventory at normal room temperature was adopted as such in the bill of entry for the purpose of assessment

without reducing the volume to 15°C which was the basis for levy of duty. The amount of differential duty could not be worked out for want of details.

(v) Custom House Calcutta

The following vessels reverted to coastal run from foreign voyage.

Name & No. of vessel	Date of reversion to coastal run	Oil lying on board the vessel			
		Furnace oil Tonnes	Diesel oil Tonnes	Lub oil Kl.	Heavy oil Tonnes
Calcutta port					
1. M.T.Nandkishore 666/85* 773/85**	19 December 1985	454.1	99.20	27.273	NIL
2. M.V. Vayudoot 644/87* 764/87**	22 October 1987	90.0	28.35	9.430	NIL
3. M.V. Vayudoot 517/87* 611/87**	29.30 August 1987	89.3	52.70	11.270	NIL
Haldia Port					
4. M.T. Jagpalak 155/85* 319/85**	30 August 1985		88.91	37.853	354.44
5. M.V. Jagpalak 207/85* 456/85**	20 December 1985	167.0	125.43	41.755	NIL
6. M.V. Pawan Doot 43/87(h)* 81/87 (H)**	28 February 1987	333.52	52.02	NIL	NIL

* Indicates Import Rotation No.
** Indicates Export Rotation No.

The Custom House did not levy any duty on any of those oils on the grounds that those goods were of 'Indian origin' as certified in the inventory of stores. The steamer agents, however, did not make any declaration inthe bills of entry that those oils were duty paid oils.

It was pointed out in audit that unless concrete evidence of payment of duty on the oils lifted out of India by those vessels on foreign run was produced, the non levy of duty was irregular.

The irregularity resulted in nonlevy of duty of Rs.9.55 lakhs.

11. Other Irregularities

(i) Drawback payment cases

The revised procedure envisages that at the time of reversion of a vessel to coastal run her Master should pay the customs duty on the entire quantity of ships' stores (or a portion of the ships' stores at the discretion of the steamer agents) manifested and claim the amount of customs duty on unutilised ships' stores at the time of reversion to foreign run as drawback.

However, due to the non implementation of the revised procedure in regard to payment of customs duty on the entire quantity of ships' stores (or the portion of quantityof ships stores as the case may be) at the initial stage and claiming the drawback amount at a later stage, there were no cases for claiming drawback.

(ii) Non concellation of guarantee certificate

To safeguard revenue the Preventive department at the port of reversion of the vessel to coastal run, under the revised procedure, should take simple guarantee from the steamer agent in respect of private property of the crew. Subsequently, when the crew are finally paid off, their baggage is decleared in accordance with Crew Baggage Rules. The Custom House at which the

reversion of the vessel to foreign run takes place again, would ensure that all the private property declared by the crew is properly accounted. A certificate to that effect shoud be issued by the Preventive department of the last Indian Port of call to the steamer agents. The guarntee is cancelled when the steamer agent produces this certificate at the original customs port at which reversion to coastal trade occured.

Following was the position of guarantees obtained and cancelled during the years 1985-86 to 1987-88 and those outstanding at the end of each of those years. This did not include the figures relating to Bombay Custom House on account of non-availability of concerned files.

	No. of guarantees	1985-86	1986-87	1987-88
i)	pending at the beginning of the year	271	235	235
ii)	received during the year	50	77	66
iii)	cancelled during the year	86	77	65
iv)	pending at the end of the year	235	235	236

The analysis of 236 guarantees pending on 31 March 1988 was as under:

Less than one year	35
Between one to three years	64
Over three years	137
Total	236

In Calcutta Custom House, 174 guarantees were outstanding for cancellation at the end of 31 March 1988, out of which 126 cases were stated to be pending in courts.

In Madras, Tuticorin and Vizag custom Houses, no guarantees were obtained from the steamer agents. The department argued that clearance of crew baggage was watched by means of a circulating copy sent through the Master of the vessel in a sealed cover to the customs authorities at the subsequent ports and that clearance of goods at the time of signing off was watched through copies in which endorsement of clearance of goods is made.

In customs ports under collectorate of Customs (Prev) Ahmedabad and collector of Custom Rajkot there were 33 guarantees pending cancellation even though vessels had reverted to foreign run from coastal trade.

(iii) Fuel oil in aviation tanks

To facilitate recovery of duty/payment of drawback on the fuel/lubricating oil in the tanks of the incoming aircrafts of Indian Airlines, a procedure was formulated in April 1971 whereby the total duty leviable on imports during a month is set off against the total drawback payable on exports during that month.

For this purpose, Government have issued notification 154-Cus dated 2 August 1976 as amended on 22 April 1987 exempting from payment of duty, so much of the quantity of fuel, when imported into India in the tanks of aircraft of Indian Airlines as is equal to the quantity of the same type of fuel which was taken out of India. At Air Customs Trivandrum Airport though Indian Airlines claimed refund of central excise duty on the quantity of fuel consumed in its flight to Colombo and Male, yet it was not clear from the proforma accounts submitted by that Airlines whether in any of the flight coming from Colombo and Male, quantity of fuel brought in its tank was more than the quantity of fuel taken out of India. The customs department was asked to verify this aspect from the log books of the aircraft to see whether in any case import duty was leviable from 1985-86 onwards. Reply has not been received (May 1989).

(iv) The refund of central excise duty on fuel is granted by the central excise department after verifying bills of entry, shipping bills and proforma accounts. Following refunds of central excise duty were made during the years from 1985-86 to 1987-88:

Year	(Rs. in lakhs)
1985-86	32.81
1986-87	38.96
1987-88	46.89

The claims for these refunds are required to be made before expiry of six months. It was, however, seen from the entries in refund register that the refund claim of Air India for the months of August and September 1987 for Rs.5,55,737 was received in the Divisional Office of central excise collectorate Cochin on 18 April 1988 (i.e. after the prescribed time limit of 6 months). The refund was sanctioned on 10 May 1988. It was pointed out in audit that as the aforesaid payment of refund was time barred, it was irregular. The correctness of the amount of refund claim could not be verified as the relevant file was not made available to audit

12. Non production to Audit of files relating to vessels which reverted to coastal trade

According to information made available by the Bombay and Goa Collectorates of Customs, 215 vessels/aircrafts reverted to coastal trade during the years 1985-86 to 1987-88. Out of these 87 ships' stores files only were made availale to audit for scrutiny. The remaining 128 files relating to 128 vessels which reverted to coastal trade were not made available. The department stated that those files were misplaced. In the circumstances the quantum of ships' stores which remained on board at the time of reversion of vessels to coastal run and the duty liability thereon could not be ascertained in audit.

The aforesaid appraisal was sent to the Ministry of Finance in August 1989; their reply has not been received (November 1989).

1.03 Man made filaments and man made staple fibres and products thereof

(1) Introduction

Central Excise duty for the first time was imposed on rayon and artificial silk fabrics on 1 March 1954 by adding item 12 A to the first schedule to the Central Excises and Salt Act, 1944 through the Finance Act, 1954. Rayon and synthetic fibres and yarn were brought under the central excise net with effect from 1 December 1956. Thereafter in March 1972 and June 1977, the scope of excise duty on these fibres and fabrics was further extended. After the introduction of Central Excise Tariff Act 1985 replacing the schedule I ibid with effect from 28 February 1986 man made filaments, yarns and products thereof are classifiable under Chapters 54 and 55 of the schedule to that Act.

(2) Fiscal levies

Following duties are leviable on man-made filaments, fibres, yarns and fabrics thereof :

i) Basic excise duty under the Central Excises and Salt Act, 1944;

ii) Special excise duty under the Finance Act;

iii) Cess under the Khadi and other Handloom Industries Development (Additional duty on cloth) Act, 1953;

iv) Additional excise duty under the Additional Duties of Excise (Goods of Special Importance) Act, 1957; and

v) Additional duty of excise under the Additional Duty of Excise (Textiles & Textile Articles) Act, 1978.

(3) Central Excise control

Earlier, Self Removal Procedure was applicable to the factories producing manmade filaments, fibres, yarns and products thereof. Under this procedure a large measure of trust was placed on the manufacturers' declarations made by them and their accounts. This procedure has been discontinued from 28 February 1986 and the factories have been brought under physical control, under which the Central Excise Officers exercise physical control at the factory gate. The technique of control provides for checks by Supervisory Officers at various stages right from the stage of receipt of raw materials, through process of manufacture, packing, storage and upto the final removal of the manufactured products from the factory.

(4) Excise licensees

The value of manmade filaments, fibres, yarns and fabrics produced during the years 1986-87 and 1987-88 and the amount of Central Excise duty recovered thereon during the years are given below :-

Year	Value of goods cleared (Rs. in crores)	Amount of duty paid (Rs. in crores)
1986-87	6301.75	1645.64
1987-88	4193.94	1891.72

(5) **Scope of audit**

The scope of audit of assessment documents relating to levy, assessment and collection of central excise duty on the manmade filaments, fibres, yarn and fabrics was designed to test check the efficiency of the system of assessment of central excise duty on these goods. In particular, the following aspects were seen :

i) The entire production of goods was taken on record and there was no suppression thereof;

ii) The goods were classified correctly;

iii) The duty was levied at correct rates, its amount was assessed correctly and credited to Government accounts promptly.

iv) All the duties leviable under the various Acts were correctly assessed as laid down in the Tariff or at the rates in force from time to time.

(6) **Highlights**

A review of the system of levy, assessment and collection of duty on goods falling under Chapters 54 and 55 was conducted. The results of review are contained in the succeeding paragraphs which highlight the following:-

Twenty two units did not pay duty of Rs.53.82 crores on the goods produced by them and used captively for further manufacture of other products.

Incorrect availment of concessional rates of duty leading to underassessment of Rs.4.94 crores.

Incorrect classification of excisable goods resulting in short levy of duty of Rs.3.94 crores.

Short accountal of production of excisable goods leading to the escapement of duty of Rs.2.92 crores.

Short recovery of additional duty of Rs.9.69 lakhs under the Additional Duty of Excise (Textile & Textile Articles) Act, 1978.

Short levy of duty of Rs.4.74 lakhs on account of shrinkage and shortages of fabrics.

Other irregularities involving duty of Rs.35.68 lakhs.

Incidence of additional excise duty on cheaper cloth like 'sulabh' became more than that on costlier cloth due to restructuring of duty done on 25 November 1987 and again on 9 December 1987.

(7) **Non levy of duty on excisable goods captively consumed within the factory of their production**

Rules 9 and 49 of Central Excise Rules, 1944 require that duty shall be paid on excisable goods before their removal from any place, where they are produced or manufactured or any premises appurtenant thereto, whether for consumption, export or manufacture of any other commodity in or outside such place.

Following twenty two cases of removal of manmade filaments, fibres, yarns etc., for the manufacture of other manmade yarn without payment of duty of Rs.53.82 crores were noticed in test audit.

(i) **Tow**

(a) An assessee in Madras collectorate manufacturing polyester staple fibre, cleared polyester tow without payment of duty for the manufacture of polyester fibre and polyester tops falling under heading 55.01 in the same factory. The department did not demand duty for the clearance of such tow from April 1986 to October 1987. This resulted in non levy of duty of Rs.42.92 crores.

(b) Another assessee in Coimbatore collectorate manufacturing acturing artificial tow and artificial staple fibre (heading 55.02) out of wood pulp, cleared the tow without payment of duty for the manufacture of artificial staple fibre within the factory of production. As the clearance of artificial tow (heading 55.02) for captive consumption without payment of duty was neither covered under third proviso to Rules 9 and 49 nor under any exemption notification, it resulted in non-payment of duty of Rs.5.20 crores during the period from April 1986 to March 1988.

The irregularity was pointed out in audit in April 1989. The department accepted

the facts and stated (June 1989) that the tow was not an excisable commodity as it was (i) neither marketable nor marketed; (ii) not stable; and (iii) not quantifiable.

(c) An assessee in Chandigarh collectorate produced 'viscose polyester tops (sliver)' and consumed it captively in the manufacture of cellulosic spun yarn/polyester yarn without payment of duty. This resulted in non-collection of duty of Rs.1.18 crores during the year 1986-87 and 1987-88.

Non-levy of duty was pointed out in audit (May 1989); the reply of the department has not been received (July 1989).

(d) A manufacturer of polyester staple fibre in Meerut collectorate manufactured polyester tow, an excisable commodity falling under heading 55.01 and used it captively in the manufacture of polyester staple fibre without payment of duty, which resulted in escapement of duty of Rs.8.61 lakhs on tow lost in the process of manufacture of polyester staple fibre during the period from March 1986 to February 1988.

At the time of audit in March 1989, the department stated that the process of manufacture being continuous one, tows were not sold in the market and hence not subjected to duty. The reply is not acceptable as tow is an excisable product under heading 55.01 and Rules 9 and 49 provide for levy of duty even on intermediate excisable goods coming into existence in a continuous process.

The matter was reported to the department in May 1989; its final reply has not been received (July 1989).

(ii) **Yarn**

(a) Four assessees in Meerut and Kanpur collectorates engaged in the manufacture of polyester and nylon filament yarns, produced monofilament yarn and used it captively in the manufacture of partially oriented yarn without payment of duty. Non-payment of duty at the monofilament yarn stage resulted in escapement of duty of Rs.205.11 lakhs on mono-filament yarn lost at various stages of processing viz take up waste, undrawn and drawn wastes etc., during the period from July 1986 to February 1989.

The irregularity was pointed out in audit (May 1989); the reply of the department has not been received (July 1989).

(b) Four assessees in Delhi collectorate, were paying duty after conversion of single yarn into double yarn. Another assessee in the same collectorate paid duty after converting the multifilament yarn into polyester filament yarn i.e., monofilament yarn. Non-payment of duty at the single yarn/multifilament yarn stage, resulted in escapement of duty of Rs.101.34 lakhs on single yarn/multifilament yarn lost in the course of manufacture of finished yarns during the years 1986-87 and 1987-88.

Escapement of duty was pointed out in audit (April 1989), reply of the department has not been received (June 1989).

(c) Three assessees in Chandigarh collectorate, produced nylon filament yarn, non textured/multifilament yarn/ single yarn and used them captively in the manufacture of nylon filament yarn textured/mono-filament yarn/double yarn respectively without payment of duty which resulted in escapement of duty of Rs.93.58 lakhs on nylon filament yarn, non texture/multifilament yarn/ single yarn lost in the process of manufacture of finished goods.

The short levy of duty was pointed out in audit in May 1989; the reply of the department has not been received (July 1989).

(d) An assessee in Indore collectorate manufactured single yarn and removed it without payment of duty for the manufacture of doubled/folded yarn falling under various headings of Chapter 55. The assessee did not maintain any production accounts for the production of single yarn and its utilisation. The quantity of yarn wasted in the process of doubling/folding escaped levy of duty.

On the escapement of duty on single yarn lost in process of doubled/folded yarn being pointed out in audit (June 1987), the department issued (August 1988 and January 1989) show cause-cum demand notice for Rs.8.27 lakhs covering the period from April 1983 to November 1988 and claimed that the issue was already under correspondence with the assessee. The fact, however, remains that the recovery proceedings were actually started only after the irregularity was pointed out in audit in June 1987.

Further developments of the case have not been reported (July 1989).

(e) Another manufacturer in Meerut collectorate produced nylon filament yarn nontextured (sub heading 5402.11) and used it in the manufacture of nylon filament yarn textured (sub heading 5403.11) without payment of duty. As the yarn before texturisation was a fully finished excisable commodity, its use without payment of duty in the process of texturisation was irregular and resulted in escapement of duty of Rs.30.29 lakhs on non textured yarn lost in the process of texturisation during the period from March 1986 to January 1989.

The irregularity was pointed out in audit (May 1989); reply of the department has not been received (July 1989).

(f) A unit in Jaipur collectorate manufactured yarn from manmade staple fibre wound it on cones and partly sold it after payment of duty and used the remaining captively for doubling of yarn without payment of duty during the period 1986-87 and 1987-88. Removal of yarn without payment of duty for doubling, resulted in escapement of duty of Rs.1.92 lakhs on the yarn lost in the process of doubling.

The omission was pointed out in audit (June 1989); the reply of the department has not been received.

(g) Three assessees in Chandigarh collectorate, manufactured single yarn (headings 55.05 and 55.06) from artificial staple fibre and removed it without payment of duty for the manufacture of doubled and multifold yarn. Removal of single yarn without payment of duty resulted in escapement of duty of Rs.2.08 lakhs on single yarn lost in the process of its doubling during the years 1986-87 and 1987-88.

The irregularity was pointed out in audit (June 1989); the reply of the department has not been received (August 1989).

(h) Yarn of artificial staple fibres not containing synthetic staple fibres i.e., cellulosic spun yarn is classifiable under heading 55.05 and such yarn supplied in plain (straight) reel hanks whether single or multiple fold is classifiable under sub heading 5505.20 and is chargeable to nil rate of duty.

In a spinning mill in Bangalore collectorate cellulosic spun yarn on cops which were produced at the spindle stage (ring frame) was used captively for conversion into yarn in plain (straight) reel hanks and those plain (straight) reel hanks were cleared without payment of duty. As the yarn in plain (straight) reel hanks was chargeable to nil rate of duty and there was no notification granting exemption to such yarn on cops captively consumed, it resulted in the non levy of duty of Rs.89,239 on the clearances during the period from May 1987 to March 1988.

(8) Non levy/short levy of duty due to incorrect grant of exemp-tion

Exemption from duty to the manmade filaments, fibres, yarns and fabrics thereof falling under Chapters 54 and 55 have been notified under Rule 8(1) of the Central Excise Rules, 1944 (now Section 5A of the Central Excises and Salt Act, 1944) from time to time.

Nineteen cases of incorrect grant of exemption resulting in non levy/short levy of duty of Rs.4.94 crores were noticed in test audit. These cases are given below :

(i) Tops

As per a notification dated 29 July 1986 synthetic tops (heading 55.01) manufactured out of duty paid fibre or tow, are exempt from the whole of duty. Further, articles consisting of a mixutre of two or more textiles materials should

be treated as consisting wholly of that textile material which predominates by weight over any other single textile material in terms of note 2(A) of Section XI of the Schedule to Central Excise Tariff Act, 1985.

(a) A unit in Meerut collectorate produced tops (heading 55.02) in which viscose predominated by weight and used them without payment of duty in the manufacture of polyester viscose cellulosic spun yarn treating those tops as synthetic tops instead of viscose tops under the aforesaid notification of 29 July 1986 during the years 1987-88 and 1988-89. This was irregular because the tops should have been treated as made of viscose in view of note 2(A) ibid and resulted in non levy of duty of Rs.1.27 crores.

The omission was pointed out in audit (April 1989); the reply of the department has not been received (July 1989).

(b) Three assessees in Bombay I collectorate, produced tops out of carded and combed viscose and polyester staple fibre in which viscose predominated by weight and availed exemption from the whole of duty on such viscose tops in terms of the aforesaid notification dated 29 July 1986. As that notification did not cover viscose tops, the grant of exemption was irregular and resulted in non-levy of duty of Rs.23.10 lakhs during the years 1986-87 and 1987-88.

The irregularity was pointed out in audit (May and June 1989); the reply of the department has not been received (August 1989).

(c) An assessee in Baroda collectorate manufactured blended tops having 48 per cent wool and 52 per cent viscose and cleared them without payment of duty as per instructions of Ministry of Finance contained in their letters dated 4 April 1986 and 23 December 1986. As these instructions have no legal force and since the notification issued on 29 July 1986 exempts synthetic tops only, the tops manufactured out of viscose and wool, in which viscose predominated in weight would not be covered under that notification. The incorrect grant of exemption from duty on the tops cleared during the period from March 1986 to July 1988 amounted to Rs.19.71 lakhs.

The incorrect grant of exemption was pointed out in audit (April 1989); the reply of the department has not been received (July 1989).

(ii) Polyester staple fibre

As per a notification issued on 28 August 1985 polyester staple fibre (sub heading 5501.20) is exempt from the whole of duty of excise leviable thereon if such fibre is intended for use in the manufacture of low priced fabrics under a programme, approved by the Textile Commissioner. The exemption is subject to the condition that the manufacturer of the fabrics shall, within such period as the Assistant Collector of Central Excise may specify in this behalf, produces a certificate issued by Textile Commissioner to the effect that the polyester fibre has been used for the aforesaid purpose. The notification stipulated that the exemption is also applicable to the synthetic staple fibres contained in the fents, rages and chindies of fabrics only upto an aggregate quantity not exceeding 8 per cent of the total quantity of clearances of "sound" fabrics.

(a) A unit in Meerut collectorate, which was engaged in the manufacture of polyester staple fibre, cleared during the period from January 1986 to August 1988, 692800 kilograms of polyester staple fibre without payment of duty of Rs.133.67 lakhs under the aforesaid notification of 28 August 1985. The end use certificates from the Textile Commissioner were not obtained even after the lapse of periods ranging between 6 months and 3 years in respect of duty free clearance of the fibre. In the absence of the end use certificates, exemption availed by the assessee was not regular.

The omission was pointed out in audit (January 1988); the reply of the department has not been received (April 1989).

(b) Three assessees in Bangalore & Belgaum collectorates, purchased polyester staple fibre without payment of duty for the manufacture of low priced blended fabrics under a programme approved by the Textile Commissioner. Those assessees produced and cleared

22,34,097 linear metres of sound blended fabrics containing 1,20,764 kilograms of polyester staple fibres as also fents, rags and chindies containing 25,455 kilograms of polyester staple fibre during the period from September 1987 to March 1988. In terms of the above notification dated 28 August 1985, only 6,897 kilograms of polyester staple fibre contained in the fents, rags and chindies of the blended fabrics was exempted from the duty. The balance quantity of 15,588 kilograms of polyester fibres contained in those fents, rags and chindies, therefore, escaped levy of duty of Rs.3.90 lakhs.

The irregularity was pointed out in audit (May 1989); the reply of the department has not been received (June 1989).

(c) A textile mill in Indore collectorate, produced and cleared during the period from April 1986 to October 1988, 8,80,107 linear metres of low priced fabrics containing 94,871 kilograms of the polyester fibre as also 2,14,093 linear metres of fents, rags and chindies which contained 20,083 kilograms of the polyester fibre. As per notification dated 28 August 1985 only 7,590 kilograms of polyester fibre contained in fents, rags and chindies, was eligible for exemption. The balance quantity of 12,493 kilograms was therefore, not eligible for exemption on which duty not paid amounted to Rs.3.17 lakhs.

The irregularity was pointed out in audit (March 1989). Department's reply has not been received (June 1989).

(iii) Fabrics of man-made staple fibres

Fabrics of man-made staple fibres woven on handlooms (sub heading 5512.21) are assessable to basic and additional excise duties at nil rate, if they are processed with the aid of power or steam in a factory owned by a State Government Handloom Development Corporation or Apex Handloom Co-operative Society and approved, in either case, in this behalf by Government of India on the recommendation of the Development Commissioner for Handlooms.

(a) A textile processing mill in Coimbatore collectorate set up by the State Government in the cooperative sector for the development of handloom industry, which was not approved by the Government of India as required under sub heading 5512.21, processed man-made fabrics woven on handlooms and cleared them at nil rate of duty from April 1986 onwards. The mill availed full exemption on the basis of a letter dated 2 July 1984 addressed by the Deputy Development Commissioner (Handlooms) office of the Development Commissioner for Handlooms, New Delhi to the Collector of Central Excise, Madras. Since the condition prescribed in the aforesaid sub heading 5512.21 was not fulfilled, clearance of fabrics at nil rate of duty was not in order and resulted in non levy of duty of Rs.43.92 lakhs on clearances of man-made fabrics woven on handlooms during the period from April 1986 to June 1988.

On the irregular grant of exemption being pointed out in audit (May 1989), the department stated (June 1989) that the Deputy Commissioner (Handloom) is being asked to ascertain whether the unit stands as approved unit by Government of India. Further developments have not been received (July 1989).

(b) A State Government Corporation in Bangalore collectorate processed man-made fabrics woven on handlooms with the aid of power, classified them under sub heading 5512.21 cleared them at nil rate of duty without obtaining the approval of Government of India. In the absence of such an approval, the processed fabrics could not avail the statutory exemption admissible under sub heading 5512.21. Such processed fabrics should have been cleared after payment of duty under the sub heading 5512.26. This resulted in short levy of duty of Rs.14.72 lakhs during the period from April 1986 to October 1988.

On this being pointed out in audit (March 1989), the department opined (May 1989) that non approval by Government of India was a technical lapse and exemption could not be withheld under the said sub heading on that ground. The department added that a show cause notice was, however, being issued to the assessee in this regard. Further developments have not been received (July 1989).

(iv) **Polyester staple fibres and polyester filament yarns**

Under a notification dated 3 April 1986, polyester staple fibres and polyester filament yarns are exempted from so much of the duty of excise leviable thereon as was equivalent to the duty paid on monoethylene glycol used in the manufacture of that fibre or yarn.

(a) Two assessees in Pune and Bombay III collectorates manufactured polyethylene terephthalate (polyester polymer chips) falling under heading 39.08 using dimethyl terephthalate and mono ethylene glycol as raw materials. The chips so manufactured were used within the factory for manufacture of polyester filament yarn. While utilising the credit of duty paid on mono ethylene glycol for payment of duty on polyester filament yarn, the assessee did not restrict the credit to the amount of duty corresponding to the input actually used in the final product which resulted in excess grant of exemption to the extent of Rs.42.93 lakhs during the period from May 1986 to February 1989.

The irregularity was pointed out in audit (June 1989); the reply of the department has not been received (August 1989).

(b) An assessee in Baroda collectorate manufacturing polyester filament yarn (heading 54.02) was availing set off of duty paid on mono ethylene glycol used in the manufacture of polyester filament yarn in terms of a notification issued on 3 April 1986. During the manufacturing process of polyester filament yarn, methanol, waste yarn and glycol sludge emerged as bye products. Since those bye products did not qualify for set off of duty under the aforesaid notification of 3 April 1986, the credit of duty attributable to that portion of mono ethylene glycol contained in those bye products required to be withdrawn.

On this being pointed out in audit (September 1987), the department raised two demands of Rs.4.71 lakhs and Rs.3.51 lakhs for the periods from 1 March 1988 to 31 August 1988 and 1 September 1988 to 31 January 1989 respectively out of which the first demand was confirmed on 30 January 1989. Further progress have not been reported (July 1989). Similar demand of Rs.18.75 lakhs for the period from May 1986 to February 1988 has not been raised (July 1989).

(c) A unit X in Aurangabad, obtained mono ethelyne glycol on behalf of another unit Y in Rewari on payment of duty and used it in the manufacture of polyester chips (sub heading 3907.60) which were exempted from the whole of duty under a notification dated 1 March 1986. The chips so manufactured were sent to unit Y which used them for further manufacture of polyester filament yarn. Since the polyester chips were exempted from the whole of duty, the mono ethelyne glycol used in the manufacture of those chips was not entitled to the exemption from duty under a notification dated 3 April 1986. Irregular grant of exemption resulted in non payment of duty of Rs.19.19 lakhs from June 1986 to March 1988.

In reply to audit query the department explained that credit on mono ethelyne glycol was allowed only after relaxation by the Central Board of Excise and Customs of the set off procedure laid down by the Collector vide their letter dated 23 November 1987 addressed to the Collectors of Central Excise, Delhi, Meerut and Jaipur.

The instructions contained in Board's aforesaid letter of 23 November 1987 extends the scope of notifications dated 3 April 1986 from one factory to two factories. Moreover in such cases the procedure prescribed in Chapter X of the Central Excise Rules has to be followed in terms of another notification dated 4 May 1987.

(v) **Nylon filament yarn**

As per a notification issued on 1 March 1986, polyamide chips (heading 39.08) used in the manufacture of nylon yarn are exempted from duty and if their use is elsewhere than in the factory of production the procedure set out in chapter X of Central Excise Rules has to be followed. This notification was amended on 28 April 1987 to include nylon mono filament yarn.

Two assessees in Bombay III and one in Bombay I collectorates manufactured synthetic

(nylon) mono filament of 60 deniers or more and of cross sectional dimension not exceeding 1 mm and cleared them without payment of duty during the year 1986-87. Since the amendment had no retrospective effect, polyamide chips used in the manufacture of nylon monofilament yarn prior to 28 April 1987 were not eligible for exemption from duty. Incorrect availment of exemption on polyamide chips brought under chapter X procedure without payment of duty and used in the manufacture of nylon monofilament yarn prior to 28 April 1987 resulted in non levy of duty of Rs.31.23 lakhs during 1986-87.

Replies to the audit observations communicated to the department in May and June 1989 have not been received (July 1989).

(vi) Samples

As per a notification issued on 21 February 1976 as amended, samples of man made fibres drawn for test in the laboratory within the factory not exceeding 350 grams at a time and subject to a maximum of 25 kilograms per month are exempt from a payment of the whole of the duty leviable thereon provided that the remnants left over after test are either returned to the factory or destroyed.

A unit in Meerut collectorate, drew samples of polyester fibre from the fibre line for test in the laboratory within the factory in quantities exceeding 350 grams at a time and much in excess of the overall limit of 25 kilograms per month, but did not pay duty on the excess quantities drawn. After test, major portion of the samples drawn was stated to have been returned to the factory and quantities around 10 kilograms each month were consumed in the production of yarn (for test purposes) which was stated to be accumulating for destruction. During the period from June 1987 to February 1989 the total quantity of samples of polyester fibre drawn was 22852.5 kilograms out of which the excess quantity worked out to 22327.5 kilograms on which duty of Rs.4,32,109 was not recovered.

It was stated in reply that the excess quantity was being sent back to the fibre line and the account for which was being verified from time to time by the proper officer. Reply was not tenable as the limit prescribed in the notification is regarding drawal of samples and not for its consumption in tests within the factory. The drawal of samples in excess of 25 kilograms in a month was, ab initio, irregular.

The matter was reported to the department (May 1989); its further comments have not been received (July 1989).

(vii) Irregular sale of yarn to cooperative societies etc.

As per a notification dated 1 March 1986 as amended by another notification on 1 March 1987 certain varieties of yarn cleared to registered handloom cooperative societies or organisations set up or approved by Government for the development of handlooms are eligible for NIL rate of duty if payment for such yarn is made by cheque drawn by such co-operative society or organisation on its own bank account.

A unit in Cochin collectorate, produced certain varieties of yarn and sold them to three registered co-operative societies and one organisation without payment of duty under the above mentioned notifications, but payments were not made by the co-operative societies or corporation by cheques drawn on their bank account as stipulated in the notifications. Instead, the payment were arranged through bank account by negotiating the purchase documents through the bankers.

On the inadmissibility of the exemption being pointed out in audit (October 1987), the department accepted the objection (March 1988 and November 1988) and reported that as the assessee misled the department into believing that the payments for the consignments were made by cheque drawn by the consignees on their bank accounts, action was being taken to issue show cause notice for demand of duty extending to five years. Further developments have not been received (June 1989).

(9) Short levy of duty due to misclassification of products

Classification of a product under a wrong heading or sub heading results in incorrect levy of duty. In the case of man-made filament yarn (Chapter 54), rate of duty is linked to the denierage slab; the lower the denierage slab, the higher the rate of duty. The determination of correct denierage of such yarn is, therefore, vital for determination of correct rate and amount of duty.

A test audit of records revealed that ten assessees manufacturing different products of Chapters 54 and 55 misclassified them under incorrect sub headings thereby resulting in short

levy of duty of Rs.3.94 crores. Those cases are given below:-

(i) The central Board of Excise and Customs in consultation with the Chief Chemist and the Directorate of Inspection (C&CE) decided (8 September 1988) that in factories where there is facility for testing filament yarn, the test should be carried out under standard conditions namely 68°F (20°C) and 65 per cent relative humidity. The resultant weight in terms of grammage of 9000 metres of yarn will form the basis to determine the denier of yarn, but where there is no such facility for maintaining the standard conditions for test, the denier of yarn will be determined with reference to the weight of 9000 metres of yarn on even dry basis i.e., after drying yarn to a constant weight at 100°- 105°C, and the denier calculated after giving moisture regain of 4.2 per cent in the case of nylon and 11 per cent in the case of viscose rayon.

(a) A manufacturer in Calcutta II collectorate, produced nylon filament yarn and declared its denierage after applying 13 per cent moisture regain (conventional allowance) instead of adopting the method of calculation as prescribed by the Board in September 1980 in terms of which the percentage of moisture regain should be 11 and not 13. The determination of denierage of such yarn on the basis of incorrect method resulted in underassessment of duty of Rs.2.38 crores during the period from March 1986 to February 1988.

On this being pointed out in audit in September 1988, the department did not admit (January 1989) the audit objection on the grounds that variation of actual denierage from the declared denierage in the present case being within the tolerance limit as per test result of chemical examiner, the declared denierage was acceptable.

The fact, however, remains that in this case the declared denier itself was worked out incorrectly and, therefore, the contention of the department to the effect that the variation between the declared and the actual denier of the yarn in question was within the prescribed tolerance limit has no relevance.

(b) Three manufacturers of nylon filament yarn of various deniers in Trichy and Madras collectorates did not have the facility for maintaining the standard condition for test and, therefore, were testing the yarn without following the prescribed procedure viz., drying the yarn to a constant weight at 100°- 105°C and adding the moisture regain of 4.2 per cent. The procedure adopted by the manufacturers was to weigh 90 metres of yarn in the ambient temperature and relative humidity and multiply it by 100 to get the denier. A tolerance of 4 per cent was also allowed. Since the licensees, interalia, manufactured monofilament yarn of marginal deniers such as 210, 430, 630, 725 and 840 deniers and cleared it at concessional rate of duty under notifications dated 3 November 1962 and 1 March 1988, any variation in the denierage of monofilament yarn would result in denial of concessional rate of duty/lesser duty. Due to climatic conditions prevailing in the factory at the time of testing the yarn, the temperature and humidity may vary and hence the weight of the yarn and consequently the denierage may also vary according to the moisture content in the yarn. If the correct procedure had been followed for testing the denier, there should have been variation in the denierage even after allowing the tolerance of 4 per cent and the assessee would have become ineligible to avail the concessional rate of duty/ lesser rate of duty.

Further, according to Board's letter dated 8 September 1980, the factory officer has to draw samples of yarn of marginal deniers once in a month and send them to the Chemical Examiner for verification.

It was noticed in audit that samples were not taken every month as prescribed by the Board. In one case, samples were not taken and sent to chemical Examiner even once from the inception of the factory (i.e., from July 1987 to March 1989).

The availment of concessional rate of duty and payment of lesser duty was not correct on account of nonfollowing of

correct procedure for testing of deniers by the manufacturers and nontaking of samples by the department. This resulted in short levy of duty of Rs.3.62 lakhs during the period from April 1986 to March 1988.

The above position was brought to the notice of the concerned collectors in May 1989; their replies have not been received (July 1989).

(ii) As per description of sub heading 5504.32, yarn not containg not more than one sixth by weight of other synthetic staple fibres, calculated on the total fibre content, is classifiable under that sub heading with duty at nil rate. Yarn not confirming to the said description will fall under residuary sub heading 5504.39 with duty at Rs.18 per kilogram.

Two units in Delhi collectorate manufactured man-made yarn by mixing acrylic and viscose fibres in the ratio of 70 : 30 respectively, classified their products under sub heading 5504.32 and paid duty at nil rate. The yarn was, however, classifiable under the sub heading 5504.39 as sub heading 5504.32 related to acrylic yarn (synthetic fibres) if mixed with other synthetic fibres of not more than 1/6th in weight, calculated on the total fibre content. Incorrect classification of the yarn resulted in nonpayment of duty of Rs.125.68 lakhs on the clearances made during the years 1986-87 and 1987-88.

On the omission being pointed out in audit (April 1989), the department stated that the words 'not containing any other textile materials' like the sub headings 5504.22, 5506.21 are not mentioned in the description of sub heading 5504.32 and, therefore, it does not prevent, the presence of any other textile material and is, classifiable under the aforesaid sub heading 5504.32. The contention of the department is not correct as the words 'other synthetic fibres' under sub heading 5504.32, itself prevent the presence of any other synthetic staple fibre in excess of 1/6th by weight. Since viscose is an artificial fibre, the yarn in question is correctly classifiable under the sub heading 5504.39.

(iii) As per Rule 4 of the Interpretative Rules, goods which cannot be classified in accordance with Rules 1 to 3 ibid, shall be classified under the heading appropriate to the goods to which they are most akin.

As per note 2(A) of Section XI of the schedule to Central Excise Tariff Act, 1985, articles consisting of a mixture of two or more textile materials are to be classified as if consisting wholly of that textile material which predominates by weight or any other single textile material. As such, viscose/rayon tops which are carded and combed fibres, although not specifically included in the tariff description of heading 55.02 would appropriately be classifiable under that heading.

(a) An assessee in Kanpur collectorate, manufactured blended wool tops in which viscose/rayon predominated by weight, classified them as wool tops under sub heading 5102.90 with effect from 1 March 1986 and paid duty at 12 per cent ad valorem. The assessee stopped paying duty from 1 June 1986 on receipt of Board's clarification of 4/7 April 1986 to the effect that no duty was payable on wool tops.

Since the product manufactured by the assessee was not wool top but was artificial fibre tops because of predominency of artificial staple fibres, those were correctly classifiable under heading 55.02 and the said clarification dated 4/7 April 1986 was not applicable to them. Incorrect classification of the product resulted in short levy of duty of Rs.16.71 lakhs during the period from 1 March 1986 to 31 May 1986.

On the mistake being pointed out in audit (November 1987), the department stated (February 1988) that the blended wool tops were correctly classifiable under heading 51.02 as the tariff description of heading 55.02 does not cover tops. The reply of the department is not acceptable in view of Rule 4 of Interpretation and note 2(A) of Section XI of the Tariff.

(b) An assessee in Calcutta II collectorate, manufactured carded and combed viscose polyester blended staple fibres from duty paid viscose staple fibre and polyester staple fibre and used the

product within its factory, without payment of duty, for manufacturing viscose polyester blended yarn. Since the blended staple fibre had a predominating viscose content it was classifiable as viscose staple fibre in terms of note 2(A) to Section XI of the Tariff. As viscose staple fibre was carded and combed, it was classifiable under heading 55.02 in accordance with the clarification issued by the Ministry of Finance in November 1986. Such blended fibre on its captive consumption, therefore, attracted further duty of Rs.6.60 lakhs during the period from March 1986 to March 1988.

On the omission being pointed out in audit in October 1988, the department did not admit the objection and stated (February 1989) that carded and combed viscose staple fibre was not a manufactured product. It added that it was produced only at the intermediate stage for final manufacture of viscose spun yarn.

The contention of the department is not acceptable as carded and combed viscose fibre is classifiable under heading 55.02 and its captive consumption for manufacturing yarn without payment of duty is neither permissible under Rules 9 & 49 of the Central Excise Rules 1944, nor has any exemption from duty been granted for the purpose.

(iv) Yarn in which artificial staple fibre predominates is classifiable under heading 55.06. Such yarn containing not only artificial staple fibre and polyester staple fibre, but containing other textile materials also attracts duty at the rate of Rs.9.90 per kilogram under sub heading 5506.29.

An assessee in Jaipur collectorate manufactured and cleared 52,492.200 kilograms of yarn containing polyester, viscose and ramie (45:50:5) from November 1987 to September 1988 and 3441.300 kilograms of yarn containing polyester, viscose and cotton (43:50:7) from July 1987 to October 1987 on payment of duty at the rate of Rs.6 per kilogram under sub heading 5504.22. As the said yarn contained viscose (artificial staple fibre) in predominance with other textile materials alongwith polyester staple fibre, it was chargeable to duty at the rate of Rs.9.90 per kilogram instead of Rs.6 per kilogram under sub heading 5504.22. This resulted in under assessment of duty (including additional excise duty) amounting to Rs.2.53 lakhs during the period from November 1987 to September 1988.

The misclassification was pointed out in audit in October 1988, the department admitted the audit objection (April 1989) and issued three demand cum show cause notices aggregating to Rs.2.70 lakhs covering the period from July 1987 to September 1988. Further progress regarding confirmation of demands has not been received (June 1989).

(v) A partnership firm in Bangalore collectorate engaged in the manufacture of synthetic filament yarn obtained high density polyethylene/polypropylene granules as raw materials, converted them into molten form by heating. The molten material was passed through a round die to obtain tubular sheets which were cut to strips of width not exceeding 5 mm. Those strips were subjected to fabricating and twisting processes. The final product assumed the shape of filament yarn of denierage between 750 and 11000 in continuous length which was wound on bobbins and cleared for stitching purposes. The assessee classified the filament yarn under sub headings 5404.96 or 5404.97 depending on denierage, got the classification approved by the department and paid duty on it as artificial filament yarn. Since the filament yarn was manufactured out of HDPE/PP granules, it should have been classified under the sub heading 5402.95 in terms of the definition contained in note 2(D) of Section XI of the schedule to the Central Excise Tariff Act, 1985. On this being pointed out in audit in August 1988, the jurisdictional Assistant Collector rectified the classification of the product from 5404.96 to 5402.95 with effect from September 1988. During the period from November 1986 to June 1988, however, the assessee had cleared 41,930 kilograms of filament yarn at lower rates resulting in short levy of Rs.1.20 lakhs.

When this position was brought to the notice of the collector in December 1988,

he did not accept (January 1989) the objection on the ground that the fabricated strip did not have yarn in continuous line. This contention is not acceptable because :

i) the filament yarn was produced out of HDPE/PP granules and would, therefore, be termed synthetic as per note 2(D) ibid;

ii) the Tariff does not prescribe that the yarn should be in continuous line for its classification as filament yarn;

iii) the jurisdictional Divisional Officer has already approved classification of the goods as synthetic filament yarn under sub heading 5402.95 in the classification list effective from 2 September 1988.

(10) Short levy of duty due to short accountal of production

Rule 53 of the Central Excise Rules, 1944, requires every manufacturer to maintain an account of stock in prescribed form and enter in such account daily (a) description of goods; (b) opening balance; (c) quantity manufactured; (d) quantity deposited in the store room; (e) quantity removed after payment of duty; (f) quantity delivered from the factory without payment of duty for export or other purposes and (g) the rate of duty and the amounts. Rule 55 further requires every manufacturer at the end of every quarter to submit to the proper officer a return indicating therein the quantity of principal raw materials which the Collector may, by order, specify and is used in the manufacture of excisable goods and the quantity of each description of finished goods produced.

Escapement of duty of Rs.2.92 crores on account of short accountal of production by six assessees in four collectorates, was noticed in test audit. Input-output ratios were not prescribed in four other collectorates. Those cases are given below :

(i) The production of fabrics recorded in the central excise records (i.e.RT 5 returns) maintained by two assessees A and B working respectively under the jurisdiction of Bombay I and Bombay II collectorates, was less than the actual production of fabrics exhibited in their annual accounts. Production of fabrics short accounted for worked out to Rs.75.85 lakhs linear metres on which duty amounting to Rs.2.69 crores escaped assessment.

The short accountal of production and escapement of duty was pointed out in audit (May and June 1989). Reply of the department has not been received (August 1989).

(ii) Production records maintained and quarterly returns (RT5) submitted by the assessee under the jurisdiction of Pune collectorate showed that for the period September 1986 to August 1987, 5109 tonnes of nylon yarn was produced. However, as per the annual accounts of the assessee for the same period, the production of yarn was 5130 tonnes. The assessee could not reconcile the discrepancy of 21 tonnes of yarn short accounted for in the central excise records, on which duty amounting to Rs.14 lakhs (approximately) escaped assessment.

The above irregularity was pointed out in audit in June 1989, reply of the department has not been received (August 1989).

(iii) The scrutiny of the records of three assessees in Delhi collectorate, showed that the production recorded in the daily production account (RGI) was less than the production exhibited in Balance Sheet. It was also noticed that the quantity of finished goods recorded in RT5 (quarterly return)/RGI was less than the actual quantity of grey cloth issued for processing. In all there was short accountal of Rs.11.17 lakhs metres of fabrics during the years 1986-87 and 1987-88 on which duty escaped amounted to Rs.9,21,512.

The irregularities were pointed out in audit in April 1989, reply of the department has not been received (August 1989).

(iv) Following was the position of pulp used, viscose yarn produced, visible waste arose and invisible waste in quarterly returns (RT5) for the year 1986-87 and first quarter (April-June 1987) of the year 1987-88 submitted by an assessee to Bombay III collectorate.

(Quantity in tonnes)

Period	Pulp used	viscose yarn produced	visible waste	Invisible waste
1986-87	10,303	9,106(88.37) per cent	569 (5.5) per cent	628(6.09) per cent
April-June 1987	2,605	831(31.09) per cent	138(5.03) per cent	1,613(61.9) per cent

The above table shows that invisible waste was 6.09 and 61.9 per cent of the pulp used during the said periods. The disproportionate percentage of invisible waste of 61.9 per cent during April to June 1987 could not be explained by the assessee; he also did not show the production of viscose yarn separately in his annual accounts.

The matter was reported to the department in June 1989; its reply has not been received (August 1989).

(v) The approximate ratio between principal raw materials and finished products in respect of certain commodities were prescribed by the Directorate of Inspection, Customs and Central Excise in his letters dated 26 April 1971 and 26 April 1972. In respect of rayon and synthetic fibres and yarn, the collectors concerned were asked to fix the ratio for each type of product and for each factory after proper scrutiny on the ground that there existed many types of raw materials for rayon and synthetic fibre and yarn and the ratio would have to be fixed for each variety.

(a) It was noticed in audit that the Central Excise collectorates Madras, Madurai, Trichy and Coimbatore did not prescribe the ratio between principal raw material and finished product in respect of rayon and synthetic fibre and yarn. In the absence of any such ratio, the correctness of production shown by various manufacturers of man made fibres and yarn could not be verified in audit. It was not clear how the authenticity of production and clearance shown by the assessee was verified by the department.

This was brought to the notice of the collectors concerned in May 1989; their reply has not been received (August 1989).

(b) An assessee under the jurisdiction of Bombay III collectorate, manufactured polyester filament yarn using terephthalic acid as raw material. The assessee did not maintain raw material account (Form IV) in respect of terephthalic acid and also did not submit quarterly returns (RT5) to proper officer. In the absence of maintenance of Form IV account and submission of RT5 return to the proper officer it was not clear to audit as to how the authenticity of production and clearance was verified by the department.

(11) Short levy of additional duties of excise

As per Additional Duty of Excise (Textile and Textile Articles) Act, 1978 additional duty is leviable on goods falling under chapters 54 and 55 of the schedule to the Central Excise Tariff Act, 1985. Section 3 of the Act 1978 ibid prescribed that additional duty payable would be on the basic excise duty excluding any set off of duty granted under the Central Excises and Salt Act, 1944.

Two cases of short levy of additional duty of Rs.9.69 lakhs were noticed in the course of test audit which are given below :

(i) As per a notification issued on 10 February 1986, specified man-made yarns falling under chapters 54 and 55 are assessable to additional duty at the rate of 13.64 per cent of the basic excise duty.

A manufacturer of polyester filament yarn (sub heading 5402.20) in Baroda collectorate, paid additional duty on the basis of the net amount of basic excise duty after availing the set off of duty paid on monoethylene glycol contained in the polyester filament yarn during the period from 31 May 1986 to 29 February 1988. It resulted in duty being levied short by Rs.8.63 lakhs.

On this being pointed out in audit in August 1987, the department accepted the objection and raised demand in March 1988. However, the Appellate authority set aside the demand in January 1989 on the ground that the department had instructed the assessee in May 1986 to pay the additional duty on the net amount of duty chargeable after allowing the set off. Thus, incorrect instructions given by the department to the assessee in May 1986, resulted in loss of revenue of Rs.8.63 lakhs.

(ii) As per a notification issued on 19 January 1988, fents and rags of man-made fabrics falling under headings 54.09, 54.12, 55.08, 55.11 and 55.12 were exempted from so much of the duty of excise leviable thereon under the additional duties of excise (Goods of Special Importance) Act, 1957 as in excess of 5 per cent ad valorem provided the aggregate quantity of clearances of such fents and rags did not exceed five per cent of total quantity of clearances of sound fabric under the said heads during a calender year.

A mill in Indore collectorate manufactured and cleared 14,73,915.80 linear metres of man-made fabrics (sound) during the period from 19 January 1988 to 31 March 1988. During the same period, the mill also produced and cleared 1,38,177.40 linear metres of fents and rags of the same fabric availing exemption under the said notification. Since five per cent of the total quantities of clearance of sound fabric was eligible for concession, the clearance of 64,481.60 linear metres at concessional rate was irregular and resulted in short levy of duty of Rs.1,05,553.

The irregularity was pointed out in audit in April 1989, reply of the department has not been received (August 1989).

(12) Non levy of duty on excess shrinkage of fabrics

Processing loss due to shrinkage in length as well as in width takes place when fabrics are subjected to processing.

As per the Director of Inspection of Customs and Central Excise letter dated 24 April 1971, following broad ratios were prescribed between rayon and art silk fabrics (principal raw material and finished goods):

Finished goods	Important raw materials	Percentage of (1) over (2)
Rayon or art-silk fabrics	1 - Yarn	99
	2 - grey fabrics	100 (for processing units)

The Directorate of Inspection in his letter dated 5 June 1972 pointed out that no precise correlation is possible between the principal raw materials and finished products on a general basis. In such cases collectorates were asked to lay precise formulae in respect of individual units under their control on the basis of specifications of principal raw materials used and finished goods manufactured.

(i) It was noticed in audit that no input-output ratios as per aforesaid instructions dated 5 June 1972 have been prescribed in Madras, Madurai, Trichy, Coimbatore, Bangalore, Belgaum, Chandigarh and Delhi collectorates. The central excise collectorate, Baroda has prescribed the following range of losses in the processing operation :-

	Types of factories	Percentage loss in processing warp length
1.	Viscose or rayon fabrics	3 to 6
2.	100 per cent polyester or 67 per cent polyester + 33 per cent cotton blended fabrics	1 to 3 (2 to 5 in weft)
3.	67 per cent polyester + 33 per cent viscose blended	6 to 8 (5 to 8 in weft)
4.	Nylon-nylon stretch	6 to 12
5.	Nylon twisted-nylon limited	5 to 9

(ii) A unit in Coimbatore collectorate which undertook processing of all types of fabrics showed average processing loss of 12.16 per cent in respect of those lots in which the shrinkage exceeded the limit of 8 per cent in weft during the years 1986-87

and 1987-88. As per Auditor's Report of the factory and monthly realisation statement, there was no shortage in warp of the processed fabrics and the entire shortage of 12.16 per cent was in respect of weft only, which was more than the limit of 8 per cent in weft prescribed by the central excise collectorate, Baroda. The quantity of loss in shrinkage, which was in excess of the said prescribed maximum limit of 8 per cent was 60,853 square metres and the loss of revenue on account of non recovery of duty on that excess shrinkage was Rs.1.21 lakhs during the period from April 1986 to March 1988.

On the omission being pointed out in audit (May 1989), the department, while not admitting the objection, stated (July 1989) that considering the entire quantity of grey fabrics processed during the period from April 1986 to March 1988, the percentage of shortage worked out to 8.22. The reply is not acceptable as the percentage of shortage in respect of different lots varied from 1 to 27 and only cases exceeding the prescribed limit of 8 per cent were to be considered and not on the basis of average for the whole year.

(iii) In the case of two assessees in Delhi collectorate shrinkage losses ranging between 5 and 22.2 per cent per square metre were shown in the lot registers. It was also noticed that shrinkage losses were not considered while arriving at the assessable value. This resulted in undervaluation of fabrics as a result of which they fell in the lower slab of rate of duty., This resulted in short levy of basic and additional excise duties of Rs.1.09 lakhs on the clearance made between March 1987 and October 1987.

Another two units in that collectorate, did not maintain lot registers and correctness of shrinkage losses during the processing of fabrics allowed to those units could not be ascertained in audit.

The irregularities were pointed out in audit in April 1989; the reply of the department has not been received (July 1989).

(iv) A processing unit in Madras collectorate, which undertook processing of viscose or rayon fabrics and viscose cotton blended fabrics had shown a processing loss of 6.5 per cent in warp and 8.7 per cent in weft during 1986-87 and 10.8 per cent in warp and 4.92 per cent in weft during 1987-88, which was more than the maximum limit of 6 per cent prescribed by the Central Excise collectorate, Baroda. The percentage of loss in square metre worked out to 14.25 in 1986-87 and 15.02 in 1987-88, which was 8 per cent more than the maximum limit prescribed. The loss of revenue on account of non recovery of duty on excess shortage for the period from April 1986 to March 1988 was Rs.74,381.

This was brought to the notice of the department in May 1989; its reply has not been received (August 1989).

(v) According to para 71 of the Supplement to the Manual of Departmental Instructions on manufactured excisable products rayon or artificial silk fabrics - rayon and synthetic fibres and yarn, every assessee is required to maintain a register of losses in the form shown in Appendix 'C' of the Manual, which reveals the processing loss. Similarly, independent processors of fabrics of man-made filament yarn and man-made staple fibre are required to maintain a lot register.

Six composite mills in Madurai, Trichy and Madras collectorates and seven processing units in Madras & Coimbatore collectorates did not maintain the register of losses and lot registers. Due to non-maintenance of those registers, shrinkages or elongation and percentage of losses or gain could not be ascertained in audit.

On this being pointed out in audit (May 1989), the department stated (July 1989) that the assessees have been directed to maintain separate registers for losses and lots.

(13) Other irregularities

(i) Short levy due to undervaluation

A manufacturer of nylon filament yarn of various deniers (Chapter 54) in Madras collectorate, cleared a portion of different types of

wastes (heading 54.01) generated in the production of that yarn for captive consumption in the manufacture of nylon compounded chips (Chapter 39) on payment of duty and remaining portion of the waste was used captively for recovering caprolactum without payment of duty under a notification issued on 18 March 1972. The assessee adopted the price of waste declared in part I (applicable to such excisable goods) of the price list which was filed by him in March 1985 and approved by the department on 5 September 1986 for payment of duty on waste captively consumed in the manufacture of compounded chips. There was, however, no sale of waste. While the value of the nylon chips, which were manufactured out of the waste was revised upward periodically, the value of the waste was not revised even once after March 1985. Further, the value of captrolactum, which was present in the waste and could be recovered was about 2 to 3 times more than the assessable value adopted for the waste. It, therefore, follows that the assessable value of the waste adopted by the assessee and approved by the department was on the lower side. Adopting the rate of duty of Rs.9 per kilogram laid down in respect of heading 54.01 for the undrawn wastes cleared during the period from April 1987 to March 1988, the underassessment of duty worked out to Rs.12.19 lakhs.

When this was pointed out in audit (November 1988) the department justified the assessment (February 1989 and June 1989) on the following grounds :-

The price list filed during 1985 in Part I was based on market price of the comparable goods. Since the assessee was adopting only Part I price even for captive clearance, the assessee need not be insisted upon for filing price list under Part VI for captive use; the waste lying in the factory was the stock accumulated from 1976-77 onwards and, therefore, it may not be reasonable to compute the value of waste by taking into account the caprolactum content; while the tariff rate of duty for yarn itself was Rs.7.51 per kilogram the rate of duty for waste arising from the stage of yarn cannot be logically be beyond the duty, even though a ceiling has been given as Rs.9 per kilogram or 50 per cent ad valorem whichever is less.

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

i) since there was no sale, the value for the purpose of assessment should be based on Part VI of the price list and the amount of duty calculated at the specific rate of Rs.9 per kilogram will be less than that worked out at the rate of 50 per cent ad valorem prescribed under heading 54.01;

ii) the wastes used for captive consumption were of good quality and contained about 60 to 70 per cent of caprolactum (the main raw material), the value of which was more than the assessable value adopted for the waste;

iii) the argument that the rate of duty for waste arising from the stage of yarn cannot be logically more than the duty of yarn cannot be accepted, because the rates of duty have been fixed by Government and incorporated in the Tariff itself.

(ii) Irregular movement of artificial silk fabrics for processing under Rule 56B

Rule 56B of the Central Excise Rules, 1944 provides that goods which are in the nature of semi finished form could be removed, without payment of duty, from one premises of a manufacturer to some of his other premises or premises of another unit for carrying out certain manufacturing process.

As the bleached/dyed fabrics are not semi-finished goods, their movement without payment of duty cannot be resorted to under Rule 56B. The Central Board of Excise and Customs also clarified (2 March 1988) that permission for removal of bleached/dyed cloth for printing, without payment of duty, under that rule was incorrect.

A unit in Delhi collectorate was removing bleached/dyed fabrics to two other units under Rule 56B without payment of duty. Since the bleached/dyed fabrics are not semifinished goods, the assessee could not remove the goods without payment of duty. Therefore, grant of incorrect permission under Rule 56B by the department resulted in estimated loss of duty amounting to Rs.11.77 lakhs on the removals from 1 April 1987 to 14 July 1987.

Since the complete records were not made available the department was asked (April 1989) to work out the actual loss of duty on this account. Further progress of the case has not been reported (August 1989).

(iii) Non-levy of interest

The Central Board of Excise and Customs issued instructions to the Collectors on 20 April 1985 that whenever facility of paying arrears of Central excise dues had been accorded, interest at the rate of 12 per cent per annum (17.5 per cent per annum from 20 April 1985) would be chargeable on monthly basis. The Board withdrew the power to allow payment of Government dues in instalments from the Collectors on 5 August 1985. Subsequently, the Board clarified on 1 October 1985 that interest should be charged in all cases of deferment of duty from the date of initial confirmation of demand.

The dispute for paying duty on cost of fabrics and job charges including margin of profit which was pending with the Supreme Court of India was decided by that court on 4 November 1988 {1988 (38) ELT 535 (SC) M/S.Ujagar Prints ETC}. As per that judgment duty is payable on the cost of fabrics, job charges and margin of profit.

Five assessees in Delhi collectorate, collected central excise duty from the customers pending decision of the Supreme Court, but did not pay it in lumpsum even after the decision of the Court. Instead they paid arrears of duty in instalments. Neither did they pay any interest on the duty paid in instalments, nor did the department demand it. Interest not recovered, amounted to Rs.9.44 lakhs.

The omission was pointed out in audit (April 1989). The reply of the department has not been received (August 1989).

(iv) Non raising of demand

A unit in Delhi collectorate, was manufacturing yarn from synthetic wastes (polyester) and classified it under heading 55.05, (yarn of staple fibres not containing synthetic staple fibres). Since the yarn contained synthetic staple fibre, it was classifiable under heading 55.06.

The department raised (June 1984, August 1984, November 1984, February 1985 & March 1985) demands for Rs.20.84 lakhs for the period from June 1983 to January 1985 which were confirmed in July and August 1985. The demands for the periods February 1985 to February 1986 and January 1987 to March 1988 were also raised by the department which were pending adjudication (April 1989). It was, however, noticed in audit that no demand of duty of Rs.2,18,055 for the intervening period from March 1986 to December 1986 was raised by the department.

Omission to raise demand was pointed out in audit in April 1989; the reply of the department has not been received (August 1989).

(v) Delay in adjudication

The Central Board of Excise and Customs issued (17 January 1983) the following instructions to the departmental officers for the expeditious adjudication of the demands :

a) Demand cases should be decided within a maximum period of six months from the date of issue of the show cause-cum demand notices;

b) a list of all the cases which cannot be adjudicated within six months should be sent to the Collector monthly with precise reasons for non-adjudication;

c) a suitable time limit should be fixed by the Collector/Additional Collector/ Deputy Collector for each case within which the Assistant Collector should adjudicate the demand cases;

d) if the cases are still not decided within the extended time limit, the matter should be further examined to consider the reasons for delay and further direction should be issued to the Assistant Collector.

An assessee in Bombay III collectorate, manufactured blended yarn falling under heading 55.04 and after doubling or multifolding of such yarn, used it for weaving of fabrics within the same factory. No duty was paid on the yarn at the single stage. Duty was paid at the time of clearance of the doubled/multifolded yarn for weaving. The department issued show cause notices demanding duty of Rs.18.61 lakhs on such yarn at the single stage, for the period from July 1981 to December 1988.

It was noticed in audit that the notice for duty amounting to Rs.10.93 lakhs for the period from July 1981 to July 1985 was issued by the Collector in June 1986, and notices for the later periods were issued periodically by the Range Superinten-

dent, the last notice having been issued in February 1989. The case has not been adjudicated (May 1989).

Delay in adjudication of demand notices was pointed out in audit (June 1989). Reply of the department has not been received (July 1989).

(vi) Non verification of stock

As per Rule 223A of the Central Excise Rules, 1944, the stock of excisable goods remaining in a factory, warehouse or store room licensed or approved for the storage of such goods shall be weighed, measured, counted or otherwise ascertained in the presence of the proper officer as often as the Collector may deem it necessary, and at least once in every year. In case the quantity so ascertained is less than the quantity which ought to be found in such premises, the keeper thereof shall be leviable to pay the full amount of duty chargeable on such goods as are found deficient and also a penalty which may extend to two thousand rupees.

a) In the course of test audit of the records of a textile mill in Meerut collectorate it was noticed (February - March 1989) that the annual physical verification of the stock of excisable goods manufactured in the unit and remaining in stock on date was not conducted during the years 1986, 1987 and 1988. The Range officer could not give any reason for not conducting the verification work.

Non compliance of the provisions of Rule 223A by the department was pointed out in audit (May 1989); the reply of the department has not been received (July 1989).

b) In the case of nine textile producers in Delhi Collectorate, annual physical verification of the stock of excisable goods manufactured by them was not conducted by the Central Excise department during the years 1986-87 and 1987-88 as required under Rule 223A ibid.

This was brought to the notice of the Collector of Central Excise in May 1989; his reply has not been received (August 1989).

c) In the caseof three textile mills in Chandigarh collectorate physical verification of the stock of excisable goods was not conducted annually. It was noticed in audit that in one mill the verification was not conducted during the years 1986-87 and 1987-88 and in the second mill, the verification was not done during 1987-88. In the third mill the verification was not conducted for the years 1985-86 and 1986-87 but it was conducted for the year 1987-88 (March 1988).

Non verification of stock was pointed out in audit (May and June 1989); reply of the department has not been received (July 1989).

(14) Frequent changes in duty structure of man-made fabrics

Prior to 25 November 1987, additional excise duty on man-made fabrics was levied on the basis of the value of those fabrics. The value for the purpose of excise duty was taken to be the cost of the processed fabrics plus the processing charges plus the profit margin which in effect meant the value at which the fabrics were sold in the course of the wholesale trade. A large number of textile processors and textile mills disputed the manner of determination of value and contested that excise duty should be levied on the processing charges only and accordingly they obtained stay from High Courts/Supreme Court restraining the department from collecting duty on the entire value of the fabrics. This resulted in steep fall in revenue from additional excise duty on man-made fabrics.

In order to mitigate the above problem, Government modified the duty structure with effect from 25 November 1987 by issue of notification on that date and levy of additional excise duty was based on the width of the fabrics without any reference to their value. The rates of additional duty were as follows:

	Description of the goods	Rate
I.	Fabrics of width not more than 100 Cms. and whose weight per square metre -	
	a) does not exceed 100 grams	Rs.2.00 per square metre
	b) exceeds 100 grams	Rs.5.00 per square metre
II.	Fabrics of width more than 100 Cms. but not more than 120 Cms.	Rs.125 per square metre
III.	Fabrics of width more than 120 Cms.	Rs.5.00 per square metre

However, those revised rates were criticised on various grounds, one of which was that the incidence of duty on cheaper fabrics was higher than that on costlier fabrics.

Accordingly, Government revised the rates of duty which were introduced on 25 November 1987 and again on 9 December 1987 by issuing two notifications 260/87 and 262/87, dated 09.12.1987. The modifications made were briefly as follows:

i) Specific duty for various value slabs on a ground scale was fixed in respect of different varieties of fabrics;

ii) a uniform rate of 50 paise per square metre was prescribed for 'sulabh' fabrics and warp kintted fabrics to restore the level of duty which prevailed prior to 25 November 1987;

iii) lower rate of duty of Rs.1.25 per square metre was prescribed for blended fabrics, nylon and viscose fabrics etc.

Subsequent to the implementation of the above changes from 9 December 1987, the textile industry faced further problems in connection with the anomaly of duty incidence in the case of

i) viscose fabrics;
ii) nylon woolly sarees;
iii) cheaper varieties of suitings;
iv) dhoties and lungies; and
v) spun x spun shirtings of polyester and viscose staple fibre.

To minimise these difficulties, the following modifications were made by issue of five notifications 2/88 to 6/88 on 19 January 1988 :

i) a separate duty structure was prescribed in respect of knitted or crocheted fabrics of man-made textile materials on the basis of their value;

ii) an ad valorem duty of 5 per cent on fents, rags and chindies subject to a quantity limit of 5 per cent of the total clearances of man-made fabrics was prescribed;

iii) a separate duty structure in respect of fabrics of fibres or yarn of cellulosic origin, whether or not containing cotton on the basis of weight of the fabrics, was prescribed;

iv) width criterion in respect of certain fabrics was increased so as to include dhoties and lungies and to treat them on par with sarees;

v) weight criterion in respect of certain fabrics (shirtings) was raised to 150 grams per square metre as against 125 grams prescribed earlier;

vi) rates of duty in respect of fabrics of value not exceeding Rs.40 per square metre were brought down.

It is evident from above that the rates of additional duties were revised on 25 November 1987 and again 9 December 1987 in such a way that the incidence of additional excise duty on cheaper cloth like 'sulabh' became more than that on costlier and fancy cloth. It would also be clear that those frequent changes in duty were made on adhoc basis as a response to the various pressure groups rather than as a result of a well thought out policy.

The appraisal was sent to the Ministry of Finance in September 1989; their reply has not been received (November 1989).

1.04 Clearance of goods for industrial use

(1) Introduction

Chapter X of the Central Excise Rules, 1944 sets out a procedure to be followed by the manufacturers for obtaining certain excisable goods where duty remissions have been given for such uses. In these cases, the Central Government have been sanctioning the exemption from the whole or part of the duty payable on excisable goods subject to their being used in specified industrial processes. Such exemptions invariably provide the conditions :-

i) that the Collector of Central Excise is satisfied that the goods are intended for use in the specified industrial process mentioned in the notifications; and

ii) the procedure set out in Chapter X of the Central Excise Rules, 1944 is followed.

(2) Administration of the procedure

The Central Government issues notifications providing for levy of concessional rate of duty on excisable goods required for specified industrial processes subject to the observance of the procedure laid down in Chapter X of the Central Excise Rules, 1944. The Central Excise collectorates are responsible for overseeing that such goods cleared from the factories at concessional rate of duty are actually used for the specified purpose and there is no misuse.

(3) Scope of audit

The scope of audit was designed to see that the excisable goods cleared from the factories at concessional rate of duty for specified industrial processes, were actually so used and there was no misuse. Following other points were seen :

i) the excisable goods obtained at concessional rate of duty for specified purposes were actually received and accounted for by the consignees and differential duty was recovered on shortages;

ii) the consignors of excisable goods received rewarehousing certificates from the consignees and that the concession in duty was availed after following prescribed procedure;

iii) the manufacturers who procured excisable goods at concessional rate of duty for specified industrial purposes held valid central excise licences;

iv) there was no irregular transfer of such excisable goods to unauthorised manufacturers;

v) there was no irregular disposal of surplus, defective or damaged excisable goods;

vi) the excisable goods were neither procured in excess of the bond amount nor were there excess quantities held in stock;

vii) annual stocktaking of excisable goods was done regularly.

(4) Highlights

An appraisal of the procedure regarding movement of goods at concessional rate of duty for specified industrial purposes has been conducted. The results of appraisal are contained in the succeeding paragraphs which highlight the following :

- **Seventy one assessees in fifteen central excise collectorates brought excisable goods valuing Rs.14.71 crores into their factories for special industrial purpose, but did not use them for that purpose resulting in short levy of duty of Rs.3.80 crores.**

- **Eighty one manufacturers in fifteen collectorates did not account for excisable goods valuing Rs.32.55 crores brought into their factories at concessional rate of duty under Chapter X procedure during the years 1986-87 and 1987-88. The short levy of duty in those cases amounted to Rs.2.08 crores.**

- **Short levy of duty of Rs.91.47 lakhs was noticed account of procedural irregularities.**

- **Twenty two manufacturers in six collectorates, who were not holding valid licences, were allowed to bring excisable goods valuing Rs.225 lakhs involving duty of Rs.62.27 lakhs into their factories for use in specified processes during the period of three years ended March 1989.**

- **Excisable goods in excess of the bond amount were procured by a number of assessees in the various central excise collectorates during the years 1986-87 and 1987-88. The duty involved was Rs.35.17 crores.**

  The stock of such goods exceeded Rs.8.58 crores in sixteen collectorates and Rs.12.57 crores in seventeen collectorates during the years 1986-87 and 1987-88 respectively.

- **Other irregularities involving non levy / short levy of duty of Rs.35.41 lakhs were noticed.**

(5) The number of manufacturers working under Chapter X Procedure ibid in the 32 Central Excise Collectorates at the end of the last 3 financial years was as under :

Date	No.
31 March 1987	6303
31 March 1988	6740
31 March 1989	6842

(6) Misuse of concession - goods not used for intended purpose and non verification of enduse

As per Rule 196 of the Central Excise Rules, 1944, if the applicant has not used the goods, brought under Rule 192 for the intended purpose and in the manner stated in application, he should, on demand, pay the duty leviable on such goods.

Seventy one assessees in fifteen central excise collectorates brought excisable goods valuing Rs.14.71 crores involving duty of Rs.3.80 crores into their factories for use in special industrial purpose under Chapter X of the Central Excise Rules, 1944, during the years 1986-87 and 1987-88. They, however, either did not utilise those goods for the intended purpose or there was no verification by the central excise department of their end use. Some of these cases are given below :-

i) a) Sixteen L-6 licensees in the Calcutta I, Calcutta II and Bolpur Collectorates manufacturing thinners and paints obtained toluene, benzol, etc., at concessional rate of duty as per a notification dated 1 March 1984 and used them in the manufacture of thinners instead of using such thinners in their factories for manufacture of paints, varnishes etc., as required under the notification. Those manufacturers sold the thinners to outside parties.

Failure to prevent misuse of L-6 licences resulted in duty being levied short by Rs.1.44 crores for different periods between April 1986 and March 1988.

b) A licensee in Bombay-II collectorate, brought into his factory mixed xylene (sub-heading 2707.90) under Chapter X procedure as per a notification dated 1 March 1984 for the manufacture of paints. But he used 55.200 kilolitres of mixed xylene for manufacture of thinner and not paints during the period from April 1988 to March 1989. The duty short levied amounted to Rs.1.01 lakhs.

ii) a) As per a notification dated 1 March 1984 raw naptha brought into the factory under Chapter X procedure for manufacture of fertiliser and ammonia is assessable to duty at the rates of Rs.4.40 and Rs.100 per kilolitre respectively.

An assessee was bringing into his factory raw naphtha for manufacture of fertiliser on payment of duty at the concessional rate of Rs.4.40 per kilolitre. He produced ammonia from such raw naphtha and used it in the manufacture of ammonium chloride which was not used in the manufacture of fertiliser. Duty on raw naphtha was, therefore, leviable at the rate of Rs.100 per kilolitre and not at the rate of Rs.4.40 per kilolitre. The differential duty on the raw naphtha not used in the manufacture of fertiliser during the period from March 1986 to September 1987 amounted to Rs.39.74 lakhs.

b) As per a notification dated 1 March 1984, remission of duty is available on furnace oil intended for use as feedstock in the manufacture of fertilisers provided the procedure prescribed in Chapter X is followed.

A licensee in Hyderabad collectorate, brought into his factory furnace oil without payment of duty following Chapter X procedure under the aforesaid notification dated 1 March 1984. He, however, utilised the furnace oil as fuel in running the machinery for generating steam during the period from April 1987 to June 1988. On the quantity of 12,350.254 kilolitres of furnace oil so used, duty short levied was Rs.7.93 lakhs.

c) As per a notification dated 22 March 1975, sulphuric acid brought into the factory under Chapter X procedure and intended for use in the manufacture of fertilisers is exempt from the whole of duty leviable thereon.

An assessee brought sulphuric acid into his factory without payment of duty during the period from 1 March 1986 to 30 June 1988 under the aforesaid notification dated 22 March 1975 and utilised it for demineralisation of water instead of using it in the manufacture of fertilisers. The duty not levied on the sulphuric acid not

used for the intended purpose amounted to Rs.7.26 lakhs.

d) According to a notification issued on 17 March 1985 ammonia is exempted from the whole of duty if it is used in the manufacture of fertilisers and in case such use is elsewhere than in the factory of production, the procedure set out in Chapter X of Central Excise Rules, 1944 is followed.

A licensee in Cochin collectorate, brought into his factory ammonia under Chapter X procedure as per the aforesaid notification dated 17 March 1985 and manufactured ammonium chloride of high purity (99.80 per cent) which was sold as industrial chemical and not as fertiliser on payment of duty. As the ammonia brought into the factory was not used in the manufacture of fertiliser, the benefit of the aforesaid notification was not admissible. The duty not levied on 250.468 tonnes of ammonia used for the manufacture of ammonium chloride during the period from April 1986 to January 1989 amounted to Rs.2.50 lakhs.

iii) a) Another L6 licensee in Cochin collectorate brought into his factory benzene at concessional rate of duty for use in the manufacture of phenol and acetone under a notification dated 1 March 1984. But he manufactured high purity cumine (an intermediate product). He sold 6,670.467 tonnes of cumine so manufactured from benzene on payment of appropriate duty during June 1987 to December 1987. It was also seen that 0.7 tonnes of benzene was needed to produce one tonne of cumine and, therefore, a quantity of 4,669.327 tonnes of benzene needed to produce 6,670.467 tonnes of cumine, which should not have been assessed to duty at the concessional rate under the aforesaid notification dated 1 March 1984.

The short levy of duty on bnezene amounted to Rs.26.46 lakhs.

b) An assessee in Madras collectorate manufacturing 'linear alkyl benzene' applied for remission of duty on 'benzene' under Chapter X of the Central Excise Rules, 1944 for use in the manufacture of linear alkyl benzene in terms of a notification dated 1 March 1984 and obtained L-6 licence for this purpose.

It was noticed in audit that the assessee used a portion of benzene received under Chapter X procedure in the manufacture of 'heavy alkalite' also. As the remission of duty applied for by him and granted to him was for the use of benzene in the manufacture of linear alkyl benzene and not heavy alkalite, it resulted in short levy of duty of Rs.1.30 lakhs on benzene used in the manufacture of heavy alkalite from October 1987 to February 1988.

iv) In Indore collectorate, a manufacturer of iron and steel products cleared coal tar wash oil (sub heading 2707.90) at concessional rate of duty under a notification dated 1 March 1984 which stipulated following of Chapter X procedure for availing the concession on duty. As the licensee did not follow the Chapter X procedure, the concessional rate of duty was not admissible to him. The differential duty not recovered on clearances from July 1987 to August 1988 worked out to Rs.17.14 lakhs.

v) a) As per a notification issued in August 1983 excisable goods supplied to the Oil and Natural Gas Commission or the Oil India Limited, for exploration purposes were exempt from the whole of duty leviable thereon. By an amending notification issued in December 1986 such goods were allowed to be removed at a concessional rate of duty of 10 per cent ad valorem from 30 December 1986. By issue of another notification on 11 September 1987 Government enlarged the scope of the earlier notification so as to include exploitation activity also within its ambit. The complete exemption from the payment of duty upto 29 December 1986 and the payment at concessional rate from 30 December 1986 was subject to the condition that before clearance of the said goods, a certificate from the Oil and Natural Gas Commission or the Oil India Limited, as the case may be, to the effect that such goods were required to be used in connection with their oil exploration or exploitation activity was produced to the proper officer and also the procedure set out in Chap-

ter X of Central Excise Rules, 1944 was followed.

An assessee in Bombay III collectorate, engaged in the manufacture of storage tanks and other items of steel fabrication (Chapter 73 of the schedule to the Central Excise Tariff Act, 1985), supplied goods of the value of Rs.66.19 lakhs to the Oil and Natural Gas Commission and the Oil India Limited, during the period from April 1986 to October 1986 availing exemption from the whole of excise duty. He also supplied goods valued at Rs.3.43 lakhs at the concessional rate of duty of 10 per cent ad valorem to ONGC during the period from October 1987 to April 1988. The assessee neither obtained the required certificate from the ONGC nor followed the procedure set out in Chapter X as stipulated in the aforesaid notification. Non-fulfilment of the conditions prescribed in the exemption notification resulted in non levy of duty of Rs.9.92 lakhs from April 1986 to October 1986 and short levy of duty of Rs.1.14 lakhs from October 1987 to April 1988. When this was pointed out in audit (October 1988), the department accepted (January 1989) that the goods were removed without observance of Chapter X procedure.

b) i) As per a notification issued on 11 September 1987 goods specified in the table to that notification and cleared to the Oil and Natural Gas Commission, are exempt from duty in excess of 10 per cent ad valorem subject to the condition that the procedure laid down in Chapter X of the Central Excise Rules, 1944 is followed and a certificate obtained from the ONGC stating requirement of such goods in connection with oil exploration or exploitation to the proper officer, who may require such certificates or evidence as are necessary for verifying that the said goods have actually been used on such exploration or exploitation.

It was noticed in audit that in Shillong collectorate during the period from 11 September 1987 to 17 January 1989 goods which were not covered under the aforesaid notification were obtained by the ONGC at the concessional rate of duty in terms of that notification.

The differential duty short levied amounted to Rs.7.64 lakhs for the period from 11 September 1987 to 17 January 1989.

b) ii)Similarly, in respect of another unit of the ONGC in the same collectorate, the short realisation of duty amounted to Rs.1.58 lakhs during the aforesaid period.

vi) A manufacturer of motor vehicles in Coimbatore collectorate, obtained parts and accessories of motor vehicles and internal combustion engines at concessional rate of duty under Chapter X of the Central Excise Rules, 1944 for use as original equipment in the manufacture of 'motor vehicles heavy duty'. He, however, used them in the manufacture of 'motor vehicles medium duty'. This resulted in short levy of duty of Rs.4.99 lakhs during the years 1986-87 and 1987-88.

vii) As per a notification issued on 23 July 1977 pasteurised butter is exempt from the whole of duty if it is used for regeneration of liquid milk and if so used elsewhere than in the factory of production the procedure set out in Chapter X is followed.

An assessee in Bombay III collectorate holding L-6 licence, was receiving pasteurised butter without payment of duty under the above notification. During the period September 1985 to August 1986 the pasteurised butter was received by the assessee for storage purposes only and after a period of storage he supplied the butter to another factory elsewhere. The licensee thus contravened the condition of the aforesaid notification and also the provisions of the Chapter X procedure. The duty not levied on the pasteurised butter amounted to Rs.3.65 lakhs.

viii) As per a notification dated 15 September 1986 ammonia produced by M/ S.Rashtriya Chemicals and Fertilisers Limited, Thal and supplied to Heavy Water Plant, Thal is exempt from the whole of duty under certain conditions provided the procedure set out in Chap-

ter X of the Central Excise Rules, 1944 was followed.

It was seen in audit that M/S.Rashtriya Chemicals and Fertilisers cleared ammonia without payment of duty to the Heavy Water Plant without following the procedure prescribed in Chapter X. This resulted in non levy of duty of Rs.3.45 lakhs on 3,454 tonnes of ammonia cleared during the period from 15 September 1986 to March 1987.

On this being pointed out in audit (october 1987), the department accepted the objection (January 1989) and stated that Ministry of Finance have been approached to waive the condition of following Chapter X procedure as both the consignor and the consignee are Government undertakings.

ix) As per a notification dated 1 March 1988 phosphorous pentasulphide (sub heading 2813.00) used in the manufacture of pesticides (Chapter 38) is exempt from payment of whole of the duty of excise leviable thereon. By an amendment dated 3 May 1988 the exemption was extended to phosphorous pentasulphide used in the manufacture of all goods classifiable under sub heading 3808.10 subject to following of the procedure set out in Chapter X of the Central Excise Rules, 1944 if such use was elsewhere than in the factory of production.

An assessee in Bombay II collectorate engaged in the manufacture of phosphorous pentasulphide (sub heading 2813.00) cleared his goods without payment of duty for use elsewhere than in the factory of production in the manufacture of goods specified under the sub heading 3808.10 without following the procedure set out in Chapter X of the Central Excise Rules, 1944 even after 3 May 1988. This resulted in non levy of duty of Rs.3.02 lakhs on the goods cleared during the period from 5 May 1988 to 20 May 1988.

On this being pointed out in audit (July 1988), the department stated (February 1989) that phosphorous pentasulphide continued to enjoy exemption from payment of duty even prior to and after aforesaid amendment dated 3 May 1988, the only difference being that earlier, end use certificates were necessary for allowing such exemption till 2 May 1988 and thereafter rewarehousing certificates are necessary. It added that the amendment dated 3 May 1988 was, therefore, a procedural one.

The department's reply is not acceptable as after the amendment dated 3 May 1988 removal of the goods without payment of duty was subject to the observance of the procedure set out in Chapter X of the Central Excise Rules, 1944. As this requirement was not fulfilled by the assessee, duty was payable on the goods cleared during the period referred to above.

x) By a notification dated 28 February 1986, ferro-alloys (sub heading 7202.20) used in the manufacture of iron and steel are chargeable to nil rate of duty provided the procedure set out in Chapter X of the Central Excise Rules, 1944 is followed.

A public sector undertaking in Patna collectorate, was bringing into the factory ferro-manganese and ferro-silicon under Chapter X procedure without payment of duty during the period from August 1987 to April 1988. 197.267 tonnes of goods were received short from the consignor factory. It was noticed in audit that the department did not issue any demand for duty of Rs.1.47 lakhs leviable on the goods received short.

On the omission being pointed out in audit (June 1988),the department stated (May 1989) that the assessee had deposited Rs.3,03,538 on 8 September 1988 for the short receipts under the Chapter X procedure.

xi) In Jaipur collectorate a manufacturer of motor vehicles brought motor vehicle parts without payment of duty for use as original equiment parts in the manufacture of IC engines in terms of a notification dated 15 September 1987. During the period from 15 September 1987 to 31 May 1988 the assessee brought 2,153 piston assemblies, out of which 1,679 piston assemblies were used in the manufacture of IC engines resulting in non levy of duty of Rs.1.01 lakhs on the

remaining 474 piston assemblies.

(7) **Non levy of duty on excisable goods not accounted for**

Under Rule 196 of the Central Excise Rules, 1944, if excisable goods obtained under Rule 192 are not duly accounted for as having been used for the purpose and in the manner stated in the application or are not shown to the satisfaction of the proper officer to have been lost or destroyed by natural causes or by unavoidable accident during transport from the place of procurement to the applicants premises or during handling or storage in the premises approved under Rule 192, the applicant shall, on demand by the proper officer, immediately pay the duty leviable on such goods. The concession may at any time be withdrawn by the Collector if a breach of these rules is committed by the applicant, his agent or any person employed by him. In the event of a breach, the Collector may also order the forfeiture of the security deposited under Rule 192 and may also confiscate the excisable goods and all the goods manufactured from such goods in store at the factory.

It was noticed in audit that 42 and 39 units in 15 central excise collectorates did not account for excisable goods (valued Rs.17.57 crores and Rs.14.98 crores) brought into the factories at concessional rate of duty under Chapter X procedure during the years 1986-87 and 1987-88 respectively for the intended purpose. The total duty involved in those cases was Rs.208.31 lakhs (Rs.160.38 lakhs during 1986-87 and Rs.47.93 lakhs during 1987-88). Some of those cases are given below :-

i) A comparision of the stock register of inputs maintained by a licensee in Nagpur collectorate, with the relevant inward gate passes revealed that he accounted for the receipt of 9,286.189 kilolitres of low sulphur heavy stock (LSHS) as against 10,281.480 kilolitres despatched by the supplier during 1986-87 to 1988-89 (December 1988). There was, therefore, shortage of 995.291 kilolitres of LSHS and the duty leviable thereon was Rs.1.48 lakhs.

As per the actual accounting in respect of day to day receipts of LSHS and its consumption by this licensee, recorded in his stock register (RG16) from April 1986 to December 1988, the closing balance as on 31 December 1988 worked out by Audit was 3,742.239 kilolitres, whereas the closing balance on 31 December 1988 as shown in the register was 1,038.000 kilolitres only. Thus there was a shortage of 2,704.239 kilolitres of LSHS involving duty of Rs.4.01 lakhs.

ii) An L-6 licensee in Shillong collectorate was, receiving low sulphur heavy stock for use as fuel for generation of electrical energy without payment of duty. A scrutiny of application for removal (AR-3) issued by the refinery at the time of despatch and the corresponding challan (D-3) accompanying the tank lorries/tankers for transportation to the premises of the licensee, revealed that quantities of 1,946.180 kilolitres in 1987-88 and 1,920.322 kilolitres in 1988-89 were short received. The duty leviable on the shortages amounted to Rs.3 lakhs and Rs.2.97 lakhs respectively (total Rs.5.97 lakhs).

Neither was any demand in this regard raised by the department, nor were the shortages regularised.

iii) There was substantial losses in the quantity of ferro-alloys in the accounts of an L-6 licensee in Indore collectorate during the period from April 1986 to September 1987. Central excise duty amounting to Rs.5.61 lakhs on the deficient quantity was not demanded by the department.

iv) A licensee manufacturing diesel operated IC engines in Jaipur collectorate, did not account for the receipt of 316 cartons during the period from September 1986 to June 1988. On the discrepancy being pointed out in audit (July 1988), the department booked an offence case and demanded (September 1988) duty of Rs.1.55 lakhs.

v) A manufacturer of electric motors in Indore collectorate did not account for the stators and motors brought into the factory under Chapter X procedure. The duty involved thereon was Rs.1.14 lakhs, for which no demand was raised by the department.

vi) A fire accident occured in the premises of a licensee in Calcutta II collectorate in January 1987 and excisable goods

involving duty of Rs.1.20 lakhs brought under Chapter X procedure into the factory were found to have been lost. Neither was the loss condoned by the department, nor was any demand for duty raised against the licensee.

(8) Short levy of duty due to procedural irregularities

The Central Government may sanction remission of duty on excisable goods cleared for use in the specified industrial process by issue of a notification under erstwhile Rule 8(1) of the Central Excise Rules, 1944 (now Section 5 A of the Central Excises and Salt Act 1944). For availing this concession the procedure set out in Chapter X of the Central Excise Rules, 1944 has to be followed.

i) An assessee in Bombay II collectorate, cleared goods to various L-6 licensees at concessional rates of duty under a notification dated 1 March 1984. It was noticed in audit that rewarehousing certificates in respect of 106 cases involving excise duty of Rs.69.57 lakhs were not received back by the consignor's range. It was, therefore, not known to the proper officer at the consignor's end whether the goods were actually received and duly accounted for by the various L-6 licence holders.

ii) An assessee in Indore collectorate was clearing coal tar wash oil at concessional rate of duty under a notification issued on 1 March 1984. He, however, did not follow Chapter X procedure which was a precondition for availment of concessional rate of duty under that notification. Availment of concessional rate of duty was, therefore, irregular and resulted in short levy of duty of Rs.17.14 lakhs during the period from July 1987 to August 1988.

iii) An assessee in Bangalore collectorate engaged in the manufacture of industrial springs for power tillers, motor vehicles land tractors, partly cleared his products without payment of duty under bond to original equipment manufacturers as per notifications issued in April 1979, April 1986 and May 1986. It was noticed in audit (November 1984 to October 1987) that in 563 cases pertaining to the period from January 1981 to July 1987, the rewarehousing certificates were not received even after the expiry of the period of ninety days and no demand for the recovery of duty on goods not acknowledged by the consignees, was raised by the department.

On this being pointed out in audit, the department accepted the objection and reported (November 1987 to April 1989) recovery of duty of Rs.1.92 lakhs.

iv) As per a notification dated 18 April 1988 electric motor and parts used in the manufacture of submersible pump sets or monoblock pump sets were exempt from the levy of the whole of excise duty and where such use was elsewhere than in the factory of production the procedure prescribed in Chapter X of the Central Excise Rules, 1944 was to be followed.

A manufacturer of electric motors in Calcutta I collectorate, cleared his product without payment of duty to other factories for use in the manufacture of monoblock/submersible pump sets during the period from 23 May 1988 to 17 November 1988 under the aforesaid notification. He, however, did not follow Chapter X procedure. This resulted in non levy of duty of Rs.1.42 lakhs.

v) An L-6 licensee in Cochin collectorate, was bringing in ammonia without payment of duty under Chapter X procedure for manufacturing fertilisers. He was also producing ammonia within the factory and also importing ammonia. The ammonia produced by him and brought in the factory under Chapter X procedure was being stored in phase I tank and the quantity imported in phase II tank. Often the assessee transferred imported ammonia in phase II tank to phase I tank contrary to the provisions of Rule 194 of the Central Excise Rules, 1944 which prescribed that goods brought under L-6 licence should be stored separately and distinctly from the goods brought into the factory otherwise.

vi) As per Rule 194 of Central Excise Rules, 1944, a licensee working under Chapter X procedure is required to submit a monthly return in form RT 11 for the receipt and issue of excisable goods on

which remission of duty has been granted The format of the return provides for verification by the Central Excise Officer of the details furnished by the licensee in those returns.

It was noticed that 17 licensees in Madras, Coimbatore, Madurai, Trichy and Cochin collectorates did not furnish the prescribed return (RT 11) in respect of excisable goods brought into the factory under Chapter X procedure for the various periods during 1986-87 and 1987-88. Further in the returns furnished by the 56 licensees in Madras, Coimbatore, Madurai and Trichy collectorates, there was no evidence of the verification by the Central Excise officers.

vii) An assessee in Allahabad collectorate working under Chapter X procedure, neither stored the goods brought into the factory under L-6 licence separately nor maintained any stock register and did not, therefore, submit any monthly return to the department. He stored those goods alongwith other raw materials and their receipts and issues were shown in form IV (Raw material account). This was contrary to the prescribed procedure under Chapter X vide Rules 192 and 194 (2) of the Central Excise Rules, 1944.

viii) A holder of L6 licence in Madurai collectorate, did not execute bond (B-8), maintain stock register of excisable goods brought into the factory for use (RG 16), furnish monthly return of such goods used (RT 11) to the department or furnish rewarehousing certificate for the receipt of goods from another licensee.

ix) Another licensee (L-6) in Coimbatore collectorate trans-ferred the excisable goods without payment of duty to another L-6 licensee under his own transit documents instead of under prescribed application for removal of such goods (AR 3A), gate passes (GP 2), etc.

x) As per Rule 196 of the Central Excise Rules,1944, if the applicant has not used the goods brought into the factory under Rule 192 ibid for the intended purpose and the manner stated in the application he should, on demand, pay the duty leviable on such goods.

An assessee in Bombay II collectorate, was bringing motor vehicle parts for use as original equipment on the motor vehicles under Chapter X procedure. His return (RT 11) for February 1989 revealed that 1,51,571 items (specified) and 65,585 items (non-specified) obtained under that procedure had been lying in stock since March 1986. The department did not demand any duty on those items (June 1989). The amount of duty could not be ascertained in audit for want of details.

(9) Procurement of excisable goods without valid licence

As per Rule 192 of the Central Excise Rules, any person desiring to obtain remission of duty on special goods for use in a specified process should make an application stating the estimated annual quantity of such excisable goods required and the purpose for and the manner in which they are intended to be used and declaring that those goods will be used for such purpose and in such manner. If the collector is satisfied that the applicant is a person to whom concession can be granted without danger to revenue, a licence (L-6) may be granted to the applicant.

It was noticed in audit that 22 manufacturers in six collectorates brought into their factories excisable goods valuing Rs.225 lakhs and involving duty of Rs.62.27 lakhs into their factories for use in specified processes during the years 1986-87, 1987-88 without holding a valid L-6 licence. Some of those cases are given below :

i) A public sector undertaking in Shillong collectorate, obtained an L-6 licence valid upto 31 December 1990 for procurement of the erstwhile tariff item 68 goods, whose value in a particular year, should not have exceeded Rs.30 lakhs. Although the tariff item 68 was abolished from 28 February 1986 on the introduction of Central Excise Tariff Act 1985, the licensee had neither applied for a fresh licence nor got the licence revised suitably. The assessee was allowed to continue to obtain goods falling under various chapter headings/sub headings, which resulted in short levy of duty amounting to Rs.23.95 lakhs.

ii) Under Rule 178(4) of the Central Excise Rules, 1944 if the holder of a licence enters into partnership in regard to the

business covered by the licence he shall report the fact to the licensing authority within 30 days of his entering into such partnership and shall get his licence suitably amended. An L-6 licence valid upto 31 December 1987 was issued (February 1982) to a trader in Shillong collectorate for bringing tea waste (sub heading 0902.19) at concessional rate of duty. The business was changed to a partnership firm on 1 October 1988 and ultimately was converted into a private limited company on 1 April 1989. With the change in the status of the assessee, the L-6 licence issued earlier in February 1982, became inoperative. The assessee continued to bring tea waste at concessional rate of duty. The differential duty on the quantity of tea waste brought into the factory during the period from 1 October 1988 to 31 March 1989 amounted to Rs.18.58 lakhs.

The irregularity was pointed out in audit in May 1989; no reply has been received (June 1989).

iii) A manufacturer in Patna collectorate, applied for the issue of L-6 licence for availing concessions under a notification issued on 24 April 1986, in respect of parts of goods falling under chapters 73, 84 and 86, for use in his other factory. The department granted L-6 licence for parts falling under chapter 84 only and did not issue licence for parts falling under the other two chapters, as the intended use of the latter parts was not according to the condition of the notification. Nevertheless, the manufacturer also brought parts (Chapters 73 and 86) for specified use without payment of duty. This resulted in irregular remission of duty of Rs.15.64 lakhs during the period from August 1986 to August 1988.

On the omission being pointed out in audit (October 1988), the department accepted the objection and stated (May 1989) that a show cause cum demand notice was issued on 17 April 1989. Further developments have not been reported (July 1989).

iv) An assessee in Calcutta I collectorate, was authorised to obtain compressors (sub heading 8414.10), without payment of duty, to be used in the manufacture of water coolers. He, however, procured several other parts of compressors viz. overload protectors, start relays etc. (sub heading 8536.10) without payment of duty for manufacture of water coolers.

Since the parts falling under sub heading 8536.10 were not mentioned in the L-6 licence, the concession in duty on those parts was not admissible under chapter X. It resulted in loss of excise duty of Rs.1.37 lakhs from April 1986 to February 1989.

v) An L-6 licence, issued to an assessee in Shillong collectorate for procuring skimmed milk powder (sub heading 0401.13) for purpose of regeneration of liquid milk expired on 31 December 1984. A new licence was issued on 19 March 1986. Thus the assessee did not possess a valid licence during the period from 1 January 1985 to 18 March 1986 during which he procured 22,375 kilograms of skimmed milk powder at concessional rate of duty under chapter X procedure. This resulted in availment of irregular concession in duty amounting to Rs.1.17 lakhs during 1 January 1985 to 18 March 1986.

vi) One of the conditions for getting air conditioners at concessional rates of duty for use in specified process under a notification dated 1 March 1978 (as amended) is that the air conditioners should not be resold within a period of five years from the date of installation. Accordingly, the L-6 licences issued were required to be kept valid for a period of five years from the date of installation of the refrigerators.

Seven assessees in Cochin collectorate, did not keep their L-6 licences valid for a period of five years from the date of installation of the refrigerators. The invalidated period, ranged from 2 1/2 years to 3 1/2 years. In the circumstances it was not clear how the department ensured that the air conditioners were not resold within a period of five years of installation.

(10) Irregularities in transfer of excisable goods

As per Rule 196 AA of the Central

Excise Rules, 1944, an L-6 licensee may with the previous approval of the proper officer, despatch the excisable goods obtained under Rule 192 to another manufacturer who is eligible to the concession in respect of such goods and to whom a licence has been granted under Rule 192 for obtaining such goods.

i) An assessee in Cochin collectorate who was bringing into his factory sulphuric acid under Chapter X procedure, diverted 916.33 tonnes of the acid without the permission of the central excise department to his other unit situated in another range under the same collectorate, during the period from May 1988 to June 1988. The duty involved thereon was Rs.1.70 lakhs.

ii) An L-6 licence holder in Shillong collectorate was procuring skimmed milk powder for regeneration of liquid milk under Chapter X procedure. He transferred a quantity of 15,275 kilograms of skimmed milk powder to a unit 'A' during the period from January 1985 to March 1986 and another quantity of 8,650 kilograms of the same to another unit 'B' during the period from August 1986 to March 1989. Both the units A and B did not hold valid L-6 licences for receiving the said goods during the said period. Such transfer of stock was, therefore, contrary to provisions of Rule 196AA of Central Excise Rules, 1944. The duty involved in the two cases amounted to Rs.1.26 lakhs.

iii) Two licensees (L-6) one each in Coimbatore and Madurai collectorates, transferred excisable goods involving duty of Rs.92,977 obtained by them under Rule 192 to other L-6 licensees without payment of duty from 1 March 1986 onwards when the relevant notifications were not in force.

iv) A manufacturer of solvent extracted fixed vegetable oil in Calcutta II collectorate, obtained special boiling point spirit falling under sub heading 2710.12 (hexane) at nil rate of duty under a notification dated 10 February 1986. He sold 34,300 kilolitres of hexane to another L-6 licence holder during the period from December 1987 to March 1988 without obtaining prior approval of the proper officer. The licensee did not also produce rewarehousing certificate in the manner laid down in Rule 156A. The duty involved in the irregular clearance of normal hexane worked out to Rs.44,800.

On the mistake being pointed out (February 1989) in audit, the department stated that a show cause cum demand notice was issued to the licensee in this regard. Further developments in the matter have not been reported (July 1989).

(11) Irregular disposal of surplus excisable goods

As per Rule 196A of the Central Excise Rules, 1944, if any excisable goods obtained under Rule 192 ibid become surplus to the needs of the applicant for any reason, the applicant with the previous approval of the proper officer may :

a) clear the goods on payment of appropriate amount of duty;

b) return the goods to the original manufacturer of those goods who will add the quantity to his non duty paid account (The applicant shall be accountable for transit loss from the applicant's premises to the place of the original manufacture) or

c) clear the goods for export in the manner provided in Rule 12 or 13 or 14 ibid as the case may be.

i) A licensee in Madras collectorate availing remission of duty on skimmed milk powder for use in regeneration of milk, cleared 50 tonnes of 'skimmed milk powder' as such in June 1987, without payment of duty of Rs.1.76 lakhs and without obtaining permission by the proper authority.

ii) Another licensee in Bangalore collectorate transferred surplus stock of 5,150 kilograms of butter and 26,400 kilograms of skimmed milk powder to another licensee during June 1987 without obtaining prior permission by the proper authority. The amount of duty involved in the irregular transfer worked out to Rs.1.08 lakhs.

(12) Adoption of incorrect value for demanding duty

As per sub rule (2) of Rule 196 where the duty becomes chargeable in terms of sub rule (1) of that rule if any excisable goods brought into the factory under Chapter X procedure are removed as such from the premises of an L-6 licensee, then the rate of duty and the tariff valuation, if any, applicable to those goods shall be those prevalent on the date of such actual removal.

A licensee in Coimbatore collectorate engaged in the manufacture of motor vehicles, cleared during 1986-87 and 1987-88 excisable goods brought by him under Chapter X procedure, on payment of duty adopting the value applicable at the time of receipt of goods instead of adopting the value applicable on the date of removal. The incorrect adoption of value resulted in short payment of duty of Rs.2.23 lakhs during the years 1986-87 and 1987-88.

(13) Disposal of defective or damaged excisable goods without payment of duty

As per Rule 196B of the Central Excise Rules 1944, if any excisable goods obtained under Rule 192 ibid are, on receipt, found to be defective or damaged or unsuitable to the needs of the applicant, he may after examination and with the written permission of the proper officer

a) return such goods to the original manufacturer of the goods from whom the applicant had received them under bond subject to conditions prescribed by the collector in this behalf; or

b) clear such goods on payment of duty; or

c) destroy such goods where the duty payable has been remitted.

i) An assessee in Bombay II collectorate, who was bringing tyres and tubes for use as original equipment in the manufacture of motor vehicles without payment of duty under a notification issued on 12 February 1986, had a stock of damaged tyres and tubes (6,065 Nos.) since March 1983. The assessee applied (in January 1988) for remission of duty of Rs.1,45,560 leviable thereon. This was not agreed to by the department who asked him to pay the duty in April 1988, which has not been paid (May 1989).

ii) A licensee in Bhubaneswar collectorate, found a quantity of 29.910 tonnes of ferro-silicon defective and hence rejected them. He also deducted this quantity from his stock account in March 1987. The rejected goods were stated to have been returned by him to the original manufacturer situated in a different collectorate. He neither made available to audit permission of the proper officer for returning the rejected goods nor the rewarehousing certificate from the recipient collectorate. The duty involved on such rejected material amounted to Rs.40,990.

(14) Irregular procurement of goods in excess of bond amount

An assessee should execute with the proper central excise officer adequate security in the form of bonds {B-8(Sur) or B-8(Sec)} before he is accorded permission to work under Chapter X procedure. As per instructions dated 19 November 1977 of the Central Board of Excise and Customs the amount of the bond may, at the discretion of the Assistant Collector, be fixed at a sum not exceeding the amount of duty leviable on one month's estimated consumption of the excisable goods. In cases of genuine hardship this limit may be relaxed with the prior approval of the Board.

A test audit of the records of assessees holding L-6 licences in the various central excise collectorates revealed that during the years 1986-87 and 1987-88 goods involving duty of Rs.31.43 crores and 3.74 crores respectively were brought into the factories for specified industrial purposes under Chapter X procedure in excess of the amounts of the bonds executed by them. Some of those cases are given below:

i) **Ahmedabad collectorate**

a) An assessee brought excisable goods into his factory at concessional rate of duty in December 1986 and July 1987 under Chapter X procedure for use in special industrial purpose in excess of the bond amount. The differential duty involved was Rs.140.02 lakhs.

b) Another assessee brought excisable goods into his factory at concessional rate of duty in December 1986 and August 1987

under Chapter X procedure in excess of the bond amount. The differential duty involved was Rs.15.55 lakhs.

ii) **Vadodra collectorate**

a) An assessee brought excisable goods into his factory at concessional rate of duty in October 1986 and October 1987 under Chapter X procedure in excess of the bond amount. The differential duty involved was Rs.33.34 lakhs.

b) Similarly, two other assessees brought excisable goods into their factories at concessional rate of duty in April and September 1987 under Chapter X procedure in excess of the bond amount. The differential duty involved was Rs.6.93 lakhs.

iii) **Jaipur collectorate**

An assessee brought excisable goods into his factory at concessional rate of duty from 22 August 1986 to 1 September 1986 under Chapter X procedure in excess of the bond amount. The differential duty involved was Rs.3.49 lakhs.

iv) **Kanpur collectorate**

An assessee brought excisable goods into his factory at concessional rate of duty in excess of the bond amount on 14 September 1986, 30 November 1986, 17 December 1987 and 18 January 1988. The amount of duty in excess of the bond amount was Rs.3.49 lakhs.

v) **Bhubaneshwar, Shillong and Calcutta I collectorates**

In the following six cases stock of excisable goods involving duty of Rs.9.58 lakhs brought into the factory at concessional rate of duty was held in excess of the bond amount

Sl. No.	Collectorate	No. of assessees	Period	Duty involved (Rs. in lakhs)
1.	Bhubaneswar	2	16.01.1987 to 17.02.1988 (various dates)	3.63
			15.07.1986 to 31.03.1987 (various dates)	2.03
2.	Shillong	1	31.03.1987	1.75
3.	Calcutta I	3	31.12.1986 and 31.12.1987 28.02.1987 and 31.10.1987 31.10.1986 and 31.10.1987	2.17

vi) **Bangalore and Coimbatore collectorates**

Eight assessees brought into their factories excisable goods involving duty of Rs.2.48 lakhs under Chapter X procedure after the expiry of the bonds executed by them.

vii) **Cochin collectorate**

An assessee brought into his factory benzene at concessional rate of duty under Chapter X procedure for manufacture of phenol and acetone during the period from 21 November 1986 to 17 June 1987 without executing any bond.

(15) Excess quantity of goods in stock

As per Rule 192 a person desiring to obtain remission of duty on goods used for special industrial purpose, should indicate in his application to the collector for obtaining the L-6 licence, the estimated annual quantity of the excisable goods required by him. He should also indicate the purpose and the manner in which he intends to use them, and should give an undertaking that the inputs would be used for the said purpose only and not otherwise.

Following table shows the prescribed

value of the estimated annual requirement of inputs and the value of excisable goods actually brought into the factories at concessional rate of duty under Chapter X procedure in 16 and 17 collectorates during the years 1986-87 and 1987-88 respectively. It would be seen therefrom that value of goods actually received by the licencees exceeded the prescribed value of goods by Rs.18.62 crores in 16 collectorates and Rs.20.48 crores in 17 collectorates during the years 1986-87 and 1987-88 respectively.

(Rupees in crores)

Year	Value of estimated annual requirement of input goods	Value of input goods actually received
1986-87	15.93	34.55
1987-88	19.18	39.66

Some of those cases are given below:

i) A manufacturer of milk products in Bangalore collectorate had excess quantity of butter in stock valued at Rs.202.00 lakhs in 1986-87 and Rs.208.94 lakhs in 1987-88.

Another manufacturer of the same product in the same collectorate, had excess stock of the butter valued at Rs.12.00 lakhs in 1986-87.

ii) A manufacturer of tractors in Delhi collectorate, had 4,946 No. of IC engines valued at Rs.47.98 lakhs in excess of the prescribed maximum limit of 1,500 No. of IC engines during 1986-87 and 7,820 No. of IC engines valued at Rs.758.54 lakhs in excess of the prescribed limit of Rs.109.12 lakhs during 1987-88.

A licensee in the same collectorate engaged in the manufacture of ferro alloys, had excess stock valued at Rs.18.10 lakhs in 1986-87 and Rs.52.24 lakhs during 1987-88.

iii) A manufacturer of fertilisers in Madras collectorate had an excess quantity of sulphuric acid valued at Rs.87.45 lakhs and Rs.61.83 lakhs in 1986-87 and 1987-88 respectively.

iv) A manufacturer of fertilisers in Cochin collectorate had excess stock of raw naphtha valued at Rs.95.56 lakhs and Rs.2.11 lakhs in 1986-87 and 1987-88 respectively.

Another manufacturer of milk products in the same collectorate had excess stock of skimmed milk powder valued at Rs.12.10 lakhs during 1986-87.

v) In Calcutta I collectorate L-6 licence holder whose maximum prescribed limit of plates, containers etc., for manufacturing batteries was 5,00,000 nos. had with him an excess quantity of 3,85,865 nos. during 1987-88. The value of the excess quantity retained by him amounted to Rs.22.15 lakhs.

Another licensee in Calcutta II collectorate, who was engaged in the manufacture of jute products, had a quantity of 180.60 tonnes of jute batching oil in excess of the maximum prescribed quantity of 1,296 tonnes.

vi) A licensee in Bhubaneswar collectorate, had an excess stock of ferro silicon valued at Rs.10.94 lakhs during 1986-87 and another licensee had an excess stock of television chassis valued at Rs.16 lakhs in 1987-88.

vii) In Chandigarh collectorate a licensee, had 112 kilolitres of normal hexane in excess of the prescribed maximum quantity of 180 kilolitres. The value of the excess quantity irregularly held by him amounted to Rs.4.77 lakhs during 1986-87. The same licensee held an excess quantity of 120 kilolitres of normal hexane valued at Rs.5.73 lakhs in stock during 1987-88.

viii) A licensee in Hyderabad collectorate, had excess stock of hexane valued at Rs.1.28 lakhs during 1986-87 and Rs.1.80 lakhs during 1987-88.

ix) A licensee in Indore collectorate engaged in the manufacture of steel and alloys whose maximum prescribed quantity of oxygen gas was 78000 M, had held in stock excess quantities 2.35 lakhs M and 2.61 lakhs M, of oxygen gas during the years 1986-87 and 1987-88 respectively.

(16) Annual stock taking

Rule 223A of the Central Excise Rules, 1944 required that annual stock taking should be done in respect of all excisable goods including

those received under Chapter X procedure. If the quantity of stock so ascertained is found to be less than the quantity which ought to have been found in such premises, the owner of the premises shall, unless the deficiency be accounted for to the satisfaction of the proper officer, be liable to pay full duty chargeable on such goods as are found deficient and also a penalty leviable under the rules.

Following table shows the position in regard to non-conducting of physical verification of excisable goods brought by the various units into their factories in twenty collectorates during the years 1986-87 and 1987-88.

Sl. No.	Collectorate	No. of units	
		1986-87	1987-88
1.	Chandigarh	90	127
2.	Buhbaneswar	79	79
3.	Indore	6	21
4.	Cochin	5	5
5.	Ranchi	39	39
6.	Allahabad	14	14
7.	Kanpur	18	18
8.	Meerut	14	14
9.	Hyderabad	2	4
10.	Jaipur	9	20
11.	Madurai	11	14
12.	Nagpur	16	16
13.	Madras	2	4
14.	Coimbatore	4	2
15.	Vadodra	18	22
16.	Bangalore	4	4
17.	Ahmedabad	9	23
18.	Trichy	1	2
19.	Delhi	12	12
20.	Belgaum	3	3
	Total	356	443

In the circumstances it could not be ascertained in audit whether there were any shortages in those cases and, if so, whether they were condoned or duty thereon was recovered.

Annual stock taking conducted in the year 1987 in a unit in Cochin collectorate revealed shortages of 3.8110 kilolitres of hexane. Neither was this shortage condoned nor was duty of Rs.7,050 leviable thereon demanded.

(17) Other irregularities

i) In Calcutta II collectorate an assessee continued to bring into his factory brake-lining, clutch facing, tie rod and electric horn even after their specific exclusion from notification dated 10 February 1986 by issue of another notification 20 May 1986. The differential duty leviable amounted to Rs.0.89 lakh during the period from June 1986 to August 1986.

ii) Another L-6 licensee in Ahmedabad collectorate, brought into his factory 12 air conditioners under Chapter X procedure in June 1985 but did not install them till December 1988 i.e., for three and a half years. The department did not demand (June 1989) duty of Rs.1.64 lakhs leviable thereon.

iii) One unit under Vadodra collectorate, was receiving laminated HDPE fabrics without payment of duty under a notification dated 1 March 1987. Out of 4,25,240 metres of laminated HDPE fabrics treated as waste during the period April 1987 to June 1988, the unit sold 9,15,000 pieces (metres not available) valued at Rs.36,72,520 to various parties who were not L-6 licence holders. Duty leviable on such waste which was not recovered by the department, worked out to Rs.11.02 lakhs. On the irregularity being pointed out in audit (July 1988), the department issued a show cause cum demand notice in September 1988. Further progress has not been reported (June 1989).

iv) An L-6 licensee in Coimbatore collectorate, transferred substantial quantity of goods (34 per cent) manufactured by him in 1986-87 and (62 per cent) in 1987-88 to another unit in a different collectorate utilising his storage capacity as a transit facility. As the grant of permission to work under Chapter X procedure is mainly intended for the use of excisable goods in the manufacturing process by the applicant himself, utilisation of the permission as transit facility for receiving and transferring of goods to other units is not in order and is against the spirit of the concession granted.

v) Another licensee (L-6) in Bangalore collectorate, engaged in the manufacture of pressure cookers was bringing parts of pressure cookers under Chapter X procedure without payment of duty for the use in the manufacture of pressure cookers under a notification issued on 3 April 1986 and stored them in his L-6 premises.

He was also bringing duty paid parts of

pressure cookers (i.e. the same goods for which the factory held L-6 licence) for sale as spares to the customers in contravention of Rule 51A. The licensee had not furnished monthly returns (RT 11) showing the quantities of goods used and commodity manufactured during the years 1986-87 and 1987-88. No stock taking was also conducted during those years.

The remission of duty on parts of pressure cookers obtained under Chapter X procedure amounted to Rs.4.73 lakhs during the years 1986-87 and 1987-88.

vi) Two assessees holding L-6 licences in Bangalore collectorate engaged in the manufacture of sacks, maintained their own stock accounts for receipt of LDPE laminated fabrics. This account showed only the receipt and issues of LDPE laminated fabrics brought into the factory under Chapter X procedure. It did not show the goods viz. LDPE laminated sacks manufactured out of it. Further neither the stock register (RG 16) required to be maintained under Rule 194(1) had been maintained, nor monthly returns (RT 11) under Rule 194(3) furnished. No stock verification was done thus contravening Rule 223A. As both laminated and unlaminated sacks were accounted for by him as sacks only it was not clear how it was ensured that the entire quantity of LDPE laminated fabrics involving duty of Rs.6.21 lakhs brought into the factories under Chapter X procedure during 1987-88, were used for the intended purpose.

The appraisal was sent to the Ministry of Finance in September 1989; their reply has not been received (November 1989).

1.05 Irregular refunds

(1) Introduction

Refunds of central excise duty may arise due to amounts paid through inadvertence, errors or misclassification; or rebate of Central Excise duty paid on goods exported out of India; or claims arising as a result of adjudication orders; or duty paid on goods returned to the factory for being remade, reconditioned etc., or licence fees paid on applications which are rejected by the Central Excise department; or unused Central Excise revenue stamps/labels; or initial deposits of money made by the units working under compounded levy system; or money remaining in the Personal Ledger Account (PLA) on closure of the business. Fines and penalties imposed in the course of adjudication may be ordered for refund during appellate proceedings.

As per sub-section (1) of Section 11B of the Central Excises and Salt Act, 1944, an assessee can claim refund of central excise duty by making an application to the Assistant Collector of Central Excise within 6 months from the relevant date. Under sub-section (2) of Section 11B ibid 'relevant date' means:

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves, or, as the case may be, the excisable materials used in the manufacture of such goods :-

i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

ii) if the goods are exported by land, the date on which such goods pass the frontier, or

iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of goods returned for being remade, refined reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the aforesaid purposes;

(c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;

(d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by issue of a notification in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer

has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;

(e) in a case where duty of excise is paid provisionally under the Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;

(f) in any other case, the date of payment of duty.

(2) Scope of audit

The scope of audit of refunds was designed primarily to test check that refunds were made in accordance with the provisions of the Central Excise Law and there was no overpayment. Following points were particularly seen :

i) refund claims were made within the prescribed time limit, sanctioned by the competent authority and paid without delay;

ii) refunds were neither sanctioned nor made in cases where stay was granted by an appropriate authority;

iii) system existed with the central excise department to ensure that claims for refunds already made, were not again sanctioned;

iv) while sanctioning refunds, adjustments on account of credit of central excise duty already availed under Modvat scheme or Rule 56A procedure were made;

v) mechanism existed with the central excise department whereby files relating to refunds exceeding Rs.1 lakh were sent to Internal Audit Department for post audit and that department actually scrutinised those files;

vi) assessable value was redetermined, duty reassessed and collected in cases where the amount refunded was not passed on to the consumers; and

vii) particulars of the refunds exceeding Rupees fifty thousand were reported to the concerned Income Tax authorities.

(3) Highlights

An appraisal of refunds made by the central excise department, has been conducted. The results of appraisal are contained in the succeeding paragraphs which highlight the following:

There were delays ranging from six weeks to more than a year in making refunds of Rs.155.39 crores in 24,416 cases during the years 1985-86, 1986-87 and 1987-88.

Neither did the divisions in sixteen central excise collectorates receive back weekly statements of refunds from the Chief Accounts Officers duly verified, nor did those divisions take any action to obtain those statements back from the Chief Accounts Officers.

There was a loss of Rs.10.76 crores on account of non-redetermination of assessable value of excisable goods on account of grant of refunds to 599 assessees in twenty central excise collectorates, who did not pass on those refunds to the customers.

Amounts of Rs.1.35 crores on account of credit of duty already availed of by the buyers of the finished goods under Rule 57A/Rule 56A were not reversed before granting refunds of duty to five manufacturers.

Loss of revenue of Rs.5.78 lakhs on account of irregular refunds of cess, was incurred.

Refunds of Rs.11.51 crores in 254 cases had to be made even before the cases were finally decided as the department did not pray for the grant of stay for refund of duty already paid by the assessees while going in appeal before the appellate authorities.

Cases of unjust enrichment of Rs.33.21 lakhs owing to grant of refunds to the assessees who had already recovered duty from the customers, were noticed.

Non-reporting of 886 cases involving refunds of Rs.37.36 crores to the Income Tax authorities, were noticed.

Non-submission of cases of refunds of

Rs.78.50 lakhs to the Collectors of Central Excise for his review, were noticed.

Other irregularities in granting refunds resulted in loss of revenue of Rs.3.82 crores in seven collectorates.

(4) Refund of central excise duty

During the years 1985-86, 1986-87 and 1987-88 an amount of Rs.254.53 crores on account of central excise duty was refunded in 60,252 cases in 32 collectorates as under :-

	1985-86		1986-87		1987-88	
	No.	(Rs.in crores)	No.	(Rs.in crores)	No.	(Rs.in crores)
a) Amounts paid through inadvertence etc.	1,819	16.78	2,203	18.10	2,520	27.19
b) Rebate of duty on goods exported outside India	14,240	24.69	10,217	14.45	15,822	22.64
c) Refund of duty paid of the inputs used in the final products cleared for export under bond	1,851	27.16	1,530	26.65	1,985	34.68
d) Others	2,609	9.00	2,698	15.86	2,758	17.33
Total	20,519	77.63	16,648	75.06	23,085	101.84

(5) Delay in disposal of refund claims

As per instructions regarding expeditious disposal of refund claims issued by the Central Board of Excise and Customs on 1 August 1983 and reiterated on 7 March 1988 a period of six weeks should ordinarily be sufficient to process a refund claim from the date of its receipt by the Assistant Collector of Central Excise till payment.

Delays ranging from 6 weeks to more than a year were noticed in refunding Rs.155.39 crores in 24,416 cases during the years 1985-86, 1986-87 and 1987-88 as is evident from the following table:

	1985-86		1986-87		1987-88	
	No.	(Rs.in crores)	No.	(Rs.in crores)	No.	(Rs.in crores)
a) Delays between 6 and 12 weeks	1,661	6.29	1,299	8.09	2,879	15.21
b) Delays between 12 weeks and one year	2,800	26.54	4,492	24.03	6,154	32.03
c) Delays beyond one year	2,038	19.17	1,729	12.71	1,364	11.32
Total	6,499	52.00	7,520	44.83	10,397	58.56

(6) Omission to watch the receipt of verified refund statements from the Chief Accounts Officers

As per para 256 of Basic Excise Manual weekly statements of refund claims passed by the Assistant Collector should be sent to the Pay and Accounts Officer/Chief Accounts Officer. On their receipt the Chief Accounts Officer should post audit the payment and return the duplicate copy of the statement with objections, if any, to the Assistant Collector within 15 days. The procedure also envisages existence of a system in the Office of the Assistant Collector to watch the

receipt back of the audited statements from the Chief Accounts Officer.

The position of arrears in receipt of the aforesaid statements was reviewed in respect of 29 out of the 32 collectorates for the years 1985-86, 1986-87 and 1987-88.

It was noticed that weekly statements were not being received from the Chief Accounts Officers in the divisions of the following 16 collectorates :

(1)	Ahmedabad	(2)	Bangalore
(3)	Belgaum	(4)	Bolpur
(5)	Calcutta-I	(6)	Calcutta-II
(7)	Cochin	(8)	Coimbatore
(9)	Guntur	10)	Hyderabad
11)	Indore	12)	Madras
13)	Madurai	14)	Rajkot
15)	Trichy	16)	Vadodara

No register for keeping watch over the receipt of those statements was found maintained in the divisions under Chandigarh Collectorate. As regards divisions in the other collectorates, the registers were incomplete and, therefore, no follow up action in obtaining the wanting statements from the Chief Accounts Officers could be taken. In Bombay I Collectorate the delay in receipt of the statements in the divisions ranged from 48 to 205 weeks.

(7) Assessable value not redetermined resulting in loss of revenue

Section 4 of the Central Excises and Salt Act, 1944, allows deduction of the duty payable from the price of the manufactured product for the purpose of arriving at the assessable value of the product. However, if the assessee collects more duty than that paid to Government the assessable value is required to be redetermined after adding such excess to the original assessable value. On 23 February 1981, the Central Board of Excise and Customs clarified that while allowing refunds of duty in cases where duty realised by the assessee was in excess of the duty actually paid to Government it is necessary to redetermine the assessable value of the product as the amount of duty refunded ceases to be excise duty and forms a part of the assessable value.

It was noticed in audit that refund of duty granted in 599 cases in 20 central excise collectorates was not passed on to the consumers by the assessees during the years 1985-86, 1986-87 and 1987-88. In those cases the assessable value of the excisable goods was not redetermined and differential duty of Rs.10.76 crores was not adjusted from the refund amounts/collected. The year-wise details of these cases are given below :

Year	No.	Amount (Rs.in crores)
1985-86	237	5.00
1986-87	170	1.72
1987-88	192	4.04
Total	599	10.76

Some of these cases are given below :-

(i) Collectorate, Baroda

A manufacturer of paints, varnishes and thinners was granted refund of central excise duty of Rs.72,62,786 in August and September 1987 as a result of reduction in the assessable value of his product by the Divisional Assistant Collector in his orders of April 1986. However, neither was the amount of refunds passed on to the consumers, nor the assessable value of the product was redetermined. It resulted in short levy of duty of Rs.7,60,888.

(ii) Collectorate, Delhi

As per a notification dated 31 May 1979, telecommunication wires and cables falling under erstwhile tariff item 33 B(i) and used as (i) overhead or underground telecommunication wires and (ii) overground (laid on the ground) telecommunication wire excluding internal housing cables ancillary for telecommunication purposes supplied on specific demand for telecommunication purposes, were assessable to duty at the rate of 10 per cent ad valorem.

An assessee initially paid duty at tariff rate of 20 per cent ad valorem and later on applied for refund of the excess duty at the differential rate of 10 per cent paid by him, which was allowed to him in September 1984. In this case also neither did the assessee pass on the amount of refund to the consumers, nor did the department redetermine the assessable value for recovering the differential duty of Rs.7 lakhs.

(iii) Collectorate, Bombay III

As per orders dated 11 December 1986 of the Bombay High Court a manufacturer of copper coated M.S.wires which were assessable to central excise duty at ad valorem rates under erstwhile tariff item 50, was granted a refund of

duty of Rs.26,96,913 together with interest of Rs.10,70,549 at the rate of 12 per cent per annum.

He, however, neither passed on the amount of refund to the consumers nor did the department redetermine the assessable value and collected differential duty of Rs.4,59,821 as also the amount of interest of Rs.1,82,527 excess paid to him.

(iv) Collectorate, Hyderabad

An assessee, who was refunded Rs.43.08 lakhs (on account of central excise duty) in August 1987, did not pass it on to the consumers. The department did not also redetermine the assessable value resulting in under assessment of duty of Rs.5.86 lakhs. On this being pointed out in audit in April 1989, the department stated (26 May 1989) that the concerned Assistant Collector has issued a show cause cum demand notice for Rs.5.86 lakhs and that the assessee has agreed for adjustment of demand against the refund claims due. Further developments have not been reported (August 1989).

(v) Collectorate, Pune

(a) An assessee was granted (24 October 1986) refund of Rs.21,35,885 on account of excess central excise duty collected as a result of inclusion of sales tax, surcharge, discount and octroi in the assessable value during the period from 17 March 1986 to 24 July 1986. The assessee did not pass on the amount of refund to the consumers. In the circumstances the Central Excise department ought to have redetermined the assessable value and recovered the differential duty of Rs.5,33,971 which was not done.

(b) An assessee was insulating duty paid copper conductors and was paying duty on insulated conductors under protest. Subsequently, he was allowed refunds of Rs.29,90,458 on various dates between 9 February 1987 and 4 April 1989, which were not passed on to the consumers. The department also did not recover differential duty of Rs.2,99,045 after redetermining the assessable value.

(c) Another assessee paid duty on his products under protest during the period from 1979 to 1982 as there was dispute between him and the department about the classification of those products. According to him the goods were classifiable under erstwhile tariff item 68, whereas the department's view was that those goods were classifiable under erstwhile tariff item 62. The view of the assessee was upheld and an amount of Rs.19,62,160 on account of differential duty was refunded to him on 24 October 1986. The assessee neither passed on the refund amount to the consumers nor the department redetermined the assessable value and recovered differential duty of Rs.1,56,970.

(vi) Collectorate, Indore

As per orders dated 12 August 1987 of the special bench of Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi, an assessee was paid (March 1988) refund of Rs.13,91,426 on account of central excise duty paid by him on the aerated waters from 17 August 1976 to 23 June 1977. As he did not pass on the amount of the refund to his customers, the central excise department should have redetermined the assessable value of aerated waters and adjusted the differential duty of Rs.2,08,713 from the refund amount. This was not done.

(vii) Collectorate, Patna

Two manufacturers of (i) ingot moulds (sub heading 8454.00) and (ii) mortars and fire bricks (sub heading 3816.00 / 6901.00) paid duty on their products and subsequently claimed full exemption / concessional duty under a notification dated 1 March 1986 as amended on 2 April 1986. Accordingly Rs.5,80,491 and Rs.6,04,405 were refunded to them in July 1986 and September 1987 / February 1988 respectively. However, the assessable value was not redetermined after taking into account the portion of the excise duty collected from the customers and retained by the assessees. This resulted in underassessment of duty of Rs.1,93,352.

(viii) Collectorate, Madras

As per a notification dated 5 May 1986 speciality oils were assessable to duty at the concessional rate of 12 per cent ad valorem.

A public sector undertaking paid duty on the speciality oil at the rate of 20 per cent ad valorem plus Rs.250 per tonne from 1 March 1986 to 4 May 1986. Subsequently, it claimed and was refunded (28 November 1986) excess duty of Rs.6.83 lakhs, which was not passed on to the

customers. The Central Excise department did not redetermine the assessable value and recover differential duty of Rs.71,710.

(ix) Collectorate, Bombay II

As per orders of Bombay High Court allowing deduction of freight, forwarding charges, scheme discount, cash discount etc. from the assessable value, an assessee was authorised a refund of Rs.14,02,665 of differential duty for the period from 1 January 1977 to 22 September 1983. Since the refund amount was not passed on to the consumers, the department should have redetermined the assessable value and adjusted the duty of Rs.2,43,338 which became due to Government from the refund claim. This was not done. The amount has not been recovered (July 1989).

(8) Non-recovery of credits of duty paid on inputs at the time of grant of refund

If duty paid on excisable goods which were used in the manufacture of other goods is refunded, then credit of duty paid on such input goods taken under Rule 56A of the Central Excise Rules, 1944 or Modvat Scheme or the set off of the duty allowed under a notification dated 4 June 1979 has to be reduced suitably. The Central Board of Excise and Customs also issued instructions on 15 April 1988 for the procedure to be followed in this regard. As per this procedure, the proper officer should, before authorising refund of excise duty in such cases, verify not only whether the duty to be refunded was actually paid earlier by the consignor, but should also ensure that the credit of duty taken by the consignee has been reversed.

(i) Collectorate, Delhi

(a) As per directions dated 11 July 1985 of the Delhi High Court an assessee was refunded (8 and 14 November 1985) Rs.241.53 lakhs on account of duty paid by him on malt and malt extracts during the period from September 1980 to October 1985. As per information furnished by the Range Officers four of the customers of the assessee had taken credit of Rs.61 lakhs included in the above amount of Rs.241.53 lakhs on account of duty paid by the former to the latter on malt and malt extracts under rule 56A. However, neither did the department deduct Rs.61 lakhs from the above claim of the assessee nor did it ensure that the customers had reversed the said credit of Rs.61 lakhs availed by them.

(b) As per the Collector (Appeals) orders dated 11 February 1987, an other assessee was refunded (11 February 1987) Rs.124.63 lakhs on account of duty paid on malt and malt extract during the period from 1977 to 1985. As per notification dated 4 June 1979 the buyers of his goods were entitled to set off/proforma credit of the duty paid by them to him. Consequent upon the grant of refund to the assessee, the amount of set off/proforma credit availed of by the buyers became recoverable from them in terms of para 3 of the said notification dated 4 June 1979. The amount so recoverable worked out to Rs.63.15 lakhs out of which recovery of Rs.12.44 lakhs (Rs.11.18 lakhs representing recovery and Rs.1.26 lakhs non-availment of set off by the buyers) could only be effected till March 1989. The balance of Rs.50.71 lakhs has not been recovered even after a lapse of about two years and despite protracted correspondence (June 1989).

(ii) Collectorate, Ahmedabad

(a) A manufacturer'A' of tin taggers, cuttings of tin plates sold his product to the manufacturers of metal containers after payment of duty from 1 March 1975 to 30 July 1983. In turn those manufacturers of metal containers availed credit of duty paid by them on those tin taggers and cuttings of tin plates. Subsequently, as per orders dated January 1986 of the Collector (Appeals) the manufacturer 'A' was granted a refund of Rs.11,63,164 in December 1987. However, at the time of authorising the refund, the department did not ascertain whether the manufacturers of the containers reversed the credit of duty taken by them.

(b) A manufacturer of 'O.T.base" initially paid duty under the erstwhile tariff item 14D under protest. Subsequently, the Divisional Assistant Collector in his adjudication orders decided (April 1983) that the goods fell under erstwhile tariff item 68. As a result, refund of Rs.11,11,520 was authorised (June 1983 and September 1986) to the assessee without ascertaining whether his customers who had

taken credits of duty on O.T. base reversed the same.

(iii) Collectorate, Baroda

A licensee engaged in the manufacture of bulk drugs was granted (November 1987) a refund of Rs.1,84,862 as a result of giving retrospective effect to a notification of 3 April 1986, from 1 March 1986. However, credit of Rs.83,748 availed of by his customers under Modvat scheme was not reversed.

(9) Irregular refund of cess

(i) Collectorate, Pune

According to Vegetable Oil Cess Act, 1983, read with a notification issued on 8 December 1983, a duty of excise called cess @ Rs.5 per quintal is leviable from January 1984 on vegetable oil produced in India.

An assessee did not pay cess on the vegetable oil produced by solvent extraction process under Vegetable Oil Cess Act, 1983. The central excise department issued 4 show cause notices demanding cess of Rs.1,68,391 for the period January 1984 to June 1985. Thereupon, he filed a writ petition in the Supreme Court challenging the validity of the said act and sought for stay of recovery. As the Supreme Court did not grant orders staying recovery he paid Rs.1,67,733 to the department. Ultimately his writ petition was dismissed by the Supreme Court on 15 December 1986. In disregard to the aforesaid orders of the Supreme Court the assessee was irregularly refunded (29 November 1988) an amount of Rs.3,14,838 on account of cess paid on vegetable oil from 9 October 1985 to 11 February 1987.

(ii) Collectorate, Coimbatore

As per the order of Ministry of Industries dated 28 December 1983, cess at the rate of 1/8 per cent ad valorem is leviable on all motor cars, buses, trucks, jeep type articles, vans, scooters, motor cycles, mopeds and all other motor vehicles. The value for the purpose of levy of cess includes duties and taxes paid. In this connection the Central Board of Excise and Customs in its letter dated 15 January 1988 clarified that the department has gone in appeal against the orders of CEGAT to the effect that assessable value for the purpose of levy of cess should be the value as per Section 4 of the Act (excluding taxes and duties) and pending decision in that appeal, cess should be levied on the basis of value inclusive of duties.

A manufacturer of motor vehicles (Chapter 87) preferred an appeal against the orders of the jurisdictional Assistant Collector confirming the demand of cess on the basis of assessable value inclusive of central excise duty. Based on the orders of Collector (Appeals) dated 23 September 1987, the department refunded an amount of Rs.1.39 lakhs on 27 May 1988, in stead of filing an appeal before the Tribunal for obtaining a stay in keeping with Board's instructions.

On the omission being pointed out in audit in October 1988, the department stated (November 1988) that the refund sanctioned was as per the orders of the Collector (Appeals) and that a show cause notice was issued on 29 August 1988 to keep the matter alive.

The fact remains that failure to obtain a stay on payment of refund resulted in an avoidable loss of revenue of Rs.1.39 lakhs.

(iii) Collectorate, Patna

As per Jute Manufactures Cess Act, 1983, every article of jute manufacture specified in the schedule to that Act is leviable to cess at the prescribed rates. 'Sacking bags' are chargeable to cess at the rate of Rs.61.35 per tonne under, the residuary item 'any other article of jute manufacture'.

A manufacturer of jute articles paid cess at the rate of Rs.61.35 per tonne during the period from 1May 1984 to 19 February 1986. The rate of cess payable on sacking bags was incorrectly shown as Rs.52.15 instead of Rs.61.35 per tonne in the classification list effective from 17 March 1985. The classification list with incorrect rate of Rs.52.15 per tonne was approved by the department on 10 March 1986 and the assessee was refunded an amount of Rs.1,23,784.

The refund allowed was irregular as the rate of Rs.52.65 per tonne is applicable to sacking which is different from sacking bags and cess was therefore, correctly payable at Rs.61.35 per tonne applicable to other articles of jute manufactures.

(10) Irregular refund of interest collected on delayed payments of duty

The Central Board of Excise and Customs issued instructions to the Collectors on 20 April 1985 that whenever facility of paying ar-

rears of central excise dues had been accorded interest at the rate of 12 per cent per annum (17.5 per cent per annum from 20 April 1985) would be chargeable on monthly basis. The Board withdrew the power to allow payment of Government dues in instalments from the Collectors on 5 August 1985. Subsequently, the Board clarified on 1 October 1985 that interest should be charged in all cases of deferment of duty from the date of initial confirmation of demand.

Collectorate, Madras

A manufacturer of television sets claimed certain percentage as abatement towards post-manufacturing expenses from the assessable value on the directions of a High Court, which were provisionally allowed by the department. Subsequently, after the pronouncement of Supreme Court's judgment in Bombay Tyres International case in August 1983 {1983 ELT 1896 SC} the department determined (10 September 1985) the assessable value finally and demanded differential duty of Rs.39.86 lakhs which was paid by the assessee in eleven instalments. A sum of Rs.1.81 lakhs, being the amount payable by the assessee towards interest on belated payment of duty in instalments, was also recovered. The assessee went in appeal to the Collectors (Appeals) against the recovery of interest amount of Rs.1.81 lakhs, who allowed (29 January 1988) the appeal on the ground that the authority quoted by the Assistant Collector for collecting interest on delayed payment of arrears was defective. Consequently, the amount of Rs.1.81 lakhs was refunded to the assessee on 29 April 1988. The Collectorate also decided not to go in Appeal to CEGAT against the order in appeal of the Collector (Appeals) The action of the collectorate contravened the aforesaid instructions of the Board dated 1 October 1985.

(11) Failure of the department to pray for stay order

Refund claims cannot be withheld by the departmental officers merely because the department intends to file or has filed an appeal against the order, unless a stay order against the operation of the order in question is obtained by the department from the appropriate authority.

It was noticed in audit that an amount of Rs.11.51 crores was refunded in the following 254 cases because the department did not pray for grant of stay of refund of duty already paid by the assessees while going in for appeal to the appellate authority.

Year	No. of Collectorate	No. of cases	Amount (Rs. in crores)
1985-86	10	69	3.02
1986-87	14	101	3.07
1987-88	15	84	5.42
		254	11.51

(12) Payment of refund leading to unjust enrichment

The Calcutta High Court in Assistant Collector Central Excise and others Vs. Madura Coats Limited {1988 (17) ECR 440 (Calcutta)} held that there was no reason why the principles of unjust enrichment were not applied against an assessee where he had paid the duty and passed on the same to his purchasers and himself had not suffered any loss or prejudice. On this basis the Bombay High Court held in the case of M/ S.Roplus (India) Limited Vs. Union of India {1988 (38) ELT 27 (Bom)} that as the petitioners had already recovered the whole of the duty from their customers, they were not entitled to refunds even under the Contract Act.

In the following cases in Calcutta I and II collectorates unjust enrichment of the assessees as a result of refunds of duty which was not passed on to the consumers, were noticed in test audit:

(i) Collectorate, Calcutta-I

An assessee was paying central excise duty on metalised yarn under erstwhile tariff item 15A(2). Subsequently, the CEGAT decided the classification of his product under erstwhile tariff item 18 and he was refunded (5 May 1987) duty of Rs.15,03,050 which was not passed on to the consumers.

(ii) Collectorate, Calcutta II

(a) A manufacturer of arms and ammunition falling under heading 93.06, submitted classification list claiming the concessional rate of duty 5 per cent ad valorem applicable to a small scale unit under a notification dated 1 March 1986, but the jurisdictional Superintendent directed the assessee to pay duty at the full rate of 15 per cent ad valorem pending the approval of the classification list on the ground that the exemption may not be available to him. Accordingly, the assessee started paying duty @ 15 per cent ad valorem from April 1986. Subsequently,

the department approved (12 February 1987) the classification list allowing him the benefit of the concessional rate of duty of 5 per cent. Thereupon, the assessee submitted a refund claim for Rs.4,747 on account of differential duty on the goods cleared in April 1986.

On receipt of the refund claim the department issued a show cause notice calling the assessee to explain as to why his refund claim should not be rejected as he had realised the duty at the full rate from the customers. The assessee pointed out that there was no bar in the Central Excise Law to grant refund of duty in those cases only, where this benefit in duty was passed on to the customers. The assessee was eventually paid refund of Rs.6,79,386 on account of the difference of duty paid (15 per cent minus 5 per cent) from April 1986 to January 1987 though he had realised duty at 15 per cent from the customers. Even the assessable value was not redetermined and differential duty was not adjusted from the refund claim.

(b) A manufacturer of ingots was clearing his goods on payment of duty under heading 84.85 of the schedule to the Central Excise Tariff Act, 1985. However, the goods were exempted from the whole of duty from a retrospective date by issue of a notification under Central Duties of Excise (Retrospective Exemption) Act, 1986. Accordingly, he was refunded Rs.2,95,890 and Rs.3,65,717 on 8 October 1986 and 27 November 1986 respectively, which resulted in his unjust enrichment as the duty had already been passed on to the consumers by him.

(iii) Collectorate, Nagpur

As per a notification dated 3 April 1986 articles of wood falling under sub heading 4410.90 of the schedule to the Central Excise Tariff Act 1985, were exempt from the whole of duty leviable thereon.

(a) Two assessees supplied articles of wood to the Defence Department as per latter's specifications and requirements. According to the terms of the contract entered into between the Defence Department and the assessees, central excise duty at the rate applicable at the time of delivery was to be charged in addition to the price fixed. Due to late receipt of aforesaid notification dated 3 April 1986 those assessees continued to recover duty from the Defence Department and pay it to the central excise department till 27 May 1986. Subsequently, they claimed and were refunded (December 1986) duty of Rs.3,33,000 paid by them during the period from 3 April 1986 to 27 May 1986.

As the assessees had recovered the excess amount of duty from the Defence Department, the entire amount of refund was due to be paid to the Defence Department by the assessee. The amount was neither paid to them nor were they informed about the sanction of refund either by central excise department or by the assessee. In one case, the matter was taken up by Audit with the central excise and Defence departments for recovery of the amount from the assessees. The Defence department accordingly recovered (October 1988) Rs.1,32,142 out of Rs.1,73,789 from one assessee. The central excise department intimated (February 1988) that there were no such instructions from the Government. The balance amount of Rs.2,00,858 was retained by the assessee.

(b) Two other assessees who had entered into contract with the Maharashtra State Electricity Board (M.S.E.B.) and Indian Railways for supply of their products, also recovered from the Electricity Board and Indian Railways duty of Rs.1,43,828 during 17 March 1985 to 31 October 1985 and paid it to the Central Excise department. Later, the whole amount was refunded to the assessees as the goods sold by them to the Electricity Board and Indian Railways were exempt from payment of duty under a notification dated 17 March 1985. The assessees retained the amount refunded to them and did not return them to the Electricity Board and Indian Railways.

(13) Non-reporting the particulars of refunds exceeding Rs.50,000 to Income Tax authorities

As per the Central Board of Excise and Customs instructions dated 1 February 1975

whenever refunds exceeding Rs.50,000 are paid, the particulars of such refunds should invariably be reported to the concerned Income Tax authorities.

It was noticed in audit that refunds exceeding Rs.50,000 each were allowed in 886 cases in twenty Central Excise Collectorates during the years 1985-86 to 1987-88, but the particulars of those cases were not reported to the Income Tax authorities. Their year-wise analysis is given below:

Year	No. of cases	Amount (Rs. in crores)
1985-86	275	13.77
1986-87	251	8.28
1987-88	360	15.31
Total	886	37.36

(14) Non-submission of files relating to refunds exceeding Rs.one lakh to the Collector for review

As per Directorate of Inspection and Audit (Customs and Central Excise) instructions dated 12 March 1983 all files relating to refunds exceeding Rs.one lakh should be submitted to the Collector of Central Excise for post audit by the Internal Audit Department (IAD). These instructions were not followed in the following cases:

(i) Collectorate, Indore

A refund of Rs.70 lakhs was authorised to a firm on 30 March 1987, but there was nothing on record to show whether the case file was submitted to the Collector for audit by IAD. On the matter being pointed out in audit in January 1989, the Assistant Collector stated that those files were submitted to the Collector, but the fact of audit of the refund by the IAD was being ascertained. Further report has not been received (July 1989).

(ii) Collectorate, Cochin

The files relating to refunds of Rs.13.67 lakhs and Rs.2.07 lakhs made to two assessees were not submitted to the Collector of Central Excise for post audit by the IAD. On the omission being pointed out in audit, the department stated (May 1989) that all refund claims involving amount in excess of Rs.1 lakh are now being sent to the Collector for preaudit before issue of cheque.

(iii) Collectorate, Bhubaneswar

As a result of an adjudication order by the Collector (Appeal), Calcutta, an amount of Rs.2,76,495 was refunded to an assessee.

Although the refund amount was more than Rs.1 lakh, it was not submitted to the Collector for post audit.

(15) Other irregularities

(i) Collectorate, Belgaum

(a) The Supreme Court in its orders dated 17 February 1987 in a Civil Miscellaneous Petition filed by a manufacturer of cotton tyre cord wrap sheets set aside the show cause notice dated 20 May 1982 demanding duty of Rs.1,35,48,628 for the period from 30 June 1976 to 23 February 1981 on the grounds of time bar. In view of those orders, the department refunded (8 April 1988) an amount of Rs.87 lakhs already collected from the licensee in instalments towards the confirmed demands. The balance of Rs.48,48,628 was also foregone.

The failure to issue show cause notices from time to time in time so as to keep the demand alive resulted in loss of Rs.135.49 lakhs.

(b) The Government of India in their notification dated 29 April 1987 prescribed concessional rate of duty of Rs.205 (against normal rate of Rs.225) per tonne on cement produced in the factories which commenced production between 1 January 1982 to 31 March 1986 subject to certain terms and conditions specified therein.

A leading cement manufacturer had an installed capacity of producing six lakh tonnes of cement per annum from 1968. Subsequently, in 1982 an additional production capacity of 10 lakh tonnes per annum was added by the company by installing an additional kiln No.3 with cement mills No.5 and 6. The production and clearance of the entire factory was accounted for in a single set of central excise records. In order to become eligible for the above concessional rate, the licensee filed (16 May 1987) a separate classification list effective from

29 April 1987 for the cement produced in extended cement plant (called as phase II) which was rejected by the department on 21 August 1987.

On representations made by the licensee, the Collector directed (15 February 1988) the Assistant Collector to allow the benefit of concessional rate of duty in respect of cement produced by the assessee in his phase II plant. Thereupon, the licensee applied for a separate L-4 licence in respect of phase II plant which was granted with effect from 24 February 1988. A new personal ledger account (PLA) was also opened on 30 March 1988 in respect of phase II plant. The classification list claiming exemption under notification dated 29 April 1987 as amended was also approved effective from 1 April 1988. The licensee's claim for refund of differential duty covering the period from 15 July 1987 to 21 February 1988 for Rs.1,25,92,716 was passed by the Assistant Collector in August 1988. The claim for the period from 29 April 1987 to 14 July 1987 was rejected as time barred.

The refund made was not in order as the benefit of concessional rate of duty contained in notification dated 29 April 1987 was available only to new cement factories which commenced production during the period from 1 January 1982 to 31 March 1986 and not to extensions to or expansions of the then existing projects.

(ii) Collectorate, Bangalore

(a) A manufacturer of 'soluble coffee' falling under sub heading 2101.10, was availing Modvat credit on the inputs such as raw coffee (sub heading 0901.19) and metal containers OTS cans (sub heading 7310.00). Since the soluble coffee was exported, he preferred a refund claim for the credits lying in his Modvat account for the period from 1 April 1988 to 30 September 1988 under Rule 57F(3). The Assistant Collector, admitted a refund claim of Rs.49,93,831 and allowed payment on 3 February 1989. However, the licensee did not expunge credit of Rs.49,93,831 from his Modvat account on this account (i.e. 3 February 1989). When this was pointed out in audit on 10 March 1989, the licensee was made to reduce this amount from the closing balance in the Modvat account for March 1989.

(b) An assessee filed a classification list effective from 1 March 1986 in which he classified his product viz., cotton linters under heading 14.01 attracting duty at 12 per cent ad valorem. The same was approved by the Assistant Collector. Subsequently, the licensee sought reclassification of his product under heading 47.01 and claimed exemption under notification dated 1 March 1986 by filing a revised classification list on 22 June 1986.

The Assistant Collector in his order in original dated 4 July 1986 rejected the claim of the licensee. The Collector (Appeals), however, in his order dated 12 September 1986 allowed the appeal and directed that the product be classified under heading 47.01 and exemption contained in notification dated 1 March 1986 be allowed. Accordingly, the licensee preferred the refund claim for Rs.10,38,976 on account of duty paid from 1 March 1986 to 8 July 1986. The same was paid by the department on 3 April 1987.

As revised classification list was effective only from 22 June 1986 (date on which it was filed), the refund should have been granted only in respect of clearances from 22 June 1986 to 8 July 1986. The refund of Rs.9,84,972 relating to the earlier period from 1 March 1986 to 21 June 1986 was, therefore, irregular.

(c) An assessee claimed (26 November 1984) a refund of Rs.4,67,714 on account of duty paid on mebex tablets for the period from 22 June 1984 to 6 July 1984 which contained 'MEBANAZOLE' as one of the ingredients and which was exempted under a notification dated 3 May 1969 as amended on 21 April 1984. The refund was authorised on 31 December 1985.

As the licensee claimed exemption for the product on the basis of classification list filed by him and approved by the

Assistant Collector on 1 August 1984, he was eligible for the exemption from duty from 1 August 1984. It was, therefore, irregular to refund the duty of Rs.4,67,714 already paid for the clearances made from 22 June 1984 to 6 July 1984.

(d) As per Section 11 B(3) of the Central Excises and Salt Act, 1944, the Assistant Collector of Central Excise can order refunds suo motu to an assessee, where the refunds are a result of any order passed in appeal or revision under that Act, even if the assessee had not preferred any claim in this regard.

An assessee engaged in the manufacture of resin coated cotton fabrics, classified his goods under erstwhile tariff item 19III, which was approved by the department on 19 April 1985 and on which the auxiliary duty payable was indicated at 10 per cent ad valorem. However, the assessee contended, among other things, that as plastics contained in his goods predominated in weight they were classifiable under erstwhile tariff item 15A (2) which attracted auxiliary duty at 5 per cent ad valorem, in terms of a notification dated 1 March 1983 and preferred a claim for refund of Rs.13,608 on account of excess auxiliary duty excluding the time barred claim.

The Assistant Collector, subjected the said goods for chemical examination and on the basis of test report passed orders classifying the goods under erstwhile tariff item 68. As a consequence the assessee became eligible to pay nil rate of duty on his goods in terms of a notification dated 17 March 1985. The Assistant Collector ordered suo motu refund of the entire duty (viz.auxiliary duty of Rs.23,265 special excise duty of Rs.6,905 and basic excise duty of Rs.69,927) aggregating to Rs.1,00,097 paid by the assessee during the period from 11 December 1984 to 22 April 1985, even without the assessee filing a claim in this regard. The refund was contrary to the aforesaid provisions of Section 11 B of the Act.

(iii) Collectorate, Patna

(a) Chewing tobacco viz. 'surti' bearing a brand name is classifiable under sub heading 2404.41 of the schedule to the Central Excise Tariff Act, 1985.

Two units belonging to a manufacturer brought from outside, raw tobacco in the form of flakes/tobacco patti in bulk in gunny bags and repacked them into small packs bearing a brand name. They cleared the product after payment of duty at the rate of 25 per cent ad valorem (basic and additional excise duties). Subsequently, those units claimed refund of duty amounting to Rs.15,79,383 paid during the period from 3 September 1986 to 13 October 1987 on the ground that their product was unmanufactured tobacco packed in small packs without undergoing any manufactring process and hence no duty was payable by them. They also cited a decision dated 20 October 1985 of CEGAT {1986 (23) ELT 184} in a similar case. The refund claim was allowed by the department.

As the aforesaid CEGAT decision dated 20 October 1985 related to pre 28 February 1986, during which the Central Excise Tariff Act, 1985 was not effective, the said decision was not relevant and the refund made was irregular.

(b) As per a notification issued on 1 January 1987, raw naphtha (falling under Chapter 27) intended for use in the generation of power in a public sector fertiliser unit at Barauni is assessable to duty at the concessional rate of Rs.525 per kilolitre provided the procedure set out in Chapter X of the Central Excise Rules, 1944 is followed.

An oil refinery cleared 803.043 kilolitres of raw naphtha on payment of normal rate of duty at Rs.2253.88 per kilolitre to a public sector fertiliser unit at Barauni during the period from 1 January 1987 to 25 January 1987. Subsequently, it claimed the differential duty amounting to Rs.13,88,365 which was allowed by the department.

The refund was not admissible as Barauni unit did not follow the prescribed Chapter X procedure during the said period in as much as L-6 licence was issued to the unit on 29 January 1987 (after the goods were received) and on

the same date the bond was executed and the CT2 certificate was issued.

On the irregularity being pointed out in audit (July 1988), the department did not accept the objection and stated (May 1989) that the date from which Chapter X procedure was to be followed was not expressly provided in the notification and the assessee should not be denied the remission of duty since completion of the formalities under the procedure is a lengthy affair.

The contention of the department is not acceptable, as raw naphtha in terms of a notification of 1 January 1987 can be cleared by the manufacturer at a concessional rate on production, at the time of removal, of a valid authority such as a CT2 certificate which is issued by the Collector after he is satisfied of its intended use, manner of its use, storage, execution of necessary bond etc. as prescribed in Rule 192 and other rules under Chapter X of Central Excise Rules, 1944. Accordingly, CT2 certificate is valid only for clearances to be made afterwards and not for those already made. Therefore, raw naphtha cleared at normal rate of duty prior to the issue of CT2 certificate was not eligible for concessional rate of duty with the result that refund of differential duty of Rs.13,88,365 was irregular.

(iv) Collectorate, Hyderabad

As per Rule 233B of the Central Excise Rules, 1944, an assessee paying duty under protest, is required to file an appeal or revision within the specified period failing which it should be deemed that the assessee has paid the duty without protest and, therefore, the proviso to Section 11B of the Central Excises and Salt Act, 1944 would not be applicable to him.

A manufacturer of cement cleared the goods after packing them in gunny bags. The department included the value of gunny bags omitted to be included by the assessee in the assessable value while approving the price list. Although the assessee paid the duty under protest, he failed to file an appeal against the decision of the department within the time limit prescribed. However, his claim for refund of duty, filed after a period of ten years, which was barred by time was admitted by the department. The duty of Rs.17,68,482 paid under protest on the value of gunny bags used for clearance of goods during the period from 1 October 1975 to 8 January 1976 was refunded to him in September 1986.

On the irregular refund being pointed out in audit (November 1986), the department intimated (April 1989) that an application for revision had been filed (April 1987) before Collector (Appeals) who held (October 1987) that the refund was irregularly made and the assessee was asked (February 1988) to pay back the amount refunded to him. The assessee went in appeal to CEGAT whose decision has not been reported (May 1989).

(v) Collectorate, Rajkot

A manufacturer of rubber products filed a classification list on 27 May 1986 classifying the excisable goods under sub heading 8708.00 with duty leviable at the rate of 20 per cent ad valorem. The clasification list was to be effective from 1 March 1986. Subsequently, a revised classification list classifying the products under sub headngs 4008.29 and 4017.00 with duty leviable at 'nil' and 15 per cent ad valorem was filed with effect from 1 September 1986, which was approved by the department subject to chemical test. Before receipt of chemical test report refunds amounting to Rs.5,57,661 covering the period from March 1986 to November 1986 were authorised to the licensee.

As the earlier classification list filed with effect from 1 March 1986 was in force till the revised classification list was approved by the department with effect from 1 September 1986, the refund of Rs.3,90,590 for the period from March 1986 to August 1986 was irregular.

(vi) Collectorate, Jaipur

As per orders issued by the Collector (Appeals) New Delhi on 3 January 1987, stainless steel patta/patti were chargeable to duty at the rate of Rs.365 per tonne from 1 March 1986 under sub heading 7208.00 instead of at the rate of Rs.715 (cold rolled) per tonne under sub heading 7211.31 or 7211.39 respectively. Accordingly, refund on account of payment of excess duty was claimed by the manufacturers.

It was seen in audit in May 1989 that the duty had been paid by the manufacturers through Personal Ledger Account (PLA) and Modvat Credit Account (RG23A). Accordingly, the excess

duty paid through PLA was refundable in cash, and the excess duty paid through Modvat credit account was to be credited in that account only and was not refundable in cash. But the entire excess amount of duty was refunded in cash. This resulted in excess refund of Rs.2,41,447 in 6 cases.

(vii) Collectorate, Nagpur

As per a notification dated 1 March 1986 as amended first clearance of specified goods upto an aggregate value of Rs.30 lakhs are exempt provided the total value of clearances of the specified goods under any heading Chapter (from 1 April 1989) does not exceed Rs.15 lakhs.

An assessee manufacturing and clearing 'aerated waters' not containing sugar and containing sugar falling under heading 22.01 and 22.02 respectively was availing the benefit of concessional rate of duty in terms of the aforesid notification dated 1 March 1986 as amended. The value of clearances of both the products reached Rs.30 lakhs on 13 May 1986 and as such clearances of one of the products whose total value of clearances was below Rs.15 lakhs without payment of duty made after that date were irregular. Accordingly, the Range Officer, while assessing the monthly returns (RT12) of the assessee, pointed out the short payment of duty of Rs.44,983 during May and June 1986, Rs.38,026 during July and August 1986 and Rs.25,039 during September and October 1986. Out of those demands, the assessee paid Rs.44,983 initially but preferred a refund claim for the same to the Assistant Collector, Central Excise which was sanctioned and paid to him. Subsequently, the demands for Rs.38,026 and Rs.25,039 were also withdrawn on the grounds that refund claim for the amount of Rs.44,983 already paid was sanctioned. It resulted in loss of Rs.1,08,048 to Government.

The appraisal was sent to the Ministry of Finance in September 1989, their reply has not been received (November 1989).

CHAPTER 2
CUSTOMS RECEIPTS

2.01 The net receipts from customs duties during the year 1988-89, after deducting refunds and drawback paid alongside the budget estimates and figures for the preceding year 1987-88, are given below:

(in crores of Rupees)

Customs Receipts from	Receipts 1987-88	Receipts 1988-89 ***	Budget Estimates 1988-89	Revised Budget Estimates 1988-89
Imports*	13,871.89	6,029.04	5,782.06	16,040.60
Exports	49.07	25.49	42.00	24.16
Cess on Exports	24.36	30.11	22.25	28.52
Other Receipts	185.30	184.65	250.00	154.62
TOTAL	14,130.62	16,269.29	16,096.31	16,247.90
Deduct Refunds	255.44	183.85	185.00	135.90
Deduct Drawback**	172.79	297.64	285.00	300.00
Net Receipts	13,702.39	15,787.80	15,626.31	15,812.00

* This amount includes additional (countervailing) duty leviable under Section 3 of the Customs Tariff Act, 1975 and auxiliary duty leviable under Section 77 of the Finance Act, 1988.
** This amount does not include drawback allocated towards excise duty.
*** The figures are provisional pending certification.

The increase in gross revenue collections was mainly on account of larger realisations of duty than anticipated from vegetable oil; mineral fuel; chemicals; plastics; rubber; primary materials of iron and steel; nonferrous metals excluding aluminium; electrical machinery; railway locomotives; components of clocks and watches. The above increases have been partly offset by reduction in the revenue from import duties in respect of man made staple fibres; ceramic products, iron and non alloy steel; machinery excluding machine tools and ball/roller bearings; motor vehicles; aircraft, vessels and their components; optical, cinematographic, medical equipments, projects imports and baggage.

In the budget for 1988-89, the revenue from export duties was estimated at Rs.42.00 crores. The revised estimates for 1988-89 were estimated at Rs.24.16 crores. The actual realisation was Rs.25.49 crores. The decrease in receipts over the budget estimates for 1988-89 in terms of gross revenue was mainly on account of abolition of export duty on coffee and black pepper.

2.02 Portwise Collections

(i) Import duty collected during the years 1987-88 and 1988-89 are given below portwise as per the available information furnished by the Ministry of Finance.

Port of entry	Bills of entry (in hundreds)		Value of imports (Rupees in crores)		Import duty	
	1987-88	1988-89	1987-88	1988-89	1987-88	1988-89
Bombay	1,427	1,454	6,928	8,376	5,183	5,872
Calcutta	509	594	2,374	2,240	1,903	2,012
Madras	1,054	961	1,799	2,943	1,931	2,248
Cochin	59	100	262	429	270	316

Port of entry	Bills of entry (in hundreds)		Value of imports (Rupees in crores)		Import duty	
	1987-88	1988-89	1987-88	1988-89	1987-88	1988-89
Goa	10	22	82	134	25	43
Kandla	60	95	1,057	993	668	728
Visakha-patnam	36	32	557	734	417	354
Delhi	1,203	1,562	236	783	662	935
Other Ports	4,478	2,232	4,053	5,296	2,766	3,512
TOTAL	8,836	7,052	17,348	21,428	(a)13,825	(b)16,020

(a) differs from the accounts figure of Rs.13,871.89 crores.
(b) differs from the accounts figure of Rs.16,029.04 crores.

(ii) The value of exports, export duty collected and amount of drawback paid during the years 1987-88 and 1988-89 are given portwise as per available information frunished by the Ministry of Finance.

Port of export	Number of shipping bills (in hundreds)		Value of export (in crores of Rs.)	
	1987-88	1988-89	1987-88	1988-89
Bombay	2,362	2,494	3,980	5,060
Calcutta	679	871	1,145	1,435
Madras	1,173	1,470	1,624	2,095
Cochin	255	408	1,117	1,093
Goa	4	15	203	238
Kandla	78	114	619	807
Visakhapatnam	47	51	181	465
Delhi	1,882	2,023	1,237	1,673
Other Ports	3,085	3,248	4,446	6,639
TOTAL	9,565	10,694	14,552	19,505

Port of export	Export duty collected (in crores of Rs.)		Amount of drawback paid (in crores of Rs.)	
	1987-88	1988-89	1987-88	1988-89
Bombay	2	1	104	146
Calcutta	2	2	12	18
Madras	8	5	43	38
Cochin	27	14	4	3
Goa	-	-	-	-
Kankla	-	-	1	19
Visakhapatnam	-	-	-	1
Delhi	-	-	92	31
Other Ports	10	3	19	36
TOTAL	(a)49	(b)25	275	292

(a)differs from accounts figure of Rs.49.07 crores.
(b)differs from accounts figure of Rs.25.49 crores.

2.03 Imports and Exports and receipts from duties thereon

Value of goods imported and exported during the last two years (whereever available) and collections from duties on imports and exports, classified under statistical headings are given in Annexures 2.1 to 2.4 to this chapter.

2.04 Cost of Collection

The expenditure incurred on collection of customs duties during the year 1988-89 alongside the figures for the previous year are given below:

	(in crores of Rupees)	
Cost of collection on	**1987-88**	**1988-89**
Revenue-cum-import export and trade control functions	20.08	22.75
Preventive and other functions	112.93	132.75
	133.01	155.50
Cost of collection as percentage of gross receipts	0.94	0.96

2.05 Searches, seizures and confiscations

The number of searches conducted and seizures effected by the Customs Officers in recent years, as per information made available by the Ministry of Finance, are given portwise in Annexure 2.5 to this Chapter

2.06 Ad hoc exemptions

Under Section 25(2) of the Customs Act, 1962, the Central Government may, if it is satisfied that it is necessary in the public interest so to do, by special order in each case, exempt, under circumstances of an exceptional nature to be stated in the order, any goods from the payment of customs duty, where such duty is leviable. The number of such exemptions issued and availed of during the year 1988-89 and the preceding two years are given below:-

		1986-87	1987-88	1988-89
(i)	Number of exemptions issued and availed of	113	222	N.A
(ii)	Total duty involved (in crores of Rupees)	588.62	551.21	218.08*
(iii)	Number of cases having a duty effect above Rs.10,000	106	204	N.A
(iv)	Duty involved in cases at (iii) above (in crores of Rupees)	588.62	551.20	N.A

N.A = Not made available by the Ministry of Finance(December 1989).
* = For eight collectorates only.

2.07 Verifiction of end use where exemption from duty was conditional

As per provisions of Section 25 of the Customs Act, 1962, where the Central Government is satisfied that it is necessary in the public intrest so to do, they may, by notification in the official gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the noitificatin, goods of any specified description from the whole or any part of the duty of cutoms leviable thereon. When Government imposes an end use condition, a bond is obtained from the importer which is enforced for recovery of duty, in case the condition of end use is not fulfilled.

Information on value of goods exempted from duty subject to end use conditin, the amount of duty involved value of end use bond held b7 Customs authorities, and the number of cases where fulfilment of end use condition was verified during the last three years, as furnished by the Ministry of Finance, are given in Annexure. 2.6.

The value of goods exempted from duty (subject to end use condition) decreased from Rs.856.93 crores in 1986-87 to Rs.* crores in 1988-89. The amount of import duty for gone every year on goods exempted from duty (subject to end use condition) went down from Rs.894.43 crores in 1986-87 to Rs.* crores in 1988-89.

2.08 Arrears of Customs duty

The amount of customs duty assessed upto 31 March 1989 which was still to be realised on 31 August 1989 was Rs.20.18 crores in respect of eighteen collectorates.

2.09 Time barred demands

Of the demands raised by the department up to 31 March 1989 which were pending realisation as on 31 August 1989, recovery of demands amounting to Rs.2.26 crores raised in 18 Custom Houses and Collectorates was barred by limitation.

2.10 Write off of duty

Customs duties written off, penalties abandoned and exgratia payments made during the year 1988-89 and the preceding two years are given below:-

Year	Amount** (in lakhs of rupees)
1988-89	22.48
1987-88	0.43
1986-87	2.53

2.11 Pendency of audit objections

The number of audit objections raised in audit upto 31 March 1988 and the number pending setlement as on 30 September 1988 in the various Custom Houses and combined Collecto- rates of Customs and Central Excise are given below:-

Number of outstanding objections and amount of revenue involved.

(Rupees in lakhs)

No.	Name of Custom House or Collectorate	Raised upto 1986-87		Raised in 1987-88		Total	
		No.	Amount	No.	Amount	No.	Amount
1.	Bombay(sea)	54	76.80	42	1899.89	96	1976.69
2.	Bombay(air)	29	96.29	14	37.59	43	133.88
3.	Meerut, Kanpur and Allahabad	23	304.17	17	64.75	40	368.92
4.	Bangalore	52	12.01	11	1.71	63	13.72
5.	Guntur	14	-	14	0.07	28	0.07
6.	Madras	2084	392.88	663	280.28	2747	673.16
7.	Tiruchirapalli	26	1.00	15	-	41	1.00
8.	Coimbatore	5	-	6	0.07	11	0.07
9.	Patna(Prev)	2	9.21	-	-	2	9.21
10.	Cochin	6	18.79	7	5.80	13	24.59
11.	Bangalore and Karnataka outports	-	-	2	0.44	2	0.44
12.	Hyderabad	-	-	35	12.92	35	12.92
13.	Visakhapatnam	11	26.29	12	39.37	23	65.66
14.	Chandigarh	5	9.30	2	2.88	7	12.18
15.	Jaipur	19	16.13	18	16.71	37	32.84
16.	Ahmedabad (Prev), Baroda and Rajkot	37	957.98	47	412.25	84	1370:23
17.	Delhi	241	97.54	113	81.24	354	178.78
18.	Calcutta, Customs(Prev) West Bengal & Shillong	124	882.51	142	447.54	266	1330.05
	TOTAL	2732	2900.90	1160	3303.51	3892	6204.41

* = Not made available by the Ministry of Finance (December 1989).

** = Amount pertains to eight collectorates only. Information in respect of remaining collectorates not made available by the Ministry of Finance (December 1989).

The outstanding objections fall under the following categories:

	Category of objections	Amount (Rs. in lakhs)
1.	Short levy due to misclassificaton	1347.39
2.	Short levy due to incorrect grant of exemption	763.12
3.	Non-levy of import duties	141.44
4.	Short levy due to undervaluation	131.84
5.	Irregularities in grant of drawback	21.00
6.	Irregularities in grant of refunds	315.65
7.	Irregularities in levy and collection of export duty	24.24
8.	Other irregularities	3452.22
9.	Over assessment	7.51
	Total	6204.41

The Ministry of Finance have stated (October 1989) that the pendency of audit objections is kept under constant watch with the object of reducing the pendency as far as practicable and the collectors concerned are given instrucions to take urgent steps to settle the pending audit objections.

2.12 Results of Audit

Test check of records in Custom Houses/ Collectorates conducted in audit during the year 1988-89 revealed short levy of duties, irregular payments of refund, excess/irregular payments of drawback and loss of revenue amounting to Rs.41.98 crores. The department has accepted short levies and irregular refunds and drawback amounting to Rs.4.62 crores. Over assessments and short payments by department detected in audit and pointed out to department also amounted to Rs.93.19 lakhs.

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

a) Non levy of import duties
b) Short levy due to incorrect grant of exemption,
c) Irregularities in the grant of refunds
d) Short levy due to misclassification
e) Short levy due to undervaluation
f) Irregularities in the payments of drawback
g) Short levy due to mistakes in computaion of duty
h) Application of incorrect rates of duty
i) Non levy of export cess
j) Other irregularities

System studies on the following two areas of administration of the Customs department were also conducted. The results of those studies are contained in paragraphs 1.01 and 1.02 of this report.

(i) Non disposal/delay in disposal of seized and confiscated goods

(ii) Ships' stores - levy and collection of duty.

These studies also revealed non levy/ short levy of Customs duty amounting to Rs.24.82 crores.

NON LEVY OF IMPORT DUTIES

2.13 Non levy/short levy of auxiliary duty

(i) Lube base oils

Lubricating oils (i.e., any oil which is ordinarily used for lubrication) are classifiable under heading 27.10(8) of the schedule to the Customs Tariff Act 1975, while lube base oils (viz., 'solvent bright stocks', 'lube base', turbine Oils, etc.) are classifiable under heading 27.10(1) ibid as, 'petroleum oils, 'not elsewhere specified'.

The practice in a major Custom House was to assess "solvent bright stock", "lube base stock, etc; on their import, under heading 27.10(8), treating them as lubricating oils, with basic customs duty at 40 per cent ad valorem and auxiliary duty at nil rate in terms of notifications issued from time to time, exempting auxiliary duty on goods falling under heading 27.10(8).

It was pointed out in audit (September 1985 to June 1986) that base oils imported in 13 consignments between 21 February 1985 and 7 November 1985 could not be considered as lubricating oil falling under heading 27.10(8) as they were only base oil used in the manufacture of

lubricating oil and were not ordinarily used for lubrication purposes. Further, they had to be processed with other additives to transfer them into lubricating oil. Hence, the imported goods were required to be assessed under heading 27.10(1) as petroleum oils not elsewhere specified with 40 per cent basic duty plus 40 per cent auxiliary duty (45 per cent auxiliary duty from September 1987).

In this connection the attention of the department was invited to the opinion of the Indian Institute of Petroleum, Dehradun, an apex body and authority on petroleum products, which confirmed (September 1987) that lube base stock is not ordinarily used as lubrication oils and that for purposes of classification, 'lube base stock' is an unfinished raw material from which the finished lubricating oil is made. The issue was discussed further in Tariff conference held in November 1987. It was pointed out therein that lube base stock' is an unfinished raw material from which the finished lubricating oil is made. It was, therefore, decided in that conference that 'lube base stock" would not be classifiable under heading 27.10(8) of the aforesaid schedule as lubricating oil and that it is clearly distinguishable from lubricating oil for tariff purposes.

The misclassificaton of these goods by the Custom House led to nonlevy of auxiliary duty of Rs.2,77,96,138 in 13 cases. It was noticed that, after the issue of audit objections, the department raised demand for a total amount of Rs.11,94,64,616 in 53 cases of import during 1986-87 and for Rs.4,89,26,935 in 19 cases during 1987-88. In addition nonlevy of auxiliary duty of Rs.2,14,64,069 in 8 cases was pointed out during April and July 1988. The total of auxiliary duty which was not levied and was recoverable at the instance of audit on the import of lube base oils worked out to Rs.21.76 cores in 93 cases.

On the basis of a revised opinion of the Deputy chief Chemist, the Central Board of Excise and Customs reviewed the matter (August 1988) and came to the conclusion that the lube base stock could be regarded as ordinarily used for lubrication and the earlier practice of the Custom House classifying it under heading 27.10(8) was correct.

It was reiterated in audit that the lube base stock is classifiable under heading 27.10(1) only and the decision taken in the Tariff Conference held in November 1987 did not require any modification. The Ministry was also advised (June 1989) to obtain the opinion of the Indian Institute of Petroleum, Dehradun.

It will also not be out of place to point out that Government, themselves, accepted that base mineral oil for manufacture of lubricating oils and lubricating greases would fall under the heading "all sorts of mineral oils not otherwise specified", under the erstwhile Indian Customs Tariff Act, 1934 and issued exemption notification No.34-Cus, dated 1 March 1968 as amended under item 27(3) of that Act. In case base mineral oil was the same as lubricating oil, there was no necessity of issuing these notifications under the item 27(3) ibid. The grant of exemption for base mineral oil for manufacture of lubricating oil under aforesaid item 27(3) itself lends support to the view that base mineral oils for the manufacture of lubricating oil and lubricating greases have always been held as distinct and different product (viz., unfinished raw material for the manufacture of lubricating oils and lubricating greases).

(ii) Bright stock

On four consignments of 'bright stock 150-SN' valued at Rs.70,59,871, imported and cleared from bond through another major Customs House in January 1987, the benefit of the exemption notification issued in March 1986 was extended and no auxiliary duty was levied.

As 'bright stock' is a base oil - a component for lubricating oil - and not a lubricating oil in itself, the non levy of auxiliary duty was irregular; which resulted in escapement of duty of Rs.28,23,948. The omission was pointed out in audit in September 1987.

The Ministry of Finance was asked (11 April 1989) to seek the opinion of the Indian Institute of Petroleum as to whether lube base oil is lubricating oil or not.

In both the cases, the Ministry stated (November 1989) that the matter was being examined in consultation with the said Institute.

(iii) Printing machine

In terms of a notification issued in March 1988, auxiliary duty on goods which are partially or wholly exempt from duty of customs by virtue of a notification issued in June 1980, was leviable at 5 per cent ad valorem.

In a major custom House, no auxiliary duty was levied on import of printing machine

which was assessed (July 1988) to basic customs duty under the said notification of June 1980. This resulted in non levy of auxiliary duty amounting to Rs.2,97,837.

On this being pointed out in audit (January 1989) the department admitted the objection and stated (February 1989) that due to expiry of time limit request for voluntary payment was made to the importer. Report on recovery has not been received.

The Ministry of Finance have confirmed the facts.

(iv) Baggage

As per a notification issued on 19 September 1987 auxiliary duty leviable on imported goods was raised from 40 to 45 per cent advalorem with effect from 20 September 1987.

In 250 cases of dutiable goods like refrigerators, air conditioners etc. cleared under Transfer of Residence Rules through a major Custom House during the period from September 1987 to February 1988 auxiliary duty was levied at the rate of 40 per cent instead of 45 per cent.

The short collection of duty amounting to Rs.37,580 was pointed out in October 1988 to the Custom House during test audit of baggage receipts of the unaccompanied baggage centre.

The matter was also reported to the Ministry of Finance in July 1989. They confirmed the facts and stated (September 1989) that the short levy of duty amounting to Rs.30,530 has been recovered and efforts are being made to recover the balance amount.

2.14 Non levy/short levy of additional duty.

(i) Solid rubber tyres.

Solid rubber tyres are classifiable under heading 40.12 of the schedule to the Central Excise Tariff Act, 1985 and pneumatic tyres of rubber are clasifiable under heading 40.11 ibid for the purpose of levying of additional duty.

Two consigements of tubeless tyres, imported through a major port in January and April 1988, were classified under subheading 4012.90 of the schedule to the Central Excise Tariff Act 1985 and assessed to additional duty at 15 per cent ad valorem.

It was pointed out in audit (June and September 1988) that the subject goods had been described as tubeless tyres in the invoice and description to the effect that they were solid rubber tyres was not recorded therein. Further, tubeless tyres manufactured by the same firm having identical description, weight and measurement imported by a Government of India undertaking in January 1988 were classified as pneumatic tyres under heading 40.11 and assessed to addditional duty at 66 per cent ad valorem. The aforesaid consignments should also, therefore, be treated as pneumatic tyres and assessed likewise at 66 per cent ad valorem under sub heading 4011.91 of the schedule to the Central Excise Tariff Act 1985. The misclassification resulted in duty being levied short by Rs.12,09,131.

The department admitted the objections and recovered the short levied amount.

The Ministry of Finance have confirmed the facts.

(ii) Stickers

"Stickers plastic material backed by paper" are classifiable under sub heading 3919.90 of the schedule to the Central ExciseTariff Act, 1985 and on their import are assessable to additional duty at the rate of 40 per cent ad valorem.

On a consignment of stickers valued at Rs.6,27,147 and imported in June 1986 by a manufacturer, additional duty was levied at the rate of 15 per cent ad valorem instead of 40 per cent ad valorem. The mistake resulted in duty being levied short by Rs.3,76,288.

On this being pointed out in audit (April 1987), the department accepted the mistake and recovered the short levied amount (May 1989).

The Ministry of Finance have confirmed the facts.

(iii) Jumbo rolls

In terms of a notification dated 1 March 1988, the effective rate of additional duty of customs on "Jumbo rolls for Cine Films" is Rs.24 per square metre.

In respect of goods imported during April 1988 by a public sector undertaking through a major Custom House, the unit measurement was adopted as linear metre instead of square metre which resulted in the short collection of

additional duty amounting to Rs.2,89,872.

On this being pointed out in audit (September 1988) the Custom House admitted the objection (October 1988) and recovered the amount (November 1988).

The Ministry of Finance have confirmed the facts.

(iv) Textiles and textiles machinery

With effect from 1 June 1977, cess became leviable on all textiles and textile machinery manufactured in India at the rate of 0.05 per cent ad valorem. In terms of Section 3 of the Customs Tariff Act, 1975, additional duty at 0.05 per cent ad valorem also became leviable on all imported textile machinery with effect from June 1977.

No additional duty equal to the aforesaid cess was, however, levied in a Customs Division on the import of textile items by a textile unit during the period from February 1983 to January 1986. This resulted in non-levy of cess amounting to Rs.2,06,883.

On this non levy being pointed out (March 1985) in audit, the department accepted the objection and stated that demands amounting to Rs.86,210 were realised. The remaining demands for Rs.1,20,673 could not be collected as those demands became time barred.

The matter was reported to the Ministry of Finance in April 1989.

(v) Photographic colour films

Photographic colour films are classifiable under heading 3701.90 of the schedule to the Central Excise Tariff Act 1985 and assessable to additional duty at the rate of 20 per cent ad valorem.

On a consignment of photographic colour films imported (March 1986) by a company additional duty was levied at the rate of 12 per cent ad valorem under the aforesaid heading instead of correct rate of 20 per cent. Application of incorrect rate resulted in short levy of duty by Rs.1,36,708.

On the mistake being pointed out in audit (May 1987), the department recovered the short levied amount (November 1988).

The Ministry of Finance have confirmed the facts.

(vi) Activated clay

Activated clay falls under heading 38.02 of the schedule to Central Excise Tariff Act 1985 and is ssessable to additional duty at the rate of 15 per cent ad valorem.

A consignment described as "Tonsil Ac (bleaching earth)" and amplified as activated clay was classified under heading 25.05 ibid and assessed (April 1987) free of additional duty in terms of a notification dated 17 February 1986.

It was pointed out in audit (March 1988) that the subject goods, being activated clay, were assessable to additional duty at 15 per cent advalorem under heading 38.02 of the Central Excise Tariff in terms of explanatory notes at page 188 of the Harmonised System of Nomenclature (chapter 1-29). The misclassification of the goods resulted in additional duty being levied short by Rs.1,31,450.

The Ministry of Finance have confirmed the facts.

(vii) Filter aid powder

In terms of a customs notification issued on 17 February 1986, as amended additional duty leviable on all imported goods is fully exempted if such goods fall under specified chapters/headings of the Central Excise Tariff. Accordingly mineral products classifiable under heading 25.12 of Customs Tariff Act 1975 are exempted fully from levy of additional duty, as goods falling under heading 25.05 of the Central Excise Tariff.

Four consignments of filter aid powder 'Hyflosupercel' assessable under heading 38.02 of Customs Tariff Act 1975 as activated mineral product' and attracting additional duty at the rate of 15 per cent ad valorem under heading 38.02 of Central Excise Tariff were classified under heading 25.12 of Customs Tariff Act 1975 as 'mineral product' without levy of additional duty extending the benefit of the aforesaid notification dated 17 February 1986.

It was pointed out in audit (December 1988 and April 1989) that the classification of the subject goods under the heading 38.02 would be more appropriate. The misclassification resulted in the nonlevy of additional duty of Rs.77,382.

The matter was reported (July 1989) to

the Ministry of Finance who confirmed (October 1989) that the appropriate classification of the goods would be 38.02 of the Customs Tariff Act, 1975.

(viii) Organic surface active agents

Organic surface active agents (other than soap), surface active preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, are classifiable under heading 34.02 of the schedule to the Central Excise Tariff Act, 1985.

A consignment of catacarb 251 H imported through a major port and cleared from warehouse in August 1986, was classified as a catalyst under heeading 3815.90 of the Customs Tariff Act, 1975 and assessed to basic customs duty at 70 per cent ad valorem and auxiliary duty at 40 per cent ad valorem. For additional duty, the goods were classified under heading 3801.90 of the Central Excise Tariff Act, 1985 as "miscellaneous chemical products" and assessed to duty at 15 per cent ad valorem.

It was pointed out in audit (April 1987) that, as the goods had 'foaming property', the same would be classifiable as surface active agents under heading 3402.90 of Central Excise Tariff. In this connection, reference was also cited to the Tariff Advice 20/82 dated 21 April 1982 issued in the context of the erstwhile Central Excise Tariff, according to which the goods having the foaming property would merit classification under the then item 15 AA of the Central Excise Tariff (now 3402.90 of Central Excise Tariff Act, 1985) as 'surface active agents. It was, therefore, held in audit that so long as the functional property of 'foaming' is present in the goods, the same would attract additional duty at 20 per cent ad valorem under heading 3402.90 of the Central Excise Tariff Act, 1985.

The department admitted the objection (July 1988) and stated that the recovery of short levied amount of Rs.55,744 was being effected through voluntary payment.

Report on review of other exbond clearances suggested in audit was not received (October 1988).

The Ministry of Finance stated (August 1989) that a sample of "catacarb 251 H" from another consignment was subsequently tested and it was not found to possess surface active preparation. The Ministry added that the similar consignment imported earlier was not tested and hence the same was assessed on the basis of the declaration in the form of a write up produced by the importer. The Ministry have concluded that the matter would require further examination.

SHORT LEVY DUE TO INCORRECT GRANT OF EXEMPTION

2.15 Components of fuel efficient motor cars

In terms of a notification dated 8 October 1984, goods required for the manufacture of components of fuel efficient motor cars are liable to basic customs duty at a concessional rate of 25 per cent ad valorem with appropriate auxiliary duty and free of additional duty. The conference of collectors of customs held in February 1986 considered the question whether Maruti vehicles 800v and 800VT were to be considered as 'vans' or 'cars'. It was held that the "Maruti Vans" could not be considered as motor cars within the meaning of the term specified in the exemption notification on the customs and central excise duty side which relates to fuel efficient motor cars and if the intention was to extend it to 'vans', a suitable amendment to the notification would be necessary.

Component parts of brakes imported in eleven consignments through a major Custom House during the period January 1986 to March 1987 were subjected to the concessional assessments in terms of the aforesaid notification. While the goods had been amplified as "meant for Maruti Vans" in six consignments, information whether they were intended for 'cars' or 'vans' were not available in respect of the remaining five consignments.

It was pointed out (July 1986 to September 1987) in audit that the imported goods would not qualify for exemption in terms of the aforesaid notification of October 1984 but were to be assessed on merits under relevant headings of the customs and Central Excise Tariffs. The department stated that the latter five consignments were meant for use in cars only. In respect of the six consignments intended for 'vans' it was stated that the issue was being studied separately (June 1988). The incorrect extension of the exemption to these six consignments resulted in duty being levied short by Rs. 14.9 lakhs.

Internal audit department of the Custom House subsequently raised objections on the

same ground involving a short levy of duty of Rs.1.24 crores.

Final decision of the department in the matter was not intimated (July 1989).

The matter was reported to the Ministry of Finance in August 1989; their reply has not been received (November 1989).

2.16 Parts of bucket of shovel crawler dozer

(i) As per a notification of March 1987, parts of articles falling under the headings of the Customs Tariff specified in the notification were exempted from payment of basic customs duty in excess of 45 per cent ad valorem and the whole of additional duty. While heading 84.29 was specified in the notification, heading 84.31 was not mentioned therein. Accordingly parts of the articles falling under heading 84.31 were not eligible for exemption in terms of the said notification.

Three consignments of different spare parts of bucket of shovel (excavator) falling under subheading 8429.59 of the Customs Tariff was classified under subheading 9806.00 and assessed to duty (March, April, and August 1988) applying the aforesaid notification. It was pointed out (January 1989) in audit that the said notification would not apply to the subject goods as they were parts of bucket falling under heading 84.31 which was not specified in the notification. The incorrect grant of exemption resulted in duty being levied short by Rs.30,75,995.

In reply, the department stated (December 1988 and March 1989) that heading 98.06 being specific for parts of articles under chapters 84,85 and others, parts of articles of headings 84.25 to 84.30 would come under the purview of heading 98.06 inspite of a specific heading 84.31 being provided exclusively for those parts. It added that parts of heading 84.29 were specified in the above mentioned notifiation.

The department's views are not acceptable for the following reasons:

Mechanical shovels were classifiable under heading 84.29 of the Customs Tariff but their parts (i.e. the bucket) were classifiable under heading 84.31 of that Tariff. While bucket being part of article falling under heading 84.29, was eligible for concessional assessment, parts of buckets were not eligible for such concession as they were parts of articles falling under heading 84.31 and should not be treated as parts of mechanical shovel (heading 84.29).

(ii) A consignment of "cutting edge adapter bit end for dozer bucket", amplified as parts of crawler dozer, was classified under heading 98.06 and assessed to duty (April 1988) applying the aforesaid notification.

It was pointed out in audit (September 1988) that the aforesaid notification would not apply to the subject goods as they were parts of buckets falling under heading 84.31 which is not specified in the notification. The incorrect grant of exemption resulted in duty being levied short by Rs.2,11,375.

The department stated (March 1989) that heading 98.06 being specific for parts of articles under chapters 84,85 and others, parts of articles of heaings 84.25 to 84.30 would come under the purview of heading 98.06 inspite of a specific heading 84.31 being provided exclusively for those parts. It added that parts of heading 84.29 were specified in the above mentioned notification.

The departmental contention is not acceptable for the following reasons:

Crawler dozers are classifiable under heading 84.29 but their parts i.e., the bucket, is classifiable under heading 84.31. While buckets being parts of articles falling under heading 84.29 are eligible for concessiional assessment, parts of buckets are not eligible for such concession as they are parts of articles falling under heading 84.31 and should not be treated as parts of crawler dozers (heading 84.29).

In both the cases, the Ministry of Finance stated (November 1989) that the issue regarding correct classification and rate of duty needed further examination.

2.17 Parts of machine tools

In terms of a notification dated 1 March 1986 as amended, component parts of machine tools for working on metals are chargeable to basic customs duty at a concessional rate of 35 per cent ad valorem. Auxiliary duty in respect of goods covered by the said notification was fully exempted under a separate notification issued on 12 May 1987.

(i) A consignment of spare parts of shearing machine for working on metals falling

under subheading 8466.94 of the Customs Tariff Act 1975 was imported in January 1988 and assessed to duty, under the aforesaid notification of 1 March 1986. It was pointed out (June 1988) in audit that because spare parts could not be considered as component parts, the subject goods were not entitled to the exemption under the aforesaid notifications. The irregular grant of exemption resulted in duty being levied short by Rs.23,35,438.

The department stated (August 1988) that the Tariff Conference held in November 1987 had discussed this issue and decided that the Central Board of Excise and Customs should amend the notification of 1 March 1986 to the effect that both spare parts and component parts were covered by it.

However, the fact remains that the notificastion, as it stands now, does not cover spare parts. If Government desires to extend the benefit of concessional assessment to spare parts, the intention has to be explicitly indicated in the noitification by amending it. No amendment was made (February 1989).

(ii) Two consignments of spare parts of USI press and multispindle lathe for working on metal falling under sub heading 8462.10 and 8458.99 respectively of the Customs Tariff Act, 1975 were classified under heading 98.06 ibid and assessed (January 1988) to duty applying the aforesaid notification of March 1986.

It was pointed out (July 1988) in audit that since spare parts could not be considered as component parts, the subject goods were not entitled to the exemption granted as per the aforesaid notification. The irregular grant of exemption resulted in duty being levied short by Rs.70,464.

The department stated (January 1989) that the benefit was given to both spares and components in accordance with the decision taken in the conference of Collectors held in December 1988.

The Collectors' conference, held in December 1988, while deciding to interpret the term component liberally to cover "spares" had also proposed to obtain a clarification from the Commerce Ministry about the scope of the term "component". As per decision taken in an earlier conference of Collectors held in November 1987 the Finance Ministry was to amend the notification of March 1986 to the effect that both spare parts and component parts were covered by it, which has not been done (November 1989).

In both the cases, the Ministry of Finance stated (November 1989) that as there was no distinction between component parts and spare parts in the Harmonised System of Tariff, the notification of March 1986 should be interpreted liberally to include the spare parts also within the term 'component parts'.

However, the fact remains that neither the term 'component parts' includes 'spare parts' nor the decision taken in the conference of Collectors of Customs held in December 1988 about the seeking of the clarification from the Ministry of Commerce regarding the scope of the term 'component' has been implemented.

2.18 Ceramic capacitors

(i) In terms of a notification dated 18 August 1983, capacitors were assessable to basic customs duty at the concessional rate of 50 per cent ad valorem and auxilialry duty at 25 per cent ad valorem. This notification was amended on 12 September 1986 to exclude paper capacitors, power capacitors and disc ceramic capacitors from the scope of exemption.

Four consignments of fixed ceramic capacitors, imported by a public sector undertaking in February and April 1987 through an Air Cargo Complex, were assessed at the concessional rates in terms of the aforesaid notification.

It was pointed out in audit (April 1988 and June 1988) that, as per the amended notification issued in September 1986, the fixed ceramic capacitors were liable to the basic customs duty at 100 per cent ad valorem and auxiliary duty at 40 per cent ad valorem instead of at the concessional rates. The department accepted the objections and recovered the short levied duty of Rs.7,40,091 (September 1988, November 1988 and March 1989).

The Ministry of Finance have confirmed the facts.

(ii) According to a notification dated 29 April 1987 read with another notification dated 12 May 1987, capacitors excluding paper capacitors, power capacitors, medium and high frequency capacitors and disc ceramic capacitors were subject to levy of basic customs and auxiliary duties at concessional rates of 50 and 30 per cent ad valorem respectively.

Ceramic plate capacitors and the ceramic power capacitors imported in November 1987 through a major Custom House were assessed at the aforesaid concessional rates of duty though there was no evidence on record to indicate that the imported goods did not fall under the excluded categories. Justification of the assessment at the concessional rates was sought in audit and levy of basic customs and auxiliary duties at the rates of 100 per cent and 45 per cent ad valorem respectively was also suggested (June 1988). The department reviewed the assessment and admitted that the imported goods were power capacitors only. It also collected the short levied amount of Rs.1,95,234 in July 1988.

The Ministry of Fiance have confirmed the facts.

2.19 Parts of paper making machinery

As per a notification of 1 March 1986, "Component parts of paper making machinery" are chargeable to basic customs duty at a concessional rate of 40 per cent ad valorem. Auxiliary duty of customs in respect of goods covered by the aforesaid notification was fully exempted under a separate notification issued on 12 May 1987.

A consignment of "Spare parts of black clawson hydrafiner" falling under subheading 8439.99 of the Customs Tariff was assessed to duty in January 1988, applying the notification of 1 March 1986. It was pointed out (July 1988) in audit that since spare parts could not be considered as component parts, the subject goods were not entitled to the exemption from duty in terms of the aforesaid notifications. The incorrect grant of exemption resulted in duty being levied short by Rs.46,211.

The department stated (March 1989) that the issue was decided in the Tariff Conference held in November 1987 which held the views that both the component parts and spare parts were covered under the notification of 1 March 1986.

The fact, however, remains that the said conference could not take any decision about the scope of the aforesaid notification dated 1 March 1986 and suggested that the Government should amend it to bring component parts and spares within its ambit. It is, therefore, clear that the notification, as it stands presently, does not cover spare parts. If the Government intended to extend the benefit of concessional assessment to spare parts also, such intention has to be explicitly brought out in the notification itself. No amendment has been issued (March 1989).

The Ministry of Finance stated (November 1989) that as there was no distinction between component parts and spare parts in the Harmonised System of Tariff, the notification of March 1986 should be interpreted liberally to include the spare parts also within the term 'component parts'.

However, the fact remains that neither the term 'component parts' includes 'spare parts' nor the decision taken in the conference of collectors of customs held in December 1988 about the seeking of the clarification from the Ministry of Commerce regarding the scope of the term 'component' has been implemented.

2.20 Scientific equipments

Under a notification issed in March 1981, scientific and technical instruments, apparatus and equipments including spare parts, component parts and accessories thereof but excluding consumable items imported by a research institution are exempted from the whole of customs duty and additional duty. The notification exempts such equipments from the whole of auxiliary duty also. The concession is, however, not admissible if the Institution is engaged in any commercial activites. The Research and Development (R&D) Units attached to a commercial concern are therefore not entitled to avail of the concession.

(i) Scientific equipments valued at Rs.10,23,378 imported through a major port during March 1987 by a R&D unit attached to a commercial organisation were cleared free of duty availing the exemption envisaged in the aforesaid notification. The concession was granted as the research in the instant case was not for commercial consideration but for ecological and environmental interest.

The criterion for allowing the exemption is not the purpose of a particular research but the fact whether the R&D unit for which the import is made is attached to a commercial organisation or not. The goods were assessable to basic customs duty at 40 per cent ad valorem and additional duty at 15 per cent ad valorem.

The short levy amounting to Rs.6,24,260 due to irregular exemption was pointed out in audit in March 1988.

The Ministry of Finance have confirmed the facts.

(ii) A consignment of aluminium alloy sheets, imported by a research organisation of the Government in August 1988 through a major airport was cleared free of duty in terms of the aforesaid notification. It was pointed out (March 1989) in audit that the goods imported were not scientific apparatus, instruments, equipments, or components but only raw materials for manufacture of further articles and hence were ineligible for the exemption from duty.

The department admitted the objection and collected the short levied amount of Rs.2,07,058 in April 1989.

The Ministry of Finance have confirmed the facts.

2.21 Tartaric Acid

While polycarboxylic acids fall under heading 29.17 of the Customs Tariff, carboxylic acids with alcohol function are classifiable under heading 29.18 ibid. In terms of a notification issued on 29 July 1986 dicarboxylic acid imported by a leather chemical manufacturing unit for the manufacture of leather chemicals is assessable to basic customs duty at a concessional rate of 20 per cent ad valorem and free of additional duty.

In a major Collectorate two consignments of tartaric acid imported in January 1987 and May 1987 were amplified as dicarboxylic acid and assessed to duty under heading 29.18 applying the aforesaid notification.

It was pointed out in audit (December 1987) that tartaric acid which contains carboxylic groups as well as alcoholic groups should not be treated as dicarboxylic acid and as such was not eligible for concessional assessment in terms of the aforesaid notification. The irregular grant of exemption resulted in duty being levied short by Rs.6,63,519.

The collectorate stated that dicarboxylic acid was a wide and generic term. Any compound containing two carboxylic groups was a dicarboxylic acid. The presence of two hydroxyl groups in the tartaric acid did not bring the term out of the purview of dicarboxylic acid.

The reply is not acceptable. No technical literature was found to have mentioned tartaric acid as dicarboxylic acid. The Customs Tariff has also provided two separate headings for dicarboxylic acid (polycarboxylic acid) and tartaric acid viz. 29.17 and 29.18 respectively. Further, the Chief Chemist in his opinion dated 13 July 1989 has also confirmed that tartaric acid does not merit consideration as "dicarboxylic acid" for the purpose of the said notification dated 29 July 1986.

The Ministry of Finance have confirmed the facts.

2.22 Unalloyed aluminium sheets and strips

In terms of a notification dated 17 February 1986 as amended in September 1986, alloyed aluminium plates, sheets and strips falling under heading 76.06 of the Customs Tariff Act, 1975 are chargeable to basic customs duty at the rate of 60 per cent ad valorem with appropriate auxiliary and additional duties. Unalloyed plates, sheets and strips falling under the same heading, as a corollary, are chargeable to basic customs duty at the standard rate of 100 per cent ad valorem, besides auxiliary and additional duties at the appropriate rates.

Three consignments of unalloyed aluminium sheets imported in April and June 1988 and one consignment of unalloyed aluminium strips imported in April 1988 through a major custom house were extended the benefit of concessional assessment admissible to alloyed aluminium products and charged to basic customs duty at 60 per cent ad valorem.

When it was pointed out (September, October and November 1988) in audit that the benefit of concessional assessment in terms of the said notification was not admissible to these imports, the Custom House admitted the objection in all the cases (April 1989) and intimated recovery of duty of Rs.5.42 lakhs from one importer (November 1988 and January 1989). Report on recovery of Rs.1.17 lakhs from another importer was not received (June 1989).

The matter was reported to the Ministry of Finance in August 1989.

2.23 Universal Testing Machine Zwich

"Universal testing machine zwich" is classifiable under heading 90.28 (i) and attracts import duties at 60 per cent (basic), 40 per cent (auxiliary) and 12 per cent (additional). A concessional rate of 30 per cent in respect of basic customs duty is, however, applicable to specified

testing machines, and instruments in terms of notification dated 1 March 1978 as amended on 16 February 1985.

On a consignment of testing machines imported in October 1985, the department levied the concessional rate of duty even though the machines did not fulfil conditions laid down in the aforesaid notification. The levy of concessional rate of duty without proper verification resulted in duty being levied short by Rs.6,38,069.

On this being pointed out in audit (May 1986) the department recovered the short levy (November 1988).

The Ministry of Finance have confirmed the facts.

2.24 Parts of general use

In terms of the definition given in note 2 to section XV of schedule to the Customs Tariff Act, 1975, 'springs' fall under the category of parts of general use. When such parts are imported as parts of machinery, they are classifiable under heaing 98.06. Till 28 February 1988, these goods attracted basic customs duty at 45 per cent ad valorem and additional duty at nil rate in terms of a notification of March 1987. By an amending notification issued on 1 March 1988, 'parts of general use' were excluded from the purview of former notification and from that date they attracted basic customs duty at 100 per cent ad valorem with auxiliary duty at 45 per cent ad valorem plus additional duty at 15 per cent ad valorem in terms of another notification issued in March 1987 as amended on 29 April 1987.

'Springs'which were spare parts of valves, imported in four consignments through a major airport during the months of May and June 1988, were classified correctly under heading 98.06, but were subjected to levy at the lower rates of duty which were prevalent prior to 1 March 1988.

It was pointed out (August to October 1988) in audit that the imported goods would be correctly assessable to duty at the higher rates and this resulted in duty being levied short by Rs.5,36,024. Review of similar imports was also suggested.

Reply of the department was not received (July 1989).

The matter was reported to the Ministry of Finance in August 1989; their reply has not been received (November 1989).

2.25 Ice cube machines

'Ice cube machines', being 'freezing equipments' are classifiable under sub heading 8418.69 of the Customs Tariff Act,1975 and chargeable to duty at 110 per cent ad valorem (basic), 45 per cent (auxiliary) and 110 per cent ad valorem(additional).

Two 'Ice cube machines' (Model 51842) having capacity of 230 kilograms imported along with their spare parts and other accessories in December 1987 were assessed under sub heading 8418.40 ibid at 45 per cent ad valorem (basic duty), 45 per cent (auxiliary duty) and nil additional duty granting the benefit of a notification issued in March 1987.

On the irregular grant of exemption resulting in short levy of Rs.5,66,404 being pointed out (May 1988) in audit, the Custom House did not admit the objection stating (September 1988 and February 1989) that 'ice cube machine' was a refrigerating equipment as it froze water to sub zero degree temperatures for formation of ice-cubes and its capacity being 230 kilograms was other than household type refrigerator. The department added that the expression 'refrigerating equipment' appearing in the table to the notification would include 'freezer' also.

The reply of the department is not acceptable as the description of articles under heading 84.18 of the Customs Tariff Act, 1975 suggests separate clasifications for 'refrigerators' and 'freezers'and the exemption notification would apply only to 'refrigerators and refrigerating equipments, other than household type refrigerators' which means that 'freezing equipments' are not eligible for concessional rates of duty.

The Ministry of Finance stated (December 1989) that the issue regarding grant of exemption to ice cube machine needed further examination.

2.26 Printing machine

"Dot matrix printers" were unconditionally liable to a concessional rate of basic customs duty of 50 per cent ad valorem in terms of notification of August 1983. However, in terms of another notification issued in November 1984 in supersession of the former notification, they were liable to basic Customs duty at 60 per cent ad valorem subject to certain conditions.

"Dot matrix printers" imported and cleared through an inland bonded Warehouse in December 1984/January 1985 were assessed to basic customs duty at 50 per cent ad valorem with auxiliary duty at 25 per cent ad valorem and free of additional duty quoting the aforesaid notification of August 1983.

It was pointed out (March 1986) in audit that, in the absence of certificate regarding non-manufacture in India and recommendation to the grant of concession by the Department of Electronics, the benefit under the latter notification issued in November 1984 would not be available and that the goods merited assessment to basic customs duty at the standard rate of 100 per cent ad valorem with auxiliary duty at 40 per cent ad valorem and additional duty at 15 per cent ad valorem. The short levy of duty amounted to Rs.58,542.

Reply of the department was not received (July 1989). The matter was reported to the Ministry of Finance in August 1989; their reply has not been received (November 1989).

2.27 Parts of gas compressors

As per a notification issued on 15 April 1986, "component parts of gas compressors other than of a kind for use in air conditioning equipment" falling under heading 8414.90 of the Customs Tariff Act, 1975, were assessable to basic customs duty at a concessional rate of 40 per cent ad valorem.

A consignment of component parts of gas compressors was assessed (September 1988) to the basic customs duty at the concessional rate of 40 per cent in terms of the aforesaid notification.

It was pointed out (January 1989) in audit that, as the concerned bill of entry was presented on 31 March 1986, the said notification which came into force from 15 April 1986, was not applicable. Accordingly, the subject goods were liable to be assessed to basic customs duty at 100 per cent ad valorem instead of at 40 per cent ad valorem levied thereon. Incorrect application of exemption notification resulted in duty being levied short by Rs.4,26,230.

The department, while admitting (April 1989) the mistake, stated that a demand notice for the realisation of the short levied amount had since been issued.

The Ministry of Finance have confirmed the facts.

2.28 Surface active preparations

Penetrators (surface active preparatons), when imported, are assessable to duty under heading 34.02 of the Customs Tariff Act, 1975. However, if these goods are imported for use in leather industry, they are assessable to basic customs duty at the concessional rate of 40 per cent ad valorem in terms of a notification dated 9 July 1985. The goods covered by this notification are exempt from the whole of auxiliary duty.

A consignment of 560 paper bags of Tanasol HC (Leather penetrators) valued at Rs.2,57,094 imported through a major port during November 1986, was assessed to basic customs duty at 100 per cent ad valorem, auxiliary duty at 40 per cent and additional duty at 20 per cent ad valorem. The importer's request for concessional assessment under the aforesaid notification was turned down by the Assistant Collector as there was no evidence to show that the goods were meant for use in leather industry. The orders of the Assistant Collector were set aside by the Collector (Appeals) who directed the department to consider the case de novo. The department then refunded an amount of Rs.3,80,500 collected in excess of 40 per cent ad valorem on the ground that the said notification did not stipulate any specific conditions.

It was pointed out (September 1988) in audit that the refund granted without considering the end use was irregular. The notification was specific in as much as it allowed exemption only to goods imported for use in leather industry.

The department's further reply has not been received (July 1989).

The matter was reported to the Ministry of Finance in August 1989; their reply has not been received (November 1989).

2.29 Components of hydraulic pumps of cooling water system

In terms of a notification 69/87 dated 1 March 1987, parts (falling under heading 98.06 of the Customs Tariff Act, 1975) of items specified in the table thereto, are assessble to basic customs duty at 45 per cent ad valorem without any additional duty, while the unspecified residual goods, classifiable under that heading, attract basic custom duty at 100 per cent ad valorem plus

additional duty at 15 per cent ad valorem under another notification 68/87 of the same date.

A consignment of 'different components of hydraulic pumps of cooling water system' was assessed (January 1988) under heading 98.06 as parts of the goods falling under sub heading 8413.30 by incorrectly applying notification 69/87 dated 1 March 1987, eventhough sub heading 8413.30 was specifically excluded from the scope of that notification. It was pointed out (June 1988) in audit that duties were leviable at the rates specified in the notification 68/87 and not in notification 69/87.

Incorrect grant of exemption resulted in duty being levied short by Rs.3,53,923.

The irregularity was pointed out in audit in June 1988. The Custom House admitted the objection and stated that a demand notice for this amount had been issued in July 1988.

The Ministry of Finance confirmed the facts and stated (November 1989) that the short levied amount had since been realised.

2.30 Universal grinding machines

As per a notification issued in February 1985, horological machines and testing equipments imported for the manufacture and assembly of "wrist watches" are eligible for the concessional assessmment of basic customs duty at the rate of 10 per cent ad valorem.

A consignment of "universal grinding machine" imported in March 1986 through a major Custom House was declared as horological machine and allowed the concessional assessment in terms of the aforesaid notification. It was pointed out (December 1986) in audit that, since the imported machine was for grinding "tools" such as drills, reamers form tools and not a horological machine,the assessment at concessional rate of duty was not admissible and it resulted in short levy of duty of Rs.3,53,825. Though the Custom House (February 1987) did not deny that the imported machine was tool grinding machine, yet it justified the concessional assessment on the grounds that competent authority had certified it as horological machine which should be taken to mean machine pertaining to horological industry. It added that though the machine was not directly used in the production line of wrist watches, it was used in the manufacture of tools which were in turn used in the manufacture of wrist watches. It drew an analogy of Central Board of Excise and Customs letter dated 4 March 1985 classifying diesel generator as capital goods used for the purpose of manufacture of goods for export.

The reply is not acceptable since the imported goods are only a "tool grinding machine". Further, all machines used in a horological industry need not be treated as horological machines. Again the Ministry, in audit para 1.32 for Audit Report 1983-84, had earlier admitted the view of Audit that truck tractors were not asessable to basic customs duty on the basis of a certificate issued by the administrative machinery.

The matter was reported to the Ministry of Finance in August 1989; their reply has not been reveived (November 1989).

2.31 Relays

As per notification 158/88 dated 13 May 1988, certain specified articles falling within chapter 85 of the Customs Tariff were exempted from the whole of auxiliary duty leviable thereon. In terms of notification 162/88 of the same date, certain types of relays falling under the said chapter, however, attract auxiliary duty at 30 per cent ad valorem.

A consignment of "relays" falling under subheading 8536.49 of the Customs Tariff was assessed (September 1988) free of auxiliary duty applying the first mentioned notification.

It was pointed out (March 1989) in audit that since the subject goods were not covered by the said notification, they were not entitled to the exemption granted under it. They were liable to be assessed to auxiliary duty in terms of the second mentioned notification. The incorrect grant of exemption resulted in duty being levied short by Rs.2,85,560.

The department admitted the mistake and recovered the short levied amount (April 1989).

The Ministry of Finance have confirmed the facts.

2.32 Cladded steel

As per a notification dated 17 February 1986 as amended "hoops and strips of iron or steel (of carbon content less than 0.6 per cent by weight) namely rolled products with sheared or

unsheared edges, of rectangular section of a thickness not exceeding 6 mm, of a width not exceeding 500 mm and of such dimension that the thickness does not exceed onetenth of the width, in straight strips, coil or flattened coils" classifiable under heading 72.11 and 72.12 of the Customs Tariff Act, 1975 when imported, are exempted from basic customs duty in excess of 60 per cent ad valorem.

On a consignment of 'cladded steel' (alloy steel and iron), having thickness varying from 17.9 mm to 20 mm and width varying from 155 mm to 180 mm, imported through a major Customs House in February 1988, basic customs duty was levied at 60 per cent and auxiliary duty at 45 per cent, the goods being classified under sub heading 7212.60 and assessed in terms of the aforesaid notification of 17 February 1986. Additional duty was levied at Rs.365 per tonne.

It was pointed out (September 1988) in audit that the exemption for the imported goods was inadmissible in terms of the aforesaid notification and that the basic customs duty was leviable at 80 per cent ad valorem plus Rs.7000 per tonne with auxiliary duty at 45 per cent and additional duty at 15 per cent under subheading 7212.90 of Central Excise Tariff.

The department stated (October 1988) that the goods were 'flat bars' classifiable under sub heading 7215.90 and were, therefore, assessable to duty at the rate of 60 per cent ad valorem in terms of the same notification.

This is not acceptable for the following reasons:

(i) The imported goods are "cladded steel" having a width less than 600 mm. Since the percentage of alloy steel is below 20 per cent, the goods merit assessment as cladded steel in terms of note **2** to chapter 72. "Flat rolled products of iron or non alloy steel of a width less than 600 mm, clad" is specifically covered by heading 7212.60.

(ii) The goods satisfy the definition of 'flat rolled products' given at note 1(K) to Chapter 72 and the question of classifying the goods as 'other bars and rods' under heading 7215 does not arise.

The incorrect application of the notification resulted in duty being levied short by Rs.2,44,800.

The matter was reported to the Ministry of Finance in July 1989; their reply has not been received (November 1989).

2.33 Gas masks and filters

Breathing appliances and gas masks covered by heading 90.20 of the Customs Tariff Act, 1975 are assessable to basic customs duty at 60 per cent ad valorem and additional duty at 15 per cent ad valorem. Auxiliary duty at 45 per ent was also leviable.

A consignment ot 400 pieces of goods described as gas masks and filter valued at Rs.1,44,167 imported through a major port, was cleared duty free in January 1988 availing the exemption granted under a notification dated 22 September 1981. Gas masks/filters by virtue of their function of retention of airborne pollutants from the air in the contaminated area could not be considered as breathing appliances into which air comes from outside the contaminated area. As the notification does not exempt gas masks/ filters, short levy of Rs.1,95,707 was pointed out in audit in Septmber 1988. The department did not admit the objection on the plea that the item imported was breathing apparatus which saved men from harmful effects of toxic gases and that it came under compressed air breathing apparatus and other breathing appliances identical to those used by firemen. This is not acceptable because breathing appliances used by fireman are already included under (i) other breathing appliances on page 1495 of the explanatory notes to Harmonised System of nomenclature. No doubt the goods are of life saving nature but they do not qualify for exemption from duty under B-5 of the aforesaid notification.

The matter was reported to the Ministry of Finance in August 1989; their reply has not been received(November 1989).

2.34 Styrene and nonyl phenol

Concessional rate of basic customs duty of 70 per cent ad valorem, available in terms of notification dated 17 February 1986 was withdrawn in respect of styrene and nonylphenol (Chapter 29) by issue of an amending notification on 21 May 1986. On import of these items, tariff rate of 100 per cent ad valorem is, therefore, leviable with effect from 21 May 1986.

On the clearance of styrene and nonylphenol from a customs public bonded Warehouse effected on 21 May 1986, 2 June 1986 and

13 June 1986 the duty at 70 instead of at 100 per cent ad valorem was collected. This resulted in duty and interest being short levied by Rs.1,11,180.

The short levy was pointed out (January 1988) in audit. The department accepted it and stated (February 1989) that the claim had become time barred and that no reply had been received from the assessee to the request for voluntary payment made to him.

The Ministry of Finance have confirmed the facts.

2.35 Insulating material

In terms of a notification dated 9 June 1978 as amended, friction material of a kind suitable for brakes, clutches or the like falling under Chapter 68 of the Customs Tariff Act, 1975 are exempted from the levy of basic customs duty, auxiliary duty and additional duty.

'Synthane taylor H.S.T. Grade insulating material' imported in October 1986 was classified under heading 6812.90 ibid, but was incorrectly assessed free of duty in terms of the aforesaid notification. It was pointed out (April 1987) in audit that since the imported items were not used as brakes or clutches but as insulators for moulds in vertical curing Presses to prevent heat loss from the mould, they would not be eligible for the exemption under the said notification but were assessable to basic customs duty at 100 per cent ad valorem with auxiliary duty at 40 per cent ad valorem and additional duty at 15 per cent ad valorem.

The department admitted the objection and recovered the short levied duty of Rs.1,03,703 (August 1988).

The matter was reported to the Ministry of Finance in April 1989.

2.36 Cellulose acetate sheets

Notification no.26 customs dated 31 January 1979, providing for concessional assessment of basic customs duty at the rate of 75 per cent on imported cellulose acetate sheets, was rescinded on 19 May 1988. Though the effective rate of basic customs duty was retained under another notification, auxiliary duty at the rate of 45 per cent was leviable on the goods from 19 May 1988.

On a consignment of cellulose acetate sheets having an assessable value of Rs.5,06,296 imported through a major custom house during November 1988, auxiliary duty was levied at 30 per cent ad valorem, invoking the notification 163 of 13 May 1988 instead of 45 per cent ad valorem leviable thereon. This resulted in duty being levied short by Rs.1,02,525.

On the mistake being pointed out in audit (April 1989), the department accepted the objection (May 1989).

The Ministry of Finance have confirmed the facts.

IRREGULAR REFUND

2.37 Irregular grant of refunds

(i) In terms of Section 2 (23) of the Customs Act 1962, import means bringing into India from a place outside India. As per Section 2(27) ibid, India includes the territorial waters of India. Section 12 of that Act lays down that goods imported into India are subject to duty at the rates specified under the Customs Tariff Act 1975 or any other law for the time being in force. In terms of a notification issued in January 1987, Government of India extended the Customs Act 1962 to the designated areas in the continental shelf and exclusive economic zone of India with effect from 15 January 1987 with the result that such designated areas in those zones became part of Indian territory. Therefore, goods brought into the country prior to 15 January 1987, from a place outside the territorial waters of India (i.e., designated areas in the continental shelf and exclusive economic zone of India) were imported goods and were liable to duty unless they were exempted.

A consignment of 30,000 tonnes of "Ratna crude" (originating from the Bombay High oil fields) situated in the aforesaid designated areas was procured by an oil refinery based in Madras and the same was cleared in September 1985 through a major Custom House on payment of basic customs duty at the rate of 10 per cent ad valorem and auxiliary duty of customs at the rate of Rs.300 tonnes totaling Rs.1.74 crores. Accepting the averments of the importers that the subject import was indigenous crude obtained from the Bombay High Oil Field, the Custom House treated the goods as non-import and refunded the duty of Rs.1.74 crores in March 1986. The Custom House justified the refund by stating that Bombay High (off shore) falls within the Exclusive Economice Zone and hence the oil, obtained

from these zones, was indigenously produced oil (February 1988).

It was, however, pointed out (March/ December 1988) in audit that the Bombay High oil fields, though situated within the Exclusive Economic Zone, fell outside the territorial waters of India and as such the receipts of crude oil from the Bombay High oil field should be considered as 'imports' for the purpose of Customs Act. It was, further, pointed out that, in the absence of (i) an exemption notification similar to Customs notification 202 dated 24 August 1983 exempting fish caught on the high seas outside the territorial waters of India and imported or (ii) a notification extending the provisions of the Customs Act 1962 to the Exclusive Economic Zone in terms of Sections 7(6) and 7(7) of the Territorial Waters, Continental Shelf, Exclusive Zone and Other Maritimes Act 1976, the Bombay High Crude procured prior to 15 January 1987 by the refinery from the aforesaid designated areas should be treated as imported goods only. Accordingly the refund of Rs.1.74 crores by the Custom House was irregular.

The matter was reported to Ministry of Finance in June 1989; their reply has not been received (November 1989).

(ii) Spirit obtained by distilling grape wine is classifiable under sub-heading 2208.20 of the Customs Tariff Act 1975 and assessable to duty at the rate of Rs.80 per litre or 270 per cent ad valorem, whichever is higher plus auxiliary duty at the rate of 40 per cent ad valorem and additional duty at the rate of Rs.33.33 per litre.

A consignment of cognac grape spirit (obtained by distilling grape wine) valued at Rs.2,12,313 imported through a major Custom House (March 1986) was assessed to duty at the above rates though classified under a different head. After getting the goods cleared, the importer filed a refund claim contending that the imported spirit was compound alcoholic preparation used in the manufacture of beverages on which duty was leviable at a lower rate under sub heading 2208.10. The department admitted the claim, and refunded an amount of Rs.3,21,269 in June 1987.

It was pointed out (March 1988) in audit that the grant of refund was irregular because the chemical test on the goods had conformed to the characteristics of spirit distilled from grape wine in the goods imported and hence the goods were correctly classifiable under sub heading 2208.20. The issue was discussed by the Collectors in a Conference held in September 1988, where the view of Audit was accepted.

The department stated (November 1988) that a request for voluntary payment had been made to the importer. Report on recovery has not been received (June 1989).

The matter has been reported to Ministry of Finance (July 1989).

(iii) Phosphoric acid was classifiable under heading 28.01/58(13) of the erstwhile Customs Tariff and if imported for manufacture of fertilisers was assessable to basic customs duty at the concessional rate of 15 per cent ad valorem in terms of a notification dated 2 August 1976.

A quantity of 5977.848 tonnes of standard merchant grade Phosphoric acid solution containing 3238.798 tonnes of 100 per cent phosphoric Pentoxide (P205), imported (November 1980) through a minor port was initially assessed to basic customs duty at the aforesaid rate on the basis of invoiced quantity and value. Based on the importer's survey reports certifying an import of 3116.945 tonnes of 100 per cent P205, a refund of Rs.72,282 was subsequently granted (February 1983). The refund arose on account of reckoning the P205 content as 51.93 per cent on the basis of test undertaken at the time of import as against 54.18 per cent noticed at the time of loading and given in the invoice.

It was pointed out in audit (March 1983) that since there was nothing on record to indicate that, under the terms of contract, the payments were to be made on the basis of P2 05 content determined at the time of import and as no case of short landing of phosphoric acid solution was established, the customs duty should have been levied on the basis of invoiced quantity and value and that the grant of refund was irregular. The department stated (September 1983) that demand notices had been issued in the instant case and similar other cases and added (July 1988) that the demand of Rs.72,282 had been confirmed and the importers asked to recredit the refunded amount.

Report on recovery and confirmation of demand in other similar cases has not been received (May 1989).

The matter has been reported to Ministry of Finance (July 1989).

(iv) A vessel valued at Rs.30,48,594 was imported for scrapping through a major Custom House in December 1982. Its hull, movable gears and fuel oil were separately assessed to duty. The assessable value of the hull was determined by deducting the appraised value of the movable gears and fuel oil as per inventory taken prior to delivery of the vessel, from the agreed price of the complete vessel. However, the entire duty collected on fuel oil (assessable value Rs.92,529) was refunded in february 1987 on the ground that there was no stock of oil on board as per inventory taken immediately after the presentation of the bill of entry.

In the absence of any stock of oil on board at the time of importation, the assessable value of the hull ought to have been determined after deducting the value of the movable gears only from the agreed price of the complete vessel. The assessment made by the department and the subsequent refund of duty on the value of fuel oil were, there fore, not in order. On this being pointed out in audit (April 1988), the department justified (March 1989) the refund on the ground that there were no bunkers in the vessel at the time of delivery.

The departmental stand is not acceptable as the original assessment itself was made wrongly inasmuch as the value of hull was determined after deducting from the agreed price of the vessel the value of movable gears and fuel oil even though there was no fuel oil on board at the time of delivery.

The incorrect assessment and subsequent refund of duty on fuel oil resulted in loss of revenue of Rs.67,362.

The matter was reported to Ministry of Finance in August 1989; their reply has not been received (November 1989).

SHORT LEVY DUE TO MISCLASSIFICATION

2.38 Parts of general use

In terms of the note 2 to section XVII of the schedule to the Customs Tariff, parts and accessories, even if identifiable as parts of goods falling under Chapters 86 to 89 of that schedule are to be classified on merits.

Screws, bearings, washers, etc. described as component parts of aircraft, imported by a public sector undertaking during July, September, and November 1983 were classified as parts of aeroplanes under heading 88.01/03(2) ibid and assessed to basic customs duty at 40 per cent ad valorem with auxiliary duty at 25 per cent ad valorem and additional duty at 10 per cent ad valorem under Tariff item 68 of the erstwhile Central Excise Tariff.

It was pointed out (February, March and May 1984) in audit that the above components were correctly classifiable on merits under the appropriate headings and items of the Customs and Central Excise Tariffs respectively.

The department admitted the objection (May 1988). Further, based on the rationale of the objection raised in statutory audit, the Internal Audit Department of the Custom House subsequently raised thirty objections involving short collection of duty amounting to Rs.29.20 lakhs.

The Ministry of Finance, while confirming the facts, stated (June 1989) that, out of 30 cases, wherein Internal Audit pointed out the short levy of Rs.29.20 lakhs, an amount of Rs.2,96,375 has been realised. Further progress regarding realisation of balance amount has not been received (November 1989).

2.39 Articles of stones

In terms of note 1 to Chapter 98 of Customs Tariff, parts of machinery, even though covered by a more specific heading elsewhere in the Schedule, would fall under heading 98.06.

(i) Mill stones, grindstones, etc., imported as parts of machinery would accordingly be classifiable under heading 98.06 and with effect from 1 March 1988 are liable to levy of basic Customs duty at 100 per cent ad valorem with auxiliary duty at 45 per cent ad valorem and additional duty at 15 per cent ad valorem in terms of a notification dated 1 March 1987.

Thirty consignments of such parts from 1 April 1988 to 20 September 1988 were assessed on merits, as grinding stones under heading 68.04 and subjected to levy of basic customs duty at 40 per cent ad valorem with auxiliary duty at 45 per cent ad valorem and additional duty at 20 per cent ad valorem.

When the incorrect assessment involving a total short collection of Rs.18,89,750 was pointed out (September 1988 to February 1989) in audit, the Custom House recovered the short

collection of duty of Rs.33,344 in one case (March 1989) and issued demands aggregating to Rs.3,64,925 in four other cases. In respect of five cases, involving short levy of duty of Rs.4,09,005, it was stated that demand for differential duty had been issued simultaneously at the time of assessment, but the reasons for adoption of such incorrect procedure was not made known. No reply was received in respect of the remaining 20 cases involving a short collection of duty of Rs.10,82,476 (July 1989).

The matter was referred to the Ministry of Finance in Augtust 1989; their reply has not been received (November 1989).

(ii) Hand polishing stones, whet stones, oil stones and hones are excluded from subheading (b) of the heading 68.01/16 of Custom Tariff but are assessable under sub heading (a) thereof.

Goods described as stones for super finishing machines imported in two consignments through a major custom house in October 1985 were assessed to basic customs duty under subheading 68.01/16(b) at 40 per cent ad valorem with auxiliary duty at 30 per cent ad valorem. Additional duty was levied under item 51 of the erstwhile Central Excise Tariff at 15 per cent ad valorem.

It was pointed out (March 1986) in audit that the super finishing stones would fall under the category of "honing stones' and would more appropriately be classifiable under sub-heading No.68.01/16(a) and assessable to basic customs duty at 100 per cent ad valorem with auxiliary duty at 40 per cent ad valorem without change in the rate of additional duty.

The department contended (March 1986) that the imported goods were only grinding stones and were covered under subheading 68.01/16 (b) and that the explanatory notes to CCCN under heading 68.05 covered hand operated hones only and such hones only were excluded from subheading 68.01/16 (b). Consequently stones used in finishing machines would fall under subheading 68.01/16(b).

The view of the Custom House is not acceptable on the following grounds:

(a) The Appellate Tribunal in two specific decisions on the assessment of super finishing stones and honing stones has held that, where the explanatory notes were not incorporated in the Customs Tariff, the matter would have to be decided on the basis of the plain interpretation of the Tariff. On this basis,the plain interpretation of the expression "but excluding hand polishing stones, whet stones, oil stones and hones" under sub heading(b) of heading 68.01/16 of the Customs Tariff, is that the word "hand" qualifies only polishing stones. The Tribunal also held that the department was right in holding the view that both machine operated and hand operated hones were excluded from subheading (b) and that the assessment under sub heading (a) was correct.

The reply of the custom House goes against the stand taken by the department before the Appellate Tribunal which had also upheld this position.

(b) Further, in an identical case, the Ministry had earlier confirmed the view of Audit.

Short levy of duty in the two cases amounted to Rs.52,713.

The matter was referred to the Ministry of Finance in August 1989; their reply has not been received (November 1989).

2.40 Interchangeable tools

(i) Certain machines for working on metals are classifiable under heading 84.62 of the Customs Tariff. Interchangeable tools for machine tools are, however, classifiable under heading 82.07 of the said Tariff.

In terms of a notification dated 1 March 1978, automatic flow forming machine for manufacture of seamless tubes and other cylindrical components of metals falling under chapter 84 ibid are exempted from basic customs duty in excess of 35 per cent ad valorem. Inter changeable tools used in such machine are, however, not entitled to the concession under the said notification.

A consignment described as "impact extrusion machine (automatic flow forming)" for manufacture of "rigid copper tubes complete with tools" imported in December 1987 was classified under subheading 8462.99 of the customs Tariff and assessed to customs duty by applying the aforesaid notification.

It was seen from the invoice that in the consignment there were some inter changeable

tools apart from the machine. It was pointed out (June 1988) in audit that the said tools were classifiable under heading 82.07 and the notification of March 1978 was not applicable to those cases. The misclassification resulted in duty being levied short by Rs.16,15,326.

The department admitted (January 1989) the mistake and stated that demand notice for the short levied amount was issued.

The Ministry of Finance stated (August 1989) that the correct classification of the goods and the rate of duty were under further examination. Results of such further examination have not been received (November 1989).

(ii) Interchangeable tools are classifiable under heading 82.07 of the Customs Tariff and 82.02 of the Central Excise Tariff attracting basic customs duty at 60 per cent and additional duty at 20 per cent ad valorem respectively.

A consignment of 'broaches'imported through a major port in January 1988 was classified under heading 98.06 of the Customs Tariff as parts of broaching machine and assessed to basic customs duty at 45 per cent ad valorem and free of additional duty.

It was pointed out in audit (June 1988) that broaches being interchangeable tools could not be treated as parts of broaching machine and were , therefore, classifiable under subheadings 8207.60 and 8202.10 of the Customs and Central Excise Tariffs respectively. The misclassification resulted in duty being levied short by Rs.37,613.

The department stated (October 1988) that 'broach' was nothing but boring bit which could not work by itself and was fitted in the boring machine for the purpose of boring. It was, therefore, a part of machine.

The reply of the department is self contradictory in- asmuch as it admitted that broach cannot work independently and is fitted to a machine. The subject goods exhibit the characteristics of interchangeable tools falling under heading 82.07 of the Customs Tariff. Broach is not an integral constituent of the broaching machine and the machine can operate with different types of broaches. Therefore, broach is not a part of broaching machine.

The Ministry of Finance stated (August 1989) that the matter required further examination. The results of such examination have not been received (November 1989).

2.41 Stepper motors

Watch components, in unassembled condition, which are not by themselves watch movements, are not covered by chapter 91 of the Customs Tariff Act, 1975. They are to be classified under chapter 85, ibid, in terms of note 1(g) of that chapter. Accordingly stepper motors are classifiable under chapter 85 and assessable to basic customs duty at 110 per cent ad valorem plus additional duty at 20 per cent ad valorem upto 28 February 1987 and 25 per cent thereafter.

A watch manufacturing unit cleared 51,000 sets of "stepper motors" from a customs bonded warehouse on 5 December 1986 and 10 April 1987 for manufacturing wrist watches by paying duty at the concessional rate of 10 per cent ad valorem in terms of a notification dated 28 February 1985 which was applicable to items classifiable under chapter 91. The misclassification of stepper motors under chapter 91 and consequential incorrect levy of duty at the concessional rate in terms of the aforesaid notification were pointed out in audit in December 1987. This resulted in duty being levied short by Rs.11,15,175.

The Ministry of Finance have confirmed the facts.

2.42 Card readers spares

Card readers (input units) fall under heading 84.71 of the Customs as well as Central Excise Tariffs, and are chargeable to basic customs duty at 35 per cent ad valorem and additional duty at 10 per cent ad valorem in accordance with notifications issued in March 1988. Parts and accessories of the aforesaid items are, however, classifiable under heading 84.73 of both the Tariffs and are asessable to basic customs duty at 200 per cent ad valorem and additional duty at 20 per cent ad valorem.

A consignment of 'card reader spares' imported in August 1988 was assessed to duty under heading 84.71 of the said Tariffs.

It was pointed out in audit (January 1989) that the subject goods were classifiable under heading 84.73 of both the Tariffs and liable to be assessed at higher rates. Misclassification of the goods resulted in duty being levied short by Rs.2,70,588.

The department admitted the mistake and stated (May 1989) that demand for the short levied amount was confirmed in April 1989.

The Ministry of Finance have confirmed the facts.

2.43 Ball bearings

Ball bearings are classifiable under heading 84.82 of the Customs Tariff Act, 1975 and chargeable to basic customs duty at 150 per cent ad valorem plus Rs.6 per bearing if the net weight of the ball bearing is 0.019 kilogram or more but not more than 0.082 kilogram in terms of notification 146 dated 26 February 1986. It is also liable to auxiliary duty at 40 per cent ad valorem and additioal duty at 20 per cent advalorem under heading 84.82 of the Central Excise Tariff Act, 1985.

On a consignment of 63,105 ball bearings of different sizes (weight not specified) imported in July 1986, basic custom duty was levied under heading 84.62 ibid at 150 per cent plus auxiliary duty 40 per cent plus additional duty at 15 per cent ad valorem.

It was pointed out (April 1987) in audit that the goods would attract basic customs duty at 150 per cent plus Rs.6 per ball bearing plus auxiliary duty at 40 per cent and additional duty at 20 per cent ad valorem.

The misclassification of the goods resulted in duty being levied short by Rs.4,65,727. The objection was communicated to the department in April 1987.

Reply of the department was not received (July 1989). The matter was reported to the Ministry of Finance in August 1989); their reply has not been received (November 1989).

2.44 Transmitters with thermionic valves

"Transmitters with thermionic valves, IC's, LED's etc." are classifiable under heading 85.26 and attract basic customs duty at 100 per cent plus auxiliary duty at 40 per cent and additional duty at 15 per cent ad valorem.

On a consignment of above mentioned goods imported by a public sector undertaking in August 1987, the department termed the goods as "Kits for non-directional beacon transmitters", classified them under the subheading 8517.82 and levied the concessional rate of duty in terms of a notification dated 2 August 1976. However, the benefit of the said notification was not admissible as the importer did not furnish the certificate prescribed therein. This resulted in duty being levied short by Rs.3,66,103.

On this being pointed out in audit (August 1987) the department recovered Rs.3,20,505 in April 1989 and stated (June 1989) that efforts would be made to recover the balance amount of Rs.45,598.

The Ministry of Finance have confirmed the facts.

2.45 Valves and their components

Parts of articles of chapter 84 of the Customs Tariff Act, 1975 are assessable under heading 98.06, even though they may be covered by a more specific heading elsewhere in the aforesaid Act.

As per note 7(d) to chapter 98 of the Act ibid read with notifications of March 1987 and September 1988 parts falling under heading 84.81 were excluded from the scope of heading 98.06.

Component parts of valves viz., valve body, jacket, plug, guide caff and disc holder imported in September 1988 and orifice sleeve, throttle body and poppet imported in October 1988, were misclassified under heading 98.06 and charged to basic customs duty at 45 per cent ad valorem with auxiliary duty at 45 per cent ad valorem and free of additional duty.

When it was pointed out (January 1989) in audit that the goods merited assessment under subheading 8481.90 attracting basic customs duty at 60 per cent ad valorem with auxiliary duty at 45 per cent ad valorem plus additional duty at 15 per cent ad valorem under subheading 8481.99 of the Central Excise Tariff, the Custom House recovered (February and March 1989) the short levied duty of Rs.15,798 in respect of two imports. No reply was received (June 1989) in respect of the third import where the short levy of duty was Rs.20,264.

The matter was reported to the Ministry of Finance in August 1989; their reply has not been received (November 1989).

2.46 Filter spares for gas turbine

Air filters were classifable under heading 84.18(2) of the Customs Tariff Act, 1975.

Filtering apparatus not elsewhere specified in the Tariff was classifiable under heading 84.18(1) and was liable to customs duty at rates lower than those applicable to air filter.

Filter spares for gas turbine amplified as other than filter fuel or air filter, on importation (August 1985) through a major port were classified under heading 84.18(1) ibid. Since the imported filters were air filters required for gas turbine operation, according to the technical write-up submitted with the bill of entry, they were assessable under heading 84.18(2) ibid. The misclassification resulted in duty being levied short by Rs.2,02,136.

On this being pointed out (August 1987) in audit, the Custom House admitted the mistake and realised the short levied amount (July 1988).

The Ministry of Finance have confirmed the facts.

2.47 Bolts, nuts, screws etc.

Parts meant for the initial setting up or assembly of bull dozers were liable to concessional rate of basic customs duty in terms of a notification of September 1980 with appropriate auxiliary duty due thereon. Additional duty was leviable at appropriate rates under the relevant items of the erstwhile Central Excise Tariff.

Bull dozers imported in CKD condition and cleared through a public bonded warehouse by a public sector undertaking during the period from October 1984 to January 1985, included, inter alia, bolt; nut; screw; table tool; table accessories; plate etc. and these were assessed in terms of the aforesaid notification for levy of basic customs duty and auxiliary duty. Additional duty was levied at the rate of 10 per cent ad valorem under Item 68 of the erstwhile Central Excise Tariff.

It was pointed out (May 1985) in audit that:

i) Bolt, nut and screw were imported in separate packings as seen from the packing list and would be assessable at the rate of 15 per cent ad valorem with special excise duty at 5 per cent thereon under item 52 of the erstwhile Central Excise Tariff. The resultant short levy of additional duty amounted to Rs.60,928.

ii) Table tool, table accessories and plate (caution) not being in the nature of parts would not be covered by the aforesaid notification but were to be correctly assessed on merits. Short collection in this regard amounted to Rs.1,25,266.

The Custom House justified the levy of additional duty under erstwhile Item 68 of the Central Excise Tariff on the ground that the goods were imported in sub-sub-assembly condition and invoiced as such. It was also contended that the assessment was covered by Rule 2 (a) of the Interpretative Rules to the Customs Tariff which required their assessment as a complete article received in an unassembled condition. No reply was furnished in respect of goods which were not in the nature of parts.

The stand of the Custom House is not acceptable in view of the following:

(i) Rule 2(a) would apply to the assessment of goods under the First Schedule to the Customs Tariff covering levy of customs duty and not to the additional duty which is the point at issue.

(ii) As seen from the packing list, bolt, nut and screw were imported separately and not as parts of sub-sub-assemblies.

(iii) In respect of 'gear' and 'bearing' which were invoiced as sub.sub assembly but shown separately in the packing list, the Custom House had obtained separate values for 'gear' and 'bearing' and subjected them to levy of additional duty under erstwhile Items 68 and 49 of the Central Excise Tariff respectively.

(iv) Table tool, table accessories and plate, whether or not imported as a sub sub assembly, would not attract the provisions of the aforesaid notification of September 1980 as they were not in the nature of parts for initial setting up/assembly and hence they have to be assessed on merits.

(v) The objections relate to 36 out of 48 sets covered by the invoice. In respect of 6 sets of CKD components which were cleared earlier in September 1984, the Custom House had assessed the goods on the lines indicated in audit after obtaining break-up of values for those items from the importer.

The matter was reported to the Ministry of Finance in August 1989; their reply has not been received (November 1989).

2.48 Drill rods/drill stems

One hundred and twenty pieces of drill rods/drill stems with external upset ends which are component parts of drilling rig and blast hole drill, imported in February and March 1985 through a major Custom House, were classified under heading 73.17/19(1)(ii) of the erstwhile customs Tariff as drilling tubes and pipes and blanks therefor for levy of basic customs duty and under item 25(15) of the erstwhile Central Excise Tariff as tubes and pipes and blanks therefor for levy of additional duty.

It was pointed out (April 1986) in audit that drill rods/drill stems were classifiable under heading 84.23 ibid and liable to basic customs duty at 40 per cent plus auxiliary duty at 30 per cent and additional duty at 10 per cent ad valorem under item 68 of erstwhile Central Excise Tariff. The misclassification resulted in duty being levied short by Rs.1.69 lakhs.

The department did not accept the objection and stated that there was no indication that those drill rods/drill stems were made solely or principally for a particular machine.

The aforesaid reply is not acceptable as the importer had specifically mentioned in the purchase order that the drill rods/drill stems were component parts of the drilling rig and blast hole drill. As per explanatory notes at page 1243 of CCCN, parts of machinery namely drilling jars, drilling stems and pipes for well drilling machine were to be classified under heading 84.23. Further, the heading 84.23 includes boring and extracting machinery and clearly states that this heading includes machinery for drilling (page 1237 of CCCN).

The department, however, raised less charge demand for Rs.1.69 lakhs in October 1986. Final outcome of the adjudication proceedings was not intimated (May 1989).

The Ministry of Finance stated (September 1989) that the goods, invoiced as 'drill rods/drill stems with external upset end', were examined and found to be seamless steel tubes. The Ministry, therefore, contended that since drilling tubes and pipes were specifically covered under heading 73.17/19(2) of the erstwhile Customs Tariff Schedule, the original assessment was in order.

The Ministry's reply is not acceptable for the following reasons:-

(i) As per the purchase order of the importer, the materials were imported as components or integrnal parts of drilling rigs and blast hole.

(ii) By virtue of note 2(b) to section XVI of the Customs Tariff Act, 1975 'other parts, if suitable for use solely or principally with a particular kind of machine' are to be classified with the machine of that kind.

(iii) The fact that these materials are actually being used solely or principally with the drilling rigs and blast holes is indicated by the material specification, size, length and upset portion of the drilling rods/drilling stems, prescribed in the purchase order of the importer.

2.49 Organic chemicals

"Dimethyl lauryl amina" is classifiable under Chapter 34 of the Customs and Central Excise Tariff Schedules as "surface active agent" and assessable to basic customs duty at 70 per cent ad valorem and additional duty at 25 per cent ad valorem.

Eleven consignments of "dimethly lauryl amina", imported through a major Custom House between March 1987 and July 1988, were classified under Chapter 29 as 'organic chemicals' and assessed to additional duty at the rate of 15 per cent ad valorem.

On the incorrect classification and consequent short levy of additional duty being pointed out (November 1987 to November 1988) in audit, the Custom House accepted the objections (September, October 1988 and February 1989) in respect of 8 consignments and recovered Rs.64,303 in four cases out of the total short levied amount of Rs.1,26,583. Recovery report on the balance amount of Rs.62,280 in respect of other seven cases was not received (July 1989).

The matter was reported to the Ministry of Finance in August 1989; their reply has not been received (November 1989).

2.50 Flanged bobbins

Note 1(C) to Section XVI of the Customs Tariff Act, 1975 excludes bobbins and similar supports of any material from Chapters 84 and 85 of that Act.

A consignment of "flanged bobbins", made of aluminium and imported through a

major Custom House in August 1984, was assessed to basic customs duty at 40 per cent ad valorem under heading 84.38(1) as part of machinery and auxiliary duty at 25 per cent with additional duty at 10 per cent ad valorem under item 68 of the erstwhile Central Excise Tariff.

It was pointed out (July 1985) in audit that the goods were correctly classifiable on merits according to the material of manufacture. The department, however, stated (January and March 1987) that 'flanged bobbins' are something different from mere bobbins, since they are essential parts of the main spindle of doubling and twisting machine and that the original assessment was in order. A write up submitted by the party subsequent to the audit objection was made available in supprort of the above view. The reply of the department is not acceptable for the following reasons:

(i) 'Flanged bobbins'are essentially bobbins and will not fall outside the purview of the aforesaid note which also makes a reference to support materials.

(ii) Though these goods are parts of doubling and twisting machines by virtue of being a "bobbin" with grooves to support or bear the yarn, they get excluded from chapter 84 ibid and have to be assessed on the basis of the material of manufacture.

As these bobbins were made of aluminium, the assessment should have been made under heading 76.08/16 ibid with basic customs duty at 100 per cent ad valorem, auxiliary duty at 40 per cent and additional duty at 10 per cent ad valorem under item 68 of erstwhile Central Excise Tariff. The short collection of duty worked out to Rs.1,10,591.

The Ministry of Finance stated (September 1989) that the correct classification of the goods would require further examination. However, the Tariff Conference of collectors held in September 1989 upheld the views of Audit.

2.51 Parts of tractors

In terms of note 2(e) of Section XVII of the Customs Tariff Act, 1975, transmission parts of vehicles other than those in the nature of integral parts of engines and motors would be classifiable as parts of the vehicles to which they relate.

"U-Joints" meant for heavy duty tractor imported (November 1983) by a public sector undertaking and cleared from bonded Warehouse at an outport were classified under heading 84.63(1) and assessed to basic customs duty at 60 per cent ad valorem with auxiliary duty at 35 per cent ad valorem and additional duty at 10 per cent ad valorem under item 68 of the erstwhile Central Excise Tariff.

It was pointed out (May 1984) in audit that as the 'U Joints' were not integral parts of engine or motor, they were classifiable under heading 87.04/06(1) and assessable to basic customs duty at 100 per cent ad valorem with auxiliary duty at 35 per cent ad valorem and without change in the rate of additional duty in terms of above sectional note. The short levy of duty amounted to Rs.62,222.

The departmemt stated (February 1989) that the "U Joints" were parts of a tractor not used on the high ways and that such tractors would fall under heading 87.01(1) while their parts were liable to lower effective rates of duty under heading 87.04/06 (2) and consequently there was only an excess collection.

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

i) Tractors designed for transport on roads other than earthen roads are classifiable under heading 87.01(2) of the Customs Tariff Act, 1975.

ii) The specification list attached to the catalogue of the tractor indicates that the tractor is capable of use on the highway and that it is fitted with the tyres and can operate at a maximum speed of 60 kilometres per hour, when it is not towing the aircraft. The tractor is used for towing the aircraft on the tarmac for positioning for take off, etc. As the tractor is designed for use on roads other than earthen roads, it would be classifiable under heading 87.01(2) and its parts would fall under heading 87.04(6)(1) only.

The Ministry of Finance have confirmed the facts.

2.52 Multi Axis Co-ordinate Measuring Machine

Electrical instruments and apparatus falling under heading 90.28(4) of the Customs Tariff are assessable to duty at the rate applicable to non-electric counterparts of the headings

specified therein. The Ministry of law was of the opinion that the expression "rate applicable" used in heading 90.28 (4) ibid referred to only the 'statutory rate' and not to the 'effective rate' of duty.

Goods described as nikon make multiaxis co-ordinate measuring machine imported through a major Custom House in January 1985 were assessed to duty as profile projectors under heading 90.16(2) ibid at 40 per cent ad valorem with auxiliary duty at 30 per cent ad valorem and additional duty at 10 per cent ad valorem under the item 68 of erstwhile Central Excise Tariff.

It was suggested in audit (September 1985) that the assessment of the goods as profile projectors would need re-examination. The Custom House verified the catalogue and stated that the goods were an electrical measuring instrument falling under the heading 90.28(4) read with 90.16(1) supra and that in terms of notification 394/76 dated 2 August 1976 there would be no change in the rates of duty.

This stand of the Custom House is contrary to the aforesaid opinion of the Ministry of Law, that goods falling under heading 90.28(4) ibid are liable to the statutory rates of duty aplicable to their non-electrical counterparts and not the effective rate. On this basis, the goods were liable to basic customs duty under the heading 90.16 (1) ibid at 60 per cent ad valorem with auxiliary duty at 15 per cent ad valorem and additional duty at 10 per cent ad valorem under item 68 of the erstwhile Central Excise Tariff.

The resultant short colection of duty in these cases works out to Rs.37,407.

The same issue was raised in para 1.31(ii) of Audit Report 1983-84 and 1.31(i) of Audit Report 1984-85 in which the Ministry of Finance was asked to obtain the revised opinion of Ministry of Law.

The Ministry of Finance stated (December 1989) that the nonelectrical counterpart of the imported machine would be classifiable under heading 90.16(2) of the Customs Tariff Act, 1975 which carried a statutory rate of 40 per cent ad valorem and hence there would be no short levy. The fact remains that the co-ordinate measuring machine with builtin micro computers and printers performed a wide variety of processing functions besides measurement. Hence the classification under heading 90.16(1) ibid would be more appropriate.

SHORT LEVY OF DUTY DUE TO UNDERVALUATION

2.53 Short levy of duty due to application of incorrect exchange rate

As per proviso to section 14(1)(a) of the Customs Act, 1962 the rate of exchange for conversion of value expressed in foreign currency in respect of any imported goods is the rate of exchange in force on the date of presentation of the bill of entry.

(i) In respect of a consignment of dutiable goods imported through a major Custom House during March 1988, the rate of exchange of Italian Lires 9273 = Rs.100 was incorrectly adopted for converting the F.O.B value of Japanese Yen 1807100 instead of the correct rate of Japanese Yen 958 = Rs.100. This resulted in duty being levied short by Rs.1,64,036.

On the mistake being pointed out in audit in August 1988, the department admitted the underassessment and recovered the short levied amount in December 1988.

The Ministry of Finance have confirmed the facts.

(ii) On a consignment of dutiable goods, the bill of entry was presented on 6 November 1987. The correct rate of exchange applicable on that date was Japanese Yen 1092 for Rs.100 as against the rate of Italian Lires 9969 for Rs.100 incorrectly applied by the department. This resulted in duty being levied short by Rs.85,866.

On this being pointed out in audit (April 1988), the department admitted the objection and recovered the short levied amount in June 1988.

The Ministry of Finance have confirmed the facts.

2.54 Short levy of duty due to adoption of lower assessable value

While determining the assessable value under Section 14 of Customs Act, 1962 in respect of one set of 'drawing and documents of PIELSTICK 8 PA 4-V- 200 diesel engine' imported during May 1987, income tax of French Francs 1,50,000 was deducted from the gross free on board (F.O.B) value of French Francs 5,00,000 and the net F.O.B. value was taken as French Francs 3,50,000.

It was pointed out (December 1987) in audit that assessable value ought to have been calculated on the gross F.O.B. value of French Francs 5,00,000 and not on the net F.O.B. value of French Francs 3,50,000. The adoption of lower assessable value resulted in duty being levied short by Rs.1,27,660.

The department admitted the objection and recovered the short levied amount in july 1988.

The Ministry of Finance have confirmed the facts.

2.55 Short levy of duty due to non-inclusion of value of terminals in the assessable value

As per section 19 of the Customs Act 1962, if the importer produces evidence to the satisfaction of the proper officer regarding the value of the articles liable to different rates of duty, such articles shall be chargeable to duty separately at the rates applicable to them.

Terminal sets numbering 306000 along with other goods were imported through a major Custom House in May 1986. Though the value of those 'terminals' was separately shown in the invoice attached to the bill of entry, their value was not included in the total assessable value shown in the bill of entry and those 'terminals', therefore, escaped levy of duty of Rs.1,13,530.

On the short levy of duty being pointed out (April 1988) in audit, the department recovered the short levied amount (August 1989).

The Ministry of Finance have confirmed the facts.

2.56 Short levy of duty due to non-inclusion of miscellaneous charges in the assessable value

As Section 14 of the Customs Act, 1962 and the Customs Valuation Rules, 1963, the sale price of goods for delivery at the time and place of importation must include inter alia incidental charges also normally incurred in overseas trade practice by trade in general.

In the determination of assessable value of a consignment of 'electrical high grade zinc - unwrought unalloyed' cleared from warehouse during November 1987, an amount of Rs.72,686 shown in the invoice as miscellaneous charges (STUC) was not added to the C.I.F value of Pound Sterling 3,38,473.

This resulted in duty being levied short by Rs.95,202.

On the omission being pointed out in audit (August 1988) the Custom House recovered the short levied amount (December 1988).

The Ministry of Finance have confirmed the facts.

2.57 Short levy of duty due to non-inclusion of discount in the assessable value

In terms of para 21(3) of chapter 3 of the Central Appraising Manual (Vol.I) full duty should be charged on any extra quantity of goods allowed as trade discount in kind, while assessing goods under section 14(1) of the Customs Act, 1962.

It was noticed from the invoices attached to two bills of entry presented by a public sector undertaking in December 1984 and January 1985 for the clearance of colour television picture tubes through a major Custom House that, in addition to the quantity paid for, 131 colour television picture tubes representing 1 per cent thereon, were supplied free of cost. As the value of the colour picture tubes supplied free of cost was not included in the assessable value, it was suggested (July 1985) in audit that recovery of the differential duty of Rs.70,900 should be made by increasing the assessable value of all goods by one per cent.

The Custom House admitted the objection (October 1988). Report on recovery has not been received so far (November 1989).

The Ministry of Finance have confirmed the facts.

2.58 Short levy of duty on post parcels due to their undervaluation

The Customs Valuation (Determination of price of imported goods) Rules 1988 require that, in the case of goods imported by air, if the freight and insurance charges are not ascertainable, the F.O.B. value of the goods should be increased by 6 1/8 per cent till August 1988 and thereafter by 16 per cent to arrive at the assessable value.

It was noticed from the way bills in the

postal appraising department of a Custom House that only 6 1/8 per cent was added to the F.O.B. value to cover the freight and insurance charges in respect of 104 post parcels assessed to duty between September 1988 and November 1988. This resulted in duty being levied short by Rs.47,109. On this being pointed out (February 1989) in audit, the department recovered the short levy of Rs.24,373 in 39 cases.

Report on recovery in the remaining cases has not been received.

The Ministry of Finance have confirmed the facts.

2.59 Short levy of duty due to non-inclusion of actual air freight

By a notification issued in January 1987, maximum air freight was fixed at 15 per cent of the F.O.B value of the goods. This notification was rescinded on 10 August 1988. Again, from 16 August 1988 freight, insurance and some other charges forming part of assessable value of goods imported by air is limited to 16 per cent in terms of Customs Valuation Rules, 1988. Accordingly, during the period between 10 August 1988 and 15 August 1988, actual amount incurred towards freight and insurace would form part of assessable value.

On three consignments of goods imported by air between 10 August 1988 and 15 August 1988, air freight and insurance charges at 16.125 per cent of the F.O.B value instead of the actual air freight and insurance charges were included in the assessable value. This resulted in duty being levied short by Rs.39,535.

On the mistake being pointed out (January 1989) in audit, the department admitted the mistake and stated that confirmed demand notices in respect of these cases were issued (April 1989).

The Ministry of Finance have confirmed the facts.

IRREGULARITIES IN PAYMENT OF DRAWBACK

2.60 Fixation of All Industry rates of drawback

Drawback of Customs and Central Excise is granted as per the provisions of Section 75 of the Customs Act, 1962 and Section 37 of the Central Excises and Salt Act, 1944. Customs and Central Excise Duties Drawback Rules, 1971 have been framed in exercise of the powers conferred by these Sections. Drawback, as defined in these rules, in relation to any goods manufactured in India and exported, means rebate of duty chargeable on any imported materials or excisable materials used in the manufacture of such goods in India.

Under the Rules, the amounts or rates of drawback (All Industry) are determined by Government having regard to the average quantity or value of each class or description of duty paid materials from which a particular class of goods is ordinarily manufactured in India.

The class or description of exported goods is identified and a subserial number is allotted to each class or description in a table appended to the said Drawback Rules. The amount or rate of drawback determined on the basis of the averages aforesaid is mentioned against each class or description in the table.

The Public Accounts Committee in Para 1.117 of their 216 Report (Seventh Lok Sabha) observed that the Ministry of Finance should aim at arriving average rates based on manufacturing data of at least 50 per cent of the exporters of any group of products. If a target of 50 per cent is aimed at, their rates are not likely to be distorted too much by taking brand rates into account in averaging calculations, nor distorted by data of dominant exporters influencing the fixation of rates unduly.

An analysis of the drawback rates fixed by the Ministry with effect from 1 June 1988, was made to see how far the observations of the Public Accounts Committee have been met in regard to calculations and utilisation of data for fixing the All Industry rates and the findings were reported to the Ministry of Finance in August 1988.

A similar study of the All Industry rates fixed with effect from 1 June 1989 has also been made and the two analyses are as follows:-

	1 June 1988	1 June 1989
1. Number of items for which All Industry rates were announced	332	340
2. i) Number of items for which data on duty element in recent exports was not received	117	77
ii) Out of 2(i) above, number of items for which the rates were changed on the basis of changes in the rates of duty of Customs and Central Excise	64	61
3. Number of items for which duty element in recent exports was received from	215	263
i) one manufacturer	84	83
ii) two manufacturers	57	66
iii) more than two manufacturers	74	114
4. Number of rates fixed on the basis of data received where weighted average on duty element in exports covered		
a) Exports by one manufacturer or exporter	3	8
b) Exports by two manufacturers or exporters	2	12
c) Exports by more than two manufacturers or exporters	2	14

The Ministry of Finance stated (December 1989) that efforts would be made to collect more comprehensive data from larger number of exporters, wherever input and output norms cannot be easily determined to avoid any distortion in the drawback rates.

2.61 Incorrect grant of drawback

(i) As per general note 5 of the public notices issued from time to time under Rule 3 of the Drawback Rules, 1971 effective upto 31 May 1986 drawback on packing materials was admissible at the rates specified against the relevant sub serial number pertaining to the material which such packing materials were made of. The said general note was withdrawn from 1 June 1986 and since then the rates specified in the schedule of drawback are inclusive of draw back on packing materials used.

It was noticed (September 1988) in audit that drawback was claimed and allowed on boxes, cartons etc. used as packing materials on goods exported on and after 1 June 1986. On this incorrect grant of drawback being pointed out (October 1988) in audit, the department recovered the total payment of drawback of Rs.3,47,607 wrongly made to the exporters.

The Ministry of Finance have confirmed the facts.

(ii) Drawback was allowed even after June 1986 on packing materials used in the consignments of shrimps exported, at the all industry rate fixed for paper and paper board under subserial 2405 of the drawback schedule.

It was pointed out in audit (March 1989) that the aforesaid subserial was not applicable to the packing materials used in the export of shrimps and a brand rate should have been fixed in those cases. In the absence of any brand rate, the payment of drawback of Rs.2,74,275 between June 1986 and August 1988 was irregular. In reply, the department stated (May 1989) that as per the existing general notes , the rates are inclusive of drawback for packing materials but the notes are silent about the eventuality when the goods exported in packed condition are not entitled to any drawback. It added that since no drawback is admissible on the export of shrimps, drawback is admissible on the packing material under subserial 2405.

The department's reply is not acceptable. The subserial 2405 is applicable to different types of paper and paper board exported as such.

In the event of such materials being used as packing material for some other export product for which no all industry rate has been fixed, suitable brand rate has to be got fixed by the Ministry of Finance.

The matter was reported to the Ministry of Finance in 1989; their reply has not been received (November 1989).

2.62 Excess payment of drawback

As per provisions of the Customs and Central Excise Duty Drawback Rules, 1971, Government may sanction brand rates of drawback for the products exported by a particular manufacturer after considering all relevant facts relating to the proportion in which the materials or components are used in the production or manufacture of the exported goods and the duties paid on such materials or components.

Based on the procurement of "laminated P.U foam, man made fabrics and shoe lace tapes" which were sufficient for the manufacture of 6000 pairs of leather shoes uppers only, the Ministry of Finance fixed in July 1985 draw back at the brand rate of Rs.9.70 per pair on the exports made by an exporter during the period from 15 December 1984 to 15 June 1985. On 13 November 1985 the rate of drawback was amended as Rs.8.70 per pair and the validity period was extended from 16 June 1985 to 31 May 1986 without imposing any quantity restriction. It was noticed in audit from the statement of exports available in file of the Ministry that as the maximum exportable quantity of 6000 pairs of shoe uppers out of the available stock of aforesaid inputs had already been exported by the exporter on 15 and 31 December 1984, the extension of the validity period of the brand rate without obtaining proof of further procurement and duty incidence suffered on these inputs was not in order. On this irregularity being pointed out in audit (November 1986), the Ministry imposed the quantity restriction of 6000 pairs in their letter dated 15 October 1987 and directed the Collector of Customs to recover the excess amount of drawback paid on exports over and above the quantity of 6000 pairs.

The Ministry of Finance intimated (November 1989) that a sum of Rs.3,28,253 representing the excess amount of draw back had been recovered from the exporter in May 1989.

2.63 Overpayment of drawback

Under Rule 5 of the Custom and Central Excise Duties Drawback Rules, 1971 read with section 16 of the Customs Act, 1962, drawback is payable at the rate in force on the date of presention of the shipping bill.

In repect of export of seven consignments of finished leather under shipping bills presented in April 1986 through a major port, drawback was paid at the rate of 8 per cent on free on board (FOB) value which came into effect from 1 June 1986 instead of 4 per cent on FOB value which was applicable during April 1986.

On the incorrect application of rate of drawback being pointed out (October 1988) in audit, the department recovered the excess amount of drawback of Rs.2,93,169 (November 1988).

The Ministry of Finance have confirmed the facts.

2.64 Irregular payment of drawback

As per Rule 13 of the Customs and Central excise Duties Drawback Rules, 1971, where any exporter finds that the amount of drawback paid to him is less than what he is entitled to on the basis of the amount or rate of drawback determined by Government, he shall prefer a supplementary claim within a period of six months from the date of first payment or first settlement of the original drawback claim.

In terms of circular No.21/DBK issued by the Ministry of Finance in November 1981, pending claims in respect of 'Sulfate oil' were payable under serial NO.11 of the Duty Drawback Schedule treating it as organic chemical and all collectors were advised for settlement of the claims accordingly.

It was noticed that initial claims for drawback on salfat oil pertaining to the period from July 1979 to December 1979 were finally settled between October 1979 and August 1982 on the basis of the rate applicable to steel drums as containers under sub serial No.3631/3622(b) of Drawback schedule. On 8 June 1984, the concerned exporter requested the Ministry of Finance to allow him to file supplementary claims of drawback in respect of export of 'sulfate oil'. Accordingly, on 14 June 1984 instructions were issued by the Ministry of Finance to the Collector of Customs Calcutta inviting his attention to their

aforesaid instructions of November 1981 for payment of drawback of Rs.1,82,714 on export of 'sulfate oil' also.

It was pointed out in audit (January 1987) that since supplementery claims for drawback were not preferred within the time limit of six months from the date of first payment of drawback, the payment of Rs.1,82,714 made against the supplementary claims was irregular.

The department stated (October 1988) that the time limit was not applicable since the claims were filed within six months from the date of communication of the orders of the Ministry dated 14 June 1984.

The contention of the collectorate is not acceptable for the following reason:

As per the Drawback Rules, the crucial date of submission of supplementary claims is six months from the date of first payment or first settlement. Accordingly payment of drawback in the claims preferred beyond the stipulated period was not in accordance with the Rules. The Central Government also did not exempt the exporter from the provision of Rule 13 in exercising powers under Rule 15 of the Drawback Rules 1971.

The matter was reported to Ministry of Finance in August 1989; their reply has not been received (November 1989).

EXPORT CESS

2.65 Non levy of cess

As per the Spices Cess Act 1986, a cess of 3.5 per cent ad valorem is leviable on pepper exported out of India. Spices which are in the form of curry powders, spice oil, oleoresins and other mixtures where spice content is predominant are exempted from levy of cess by the Spices Board in terms of a notification issued in November 1987. Dehydrated green pepper, frozen green pepper, freeze dried green pepper etc., are not exempted.

On the export of dehydrated green pepper, frozen green pepper and freeze dried green pepper, during December 1987 to May 1988, Cess was not collected by a major Custom House. This resulted in non levy of cess amounting to Rs.2.67 lakhs. This was pointed out in audit in August, September, October and December 1988. The Custom House reported recoverey of Rs.7284 in April 1989 and raising of a demand for Rs.17,907 which was pending realisation (July 1989). In other cases the parties were requested (April 1989) for voluntary payments.

The Ministry of Finance have confirmed the facts.

MISTAKES IN COMPUTATION

2.66 Short levy due to mistakes in computation of duty

(i) On a consignment of "CKD parts for telephone equipment" valued at Rs.12,98,445 imported by a public sector undertaking in April 1987, duty leviable was correctly worked out as Rs.11,03,678 but a sum of Rs.5,19,378 only was actually collected.

On the mistake being pointed out (March 1988) in audit, the Customs House admitted it and recovered the balance amount of Rs.5,84,300 (September 1988).

The Ministry of Finance have confirmed the facts.

(ii) 'Modules' (Integrated circuits) being spares for "Soot blower system electronic" imported through a major Custom House in February 1988 were classified under heading 85.42.80 of the Custom Tariff Schedule and assessed to basic customs duty at 50 per cent ad valorem with auxiliary duty at 30 per cent ad valorem and free of additional duty in terms of a notification issued in April 1987.

Internal audit of the Custom House suggested (February 1988) that the goods would, in the absence of catalogue, be leviable to basic customs duty at the standard rate of 100 per cent ad valorem with auxiliary duty at 45 per cent ad valorem and additional duty at 15 per cent ad valorem under heading 85.48 of the Central Excise Tariff Schedule. Though the assessment was revised accordingly and the duty was correctly worked out as Rs.7,38,881 only a sum of Rs.3,25,230 which was the duty worked out at the original rates was actually collected. This resulted in duty being collected short by Rs.4,13,651.

On this mistake being pointed out in audit (July 1988), the department recovered the differential duty (September 1988).

The Ministry of Finance have confirmed the facts.

(iii) On a consignment of electornics goods (5 items) imported in September 1985, customs duty of Rs.6,06,957 was collected as calculated by the department (November 1985). However,the duty chargeable actually worked out to Rs.7,49,332 and acordingly, there was short collection of duty amounting to Rs.1,42,375 owing to arithmetical mistake in computation of duty. The calculation mistake was not detected in internal audit also.

On this mistake being pointed out (June 1986) in audit, the department admitted it (October 1988) and recovered the short levied amount.

The Ministry of Finance have confirmed the facts.

(iv) A consignment of 51 bundles of C.R.C.A. steel sheets (weighing 134.036 tonnes) valued at Rs.8,86,088 and imported in May 1988 through a major Custom House was correctly charged to auxiliary duty. Basic customs duty and additional duty at the specific rates of Rs.5000 per tonne and Rs.715 per tonne respectively were, however, collected on 116.826 tonnes of steel sheets only (weight pertaining to one of the two invoices covering the consignment of 51 bundles). This resulted in duty being levied short by Rs.98,361 in respect of the quantity of 17.210 tonnes indicated in the second invoice.

On the error being pointed out in audit in October 1988, the Custom House admitted the objection and recovered (February 1989) the amount.

The Ministry of Finance have confirmed the facts.

APPLICATION OF INCORRECT RATES OF DUTY

2.67 Short levy of basic customs and additional duties

(i) Stainless steel

The customs duty appropriated, in terms of Section 48 and 150 of the Customs Act, 1962, from the sale proceeds of 30,660 kilograms of stainless steel sheets sold for Rs.9,85,105 from a port Trust warehouse during the year 1983-84 was calculated as Rs.2,99,350 at 22 per cent ad valorem (basic customs duty).

It was pointed out (July 1988) in audit that the correct rate of basic customs duty in terms of notification dated 25 May 1981 as amended would be 220 per cent ad valorem and not 22 per cent as applied. This resulted in duty being collected short by 3,99,292.

Reply from the department was not received (June 1989).

The matter was reported to the Ministry of Finance in August 1989; their reply has not been received (November 1989).

(ii) Components for dump trucks

Additional duty under the erstwhile item 68 of Central Excise Tariff was payable at the rate of 12 per cent ad valorem with effect from 17 March 1985.

A consignment of components for HD 785 dump trucks in completely knocked down condition for initial assembly of dumpers was cleared exbond by a public sector undertaking on 19 March 1985 through a major Custom House. While assessing the goods, the department erroneously charged additional duty at 10 per cent ad valorem instead of at the correct rate of 12 per cent ad valorem. This resulted in duty and interest being levied short by Rs.2,89,513.

On this mistake, being pointed out (April 1986), the department accepted the objection and recovered the amount (June 1988).

The Ministry of Finance have confirmed the facts.

OTHER IRREGULARITIES

2.68 Irregular exemption from payment of customs duty on nylon filament yarn and polyester filament yarn imported against duty free replenishment licences

With a view to giving fillip to exports, a scheme has been introduced to provide duty free imports of raw materials against replenishment licences issued on the exports of specified products.

The object of the replenishment scheme is to provide by way of replenishment the imported materials required in the manufacture of the products exported.

The scheme is applicable to all registered exporters and export houses, exporting the specified products. Replenishment licences is-

sued under the scheme will be freely transferable and are not subject to "Actual User" conditions from the Import Trade Control (ITC) Policy year 1981-82. Prior to this, the duty free replenishment licences were not freely transferable and they were subject to actual user condition.

As per notification 120/78-Cus dated 19 June 1978, as amended by notification 107/81-Cus dated 3 April 1981, nylon filament yarn and polyester filament yarn imported under Import (Control) Order, 1955 are exempted from the whole of customs duty against the export of the following viz:

i) Nylon filament yarn fabrics, embroidered fabrics, quilted fabrics, quilted blanket, hosiery, knitwear and made-up articles;

ii) Polyester filament yarn fabrics, embroidered fabrics, hosiery, knitwear and made-up articles;

iii) Fabrics, embroidered fabrics, hosiery, knitwear and madeup articles of mixed yarn of nylon filament and polyester filament.

Subject to production of a certificate from the authority issuing the import replenishment licence or an endorsement by the said authority on the said licence specifying the quantity and value of nylon filament yarn or polyester filament yarn or both, as the case may be, allowed to be imported under the said licence against exports of the aforesaid products and further that in respect of polyester filament yarn allowed to be imported under the said licence against the exports of the aforesaid products made on or before 31 May 1978, the exemption shall be from so much of that portion of the customs duty leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 as is in excess of 80 per cent ad valorem.

Import Trade control policy for 1977-78 permitted the following value upto which import replenishment in terms of Free on Board (FOB) value of the export products is allowed:-

Non-cellulosic K.11 fabrics and made-up articles including embroidered		Percentage upto which import replenishment in terms of FOB value of the export product is allowed
i)	made of polyesteracrylic fabric	10
ii)	made of nylon filament yarn, nylon quilted blankets	50
iii)	made of other non-cellulosic fibre/yarn	40

According to Appendix 29 of the Import and Export Policy, April 1984 - March 1985 read with Part B of its Annexure II and notification 120-Cus dated 19 June 1978, imports of nylon filament yarn/polyester filament yarn (to the extent of 1.1 kilograms against 1 kilogram of the respective yarn certified to have been used in the product exported) under Duty Free Import Replenishment Licence were eligible for exemption from basic customs duty. Such replenishment licences were to be issued to the extent of 40 per cent of the FOB value of the respective exports. Both quantity and value were limiting factors.

An Export House at Madras was issued replenishment licences in terms of aforesaid Appendix-29 in February 1985 for import of polyester filament yarn instead of nylon filament yarn to the extent of 50 per cent instead of 40 per cent of FOB value of nylon fabrics exported in January 1985 as per export contracts registered in March 1978. Normal replenishment licence for import on payment of duty could be issued for import of polyester filament yarn to the extent of 50 per cent of FOB value of nylon fabrics exported in terms of pages 29 and 46 of Import Trade Control policy, Volume II April 1977 - March 1978 read with K-11 of Section II of that Policy. If duty free imports licence had to be issued in February 1985 in respect of such exports of nylon filament fabrics in January 1985, it had to conform to the provisions of Appendix 29 of the Import and Export Policy, April 1984 - March 1985. In other words, the replenishment licence to be issued was to be 40 per cent of FOB vaiue of exports and that too for the import of nylon filament yarn and further licence was to specify the quantity of yarn that could be imported.

The licences issued in favour of the Export House at Madras were sold to an importer at Ahmedabad in February 1985. These licences did not specify the quantity of yarn to be imported as required under notification 120/78 - Cus dated 19 June 1978.

The importer at Ahmedabad made the following imports of polyester filament yarn during the years 1984-85 and 1985-86 against the afore-

said replenishment licences purchased from the Export House at Madras resulting in grant of excess exemption from customs duty of Rs.73.24 lakhs and Rs.6.74 crores during the years 1984-85 and 1985-86 respectively.

	1984-85 Rs.	1985-86 Rs.
1. F.O.B value of export of NFY fabrics (A)	1,25,19,724	12,12,16,660
2. C.I.F. Value of REP licences of PFY (50 per cent) (B)	62,59,862	6,06,08,330
3. Admissible as per policy i.e. allowable to NFY (40 per cent) (C)	50,07,890	4,84,86,664
4. Duty exemption allowable on NFY (i.e. on (c) at 135 per cent and 140 per cent) (D)	67,60,652	6,78,81,329
5. Duty exemption allowed on PFY at 225 per cent (B) + Rs.15 per kilogram (E)	1,40,84,689	13,53,26,636
6 Excess exemption allowed: (E) less (D)	73,24,037	6,74,45,307

It was pointed out in audit (July 1987) that the polyester filament yarn could not be imported against the export of nylon filament fabrics in terms of part 'B' below Annexure II to Appendix 29 to the Import and Export Policy April 1984 - March 1985 read with notification 120-Cus dated 19 June 1978.

In reply, the Ministry of Finance stated (December 1987) that the replenishment licences were issued to the party giving the benefits available at the time of registration of their contracts under paragraph 44 (1) of the Import Trade control Policy for 1977 -78 against the export of synthetic filament yarn fabrics/mixed or blended fabrics. They added that the import of synthetic filament yarn (excluding nylon filament yarn) which included polyester filament yarn was permissible against the export of synthetic filament yarn fabric and made-up articles with replenishment of 50 per cent in respect of export of non-cellulosic textiles of nylon filament yarn. The Ministry also pointed out that the Import Policy for 1977-78 did not provide for quantity restrictions.

The Ministry's reply is not acceptable in view of the following:

(i) Issue of replenisment licences for the import of polyester filament yarn against the export of nylon fabrics was against the objective of the scheme for registered exporters (vide Section I Part 'B' of Import Trade Control Policy Vol.II for 1977-78).

(ii) The argument that the import of nylon filament yarn was excluded from the synthetic filament yarn is not tenable because list of items not allowed to be imported against replenishment entitlements in Part II of Annexure I to Part - B of the above Policy did not include nylon filament yarn. In addition, customs notifications viz., 20 dated 7 February 1977, 128 dated 1 July 1977 and 159 dated 15 July 1977 prescribed the conditions for import of nylon filament yarn establishing that import of nylon filament yarn was permissible in the year 1977-78.

(iii) Notification 120/78 dated 19 June 1978 which superseded earlier notifications dated 7 February, 1 July and 15 July 1977 on the subject clearly lays down both quantity and value restrictions for import of polyester filament yarn and nylon filament yarn.

(iv) Even though the Import Policy for the year 1977-78 did not provide for quantity restrictions, Part-B of Annexure -II to Appendix-29 of Vol.I of Import and Export Policy for the year 1983-84 specifically provided that, in order to enable the eligible exporter to get the benefit of notification No.120-Cus/F.No.609/52/78 -DBK dated 19 June 1978, import replenishment licence would be granted against the export of products, referred to in the said notification, made on or after 1 March 1983 as per the norms regarding usage of yarn certified in the export product at 40 per cent of the FOB value of the

respective exports and that both value and quantity would be limiting factors.

(v) Since the exports were made during the year 1985, both the value and quantity restrictions should have been applied as required under the said notification of 19 June 1978. Further any change in the notification should have been made by way of an amendment to the notification which would have only prospective effect and the same cannot be given retrospective effect. In other words, the clarification issued in Ministry's letter F.609/52/79-DBK dated 30 October 1979 in this respect could not be invoked as the issue has got revenue implications. With the promulgation of Import policy for the year 1984-85 and imposition of specific quantity restriction, the executive instructions issued in the year 1979 lost relevance and were not applicable in the changed circumstances.

(vi) Moreover, the imports of polyester filament yarn were made under Open General Licence and the bills of entry presented by the importer were assessed to duty. Duty was, however, not realised as a result of warehousing of goods. Since goods were assessed under Section 47 of the Customs Act, 1962 on their first importation at the port of import, the subsequent clearance allowed under duty free replenishment licences at the warehousing station was violative of Section 149 of Customs Act, 1962. In this connection it may be pointed out that the importer did not produce the relevant replenishment licences at the time of first importation in order to attract the provisions of Section 149 of the Customs Act, 1962.

(vii) The fact remains that even though these replenishment licences were issued in pursuance of the existence of contracts entered into upto 31 March 1978 in terms of the Import policy for the year April 1977- March 1978, neither actual user condition was imposed nor the facility of transfer of these replenishment licences was barred in terms of that policy.

(viii) The whole transaction resulted in fortuitous benefit to the Export House as well as to the purchaser of duty free replenishment licences.

The matter was reported to the Ministry of Finance in August 1989; their reply has not been received (November 1989).

2.69 Fraudulent clearance of colour films without payment of customs duty

According to Sections 46 and 47 of the Customs Act, 1962, goods imported by an importer for home consumption are cleared by the customs department on receipt of proof of payment of duty into the Government account either at Customs House treasury or through a nominated scheduled bank. The amount of duty to be paid is recorded by the customs department on the bill of entry and is paid by the importer through a challan (four copies) in the prescribed form TR 6. On payment of duty by the importer into the bank, two copies of the challan duly stamped as paid are handed over to the importer, and other two copies are retained by the bank for being sent to the Pay and Accounts Officer (PAO) and its focal point branch. The importer presents one copy of the duty paid challan to the customs official responsible for maintaining the challan register. The official after making suitable entry in the challan register puts/affixes a rubber stamp on all the copies of the bills of entry, after recording the fact of payment of customs duty, and authenticates the enfacement on the bills of entry by putting his initials. The bills of entry are then presented to the appraiser who is required to satisfy himself about the accuracy and genuineness of the payment of duty before goods are allowed "out of customs charge" for delivery.

The focal point branch of the bank forwards a copy of the challan to the Chief Accounts Officer (CAO) of the Custom House separately. The Collector of Customs also sends monthly statements of revenue receipts to the CAO on the basis of copies of the challans received from the bank. The CAO is responsible for carrying out reconciliation of figures of receipts reported to him by the Collector and the PAO with the figures compiled by him on the basis of challans received by him.

It was noticed in the third week of July 1988 by the preventive department of a customs collectorate that two consignments of colour films and zip fasteners were being cleared without documents. These two consignments were seized and investigation was started, which revealed that some consignments of similar nature had already been cleared by the importers who had given fictitious addresses. It was also found that duty paid stamps of various branches of the Punjab National Bank and signatures of detach clerks had been forged in these documents. It was disclosed by the customs department that documents for the aforesaid goods in two con-

signments were cleared through Allahabad and Grindlays Banks whose advices were not genuine and perhaps had been forged. The customs department added that it was able to identify 14 more consignments which appeared to have been cleared by adopting the same modus operandi between May 1988 and July 1988. The department pointed out that in respect of 19 bills of entry covering import of colour films duty amounting to Rs.4.5 crores approximately was evaded. In view of the ramifications of forgery and fraud, the customs department referred (8 August 1988) the matter to the Central Bureau of Investigatin for further investigations.

After coming to know about fraudulent evasion of customs duty through the news paper reports, the scrutiny of bills of entry relating to similar goods was taken up in audit, during which it was noticed that bills of entry relating to four consignments of colour films involving import duty of Rs.27,25,844 were filed with the customs department in January 1987 and December 1987. All these four consignments were cleared by the Custom House between three to six days of filing of the bills of entry. However, no challans (TR 6) for payment of the aforesaid amount of Rs.27,25,844 were found on record with the customs department. The entries relating to the concerned challans could not also be traced in the relevant registers maintained for the purpose at the Custom House. In the case of one bill of entry, the stamp indicating the payment of customs duty though affixed was not authenticated by the customs official.

Fraudulent clearance of the goods through the presentation of bills of entry was rendered possible and could not be detected because of systems failure in the Collectorate. A general review of the relevant records of the Collectorate revealed as under:

i) In some cases, the customs duty recoverable as per challan register and that actually recovered as per TR 6 challans did not tally.

ii) The particulars of TR 6 challans such as bill of entry number, names of importers, amounts recovered etc. did not tally with the corresponding entries in challan register in some cases.

iii) The entries in challan register appeared to have been recorded by persons other than the officials authorised to maintain challan register as the handwriting and ink differed in almost each and every case.

iv) The particulars showing the name of the bank, dates of deposits, bank scroll numbers, and dates of detachment of challans were not noted in the register.

v) A few cases were also noticed where, though the challan numbers were allotted, all other columns against these challan numbers were not filled up.

vi) The entries in the challan register were not attested by any responsible officer before ordering "out of customs charge".

vii) The prescribed reconciliation of revenue realised by the customs authorities was not done by the Chief Accounts Officer.

The Collectorate admitted the fraudulent clearance of goods without payment of customs duty and stated (July 1989) that the total quantity of colour films and zip fasteners of the market value of Rs.171.84 lakhs were seized which involved customs duty of Rs.36.86 lakhs and Rs.66.34 lakhs respectively. The Collectorate also stated that reconciliation of revenue was not done due to paucity of staff and as a result of the review conducted by the department the Chief Accounts Office was being strengthened and the possibility of changing the procedure of payment of duty into several nominated banks was being re-examined.

The fraudulent payment of duty could not be detected due to the absence of a system of independent check and correlation of the payment of duty shown in the bills of entry with the Bank scrolls and challans received in the Chief Accounts Office by the Internal Audit of the Custom House.

The fraudulent payment of duty could have been avoided, had the Ministry prescribed a system of daily check similar to the one laid down in paras 2.7 and 2.8 of the Central Manual of Internal Audit Department for the major custom houses having their system of payments through custom house treasury. This system of daily check was all the more essential when the facility of payment of customs duty through several nominated nationalised banks was allowed to the importers/exporters.

The Ministry of Finance stated (November 1989) that the matter including the facts set out in the para was still under investigation by C.B.I.

2.70 Non levy of duty on moveable gears, ships' stores bunkers etc. on the ships imported for breaking

As per notification 163-Cus dated 1 March 1986 ships imported for breaking are assessable to import duty at a specific rate of Rs.1400 per light displacement tonnage. The term 'light displacement tonnage(LDT)' has been defined in the 1986 Budget instructions as equal to displacement of a ship minus dead weight tonnage where:

i) Displacement of a ship indicates total weight of the ship in tonnes which is equal to the under water volume of a ship upto summer load water line.

ii) Dead weight tonnage is the total carrying capacity of a ship in tonnes which includes cargo, fuel oil, fresh water, stores, provisions etc.

The ships imported for breaking also contain ships' stores and other items like moveable gears, lubricating oils, fuel oil etc. Such items are to be assessed to customs duty separately as they are excluded from LDT and are chargeable to duty.

As per Section 46 of the Customs Act, 1962 read with Bills of Entry (Forms) Regulations, 1976 every importer has to file a bill of entry for dutiable, exempted or free cargo.

It was noticed in audit (March 1987 to December 1988) that, in a Collectorate, 115 bills of entry relating to ship breaking units were assessed from March 1986 onwards without levying duty on moveable gears, stores, fuel oil etc. If no duty is to be charged on these items there should have been a specific exemption to that effect. In the absence of a specific exemption, they were required to be scrapped along with the ship and no clearance was to be allowed. Further, no bills of entry were filed for the clearance of these items also.

Prior to 1 March 1986 such items were assessed to duty at an average rate of Rs.3,13,830 per ship. On this basis the duty not levied in respect of 115 cases worked out to Rs.3,60,90,450.

When this was pointed out in audit the department stated (August 1988) that the ships were sold on 'as is where is' basis and the duty of Rs.1400 per light displacement tonnage(LDT) included everything on board. The department added that the agreement of the Metal Scrap Trading Corporation, the canalising agency for import of old vessels for breaking, indicated the value for LDT and this value generally included even the value of fuel oil, stores, etc., which were carried on board till the time of delivery.

The reply of the department is not acceptable as duty is levied at specific rate on the basis of LDT which excludes the weight of cargo, fuel oil, stores etc.

The matter was reported to the Ministry of Finance in July 1989; their reply has not been received (November 1989).

2.71 Non verification of end use

(i) As per notification 29 dated 25 February 1983 as amended, the components (including the components of fuel efficient motor cars in semi-knocked down packs and completely knocked down packs) required for the manufacture of fuel efficient motor cars of engine capacity not exceeding 1000 cubic centimetres were assessable to customs duty at the rate of 25 per cent ad valorem and nil additional duty subject to the conditions mentioned therein.

A manufacturer imported components for use in the manufacture of fuel efficient motor cars after paying customs duty in terms of the aforesaid notification. During the period August 1983 to December 1985 such components valued at Rs.54,45,221 were found damaged and were therefore not used in the manufacture of fuel efficient motor cars. Compensation for such damaged components was received from the insurance company. Since the components were not used in the manufacture of fuel efficient motor cars, exemption granted in the notification was not applicable to these components and thus an amount of Rs.77.86 lakhs, being the differential duty on the said components, was not recovered.

The omission was pointed out (June 1988) to the department; no reply was received (June 1989).

The matter was reported to the Ministry of Finance in August 1989; their reply has not been received (November 1989).

(ii) Notification 30-Cus dated 25 February 1983 stipulates concessional assessments to components required for the manufacture of fuel efficient two wheeled motor vehicles falling under heading 8709/12 of erstwhile Customs

Tariff Schedule with levy of basic customs duty at 25 per cent ad valorem, auxiliary duty at 15 per cent ad valorem and without additional duty as against the standard rate of basic duty at 100 per cent ad valorem, auxiliary duty at 40 per cent ad valorem and additional duty at 12 per cent under item 68 of Central Excise Tariff subject to the condition that a certificate is produced from the Assistant Collector, Central Excise in whose jurisdiction the factory manufacturing such motor vehicles is situated to the effect that such imported components have been used in the manufacture of fuel efficient two wheeled motor vehicles.

In the case of imports (March 1985) of internal combustion engine components for the manufacture of fuel efficient two wheeled motor vehicles through a major Custom House, concessional assessment was made under the aforesaid notification after executing three end use bonds in April 1985 for the payment of differential duty (i.e.)the difference in duty as per the standard rate and concessional rate. The enduse bonds were cancelled in January 1986 and May 1986 based on a certificate given by chartered accountant and notarised.

On the incorrect acceptance of the certificate being pointed out in audit (June 1986 and February 1987), the Custom House stated (July 1987) that though the utilisation certificate had to be obtained from the Central Excise department in the present case, the lapse was condoned by the Assistant Collector, Customs.

The reply is not acceptable since the notification stipulates the end use certificate only from the central excise authorities and no provision for condonation of such lapse is prescribed.

Further,the suggestion of audit to obtain an end use certificate from the competent Central Excise authorities to regularise the concessional assessment had not been complied with.

The incorrect closure of bonds without verification of end use resulted in duty of Rs.5,02,831, in respect of three cases, not being recovered from the importers.

The matter was reported to the Ministry of Finance in August 1989; their reply has not been received (November 1989).

2.72 Unauthorised clearance of textured yarn without payment of duty

In terms of a notification dated 9 June 1978 as amended, issued under the Customs Act 1962, yarn of man-made fibre (continuous) imported against Advance Licence issued under the Import (control) Order 1955, for the purpose of manufacure of goods for export was exempt from the whole of basic customs duty and the additional duty leviable thereon. By a notification dated 1 July 1983 as amended, issued under the Central Excise Rules, 1944, textured yarn was exempt from the whole of duty of excise subject to the condition that the appropriate duty of excise or the additional duty under section 3 of the Customs Tariff Act, 1975, as the case may be, had already been paid on filament yarn used in the manufacture of such textured yarn.

A manufacturer imported 47512 kilograms of partially oriented filament yarn [yarn of man-made fibre (continuous)] from June 1985 to August 1985 and did not pay basic customs duty and additional duty under the aforesaid notification dated 9 June 1978 on the ground that it was meant for the manufacture of textured yarn which was to be exported. However, textured yarn manufactured from partially oriented filament yarn was not exported. Instead it was cleared for home consumption without payment of duty.

On this irregular clearance of partially oriented yarn for home consumption without payment of duty, being pointed out (January 1987) in audit, the department accepted the facts and intimated (October 1988) that against total duty liability of Rs.62.92 lakhs an amount of Rs.55.26 lakhs has been deposited by the manufacturer at the Bombay Custom House in instalments between 9 April 1987 and 15 June 1988. The details of recovery of the balance of Rs.7.66 lakhs have not been received.

The Ministry of Finance have confirmed the facts.

2.73 Irregular closure of objections raised in Internal Audit

According to the procedure laid down in the departmental manual of Internal Audit Department, (IAD) on receipt of an objection which, if sustaind, may result in the levy of extra duty on the bills of entry etc., the concerned appraising group should issue less charge demand immediately to avoid the statutory time limit bar and send a reply to the IAD admitting or

contesting the objection within a prescribed period.

(i) Certain types of exhaust fans and blowers, flame proof fans and blowers falling under sub heading 8414.59, 8414.60 or 8414.80 were assessable to basic customs duty at 50 per cent ad valorem by virtue of notification 153-Cus dated of 1 March 1986.

Scrutiny of closed Internal Audit Department (IAD) objection files of a Customs Callectorate revealed in February 1989 that a consignment of "compressor (Air compressor of capacity more than 7.5 KW) used in the braking system of Railway loco" imported in March 1986 was assessed to basic custom duty at 50 per cent ad valorem under heading 8414.80 of the Customs Tariff in terms of the aforesaid notification of March 1986. The IAD pointed out on 25 June 1986 that the subject goods were not eligible for this concession as they were not covered by the said notification and they were liable to be assessed at 110 per cent ad valorem instead of at 50 per cent ad valorem. The resultant short levy of Rs.25,58,294 was also pointed out by Internal Audit as recoverable.

The appraising group in the Cusotm House contended that the goods fell under the heading which was specifically mentioned in the aforesaid notification. The IAD, accepting the reply of the appraising group, closed the case on 13 September 1988.

It was pointed out in statutory audit (February 1989) that since air compressors were not specified in the aforsaid notification they were not eligible for the benefit and as such there was a short levy of duty of Rs.25,58,294. The incorrect closure of I.A.D. objection was therefore suggested for review.

The department stated (May 1989) that the intention of Government was to grant concession on the goods covered by sub-heading 8414.80, though they were not mentioned therein. The department added that the lacuna was removed by an amending notification issued on 15 April 1986. Although the I.A.D dropped their objection raised earlier than statutory audit, the demand which was issued consequent to that objection was kept alive till its closure by statutory audit.

The reply of the department is not acceptable. The notification as it stood at the material time exempted certain specified goods under sub-heading 8414.80 and not all the goods falling under that heading. It did not cover air compressors. Further, the objection was closed by IAD in September 1988 before the irregularity was pointed out by statutory audit in February 1989.

The Ministry of Finance have confirmed the facts.

(ii) Cobalt mattes and other intermediate products of cobalt metallurgy; unwrought cobalt; waste and scrap; powders are assessable to basic customs duty at the rate of 60 per cent ad valorem under sub heading 8105.10 of the 1st schedule to Customs Tariff Act, 1975. In terms of notification 64/86-Customs dated 17 February 1986, unalloyed, unwrought cobalt falling under this heading is eligible for concessional assessment at the rate of 40 per cent ad valorem. Cobalt metal powder, though covered under sub heading 8105.10 does not find mention in the said notification.

The Tariff Conference held the view in January 1987 that it would not be correct to deny the benefit of the aforesaid notification to cobalt powder and suggested necessary action by the Central Board of Excise and Customs.

Closure of an objection raised by Internal Audit against the concessional assessment of cobalt metal powder by a major Custom House (July 1986) and continued concessional assessments of several subsequent imports of cobalt metal powder in this Custom House (March 1987 to August 1988) were objected to by statutory audit (September 1987 to December 1988) on the grounds that i) the notification in the existing form did not permit extension of concessional assessment to cobalt metal powder and ii) the concessional assessment under the said notification amounted to enlargement of its scope.

In reply (May 1988), the department referred to the aforesaid Tariff Conference decision and pointed out that the minutes of the conference required issue of tariff advice by Custom Houses which was completed. The reply is not acceptable for the reasons stated in the previous subpara. Non-issue of amendment notification was also pointed out to the Board by Audit (January 1989). Duty effect involved worked out out to Rs.7.26 lakhs in 12 cases.

The matter was reported to the Ministry of Finance in August 1989; their reply has not been received (November 1989).

(iii) Parts of instruments and apparatus for physical or chemical analysis falling under heading 90.27 of the Customs Tariff are classifiable under heading 98.06.

According to notification 112 Customs dated 1 March 1987, certain specified goods falling within the chapters indicated against them in the said notification are exempted from the whole of auxiliary duty leviable thereon. Although chapter 90 was specified in the notification, chapter 98 was not specified therein.

Scrutiny of closed Internal Audit Department (IAD) objection file revealed that in an assessment made (March 1987) of spare parts of ash vacuum spectrometer falling under heading 98.06, auxiliary duty was levied at nil rate in terms of the aforesaid notification and the IAD observed (August 1987) in regard to this assessment that the benefit of the said notification was not applicable and the goods were liable to auxiliary duty at 40 per cent ad valorem. The objection was, however, closed (July 1988) on the grounds that prior to the introduction of heading 98.06 there was no auxiliary duty on the subject goods, and after the introduction of this heading, duties in most cases had been reduced.

It was pointed out in audit (September 1988) that the closure of the objection was irregular. Since chapter 98 was not specified in the aforesaid notification the subject goods were not eligible for the exemption granted therein and would attract auxiliary duty at 40 per cent ad valorem. The irregular grant of exemption resulted in duty being levied short by Rs.67,081.

Reply from the department has not been received (June 1989).

The matter was reported to the Ministry of Finance in August 1989; their reply has not been received (November 1989).

2.74 Loss of revenue on delayed disposal and pilferage of uncleared warehoused goods

(i) According to Section 72 of the Customs Act, 1962, where any warehoused goods have not been removed from a warehouse at the expiry of the period of warehousing, the proper officer may demand and the owner of such goods shall forthwith pay the full amount of duty chargeable together with penalties, rent, interest and other chrges payable in respect of such goods. If the owner of the goods fails to pay any amount demanded as aforesaid, the proper officer may cause to be detained and sold, after notice to the owner, such sufficient portion of his goods as the said officer may select.

Sub para (iii) of para 115 of the Central Manual of the Bond Department specifies a time limit of one month after the expiry of period of warehousing to complete all the formalities connected with the sale of goods after notice to the owner. It was noticed that three consignemnts of synthetic resin low density polythelene moulding powder (L.D.P.E) black crosslink were imported and warehoused under bond in September 1979(one consignment) and December 1979 (two consignments) for a period of one year. The total assessable value of these three consignments was Rs.6,39,032. The goods were not cleared by the importer after the expiry of the period of warehousing. In March 1984 the department raised a combined demand for the three lots for Rs.7,07,484. The goods were detained for disposal in June 1984.

The department fixed the wholesale market price of Rs.15,89,077 after allowing 20 per cent depreciation on the value of the goods (Rs.19,86,000 at the time of import) in December 1985. An attempt was made to sell the goods in auctions held between February 1986 to June 1987. As the bids were unattractive (Rs.51,000 lowest and Rs.1,70,000 highest) goods were not sold. From March 1986 to May 1987 twelve tenders were invited which evoked no response. In September 1987, the goods were sold at Rs.6,51,000 against a tender offered in June 1987.

The duty and warehousing interest at the time of sale aggregated to Rs.19,02,000 (duty Rs.11,47,000 + interest Rs.7,55,000). Lack of prompt action, improper storage and inadequate publicity for sale resulted in a loss of revenue of Rs.12.51 lakhs.

When the matter was pointed out in audit in June 1988, the department stated (August 1988) that wide publicity was given before every auction and tender sale. Several attempts were made to sell the goods in auction or through tender but goods were finally sold when the best offer was received. The department justified the sale at that price on the ground that the goods were seven years old and were lying scattered on the floor. The department added that there were no instructions for periodical check of physical conditions of goods warehoused in any public warehouse.

The reply of the department is not acceptable. The fact that the bids in the auction varied between Rs.51,000 to Rs.1,70,000 does not indicate effective publicity. This is confirmed when these bids are compared with the offer of Rs.6,51,000 against the last tender. Had the process of auction/tender started immediately after the expiry of warehousing period and detention of goods, more attractive offers/bids could have been expected. Further, as admitted by the department, the goods were lying scattered on the floor and hence, due to the absence of any periodical check of the physical conditions by customs officers, the deterioration in the condition of goods due to improper storage for over 7 years and consequential dimunition in their value led to loss of revenue by way of lower prices in auction/tender. Moreover, direct negotiation with the cable manufacturers who were the principal users of the goods could have yielded better results. Records, however, do not indicate that firms dealing with cable manufacturing including public sector were approached. This is further highlighted by the fact that the goods were purchased by a dealer of ball bearing and automobile parts.

The Ministry of Finance stated (September 1989) that there was delay in taking action under section 72 of the Customs Act, 1962 on expiry of warehousing period in this case. The Ministry added that there was no evidence to indicate that the goods deteriorated on storage or the less realisation of price on disposal was due to lack of wide publicity.

The fact remains that there was less realisation of price as a result of delay in disposal of goods. Further, the fact that the goods were lying scattered on the floor for over 7 years has already been admitted by the department. As those goods were chemical compound and as they were lying exposed to air and moisture for over seven years they could not retain their potency or shelf life intact. This is evident from the low sale price of Rs.6.51 lakhs as against their wholesale market price of Rs. 15.89 lakhs fixed at the time of their auction in December 1985.

(ii) As per sub-para (iii) of para 32 (a) of the Central Manual (2nd Edition) of the Bond Department, the Warehouse keeper, while admitting the goods into the warehouse will enter the particulars of the quantity and description of the goods in the stock lists (form No.CBR Cus.171) and certify on the face of the duplicate bill of entry to the effect that the goods mentioned in the duplicate bill of entry have been duly received in the warehouse and that they have been found to correspond in particulars with those entered in the bill of entry and after noting the date of warehousing therein return the same to the Bond clerk. Sub-para (1) of para 33 of the Manual ibid provides that the Bond clerk on receipt of the duplicate bill of entry will see that all the packages covered by the bond have been duly warehoused or otherwise accounted for. Sub-para (ii) of para 52 of the said Manual states that when any illegal shortages (other than those found on ships Agent Survey) are discovered in the consignment before warehousing is completed, the Bond section on receipt of the deplicate into bond bill of entry makes an immediate demand of duty from the bonders for such shortages under sectior 72(1) of the Customs Act, 1962.

However in a warehouse it was noticed that a consignment of 79,615 pieces of spare parts of earth moving machinery, ball bearings, roller bearings etc., having assessable value of Rs.3,36,532 was warehoused under bond in July 1980 for one year. An extension of bonding period for six months also expired on 29 January 1982 and the party did not clear the goods even after expiry of that period. A demand notice under section 72 (1) demanding duty, interest and other charges was issued in November 1984. A notice under section 72 (2) ibid for detention and sale was issued in November 1985. The department, before sale, made an inventory of the goods in April 1986 which revealed shortage of 30,280 pieces which did not include shortage of 12,150 pieces detected during agents survey before warehousing. The goods were sold in auction for Rs.8,20,100 in December 1986.

The duty chargeable on the total quantity of spare parts warehoused (i.e 79,615 pieces) on the date of disposal was Rs.14,07,829. Interest payable as per provision of the Customs Act was Rs.6,80,290. The total loss sustained was Rs.12,68,019. Non observance of provisions of Manual and inordinate delay in disposal of warehoused goods led to such a huge loss.

The matter was brought to the notice of the department in June 1988 and to the Ministry of Finance in May 1989.

The Ministry of Finance have confirmed the facts.

(iii) In yet another consignment of 22 drums of 'mining scrapper chains made of steel' weighing 10,550 kilograms and having an assessable value of Rs.2,01,070 was imported and

warehoused for one year in December 1979. The importer did not clear the goods after expiry of the warehousing period (December 1980). There was nothing on record to indicate that there was any extension of warehousing period. In November 1983, the department issued demand notice followed by notice for detenion for sale in June 1984 under section 72 of the Custom Act, 1962. A physical verification conducted by the department in November 1984 revealed that though the condition of the materials was 'good' there was a loss of one drum containing chains having a net weight of 378 kilograms. The department issued orders for disposal of the goods in November 1984. The goods were put to auction/tender for the first time in February 1985. In February 1985, the department also fixed the sale price at Rs.4,18,002. As against this fixed price the highest price quoted in 12 auctions between February and December 1985 was only Rs.90,000. In December 1985, a second inventory revealed rusting of 20 per cent of the material.

While the attempts for sale were in progress from February 1985 onwards, the importer who had evinced no interest in taking clearance of the goods for more than five years suddenly applied in January 1986 for extension of the warehousing period to the Principal Collector which was granted upto 31 March 1986. The importer relinquished his claim to the goods in March 1986. From March 1986 to June, 1987 the sale of goods was tried in fourteen auctions, the highest effective bid quoted being Rs.90,000. In June 1987, the department reduced the sale price to Rs.1,76,847. The goods were sold to a tenderer in July 1987 at Rs.1,50,000.

The duty chargeable on the goods at the time of sale (for 22 drums) was Rs.3,53,884. The interest from 1 April 1986 to 3 July 1987 was Rs.53,432. The interest of Rs.1,48,001 for the period from 1 January 1981 to 31 March 1986 became non chargeable due to the grant of extension by the Principal Collector up to 31 March 1986. Owing to delay in disposal, the Government suffered an avoidable loss of Rs.2,57,316 by way of duty and interest on warehousing besides the value of the goods.

The matter was brought to the notice of the department in June 1988. In their reply in August 1988 the department stated that 21 drums in lieu of 22 drums were physically warehoused.

Although the warehousing bill of entry indicated 22 drums and the physical inventory conducted in 1984 revealed that drum bearing number 21 was missing, the discrepancy was not reconciled and no action for the loss of imported goods was taken. The inordinate delay of over four years to initiate action for sale resulting in deterioration of goods led to realisation of such a low price.

The Ministry of Finance, while confirming the facts, stated (September 1989) that responsibility for delay in taking action under section 72 of the Customs Act 1962 was being fixed by the collector.

(iv) It was noticed that a consignment of 'Ceramic transfers decalcomonias with designs for ceramic goods' having an assessable value of Rs.3.07 lakhs was imported and warehoused in December 1977 for a period of one year. The Collector, however, extended the period upto December 1980. The goods were not cleared by the importer even then. The Custom House issued demand for duty in April 1984 and put them to auction for sale in July 1985. The goods were sold in September 1986. At the time of disposal, the duty and interest chargeable under section 61(2) of the Customs Act, 1962 amounted to Rs.6.66 lakhs. As against this, the realisation was only Rs.4.50 lakhs resulting in a loss of revenue to the extent of Rs.2.16 lakhs. The departmental records, including an inventory made in July 1985, indicated that, due to prolonged storage, the goods got considerably damaged due to absorption of moisture.

The matter was brought to the notice of the department in June 1988. The department admitted the loss of Rs.2.16 lakhs and stated (August 1988) that it attempted to fetch the highest price for the goods by putting them on auction 13 times during the period from July 1985 to July 1986.

However, the fact remains that the delay in taking action for the disposal of the goods resulted in realisation of much smaller value as they had deteriorated due to long storage.

The Ministry of Finance have confirmed the facts.

2.75 Non raising of demands for duty on goods not proved to have crossed the border

In pursuance of the provisions of the protocol to the Treaty of Transit between a neighbouring country and India, Government of India agreed to offer certain facilities to the

Government of that country for the purpose of international trade and allowed goods meant for that country to be transmitted through India. The goods in transit shall be exempted from whole of the customs duty.

According to the Memorandum to the Treaty, the importer is required to present a Customs Transit Declaration(CTD) declaring that the goods entered therein are for neighbouring country in transit through India and shall not be diverted enroute to India or retained in India. In case of any deficiency the carriers/Insurance Companies are to pay for the goods lost in transit.

In terms of Treaty of 1978, goods under movement shall be covered by an insurance policy for an amount equal to the Indian customs duty on such goods. These policies shall be assigned to the collector of customs and the amount shall become payable to the collector in the event of the goods not reaching the neighbouring country.

According to para 16 of the Memorandum to the Treaty, the importer will present to the Assistant Collector of Customs the original Customs Transit Declaration duly certified by the authorised officer of Customs and Central Excise and the customs officer of the neighbouring country to the effect that the goods have crossed into that country. The original declaration should reach the Assistant Collector concerned within one month of the date on which the transit was allowed at the Indian port of importation or such extended time as the customs authority might allow.

In a land customs station under a major collectorarte it was noticed that 39 Customs Transit Declarations pertaining to the period 1981 to 1986 remained unmatched till 1987. The department did not finalise and raise demands of customs duty of Rs.24.88 lakhs in these cases.

On the omission to raise demand being pointed out in audit in January 1988, the departmemt stated (July 1988) that demand for customs duty amounting to Rs.4,32,829 in seven cases relating to the period from March 1981 to August 1981 had been raised in May 1988. It added that action was initiated in other cases.

The Ministry of Finance, while confirming the facts, stated (June 1989) that, out of 39 Customs Transit Declarations, goods in 15 cases had already crossed the border and the related declarations had since been matched. In another 16 cases, involving duty of Rs.6.17 lakhs, show cause notices were issued. In 3 cases involving duty of Rs.36,198 the issue of demand and show cause notices was pending. The Ministry added that, in respect of the remaining cases, the matter was under correspondence.

2.76 Irregularities in importation and clearance of mineral oils

Imported mineral oils are either cleared for home consumption under Section 47 of the Customs Act, 1962 or warehoused without payment of import duty under Section 60 in the bonded tanks from which clearances for home consumption are made from time to time under section 68 ibid.

The imported finished oils are mainly cleared from the warehouse through pipelines and are delivered to the consumers from different terminal (tap-off) points.

Under Section 68 of the Customs Act, 1962 any warehoused goods may be cleared for home consumption if:

a) a bill of entry for home consumption has been presented,

b) the import duty leviable on such goods and interest etc., have been paid and

c) an order for clearance of such goods for home consumption has been made by the proper officer.

Further, a procedure has been set out in the standing order 16/81 dated 9 June 1981 regarding the movement of mineral oils through pipelines from Haldia to different terminal points. It states, inter alia, that the exbond bills of entry for clearance of the goods for consumption either at Haldia or from any other tap-off point will be filed in the Custom House well in advance of the actual anticipated date of clearance, so that sufficient time is left for processing and scrutinising the bills of entry, assessment of the duty liability and making suitable revenue deposits well before the transferred products are actually received at the tap-off points.

(i) Under section 61(2) of Customs Act, 1962 interest is payable on the amount of duty due when the goods are cleared from the warehouse beyond the period of three months. A study made at Budge Budge Oil installation revealed that although aviation gasoline was actu-

ally removed from the warehouse long after 3 months, short levy of interest of Rs.14,129 and non levy of interest of Rs.3,31,889 were noticed in respect of clearances effected in April 1986, January, March and May 1987.

The department in its reply dated 5 September 1988 stated, inter alia, that from December 1986 the bonding period of petroleum products had been changed from three months to one year vide notfication No.486/86 dated 11 December 1986.

In this connection it may be stated that the cases of aviation gasoline related to the period prior to the issue of the said notification. So, the reply is not acceptable. Further, in its last reply dated 19 June 1989, the Custom House had stated that the interest had been paid under DI Nos. 831 dated 17 March 1987 and 1181 dated 23 April 1987. But on verification it was found that those amounts had no bearing with the non levy/ short levy of interest pointed out in audit.

(ii) Under section 15(1) (b) of Customs Act, 1962 rate of duty leviable would be the rate prevalent on the date of actual removal of the goods from the warehouse.

A test audit of the records maintained at a Custom House and by a major oil refinery at Haldia conducted in March 1989 revealed that imported crude petroleum and finished products were cleared from the warehouse on payment of duty at the lower rate prevailing on the date of presentation of the bill of entry instead of at the higher rate valid on the date of actual removal of the goods from the warehouse. This resulted in short levy of additional duty of Rs.1,13,468 on superior kerosene oil. This was pointed out in audit (April and May 1988 and April 1989) and the department's reply has not been received (July 1989).

(iii) In terms of Customs (Fees for rendering services by Custom officers) Regulations, 1986 a person requiring the services of Custom Officer for any purpose has to make a formal request for the same and on its being granted the person has to pay the fees as prescribed in the table appended to the Regulations. According to said table, recovery of fees has to be made for services rendered by customs officers and there is no scope for free services to the importers as per the said Regulations.

At the time of review (March 1989) on mineral oil of a public sector undertaking at Haldia it was seen that a refinery was paying the overtime fees as per Regulations whereas Haldia Marketing Division attached to the said refinery was not paying the fees for the services rendered during office hours inspite of demands raised by the Superintendent of Central Excise, Haldia Refinery. The total outstanding demands on this account amounted to Rs.55,784. In its reply dated 19 June 1989, the Custom House intimated that the matter had been taken up with the Central Excise Officers posted at Haldia.

The matter was reported to the Ministry of Finance in August 1989; their reply has not been received (November 1989).

2.77 Non collection of interest on delayed payment of duty on vacation of stay order

Machinery imported for sorting, screening, separating, crushing, grinding or mixing earth, stones, ores or other mineral substances were assessable to import duty under heading 84.56 of the erstwhile Customs Tariff Schedule. However machinery imported for the initial setting up of a unit or the substantial expansion of an existing unit of a specified industrial plant was assessable under heading 84.66 ibid provided such machinery was imported against a specific contract registered with the appropriate Custom House as per the Project Imports (Registration of Contract) Regulations, 1965 vide notification of 18 November 1965. In terms of a notification of 2 August 1976, goods falling under 84.66 were exempt from additional duty.

An importer who imported machinery relating to cement plant for modernisation and replacement of their existing plant applied to the department for registration in June 1982 for assessment under heading 84.66. Though the contract was registered in July 1982, the department asked the importer to produce certain documents and allowed clearances provisionally under heading 84.66. Accordingly, goods worth Rs.3,22,13,399 were cleared between the period 9 September 1982 and 3 December 1982 without levy of additional duty. As the requirements were not fulfilled the goods were ordered to be assessed under heading 84.56 on 4 December 1982.

The importer paid the additional duty for the goods cleared after 4 December 1982 and filed an appeal to the Tribunal. The Tribunal confirmed the decision of the Collector on 30 March 1983 and thereafter the importer appealed to the Supreme Court. The Court, while

granting stay order on 5 August 1983, directed the importer to pay 50 per cent of the demand amounting to Rs.19,78,353 within two months and furnish a bank guarantee for the balance within the same period and directed that interest would be payable on either side at the rate of 12 per cent per annum. The importer deposited the amount accordingly and executed the bank guarantee. Though the Court dismissed the appeal on 19 March 1984, the importer did not pay the balance amount of duty of Rs.19,78,353 as well as interest, thereon. The duty was realised on 1 March 1989 by invoking the bank guarantee. But the report on recovery of interest of Rs.13,25,496 leviable as per the order of the court for the period 5 August 1983 to 28 February 1989 was not received (June 1989).

The department confirmed the facts.

The matter was reported to the Ministry of Finance in July 1989.

2.78 Interest not charged on delayed payment of custom duty

Para 4 read with para 7 of the form of legal agreement for 100 per cent export oriented units, contained in Appendix XIX -B of Hand Book of Import- Export procedures 1985-88, provides that in the event the unit is not able to fulfil the export obligation undertaken by it, the unit shall pay the customs duty that would be leviable on the items of plant and machinery, equipment and raw material (Components and consumable) imported under the licence granted to it. Further, interest at the rate of 18 per cent from the date of import/supply to the date of actual payment of customs duty is also payable.

A manufacturer, working as 100 per cent export oriented unit, was delicensed as such in September 1986. Accordingly, the customs duty on equipment, raw material, plant and machinery was recovered. Subsequently the department asked (October 1986) the assessee to deposit the differential duty of Rs.12,70,980 on the original value of plant and machinery as the duty already recovered was on the depreciated value of the plant and machinery. The duty of Rs.12,70,980 was deposited by the assessee on 14 April 1987 but interest, amounting to Rs.1,07,807 on belated payment of duty, due to Government in terms of the agreement, was not recovered.

On this being pointed out (July 1987) in audit, the department stated (September 1987) that as the debonding was not done by the department, the interest was not recoverable. The department was informed (July 1988) that as the unit's registration as 100 per cent export oriented unit was withdrawn, the interest on delayed payment of duty was recoverable as per the terms of legal agreement. Further reply of the department was not received (June 1989).

The matter was reported to the ministry of Finance in August 1989; their reply has not been received (November 1989).

2.79 Failure to review appellate orders in time and conse- quential failure to file the appeal

Section 128 A(4) of the Customs Act, 1962 envisages that, while passing final orders on an appeal, the Collector (Appeals) shall state in writing points for determination, the decision thereon and the reasons for the decision. Further, Sec.129(A) (3) ibid stipulates that an appeal against orders passed by the Collector (Appeals) should be made to the Appellate Tribunal within three months from the date on which the orders sought to be appealed against are communicated to the Collector of Customs or the other party, as the case may be. Sub-section 5 ibid empowers the Appellate Tribunal to admit an appeal even after the prescribed period if it is satisfied that there was sufficient cause for not presenting the appeal within that period.

(a) Failure to review the orders of the appellate authority in time, in a major Custom House, led to non-filing of an appeal in the Appellate Tribunal within the prescribed time limit though there were justifiable reasons for such an appeal. The Collector (Appeal) had, in this case, ordered re-assessment of imported swimming rolls (amplified as calendering rolls) under heading 84.31 of the Custom Tariff Act, 1975 and the consequential refund of duty of Rs.85,715 collected earlier. These goods were previously assessed (September 1983) under heading 84.16 ibid treating them as part of calendering and similar rolling mills (other than metal working/metal rolling machines). The Principal Collector of Customs and Central Excise did not find any justifiable reason that could be offered to the Appellate Tribunal for condonation of delay in filing the appeal and therefore ordered (March 1987) implementation of the orders of Collector (Appeals).

On this being pointed out in audit (April 1988), the Custom House replied (June and September 1988) that

(i) the goods were correctly classifiable under heading 84.31 ibid since swimming rolls were different from calendar roll, the latter falling under heading 84.16 ibid.

(ii) the Principal Collector of Customs and Central Excise had not made any remarks on the merits of the case but only expressed his disapproval in filing an appeal after time bar without any proper reasons.

The contention is not acceptable for the following reasons:

(i) Technical literature in respect of the imported goods clearly indicates that the function of the rolls is calendering and would have to be classified under heading 84.16 ibid as calendar rolls.

(ii) Collector (Appeals), while reclassifying the goods under heading 84.31 ibid, had given the reason that swimming rolls are not calender rolls but the basis on which he had arrived at his conclusion is not available in his orders which is contrary to provisions of Section 128 A(4) of the Act.

(iii) The fact that orders of the Principal Collector of Customs and Central Excise were sought for moving the Appellate Tribunal with the request for condonation of delay in filing the appeal would prove that the Custom House had satisfied themselves that the orders of Collector (Appeals) were not acceptable.

(iv) The Principal Collector of Customs and Central Excise, while ordering the implementation of the order of Collector (Appeals) had observed that it would not be taken as a precedent for future. This would also indicate that orders of Collector (Appeals) were not tenable.

Omission to review the orders of appellate authority and consequential failure in filing an appeal in the Appellate Tribunal against the orders of Collector (Appeals) have resulted in an avoidable refund of Rs.85,715.

The matter was brought to the notice of the Ministry of Finance in August 1989; their reply has not been received (November 1989).

(b) A consignment of 'Carbowax Polyethylene Glycol 400' imported through a major Custom House during March 1980 was assessed under heading 39.01/06 of the erstwhile Custom Tariff schedule at 100 per cent ad valorem (basic Customs duty) and 25 per cent ad valorem (auxiliary duty) with 8 per cent ad valorem (additional duty).

The importer filed a refund claim requesting for the assessment of the goods under heading 29.01/45(1) ibid as a chemical. The claim was rejected by the department. The importer appealed against the decision which was allowed (May 1981). The appellate order required reassessment of the goods under heading 38.01/19(1) ibid at 60 per cent ad valorem (basic Customs duty) and 15 per cent advalorem (auxiliary duty) with additional duty at 8 per cent ad valorem.

The reassessment resulted in duty of Rs.84,552 being refunded to the importer.

The department appealed (March 1984) to the Tribunal as the appellate order was not acceptable and also prayed for condonation of delay in filing the appeal. The Tribunal in its order (August 1987) dismissed the appeal for the 'inordinate, improperly explained delay,' in preferring the appeal.

The delay in filing the appeal to the Tribunal against an unacceptable appellate order resulted in the refund order remaining uncontested. This was pointed out in audit in December 1988.

The Ministry of Finance have confirmed the facts.

2.80 Incorrect rate of duty vis-a-vis date of entry inwards

In terms of Section 15 (1)(a) of the Customs Act, 1962, the rate of customs duty applicable to imported goods is the rate prevailing on the date on which the bill of entry in respect of such goods is presensted under Section 46 ibid. If, however, a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards.

A consignment of "rails" imported by Government under cover of a bill of entry presented on 15 September 1987 (under prior entry system) was assessed to basic customs duty at 40 per cent ad valorem and auxiliary duty at 40 per cent ad valorem. The auxiliary duty had, however, been increased to 45 per cent ad valorem

with effecft from 20 September 1987. As the entry inwards for the vessel in which the goods were imported was granted on 18 October 1987, the auxiliary duty should have been levied at the enhanced rate of 45 per cent ad valorem, which was not done. When the mistake was pointed out in audit in April 1988, the Custom House admitted the objection and recovered the short collection of duty of Rs.5,92,193 (June 1988).

The Ministry of Finance have confirmed the facts.

2.81 Incorrect rate of duty vis-a-vis date of clearance from the warehouse

As per section 15 (1)(b) of the Customs Act, 1962, in case of imported goods stored under bond in a warehouse and subsequently cleared therefrom, customs duty is leviable at the rate in force on the date on which such goods are actually removed from the warehouse.

(i) On specified goods including "drop forging double-acting pneumatic hammer above 5 tonnes capacity" falling under sub heading 8462.10, the effective rate of basic customs duty under notification dated 1 March 1986 was 35 per cent ad valorem. Under notification dated 1 March 1987 this rate was, however, enhanced to 55 per cent ad valorem.

A consignment of the aforesaid goods imported by a public sector under taking was stored under bond in a warehouse on 24 February 1983 and was removed therefrom on 29 September 1987. The goods were, however, assessed to basic customs duty at the rate of 35 per cent ad valorem in stead of 55 per cent ad valorem. This resulted in duty being levied short by Rs.2,88,019.

On the omission being pointed out (December 1988) in audit, the department accepted the objection and realised the short levied amount in March 1989.

The Ministry of Finance have confirmed the facts.

(ii) In terms of notifications issued in November/December 1986, the rate of basic customs duty leviable on copper wire bars (unwrought) was 95 per cent ad valorem. A consignment of copper wire bars cleared during January 1987 from a bonded warehouse was subjected to levy of basic customs duty at 75 per cent ad valorem which was prevalent earlier. When Audit pointed out (September 1987) that the correct rate of basic customs duty leviable would be 95 per cent ad valorem, the Custom House admitted the objection and recovered the short collection of duty amounting to Rs.1,38,983 (January 1988).

The Ministry of Finance have confirmed the facts.

2.82 Loss of revenue due to failure to raise demand within the specified time limit

Section 28 of the Customs Act, 1962 specifies the time limit of six months from the date of payment of duty, within which the department should issue demand notice to recover any duty which escaped assessment by way of short levy of duty. If demands, required to be raised consequent to objections raised by Internal Audit, are not raised within the prescribed time limit of six months, it leads to loss of revenue.

According to the procedure laid down in the Departmental Manual of Internal Audit Department, the said department is to raise objection of non levy or short levy of duty within 52 days from the date of presentation of the bill of entry in the cash department and intimate the objection in the shape of 'Objection Memo' to the concerned appraising group.

(i) A consignment of component parts of colour television was warehoused in a major collectorate in September 1986 and cleared in December 1986. The Internal Audit Department pointed out a total short levy of duty of Rs.1,69,614 and interest of Rs.1,394 in October and November 1988 after the expiry of the time limit of six months on 25 June 1987. The objections having become time barred, the department made a request for voluntary payment in November 1988. The amount remained unrealised (July 1989).

The Ministry of Finance have confirmed the facts.

(ii) In the same collectorate, a consignment of warehoused 'Master for photo-copy machine etc' was cleared in July 1987. The Internal Audit Department pointed out a short levy of duty of Rs.53,317 due to a mistake in totalling in November 1988 after the expiry of the time limit of six months on 26 January 1988. The objection having become time barred, the appraising group requested the importer for voluntary payment in February 1989. The amount

remained unrealised (July 1989).

The matter was reported to the department in March 1989 and the Ministry of Finance in August 1989; their reply has not been received (November 1989).

(iii) The Internal Audit Department of the same collectorate in yet another case pointed out on 3 April 1987 short levy of auxiliary duty of Rs.39,395 on an import (November 1986) of control panel (for voltage exceeding 1,000 volts) and also specifically indicated that the time limit for raising demand under section 28 of the Customs Act, 1962 would expire on 25 May 1987. The appraising group did not take any action within the stipulated time. It, however, made a request to the importer for voluntary payment of extra duty on 16 June 1987 after the expiry of time limit. The importer declined to make any payment of extra duty on the ground of time bar.

The Ministry of Finance have confirmed the facts.

2.83 Non raising of demand for duty and interest on ware housed goods at the time of their clearance or lying uncleared beyond the expiry of warehousing period

(i) As per section 61 (2) of the Customs Act 1962 where any goods remain warehoused beyond a period of one year/three months as the case may be, interest at such rate not exceeding 18 per cent per annum as fixed by the Central Board of Excise and Customs is required to be paid on the amount of duty on the warehoused goods for the period from the expiry of the period of one year/three months till the date of clearance of the goods from the warehouse. The Board had fixed the rate of interest at 12 per cent per annum by a notification issued on 13 May 1983. The Board may, in public interest in exceptional cases, however, waive by special orders the whole or part of any interest payable under the aforesaid sub section.

It was noticed in audit (December 1988) that a public sector undertaking was allowed clearance of warehoused goods(in one case in July 1987 and in 10 other cases in October 1987) without levying interest amounting to Rs.7,09,824 in contravention of the aforesaid provisions of the Act read with notification dated 13 May 1983.

On this being pointed out in audit (January 1989) the department contended that although demands for recovery of interest had been issued in August 1987 (in one case) and September 1987 (in 8 cases), clearances were allowed in expectation of orders from the Board waiving interest for which the undertaking had represented. The demands raised prior to the dates of actual clearance of warehoused goods had no relevance and allowing irregular clearance from the warehouse without charging interest merely because the assessee moved the Board for waiver of interest was incorrect. No order waiving levy of interest on the warehoused goods in question has been issued by the Board so far (April 1989).

The Ministry of Finance confirmed the facts and stated (September 1989) that the actual amount of interest short levied was yet to be worked out and the particulars would be furnished subsequently.

(ii) In terms of sub section(1) of Section 72 of the Customs Act, 1962, the proper officer should demand duty together with penalties, rent, interest and other charges payable in respect of warehoused goods which have not been removed from a warehouse on expiry of the warehousing period permissible under section 61 ibid.

It was noticed that imported 20 tonnes of steel saw blades were warehoused in a public warehouse, out of which, seven tonnes were not cleared from the warehouse even after the expiry of the extended warehousing period ending on 6 January 1988. But duty amounting to Rs. 1,02,336 together with interest and other dues was not demanded.

On the omission being pointed out in audit(October 1988), the department admitted the objection and stated (December 1988) that the Assistant Collector concerned had been directed to recover the duty together with interest.

Report on recovery of the amount has not been received (May 1989).

The Ministry of Finance have confirmed the facts.

2.84 Loss of revenue due to delay in invoking bank guarantee

A consignment of 3039.918 tonnes of melting scrap of carbon steel was imported in October 1983 and the same was cleared by the

importer after claiming exemption of import duty in terms of notification 151/77-Cus dated 15 July 1977 as amended, by executing a bond against production of end use certificate. The importer, however, produced the end use certificate for 2991.960 tonnes only on 25 September 1984 and requested for further time limit of 90 days for the balance quantity by production of a bank guarantee for Rs.30,000 valid upto 25 March 1985. As the importer failed to produce the end use certificate even after 90 days, differential duty amounting to Rs.28,872 was demanded from the importer on 16 January 1985. Though the importer did not pay the duty, the bank guarantee was not enforced before the expiry of its validity on 25 March 1985. The bank was approached by the Custom House (July 1987) for honouring the guarantee which was rejected. A detention notice under section 142 of the Customs Act was issued by the custom house on 5 February 1988 for recovery of the amount. The amount was not realised (April 1989).

This was pointed out in audit in February 1989.

The Ministry of Finance have confirmed the facts.

CUSTOMS
ANNEXURE - 2.1

Value of Imports - Commodity-wise
(referred to in para 2.03)

The value of imports during the years 1987-88 and 1988-89 according to major sectional headings in the Indian Trade Classification (revised) are given below. The figures compiled by the Director General Commercial Intelligence and Statistics and given out by the Ministry of Commerce have been indicated. The figures within brackets are in respect of some of the goods included in the respective sectional headings.

(in crores of rupees)

Sl.No.	Commodities	1987-88(P)	1988-89(P)
1.	**Food and live animals chiefly for food including**	380	834
	a) Cereals and cereal preparations	(33)	(631)
	b) Milk and cream	(50)	(78)
	c) Cashewnuts	(64)	(61)
	d) Fruits and nuts excluding cashew nuts	(59)	(64)
	e) Sugar	(174)	(0.13)
2.	**Crude materials inedible except fuel**	1018	1611
	a) Crude rubber(including synthetic and reclaimed)	108	173
	b) Raw cotton	(N.A)	(N.A)
	c) Synthetic & regenerated fibres	(28)	(37)
	d) Raw wool	(79)	(158)
	e) Crude fertilizer	(138)	(185)
	f) Sulphur & unroasted iron pyrites	(176)	(250)
	g) Metaliferrous ores and metal scrap	(422)	(677)
	h) Other crude minerals	(67)	(131)
3.	**Mineral fuels, lubricants and related materials**	4083	4245
4.	**Chemicals and related products not elsewhere specified**	1987	3525
	a) Organic Chemicals	(652)	(1119)
	b) Inorganic chemicals	(398)	(813)
	c) Dyeing and tanning substances	(80)	(95)
	d) Medicinal & Pharmaceutical products	(137)	(195)
	e) Feritilizers, manufactures	(172)	(493)
	f) Artificial resins, plastic materials	(548)	(810)
5.	**Manufactured goods**	4666	6141
	a) Pulp, paper, paper boards and manufacture thereof	(486)	(558)
	b) Textile yarn fabrics and madeup articles	(188)	(287)
	c) Pearls, precious stones and semi-precious stones	(1994)	(2866)
	d) Iron and steel	(1273)	(1751)
	e) Non-ferrous metals	(576)	(786)
	f) Manufacture of metals	(149)	(193)
6.	**Machinery and Transport equipment**	4561	5019
	a) Machinery other than electric	(2706)	(2655)
	b) Electrical machinery	(1115)	(1598)
	c) Transport equipmments	(740)	(766)
7.	**Professional, scientific controlling instruments etc.**	491	689
	GRAND TOTAL : (Including others)	22343	27693

P - Provisional N.A - Not available

ANNEXURE - 2.2

Value of Exports - Commodity-wise
(referred to in para 2.03)

The value of exports during the years 1987-88 and 1988-89 according to major sectional headings in the Indian Trade Classification (revised) are given below. The figures compiled by the Director General Commercial Intelligence and Statistics and given out by the Ministry of Commerce have been indicated. The figures within brackets are in respect of some of the goods included in the respective sectional headings.

(in crores of rupees)

Sl.No.	Commodities	1987-88(P)	1988-89(P)
1.	**Food Items**	2836	3111
	a) Meat and meat preparations	(86)	(94)
	b) Marine Products	(525)	(632)
	c) Cashew Kernels	(307)	(277)
	d) Fruits and vegetables	(151)	(164)
	e) Processed fruits, juices and other items	(66)	(101)
	f) Sugar and sugar preparations (incl. mollasses)	(1)	(7)
	g) Coffee	(263)	(279)
	h) Tea	(592)	(599)
	i) Spices	(309)	(251)
	j) Oil meals	(173)	(370)
	k) Cereals	(363)	(337)
2.	**Beverages and Tobacco**	135	128
	Tobacco unmanufactured, Tobacco refuse	(109)	(103)
3.	**Crude materials inedible except fuels**	827	1103
	a) Mica including splittings and Mica waste	(23)	(29)
	b) Raw cotton	(95)	(28)
	c) Sesame and Niger seeds	(4)	(24)
	d) H.P.S. Groundnuts	(5)	(15)
	e) Castor oil including derivatives	(6)	(5)
	f) Shellac	(14)	(16)
	g) Iron ore	(543)	(673)
	h) Ores and minerals other than iron ore and Mica	(137)	(313)
4.	**Mineral, fuels, lubricants and related materials**		
5.	**Chemicals and related products**	827	1531
6.	**Manufactured goods classified according to materials except pearls, precious, semi-precious stones and carpets, hand made leather and leather manufactures including readymade garments and clothing accessories**	4285	3981
	a) Cotton, yarn, fabrics etc.	(1063)	(1131)
	b) Man made textiles	(102)	(171)
	c) Woollen fabrics	(7)	(23)
	d) Readymade garments and clothing accessories	(1792)	(2097)
	e) Coir manufactures	(29)	(31)
	f) Jute manufatures including twist and yarn	(243)	(250)
	g) Natural silk textiles	(124)	(186)
	h) Mill made carpets	(24)	(92)

Sl.No.	Commodities	1987-88(P)	1988-89(P)
		(in crores of rupees)	
7.	**Engineering Goods**	1433	2318
8.	**Miscellaneous manufactured articles including handicrafts, gems and jewellery**	4434	6760
	a) Gems and jewellery	(2614)	(4398)
	b) Handicrafts	(243)	(326)
	c) Carpets handmade	(391)	(470)
	d) Leather and leather manufactures	(1149)	(1487)
	e) Sports goods	(37)	(79)
	TOTAL OF EXPORTS AND RE-EXPORTS INCLUDING OTHERS:	15719	20281

P - Provisional

CUSTOMS
ANNEXURE - 2.3

(referred to in para 2.03)

Import duty collections classified according to Budget heads

The import duty collected for the years 1987-88 and 1988-89 is given below classified according to budget heads.

Sl. No.	Commodities/budget heads	1987-88	1988-89
		(Rs. in crores)	
1.	Fruits, dried and fresh	63	77
2.	Animal or vegetable fats and oil and their cleavage products' prepared edible fats, animal or vegetable fats	619	626
3.	Petroleum oils and oils obtained from bituminous minerals, crude	1,862	1,917
4.	Petroleum Oils and oils obtained from bituminous mineral other than crude	274	396
5.	Other mineral fuels, oils, waxes and bituminous substances	84	160
6.	Inorganic chemicals	162	262
7.	Organic chemicals	825	1,134
8.	Pharmaceutical products	8	11
9.	Dyes, colours, paints and varnishes	91	100
10.	Plastic and articles thereof	703	869
11.	Rubber and articles thereof	149	174
12.	Pulp, paper, paper board and articles thereof	106	123
13.	Silk	16	11
14.	Man made filaments	153	182
15.	Man made staple fibres	46	36
16.	Primary materials of iron and steel	137	271
17.	Iron and non-alloy steel	677	776
18.	Stainless steel	90	131
19.	Other alloy steel, hollow drill bars and rods	172	201
20.	Articles of Iron and Steel	264	283
21.	Copper	401	431
22.	Nickel	64	99
23.	Aluminium	56	36
24.	Lead	30	46

CUSTOMS
ANNEXURE -2.4

Export duty and Cess
(referred to in Para 2.03)

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

(Rupees in crores)

Sl. No.	Budget head	Export duty		Export cess	
		1987-88	1988-89	1987-88	1988-89
1.	Coffee	18	6	1	3
2.	De-oiled groundnut meal	Nil	Nil	Nil	Nil
3.	Tobacco (unmanufactured)	Nil	Nil	1	1
4.	Marine Products	Nil	Nil	4	4
5.	Cardamom	Nil	Nil	Nil	Nil
6.	Mica	2	2	1	1
7.	Hides, skins and leathers	10	5	Nil	Nil
8.	Lumpy iron ore	Nil	Nil	Nil	Nil
9.	Iron ore fines (including blue dust)	Nil	Nil	2	2
10.	Chrome concentrate	Nil	Nil	Nil	Nil
11.	Other articles	Nil	Nil	7	5
12.	Other agricultural produce under A.P. Cess Act, 1940	NIL	Nil	5	9
13.	Under other Budget heads	19	12	4	5
	TOTAL	49	25	25	30

CUSTOMS
ANNEXURE - 2.5

Searches and Seizures
(referred to in para 2.05)

Searches and seizures	1986-87		1987-88		1988-89	
	Coastal	Town	Coastal	Town	Coastal	Town
A. Total No. of searches and seizures						
Bombay	11	14	12	95	N.A	N.A
Delhi	-	629	*283	504	N.A	N.A
Madras	110	683	**820	-	69	274
Calcutta	96	49	96	10	110	42
Ahmedabad	Nil	Nil	Nil	Nil	N.A	N.A
Cochin	1044	133	1172	50	N.A	N.A
TOTAL	1261	1,508	2383	659		
B. Value of goods seized (Rs.in lakhs)						
Bombay	151.30	19.57	178.00	0.54	N.A	N.A
Delhi	-	1370.83	*795.62	192.00	N.A	N.A
Madras	123.76	111.36	**471.29	-	39.12	193.37
Calcutta	1033.00	Nil	513.46	129.10	1188.55	22.15
Cochin	84.00	62.00	401.00	60.00	N.A	N.A
Ahmedabad	Nil	Nil	Nil	Nil	N.A	N.A
TOTAL	1392.06	1563.76	2359.37	381.64		

Searches and seizures	1986-87		1987-88		1988-89	
	Coastal	Town	Coastal	Town	Coastal	Town
C. Number of seizure cases adjudicated upon and resulting in levy of duty and penalty of imprisonment						
Bombay	10	3	4	Nil	N.A	N.A
Delhi	-	273	*31	Nil	N.A	N.A
Madras	71	536	***142	13	67	201
Calcutta	7	Nil	14	6	60	2
Ahmedabad	Nil	Nil	Nil	Nil	N.A	N.A
Cochin	1137	N.A@	644	34	N.A	N.A
TOTAL	1225	812	835	53		

* Airports.
** Including Town, Airport and Harbour
*** Includes 141 cases of Airport.
N.A = Not made available by the Ministry of Finance (December 1989)
N.A@ = Not available.

CUSTOMS
ANNEXURE - 2.6

(referred to in para 2.07)

Exemption from duty subject to end use verification

(in crores of Rupees)

		1986-87	1987-88	1988-89
(a)	Value of goods imported on which duty exempted			
	Bombay	496.77	148.64	N.A
	Delhi	16.80	28.89	N.A
	Madras	265.27	168.43	265.99
	Calcutta	75.72	35.43	14.98
	Ahmedabad	0.57	0.80	N.A
	Cochin	1.80	2.50	N.A
	TOTAL	856.93	384.69	
(b)	Amount of duty forgone			
	Bombay	540.64	247.61	N.A
	Delhi	37.20	31.61	N.A
	Madras	248.18	146.51	241.19
	Calcutta	64.87	49.64	21.07
	Ahmedabad	0.84	1.30	N.A
	Cochin	2.70	1.77	N.A
	TOTAL	894.43	478.44	
(c)	Value for which bond taken by Custom House			
	Bombay	139.68	248.52	N.A
	Delhi	37.20	21.21	N.A
	Madras	248.18	146.56	241.19
	Calcutta	64.87	49.64	21.08
	Ahmedabad	1.10	1.30	N.A
	Cochin	1.80	111.00	N.A
	TOTAL	492.83	578.23	

(in crores of Rupees)

		1986-87	1987-88	1988-89
(d)	Number of bonds in respect of which end use condition verified during the year			
	Bombay	N.A@	1,575	N.A
	Delhi	153	381	N.A
	Madras	7,180	4,420	6,113
	Calcutta	959	564	758
	Ahmedabad	14	19	N.A
	Cochin	102	54	N.A
	TOTAL	8,408	7,013	
(e)	Value of bonds brought forward from previous year for verification of end use condition			
	Bombay	38.03	83.70	N.A
	Delhi	28.00	46.99	N.A
	Madras	282.69	271.85	86.82
	Calcutta	44.81	26.47	34.66
	Ahmedabad	0.08	0.70	N.A
	Cochin	15.00	1.27	N.A
	TOTAL	408.61	430.98	
(f)	Value of end use bonds carried forward to next year for verification of end use condition			
	Bombay	67.19	156.41	N.A
	Delhi	356.00	42.87	N.A
	Madras	304.88	86.89	159.91
	Calcutta	26.47	34.75	13.36
	Ahmedabad	0.70	0.64	N.A
	Cochin	5.50	1.00	N.A
	TOTAL	760.74	322.56	
(g)	Number of end use bonds pending cancellation			
	Bombay	980	1,596	N.A
	Delhi	2,668	3,197	N.A
	Madras	5,003	2,334	3,082
	Calcutta	361	365	362
	Ahmedabad	11	Nil	N.A
	Cochin	63	57	N.A
	TOTAL	9,086	7,549	
(i)	Of above number pending for adjudication or appeal			
	Bombay	66	Nil	N.A
	Delhi	Nil	Nil	N.A
	Madras	1	Nil	Nil
	Calcutta	16	Nil	Nil
	Ahmedabad	Nil	Nil	N.A
	Cochin	Nil	Nil	N.A
	TOTAL	83	Nil	
(ii)	Of above number pending decision in High Court			
	Bombay	Nil	Nil	N.A
	Delhi	Nil	Nil	N.A
	Madras	27	56	7
	Calcutta	10	Nil	11
	Ahmedabad	-	Nil	N.A
	Cochin	7	4	N.A
	TOTAL	44	60	

N.A = Not made available by the Ministry of Finance (December 1989).
N.A@ = Not available.

CHAPTER 3
UNION EXCISE DUTIES

3.01 Trend of receipts

During the year 1988-89 total receipts from Union Excise duties amounted to Rs.18,749.03 crores. The receipts during the year 1988-89 from levy of basic excise duty and from other duties levied as excise duties are given below alongside the corresponding figures for the preceding year :-

	Receipts from Union Excise duties	
	1987-88* Rs.	1988-89* Rs.
A. Shareable duties :		
Basic excise duties	1,28,92,98,81,000	1,42,10,45,82,000
Auxiliary duties of excise	1,82,000	2,83,000
Special excise duties	73,81,11,000	6,94,69,84,000
Additional excise duties on mineral products	1,000	2,000
Total (A)	1,29,66,81,75,000	1,49,05,18,51,000
B. Duties assigned to states :		
Additional excise duties in lieu of sales tax	12,10,26,05,000	13,97,58,69,000
Excise duties on generation of power	--	---
Total (B)	12,10,26,05,000	13,97,58,69,000
C. Non-shareable duties :		
Regulatory excise duties	--	---
Special excise duties	11,26,35,000	44,89,82,000
Additional excise duties on textiles and textile articles	2,01,27,61,000	1,68,86,24,000
Additional excise duties on T.V. sets	37,63,62,000	45,37,46,000
Other duties	1,29,000	5,00,000
Auxiliary duties	(-)1,37,000	10,000
Total (C)	2,50,17,50,000	2,59,18,62,000
D. Cess on commodites	19,05,00,76,000	21,68,29,29,000
E. Other receipts	13,07,63,000	18,78,11,000
Total :	1,63,45,33,69,000	1,87,49,03,22,000

* Figures furnished by the Ministry of Finance in November 1989.

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

Year	Receipts from union excise duties (Rs. in crores)	Number of tariff items/ chapters	Number of tariff sub items/ headings	Number of factories paying excise duties
1984-85	11,150.84	137	370	61,501
1985-86	12,871.08	134	416	51,824
1986-87	14,387.04	91	711	53,060
1987-88	16,345.34	91	811	60,822
1988-89	18,749.03	91	912	71,444

iii) The number of commodities each of which yielded excise duties in excess of Rs.100 crores during the year 1988-89 the number of commodities which yielded receipts between Rs.10 crores and Rs.100 crores and the number of commodities which yielded less than Rs. 10 crores per year, alongside corresponding figures for the preceding four years are given below (figures in bracket given percentage to total receipts):-

Year	Number of commodities each yielding receipts		
	above Rs.100 crores	between Rs.10 crores and 100 crores	below Rs.10 crores
1984-85	21	96	25
	(80)	(19)	(1)
1985-86	24	95	15
	(82)	(17)	(1)
1986-87	20	130	534
	(58)	(35)	(7)
1987-88	19	142	652
	(57)	(35)	(8)
1988-89	27	157	602
	(60)	(33)	(7)

iv) The commodities which yielded duty amounting to more than Rs.100 crores during 1987-88 and 1988-89 are as under :

Sr. No.	Commodities	Tariff heading	Amount Rs. (in crores) 1987-88	Amount* Rs. (in crores) 1988-89
1.	Petroleum oil: motor spirit, aviation turbine fuel etc.	27.10	2,055.34	2,290.39
2.	Cigarettes	24.03	1,510.45	1,552.80
3.	Cement	25.02	864.69	898.40
4.	Synthetic filament yarn & sewing thread-not textured	54.02	963.03	895.36
5.	Tyres	40.11	498.14	568.70
6.	Sugar	17.01	474.25	540.42
7.	Motor vehicles	87.03	234.36	294.69
8.	Patent or proprietary medicaments	30.03	177.80	285.99
9.	Tobacco manufactures (other than cigarettes)	24.04	175.20	285.73
10.	Fabrics of man-made filament yarn	54.09	192.85	212.56
11.	Television receiving sets	85.28	103.82	187.48
12.	Wire & cables	85.44	143.81	187.41
13.	Parts and accessories of motor vehicles	87.08	138.67	169.98
14.	Fabrics of man-made staple fibre excluding headings 55.11 & 55.12	55.08	--	154.46
15.	Motor cycles (including scooters and mopeds)	87.11	109.93	131.01
16.	Cotton yarn	52.03	130.37	126.93
17.	Uncoated paper and paper board	48.02	113.18	124.89
18.	Synthetic staple fibre	55.01	203.16	119.97
19.	Artificial staple fibre & tow	55.02	--	119.67
20.	Soap	34.01	119.61	114.88

Sr. No.	Commodities	Tariff heading	Amount Rs. (in crores) 1987-88	Amount* Rs. (in crores) 1988-89
21.	Polymers of Vinyl Chloride	39.04	--	105.87
22.	Electric motors and generators	85.01	--	105.74
23.	Electric appratus for line telephony	85.17	--	105.37
24.	Iron & steel products-pieces roughly shaped by forging or rolling n.e.s.	72.08	--	104.89
25.	Inner tubes of rubber, for tyres	40.13	--	101.90
26.	Cotton fabrics excluding headings 52.09, 52.10 & 52.11	52.06	--	100.67
27.	Air on vacuum pumps	84.14	--	100.11

-- Total collection was less than Rs.100 crores.
* Figures furnished by the Ministry of Finance in December 1989.

v) Cess is levied and collected by department of central excise on tea, coffee, tobacco, beedi, onion, copra, oil and oil seeds, salt, rubber, jute, cotton fabrics, rayon and artificial silk fabrics, woollen fabrics, man made fabrics, paper, iron ore, coal and coke, limestone and dolomite and crude oil under various Acts of Parliament in order to provide for development of respective industries and to meet organisational expenditure on welfare of workers in the respective industries. The* yield from levy of cess in the last three years and the names of commodities are given below:-

(in crores of rupees)

Sr. No.	Commodities	Receipts from cess during 1986-87	1987-88	1988-89
1.	Crude oil	979.81	1,770.11	2,028.72
2.	Handloom cess on fabrics	12.77	12.20	11.69
3.	Tea	6.38	9.80	9.60
4.	Paper	2.23	2.43	2.93
5.	Sugar	104.81	117.20	133.09
6.	Beedi	3.72	12.08	12.29
7.	Jute manufacturers	8.00	7.29	8.10
8.	Automobiles	4.38	6.02	7.10
9.	Cotton	0.22	0.17	0.08
10.	Vegetable oils	0.47	0.29	0.03
11.	T.V.sets (Additional duty)	27.53	38.65	48.11
	Total receipts from cess	1,150.32	1,976.24	2,261.74

* Figures furnished by the Ministry of Finance in November 1989.

3.02 Variations between the budget estimates and actual receipts

The budget estimates vis-a-vis actual receipts during the year 1988-89 alongside the corresponding figures for preceding three years are given below :-

(in crores of rupees)

Year	Budget estimates	Actual receipts
1985-86	12,226.69	12,871.08
1986-87	14,266.00	14,407.29
1987-88	16,751.80	16,345.34
1988-89	18,089.38	18,749.03

3.03 Cost of collection

The expenditure incurred during the year 1988-89 in collecting Union Excise duties are given below alongside the corresponding figures for the preceding three years :-

(in crores of rupees)

Year	Receipts from excise duties	Expenditure on collection	Cost of collection as percentage of receipts
1985-86	12,871.08	80.85	0.62
1986-87	14,387.04	137.50	0.96
1987-88	16,345.34	148.41	0.90
1988-89	18,738.81	158.51	0.85

3.04 Exemptions, rebates and refunds

(i) Exemptions

In the Central Excise Tariff, the number of sub headings (each with a rate against it) under which the excisable commodities are required to be classified was 1,227 during the year 1987-88 and 1,749 during the year 1988-89. The number of exemption notifications in force during the years 1987-88 and 1988-89 numbered 468 and 626 respectively. The largest number of exemption notifications were in force in respect of the following commodities :-

Sr. No.	Chapter	Description	Number of exemption notifications in force during	
			1987-88	1988-89
1.	28	Inorganic chemicals	28	43
2.	54	Man-made filaments	22	34
3.	27	Mineral fuels	21	34
4.	84	Machinery and mechanical appliances	16	33
5.	85	Electrical Machinery and equipment	16	33
6.	40	Rubber and articles thereof	24	29
7.	48	Paper	16	28
8.	55	Man-made staple fibres	14	25
9.	87	Motor vehichels and parts thereof	14	19
10.	32	Dyes, colours, paints and varnishes	15	18

The amount of revenue foregone by grant of exemptions through issue of notifications by the Ministry of Finance under sub section (1) of Section 5A of the Central Excises and Salt Act, 1944, during the year 1988-89 was as under :-

Under sub section (1) ..... *Rs.7,350.69 crores
Under sub section (2) ..... *Rs.1.27 crores

* Figures furnished by the Ministry of Finance cover only 31 collectorates out of 32 collectorates.

(ii) Rebate

Under the Central Excise Rules the amount of rebates on excise duty paid on goods exported as also excise duty not levied on goods exported, in recent years is given below :-

(in crores of rupees)

		1987-88	1988-89
(a)	Rebate under Rule 12	58.72	55.34
(b)	Rebate under Rule 12A	10.96	16.29
(c)	Duty not levied under Rule 13-Revenue foregone as a result of export under bond	1,694.68	871.21
(d)	Differential duty recovered on unrebated amount of goods exported under bond	4.55	17.77

(iii) Refunds

The amount of duty refunded by the department in recent years becaue of excess collection is given below :-

	1986-87	1987-88	1988-89
Number of cases	7,787	*10,243	**5,686
Amount of refunds (in crores of rupees)	55.24	*85.35	**77.08

* Figures furnished by the Ministry of Finance cover only 31 collectorates out of 32 collectorates.
** Figures furnished by the Ministry of Finance cover only 28 collectorates out of 32 collectorates.

3.05 Outstanding demands

The number of demands for excise duty outstanding for collection and the amount of duty involved as on 31 March 1989 are given below :-

	Relating to			
	1987-88 and earlier years		1988-89	
	Number of cases	Amount (in crores of rupees)	Number of cases	Amount (in crores of rupees)
(a) Pending with Adjudicating officers	9,459	878.16	3,516	259.54
(b) Pending before Appellate Collectors	886	42.32	992	36.70
(c) Pending before Board	93	6.16	46	56.57
(d) Pending before Government	201	7.67	36	0.98
(e) Pending before Tribunals	1,341	132.24	1,041	197.59
(f) Pending before High Courts	1,837	190.28	850	198.85
(g) Pending before Supreme Court	349	69.67	63	22.81
(h) Pending for coercive recovery	1,65,695	54.84	1,38,918	73.61
Total	1,79,861	1,381.34	1,45,462	846.65

* Figures furnished by the Ministry of Finance in November 1989 cover 28 collectorates out of 32 collectorates.

3.06 Provisional assessments

The assessments to excise duties which have been done provisionally for various reasons, and the amount of estimated revenue involved are indicated below :-

	Relating to			
	*1987-88 and earlier years		*1988-89	
	Number of cases	Duty involved (in crores of rupees	Number of cases	Duty inolved (in crores of rupees
a) Pending decision by Courts of Law	1,230	1,890.30	431	355.76
b) Pending decision by Govt. of India or Central Board of Excise & Customs	11	1.43	4	2.85
c) Pending adjudication by the department	273	29.63	68	17.60
d) Pending finalisation of classification lists	333	61.19	131	63.36
e) Pending finalisation of price lists	2,248	221.25	1,557	219.37
f) Other reasons	911	640.76	797	433.73
Total	5,006	2,844.56	2,988	1,092.67

* Figures furnished by the Ministry of Finance in November 1989 cover 28 collectorates out of 32 collectorates.

3.07 Failure to demand duty before limitations and revenue remitted or abandoned

(i) Revenue not demanded before limitation

The total amount* of demands for duty barred by limitation and not realisable owing sto demands not having been raised in time during the last three years was Rs.1408.69 lakhs as detailed below :-

Year	Amount (in lakhs of rupees)
1986-87	93.88
1987-88	1,268.90
1988-89	45.91

* Figures furnished by the Ministry of Finance in November, 1989 cover 28 collectorates out of 32 collectorates.

(ii) Revenue remitted or abandoned

The amount* of revenue remitted, abandoned or written off during the last two years are given below :-

	1987-88* and preceding year		1988-89*	
	Number of cases	Amount (in lakhs of rupees)	Number of cases	Amount in lakhs of rupees)
Remitted due to				
a) Fire	137	32.81	44	4.94
b) Flood	9	3.90	6	54.44
c) Theft	1	0.01	--	--
d) Other reasons	292	198.30	170	33.56
Total	439	235.02	220	92.94
Abandoned or Written off due to				
a) Assessee died leaving behind no assets	64	379.26	3	0.07
b) Assessee untraceable	1,717	39.23	444	8.97
c) Assessee left India	207	0.26	1	0.27
d) Assessee incapable of payment of duty	1,299	73.29	171	40.12
e) Other reasons	99	6.59	304	31.83
Total	3,386	498.63	923	81.26

* Figures furnished by the Ministry of Finance in November 1989 cover 28 collectorates out of 32 collectorates.

3.08 Writs and Appeals

(i) Writ petitions pending in courts

Number* of writ petitions involving excise duties which were pending in courts as on 31 March 1989 are given below :-

	In Supreme Court	In High Court
Pending for over 5 years	1,128	1,749
Pending for 3 to 5 years	274	913
Pending for 1 to 3 years	410	1,267
Pending for not more than 1 year	167	673
Total	1,979	4,602

* Figures furnished by the Ministry of Finance in November 1989 cover 28 collectorates out of 32 collectorates.

(ii) Appeals pending with others

The number* of appeals and petitions pending with Collectors/Board/Government as on 31 March 1989 are given below :-

	With Collectors	With Tribunal	With Board	With Govt.
a) Number of appeals instituted during 1988-89	1,583	1,925	1	9
b) Pending as on 31 March 1989 {out of (a) above}	551	1,783	1	9
c) Number of appeals/petitions instituted in earlier years and pending on 31 March 1988	917	4,077	18	27
d) Pending as on 31 March 1989 {out of (c) above}	282	2,857	6	23

* Figures furnished by the Ministry of Finance in November 1989 cover 28 collectorates out of 32 collectorates.

(iii) Details of appeals/references disposed of

The number* of appeals and references filed before Collectors (Appeals), the Tribunals and the High Courts and Supreme Court are given below :-

			Relating to	
			1987-88 and preceding year	1988-89
1.	a)	Number of appeals filed before Collectors (Appeals)	3,672	1,837
	b)	Number of appeals disposed of during 1988-89 out of (a) above	2,014	1,361
2.	a)	Number of appeals filed before the Tribunal by the assessees during 1988-89	1,183	1,641
	b)	Number of appeals decided during 1988-89 in favour of the assessees	211	251
3.	a)	Number of appeals filed before the Tribunals by the department during 1988-89	843	777
	b)	Number of appeals decided in favour of the department during 1988-89	114	70
4.	a)	Number of appeals filed in the High Courts by the assessees during 1988-89	223	125
	b)	Number of appeals disposed of in favour of the assessees during 1988-89	27	37
5.	a)	Number of appeals filed by the department before the High Courts during 1988-89	9	33
	b)	Number of appeals decided in favour of the department during 1988-89 (including appeals filed by assessees)	71	103
6.	a)	Number of appeals filed in the Supreme Court by assessees during 1988-89	84	26
	b)	Number of appeals decided in favour of the assesses during 1988-89	14	12

		Relating to	
		1987-88 and preceding year	1988-89
7. a)	Number of appeals filed in Supreme Court by the department during 1988-89	106	64
b)	Number of appeals decided in favour of the department during 1988-89	14	39

* Figures furnished by Ministry of Finance cover 28 collectorates out of 32 collectorates.

3.09 Seizures, confiscation and prosecution

The number* of cases of seizures, confiscation and prosecution relating to the excise duties are given below :-

		1987-88 and preceding year		1988-89	
		Number	Amount (in lakhs of rupees)	Number	Amount (in lakhs of rupees)
(i)	Seizure cases	6,084	49,239.51	1,927	11,691.27
(ii)	Goods seized	3,017	8,091.91	1,173	4,762.65
(iii)	Goods confiscated				
a)	in seizure cases	2,078	7,234.30	715	1,331.94
b)	in non-seizure cases	615	10,88453	673	1,601.09
(iv)	Number of offences prosecuted				
a)	arising from seizure	143	1,196.09	91	269.39
b)	arising otherwise	65	261.77	120	1,040.80
(v)	Duty assessed in respect of goods seized or confiscated	2,490	9,419.92	1,220	3,553.34
(vi)	Fines levied				
a)	on seizure and in confiscation cases	1,589	508.76	757	4,580.00
b)	in other cases	226	132.53	162	5.29
(vii)	Penalties levied	4,044	2,109.10	1,742	5,880.18
(viii)	Goods destroyed after confiscation	20	1.15	11	1.01
(ix)	Goods sold after confiscation	78	20.43	55	0.57
(x)	Prosecution resulting in conviction	19	5.66	7	30.00
	Total	20,468	89,105.66	8,653	34,747.53

* Figures furnished by the Ministry of Finance in November 1989 cover 28 collectorates out of 32 collectorates.

3.10 Outstanding audit objections

The number of objections raised in audit upto 31 March 1988 in 32 collectorates and which were pending settlement as on 30 September 1988 was 7,323. The duty involved in the objections amounted to Rs.622.26 crores. Details are given in Annexure 3.1 to this chapter.

The outstanding objections broadly fall under the following categories :-

Sl. No.	Nature of objection	Amount (in crores of rupees)
1.	Non-levy of duty	122.26
2.	Short levy of duty due to undervaluation	42.65
3.	Short levy of duty due to misclassification	40.92
4.	Short levy of duty due to incorrect grant of exemption	49.74
5.	Exemption to small scale manufacturers	1.23
6.	Irregular grant of credit for duty paid on inputs and irregular utilisation of such credit	40.53
7.	Demands for duty not raised	88.02
8.	Irregular rebates and refunds	3.42
9.	Cess	17.28
10.	Others	216.14
11.	Internal Audit	0.07
	Total	622.26

The Ministry of Finance have stated (December 1989) that from the monthly statement of disposal of CERA objections for the month of September 1989 furnished by the Collectors of Central Excise, it is observed that 1936 CERA objections involving duty of Rs.162.68 crores were still pending settlement for more than one year.

The collector wise details of such cases have not been furnished by the Ministry (December 1989).

3.11 Results of audit

Test check of records in audit in the various Central Excise Collectorates including check of excise records of licensees manufacturing excisable commodities revealed under assessment of duty and losses of revenue amounting to Rs.74.17 crores.

System studies on the following areas of administration of the Central Excise department were also conducted. The results of those studies are contained in paragraphs 1.03 to 1.05 of this report.

i) Man-made filaments and man-made staple fibres and products thereof
ii) Clearance of goods for industrial use
iii) Irregular refunds

Those studies also revealed non levy/short levy of Central Excise duty amounting to Rs.80.20 crores.

The irregularities noticed broadly fall under the following categores :-

(a) Non levy of duty
(b) Short levy of duty due to incorrect grant of exemption
(c) Short levy of duty due to misclassification
(d) Short levy of duty due to undervaluation
(e) Irregular exemption to small scale manufacturers
(f) Irregular availment of Modvat credit
(g) Irregular grant of credit for duty paid on raw materials and components (inputs) and irregular utilistion of such credit towards payment of duty on finished goods (outputs)
(h) Non levy/Short levy of cess
(i) Delay in raising demands of duty
(j) Procedural delays and irregularities with revenue implications
(k) Other irregularities

Some of the important cases are mentioned in the succeeding paragraphs :-

NON LEVY OF DUTY

Under Rule 9 read with Rule 173G of the Central Excise Rules, 1944 no excisable goods should be removed from any place where they are produced, manufactured or cured whether for consumption, export or manufcture of any other commodity, in or outside such place unless the excise duty leviable has been paid.

Some of the important cases of non levy of duty noticed in audit are given below:

3.12 Non levy of duty on goods consumed captively

i) (a) Cotton yarn

Section 3 of the Central Excises and Salt Act, 1944, requires that excise duty should be levied on all excisable goods manufactured in India. Note 1 to Chapter 52 of the schedule to the Central Excise Tariff Act, 1985 defines "manufacture" in relation to cotton yarn of headings 52.03 and 52.04 to include sizing, beaming, warping, winding or reeling, or any one or more of these processes, or the conversion of any form of the said products into another form of such products. Rules 9, 49 and 173G of Central Excise Rules, 1944 require that duty shall be paid on excisable goods before their removal from any place where they are produced or manufactued or any premises appurtenent thereto, whether for consumption, export or manufacture of any other commodity in or outside such place. However, such goods may be removed without payment of duty if the final product is neither exempt from the whole of the duty of excise leviable thereon nor is chargeable to nil rate of duty.

Fifty one mills in the jurisdiction of nine collectorates manufactured cotton yarn in the form of cones, cheese, cops and bobbins and used them captively for conversion to single/double fold yarn in plain (straight) reel hanks and cleared them without payment of duty. As yarn in plain (straight) reel hanks was exempt from duty and there was no notification granting exemption to cotton yarn in the form of cones or cheese or cops or bobbins, removal for captive consumption without payment of duty was irregular. Failure to levy duty on cotton yarn (cones, cheese, bobbines etc.) resulted in duty of Rs.6.04 crores not being realised during different periods from different units from March 1980 to January 1989.

The Ministry of Law have also agreed with the view of Audit.

The omissions were pointed out to the department between October 1982 and April 1989 and to the Ministry of Finance in June, July and August 1989.

The Ministry of Finance have stated (September and October 1989) that the matter has since been referred to the Attorney General of India for his opinion.

(b) Narrow woven fabrics

As per a notification issued on 2 April 1986, the duty leviable on the specified goods manufactured in a factory and used within the factory of production in or in relation to the manufacture of specified final products is exempted. However this exemption is not available if the final products are exempt from the whole of the duty of excise leviable thereon or are chargeable to 'Nil' rate of duty.

As per another notification issued on 1 March 1986 where a small scale manufacturer has not chosen to avail himself of the Modvat credits under Rule 57A of the Central Excise Rules, 1944, specified excisable goods manufactured and cleared by him upto a value of Rs.15 lakhs in any financial year are exempt from whole of the duty of excise chargeable thereon.

Narrow woven man made fabrics (sub heading 5806.00) of width not more than 30.5 centimetres are exempted from payment of the whole of duty of excise in terms of a notification issued on 21 May 1986.

A small scale manufacturer engaged in the manufacture of tubular bags (sub heading 5909.00) was availing the concessional rate of duty in terms of notification dated 1 March 1986. The manufacturer brought into his factory duty paid polyester yarn and wove them on special looms into narrow woven fabrics (sub heading 5806.00) width of which worked out to 83.80 centimetres. A part of the narrow woven fabrics was cleared for home consumption and the rest captively consumed in the manufacture of coated/impregnated textile fabrics falling under sub heading 5903.29 which were further captively consumed in the manufacture of the final product namely tubular bags.

Duty was chargeable on the narrow woven fabrics (sub heading 5806.00) on the clearances for home consumption as well as for captive

consumption in the manufacture of coated/impregnated fabrics for the reasons that (i) the width of the fabrics manufactured had exceeded 30.5 centimetres (ii) concessional rates of duty in terms of notification dated 1 March 1986 were not available to the product and (iii) goods under chapter 58 are not specified as inputs in the notification dated 2 April 1986. Duty was also chargeable on the coated/impregnated textile fabrics (sub heading 5903.29) in terms of the notification dated 2 April 1986 as the manufacturer had cleared his final product viz., tubular bags without payment of duty upto the value of Rs.15 lakhs in terms of notification dated 1 March 1986 in the financial year 1986-87, 1987-88 and 1988-89.

The fact of manufacture of intermediary products viz., narrow woven fabrics and coated/impregnated textile fabrics was not however declared by the manufacturer in the classification lists filed by him under Rule 173B of the Central Excise Rules, 1944. This resulted in non levy of duty on the removal of the aforesaid fabrics.

On the omission being pointed out in audit (March 1988) the department stated (May 1989) that a show cause-cum demand notice was issued on 20 March 1989 by the Collector for Rs.18,62,521 being the duty leviable on the narrow woven fabrics and coated/impregnated fabrics cleared during the period from 1 March 1986 to 5 December 1988. Results of adjudication have not been received (June 1989).

The Ministry of Finance have stated (November 1989) that against the orders of the Assistant Collector classifying the narrow woven fabrics under sub heading 5806.00 and coated/impregnated textile fabrics under sub heading 5903.29, the assessee filed an appeal before Collector (Appeals) who has held that woven fabrics of Polyester yarn are classifiable under heading 5507 attracting nil rate of duty. The Ministry added that an appeal to the Tribunal against the order of the Collector (Appeal) is being filed.

(ii) Ethyl alcohol

Ethyl alcohol of any grade (including such alcohol when denatured or otherwise treated) was classifiable under the erstwhile tariff item 6 provided it either by itself or by admixture with any other substance was suitable for use as fuel for internal combustion engines. Under the schedule to the Central Excise Tariff Act, 1985, ethyl alcohol of any grade which either by itself or in admixture with any other substance, is suitable for being used as fuel for spark ignition engines is classifiable under heading 22.04.

A sugar factory was manufacturing ethyl alcohol of 95 per cent strength V/v grade, known as "rectified spirit", from molasses and also denaturing the same as per the requirement by adding denaturants. The ethyl alcohol of the grade of rectified special denatured spirit was partly used captively for the manufacture of acetone in the factory and partly sold outside. The denatured alcohol of the grade of special as well as ordinary denatured spirit was also sold outside. The product was captively used and cleared without payment of Central Excise duty and without observing any Central Excise procedure.

On the non levy of duty being pointed out in audit (February 1987), the department stated (September 1988 and June 1989) that based on chemical tests conducted in March and April 1987 the ethyl alcohol was found classifiable under erstwhile tariff item 6(ii) till 27 February 1986, thereafter under heading 22.04 of the schedule to the Central Excise Tariff Act, 1985 and therefore show cause notices demanding duty of Rs.5,16,47,926 for the period from January 1983 to July 1988 had been issued between February 1988 and August 1988. Further developments have not been reported (June 1989).

The Ministry of Finance stated (October 1989) that the issue whether rectified spirit/industrial alcohol etc. which is not of I.C.Engines grade, is covered by erstwhile tariff item 6(ii) of the First scheule to the Central Excises and Salt Act, 1944 and heading 22.04 of the schedule to the Central Excise Tariff Act, 1985 is under examination.

(iii) White petroleum jelly

As per sub rule(b) of Rule 3 for the Interpretation of the schedule to the Central Excise Tariff Act 1985, mixtures, compsoite goods consisting of different materials or made up of different components shall be clasified as if they consisted of the material or component which give them their essential character.

An assessee engaged in the manufacture of cosmetics manufactured a product called "white petroleum jelly", by mixing "liquid paraffin", "hard paraffin", "micro crystalline wax" etc. and subjecting the mixture to a temperature of about 100°C and consumed the same captively without payment of duty in manufacture of a final product, dutiable under sub heading 3304.00.

The intermediate product was chemically examined and found to possess the characteristic appearance of petroleum jelly containing traces of lanoline. As per "Interpretative Rules" the product ought to have been classified under sub heading 2712.00 of the schedule to the Central Excise Tariff Act 1985 and as Chapter 27 was not specified under Modvat Scheme the duty at the rate of 12 per cent ad valorem was chargeable before such captive consumption. The captive use without payment of duty on intermediate product resulted in non levy of duty of Rs.30.43 lakhs during the period from 1 March 1986 to 30 September 1987.

On the irregularity being pointed out in audit (October 1987) the department did not admit the audit objection and stated (March 1989) that petroleum jelly should not contain any other raw material except heavy petroleum lubricating oil and paraffin.

The contention of the department is not acceptable in view of the fact that : -

1) the sample of the product possesses the characteristic appearance of petroleum jelly alongwith a small amount of lanoline. The fact of the presence of small traces of lanoline cannot be allowed to interfere with its classification as petroleum jelly in terms of Rules, ibid;

2) petroleum jelly has been declared clearly as one of the contents of final products as indicated by percentage of its composition written on the tubes alongwith other contents.

The subsequent verification of the records has revealed that the non-levy of duty beyond 30 September 1987 worked out to Rs.47.40 lakhs in respect of the clearances for captive consumption of petroleum jelly during the period from 1 October 1987 to 31 May 1987. Similar irregularity was also noticed in another unit of the manufacturer, situated in another collectorate resulting in non-levy of duty of Rs.22.97 lakhs on clearances of white petroleum jelly for captive consumption during the period from 1 March 1986 to 31 May 1989. Thus, there has been a total non levy of duty of Rs.1.01 crores during the period from 1 March 1986 to 31 May 1989.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

(iv) Mineral substances

As per note 2 to chapter 25 of the schedule to the Central Excise Tariff Act 1985, heading 25.05 covers only products which have been washed, crushed, ground, powdered etc. Rock phosphate in lump form if crushed into powder form would therefore fall under sub heading 2505.00 and be chargeable to duty at the rate of 12 per cent ad valorem. Further, chapter 25 being not covered under Modvat scheme for the period from 1 March 1986 to 28 February 1987, complete exemption from payment of duty on captive consumption allowed under a notification dated 2 April 1986 was not applicable to such product.

a) A manufacturer of chemical products imported rock phosphate in lump form and crushed it in powder form. The powdered rock phosphate was utilised within the factory without payment of duty for manufacture of a chemical - "sodium tripolyphosphate" (chapter 28) which was not a fertiliser. The full exemption from payment of duty allowed to rock phosphate in any form allowed under a notification dated 8 October 1986 for use in fertiliser was, therefore, not available and duty ought to have been levied on the clearances for captive consumption. This resulted in non levy of duty for Rs.65.48 lakhs for the period from 1 March 1986 to 28 February 1987.

On the omission being pointed out in audit (April 1988), the department intimated (December 1988) that demand is being raised in respect of ground rock phosphate used in the manufacture of sodium tripolyphosphate. Further developments have not been received (January 1989).

The Ministry of Finance have stated (November 1989) that the matter is under examination.

b) An assessee obtained chromium ore from the market and got the same crushed, grounded and powdered to produce chromium ore in powder form. Such powdered chromium ore, in admixture with other substances, was used captively without payment of duty in the manufacture of sodium dichromate (a product dutiable under Chapter 28). This resulted in non levy of duty of Rs.3.55 lakhs on clearances during 1 March 1986 to 28 February 1987.

On the irregularity being pointed out in audit, the department confirmed (August 1988) that chromium ore was first crushed into powder

by the assessee but did not accept (June 1989) the objection on the grounds that powdered chromium was classifiable under heading 26.01 and would be exempt from duty under the notification dated 1 March 1986.

The reply of the department is not acceptable since, according to note 2 to chapter 26, heading 26.01 applies to ores which have been subjected to processes preparatory to metalurgical operations. But conversion of chromium ore into powder for the manufacture of sodium dichromate, obviously, does not fall under the process of the said category and its classification under heading 26.01 is, therefore, ruled out.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

c) An assessee obtained chemical grade bauxite and got the same crushed, ground and powdered to produce bauxite powder. Such bauxite powder in admixture with sulphuric acid was used captively without payment of duty in the manufacture of 'alum' (a product dutiable under chapter 28). Non levy of duty for captive use resulted in duty not realised to the extent of Rs.2.43 lakhs during 1 March 1986 to 28 February 1987.

On the irregularity being pointed out in audit (August 1988), the deprtment confirmed that bauxite was first crushed into powder by the assessee but did not accept (June 1989) the objection on the grounds that powder bauxite was classifiable under heading 26.01 and would be exempt from duty under the notification dated 1 March 1986.

The reply of the department is not acceptable since, according to note 2 to chapter 26, heading 26.01 applies to ores which have been subjected to processes preparatory to metallurgical operations. But conversion of bauxite into powder for manufacture of alum, obviously, is not a process of the said category and the classification of goods under heading 26.01 is therefore, ruled out.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

(v) Parts and accessories of motor vehicles

An assessee manufacturing motor vehicles (chapter 87), inter alia, manufactured internal combustion (I.C) engines and other parts and accessories of motor vehicles and captively consumed them without payment of duty with reference to notifications dated 19 April 1979 and 1 March 1983 as amended. As these notifications were rescinded with effect from 1 March 1986 and a similar notification providing exemption for captive use was issued on 2 April 1986 only, I.C.engines and other parts captively used during the period from 1 March 1986 to 1 April 1986 attracted duty. The department issued (August 1986) a show cause notice demanding duty on the I.C. engines manufactured and captively used during the above period. The show cause notice was also adjudicated by the jurisdictional Assistant Collector on 24 April 1988 confirming the demand.

It was noticed during audit (August 1988) that the department had omitted to demand duty on other parts and accessories of motor vehicles manufactured and captively used during the period from 1 March 1986 to 1 April 1986. The duty omitted to be demanded worked out to Rs.32,30,045.

On this being pointed out in audit (August 1988), the department stated (February 1989) that the appeal preferred by the assessee against the orders of the Assistant Collector was remanded back for fresh proceedings by the Collector (Appeals) and that a corrigendum to the show cause notice already issued for I.C.engines was made on 10 November 1988, by including the duty due on other parts also.

The Ministry of Finance did not admit the objection and stated (August 1989) that prior to 28 February 1986 the products were classifiable under erstwhile tariff item 68 and exempted from payment of duty on captive consumption as per a notification dated 30 April 1975. They added that as the effective rate of duty was maintained by issue of another notification on 2 April 1986, the exemption was available retrospectively under the provisions of the Central Duties of Excise (Retrospective Exemption) Act, 1986.

The Ministry's comments are not acceptable as they run counter to their clarification (13 July 1987) to the effect that the notification dated 2 April 1986 as amended was issued with a view to solving certain problems/difficulties relating to Modvat and had nothing to do with restoration of duty rates and as such the exemption notification could not be treated as covered under the provisions of the Central Duties of

Excise (Retrospective Exemption) Act, 1986.

(vi) Electric components

As per a notification issued on 2 April 1986 specified goods manufactured in a factory and used within the factory of production in or in relation to the manufacture of specified final products were exempted from whole of the duty of excise leviable thereon provided that the final product was not exempt from whole of the duty or chargeable to nil rate of duty.

An assessee engaged in the manufacture of vacuum and gas filled bulbs (sub heading 8539.00) and parts for these bulbs namely, filaments, lead in wires and alu-bi-pin-caps. He consumed these parts of electric bulbs captively in the manufacture of bulbs without payment of duty. As per a notification dated 1 March 1983 as amended the vacuum and gas filled bulbs of not exceeding 60 watts are chargeable to nil rate of duty. Granting duty exemption to said parts used in the manufacture of vacuum and gas filled bulbs not exceeding 60 watt under the aforesaid notification dated 2 April 1986 was , therefore, not correct. This resulted in non-levy of duty amounting to Rs.26,32,471 on the clearances during the period from August 1987 to November 1988.

On the irregularity being pointed out in audit (January 1989), the department accepted the objection and stated (March 1989) that two show cause-cum demand notices were issued to the assessee covering the period of under assessment. Report regarding confirmation of the demands has not been received (June 1989).

The Ministry of Finance have accepted the underassessment (September 1989).

(vii) Paper packing boxes

Section 2(f) of the Central Excises and Salt Act, 1944 defines the word "manufacture" as to include any process incidental or ancillary to the completion of a manufactured product. As per a judgment of the Supreme Court, manufacture would cause emergence of a new and different article having a distinct name, character or use. Printed cartons, boxes, containers and cases made wholly out of paper or paperboard of specified sub headings of chapter 48 are classifiable under sub heading 4818.12 of Central Excise Tariff Act, 1985. Other printed cartons, boxes and cases are classifiable under sub heading 4818.13, attracting duty at the rate of 35 per cent ad valorem. The Ministry in their telex dated 24 August 1987, clarified that composite paper containers would be classifiable under sub heading 4818.12 irrespective of whether printed labels are manufactured and pasted on the containers in the factory itself or procured from outside and simply pasted on the containers in the factory before clearance of the goods.

a) A footwear factory inter alia purchased unprinted flattened shoe boxes (with lids)of paper and paper board falling under sub heading 4818.19 (nil duty) and stitched them with the aid of power and pasted printed labels thereon to manufacture printed shoe boxes of paper and paper board. These printed shoe boxes were captively consumed without payment of duty. The paper used as input for making these printed shoe boxes being writing and printing paper of unspecified kind, the final products were correctly classifiable under sub heading 4818.13 chargeable to duty at the rate of 15 per cent ad valorem. As the unprinted flattened boxes had been converted to printed boxes, causing a change in the classification of the product (from sub heading 4818.19 to 4818.13), the new products (the printed boxes) were liable to duty for captive consumption till the date of extension of Modvat benefits to footwears (1 March 1987). This resulted in non levy of duty of Rs.16.57 lakhs during March 1986 to February 1987.

On the irregularity being pointed out in audit (March 1989), the department cited (March 1989) a case where the Collector (in November 1988) adjudged against incidence of duty on 'folding boxes' made of specified mill board manufactured by the same assessee. The department also referred to the judgment given by Madras High Court in the case of E.I.D. Parry Ltd., Vs. U.O.I.{1978 ELT-T 18 (MAD)} in which pasting of labels was not considered as amounting to manufacture.

The department's reply is not acceptable as the product in first case is not similar to the subject goods. Further, in view of restructuring of Tariff with the coming into force of the Central Excise Tariff Act, 1985 from 28 February 1986 the High Court judgment delivered in 1978 is not also relevant.

The Ministry of Finance did not admit the objection and stated (November 1989) that the assessee purchased unprinted flattened shoe boxes of paper and paper board (sub heading 4818.19) and stappled the same. The Ministry added that by putting a label on the manufactured unprinted shoe box no new product had

emerged having a distinct name, character and use in terms of Board's clarification issued on 17 May 1982.

The Ministry's reply is not acceptable as :

i) According to Rule 2(a) of the Interpretative Rules, any reference in a heading to goods shall be taken to include a reference to those goods incomplete or unfinished, provided that the incomplete or unfinsihed goods have the essential character of the complete or finished goods.

ii) As per note 8 to chapter 48 (as it existed during the relevant period) paper labels printed with motifs, character or pictorial representations, which were incidental to the primary use of the articles fell under chapter 48.

Thus, printed paper labels pasted on the flattened cartons/boxes which were stappled/ stitched emerged as printed cartons/boxes classifiable either under sub heading 4818.12 or 4818.13. In the instant case, the conditions stipulated against sub heading 4818.12 having been fulfilled, the goods were liable to duty under sub heading 4818.13.

b) Another assessee manufacturing package tea falling under Chapter 9, inter alia, manufactured printed paper boxes of various sizes for packing the tea and captively used them without payment of duty and without filing a classification list as well. As Chapter 48 was not covered in the list of inputs/final products in the notification dated 2 April 1986 for captive use upto 28 February 1987, and as the printed boxes were correctly classifiable under sub heading 4818.13, the non filing of the classification list and clearing them, without payment of duty, was irregular. The benefit of notification dated 1 March 1986 was also not available, as the goods were not classifiable under sub heading 4818.12, since they were not made out of any of the specified sub headings of Chapter 48. The non payment of duty for the clearances made from March 1986 to February 1987 amounted to Rs.8.51 lakhs.

On this being pointed out in audit (January 1988), the department contended (February 1988) that the classification under sub heading 4818.13 was ruled out since they were not printed cartons, but manufactured out of unprinted white paper and aluminium foil and printed labels were sealed around on four sides, only after packing of tea. The department also reported that the product would be classifiable under sub heading 4818.19 attracting 'Nil' rate of duty and that the assessee was instructed to file a classification list under sub heading 4818.19. It was further stated that aluminium foil baked paper container would fall under 7613.90 as 'other articles' in view of chapter note 1(viii) of chapter 76. The contention of the department is not tenable as composite paper containers even if affixed with printed labels subsequently would be classifiable under sub heading 4818.13 only, in view of Ministry's clarification as contained in their telex dated 24 August 1987. The contention that aluminium foil backed paper container would fall under Chapter 76 is also not acceptable since as per Rule 3(a) of Interpretative Rules, the headings which provide the most specific description shall be preferred to headings providing a more general description.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

(viii) Waste liquor - a by product

As per notification issued on 2 April 1986 as amended, specified goods, referred to as inputs manufactured in a factory and used within the factory of production, in or in relation to the manufacture of specified final products are exempted from the whole of the excise duty leviable thereon. However, if the final product is exempt from the whole of the duty, the inputs so used are liable to duty. As per another notification issued on 13 March 1986, as amended, steam is exempted from the whole of excise duty leviable thereon. This notification was given retrospective effect from 1 March 1986 in view of provisions of the Central Duties of Excise (Retrospective Exemption) Act, 1986.

In the processing of raw materials for the manufacture of caprolactum, by an assessee, waste liquor I and waste liquor II were obtained as by products. This was burnt in the plant and steam was produced which was consumed captively. The waste liquor I was consumed within the factory, whereas waste liquor II was partly consumed within the factory and cleared outside also. Since steam was exempted from payment of duty, the waste liquor used in the production of steam attracted levy of excise duty.

On this being pointed in audit (December 1986), the department issued show cause notices for levy of duty of Rs.21,44,410 for the period from 1 March 1986 to December 1988, between September 1987 and January 1989.

The department had earlier issued (July and August 1986) show cause notices for Rs.38,304 for the period 1 March 1986 to 1 April 1986 on grounds other than liability of duty on waste liquor used in the manufacture of steam, as per notification dated 2 April 1986.

The Ministry of Finance have admitted the objection (August 1989).

(ix) Sulphur trioxide

Rules 9 and 49 of the Central Excise Rules, 1944 provide that duty shall be paid on excisable goods before their removal from any place where they are produced or manufactured or any premises appurtenant thereto, whether for consumption, export or manufacture of any other commodity in or outside such place. Further as per explanation below the Rules ibid, excisable goods produced and consumed as such for the manufacture of any other commodity whether in a continuous process or otherwise shall be deemed to have been removed immediately before such consumption.

Five assessees in three collectorates manufacturing sulphuric acid falling under sub heading 2807.00, cleared a substantial quantity of it without payment of duty to industrial consumers under chapter X procedure, availing exemption under a notification issued on 22 March 1975, as amended. In the process of manufacture of sulphuric acid, an intermediate excisable product viz.sulphur trioxide, an anhydride of sulphuric acid was produced, which was consumed captively without payment of duty. This resulted in non levy of duty of Rs.13.25 lakhs calculated at the rate of 15 per cent ad valorem on sulphur trioxide produced and consumed captively during the period from April 1987 to September 1988.

On the omissions being pointed out in audit (August and December 1988), the department in the first case did not furnish reply; in the second case it stated (April 1989) that the matter was under examination; and in the remaining three cases it did not accept the objection and stated (January and May 1989) that sulphur trioxide is anhydrous sulphuric acid and falls under the same sub heading as sulphuric acid and since it emerges in gaseous form at the intermediate stage inside the plant, and cannot be marketed as such for sale, without undergoing further process of liquification, it cannot be treated as goods in the light of Supreme Court Judgment in the case of Union of India Vs. Delhi cloth and General Mills Ltd {1977 ELT (J-121)}.

The reply of the department is not acceptable as the CEGAT in the case of M/S.Dai Ichi Karakaria Private Limited decided in April 1986 that sulphur trioxide in such a case did come into existence and the fact that the product was not marketed could not be a good reason to hold that sulphur trioxide did not come into existence or was not marketable. It was also held that the Central Excise Law did not exempt intermediate products from duty of excise.

In reply to a similar case reported at Para 4.12(vi) in Audit Report 1986-87, the Ministry of Finance did not accept the objection holding that the product was not capable of being marketed and was not "goods" in view of Supreme Court judgment in the case of Union Carbide of India {1986 (24) ELT-169(SC)} for levy of duty.

This judgment relates to a case of clearances of goods in 1970. However the position has changed with the amendment of Rule 9 by notification dated 20 February 1982: thus from this date excisable goods coming into existence at an intermediate stage, are also liable to duty. What are excisable goods has been defined in Section 2(d) of the Central Excises and Salt Act, 1944. Therefore, any goods which are mentioned in the schedule to the Central Excise Tariff Act, 1985 are excisable.

The Audit views that sulphur trioxide is goods and not eligible for exemption under notification dated 22 March 1975 are further substantiated by the fact that sulphur trioxide consumed captively in the manufacture of sulphuric acid has been granted exemption from the whole of the duty of excise by a notification issued on 16 May 1989.

The Ministry of Finance have stated (November 1989) that from May 1989 the subject goods have been exempted and for the past, issue of a notification under Section 11C is being contemplated.

(x) Bituminous Mixture

Bituminous mixture consisting of a mixture of bitumen and mineral substances such as sand or asbestos are classifiable under sub heading 2715.90, attracting duty at the rate of 12 per cent (15 per cent from 1 March 1988) ad valorem.

An assessee was manufacturing inter alia, industrial fabrics by impregnating hessian with bulk bitumen and then coating the product with a bituminous mixture, consisting of bitumen and limestone powder/french chalk. The bituminous mixture required for the purpose was also produced by the assessee and used captively without payment of duty. Exemption from payment of duty for captive use was not available, either under the notification dated 2 April 1986 or under Rules 9, 49, 56A of the Central Excise Rules, 1944. The non levy of duty for the period from March 1986 to March 1989 worked out to Rs.11,80,619.

The omission was first pointed out in November 1987 in audit, covering the period from March 1986 to August 1987. The department contended (March 1988/May 1988) that the bituminous mixture manufactured by the assessee was not marketable as such because the consistency of the mixture was suited for coating hessian cloth only and that no duty could be levied on intermediate goods which are not marketable.

The reply was not acceptable as heading 27.15 specifically includes bituminous mixtures incorporating bitumen and mineral substances (HSN page 223). Hence the question of marketability did not arise inasmuch as the tariff recognises bituminous mixture as excisable. Moreover, the assessee himself was manufacturing and clearing a similar product (bitumen mastic) consisting of bitumen, silica and limestone powder on payment of duty.

The non levy of duty for the period from 1 March 1986 to 31 August 1987 was reported to the Ministry of Finance in August 1988. The Ministry of Finance, while admitting the objection, stated (November 1988) that necessary action was being taken to issue show cause notice for demanding duty.

Report on action taken for recovery of duty has not been received (June 1989).

The Ministry of Finance have stated (November 1989) that the matter is under examination.

(xi) Blended tea

As per a notification dated 11 March 1986, as amended by notification dated 1 March 1987, packed tea falling under sub headings 0902.11 and 0902.12 are chargeable to concessional duty at the rates of Re.0.44 and Rs.1.10 per kilogram respectively if the duty payable on tea falling under sub heading 0902.19 and used in the manufacture of such goods has already been paid and no credit of such duty was availed of under Rule 57A. From 2 April 1986, captive consumption of certain inputs (including inputs under chapter 9 with effect from 1 March 1987) for manufacturing dutiable outputs were exempted. The benefit under notification dated 2 April 1986 in regard to tea under sub heading 0902.11 and 0902.12 out of tea under sub heading 0902.19 was, however, restricted under a notification dated 8 June 1987, which debarred the benefits of concessional rate of duty mentioned above in the event of availing of the notification of April 1986.

Eight manufacturers of packed tea brought into their factories duty paid loose tea from different tea gardens for blending within the factory and used the blended tea without payment of duty, for manufacturing packed tea and cleared the said packed tea at concessional rate of duty as per notification dated 11 March 1986. As per note 2 to chapter 9 of the Central Excise Tariff Act, 1985 for the purpose of heading 09.02, the process of 'blending' would amount to manufacture. Therefore, blending as carried on by the above manufactures of packed tea would be considered as 'manufacture' and would attract levy of duty on such blended tea under sub heading 0902.19 before assessment of the packed tea under sub heading 0902.11 and 0902.12. Non levy of duty on such blended tea amounted to Rs.11.61 lakhs during the period from March 1986 to February 1988 after allowing notional set off of duty paid on loose tea at the garden stage.

On the irregularities being pointed out in audit (April and June 1988), the department stated (September 1988) that in pursuance of the audit objections show cause notices were proposed to be issued as a precautionary measure.

The Ministry of Finance have accepted the underassessment (November 1989).

(xii) Monoethylene glycol

Mono ethylene glycol was chargeable to duty at 15 per cent ad valorem under sub heading 2902.90 upto 9 February 1987 thereafter under sub heading 2905.90 of the schedule to the Central Excise Tariff Act, 1985. By a notification dated 4 May 1987 mono ethylene glycol was exempted from whole of the duty of excise if used in the manufacture of polyester chips/polyester staple fibre. Thus no exemption was available

during the period 1 March 1986 to 3 May 1987.

An assessee engaged in the manufacture of polyester chips/polyester staple fibre from dimethyl terephthalate and mono ethylene glycol, was also producing mono ethylene glycol out of the polyester waste for use in the factory for manufacture of polyester chips/polyester staple fibre. However no duty was paid on the glycol so produced and used in the manufacture of polyester staple fibre during the period from 1 March 1986 to 3 May 1987 and no Central Excise records in this regard were maintained.

On the omission being pointed out in audit (February 1988), the department intimated (October 1988) that a show cause-cum demand notice for Rs.9,65,567 was issued by the Collector in September 1988. Further progress regarding confirmation of demand and recovery of duty has not been received (May 1989).

The Ministry of Finance have confirmed the facts as substantially correct (September 1989).

(xiii) Parts of fire extinguishers

As per a notification issued on 1 March 1988, fire extinguishers falling under heading 84.24 were exempt from payment of whole of duty of excise. By an amendment to the above notification dated 18 April 1988, parts of goods falling under chapters 82 and 84, specified in Sl. No.1, 4 and 8 to 12 of the notification were also exempt from payment of duty. No such exemption for parts of fire extinguishers was, however, available. Hence parts of extinguishers classifiable under heading 84.24 by virtue of note 2 of Section XVI of the Schedule to the Central Excise Tariff Act, 1985 attracted duty at the rate of 15 per cent ad valorem. The benefits of notification dated 2 April 1986, as amended was also not available, as the final product (fire extinguishers) were cleared at Nil rate of duty.

An assessee manufacturing fire extinguishers falling under heading 84.24, inter alia, manufactured certain parts like cartridges, nozzles, wall brackets etc. and captively consumed the same without payment of duty in the manufacture of the final product. The non levy of duty on the parts of fire extinguishers from 1 March 1988 was not in order, for the reasons stated above. Assuming the value of parts at 50 per cent that of the final product, the duty omitted to be levied for clearances made from March 1988 to November 1988 alone amounted to Rs.9,29,184. The exact duty involved and duty for subsequent periods remained to be ascertained (June 1988).

On this being pointed out in audit (December 1988 / March 1989), the department initially did not accept the objection and stated (January 1989) that the parts manufactured were not 'goods' as they did not emerge in a marketable condition and that the goods cleared from the factory were complete fire extinguishers only. However, in response to a statement of facts, the Deputy Collector (Audit), admitted (June 1989) the objection and reported that the jurisdictional Assistant Collector was being asked to work out the actual duty involved.

The Ministry of Finance have accepted the underassessment (October 1989).

(xiv) Parts of power driven pumps

Power driven pumps for liquids and parts thereof classifiable under sub heading 8413.00 are assessable to duty at the rate of 15 per cent ad valorem. As per notification dated 1 March 1986 power driven pumps primarily designed for handling water are, however, exempt from the whole of duty of excise leviable thereon. But the parts of such pumps were dutiable from 1 March 1986 to 2 April 1986 till the same were exempted when used in the manufacture of power driven pumps primarily designed for handling water under notification dated 3 April 1986. This exemption notification was not covered under the Central Duties of Excise (Retrospective Exemption) Act 1986 read with Ministry of Finance letter dated 11 November 1987.

Three manufacturers of power driven pumps and parts thereof did not pay Central Excise duty on the parts of power driven pumps primarily designed for handling water manufactured and used captively in the manufaccure of such pumps during the period from 1 March 1986 to 2 April 1986. Thus, non levy of duty amounted to Rs.4,92,030 approximately.

On the omission being pointed out in audit (June, August and September 1987), the department in one case accepted the objection (February 1989) and issued a show cause-cum demand notice for Rs.2,77,974 (January 1989). Reply of the department in other two cases has not been received (March 1989).

The Ministry of Finance have accepted the underassessment (November 1989).

(xv) Tyre bead wire rings

As per a notification issued on 2 April 1986, specified goods manufactured and used within the factory as inputs in or in relation to the manufacture of specified final product are exempt from the whole of duty leviable thereon.

An assessee engaged in the manufacture of tyres falling under chapter 40 of the Schedule to the Central Excise Tariff Act, 1985 also manufactured tyre bead wire rings and used them within the factory without payment of duty, for manufacture of tyres. As the aforesaid notification had prospective effect only, the exemption on inputs viz. tyre bead wire rings manufactured and used within the factory for manufacture of tyres during the period from 1 March 1986 to 1 April 1986 was not in order. The assessee manufactured and used 1.55 lakhs of tyre bead rings, costing Rs.9.30 lakhs (approximately) without payment of duty, resulting in non payment of duty of Rs.1.39 lakhs during the aforesaid period.

On the irregularity being pointed out in audit in August 1988, the department did not accept the objection stating (September 1988) that it was too small an issue, there was no duty evasion, and that even if duty had been levied Government would not have been benefited since the same would have been allowed as Modvat credit. The reply does not answer the audit observation and is, therefore, not acceptable. The department's reply needs reconsideration.

The Ministry of Finance did not admit the objection and stated (August 1989) that prior to 28 February 1986 the products were classifiable under erstwhile tariff item 68 and exempted from payment of duty on captive consumption as per a notification dated 30 April 1975. They added that as the effective rate of duty was maintained by issue of another notification on 2 April 1986, the exmeption was available retrospectively under the provisions of the Central Duties of Excise (Retrospective Exemption) Act, 1986.

The Ministry's comments are not acceptable as they counter their clarification (13 July 1987) to the effect that the notification dated 2 April 1986 as amended, was issued with a view to solving certain problems/difficulties relating to Modvat, it had nothing to do with restoration of duty rates and as such the exemption notification could not be considered as covered under the provisions of the Central Duties of Excise (Retrospective Exemption) Act, 1986.

3.13 Duty not levied on transit, storage and handling losses, shortages and wastes

(i) Transit losses

Rule 156A, read with Rule 173N, of Central Excise Rules, 1944, provides for the removal of the excisable goods in bond from a factory or a warehouse to another, subject to observance of the procedure laid down therein. On arrival of the goods at the warehouse of destination, the departmental officer in charge of that warehouse is required to record warehousing certificates and send copies to officer-in-charge of the warehouse of removal and to the consignee for transmission to the consignor.

Rule 156B enables the Range Superintendent of the consignor's factory to demand duty from the consignor if the rewarehousing certificate is not received by him within 90 days of removal of goods or such extended period as the Collector may allow or if received, it shows a shortage not explained to his proper satisfaction.

A public sector oil refinery cleared in bond raw naphtha and other petroleum oils (heading 27.10) for rewarehousing in other outside warehouses. It was noticed in audit (January 1986 and January 1987) that raw naphtha, superior kerosene, high speed diesel and furnace oil, involving duty of Rs.42,97,378 in 122 cases cleared in bond during the period from April to October 1985 and raw naphtha involving duty of Rs.16,98,736 in 16 cases so cleared during the period from May 1986 to July 1986, had been received short at the warehouses of destination as per respective rewarehousing certificates. In certain cases tank wagons were missing and had not reached the destination. However, demands for duty had not been raised by the department even after the period of 90 days.

On the matter being pointed out in audit, department intimated (June 1989) that show cause notices demanding duty on the transit losses have been issued in April 1987, which are under process of adjudication. Further report has not been received (June 1989).

The Ministry of Finance have admitted the objection (October 1989).

(ii) Storage losses

As per Rule 223A of Central Excise Rules, 1944, at least once in every year, the stock of excisable goods remaining in the factory of

approved premises is required to be weighed, measured, counted or otherwise ascertained in the presence of the proper central excise officer and if deficiencies are noticed, after making due allowance for waste by natural causes as may be in accordance with the instructions issued by the Central Board of Excise and Customs, the manufacturer shall be liable to pay the full amount of duty chargeable on such goods as are found to be deficient and also a penalty which may extend to two thousand rupees.

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

The stock verification reports of a public sector steel plant for the year 1985-86 showed shortage of 11889.329 tonnes in cold rolled sheets/ cold rolled silicon sheets (438.639 tonnes) and steel ingots (11450.690 tonnes) having duty effect of Rs.44.93 lakhs.

It was noticed that the central excise officers had not been associated with the stock taking. The shortages noticed during such stock taking were adjusted in stock register by deducting the opening balance. The monthly returns were also finally assessed by the department without demanding the duty on shortages.

On this being pointed out in audit (December 1986), the department issued a show cause-cum demand notice in July 1987 which was not adjudicated (May 1989).

The Ministry of Finance have stated (November 1989) that the matter is under examination.

(iii) Irregular adjustment of shortages against surpluses

As per a notification issued on 30 April 1975, goods falling under erstwhile tariff item 68 were exempt from duty if they were intended for use in the factory in which they were manufactured or in any other factory of the same manufacturer. Where such use was in a factory of a manufacturer different from his factory where goods had been manufactured, the exemption was admissible subject to observance of the procedure set out in chapter X of the Central Excise Rules, 1944. This notification was rescinded from 1 March 1986, and similar exemption to cement clinker falling under sub heading 2502.10 was provided under a notification dated 1 March 1986. Rule 196 enjoins that if any excisable goods obtained for industrial use under the said procedure are not accounted for as having been used for that purpose, the manufacturer, who obtained the goods, shall, on demand by the proper officer, immediately pay the duty leviable on such goods.

A cement manufacturing unit at "A" was getting its supply of clinker from its sister concern at "B" under chapter X procedure. The assessee was recording in the stock account (RG 16 register) the quantity as per the bill of lading at the clinker unit as the quantity received and not on the basis of actual weighment. A shortage of 15,300 tonnes of clinker was noticed during the period September 1982 to June 1984 with reference to the private records maintained by the assessee. This shortage was arrived at after allowing storage loss and transit loss at 2 per cent each without any orders of condonation from the proper officer. As there was a surplus quantity of 20,000 tonnes of clinker in the unit at B, the department permitted (May 1985) the cement manufacturing unit to adjust the shortage in the unit at A against the surplus in the unit at B.

It was pointed out in audit (January 1986) that adjustment of shortages against such surpluses was not permissible under the Rules and excise duty was leviable as per Rule 196 of the Central Excise Rules. The department thereupon issued (between October 1986 and March 1988) show cause notices for recovery of duty of Rs.31,95,201 on the shortage of 1,16,396.020 tonnes of clinker for the period from August 1982 to August 1987. Further progress in the case has not been intimated (June 1989).

The Ministry of Finance admitted the facts and have stated (November 1989) that the matter is under adjudication.

(iv) Handling loss

Duty is levied on mineral oils under the tank discharge system by which the quantity of oil chargeable to duty is determined through dip readings of bonded storage tank before and after removal of oils. This procedure of assessment has been confirmed by the Central Board of Excise and Customs in their instructions issued from to time.

A public sector oil refinery initially paid duty at concessional rate on the clearance of mineral oils arrived at by tank discharge method on the plea that the oils were to be issued to consignee under chapter X procedure for prescribed end uses as per notifications issued by the Government. The oil was loaded in tank wagon/ lorry and the quantity as per measurement of tank/wagon/lorry was recorded in AR 3A accompanying the consignment to L6 premises. As there was difference between the quantity of oil withdrawn as per tank discharge method and that actually loaded in tankwagon/ lorry, the refinery showed the difference as handling loss for which no further duty was paid. It was pointed out in audit that the L.6 licensees would be accountable for end use of the oils shown in the AR 3A and the oil shown as handling loss could not be treated as having been used for the purpose for which concessional rate of duty has been allowed. Handling loss is an operational loss and, therefore, duty is payable at full effective rate as there was no provision for condonation of such losses. This resulted in non levy of duty of Rs.15.69 lakhs on handling loss for the period from 1 April 1986 to 31 March 1987.

On this being pointed out in audit (August 1987), the department confirmed (February 1988) that some loss of petroleum products at the point of loading to different containers is inevitable. The department, however, did not accept the objection on the ground that such loss remained within the refinery and duty at concessional rate had already been paid by the assessee.

The contention of the department is not acceptable as:

i) the quantity of oil shown as handling loss having not been despatched to the L6 Licensees is chargeable to duty at the full effective rate;

ii) the loss incurred outside the storage tank does not form part of the bonded stock, which alone is relevant for determination of duty and not the refinery as a whole and

iii) the fact that concessional duty has already been paid on the entire bonded stock does not establish any right to the assessee for non-payment of the differential duty between effective full rate and concessional rate when the quantity reckoned as operational (handling) loss is actually not being put to the end use justifying the grant of concession.

In a similar case the CEGAT held {1983-ECR 1447D October 1983} that duty at full effective rate was chargeable on operational loss.

On a similar issue highlighted in para 2.64 of the Audit Report 1984-85, the Ministry stated that the Board was examining the matter regarding prescribing a more scientific and precise method for calibrating oil discharge in view of the change in technology. The Ministry of Finance was again requested (22 June 1989) to do the needful expeditiously but the department has not installed any more scientific and precise flow meters (July 1989). Delay in taking action by the department was resulting in continued loss of revenue amounting to Rs.74.96 lakhs for the period from April 1986 to March 1989.

The Ministry of Finance have repeated (November 1989) the same reply given earlier but without commenting upon the further observations of Audit.

(v) Waste and scrap

As per Rule 57F (4) (a) the Central Excise Rules, 1944, any waste arising from the processing of the inputs, in respect of which credit has been taken under Rule 57A ibid, may be removed on payment of duty as if such waste is manufactured in the factory.

a) A manufacturer engaged in the manufacture of zinc cans for use as containers in the manufacture of electric batteries, used the inputs 'Zinc calots' (sub heading 7905.10) availing Modvat credit at the rate of Rs.5,225 per tonne. The licensee, however, cleared under intimation to the department, a portion of zinc cans, broken or damaged during manufacture of electric batteries, as waste and scrap under sub heading 7902.00 at the rate of Rs.3,600 per tonne. Since the broken/damaged zinc cans which became waste could not be considered as a by-product or waste produced alongwith the finished goods in course of manufacture of electric batteries, the licensee was liable to pay duty on the clearances of such broken/damaged zinc cans at the rate at which credit of duty had been taken on the zinc calots (i.e. at Rs.5,225 per tonne under sub heading 7905.10). The irregular clearances had thus resulted in short realisation of duty to the extent of Rs.11.57 lakhs.

On the irregularity being pointed out in audit (October 1987), the department did not admit the audit objection and contended (April 1989) that the scrap generated while manufacturing zinc cans could not be termed as zinc calots

and that the subject matter of CEGAT order was not akin to the subject matter of the instant case.

The contention of the department is not acceptable. The CEGAT in the case of Appellate Collector of Customs and Central Excise Vs. Chloride India Ltd. {1987 (12) ECR 759 (CEGAT WR B} have decided that such broken/damaged battery containers do not qualify to be classified as waste and scrap, as they were not by-product arising from the processing of inputs.

The Ministry of Finance did not admit the objection and have contended (November 1989) that the provisions of Rule 57F(4)(c) correspond to the provisions of Rule 56A(3)(iv)(c) in so far as destruction of "waste" is concerned. The fact, however, remains that in the instant case the damaged/broken zinc cans were cleared from the factory on payment of duty at the rate applicable to waste and were not desdtroyed. In the circumstances the ratio of 'CEGAT's' decision in the cae of M/S.Chloride India Limited is appliable. Duty was, therefore, leviable on the demaged cans at the rate at which credit of duty had been taken on the zinc calots or credit to that extend ought to have been expunged.

b) Four manufactures in a collectorate cleared waster and scrap of iron and steel, lead, zinc, aluminium brass, copper and welding electrodes, generated in the course of processing of inputs in respect of which Modvat credit was taken, during April 1986 to June 1988, either without payment or short payment of duty amounting to Rs.9.32 lakhs.

On the mistakes being pointed out in audit (between September 1987 and January 1989), the department recovered (April 1988) Rs.1,76,350 out of Rs.3,04,168 in one case. In other two cases involving short payment of duty of Rs.5,06,233, the department stated (April 1989) that the clearance of scrap of aluminium and brass was made after payment of effective rate of duty under relevant notification. The department was informed (May 1989) that according to a notification issued on 2 November 1987, an amount equivalent to the credit taken was to be debited back in the RG-23A Part II account. In the fourth case involving duty of Rs.1,22,051, no reply was received from the department (June 1989).

The Ministry of Finance have stated (November 1989) that the matter is under examination.

3.14 Non levy of duty due to production suppressed or not acco-unted for

As per Rule 53 of the Central Excise Rules, 1944 every manufacturer is required to maintain an account of stock in prescribed form (RGI) where he is required to enter, inter alia, (a) the quantity of goods manufactured, (b) the quantity of goods removed on payment of duty and (c) the quantity delivered from the factory without payment of duty for export or other purposes. Rules 9 and 49 of the said Rules further provide that excisable goods shall not be removed from the place of manufacture of storage unless the duty leviable thereon has been paid. Provisions of rules 173D require that every manufacturer should furnish information regarding the principal raw materials and the quantity of such raw materials required for the manufacture of unit quantity of finished excisable goods. He is also required to file periodical returns (RT5) to the proper officer indicating the quantity of raw materials used in the manufacture of excisable goods and the quantity of finished goods manufactured.

A comparison of production of cold rolled sheets as per daily stock account (R.G.I.) of a steel plant with figures of production incorporated in its annual accounts for the year, 1985-86 revealed a discrepancy between the two which led to non-accountal of 3807.550 tonnes of cold rolled sheets on which duty liability worked out to Rs.27,22,398.

On the short accountal of production being pointed out in audit (December 1986), the department issued (December 1988) a show cause-cum demand notice and confirmed demand of duty for Rs.27,22,398. In addition a penalty of Rs.10,000 was imposed. Particulars of realisation have not been intimated (April 1989).

The Ministry of Finance have accepted the underassessment (August 1989).

3.15 Excisable goods cleared without payment of duty

(i) Machinery parts

As per Section 2(f) of the Central Excises and Salt Act, 1944, the term "manufacture" includes any process incidental or ancillary to the completion of a manufactured product and which is specified in relation to any goods in the section or chapter notes of the schedule to the Central Excise Tariff Act, 1985, as amounting to "manu-

facture".

An assessee engaged in the manufacture of excisable goods, falling under chapters 81 to 84 of the schedule to the Central Excise Tariff Act, 1985 brought into his factory semi-finished parts and components of machinery such as springs, circlips, clamps and screws etc. falling under chapters 73, 82 and 83. After oxidising and rust proofing with ferric oxide and caustic soda, some quantities of the goods were cleared as spare parts falling under the sub heading 8466.00 without payment of duty. It was pointed out in audit that after such processing, these parts and components had become distinct, identifiable machine parts, which were marketable and separately classifiable under heading 84.66 of the schedule ibid. The processes undertaken by the assessee in order to make these goods marketable, therefore, were to be taken as incidental or ancillary to the completion of the manufactured product.

In the absence of availability with the manufacturer of the details of the actual quantities and the value of such goods cleared by him, it was estimated that the goods valued at Rs.59.48 lakhs and involving duty of Rs.8.92 lakhs were cleared during the years 1986-87 and 1987-88.

On the irregularity being pointed out in audit (January and February 1989), the department stated (May 1989) that the matter was under examination.

The Ministry of Finance have stated (November 1989) that the goods came to the factory in fully finished condition and that, while further machining of the goods was not done, they were subjected to the processes of 'oxidising' and 'rustproofing', which according to them did not amount to manufacture. The reply is not acceptable as the said processes enhance the marketability and hence, applying the ratio of the decision of the Supreme Court in the case of M/s. Union Carbide, such processes are ancillary or incidental to the completion of manufacture of the marketable goods. Thus excise duty became leviable on the said goods at the time of final clearance.

ii) Oxygen in cylinders

Oxygen in cylinders is liable to duty under sub heading 2804.11 and oxygen supplied through pipeline under sub heading 2804.12.

An assessee received duty paid oxygen through pipeline from an adjacent factory, filled the gas in cylinders and cleared them for sale without payment of duty. It resulted in non levy of duty of Rs.6,09,525 on clearances from March 1986 to April 1988. Even if the assessee were to avail of Modvat credit of duty paid on oxygen received through pipeline, a net duty of Rs.3,65,715 was payable which escaped levy.

The case was reported to the department in April 1988 and to the Ministry of Finance in August 1989.

The Ministry of Finance have admitted the objection (September 1989).

iii) Fabricated steel guards

An assessee engaged, inter alia in manufacture of 'other articles of iron or steel falling under sub heading 7308.90 and chargeable to duty at the rate of 15 per cent ad valorem, cleared 'fabricated steel guard' of different specification without payment of duty. This resulted in non levy of duty to the tune of Rs.4.87 lakhs during 10 April 1987 to 31 January 1988.

On the mistake being pointed out in audit (May 1988), the department stated (January 1989) that an amount of Rs.84,264 has been paid by the licensee and demand for the balance amount would be made shortly.

The Ministry of Finance have accepted the under assessment (July 1989).

iv) Terry towels

As per Rules 9 and 49 of Central Excise Rules, 1944, as in force from 1 March 1987, the payment of duty on excisable goods made in a factory and consumed or utilised in the factory either as raw material or as component parts for the manufacture of any other commodity shall not be required (a) if the latter commodity is excisable goods specified by notification issued under Rule 56A (1) of the Rules ibid; (b) if the Chapter heading number or sub heading number of that commodity under the Central Excise Tariff Act, 1985 has been specified by a notification issued under Rule 56A(1) of the said Rules and (c) the commodity is neither exempt from the whole of the duty of excise leviable thereon nor is chargeable to nil rate of duty.

A composite textile mill engaged in the manufacture of woven pile fabric, namely terry toweling fabrics of cotton manufactured grey pile

fabric of cotton, falling under sub heading 5802.11 processed the aforesaid fabric in his factory. The processed pile fabric in running length falling under sub heading 5802.12 was leviable to duty of excise at 8 per cent ad valorem and other additional duties of excise. The department allowed the assessee to remove the fabric in running length to the premises of a different person for cutting and stitching of terry towels for being retrieved by the assessee for clearance as terry towels, falling under sub heading 6301.00 which attracted duty at the rate of 12 per cent ad valorem upto 29 February 1988 and at the rate of 8 per cent ad valorem from 1 March 1988 to 22 August 1988 after which the duty payable on terry towels was wholly exempted as per a notification issued on 23 August 1988.

Since made up articles of cotton textiles namely terry towels, falling under sub heading 6301.00 were not notified under Rule 56A(1), duty was recoverable on the processed pile fabric of cotton and also on the terry towels on their removal from the factory. Whereas the department collected, the duty due on processed fabric from the assessee, the duty due on the terry towels was omitted to be levied and collected. This resulted in non levy of duty of Rs.3,02,814 on clearances valued at Rs.27,47,653 during the period from March 1987 to June 1988.

The Ministry of Finance did not admit the objection and have stated (November 1989) that the unit was following the procedure under Rule 56B of the Central Excise Rules, 1944. It has also been contended that even if the classification of terry towels under sub heading 6301.00 is accepted the product will be exempted under a notification dated 1 March 1987.

The contention of the Ministry is not acceptable as in the instant case the classification of the goods has undergone a change from chapter 58 to chapter 63 after further processing of those goods in the factory of another assessee. As such the procedure under Rule 56B ibid was not attracted. Further, the exemption under notification dated 1 March 1987 was also not applicable as the pre-contdition of payment of appropriate duty of excise for the time being leviable on fabrics of chapter 58 had not been fulfilled.

3.16 Goods cleared as non excisable or without obtainirg central excise licence

i) Wire and cables

Section 3 of the Central Excises and Salt Act 1944, requires levy of Central Excise duty on all excisable goods other than salt, which are produced or manufactured. Rules 9, 49 and 173G of Central Excise Rules, 1944, provide that duty shall be paid on excisable goods before their removal from any place where they are produced, cured or manufactured or any premises appurtenent thereto, whether for consumption, export or manufacture of any other commodity in or outside such place. Rule 174 of the said Rules further provide that every manufacturer, trader or person shall be required to take out a licence and shall not conduct his business in regard to such goods otherwise than by the authority, and subject to the terms and conditions of a licence granted.

A manufacturer cleared cables valuing Rs.10,94,650 and Rs.11,87,564 without payment of duty leviable thereon during the years 1983-84 and 1984-85 and also without obtaining central excise licence or observing other formalities under the Central Excise law. The unauthorised manufacture and irregular clearance of excisable goods came to the notice of the department when pointed out in audit.

On the omission being pointed out in audit (December 1986), the department accepted the objection and issued show cause-cum demand notice for Rs.2,34,637 covering the period from 1982-83 to 1987-88 (September 1988). Further developments have not been reported (May 1989).

The Ministry of Finance have accepted the underassessment (August 1989).

ii) Lime

Lime (calcium oxide) obtained by burning limestone at a very high temperature was an excisable item (sub heading 2505.00) and duty at 12 per cent ad valorem, subject to concessions under any notification was required to be paid.

Two manufacturers produced lime without taking a central excise licence L4 and were allowed to clear their product without payment of duty, by treating it as non excisable item. Lime was not exempt from duty under any notification but manufacturers were entitled to concessions envisaged to small scale units under a notification

dated 1 March 1986. By not classifying lime under the appropriate tariff heading no duty was levied on the lime manufactured and cleared without having a valid central excise licence.

On the non levy of duty being pointed out in audit (December 1987), the department intimated (January 1989) that two demand cum offense cases involving central excise duty of Rs.2,84,254 on account of manufacturing of excisable goods without taking a central excise lincence and clearing the same without payment of duty had been booked against both the parties. The cases were still (February 1989) under the process of adjudication.

The Ministry of Finance have admitted the objection (August 1989).

3.17 Non levy of duty on deemed export to O.N.G.C.

The concept of deemed export exists only in the Import and Export Policy for the purpose of allowing import of raw materials/ components, etc., free of customs duty or additional duty of customs by registered exporters by way of import replenishment materials required for the manufacture of goods for supply to I.B.R.D./ I.D.A. aided projects in India under international competitive bidding. This concept does not find any place under Central Excise Law and, therefore, the goods manufactured in India for deemed export have to pay duty leviable thereon under relevant tariff items as is the case with goods cleared for home consumption.

In terms of a supply order dated 27 September 1983 received from ONGC, a public sector undertaking manufacturing 'pumps and compressors' (tariff item 30A) was to supply six MOL/CT pumps for Bombay offshore project. The pumps were to be installed on Bombay High offshore platform complexes being built by a marine contractor of Korean origin. The supply of three, out of six pumps was arranged by the undertaking from a firm in France and the remaining three pumps were supplied by the undertaking from its factory.

It was noticed (December 1984) in audit that the three pumps were cleared (August 1984) from a factory under bond for 'deemed exports' without payment of duty of Rs.4.90 lakhs. As the pumps were purchased by ONGC for installation on the offshore platform on Bombay High, non payment of duty thereon for alleged export on deemed basis was irregular.

The non levy of duty was pointed out to the department in July 1985 and to the Ministry of Finance in August 1989.

The Ministry of Finance have admitted the objection (October 1989) and intimated issue of a show cause-cum demand notice in this regard.

SHORT LEVY DUE TO INCORRECT GRANT OF EXEMPTION

As per Section 5A(1) of the Central Excises and Salt Act, 1944 Government is empowered to exempt excisable goods from the whole or any part of the duty leviable thereon conditionally or unconditionally. Some of the important cases of short levy of duties due to incorrect grant of exemption, noticed in audit, are given in the succeeding paragraphs:

3.18 Paper made out of chemi-mechanical pulp

As per notifications dated 21 July 1967 and 1 March 1988 paper containing mechanical wood pulp amounting to not less than fifty per cent of the fibre content, falling under Chapter 48 was exempt from duty, provided it was intended for use in the printing of newspapers, text books or other books of general interest.

Paper manufactured by an assessee using chemi-mechanical pulp and chemical pulp was allowed the benefit of exemption under the above notifications resulting in non levy of duty of Rs.15.03 crores during the period from April 1986 to February 1988.

The irregularity was pointed to the department in August 1987 and to the Ministry of Finance in May 1989.

The Ministry of Finance have admitted the objection (September 1989).

3.19 Iron and steel products

i) Rolled products

As per a notification issued on 1 August 1983 as amended on 10 February 1986 iron and steel products classifiable under the sub headings of chapters 72 and 73 specified in column (3) of the table below the notification were exempt from the whole of the excise duty leviable thereon, if they were manufactured from duty paid inputs falling under sub headings of chapter 72 specified

in column (2) of the table. The benefit of exemption was extended to goods and materials obtained by breaking up of ships, boats and other floating structures falling under the sub headings 72.15 and 73.09 by an amending notification issued on 27 March 1987. One of the conditions laid down for availing the exemption was that the excise duty leviable or additional duty leviable under the Customs Tariff Act, 1975, as the case may be, had already been paid on such inputs.

Four rolling mills in Bombay III collectorate, manufactured round bars, angles, channels and other sections etc., from the materials obtained by breaking up of ships etc. and cleared them without payment of duty under the aforesaid notification dated 1 August 1983. No exemption to final products manufactured out of those materials was admissible because (a) the goods were specified as input from 27 March 1987 and (b) were clearly recognisable as being non duty paid. Incorrect grant of exemption to round bars etc. manufactured out of 9,534.428 tonnes of materials procured (between July 1985 and February 1988) out of breaking of ships etc. resulted in short realisation of duty of Rs.35.16 lakhs.

On the omissions being pointed out (January and February 1989) in audit, the department admitted (May 1989) the objections in two cases.

In the third case, the department, however, stated that it was seized of the issue and show cause notices were being issued to the assessee from time to time. The contention of the department is not correct because the said show cause notices related to scraps (other than ship plates) purchased from open market and did not relate to the materials obtained out of breaking up of ships.

Reply of the department in the fourth case was not received (August 1989).

The Ministry of Finance have admitted (September 1989) the objections in two cases. In the remaining two cases the Ministry have stated that the issue is under examination in the Board.

ii) Stainless steel pattis and pattas

a) Five manufacturers were receiving duty paid and non duty paid 'roughly shaped hot rolled pattas of stainless steel' (heading 72.08). After conversion by processes of rerolling, pickling and annealing, into stainless steel pattis or pattas, these were cleared without payment of duty as per notification dated 17 November 1986. Since the conditions of exemption regarding manufacture from duty paid ingots or flats were not fulfilled, these were liable to duty. This resulted in non levy of duty of Rs.16,57,268 on 4540.460 tonnes of stainless steel pattis or pattas not manufactured out of duty paid ingots or flats, cleared between February 1987 and November 1987.

On this being pointed out (November 1987) in audit, the department stated that in a similar case, advice of the Board on the question of duty liability on hot rolled pattis or pattas used in the manufacture of stainless steel pattis or pattas had been sought (August 1987). Though the department in its letter to the Board, had accepted the non-availability of exemption to hot rolled pattis or pattas under the notification dated 17 November 1986, it did not raise any demands (March 1989) for the levy of duty of Rs.16,57,268 on the ground that the issue was premature and was under active consideration of higher authorities.

b) Two assessees engaged in the manufacture of cold rolled stainless steel pattas falling under sub heading 7208.00 upto 28 February 1988 and under sub heading 7220.20 thereafter, from stainless steel hot rolled pattas falling under sub heading 7208.00 upto 28 February 1988 and under sub heading 7220.10 thereafter availed exemption under the aforesaid notification of 17 November 1986 with effect from 11 May 1987. The cold rolled sheets (pattas) manufactured by the assessees were made neither from ingots nor from flats, but were made from hot rolled pattas. Since the pattas were not manufactured from ingots or flats, the assessees were not entitled to clear them at nil rate as per the notification ibid. Duty, therefore, was payable on cold rolled stainless steel pattas (roughly shaped) manufactured and cleared, by the assessees. This resulted in duty amounting to Rs.11.61 lakhs not being levied on total quantity of 3029.437 tonnes of pattas cleared during the period from 11 May 1987 to 31 December 1988 in one case and from October 1987 to March 1989 in the other.

On the incorrect availment of exemption being pointed out in audit (November 1987 and April 1989) the department in the first case stated (March 1988) that though the inputs received by the assessee did not fall under heading 72.06 or 72.09 (ingots or flats), the said material (hot rolled pattas) were intermediate products made from ingots or flats on which duty had been paid at the original stage of 'ingots'. The depart-

ment's reply is not acceptable, as the inputs received by the assessee were neither ingots nor flats but hot rolled pattas. The suppliers who manufactured the hot rolled pattas cleared them to the assessee at 'nil' rate of duty after availing exemption under notification of November 1986. Assessee was, therefore, required to pay duty. Department's reply in the second case has not been received (July 1989).

The Ministry of Finance did not admit the objections in both the cases at (a) and (b) above and stated (November 1989) that the process of making stainless steel pattis and pattas from hot rolled pattis and pattas does not amount to manufacture as both inputs and final products are classifiable as pieces roughly placed under same heading and no new product with distinct character, identity or use emerges from the process.

The Ministry's reply is not relevant to the issue. The fact remains that the stainless steel pattas and pattis cleared by the assessees with nil rate of duty under the aforesaid notification, had neither been manufactured from duty paid ingots or flats nor did the inputs used were classifiable under sub heading 72.06 and 72.09. In the circumstances, the benefits allowed under the notification dated 17 November 1986 was irregular.

iii) Material obtained from breaking up of ships

As per a notification issued on 20 August 1986 various goods and material of iron & steel and articles of iron and steel obtained by breaking up of ships, boats and other floating structures, classifiable under headings 72.15 and 73.09 of the schedule to the Central Excise Tariff Act, 1985, were exempt from the whole of the excise duty leviable, provided that such goods had been obtained from breaking of ships, boats, or other floating structures on which duty of customs leviable thereon under the first schedule to the Customs Tariff Act, 1975, had been paid at the rate of Rs.1400 per light displacement tonnage or in the case of ships boats, etc., imported on or before 28 February 1986, appropriate additional duty leviable thereon under Section 3 of the Customs Tariff Act, 1975, had been paid.

As per another notification dated 27 March 1987, the exemption to such goods falling under headings 72.15 and 73.09 ibid and obtained from breaking up of ships, boats or other floating structures was available, provided duty of customs leviable thereon under the first schedule to the Customs Tariff Act, 1975, had been paid at the rate of Rs.1400 per light displacement tonnage on such ships, boats, and other floating structures.

Three manufacturers engaged in the ship breaking activities imported ships (one ship each) prior to 28 February 1986 on payment of customs duty at the rate of 30 per cent plus 50 per cent ad valorem. It was seen during audit that the assessee cleared the goods and material obtained by breaking of the ship without payment of duty during the period from July 1987 to November 1987 in terms of the aforesaid notification of August 1986. As the assessee did not pay customs duty at the rate of Rs.1400 per light dispalcement tonnage as referred to in the notification issued on 27 March 1987, the exemption was not available to him on the goods that were obtained by breaking up of ships etc., imported prior to 1 March 1986 and cleared after 27 March 1987. The irregular grant of exemption on clearance of 889.975 tonnes of goods resulted in short levy of duty of Rs.16.02 lakhs during the period from April 1987 to November 1987.

On the irregularities being pointed out in audit (November 1988) the department stated (June 1989) that the notification granting exemption to waste and scrap obtained from floating structures has been subject to change with every change in the effective rate of customs duty. However, the notification granting exemption to waste and scrap obtained from floating structures imported prior to 1 March 1986 and cleared after 27 March 1987 remained to be issued for which Board is considering action.

The department's reply is not acceptable as the exemption notification issued in March 1987, does not provide for grant of exemption to material obtained by breaking of ships, boats etc. imported on or before 28 February 1986 on which additional duty under Section 3 of the Customs Tariff Act, 1975, had been paid at the rate of 12 per cent; the assessee was, therefore, required to pay excise duty on the goods classifiable under headings 72.15 and 73.09 at the tariff rate of Rs.1800 per tonne.

The Ministry of Finance have stated (November 1989) that the issue is under examination.

iv) Iron casting

As per a notification issued on 24 August 1962 (amended), iron in any crude form

including pig iron, scrap iron, melting iron or iron castings in any other shape or size falling under erstwhile tariff item 26 and produced out of old iron or steel scrap or scrap obtained from duty paid pig iron (virgin metal) is exempt from central excise duty.

A Public Sector steel plant produced 5022.320 tonnes of iron castings out of duty paid pig iron (virgin metal) during the period from September 1982 to December 1983 and paid no duty on such iron castings. The said notification does not exempt payment of duty on manufacture of iron castings from duty paid pig iron (virgin metal). Only for the products out of old iron or steel scrap or scrap obtained from duty paid virgin metal, exemption is allowed. The irregular availment of exemption resulted in short levy of duty of Rs.3.87 lakhs.

On this being pointed out (June 1984) in audit, the department issued (July 1984) a show cause-cum demand notice for Rs.39.34 lakhs for the period from September 1982 to July 1983. The case was finally adjudicated in June 1988 confirming a demand of Rs.76,436 only which was recovered on 28 November 1988. The demand for Rs.11.69 lakhs was held time barred and the demand for the remaining amount was not tenable as the exemption was correctly availed. Delay in issuing show cause cum demand notice resulted in loss of revenue of Rs.11.69 lakhs.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

3.20 Polyester staple fibre

As per a notification dated 3 April 1986 as amended, polyester staple fibre and acrylic fibre falling under chapter 55 of the schedule to the Central Excise Tariff Act 1985 are exempt from central excise duty as is equivalent to the duty of excise or additional duty of customs (C.V.D) already paid on the inputs viz. mono-ethylene glycol and acrylonitrile respectively falling under Chapter 29 ibid. In Central Board of Excise and Customs Circular dated 1 April 1981, it was clarified that the manufacturers availing the set off of duty are required to maintain a register of set off in the prescribed form and declare the "input-output" ratio.

An assessee manufacturing polyester staple fibre and acrylic fibre was taking credit of excise duty as well as additional duty of customs paid on mono-ethylene glycol and acrylonitrile in the register of set off maintained since March 1987. The element of excise duty paid per unit weight of indigenous inputs was higher than that of the additional duty of customs paid on imported inputs. As both the indigenous and imported inputs were used together in the manufacture of finished products, the credit was to be utilised proportionately on the basis of the duty paid inputs used in the manufacture of finished products. But the assessee utilised the credit towards payment of duty on finished products manufactured from imported inputs on the basis of the duty paid on indigenous inputs. This resulted in irregular availment of credit and consequential short realisation of duty.

On the irregularity being pointed out in audit (February 1988), the department intimated (March 1989) that three show cause-cum demand notices for Rs.43,25,198 covering the period from March 1987 to February 1988 had been issued (August 1988 and December 1988). The Collector of Central Excise, while admitting the facts (May 1989), stated that demand for Rs.1,62,982 was confirmed by the jurisdictional Assistant Collector in April 1989.

Further progress regarding confirmation of the remaining two demands was not intimated (May 1989).

The Ministry of Finance have accepted the underassessment (September 1989).

3.21 Mineral substances - burnt lime

As per a notification issued on 18 June 1977, the goods falling under erstwhile tariff item 68 were exempt from duty , if used in or in relation to the manufacture of which no process was ordinarily carried on with the aid of power.

A manufacturer of burnt lime, discontinued payment of duty from 27 August 1985 as the department decided that the unit was eligible for exemption granted in terms of aforesaid notification dated 18 June 1977. Duty of Rs.11,44,176 levied for the clearances from 1 December 1984 to 26 August 1985 was also refunded. Duty amounting to Rs.6,08,895 was not levied on burnt lime cleared during the period from 27 August 1985 to 28 February 1986. Total duty foregone for the period from 1 December 1984 to 28 February 1986 amounted to Rs.17,53,071.

It was observed that the licensee was using power for carrying raw materials to the kiln through conveyor belt and by power operation of

conveyor belt, the mechanical benefit of speed mix of lime stone and coal was made possible. The licensee was not therefore, entitled to the exemption. Hence, the refund and the non levy of duty was irregular.

The irregularity was pointed out to the deprtment in June 1986 and to the Ministry of Finance in June 1989.

The Minisry of Finance have admitted the objection (October 1989).

3.22 Caprolactum and plybond glue

i) Caprolactum

As per a notification dated 17 March 1985 as amended, caprolactum falling under sub heading 2933.10 of the schedule to the Central Excise Tariff Act 1985, is chargeable to central excise duty at 15 per cent ad valorem. But if caprolactum is produced out of 'nylon polymer waste' by the process of recycling of such waste, it is exempt from whole of duty of excise. As per explanation to the notification, 'nylon polymer waste' means the waste arising during the manufacture of nylon yarn from caprolactum.

An assessee engaged in the manufacture of nylon yarn and tyre cord fabrics, was also producing caprolactum out of loom stage nylon waste and left over yarn waste. As per explanation to the notification caprolactum manufactured out of loom stage nylon waste and left over yarn waste was not eligible for exemption from duty. But central excise duty on caprolactum so produced was not paid and no records in this regard were maintained.

On the omission being pointed out in audit (February 1988) the department intimated (October 1988 and March 1989) that two show cause cum demand notices aggregating to Rs.12,52,903 were issued in July 1988 and December 1988. Further progress regarding confirmation of demands and recovery thereof were not intimated (May 1989).

The Ministry of Finance have admitted the objection (November 1989).

ii) Plybond glue

The tariff rate of duty on prepared glues and prepared adhesive, not elsewhere specified falling under heading 35.06 was raised from 15 per cent to 40 per cent ad valorem with effect from 1 March 1987. However, by issue of a notification on 1 March 1987 effective rate of duty on all glues and adhesives other than those based on plastics was fixed at 15 per cent ad valorem, whereas under another notification issued on 29 April 1987 the effective rate of duty for glues and adhesives based on plastics was fixed at 25 per cent ad valorem. Thus plastics based adhesives were chargeable to duty at the rate of 40 per cent ad valorem during the period from 1 March 1987 to 28 April 1987 and at the rate of 25 per cent ad valorem thereafter.

An assessee manufactured a product named "plybond glue" which contained more than 90 per cent of synthetic resin and was allowed to clear the product by incorrectly treating it as not based on plastics on payment of duty at the rate of 15 per cent ad valorem. This resulted in duty being levied short by Rs.4.5 lakhs on the clearances made during the period from 1 March 1987 to 25 April 1987 (no clearance was made thereafter).

The mistake was pointed out in audit in March 1988. The Jurisdictional Assistant Collector intimated (January 1986) that the product has been reclassified as plastic based adhesive and that the demand for Rs.4.50 lakhs was confirmed (August 1988). A penalty of Rs.500 had also been imposed. On further verification (May 1989) it was noticed that the Collector (Appeals) set aside the orders of the Assistant Collector on the grounds that the show cause notice for a period beyond six months, which was reqired to be issued by the Collector under Section 11A of the Act had actually been issued by the Superintendent. Thus non issue of show cause notice by the proper authority resulted in a loss of Rs.4.50 lakhs.

The Ministry of Finance have admitted the objection (October 1989).

3.23 Drilling rigs

As per proviso to notification dated 1 March 1988 as amended, 'drilling rigs' mounted on motor vehicle chassis, falling under headings 84.30 or 87.05 are exempted for so much of the duty as is equivalent to the duty on the chassis and compressor used in such drilling rigs, provided that the duty on chassis and compressor used in such drilling rigs has been paid and that no credit of duty paid on the chassis and compressor used in such drilling rigs was taken under Rule 56A or Rule 57A.

An assessee cleared 13 drilling rigs mounted on motor vehicle chassis during the period from 1 March 1988 to 31 May 1988 paying duty on the value of drilling rigs claiming exemption of duty payable on the value of chassis and compressors used therein under the said notification without production of any documentary evidence in support of the payment of duty on the chassises and compressors. This resulted in short levy of duty amounting to Rs.14.30 lakhs (approximately) on the clearances made from 1 March 1988 to 31 May 1988.

On this being pointed out in audit (June 1988), the department accepted the objection and stated (December 1988 and March 1989) that the amount of duty as pointd out in audit as also the duty short paid during June 1988 amounting to Rs.24.55 lakhs was demanded in September 1988 by issue of a show cause notice which was pending adjudication (March 1989).

The Ministry of Finance have admitted the underassessment (August 1989).

3.24 Petroleum products

i) Low sulphur heavy stock

As per a notification dated 1 March 1984 as amended, petroleum products produced in a refinery and used as fuel in the same premises for production of finished petroleum products are exempted from whole of duty leviable thereon.

A refinery used 93490.106 tonnes of low sulphur heavy stock for generation of electricity without payment of duty during February 1987 to March 1988. Out of the electricicty so generated, a quantity of 5904.123 MWH of electricity was supplied to the township of the refinery, I.O.C. marketing division and Oil India terminal, in the production of which 3318 tonnes of low sulphur heavy stock was used. The quantity of low sulphur heavy stock used for genration of electicity supplied outside refinery premises was not covered by the exemption notification and resulted in short levy of duty of Rs.5,14,586.

The irregularity was reported to the department in November 1988 and March 1989 and to the Ministry of Finance in July 1989.

The Ministry of Finance did not admit the objection and stated (September 1989) that there was no limitation regarding the product to be manufactured/generated by using L.S.H.S. as fuel, and in the absence of any such limitation, the concessional rate was correctly allowed.

The Ministry's contention is not acceptable because the term "Refinery" means a refinery wherein the refining of crude or shale or blending of non duty paid petroleum product is carried on.

ii) Speciality oil

As per explanation given under a notification dated 5 May 1986 speciality oil falling under sub heading 2710.99 of the schedule to the Central Excise Tariff Act, 1985 and chargeable to concessional rate of duty means any preparation made by blending or compounding of mineral oils falling under chapter 27 with other oils or any other substance. This speciality oil is intended for industrial uses (other than for use as lubricant) of which the lubrication function is only secondary in nature. Hence for applicability of the aforementioned exemption to speciality oils blending or compounding of mineral oils falling under chapter 27 with any other oil (not falling under chapter 27) or additives is a necessary precondition to be fulfilled.

a) An oil blending unit manufctured a speciality oil called as "Servo Quench - 11" which contained 100 per cent of mineral oils falling under chapter 27 with no other oils or additives. But the product was allowed to be cleared at the concessional rates of duty at 12 per cent ad valorem upto February 1988 and at 15 per cent ad valorem thereafter, under the above mentioned notification instead of at the tariff rate of 20 per cent ad valorem plus Rs.250 per tonne. Incorrect grant of exemption resulted in short levy of duty of Rs.4.09 lakhs for the period from May 1986 to December 1988.

The irregularity was brought to the notice of the department in February 1989 and the statement of facts was issued in April 1989. No reply from the department has been received (June 1989).

The Ministry of Finance have stated (November 1989) that the matter is under examination.

b) An oil company cleared two varieties of oils, (Meta Quench-39 and Elasto 541) composed of 100 per cent mineral oils; containing no other oil, or additive, but describing them as speciality oil and payment of duty at the concessional rates of 12 per cent ad valorem upto February 1988 and 15 per cent ad valorem there-

after under the above mentioned notification. Duty was, however, chargeable at tariff rate of 20 per cent ad valorem plus Rs.250 per tonne. In correct grant of exemption therefore, resulted in short levy of duty of Rs.2.06 lakhs on clearances during the period from May 1986 to Decmeber 1988.

On the irregularity being pointed out in audit (January 1989) the department did not accept the audit objection and stated (April 1989) that for manufacturing speciality oil two types of lube base stocks are mixed in certain proportion and as such there is no irregularity in availing concessional rate.

The view of the department is not correct as the speciality oil was manufactured exclusively from two types of lube base stock both falling under chapter 27 and hence the concessional rate is not applicable.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

iii) Asphalt mix

As per a notification dated 10 February 1985 as amended, asphalt mix and hot mix are exempt from the whole of the duty of excise leviable thereon.

An assessee manufacturing certain bituminous mixtures by heating asphalt and fillers like quartz, blue metal etc. sold it in blocks under various trade names like prodorphaltes, corosmatic, special mastic powder etc. These products are classified under sub heading 2715.90 but allowed exemption from payment of duty with reference to the above notification. Though the term 'asphalt mix' or 'hot mix' had not been defined, the Central board of Excise in its tariff advice dated 1 March 1982 stated that asphalt mix is manufactured by mixing asphalt with stone chips and heated at 150°C in a mixer box and that the hot mix is taken to road side and spread over for strengthening the road surface. The Board had also held that such asphalt mix is not capable of being sold or purchased in the market. But in the instant case, the above products manufactured by the assessee were used mainly to join acid resisting tiles and floorings etc., and were being sold in the market. Hence the exemption contemplated in the notification dated 10 February 1986 as amended was not applicable.

Due to the incorrect availment of exemption, there was short levy of duty of about Rs.2.07 lakhs on clearances from April 1987 to May 1988. The duty involved for the subsequent period remains to be ascertained.

On this being pointed out in audit (October 1988), the department stated (December 1988 and January 1989) that the classification under the erstwhile tariff item 68 was done on the basis of the Chemical Examiner's report and that the exemption allowed under a notification issued on 3 December 1983 was continued under notification dated 10 February 1986 with effect from 28 February 1986. It added that the exemption granted was justified because the intention, if any, was not brought out in the notification and it was not correct to import a meaning to the words which were not found in the notification or Tariff. The reply is not acceptable as the product in quention is not known as 'asphalt mix' or 'hot mix' in the market. The Chemical Examiner's oninion is also not categorical and draws inference only from the Board's tariff advice quoted above.

The Ministry of Finance have stated (November 1989) that the issue is under examination in the Board.

3.25 Rubber and rubber products

Pipings and tubings of unhardened vulcanised rubber, falling under the erstwhile tariff item 16(A)(3), designed for use as hydraulic or air brake hose in motor vehicles, were exempt from duty with reference to a notification dated 29 August 1967. Exemption was not, however, available to 'hose assembly' i.e., hose with end fittings, classifiable under erstwhile tariff item 68. In the new Tariff, tubes, pipes and hoses of vulcanised rubber, with or without fittings, designed to perform the function of conveying air, gas or liquid are classifiable under sub heading 4009.92. However, there was no change in the notification dated 29 August 1967 in the new Tariff which exempted pipings and tubings only.

An assessee manufacturing, inter alia, rubber hose assembly consisting of a rubber hose with fittings designed for use in motor vehicles, classified the product under sub heading 4009.92 and claimed exemption under the notification dated 29 August 1967 though he was paying appropriate duty for the product under the erstwhile tariff. The department initially denied the exemption to the assessee under the new tariff also, but it allowed the exemption later with reference to a clarification dated 9 November

1987 of the Board to the effect that hose assembly with or without fittings would be entitled to the benefit of the notification. Consequently, the assessee stopped payment of duty on hose assembly from April 1988.

As hose assembly was not eligible for the exemption as per the wordings of the notification, allowing the exemption was not in order. The duty omitted to be collected for three months from April to June 1988 alone amounted to Rs.8,24,139. The duty liability for the subsequent period remains to be ascertained.

On this being pointed out (October 1988) in audit, the department cited (October 1988) the Board's clarification dated 9 November 1987 and also contended (May 1989) that the classification of the product is to be based on the chapter heading, sub heading and the chapter notes, if any and not on the basis of an exemption notification.

The reply is not acceptable since Audit questioned only the admissibility of the exemption to the product and not the classification. The notification exempted only pipings and tubings and not hose assembly, even though both the items fall under the same heading/sub heading. The clarification dated 9 November 1987 of the Board is also not acceptable as it has the effect of extending the scope of exemption notification beyond the explicit wordings used therein. Further in a similar case, the Board has clarified (January 1987) that yarn and sewing thread are two different commodities even though both are included under the same heading and that the exemption available for yarn was not applicable to sewing thread. On the same analogy, though rubber hoses and hose assemblies are classifiable under the same heading, in the absence of specific exemption for hose assembly, the exemption available for pipings and tubings cannot be extended to hose assembly.

The Ministry of Finance did not admit the objection and stated (November 1989) that the Board has decided that the hose assembly with or without fittings (both being classifiable under heading 40.09) would be entitled to the benefit of the exemption notification dated 29 August 1967.

The Ministry's reply is not acceptable as the Board's aforesaid clarification has no legal authority because the express language of the notification allows exemption to pipings and tubings only and not to the hose assembly.

3.26 P.O.P. Medicaments

i) According to a notification dated 1 March 1988, patent or proprietory medicaments falling under heading 30.03 are eligible for concessional rate of duty of 10 per cent ad valorem, provided they are single ingredient formulations based on the list of bulk drugs specified in the second schedule to the Drugs (Price Control) Order, 1987 (DPCO). The expression 'single ingredient' formulation has been described as medicaments processed out of any single bulk drug, with or without the use of any pharmaceutical aids. It follows that formulations containing more than one bulk drug specified in the second schedule are not eligible for the concession.

A pharmaceutical unit manufactured, interalia, two medicaments ampicid and cefalong, the former containing the ingredients ampicilin and probenacid and the latter having cephalexin and probenacid. Since the ingredients ampicillin, cephalexin and porbenacid have all been specified as bulk drugs in the second schedule to the DPCO, the above medicaments are not eligible for the concessional rate of duty as each of them contained more than one drug specified in the schedule. However, they were allowed the concessional rate of duty, resulting in short levy of duty of Rs.5,16,388 for the period from March to October 1988.

On the incorrect availing of exemption being pointed out in audit (December 1988), the department stated (January/March 1989) that the issue was examined by it in 1986 itself and it was decided that 'probenacid' was not an active ingredient, but was only a pharmaceutical aid, based on the State Drug Controllers' opinion and hence the assessee was eligible for the concession.

The Ministry of Finance have also not admitted the objection on the same grounds as were given by the department. This view is not acceptable as the advice given by the State Drug Controller in 1986 is not valid after the issue of the Drug (Prices control) Order, 1987 which specifies probenacid as a bulk drug in the second schedule. Further, notification dated 1 March 1988 allows partial exemption to medicaments which are processed out of any single bulk drug. But in the present case medicament was processed out of two specified drugs. As such the exemption granted was incorrect.

ii) As per a notification issued on 1 April 1977, as amended, clinical samples cleared by a

manufacturer of patent or proprietary medicaments falling under subheading 3003.19 were exempt from the whole of the duty of excise leviable thereon subject to the conditions laid down therein. As per the explanation below the notification, manufacturer, in the case of a company within the meaning of the Companies Act, 1956, would refer to a company, no part of the capital of which is held by a foreigner or a foreign company.

A pharmaceutical company, forty percent of the shares of which were held by non-residents, was allowed to clear the clinical samples of a newly introduced medicine falling under chapter 30, without payment of duty in terms of the notification ibid. The exemption allowed was based on the CEGAT order dated 5 November 1985, quashing the review proceedings started against the assessee company themselves and allowing the benefit of the Gujarat High Court judgement in the case of M/s Suhrid Geigy Limited Vs.Union of India (1980 ELT-759) to the assessee. The department has filed a Special Leave Petition in the Supreme Court against a decision on the same issue.

Neither did the department complete the assessments on provisional basis nor did it raise the demand of the duty amount payable from time to time pending disposal of the Special Leave petition by the Supreme Court. By following this procedure Government revenue could have been safeguarded in the event of the Supreme Court's decision in favour of the revenue. Completion of assessments, therefore, without treating them as done on a provisional basis or raising of demand might result in duty amount of Rs.2.70 lakhs for the period May 1987 to May 1988 becoming unenforceable at a later date.

On this being pointed out in audit (September 1988) the department accepted the audit objection and stated (March 1989) that for the past clearances, a show cause-cum demand notice was being issued without enforcing the demand to keep the department's claim alive and future assessments would be done provisionally.

For the sake of uniformity in assessment in such cases it is not known whether Government have issued any instructions to the Collectorates explaining their stand in the special leave petition to Supreme Court and exhorting them to assess duty in that manner (June 1989).

The Ministry of Finance have accepted the underassessment (September 1989).

3.27 Packed tea

Tea packed in unit containers of content exceeding 25 grams but not exceeding 20 kilograms is chargeable to duty at Rs.3.25 per kilogram under sub heading 0902.12 with effect from 1 March 1988. As per a notification dated 11 March 1986 (as amended) said tea is exempt from payment of duty which is in excess of Rs.1.10 per kilogram provided the said tea is made from tea of sub heading 0902.19 on which duty has already been paid and no credit of such duty is availed under Rule 57A.

Three tea factories manufactured packed tea of sub heading 0902.12 out of non duty paid tea of sub heading 0902.19 and cleared packed tea claiming exemption under aforesaid notification. The irregularity resulted in short levy of duty of Rs.6,00,892 on 3,64,177 kilograms of tea cleared during the months of April and May 1988.

On the irregularity being pointed out in audit (November 1988), the department stated (April 1989) that the audit objection was correct and demands were being raised. Further developments have not been reported (May 1989).

The Ministry of Finance have accepted the underassessment (September 1989).

3.28 Exemption to the extent of duty paid on inputs

As per a notification dated 4 June 1979, excisable goods on which the duty of excise was leviable and in the manufacture of which any goods falling under tariff Item 68 was used as inputs, were exempt from duty of excise as was equivalent to that already paid on such inputs. With the introduction of Central Excise Tariff Act, 1985, and the Modvat Scheme from 1 March 1986, the above notification was rescinded and the unutilised credit balance was to lapse if the final product was not covered under Modvat scheme as clarified by the Government in their letter dated 1 July 1986.

An assessee manufacturing man made filament yarn, using wood pulp as input, was availing set off of duty paid on the input. The assessee, however, utilised the entire credit of duty on the inputs upto February 1986 even though some input was lying unutilised either as stock or in the process of manufacture or as already manufactured but not cleared as on 1 March 1986. Since man-made filament yarn

classified under chapter 54 was not covered for Modvat purposes, the assessee cannot avail the credit of duty paid on the inputs in stock on 1 March 1986 or in the process of manufacture or manufactured but not cleared.

On this being pointed out in audit (September 1987) the department raised a demand for Rs.4,61,937 (October 1988) for the duty paid on the inputs in the above three categories. The demand was, however, dropped (December 1988) by the adjudicating authority as time barred. Failure to initiate action for recovery of duty on rescinding the notification dated 4 June 1979 resulted in loss of revenue of Rs.4,61,937. The department accepted the objection (May 1989).

The Ministry of Finance have accepted the underassessment (September 1989).

SHORT LEVY OF DUTY DUE TO MISCLASSIFICATION

The rates of duty applicable to excisable goods are indicated under various headings of the schedule to the Central Excise Tariff Act, 1985. Wrong classification of a product under a different heading results in incorrect levy of duty. Some of the more important cases of misclassification leading to non/short levy of duty, noticed in audit are given below:-

3.29 Products of chemical and allied industries

i) Robin blue in small packing

Heading 32.06 of the schedule to the Central Excise Tariff Act, 1985, covers colouring matter. As pigments are colouring matters, they are, chargeable to duty at the rate of 10 per cent ad valorem under sub heading 3206.19. If, however, the colouring matter is put in small packing used for domestic purposes, it will be classified under heading 32.12 with rate of duty at the rate of 20 per cent ad valorem.

An assessee was manufacturing 'robin blue' and clearing it in small packs for domestic use. The product was cleared after classifying it under sub heading 3206.19 (10 per cent ad valorem) instead of under sub heading 3212.90 (20 per cent ad valorem). This resulted in short levy of duty for Rs.1.06 crores for the period from March 1986 to December 1988.

On the incorrect classification being pointed out (April 1987) in audit, the department did not accept objection and stated (August 1988) that :

a) robin blue (ultramarine blue) is not known in the trade as pigment and

b) the product being used via aqueous medium cannot be classified under heading 32.12 as the general intention of heading 32.12 is based on non aqueous medium. It is therefore neither a pigment nor a colouring matter as defined in heading 32.12.

The view of the department is not acceptable because:

i) the product is all along classified by the department as pigment both under the old and new tariffs. Even the chemical test result indicates that the product has the characteristics of inorganic pigment;

ii) as per Harmonised System of Nomenclature, colouring matter put up in small packages for domestic use is covered under heading 32.12 and the emphasis is on the mode of packaging;

iii) heading 32.12 covers colouring matter in small packages and not exclusively meant for pigments disbursed in non aqueous medium; and

iv) to avoid overlapping of classification, it has been clearly provided in note 2 of chapter 32 that heading 32.06 does not cover products falling under heading 32.12. Hence pigments in bulk form are classifiable under heading 32.06 and those packed in small packages fit for domestic use are covered under heading 32.12.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

ii) Lead oxide grey

With effect from 10 February 1987 "miscellaneous products of chemical or allied industries, not elsewhere specifed or included" are classifiable under heading 38.23 of the schedule to the Central Excise Tariff Act, 1985 with rate of duty at 15 per cent ad valorem provided the goods are not separately chemically defined elements or compounds. Prior to 10 Februry 1987 these goods were classifiable under sub heading 3801.90 with the same rate of duty. As per explanatory notes to the Harmonised System of Nomenclature (HSN) this heading covers grey

oxide being a specially prepared mixture of lead monoxide (65 to 80 per cent) and lead metal (the balance) obtained by the controlled oxidation of pure lead in a ball mill and used in the manufacture of storage battery plates.

a) A manufacturer of 'lead oxide grey' meant for supply to battery manufacturers classified the goods under sub heading 2804.60 upto 9 February 1987 and thereafter under sub heading 2824.00 as lead oxide with rate of duty of 10 per cent ad valorem. An examination, however, revealed that 'lead oxide grey' as manufactured by the assessee in a ball mill answered the description of the chemical product mentioned against heading 38.23 of HSN as per the explanatory notes thereto. The product ought to have, therefore been classified under chapter 38. The misclassification resulted in short levy of duty Rs.40.82 lakhs on clearances during the period from May 1986 to July 1988.

On the irregularity being pointed out (September 1988) in audit, the departrment, while contending that the Central Excise Tariff Act was an independent self content enactment, justified (March 1989) the assessment under chapter 28 on the ground that the concerned sub headings specifically covered lead oxides and according to Rule 3(a) of the Rules for Interpretation the heading which provides the most specific description shall be preferred to general heading. The department further stated that as per chemical test report the instant product was essentially of lead oxide (lead sub-oxide) and HSN has no legal backing for the purpose of classification when the Central Excise Tariff specified the product under chapter 28.

The contention of the department is not acceptable as (1) chapter 28 covers only separate chemical elements and separate chemically defined compounds. As per chemical test result the product is essentially composed of lead sub-oxide. This meant that the product was not 100 per cent lead sub-oxide and hence its classification under chapter 28 was ruled out due to the presence of free lead in the grey oxide in measurable quantity; and (2) the explanatory notes to HSN have pursuasive value for purposes of determination of classification. The scheme under HSN, however, makes it clear that the product is coverd under chapter 38.

The Ministry of Finance have stated (November 1989) that as clarified by the Board (20 May 1986) the product is rightly classifiable under sub heading 2804.60.

The Ministry's reply is contrary to the chemical test results, in terms of which the product merit classification under heading 38.23 as explained above.

b) An assessee manufactured lead oxide grey out of duty paid lead ingot and used the manufactured product for captive consumption in the manufacture of stationary battery plates without payment of duty by classifying the product under heading 28.24 (chargeable to duty at the rate of 10 per cent ad valorem) instead of heading 38.23. As the final product i.e., stationary battery was exempt from the whole of the duty leviable thereon under a notification issued on 10 February 1986, the benefit of exemption notification dated 2 April 1986 was not admissible to grey oxide used in the manufacture of exempted goods. A show cause-cum demand notice was issued to the manufacturer demanding duty on lead oxide grey used in the manufacture of battery plates. The demand was subsequently dropped by the Collector in adjudication on the ground that the manufacturer had expunged the Modvat credit on the lead ingot used for the purpose. As per the provisions of Modvat Rules it was incorrect to expunge duty on lead ingot instead of recovering duty on lead oxide grey after allowing credit of duty paid on lead ingot. Collector's adjudication orders were not in accordance with the provisions of the Modvat Rules. The incorrect classification of the product resulted in loss of revenue of Rs.13.55 lakhs during the period from March 1986 to July 1987. Assuming that if duty is calculated at 10 per cent ad valorem, the loss of revenue after allowing credit admissible thereon amounts to Rs.6.99 lakhs during the aforesaid period.

On the irregularity being pointed out in audit (November 1988), the department stated (May 1988) that Central Excise Tariff Act, 1985 is an independent self contained enactment and assessment of the product under sub heading 2804.10 was correct in terms of Rule 3(a) of the Rules for Interpretation of the schedule to the Central Excise Tariff Act, 1985 as the product 'lead oxide' is specifically covered under this sub heading. Further, the product was essentially lead oxide (sub oxide of lead) and HSN has no legal backing for the purpose of classification when the tariff itself specified the product under chapter 28.

The contention of the department is not acceptable because :

1) chapter 28 covers only separate chemi-

cal elements and separately defined chemical compounds. The product in question being a mixture of lead oxide and metallic lead (containing only 60 to 80 per cent lead oxide) is, as per Central Excise Tariff Act, correctly classifiable under chapter 38; and

2) the explanatory notes to the HSN may not have legal backing, but for the purpose of determination of classification of a product its persuasive value cannot be ignored.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

iii) Nitrocellulose lacquer

'Nitrocellulose lacquer' is manufactured by dissolution of nitrocellulose in ethyl acetate and mixing therein fillers like toponol powder, oil and plasticisers and was classifiable under erstwhile tariff item 14 (III)(ii) up to 27 February 1986, and under sub heading 3208.30 thereafter.

A manufacturer of 'Nitrocellulose lacquer' used it captively without payment of duty for coating on tissue paper for its conversion into stencil paper classifiable under chapter 48 of the schedule to the Central Excise Tariff Act, 1985. At the instance of Audit, the Deputy Chief Chemist opined (July 1977) that the product was a coating composition based on nitrocellulose for specific use and was appropriately classifiable under erstwhile tariff item 14(III)(ii) as pigmented nitrocellulose lacquer in the liquid form. The department, however, classified the product under sub heading 3801.90 in July 1988. This resulted in short levy of duty amounting to Rs.7.60 lakhs on clearances during the period from 1985-86 to 1986-87.

On the irregularity being pointed out (January 1988) in audit, the department stated (September 1988) that though qualitative composition is similar, the product differs from nitrocellulose lacquer in so far as quantitative composition is concerned. It was added that nitrocellulose lacquer dries by evaporation only and not by oxidation. No authority, however, was quoted in support of the view of the department.

The fact, however, remains that the Deputy Chief Chemist identified the product as essentially a coating composition and suggested its classification under erstwhile tariff item 14(III)(ii) corresponding to sub heading 3208.30. Further, the product was actually used for coating of tissue paper. No proforma credit or Modvat credit was also available during the period of objection..

The Ministry of Finance have stated (November 1989) that the matter is under examination.

iv) Copper oxychloride

As per note 1 to chapter 38 of Central Excise Tariff Act, 1985 separate chemically defined elements or compounds other than insecticide, fungicide, etc., are not classifiable under chapter 38. Further, as per notes under the heading 28.27 of Harmonised System of Nomenclature, copper chloride oxides used as insecticides, fungicides, are specifically included under chapter 28.

An assessee manufacturing insecticide (sub heading 3808.10) under a brand name attracting 'nil' rate of duty, also manufactured an intermediate product 'Copper oxychloride' to be used captively as an active agent in the manufacture of the above final product. The product 'Copper oxychloride' was classified as an 'insecticide' under sub heading 3808.10 and cleared for captive use at 'nil' rate of duty. In view of the chapter notes mentioned above and due to the fact that 'copper oxychloride' was too strong to be used as insecticide or fungicide on plants, the product was, therefore, classifiable under the heading 28.27 attracting duty at the rate of 15 per cent ad valorem and not under sub heading 3808.10. The exemption notification dated 2 April 1986 as amended was also not available as the final product was cleared at 'nil' rate of duty. The duty omitted to be levied on copper oxychloride consumed captively during the period from April 1986 to July 1988 amounted to about Rs.5.13 lakhs. The duty for the subsequently period remains to be ascertained.

On this being pointed out (October 1988) in audit, the department contended (December 1988) that as per the explanatory notes to heading 38.08 of the Harmonised System of Nomenclature, intermediate preparations requiring further compounding to produce the ready for use insecticides, fungicides, etc; are also classifiable under chapter 38 only and that the product was also registered as an insecticide under the Insecticides Act, 1968. The department further stated that as per Indian Standard Institution (ISI) specification for copper oxychloride (technical), the chemical was extensively used for agricultural and horticultural purposes in fungi-

cidal formulations. The department referred to Board's clarification dated 24 June 1986, wherein it was stated that the definition 'insecticide' would include both concentrated bulk forms as well as preparations.

The contention of the department is not acceptable since the notes to chapters 28 and 38 read together would indicate that while the chemical (viz copper oxychloride) has been specifically detailed as an item to be classified under chapter 28, it can be brought within the items excluded under chapter 38. Besides, inclusion of this chemical under the heading 28.27 of the Harmonised System of Nomenclature is specific whereas the notes to chapter 38 pointed out by the department are general in nature and the product would, therefore, be correctly classifiable under heading 28.27 only.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

v) Dant manjan

Preparations for oral or dental hygeine including dentifrices (for example, tooth paste and tooth powder) and denture fixative paste and powders are classifiable under heading 33.06 of the schedule to the Central Excise Tariff Act, 1985 and chargeable to duty at the rate of 15 per cent ad valorem. The Central Board of Excise and Customs clarified on 11 January 1978 that tooth pastes even if containing ayurvedic ingredients would be appropriately classifiable under erstwhile tariff item 14 FF corresponding to heading 33.06 ibid.

An assessee manufacturing "Dant manjan (lal)" classified the product under sub heading 3003.30 as ayurvedic medicament and cleared it at nil rate of duty. The product was rightly classifiable under sub heading 3306.00. Misclassification of the product resulted in non levy of duty of Rs.1.86 lakhs during the period from 2 June 1988 to 9 August 1988.

On the mistake being pointed out (September 1988) in audit, the department stated (January 1989) that the Ministry of Health and Family Welfare (Department of Health) New Delhi by issue of a notification in August 1987 inserted 'Ayurved Sara Sangraha' in the First Schedule to the Drugs and Cosmetics Act, 1940 and accordingly the product dant manjan (lal) of specific composition which is included therein became correctly classifiable under sub heading 3003.30.

In dealing with a similar case {1985 (6) ETR 265} and {ELT pages 424 of 15 May 1988} CEGAT laid down two tests for accepting a medicine/drug as ayurvedic medicine/drug which were not satisfied by the product dant manjan (lal). In the said case CEGAT held that (1) the definition of ayurvedic medicine as laid down in Drugs and Cosmetics Act determines the classification for the purpose of central excise duty and (ii) Danta manjan (lal) was not treated by public in common parlance as ayurvedic medicine/drug but as tooth powder. The department's view is not, therefore, accepted.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

vi) P. or P. medicaments

As per note 2(ii) below chapter 30 of the schedule to the Central Excise Tariff Act, 1985 "patent or proprietary medicaments" means any drug or medicinal preparation in whatever form, for use in the internal or external treatment of or for the prevention of ailments in human beings or animals which bears either on itself or on its container or both, a name, which is not specified in a monograph, in a pharmacopoeia, formulary or other publications, or which is a brand name etc.

The Central Board of Excise and Customs clarified in November 1985 and August 1987 that protein food supplement with iron and vitamins, was classifiable under the erstwhile tariff item 68, but was not eligible to the benefit of the exemption under a notification issued in March 1982. The revised tariff headings introduced from 10 February 1987, specifically provide "peptones, other protein substances and their derivatives etc." to be classified under the sub heading 3504.00.

An assessee manufactured a product named "Vifro-fe" tonic and classified it under sub heading 3003.19 treating it as a patent or proprietary medicament. The assessee cleared these goods claiming exemption on 15 per cent adhoc discount on retail price in terms of a notification issued in September 1983 as amended. As the product contained mainly protein hydrolysate with vitamins and carbohydrates and minerals, it was classifiable under the sub heading 3504.00 with effect from 1 March 1987 attracting duty at 15 per cent ad valorem. The

misclassification of the said product as a "medicament" and grant of a general discount of 15 per cent on the retail price of the goods in terms of the notification issued in September 1983, resulted in short levy of duty of about Rs.1.37 lakhs on clearances during the period from April to November 1987.

On this being pointed out (January 1988) in audit, the department stated (March 1988) that the product was correctly classified under the sub heading 3003.19 and that it had also been certified as for "the rapeutic use" by the Joint Commissioner, Food and Drug Administration.

The department's reply is not acceptable because :-

i) the revised central excise tariff headings introduced from 10 February 1987, specifically provide for the classification of "peptones, other protein substances and their derivatives etc." under the sub heading 3504.00;

ii) approval of classification list under the Drug Price (Control) Order, 1979, is not tenable as "Drug" under that order has wider connotation than to patent or proprietary medicines under the Central Excises and Salt Act, 1944, e.g., bulk drugs though "Drug" for the purpose of the said order, were classifiable under the erstwhile tariff item 68 and not under erstwhile tariff item 14E; and

iii) as per the publication "Nutrition and Dietic Foods, New York", the so called protein isolates are particularly useful as supplement to foods or diets poor in proteins. The distinction between a drug and a food is that the former is a substance that has a pharmacological effect in the body and is used to prevent or to treat disease, whereas the latter is a substance taken to replace the physiological waste of tissue, to supply energy and heat and to build up tissues, which provide nourishment and can not be prescribed in the general medical services.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

3.30 Electrical machinery, equipments and parts thereof

i) Electrical apparatus for switching

Electrical apparatus for switching or protecting electrical circuits or for making connections to or in electrical circuits (viz switches, relays etc) for a voltage not exceeding 1,000 volts are classifiable under sub heading 8536.90 attracting duty at the rate of 20 per cent ad valorem, while the parts of the same apparatus are classifiable under sub heading 8538.00 attracting duty at 15 per cent ad valorem. According to explanatory notes to "Harmonised System of Nomenclature" apparatus for switching electrical circuits cover those apparatus which have got the essential devices for making or breaking one or more circuits to which they are connected or for switching from one circuit to another. Such apparatus include starting switches for electric motors also.

A manufacturer of electrical contactors (viz L.T.air break contactor) manufactured and cleared the products on payment of duty at the rate of 15 per cent ad valorem classifying it under sub heading 8538.00 as parts suitable for use solely or principally with the apparatus of headings 85.35, 85.36 and 85.37. The literature of the said product published by the assessee revealed that the product was suitable for switching or controlling motors. As per technical dictionary contactor means power operated switch suitable for frequently making and breaking an electrical circuit. Its independent function as switch in an electrical circuit rendered it classifiable under sub heading 8536.90 as a complete apparatus and not a part of the same. The incorrect classification of the product resulted in short levy of duty of Rs.29.47 lakhs on clearances during the period from March 1986 to December 1988.

On the irregularity being pointed out (January 1989) in audit, the department did not admit the audit objection and stated (May 1989) that contactor is a component and it has got no individual function but when used with other components in board/panel/enclosures it helps to protect the overhead electrical circuit. It added that the terms "suitable for switching and controlling motors" mean it plays a part for disconnecting the electrical circuit in cases of danger.

But the fact remains that the contactor is a complete apparatus and it can be operated independently as 'switch' as per definition of the technical term which is supported by the literature published by the assessee. The contention of the department is not, therefore, acceptable.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

ii) Lamp and lighting fittings

Lamp and lighting fittings are classifiable under heading 94.05 of the schedule to the Central Excise Tariff Act, 1985 and chargeable to duty at the rate of 35 per cent ad valorem. Under a notification issued on 10 February 1986 (effective from 28 February 1986) all goods other than those made of glass and falling under aforementioned heading are allowed exemption in excess of 15 per cent ad valorem.

A manufacturer of flame proof fittings and increased safety fittings was allowed clearance of goods on payment of duty at the rate of 15 per cent ad valorem under a notification dated 1 March 1986 after classifying them under sub heading 8536.90. All the fittings consisted of glass casing for lamp with a cast iron cap and small lamp holder. These products are therefore classifiable under heading 94.05 and the notification dated 10 February 1986 would not be applicable as these are to be treated as made of glass in view of Rule 3(b) of the Rules for Interpretation because the glass provided essential character for the product. Incorrect classification resulted in short levy of duty of Rs.20.19 lakhs on clearances during the period from April 1986 to October 1988.

On the misclassification being pointed out in audit (November 1988), the department did not accept the audit objection and stated (May 1989) that the products are made of cast iron mainly and the glass is merely used to protect the electric bulb in volatile atmospheric conditions and for illuminating purpose. It added that the notification dated 10 February 1986 is well applicable even if the said items are classifiable under heading 94.05.

The view of the department is not acceptable as

i) the department having admitted that the glass is used to protect the bulb and for illuminating purpose, essential character of the product is that of glass; and

ii) the products are known in the trade as glass fitting, each variety is given name according to the characteristics of its glass covering. These articles cannot, therefore, be treated as cast iron fittings.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

iii) Electrical transformer

Electrical transformers are classifiable under sub heading 8504.00 of the schedule to the Central Excise Tariff Act, 1985 and are chargeable to duty at the rate of 20 per cent ad valorem. As per note 3 to Section XVI, composite machine consisting of two or more machines are to be classified as if consisting only of that component or machine which performs the principal function. Hence if an equipment consists of a transformer and other components it would be classifiable as transformer if the principal function of the equipment is that of transformer.

A manufacturer of 'battery eliminator' was allowed to clear his product on payment of duty at the rate of 15 per cent ad valorem under sub heading 8529.00 as parts of radio-cum-recorder (two-in-one). The product being a composite machine consisting of transformer, rectifiers, etc; and its main function being to step down the voltage in a line with the help of the in-built transformer when the set designed to function at a lower voltage is connected to the mains supply of 220-230 volt, it ought to have been classified as transformer under sub heading 8504.00. Incorrect classification resulted in short levy of duty to the extent of Rs.4.09 lakhs on clearances during the period from April 1986 to July 1987.

The irregularity was brought to the notice of the department in August 1987 and the Ministry of Finance in April 1989.

The Ministry of Finance have admitted the objection (October 1989).

iv) Electro magnets

i) As per Mc Graw Hills Encyclopaedia of scientific and technical terms, solenoid is an electrically energised coil of insulated wire which produces a magnetic field within the coil and in particular, a coil that surrounds a movable iron core which is pulled to a central position when the coil is energised. Explanatory notes under the heading 85.05 of Harmonised System describes electro-magnet as electrically energised coil around a core of soft iron and the passing of electric current in the coil confers magnetic properties on the core which can be used either for attraction or repulsion. This shows that both solenoids and electro magnets are not different from each other.

An assessee manufacturing solenoids and parts thereof, classified the product under heading 85.48 as electrical parts of machinery or

apparatus, not specified or included elsewhere, attracting duty at the rate of 15 per cent ad valorem. The product, however, merits classification under heading 85.05 as 'electro magnets' attracting duty at the rate of 20 per cent ad valorem. It was also known as 'magnet' only in trade parlance as seen from some of the gate passes and invoices. The incorrect classification resulted in short levy of duty of Rs.3,87,528 for the clearances made from December 1987 to November 1988. The underassessment for the earlier and subsequent periods remains to be ascertained (July 1989).

On this being pointed out (December 1988/February 1989)in audit, the department reported (February 1989) issue of a show cause notice on 4 January 1989 to safeguard revenue but contended that heading 85.05 includes only certain electro magnet operated appliances specially listed under the heading as per HSN explanatory notes, but solenoid was not specifically mentioned therein and that solenoid was not mere electro magnet. It was further stated that heading 85.48 covering electrical parts of machinery was more appropriate.

The contention of the department is not acceptable since in an electro magnet the passing of current in the coil confers magnetic properties on the core and can then be used either for attraction or repulsion. The same principle is adopted in solenoids also and hence solenoids manufactured by the assessee were correctly classifiable under heading 85.05.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

v) Electrical insulators

Electrical insulators of any material are classifiable under sub heading 8546.00 of the schedule to the Central Excise Tariff Act, 1985 and chargeable to duty at 15 per cent ad valorem.

An assessee manufactured epoxy cast components out of epoxy resin in admixture with non plastic constitutents and classified the products under heading 39.26 as "other articles of plastics", and was allowed to avail exemption from duty under a notification dated 1 March 1986. As the epoxy cast components had their end use as "insulators", they were correctly classifiable under heading 85.46.

The Supreme Court, also in the case of M/S.Geep Flash Light Industries Limited V/S. Union of India and others held on 10 August 1983 that articles made of plastics would mean articles made wholly of the commodity commonly known as plastic and not articles made from plastic in combination with other material. The incorrect classification and consequent incorrect availment of exemption by the assessee during the period from April 1987 to March 1988 resulted in short levy of duty of Rs.2,62,030.

On the irregularity being pointed out (August 1988) in audit, the department stated that a show cause notice was issued to the party and was under the process of adjudication (June 1989).

The Ministry of Finance have stated (November 1989) that the matter is under examination.

3.31 Plastics & articles thereof

i) Thermocole

As per note 10 to chapter 39 of the schedule to the Central Excise Tariff Act, 1985, the expression plates, sheets etc. in heading 39.20 and 39.21 applies only to plates, sheets etc. and to blocks of regular geometric shape, whether or not printed or otherwise surface worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut, they become articles ready for use). This means that sheets, plates, blocks etc. which are not further worked but are only cut and have become articles ready for use are classifiable as sheets, plates only under the headings 39.20 or 39.21 and not as articles of plastics.

An assessee manufacturing, inter alia, a product called thermocole, by feeding the raw material polystyrene (brand name styropol) into pre-foamer and then moulding materials into blocks under heat and pressure and cutting them into slabs/sheets of various sizes according to the requirements of customers for use as thermal insulators or for packaging sophisticated equipments. The product was classified under the sub heading 3922.90 with effect from 1 March 1986 (under sub heading 3926.90 from 1 March 1987) and was cleared at nil rate of duty claiming exemption in terms of a notification issued on 1 March 1986. As the product was in the form of blocks of rectangular shape cut into rectangular or square sheets/plates but not further worked, thereby answering to the expression innote 10 to chapter 39 it was correctly classifiable under the

heading 39.21 as plates, sheets etc. of plastics. The incorrect classification of this product under sub heading 3922.90 and availment of benefit of exemption under a notification issued on 1 March 1986 resulted in short levy of duty of Rs.39.00 lakhs during the period from March 1986 to February 1988.

The irregularity was brought to the notice of the department in March 1989 and the Ministry of Finance in August 1989.

The Ministry of Finance have accepted the objection (October 1989).

ii) Cellophane waste

Waste, parings and scrap of plastics are classifiable under heading 39.15 of the schedule to the Central Excise Tariff Act, 1985, and chargeable to duty at the rate of 40 per cent ad valorem under notifications issued on 1 March 1986 and 1 March 1988.

A manufacturer obtained cellophane waste during the manufacture of cellophane films. The waste was allowed to be cleared by classifying it under sub heading 3920.21 as films of regenerated cellulose on payment of duty at the rate of 20 per cent ad valorem under the aforementioned notifications instead of under heading 39.15. The misclassification, therefore, resulted in duty being levied short by Rs.14.20 lakhs on the clearances made between March 1986 and July 1988.

The irregularity was brought to the notice of the department in September 1988 and the Ministry of Finance in June 1989; who admitted the objection (November 1989).

iii) Vinyl acetate polymer emulsion

In terms of Rule 1 of Rules for Interpretation of the schedule to the Central Excise Tariff Act, 1985, classification (of a product) shall be determined according to the terms of headings and any relative section or chapter notes.

An assessee manufacturing various textile and leather processing chemicals falling under chapters 38 and 39, inter alia, manufactured vinyl acetate polymer based emulsion (Cilpretem) by polymerising vinyl acetate monomer and then mixing with fillers like calcium carbonate, vegetable oil and water in different proportion and classified the product under heading 38.09 as textile finishing agent attracting duty at the rate of 15 per cent ad valorem. As sub heading 3905.10 specifically covers polymerised products of vinyl acetate in primary forms, (including emulsions and suspensions, by virtue of note 6(a) to chapter 39) and as any monomer when polymerised becomes a plastic material, the product is more appropriately classifiable under sub heading 3905.10 attracting duty at the rate of 40 per cent ad valorem (20 per cent ad valorem with effect from 1 March 1988). The incorrect classification of the product resulted in under assessment of duty of Rs.3,97,200 on the clearances made from November 1986 to October 1988.

On this being pointed out (January 1989) in audit, the department justified (March 1989) the classification under chapter 38 on the ground that as per explanatory notes to HSN (page 553) on primary forms of plastics, the product was excluded from chapter 39 as a more specific heading was available elsewhere and that the product was sold only to textile industry for use as finishing agent.

The contention of the department is not acceptable since heading 39.05 specifically covers vinyl acetate polymers, whereas heading 38.09 covers a number of items like finishing agents, dye carriers and other products and hence is correctly classifiable under chapter 39 only, as per the explanatory notes quoted by the department. Further, addition of fillers to form the emulsion does not preclude the product from being classified as polymer of vinyl acetate.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

iv) Polymers of vinyl chloride

As per notifications dated 1 March 1984 and 1 March 1986 as amended, plastic material commonly known as polyvinyl chloride compound falling under the erstwhile tariff item 15A upto 27 February 1986 and under sub heading 3904.20 thereafter was chargeable to nil rate of duty.

An assessee manufacturing a product called 'vinrub' classified it under the erstwhile tariff item 15A(1) treating it as polyvinyl chloride compound and cleared it at nil rate of duty in terms of the aforesaid notifications. The product composed of polyvinyl chloride modified with nitrile butadine rubber ranging from ten to fifty per cent and small quantities of dioctyl phathalate. The product being made with substantial quantities of nitrile butadine rubber and some

quantities of dioctyl phathalate, the correctness of its classification as a PVC compound claiming exemption from payment of duty was questioned in audit. The department did not accept the objection and stated (January 1987) that it was done on the basis of test report, according to which the sample was in the form of resilient block and the nitrile rubber was used as a plasticizer modifier, for PVC resin.

It was pointed out (March 1987) in audit, that the report furnished by the Deputy Chief Chemist was not clear and the department should ascertain whether modification of polyvinyl chloride with nitrile rubber and other chemicals did not involve any chemical reaction amounting to manufacture. On the basis of the second test report which established that the product contained thirty to fifty per cent of nitrile rubber (against usual percentage of ten to twenty five of total PVC compound) alongwith forty to sixty per cent of PVC resin, the department decided that the product was not a PVC compound and held the product as classifiable under sub heading 3904.90 attracting duty at the rate of 40 per cent ad valorem.

The department further stated (January 1989) that a show cause-cum demand notice of Rs.1.58 lakhs towards duty chargeable for the period from September 1986 to December 1987 was issued and another show cause-cum demand notice for Rs.3.87 lakhs for the earlier period from October 1985 onwards was also under issue.

The department also added (May 1989) that the classification of the product under the sub heading 3904.90, which was not initially accepted by the assessee had also been approved finally (May 1989) after hearing the views of the assessee.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

v) Synthetic resins

As per note 1 to Section VII of the schedule to the Central Excise Tariff Act, 1985, goods put up in sets consisting of two or more seperate constituents, some or all of which fall in that section and are intended to be mixed together to obtain a product of Section VI or VII are to be classified in the heading appropriate to that product provided that the constituents are:

a) having regard to the manner in which they are put up, are clearly identifiable as being intended to be used together without first being repacked;

b) presented together; and

c) identifiable whether by their nature or by the relative proportions in which they are present, as being complimentary one to another.

An assessee manufactured and cleared different synthetic resins falling under chapter 39 (duty being 25 per cent ad valorem) which could not be used as resins without mixing them with a product called 'hardener' which was also manufactured by him and allowed to be cleared on payment of duty at the rate of 15 per cent ad valorem under chapter 38. The basic resins and hardener were presented together and were complimentary to each other. They were required to be mixed before actual use of resins and could not be premixed at the time of clearance. The product 'hardener' therefore ought to have been classified as resins and leviable to duty at the rate of 25 per cent ad valorem. The incorrect classification of the product had resulted in short levy of duty of Rs.88,221 on the clearances made during the period from April 1986 to January 1989.

On the mistake being pointed out (March 1988) in audit, the department did not accept the objection and stated (July 1988) that hardener cannot be classified as resin as hardener is distinguishable from resin in terms of raw materials used, manufacturing process involved and its end use.

The department, however, agreed with Audit that the only end use of hardner is for mixing it with the resin thereby facilitating the setting up of the latter.

The contention of the department is not acceptable as according to note 1 to Section VII the product has to be classified as resin. In case the product is to be assessed separately, a suitable notification is required to be issued as has been done in the case of tyres, tubes and flaps (chapter 40) covered by a notification dated 17 March 1985 as amended.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

3.32 Mineral products

i) Burnt lime and burnt dolomite

Mineral substances, not elsewhere specified are classifiable under heading 25.05 of the schedule to the Central Excise Tariff Act, 1985. Burnt lime and burnt dolomite obtained by burning limestone and dolomite respectively are classifiable under the aforesaid heading as "mineral substances not elsewhere specified." The Central Board of Excise and Customs also clarified in September 1986 that burnt lime would be appropriately classifiable under heading 25.05 ibid.

A public sector steel plant produced burnt lime and burnt dolomite and classified the products under headings 28.05 and 68.07 respectively. The products were captively consumed without payment of duty in terms of a notification issued on 2 April 1986. Since the products were correctly classifiable under heading 25.05, the benefit of exemption was not available as the said notification did not cover the goods classifiable under chapter 25. The incorrect classification of the products consumed captively resulted in short levy of duty of Rs.37.05 lakhs during the period from 1 April 1986 to 28 February 1987.

On the irregularity being pointed out (October 1988) in audit, the department accepted the objection and stated (April 1989) that action to review the classification list relating to the product 'burnt lime' and to raise necessary demand for the relevant period was being taken. As regards burnt dolomite, the department reported (April 1989) realisation of duty of Rs.7.01 lakhs.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

ii) Cementitious grout

As per Rule 3(b) of the Rules for the Interpretation of the schedule to the Central Excise Tariff Act, 1985, mixtures, composite goods consisting of different materials or made up of different components which cannot be classified by reference to the specific description provided under each heading in the schedule, shall be classified as if they consisted of the material or component which gives them their essential character in so far as this criterion is applicable.

An assessee engaged in the manufacture of various kinds of construction and mining chemicals (chapter 38), manufactured a product namely 'conbextra' which was allowed by the department to be cleared on payment of duty under sub heading 3801.90 upto 9 February 1987 and thereafter under heading 3823.00 at tariff rate of duty of 15 per cent ad valorem. The aforesaid product consisted of raw materials namely special cement (40 per cent), sand (40 per cent), aluminium oxide powder (10 per cent) and dispersing agent or syntehtic organic tanning agent (10 per cent). The product was termed cementitious grout and supplied in dry powder form for use in civil works.

Since the product was manufactured out of special cement (sub heading 2502.90) and had essential characteristics of mineral products (chapter 25), it was correctly classifiable under sub heading 2502.90 with tariff rate of duty at 40 per cent ad valorem in terms of aforesaid Rule. The misclassification resulted in short levy of duty of Rs.18,26,830 during the period from April 1986 to October 1987.

On the irregularity being pointed out (December 1987)in audit, the Jurisdictional Divisional Officer in his order dated 24 October 1988, adjudicating on the show cause-cum demand notice issued on 11 March 1988 in this regard, held that the classification of the aforesaid product adopted by the department was correct as the product was not used as cement and was also not commonly understood as such.

The Ministry of Finance have stated (October 1989) that the department has since filed an appeal against the orders of the Assistant Collector of Central Excise to the Collector (Appeals) with the prayer to classify the goods under sub heading 2502.90.

3.33 Machinery and mechanical appliances

i) Parts of motor vehicle and textile machinery

In terms of Rule 2(a) of the Rules for the Interpretation of the schedule to the Central Excise Tariff Act, 1985, any reference in a heading to goods includes a reference to those goods incomplete or unfinished provided that the goods have the essential character of the complete or finished goods. As per Rule 3(a) ibid, the heading which provides the most specific description is to be preferred to headings providing a more general description. Further, as per note 1(f) and (g) to Section XV (base metals and articles of base metal), that section does not cover articles

of Section XVI (machinery, mechanical appliances and electrical goods) and articles of Section XVII (vehicles etc.).

An assessee manufacturing parts of motor vehicle and textile machinery falling under chapters 84, 85 and 87 of the schedule to Central Excise Tariff Act, 1985 classified certain machinery parts of cast aluminium under sub heading 7601.90 as unspecified rough castings of aluminium and cleared the products without payment of duty under a notification dated 1 March 1988 (superseded by another notification dated 13 May 1988). The products being identifiable machinery parts (chapters of 84, 85 and 87 of Sections XVI and SVII) were not classifiable under sub heading 7601.90 (Section XV).

The misclassification was pointed out (19 August 1988) in audit, the department stated (November 1988) that it had issued two show cause notices for the total amount of Rs.34,25,224 covering the period from March 1988 to July 1988 on 29 August 1988 and 7 September 1988.

The Ministry of Finance have admitted the objection (September 1989).

ii) Other machinery parts

As per instructions contained in Ministry of Finance demi-official letter dated 21 March 1985 classification lists are required to be approved within 3 months from the date of their submission by the assessees.

An assessee submitted six classification lists in respect of cooling plate counterweight and C.I. top casings/bottom casings in March and May 1987 which were pending with the department for approval (March 1989). During the period from 29 April 1987 to 6 June 1988 the manufacturer cleared these goods on payment of duty at the rate of Rs.80 per tonne by classifying them as castings of iron not elsewhere specified (sub heading 7307.10). The goods were, however, rightly classifiable under chapter 84 attracting duty at higher rates. Non approval of classification under chapter 84 and non observance of Government instructions in this regard resulted in non raising of demand for differential duty of Rs.3,06,360 leviable on these goods.

The irregularity was brought to the notice of the department in March 1989 and the Ministry of Finance in August 1989.

The Ministry of Finance have admitted the objection (October 1989).

3.34 Punched/rejected sheets of steel

Under note 1 (XI) to chapter 72 of the schedule (1987-88) to the Central Excise Tariff Act, 1985, 'waste and scrap of iron and steel' has been defined as those fit only for the recovery of metal or for use in the manufacture of chemicals; but does not include slag, ash and other residue.

a) A manufacturer cleared scraps in punched sheets of steel, generated in course of manufacture of stampings and laminations, on payment of duty at the rate of Rs.365 per tonne as applicable to steel melting scraps under sub heading 7203.20. A scrutiny of the relevant sale invoices, however, revealed that such scraps had been consigned to other industrial units having no facility for recovery of metal or for the manufacture of chemicals. The scraps in question were used for making articles of steel or used in a manner other than for recovery of metal or manufacture of chemicals. The product was, therefore, correctly classifiable under sub heading 7211.31, 7211.39 with duty payable at the rate of Rs.715 / Rs.500 per tonne depending on the nature of the sheet. Incorrect classification and assessment resulted in short levy of duty to the extent of Rs.21.21 lakhs during 1986-87 and 1987-88.

The matter was reported to the department in June 1988 and to the Ministry of Finance in April 1989.

The Ministry of Finance have admitted the objection (November 1989).

b) A licensee manufacturing metal containers from steel sheets on which Modvat credit at Rs.715 per tonne was availed of, obtained punched sheets of steel generated in course of manufacture of metal containers. These punched sheets were cleared as wastes and scraps of steel on payment of duty at the rate of Rs.365 per tonne under sub heading 7203.20. As the scraps purchased by traders was used for the manufacture of articles of steel/or used in a manner other than for recovery of metal or manufacture of chemicals, the product was, classifiable under sub heading 7211.31 attracting duty at the rate of Rs.715 per tonne. The misclassification resulted in short levy of duty of Rs.2.54 lakhs during the period from June 1986 to February 1988.

The irregularity was reported to the department in April 1988 and to the Ministry of Finance in May 1989.

The Ministry of Finance have admitted the objection (November 1989).

c) The said Tariff Act was amended on 1 March 1988 and the term 'waste or scrap of iron and steel' was redefined to mean as referring to metal waste and scrap from the manufacture or mechanical working of metals, and metal goods definitely not usable as such, because of breakage, cutting up, wear or other reasons.

An assessee engaged in the manufacture of motor vehicles, brought sheets of iron/steel made from hot rolled sheets and cold rolled sheets produced in India on payment of duty of Rs.500 and Rs.715 per tonne (falling under sub headings 7212.31 and 7212.32 respectively) upto 28 February 1988 and took credit of duty paid thereon. Those sheets were slit according to requirements and the left out portions were cleared as waste and scrap on payment of duty of Rs.365 per tonne after classifying them under the sub heading 7203.20. As the left out portions were small sheets or cut pieces of sheets usable as sheets and were not waste and scrap within the meaning of the Central Excise Tariff, they ought to have been cleared as sheets after paying duty at Rs.500 and Rs.715 per tonne as per Rule 57F(4) of the Central Excise Rules, 1944. The misclassification resulted in short levy of duty of Rs.1.50 lakhs (approximately) for the period from April 1987 to February 1988.

On the irregularity being pointed out in audit (May 1988), the department accepted the objection and stated (January 1989) that the demand for Rs.85,458 for the period February 1988 to July 1988 raised in August 1988 has been confirmed. It added that the demand for the earlier period from April 1987 to January 1988 could not be raised as the classification under sub heading 7203.20 attracting duty at Rs.365 per tonne had been approved by the department. The incorrect approval of classification list resulted in loss of revenue of Rs.73,000 (approximately).

The Ministry of Finance have accepted the underassessment (October 1989).

3.35 Petroleum products

i) Hydraulic oil

As per a notification dated 5 May 1986 'speciality oil' falling under sub heading 2710.99 of the schedule to the Central Excise Tariff Act, 1985, is chargeable to duty at the rate of 12 per cent ad valorem. Under the said notification 'speciality oil' has been defined as any preparation made by blending or compounding of mineral oils (chapter 27) with other oils or any other substance and is intended for industrial uses (other than for use as lubricant) and of which the lubrication function, if any, is only secondary in nature.

A public sector undertaking manufactured a group of products of blended or compounded mineral oils as per ISI specification 3098 - 1983 for oils, hydraulic mineral oil type. The Central Board of Excise and Customs circulated August 1975 a list of 'speciality oils' wherein 'hydraulic oil' was included as a specific entry. Accordingly, the product of the licensee was chargeable to duty at 12 per cent ad valorem under sub heading 2710.99. The licensee, however, cleared the product as lubricating oil without payment of duty as per a notification dated 5 May 1984. This was irregular and resulted in short levy of duty of Rs.10.25 lakhs during the period from 1 March 1986 to 31 December 1987.

On the irregularity being pointed out (March 1988) in audit, the department stated (August 1988) that there was no specific instructions from the Government in regard to classification of the products in question and the classification determined on the basis of end use verification, to be correct.

The stand taken by the department is not tenable as :-

i) the products were manufactured as per ISI specification meant for hydraulic mineral oil;

ii) the products were declared in the price lists as 'hydraulic and circulating oils' which was not disputed bythe department;

iii) the Central Board of Excise and Customs in its August 1975 order identified 'hydraulic oil' as one of the 'speciality oils';

iv) the purpose of the product, as mentioned in the hand book of the licensee, was for use in hydraulic system and the lubrication function was secondary; and

v) the hydraulic oil manufactured by another licensee in the same Collectorate conforming to the same specification was classified by the department as 'hydraulic oil' and charged to duty as speciality oil.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

ii) Furfural extract

According to tariff description of sub heading 2710.50 any hydrocarbon oil ordinarily used as furnace fuel and also which satisfied the four requirements mentioned therein, was classifiable under that sub heading. It follows that any petroleum product not ordinarily used as furnace fuel was not classifiable under sub heading 2710.50.

A refinery producing, inter alia, 'furfural extract' by solvent extraction process, cleared the residue after recovering furfural for recycling, as spindle extracts, light neutral extracts, inter neutral extracts and heavy neutral extracts depending on the characteristics of the product. These products were mainly used for manufacture of 'process oils' by blending in appropriate proportion and as feed stock in the manufacture of carbon black. However, furfural extract was classified as 'furnace fuel' under heading 2710.50 and assessed to duty at the rate of Rs.145 per kilolitre.

It was initially suggested (March 1988) in audit, that the product would be more appropriately classifiable under sub heading 2710.99 as it was not used as 'furnace fuel'. The department contended (May 1988) that with reference to the classification of the product under the erstwhile tariff item 10 and as per the description of the product under the Harmonised System of Nomenclature (HSN) the item was classifiable as 'furnace oil' only.

The contention of the department was not accepted as the product was not ordinarily used as 'furnace oil' as evidenced by the clearances made from the refinery. On further examination, it was noticed that as per HSN explanatory notes under heading 27.13, extracts derived from the treatment of lubricating oils with certain selective solvents, were classifiable as "other residues of petroleum oils" under that heading. It was, therefore, pointed out (March 1989) through a statement of fact that the product was more appropriately classifiable under sub heading 2713.30 (2713.39 prior to 1 March 1988).

The department accepted (May 1989) the incorrect classification but added that samples were sent to the chemical examiner in November 1988 itself and as per his report the product was classifiable under heading 27.13. It was further stated that the assessments were provisional from August 1988 and that a show cause notice had been issued demanding differential duty for the period from 21 September 1988 to 22 March 1989. It added that the Board in its circular dated 13 February 1989 had stated that furfural extract would fall under sub heading 2713.39.

The reply that appropriate remedial measures were taken at the local audit report stage itself is not acceptable since the department failed to examine the correctness of classification of 'furfural extract' as suggested by Audit in March 1988. Had this been done by making provisional assessment from march 1988 and by issue of show cause-cum demand notice for the earlier period of six months, more revenue could have been safeguarded.

Instead, the product was sent to the Chemical Examiner only in November 1988 and differential duty demanded only since 21 September 1988. Due to the failure of the department to initiate necessary remedial action immediately, on receipt of the audit objection there was a revenue loss of Rs.5.06 lakhs (approximately) on 'furfural extract' cleared during the period from October 1987 to August 1988.

The Ministry of Finance have admitted the objection (November 1989).

3.36 Glass and glassware

i) Articles of fibre glass

Heading 70.19 of the Harmonised System of Nomenclature (HSN) covers 'Glass fibres and articles thereof'. As per explanatory notes under that heading, article obtained by compressing glass fibres, or super imposed layers of glass fibres, impregnated with plastics, if having a hard, rigid character and hence having lost the character of articles of glass fibres are excluded from heading 70.19, but would be classifiable under chapter 39 as articles of plastics. The corresponding heading 70.14 of the schedule to the Central Excise Tariff Act, 1985 on the other hand, covers glass fibres and articles thereof, whether or not impregnated, coated, covered or laminated with plastics or varnish. By virtue of the additional clause 'whether or not, etc' in the Central Excise Tariff, all articles of glass fibre, including those impregnated, etc. with plastics would fall within the scope of heading 70.14 only. Thus, synthetic resin bonded glass fibre laminated sheet, though has a hard, rigid character is declared to be classifiable under heading 70.14 of

the Central Excise Tariff, vide Board's Telex dated 26 May 1986.

An assessee manufacturing, inter alia, articles of fibre glass, such as pipes and fittings, storage tanks, fume exhaust systems, chimneys, etc. obtained fibre glass mats falling under heading 70.14 from outside and impregnated/coated them with synthetic resin, and cleared the product as articles of plastics falling under chapter 39 and claimed exemption with reference to a notification dated 1 March 1986 (superseded by another notification dated 1 March 1988). The department provisionally approved (May 1986) the classification and issued (November 1986) a show cause notice to the assessee as to why the articles should not be classified under heading 70.14 as articles of fibre glass. The case was adjudicated (March 1987) by the jurisdictional Assistant Collector who held that the item was classifiable as articles of plastics, because the fibre glass served only to reinforce the plastic material and because the product retained the essential characteristics of articles of plastics by being hard and rigid.

The classification of the goods as plastics was not correct because:

i) heading 70.14 covers all articles of fibre glass, whether or not impregnated, coated, covered or laminated with plastics or varnish. As this heading is more specific than the headings under chapter 39, heading 70.14 is preferable;

ii) synthetic resin bonded glass fibre laminated sheets, though rigid and hard, is classifiable under heading 70.14 as per Board's clarification dated 26 May 1986. Similarly, the goods manufactured by the assessee, though rigid and hard are to be classified under heading 70.14.

iii) the product is sold in the market as 'Orglas' and not merely as plastics.

Due to the incorrect classification there was a revenue loss of Rs.10.09 lakhs for the period from April 1987 to February 1988 alone, as the department had not gone in appeal against the orders of the Assistant Collector dated 12 March 1987.

On the irregularity being pointed out (December 1988) in audit, the department contended (January 1988/April 1989) that (i) heading 70.14 was applicable only in cases where fibre glass content was predominant and as the product contained only 39.3 per cent of glass fibre by weight, it was not classifiable under heading 70.14; (ii) the item satisfied the conditions in the explanatory notes under heading 39.17 of the HSN and (iii) as per Board's clarifications dated 29 February 1988 and 10 August 1988, similar goods were classifiable under chapter 39 only.

The contention of the department is not acceptable for the reasons stated above. Further, if the intention of Government was to classify only those articles of fibre glass in which the fibre glass is predominant under heading 70.14, there was no need for the additional pharase namely 'whether or not etc.' in the tariff heading, as the one prescribed in the HSN alone would have served the purpose.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

ii) Rear view mirror

Heading 70.06 of the schedule to the Central Excise Tariff Act, 1985, covers glass mirrors, whether or not framed, including rear view mirrors. Rear view mirrors for vehicles will, therefore, fall under sub heading 7006.10 and assessable to duty at the rate of 40 per cent ad valorem.

An assessee brought into the factory duty paid rear view mirrors for vehicles (duty at the rate of 40 per cent ad valorem) falling under sub heading 7006.10 and put them in suitable frames for use in motor cars. Those products were allowed to be cleared as parts and accessories of motor vehicles under heading 87.08 on payment of duty at the rate of 20 per cent ad valorem after utilising the Modvat credit on the rear view mirrors used in their manufcture. Since the rear view mirror is only framed, it cannot go outside the ambit of heading 70.06 and as a result of incorrect classification there was short levy of duty for Rs.1.94 lakhs on the clearances made from April 1986 to November 1988.

The misclassification was pointed out to the department in December 1988 and to the Ministry of Finance in August 1989.

The Ministry of Finance have admitted the objection (November 1989).

3.37 Motor vehicles and parts thereof

As per explanatory notes under heading 84.30 of Harmonised Commodity Coding Sys-

tem, certain machines of that heading like pile drivers and oil well driving mechines mounted on automobile chassis or lorry are classifiable under heading 87.05 as special purpose motor vehicles.

An assessee manufacturing drilling rigs mounted on motor vehicle chassis, classified them under heading 84.30 till February 1988 and under heading 87.05 from March 1988. Only drilling rigs manufactured and cleared as such without being mounted on a chassis are classifiable under heading 84.30. Since the rig manufactured was a composite unit mounted on a bought out chassis before clearance, the goods were correctly classifiable under heading 87.05 attracting duty at the rate of 25 per cent ad valorem, even prior to March 1988, especially when there was no change in the description of heading 84.30 or 87.05 since March 1986. Exemption under notification dated 1 March 1986 as amended was also not available to such rigs as duty on the component viz., drilling rigs was not paid. The incorrect classification of drilling rigs mounted on chassis under heading 84.30 resulted in short levy of duty of about Rs.11.79 lakhs during the period from June 1986 to October 1987 alone.

On this being pointed out (December 1988) in audit, the department justified the classification (March/June 1989), on the ground that as per the amendment dated 18 April 1988 to the notification dated 1 March 1988 drilling rigs mounted on chassis were classifiable under heading 84.30 also, and that the assessee would have paid excise duty under heading 87.05 by allowing the benefits of exemption under the notification dated 1 March 1986.

The contention of the department is not acceptable for the reasons stated in paras 1 and 2 supra. Further, as the assessee had not paid duty on the drilling rigs, a component part of the final product, exemption under the notification dated 1 March 1986 was not available and hence duty at tariff rate was payable on the final product. The Board's guidelines dated 17 January 1989 read with its instructions dated 16 November 1987 also supports Audit's view that the product was classifiable under 87.05 only, even prior to 1 March 1988.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

3.38 Paper and paper board

i) Cigarette paper

Cigarette paper (whether or not cut to size or in the form of booklets or tubes) is assessable to central excise duty under heading 48.13 of the schedule to the Central Excise Tariff Act, 1985. According to explanatory notes under heading 48.13 in the Harmonised System of Nomenclature (HSN) cigarette paper means all cigarette paper including plug wrap and tipping paper used for wrapping the filter mass and for assembling the filter tip and the cigarette respectively regardless of its size or presentation.

A leading manufacturer of cigarette paper manufactured inter alia, plug wrap tissue paper and cork tipping base paper for consumption in factories manufacturing cigarettes and classified the same under sub heading 4805.90 "other uncoated paper and paper board, in rolls or sheet" chargeable to duty at 10 per cent ad valorem plus Rs.1430 per tonne as amended. The classification, which was approved by the department on 15 May 1986, was not correct since the department did not identify the product as cigarette paper which is classifiable under heading 48.13 and chargeable to duty at 10 per cent ad valorem plus Rs.2300 per tonne. The misclassification resulted in short levy of duty of Rs.8.92 lakhs during the period from March 1986 to February 1988.

The misclassification was pointed out to the department in April 1988 and to the Ministry of Finance in May 1989.

The Ministry of Finance have admitted the objection (November 1989.

ii) Paper cores

Prior to 1 March 1988, sub headings 4818.11 to 4818.19 of schedule to the Central Excise Tariff Act, 1985 covered cartons, boxes, containers and cases made out of paper or paper boards. 'Paper cores' i.e. hollow, cylindrical bobbin like products used for reeling paper roll is a support material for the paper wound on it and cannot be considered as a container or a box. Consequently it was not classifiable under any of the sub headings 4818.11 to 4818.19. Its correct classification was the residual sub heading 4818.90 'other articles of paper'. From March 1988 paper core was classifiable under heading 48.22 which covered bobbins, spools, cops and supports of paper pulp, paper or paper board. The HSN

explanatory notes under heading 48.22 also support this view as it is stated therein that the heading covers cylindrical cores of the kind used for winding cloth, paper or other materials.

An assessee manufacturing paper and paper boards falling under chapter 48, inter alia, manufactured 'paper cores' for reeling paper and initially classified the product under sub heading 4818.90 and paid duty at the rate of 12 per cent ad valorem. The assessee however, reclassified the product on 7 September 1987 under sub heading 4818.19 which attracted 'nil' rate of duty. As paper cores were correctly classifiable under sub heading 4818.90, the duty omitted to be recovered on such paper cores was Rs.2.74 lakhs during the period from 24 August 1987 to 28 February 1988.

On this being pointed out (March 1989) in audit, the department stated (June 1989) that the classification was in order with reference to Board's clarification dated 10 March 1988 and that the objection was already raised during the previous audit but withdrawn subsequently. The Board's clarification is not acceptable as the paper core cannot be considered as container for the purpose of classification under sub heading 4818.19. The objection raised earlier related to non levy of duty on entire paper cores consumed captively, whereas the point raised now relate only to such paper cores which were used in exempted final product.

The Ministry of Finance did not admit the objection and have stated (November 1989) that the issue raised has been examined by the Board vide their clarification issued on 10 March 1988.

The Ministry's comments are not acceptable in view of the position explained above.

3.39 Rubber and articles thereof

i) Air pillow

Other articles of vulcanised rubber other than hardened rubber are classifiable under heading 40.17 (renumbered as 40.16 with effect from 1 March 1987) of the schedule to the Central Excise Tariff Act, 1985. Air pillows made of vulcanised rubber sheets, therefore, merit classification under the same heading. The explanatory note (6) to heading 40.16 of the Harmonished System of Nomenclature (HSN), also lends support to such classification.

A manufacturer of "air pillows" classified them under heading 42.01 as 'travel goods'. The department initially did not agree with this classification and reclassified the product through adjudication process under heading 40.16/40.17. In its de novo adjudication order at the instance of the Collector (Appeal), the department, however, again classified the product under heading 42.01 without giving any reasons for such a change. This classification of the product is not correct for the above reasons and resulted in short levy of duty of Rs.4.35 lakhs from August 1986 to November 1988.

On the irregularity being pointed out (December 1988) in audit, the department stated(June 1989) that the matter was under scrutiny.

The Ministry of Finance have admitted the objection (November 1989).

ii) Lubricating pads

Articles of vulcanised rubber (other than hardened rubber) falling under heading 40.17 and hardened rubber and articles of hardened rubber falling under heading 40.18 were assessable to duty at 15 per cent ad valorem prior to 10 February 1987. On restructuring of the Tariff with effect from 10 February 1987 by the Central Excise Tariff (Amendment) Act 1986 (65 of 1986), articles of cellular rubber of heading 40.18 which were till then classified under heading 40.17 became liable to duty at 60 per cent ad valorem under sub heading 4016.11, whereas hardened rubber and articles of hardened rubber attracted duty at 15 per cent only under heading 40.17.

An assessee manufactured journal lubricating pads for the Railways, which were used for lubricating the axles of railway wagons. Blocks of cellular synthetic rubber cut to size formed the inner core of the pad and it was enclosed inside tufted cotton canvas pouch. The item was classified under heading 40.17 and subjected to duty at 15 per cent ad valorem.

It was pointed out (February 1988) in audit that as the essential part was block of cellular rubber, which had no properties of hardened rubber, the product was classifiable under sub heading 4016.11. The department issued two show cause notices (June 1988 and February 1989) demanding differential duty of Rs.1,502 and Rs.3,37,007 for the period from January to April 1988 and December 1988 respectively and also filed (November 1988) appeal before Col-

lector (Appeals) for review of classification. The Central Board of Excise and Customs and Collector (Appeals) ordered in January 1989 and March 1989 respectively that classification under sub heading 4016.11 would be in order.

The Ministry of Finance have intimated (July 1989) that the demands have been confirmed.

iii) Rejected contraceptive

Waste, parings and scrap of rubber (other than hardened rubber) powders and granules obtained therefrom falling under sub heading 4004.00 of the Central Excise Tariff Act, 1985 are chargeable to duty at 15 per cent ad valorem. According to chapter note 6, for the purpose of heading 40.04, the expression 'waste, parings and scrap' means rubber waste, parings and scrap from the manufacture or working of rubber and rubber goods definitely not usable as such because of cutting up, wear or other reasons.

A unit manufacturing contraceptives which were exempt from the whole of duty as per a notification issued on 10 February 1986 cleared rejected contraceptives as waste without payment of duty. The waste attracted duty under sub heading 4004.00.

On the non-realisation of duty being pointed out in audit (October 1986), the department stated (February 1989) that the two demands for Rs.1,26,242 covering the period from 23 July 1986 to 3 December 1988 were raised out of which a demand for Rs.81,520 had been confirmed and another demand for the remaining amount of Rs.44,722 was in the process of adjudication.

The Ministry of Finance have accepted the under assessment (July 1989).

3.40 Miscellaneous manufactured product

i) Food supplement

As per the decision taken by the Bombay Central Excise Collectorate Regional Advisory Committee in November 1985, "Protein food tonics" being food supplement were classifiable under the erstwhile tariff item 68 and were also not eligible for exemption under notification dated 1 November 1982. The Central Board of Excise and Customs has clarified in its letter dated 7 August 1987 that protein food supplement with iron and vitamins was classifiable under the erstwhile tariff item 68 but without the benefit of the exemption under notification dated 1 November 1982. According to note (6) under heading 21.06 of Harmonised System of Nomenclature also, protein hydrolysates would be classifiable under chapter 35. Revised headings, introduced from 10 February 1987 further strengthens the said view regarding classification of this product by the introduction of a separate sub heading 3504.00 to cover "peptones, other protein substances and their derivatives etc."

An assessee engaged in the manufacture of 'protinex' (dietary supplement) classified it as P or P medicines under the erstwhile tariff item 14E upto 27 February 1986 and under sub heading 3003.19 thereafter and claimed exemption on 15 per cent discount on retail price in terms of a notification issued on 13 September 1983, as amended. As the product mainly contained protein hydrolysate (16.8 grams out of total content of 30 grams) with vitamins, carbohydrates and minerals, it was correctly classifiable under the erstwhile tariff item 68 attracting duty at 12 per cent ad valorem till 27 February 1986 under sub heading 3501.90 during the period from 28 February 1986 to 28 February 1987 and thereafter under sub heading 3504.00 attracting duty at 15 per cent ad valorem. The incorrect classification of 'protinex' under the erstwhile tariff item 14E instead of tariff item 68 and sub heading 3003.19 instead of sub heading 3501.90 resulted in short levy of duty of Rs.4.07 lakhs during the period from April 1985 to February 1986 and Rs.8.91 lakhs during the period from 28 February 1986 to January 1987.

On the irregularity being pointed out in audit (May 1988), the department stated (July 1988) that the matter examined by the Board is different from the present case and that the assessee was holding a licence under the Drugs and Cosmetics Act, 1940 and the price list was filed by the assessee under the Drugs Price (Control) Order, 1979 which was also being approved accordingly by the department.

The contention of the department is not acceptable as the clarification issued by the Board is a general one and is applicable to any protein food supplement containing protein hydrolysate, vitamins, minerals, amino acids etc. and hence could not exclude 'protinex' manufactured by the assessee. The averment of the department about holding of a licence under the Drugs and Cosmetics Act, 1940, is also not relevant because the scheme and scope of central excise classification is different from that under the Drugs & Cos-

motics Act. The same view was also expressed by the Chief Chemist, Central Revenues in December 1985 while deciding the classification of a similar product. It has also been held periodically that definition given in a particular statute cannot be used for the construction of a similar word or expression occuring in a different statute or Act.

The Collector's reliance on approval of price list under the Drugs Price (Control) Order, 1979 is also not tenable as 'drug' under that order has wider connotation than that given to P. or P. madicines under the Central Excises and Salt Act, 1944 (e.g. bulk drug though 'drug' for the purpose of the said order were classifiable not under the erstwhile tariff item 14E but under the erstwhile tariff item 68).

It may not be out of place to mention that in a similar case of misclassification of dietary supplement (viz. provisor/provimin/build up) under tariff item 1B instead of tariff time 68, the Collector of Central Excise Bombay II had already accepted the objection.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

ii) Impregnated cotton fabrics

Cotton fabrics impregnated, coated, covered or laminated with plastics (other than those coated or laminated with preparation of low density polyethylene) are classifiable under sub heading 5903.19 of the schedule to the Central Excise Tariff Act, 1985, and chargeable to basic excise duty at Rs.6 per square metre and additional duty at Rs.2 per square metre leviable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 under notification dated 1 March 1986.

Cotton fabrics impregnated with resin manufactured in a factory for captive use, were classified under sub heading 3922.90 and assessed to duty at 15 per cent ad valorem during 1 March 1986 to 1 April 1986 and thereafter allowed full exemption in terms of a notification issued on 2 April 1986.

On the misclassification being pointed out in audit (June 1986), the department booked an offence case and also issued a show cause-cum demand notice for Rs.3,21,954 on account of duty less paid for the period from March 1986 to February 1987 in March 1988. Further progress regarding confirmation of the demand and recovery thereof has not been received (May 1989).

The Ministry of Finance have stated (November 1989) that the matter is under examination.

iii) Refractory material

Refractory ceramic goods such as bricks, blocks and tiles and similar refractory ceramic constructional goods, retorts, crucibles, muffles, nozzles, plugs, supports, cupels, tubes, pipes, sheets and rods are classifiable under heading 69.01 of the schedule to the Central Excise Tariff Act, 1985.

A manufacturer of ceramic sleeves classified the product under heading 69.01 chargeable to duty at the rate of 15 per cent ad valorem. The product was neither a constructional goods nor was of a type specifically mentioned under heading 69.01. Those were ring like articles with one end slightly tapered. They are used in steel industry where they are arranged in a row to form pipe like device through which the handle of the ladle is inserted for handling molten metal in a furnace. The end use and the nature of product suggested that it was appropriately classifiable as other ceramic articles under heading 69.11 chargeable to duty at the rate of 30 per cent ad valorem. Misclassification of the product, therefore, resulted in short levy of duty of Rs.3.09 lakhs during the period from April 1986 to February 1988.

The irregularity was reported to the department in August 1988 and to the Ministry of Finance in July 1989.

The Ministry of Finance have admitted the objection (November 1989).

SHORT LEVY DUE TO UNDERVALUATION

As per Section 4 of the Central Excises and Salt Act, 1944, where goods are assessable to duty ad valorem, the normal price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal would be the assessable value provided the price is the sole consideration for sale.

3.41 Price not the sole consideration for sale

Where the price is not the sole consideration, the assessble value of such goods, as per

provisions of Rule 5 of the Central Excise (Valuation) Rules, 1975, shall be based on the aggregate of such price and amount of money value of any additional consideation flowing directly or indirectly from the buyer to the assessee. The Supreme Court in their judgment dated 7 October 1983 in the case of Union of India Vs. M/S. Bombay Tyres International also held that the charges for other services after delivery to the buyers, namely after sale service, promote the marketability of the article and, thus enter into its value in the trade.

i) Escalation charges

As per the instructions issued by the Board in their letter dated 4 October 1980, in the case of running contracts, where there is a price variation clause, the goods should be provisionally assessed at the time of clearance and final assessment made as soon as the assessee submits his bills for the escalated value, without waiting for the final acceptance of the increased invoice value by the customers.

a) A public sector undertaking, engaged in the manufacture of boiler components and spares falling under chapter 84 of the Schedule to the Central Excise Tariff Act, 1985 entered into contracts with customers for supply of their products. The period of contract varried from 36 to 48 months. At the time of clearance of the products, the assessee raised provisional invoices based on which duty was paid. Subsequently the assessee was raising supplementary invoices periodically for price variations due to increase in cost of raw materials and labour. The duty on such supplementary invoices was, however, not paid on the ground that such supplementary claims were not normally accepted in full by the customers. The practice was irregular and contrary to the Board's aforesaid instructions dated 4 October 1980. It was noticed (June 1989) that out of 175 supplementary invoices (relating to 16 contracts) involving a total duty of Rs.50,33,951 raised during the period from August 1987 to March 1989, the assessee had paid a duty of Rs.11,27,481 (covering 18 items) only after delays ranging upto 20 months. Duty of Rs.39,06,470 in respect of 157 invoices had not been paid (June 1989).

When the omission to pay duty, as and when the supplementary invoices were raised, was pointed out in audit, the department stated that the supplementary invoices raised were subject to customers scrutiny and reductions and duty due could be known only after the escalation claims were admitted by the customers and payments were received.

The contention of the department is not tenable inasmuch as the differential duty should be charged as soon as the supplementary invoices are raised without waiting for the actual realisation of the amount of the supplementary invoices; in terms of the Board's instructions cited in para 1 supra.

The Ministry of Finance have admitted the objection in principle (November 1989).

b) A manufacturer of gates, embedded parts, etc. entered into contracts with project authorities for supply of gates. The contracts contained a price escalation clause on account of increase in the labour and raw materials costs. It was noticed (August and September 1987) in audit that the assessee had received Rs.1.06 crores towards escalation charges as per his final accounts for the years 1983-84 and 1984-85. Details of the duty, if any, paid thereon were, however, not made available to Audit.

On the matter being pointed out in audit (August/September 1987), the department intimated (July 1988) that the discrepancy between the escalation charges exhibited in the final accounts and the actual receipts was being reconciled.

In reply to the statement of facts issued in February 1989, the department stated (May 1989) that against the arrears totalling Rs.2.41 lakhs in respect of one project, a sum of Rs.1.26 lakhs had been realised in December 1988, and that the duty of Rs.12.92 lakhs due in respect of another project had also been recovered in January 1989.

The Ministry of Finance have accepted the underassessment (November 1989).

c) A manufacturer of refractory materials (erstwhile tariff item 68) received (October and December 1986) Rs.65 lakhs as part payment of total escalation charges of Rs.1.30 crores in respect of excisable goods cleared during the year 1980-81 to 1984-85 but the excise duty leviable on such escalation charges was neither paid by the assessee nor demanded by the department.

On the omission being pointed out in audit (December 1987 and March 1988), department intimated (July 1988) that excise duty amounting to Rs.7,13,388, leviable on Rs.97.50 lakhs received by the manufacturer as escalation

charges, was recovered on 9 March 1988. The departmemt also intimated that balance amount of duty leviable on remaining amount of Rs.32.50 lakhs will be paid after final settlement of the value of the goods. Further progress has not been reported (May 1989).

The Ministry of Finance have accepted the underassessment (November 1989).

d) An assessee engaged in the manufature of drums and barrels falling under heading 73.10 and attracting duty at 20 per cent ad valorem had shown in the accounts for the year ended 31 March 1987, that the company had outstanding claims against another company amounting to Rs.25.60 lakhs towards escalation charges on paint prices. It was seen in audit that the assessee received Rs.15 lakhs in November 1988, towards the price escalation charges but did not pay any duty on such charges received by him. This resulted in duty of Rs.3 lakhs (approximately) being realised short.

On this being pointed out in audit (December 1988), the department stated (April 1989) that the assessee paid an amount of Rs.2.91 lakhs on the escalation charges in April 1989 and that efforts were being made to recover the balance amount of duty.

The Ministry of Finance have accepted the underassessment (November 1989).

e) A public sector undertaking entered into contract with another public sector enterprise for supply of various coal handling plant equipments. As per price variation clause supplementary invoices were raised against the buyer from time to time but duty on escalated value was not paid. This resulted in non levy of duty of Rs.2.41 lakhs on the value of supplementary invoices raised during the period from June 1987 to March 1988.

On the omission being pointed out in audit (July 1988), the department intimated (March 1989) that a total duty of Rs.5.05 lakhs including the amount of Rs.2.41 lakhs pointed out in audit has since been realised.

The Ministry of Finance have accepted the underassessment (August 1989).

ii) Dealer's commission

Under Section 4(4)(d)(ii) of the Central Excises and Salt Act, 1944 'value' in relation to any excisable goods does not include, trade discount allowed in accordance with the normal practice of the wholesale trade at the time of removal of such goods etc. As per decision of the Supreme Court in the case of M/S.Moped India Limited Vs. Asst. Collector of Central Excise, Vellore & others {1986(23)ELT-8(SC)}, however, commissions paid to the selling agents on any account are not identifiable as trade discount and hence the same will not qualify for deduction in determining assessable value of goods for the purpose of levy of excise duty under the Act.

a) A leading motor vehicle manufacturer sold his products both direct to the customers and also through authorised dealers. In case of sale through the dealers, the declared price was abated by an amount called 'dealer's margin' (as actually allowed). In case of direct sale to the customers, too, an amount called 'dealer's margin' was realised in each case, but such additional realisations had in no case been taken into account while computing the asessable value. The amounts so realised had, in fact, represented 'after sale service charges' which had actually been passed on to the selling agents who procured orders and also undertook after sale services. These amounts were, therefore, includible in the assessable value for the purpose of assessment of central excise duty under Section 4 of the Central Excises and Salt Act, 1944. This was not done and resulted in short levy of duty of Rs.23.81 lakhs during the period from April 1986 to March 1988.

On the mistake being pointed out in audit (December 1988), the department intimated (May 1989) that the issue was under examination.

The Ministry of Finance have admitted the objection (November 1989).

b) A manufacturer of various types of machineries, machine tools and spares and parts thereof (chapter 84) cleared the goods to several parties, both Government and private, on contracted price declared and approved by the department as appearing in Part VII of the price list. The transactions had been mediated through some selling agents who were remunerated to the extent of Rs.6,58,346 as commission during the period from April 1986 to March 1989 for the services rendered. For the purpose of determining assessable value of the products, the amount of commission so paid, had been deducted from the declared prices. This resulted in incorrect computation of assessable value and consequential short levy of duty of Rs.1,00,126 during the

period from April 1986 to March 1989.

On the omission being pointed out in audit in April 1988, the department did not admit the objection and stated that the selling agents purchased goods outright from the licensee and sold the same to the consumers. Such dealings might be treated as from principal to principal and as such the agency commission might be termed as trade discount and hence deductable from the wholesale price to arrive at the assessable value. To safeguard the revenue, the department, however, raised necessary demand in this regard.

The contention of the department is not acceptable because where the licensee worked on contract price as declared in part VII of the price list and not on whole sale price, the question of abatement on account of payment of commission to selling agents does not arise.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

iii) Interest charges

The Central Board of Excise and Customs in its circular dated 4 May 1988 clarified that the interest charged by the units selling their goods on credit to customers, whether by direct sale or by routing their documents through banks would form part of the price of the goods. The Board had accordingly clarified that interest charges referred to as "delayed payment charges", "interest on receivables", or "credit charges", etc., should, therefore, be included in the assessable value of the goods. They also had directed that pending disposal of the review petition filed by them against a contrary judicial pronouncement, assessing officers should include such interest charges while determining the assessable value of the goods in conformity with the stand taken by the department, by resorting to provisional assessments.

a) A manufacturer of asbestos cement products (chapter 68) was allowed to exclude from the value, the depot expenses, interest on account of recoverables and interest on depot stores amounting to Rs.42,30,842 in computing the assessable value. As these are not admissable deductions to be allowed under Section 4, duty was short realised by Rs.10,57,710 for the period from March 1987 to July 1988 besides special excise duty of Rs.15,825.

On the irregularity being pointed out (September 1988) in audit, the department stated that the issue would be examined. Reply to the statement of facts sent to the department in May 1989 has not been received (July 1989).

The Ministry of Finance have admitted the objection (December 1989).

b) An assessee engaged in the manufacture of parts and accessories of motor vehicles falling under different chapters of the schedule to the Central Excise Tariff Act, 1985 was collecting large sums towards interest from customers for extended credit period, interest for delayed payments etc. It was noticed (August 1988) in audit that the balance sheet of the assessee's accounts for the year 1987, as finalised on 27 May 1988 disclosed that an amount of Rs.60,40,893 on account of interest charges towards credit sales had been realised from customers. The department did not, however, initiate action for redetermining the assessable value and demand the duty on such interest in accordance with the aforesaid instructions of the Board. A duty of Rs.9,06,134 at 15 per cent ad valorem was chargeable on the additional consideration of Rs.60,40,893 received during the year 1987.

The Ministry have admitted the underassessment (September 1989).

c) A manufacturer of motor cycles, claimed deduction of Rs.40 per motor cycle in respect of interest on bills receivable, in the price lists effective from 15 April, 6 June, 1 September and 29 December 1987 which were approved by the department. During the period 16 June 1987 to 28 February 1988, the manufacturer cleared 56113 motor cycles on payment of duty after deducting Rs.40 per motor cycle. However, no such expenditure (interest on bills receivables) was incurred during the said period. Therefore, the deduction was irregular and resulted in short realisation of duty amonting to Rs.3,39,483.

On the mistake being pointed out in audit (December 1988), the department recovered duty of Rs.3,39,483 from the assessee (December 1988).

The Ministry of Finance have accepted the underassessment (August 1989).

d) An assessee engaged in the manufacture of "polyestyrene" falling under sub heading 3903.10 cleared them on payment of duty at the rate of 20 per cent ad valorem under a notifica-

tion issued on 1 March 1986. The assessee recovered interest at the rate of 18.5 per cent on account of delayed payments and on the amounts overdue from the customers. As the interest amount so recovered was an additional consideration flowing from customers to the assessee, the same was includible in the assessable value of the finished goods cleared by him. (The interest amount received should be considered as part of the assessable value even as per a clarification issued by the Board in May 1988). During the months of March and September 1987 alone, the assessee had recovered such amounts aggregating to Rs.13,23,691 through debit notes but had not paid any duty on them. Non inclusion of the interest amount in the assessable value resulted in duty of Rs.2.65 lakhs (approximately) being levied s[illegible] during the months of March and September 1987.

On the omission being pointed out in audit (April 1988), the department accepted the objection (February 1989) and stated that a show cause-cum demand notice for Rs.1.68 lakhs for the period from December 1987 to March 1988 and another show cause-cum demand notice for Rs.0.82 lakhs for the month of October 1988 were issued to the assessee and that demand notice for the earlier period was also under issue. Details of action taken for the period April 1988 to September 1988 has not been intimated (February 1989).

The Ministry of Finance have stated (July 1989) that the objection is based on Board's circular dated 4 May 1988 whereas the CERA party visited the unit in April 1988. They added that on receipt of Board's circular, the Collectorate had initiated action and it would have been initiated even if it was not pointed out by Audit.

The Ministry's reply is self contradictory. The objection is not based on Board's circular dated 4 May 1988 rather has confirmed the stand of Audit taken in April 1988 i.e. prior to issue of Board's circular.

iv) Bank and other charges

The Supreme Court in the case of Bombay Tyre International and others {1983 ECR 1627D-SC} have held that where the sale in the course of wholesale trade is effected by the assessee through its sales organisation at a place or places outside the factory gate, the expenses incurred by the assessee upto the date of delivery are to be included in assessable value except the expenses on account of transportation and insurance charges.

An assessee, manufacturing soap (sub heading 3402.90), claimed in his price lists, deduction on account of cost of special secondary packing, bank charges, interest on receivables and interest on finished goods from the assessable value and cleared the goods during the period December 1987 to July 1988. While approving price lists, the department allowed deductions on two items (special secondary packing and bank charges) till June 1988 and disallowed all the four items of deductions from 1 July 1988 onwards. A show cause-cum demand notice was issued (7 October 1988) for Rs.14.85 lakhs covering the aforesaid period. Since the cost of special secondary packing and the bank charges were not admissible for deduction in terms of the Supreme Court judgment ibid, action of the department to permit the same upto June 1988 was irregular. Short levy of duty, therefore, worked out to Rs.16.61 lakhs and not Rs.14.85 lakhs as demanded by the department.

On the omission being pointed out (November 1988) in audit, the department intimated (March 1989) that the entire amount of Rs.16.61 lakhs was recovered from assessee in January 1989.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

v) Technical know-how

As per advice of the Ministry of Law, circulated by the Central Board of Excise & Customs on 23 December 1983, if the agreement to sell goods includes payments by the buyer to the assessee towards technical know-how (engineering, designs and drawings etc.) then such payments should be taken into consideration for computing assessable value for the purpose of levy of central excise duty.

a) A public sector undertaking entered into a contract with the Railway Board for supply of "diesel hydraulic heavy duty breakdown crane" (sub heading 8426.00). The contract provided for payment on account of design, drawing and engineering fees to the assessee. But in determining the assessable value of the product the aforementioned charges realised from the Railway Board were excluded. As a result there was short payment of duty of Rs.2.65 lakhs on the cranes cleared during March 1988 to January 1989.

On the irregularity being pointed out in audit (March 1989), the department accepted the

objection and stated (June 1989) that the assessee has agreed to deposit the duty short levied.

The Ministry of Finance have admitted the objection (September 1989).

b) A manufacturer entered into contracts with two different parties for supply and erection of 'air pollution control system', 'pre treatment systems' etc. Though the contract separately provided for supply of design and engineering services, the design and engineering charges realised were not subjected to levy of duty while paying duty on the supplies. The irregularity resulted in short payment of duty to the extent of Rs.2.10 lakhs between January 1987 and November 1987.

On the short levy of duty being pointed out in audit (February 1988) the department stated (August 1988) that the concerned officer has been directed to charge duty on "drawing and design charges" whenever the same were included in the invoice value.

Further development have not been intimated (February 1989).

The Ministry of Finance have stated (November 1989) that the proportionate designing and engineering charges involved in the goods cleared (Rs.15.67 lakhs) out of entire contract (Rs.2.21 crores) works out to Rs.56,614 and the duty involved is Rs.8,492 for which demand has been raised.

The Ministry view in regard to charging of duty on the designing and engineering charges proportionate to the value of goods actually cleared, is not leviable as the assessee has already realised from the parties Rs.14 lakhs towards designing and engineering charges. Duty has, therefore, to be recovered on the total charges.

vi) Erection charges

As per a notification issued on 30 April 1975 goods falling under erstwhile tariff item 68 cleared from the factory of manufacture on sale were exempt (at the option of the assessee) from so much of duty leviable thereon, as was in excess of the duty calculated on the price shown in the invoice of the manufacturer. The Ministry of Finance issued instructions on 10 December 1975 that the invoice price of such goods should be verified with reference to the accounts of the manufacturer as certified by the auditors.

A unit manufacturing fabricated machinery and machinery spares under erstwhile tariff item 68 opted for invoice price in terms of the above notification. The balance sheet of the assessee for the period ending 30 June 1985 revealed that the assessee had realised Rs.43.51 lakhs towards fabrication and erection charges but excise duty amounting to Rs.5.22 lakhs was not paid thereon.

On this being pointed out in audit (September 1986), the department accepted the objection and confirmed the demand of Rs.4.31 lakhs. Realisation particulars have not been reported (February 1989).

The Ministry of Finance have accepted the under assessment (August 1989).

3.42 Excisable goods not fully valued

As per Section 4(2) of the Central Excises and Salt Act, 1944, where duty of excise is leviable with reference to value and where the price for delivery of the goods at the place of removal is not known and value is determined with reference to price for delivery at a place other than the place of removal, the cost of transportation of the goods from the place of removal to the place of delivery may be excluded from such price. Only the actual extra expenditure incurred for delivery at a place other than the place of removal could be deducted from total price collected for determining assessable value.

Where price charged is not the sole consideration, the assessable value of the goods shall be based on the aggregate of such price and the money value of any additional consideration flowing directly or indirectly from the buyer to the assessee as provided in Rule 5 of the Centrtal Excise (Valuation) Rules, 1975.

i) Chassis and compressors

The Central Board of Excise and Customs in its letter dated 16 November 1987 clarified that the cost of all components including the chassis and other attachments to the drilling rigs should be included in the assessable value of motor chassis mounted rigs (chapter 8) irrespective of the fact whether they belong to the customer or the manufacturer.

An assessee engaged in the manufacture of drilling rigs, started including value of chassis and compressors used therein from 4

December 1987. Duty on the value of chassis and compressors used in the drilling rigs cleared prior to that date was, however, neither paid by the assessee of his own nor demanded by the department. The duty not demanded in respect of clearances made during the period from 1 March 1986 to 3 December 1987 amounted to Rs.68,40,000.

On this being pointed out in audit (July 1988), the department accepted the objection and stated (March 1989) that the issue of show cause notice for the duty portion was under consideration. Further report has not been received (May 1989).

The Ministry of Finance have accepted the underassessment (August 1989).

ii) Photocopying machines

The Central Board of Excise and Customs clarified (8 April 1988) that toner being an essential part of photocopying machine, its value should be included in the assessable value of the photocopying machine.

A manufacturer of photocopying machine, falling under heading 90.09 and chargeable to duty at the rate of 20 per cent ad valorem, was clearing alongwith each machine one selenium drum, one toner and three cassettes which were essential items for working the machine. The aggregate value of these items as shown in the working sheet of the price list was Rs.15,000 including Rs.1,000 towards installation charges. The value of these items was, however, not included in the assessable value of the photocopying machines. This resulted in short levy of duty of Rs.11.91 lakhs on 397 machines cleared during the period from August 1986 to May 1988.

The irregularity was pointed out to the department in June 1988 and to the Ministry of Finance in August 1989).

The Ministry of Finance have stated (November 1989) that the matter is under examination.

iii) Cost of by-products

An assessee engaged in the manufacture of soap noodles on job work basis dutiable under sub heading 3401.10 entered into a contract with a unit at Bombay. Under item 3 of the contract, processing charges at Rs.3,500 were to be charged for the manufacture of one tonne of noodles, by-products, viz. glycerine and pitch were to be retained by the assessee as per item 12 of the contract. The retention of by-products without any payment was, thus, an additional consideration besides the processing charges and should form part of assessable value under Section 4 of the Central Excises and Salt Act, 1944. The short levy of duty, due to non-inclusion of cost of by-products retained without payment, in the assessable value amounted to Rs.4,24,383 on the clearances made during 1987-88.

On the omission being pointed out (October 1988) in audit, the department reported (December 1988 and March 1989) that while fixing the processing charges the additional consideration/income, which was in the knowledge of both the parties, was taken into account. It further stated that the assessee was paying duty on glycerine and pitch as and when those goods were cleared from the factory and there was no justification to start recovery proceedings without any basis. The stand taken by the department was not acceptable as they were informed (December 1988 and April 1989) that if the assessee firm were not to retain the by-products without payment they would have charged higher processing charges from their principal manufacturer thereby increasing the assessable value and that the fact of payment of duty by the assessee on clearances of by-products is immaterial in so far as the duty would have been payable even if their principal manufacturer had got them back and cleared them from his own factory.

The Ministry of Finance did not admit the objection and have stated (November 1989) that the assessee always used the rice bran oil and palm kernel fatty acid supplied by the principal manufacturer for the manufacture of soap noodles. They added that the recovery of any by product from those oils, is not viable and no by product was recovered.

The Ministry's comments are factually incorrect. The department vide its letter daed 16 December 1988 has already admitted that Glyserin/pitch etc. are obtained during the process of manufacture of semi-finished soap noodles.

3.43 Valuation at invoice price

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

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

A public sector undertaking opted to pay duty on invoice price on goods falling under erstwhile tariff item 68 upto 27 February 1986 and thereafter and was permitted the same mode of assessment under Rule 173 C(ii) of the Central Excise Rules, 1944; from 1 March 1986 onwards, requested the department to finalise assessment on the basis of audited accounts. The department agreed to the proposal and finalised the assessment from 1975 to 1986-87 in March 1988.

It was noticed (November 1988) in audit that an amount of Rs.16.99 crores (which represented the value of goods exported under bond without payment of duty during 1985-86) instead of Rs.11.93 crores on account of the value of goods exported under bond without payment of duty during the year 1986-87 was deducted from the total value of goods cleared during the year 1986-87.

This resulted in short computation of assessable value to the extent of Rs.5.06 crores. Besides, there were short computation of assessable value of Rs.6 lakhs during 1975-76 and Rs.2.79 lakhs during the year 1977-78 due to incorrect deductions and incorrect adoption of figures of sale value during these years resulting in short levy of duty for Rs.76.01 lakhs.

On the irregularity being pointed out in audit (November 1988), the department admitted the objection and stated (June 1989) that the assessee had paid Rs.20 lakhs out of Rs.76.49 lakhs.

The Ministry of Finance have admitted the objection (September 1989).

3.44 Cost of packing - containers supplied by the buyer of the excisable goods

As per Section 4(4)(d)(i) of the Central Excises and Salt Act 1944, the assessable value of any excisable goods, delivered at the time of removal in a packed condition, includes the cost of such packing except where the packing is of a durable nature and is returnable by the buyer to the assessee. The Central Board of Excise and Customs clarified in March 1976 that where durable containers are supplied by the buyer to the manufacturer and he clears excisable goods therein for supply to the buyer, value of such containers shall be included in the assessable value of the goods for purposes of levy of excise duty.

a) An assessee manufactured glass bottles falling under erstwhile tariff item 23A(4) (now sub-heading 7007.90) and cleared them to his customer packed in cartons supplied by the buyer. The bottles were made to special shape and design as indented for by the customer. The value of cartons was not included in the assessable value of glass bottles on the ground that they were supplied free of cost by the buyer.

On the mistake being pointed out in audit in May 1984, the department issued a show cause-cum demand notice for Rs.23.05 lakhs for the years 1984, 1985 and 1986 and confirmed (September 1988) the same. Besides a penalty amounting to Rs.6 lakhs was also imposed.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

b) Another manufacturer of glasswares (chapter 70) cleared excisable goods after packing them in cardboard cartons which were either suppplied by himself or by the buyer free of cost. But in the case of packing with buyer's material the cost of such packing was not included in the assessable value although the same was included for the purpose of valuation when the packing was supplied by the assessee himself. Non inclusion of the cost of packing material supplied by the buyer in the assessable value, therefore, resulted in short levy of duty of Rs.1,59,289. during the period from April 1987 to August 1988.

On this being pointed out in audit (November 1988), the department did not accept the audit objection and stated (March 1989) that (a) as per Section 4(4)(d)(i) of the Act the actual cost of packing only is includible and in the instant case the assessee incurred no cost and (b) The Supreme Court in its judgment dated 9 May 1988 (Bombay Tyre International case) has clearly indicated that cost of special packing provided by the assessee at the instance of the wholesale buyer which is not generally normal practice shall be deducted from the price.

The contention of the department is not tenable as

i) the cost of packing even if supplied by the buyer has to be included as the goods could

not be supplied without that packing from the place of removal and exclusion of that cost was not covered by any exemption notification and

ii) the instant packing was essential for packing glasswares which was being done in all cases and the assessee was paying duty on the cost of packing charges when he himself supplied the packing. It is, therefore, not a case of speical packing at the instance of the buyer and the Supreme Court Judgment on special packing is not relevant to the issue.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

3.45 Undervaluation of goods consumed captively

Where excisable goods are wholly consumed within the factory of production or in another factory of the same manufacturer, the assessable value is to be determined under Section 4(1)(b) of Central Excises and Salt Act, 1944 read with Central Excise (Valuation) Rules, 1975 on the basis of comparable goods or cost of production including a reasonable margin of profit, if value of comparable goods is not ascertainable. The Central Board of Excise and Customs also issued instructions in December 1980 that the data for determining the value on cost basis should be based on cost-data relating to the period of manufacture and if such data are not available at the time of assessment, duty should be levied provisionally and finalised when data for the relevant period become available. The cost value should hold good only for one year and then only if there be no major fluctuation in the price of raw material or margin of profit.

i) An assessee engaged in the manufacture of burnt lime falling under heading 25.05, on behalf of a paper mill, paid duty on the basis of provisional cost of raw materials supplied by the paper mills and conversion charges. Addition of profit element was, however, under dispute and was pending before the Tribunal. The department did not revise the provisional assessment taking the value, as per the cost data for relevant year, even though the data was made available by the assessee. This resulted in underassessment of Rs.9,73,041 for the years 1983-84 to 1987-88.

On the irregularity being pointed out in audit, (May 1988), the department stated that differential duty of Rs.5,63,906 was demanded for the period 1983-84 to 1986-87 and the differential duty for the period 1987-88 was being worked out (February 1989).

The Ministry of Finance have stated (November 1989) that the Collector has been requested to take appropriate measures to recover the undisputed amount.

ii) An assessee manufactured different varieties of "plasticisers" (heading 38.12) and cleared major portion of the same on sale to different independent buyers at contract price. A part of production of two varieties of plasticisers as manufactured by the asssessee was captively used for the manufacture of final product which was exempted from payment of duty. The assessee worked out the assessable value on cost basis arriving at a figure lower than the value at which the said plasticisers were sold to the independent buyers. Adoption of incorrect assessable value resulted in short levy of duty of Rs.9.30 lakhs during the period from April 1986 to August 1988.

The irregularity was brought to the notice of the department in September 1988 and to the Ministry of Finance in August 1989.

The Ministry of Finance have admitted the objection (November 1989).

iii) An assessee manufactured rigid polyurethane foam classifiable under sub heading 3909.60 and cleared his product wholly for captive use during the period from June 1982 to March 1986 adopting assessable value of Rs.1500 per cubic metre on the basis of the price list effective from 16 June 1982. Non revision of the assessable value after each accounting year was in contravention of the Board's instructions resulting in short levy of duty.

On the omission being pointed out in audit (July 1986), the department intimated (November 1988) that demand for differential duty amounting to Rs.5,40,196 pertaining to the period from June 1982 to June 1987 has been confirmed (March 1988).

The Ministry of Finance have accepted the underassessment (September 1989).

3.46 Undervaluation of goods manufactured on behalf of others

As per Section 4 of the Central Excises and Salt Act, 1944, read with Rule 6(b) of the Central Excise (Valuation) Rules, 1975, assess-

able value of goods chargeable to duty ad valorem shall be the normal price at which such goods are ordinarily sold in the course of wholesale trade and where such price is not ascertainable for any reason, the value may be determined on the basis of the value of the comparable goods and if that is also not determinable, on the basis of cost of production or manufacture including the profit that could have been earned on the sale of such goods.

i) An assessee engaged in the manufacture of organic chemicals falling under chapter 29, manufactured 'dioctyle phthalate' falling under sub heading 2942.00 (attracting duty at 15 per cent ad valorem) on job work basis for a customer, who supplied the raw materials 'ethyl hexanol and phthalic anhydride'. Duty was being paid on assessable value calculated on cost basis (Rs.25,000 per tonne) which was too low as compared to the price(Rs.35,000) charged from other customers in respect of the same goods. Accordingly, duty was chargeable on the assessable value of Rs.35,000 per tonne as against Rs.25,000 per tonne.

The incorrect valuation resulted in short levy of duty of Rs.22.50 lakhs (approximately) on the clearance of 1508 tonnes of dioctyle phthalate during the period from April 1987 to March 1988.

On this being pointed out in audit (July 1988), the department admitted the objection and stated (June 1989) that there is no revenue implication, as the customer would have availed of Modvat credit of duty of Rs.22.50 lakhs even if it was paid by the assessee.

The contention of the department is not tenable as the auidt objection is that the assessable value for the purpose of excise duty had not been correctly determined in respect of goods sold to a particular customer.

The Ministry of Finance have accepted the underassessment (September 1989).

ii) An assessee manufacturing organic surface active agents falling under chapter 34 of the schedule to the Central Excise Tariff Act, 1985 inter alia, manufactured a product called labsa (sub heading 3402.90) on job work basis on behalf of another manufacturer, from the raw materials supplied by the latter. The assessable value for the product was declared as Rs.20,000 per tonne based on such goods manufactured and cleared by the assessee on his own account.

It was noticed (May 1988) in audit that the price of the product had been approved as per Part I of the price list in July 1986, even though there was no sale of the product by the assessee since April 1986. Adoption of price of the part I of the price list for the product manufactured on job work basis was objected to in audit as there was no sale of comparable goods during 1987-88. It was also pointed out that in the absence of sale of comparable goods, the assessable value should have been worked out on the basis of cost construction basis. The incorrect adoption of value resulted in short collection of duty of Rs.3,22,273 for the period from April 1987 to February 1988 even without taking into account the profit element in working out the cost.

The department, however, contended (July 1988) that the assessee would have sold the product at the value of Rs.20,000 per tonne even after April 1986, if there had been demand from the customers. It was also argued that if the cost basis was adopted, the assessable value would be less than Rs.20,000 as the duty paid on the raw materials was not includible in the cost of the final product since Modvat credit was taken on such duty. Subsequently, the department stated (January 1989) that there was sale of the product in July 1986 adopting part I price.

The contention of the department that the assessee would have sold the product at the same rate during 1987 also is not tenable because the cost of raw material (LAB) had increased by 5 per cent during 1987. Further, the duty paid on raw material was also includible in the value of the final product even if Modvat credit was taken on the raw material, as the duty paid character of the input is not lost even after Modvat credit was taken on the input, as opined by the Attorney General of India on 3 October 1985. The argument that the part I price list approved in July 1986 was the comparable price is also not acceptable since there was no clerance of the goods at that value after July 1986.

Report on the action taken to demand the differential duty has not yet been received (February 1989).

The Ministry of Finance have stated (November 1989) that the matter is under examination.

3.47 Excisable goods assembled out of duty paid parts/components

i) Section 2(f) of the Central Excises and Salt Act 1944, defines 'manufacture' to include any process incidental or ancillary to the completion of a new manufactured product. It is a well settled principle that manufacture implies a change and bringing into existence of new goods having a distinct name, character or use. Further, it is also held judicially {in the case of M/S.Narne Tulaman Manufacturers Private Limited [1988 (38) ELT 566 (SC)]} that assembling of duty paid components would amount to manufacture if it brings into existence a new product known to the market and known under an excise item. The mere fact that a manufacturer bought out certain parts and manufactured only certain parts and paid duty on the manufactured parts will not change the position because parts and end products are separately dutiable.

a) A central public sector undertaking engaged in the manufacture of electronic goods falling under different chapters of the schedule to the Central Excise Tariff Act 1985, manufactured and supplied studio/video equipments like monitoring equipments, end control desk, master control racks, colour studio equipment, equipment rack etc., at the contracted prices to various Doordarshan Kendras. The manufacturer assembled the aforesaid goods in his factory partly out of goods manufactured in his factory and partly out of goods bought from outside. The process of manufacture and emergence of the identified and contracted final excisable goods was complete only on assembly and supply of the said goods to the buyers. While the value attributable to the goods manufactured in his factory was included in the assessable value and duty was collected on such clearances, the value attributable to bought out goods used in conjunction with the goods manufactued in his factory was not included in the assessable value of the finished goods. In the process, on goods cleared under different agreements aggregating to value of Rs.79,40,736, duty was collected on the value of Rs.41,16,701 only. This resulted in undervaluation of goods by Rs.38,24,035 and consequent short levy of duty of Rs.6,33,132 on the clearances during September 1987 to March 1988.

The omission was brought to the notice of department in November 1988 and to the Ministry of Finance in June 1989.

The Ministry of Finance admitted the objection and have stated (November 1989) that the short levy works out to Rs.5,14,955.

b) A manufacturer of conveyer systems undertook the work of designing, fabricating, supplying, installing and commissioning of conveyer systems in buyer's site directly, partly out of goods manufactured in his factory and partly out of goods bought from outside. The process of manufacture and emergence of the identified and contracted final excisable goods namely conveyer systems, was complete only on assembly, erection and commissioning of the said goods in buyer's site and the final assessment of duty was required to be done on the completion of the contract. While the value attributable to the goods manufactured and transported from his factory to buyer' site was included in the assessable value and duty was collected on such clearance, the value attributable to bought out goods assembled at site in conjunction with the goods transported from his factory was not included in the assessable value of the final goods. On goods erected at site under different contracts aggregating to value of Rs.31,67,232 duty was collected on the value of Rs.1,77,283 only. This resulted in undervaluation of the goods by Rs.29,89,949 and consequent short levy of duty of Rs.4,70,917 on the clearances during 1986-87.

The omission was pointed out to the department in August 1988 and to the Ministry of Finance in April 1989.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

ii) In the case of Daya Ram Metal Works Private Limited Vs. Collector of Central Excise {1985 (20) ELT 392} the CEGAT relying on the Calcutta and Madras High Courts' decisions dated 12 April 1982 and 16 August 1982 respectively had observed that once completely manufactured goods are supplied to customer, the simple fact that some part by way of raw materials were supplied even by the customers or where the manufactured articles were supplied not after assembly, but in CKD condition, would not make any difference to the question and that the value of entire raw material, or all parts, which go into the making of manufactured article shall have to be taken into account. In another decision also {1988 (19) ECR 168} CEGAT have held that value of bought out items acquired for computation of machines would form a part of assessable value.

The Ministry of Finance have clarified

in September 1977 that where goods are cleared in parts against a particular contract, duty is to be assessed provisionally on individual clearances and at the time of final assessment duty should be levied on value of the product in completely assembled condition. Value of goods in assembled condition would also include value of all parts viz. supplied from the factory of the assessee as well as bought out from outside.

An assessee was engaged in the manufacture of goods falling under chapters 73, 83, 85 and 86 of the schedule to the Central Excise Tariff Act, 1985. The contracts with buyers also provided for payment of charges towards the cost of bought out items, and erection/commissioning charges by the buyers. The department while collecting duty on cost of articles manufactured in assesse's factory did not collect duty on the value of bought out items supplied to buyers as per contract as well as on erection and commissioning charges stipulated in respective contracts. Non-levy of duty on bought out items (valued Rs.29,61,725) and errection and commissioning charges (valued Rs.3,03,248) had resulted in short levy of duty amounting to Rs.5,14,233 (basic duty Rs.4,89,746 and special excise duty Rs.24,487) in respect of 5 contracts.

The irregularity was pointed out to the department in September and October 1988 and to the Ministry of Finance in August 1989.

The Ministry of Finance have admitted the objection (October 1989).

3.48 Assessable value not redetermined

Section 4 of the Central Excises and Salt Act, 1944, allows deduction of duty payable from the price of the manufactured product to arrive at the assessable value. However, if the assessee collects more duty than that paid to Government, the assessable value is required to be redetermined after adding such excess to the original assessable value. This was made clear by the Ministry under instructions issued on 30 September 1977. To make the above position clear beyond doubt, Section 4 of the Central Excises and Salt Act, 1944, was also amended with retrospective effect from 1 October 1975 vide clause 47 of the Finance Act, 1982.

A manufacturer of cosmetics and toilet preparations (erstwhile tariff item 14F) availing himself of the small scale exemption benefit granted under a notification dated 1 March 1978 computed the clearance value of five lakhs and Rs.15 lakhs during 1978-79 and 1979-80 respectively by incorrectly excluding the duty element from cum duty price realised from the customers although no duty was paid to the Government. This resulted in short levy of duty of Rs.6.22 lakhs (1.22 lakhs from 1978-79 and 5 lakhs for 1979-80).

On this being pointed out in audit (December 1979), the department issued a show cause-cum demand notice in March 1980. On adjudication, however, the demand was dropped by the Collector (August 1987).

The department maintained (January 1989) that the demand was dropped not only on grounds of limitation but also on merits as the ratio of the Supreme Court judgment in the case of Bata Shoe Company Limited {1985 (21) ELT 9 SC} was applicable to this case. It added that the audit objection implied criticism of the judicial independence of appellate authority.

The contention of the department is not acceptable as :-

a) the said Supreme Court judgment related to interpretation of the term 'value' in the context of a notification granting exemption to footwear, when its value did not exceed Rs.5.00 per pair. In that case when the assessable value was determined from cum duty price, it worked out to an amount below Rs.5 and hence duty could not be levied. The present case is totally different in asmuchas the amount collected in excess of Rs.5 lakhs and Rs.15 lakhs would form part of the value as per amended Section 4. This position has also been upheld by Karnataka High Court and CEGAT vide their judgments (ECR page 2554 December 1985), (ECR page 449, 7 August 1987) and (ELT page 384, 1 October 1988) respectively;

b) while respecting the judicial independence of appellate authorities, Audit had only queried the administrative decision in the department not to appeal against the appellate order which was not in the interest of revenue;

c) had the demand been raised immediately on receipt of the audit objection in terms of aforesaid instructions of the Ministry dated 30 September 1977 part of the demand would not have been barred by time.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

3.49 Valuation of goods sold through sales depots

As per Section 4 of the Central Excises and Salt Act, 1944, where the goods are assessable to duty ad valorem, the normal price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, would be the assessable value, provided the price is the sole consideration for sale.

The Patna High Court in the case of M/s Tata Engineering and Locomotive Company limited, Vs. Union of India (1977 ELT- J14) held that where a manufacturer sold his goods partly through his regional depots, godowns or branches and partly at the factory gate, the price at which the goods were sold at the factory gate would be the assessable value for the goods sold through the regional sales outlets, irrespective of the percentage of sales at the factory gate. According to the guiding principles laid down in the above case and in the decisions given in the cases of M/s.Indian Oxygen Ltd. Vs. Collector of Central Excise (1988 (18) ECR-61 - Supreme Court) and M/s. Seraiklella Glass Works (P) Ltd. Vs Collector of Central Excise, Patna (1988 (18) ECR-614 (Tribunal), the assessable value of goods is to be computed on the exfactory price even in respect of sales through depots.

An assessee engaged in the manufacture of glazed tiles, falling under sub heading 6906.10 filed separate price lists part-I for sale at the factory gate and for sale through different regional sales depots. The price for sale at the factory gate was approximately ten per cent more than the prices declared for sale through the regional sales depots. Since the ex-factory wholesale price was available, the assessable value of goods should have been computed on the ex-factory price even in the case of sales through various depots. Nondetermination of the assessable value at the price at which the goods were sold at ex-factory price, in terms of Section 4(1) (a) of the Central Excises and Salt Act, 1944, and the above cited decisions resulted in short levy of duty of Rs.4.78 lakhs (approximately) on clearances for the period from April 1987 to September 1987.

On this being pointed out (April 1988) in audit, the department did not accept the objection; referred to Section 4(1) (a) (i) of the Central Excises and Salt Act, 1944 and stated (April 1989) that it provides a statutory basis for acceptance of different assessable values for different classes of buyers. It added that the wholesale prices in different regional sales depots were kept low in order to absorb the additional taxes and transportation charges and also to keep the price stable at competitive level.

The department's reply is not acceptable for the following reasons:-

i) the assessee, in the instant case, had filed price lists in part-I only for the sales made both at the factory gate and sales through the regional depots to dealers of different regions and there should not, therefore, have been any difference in the prices;

ii) for observance of different prices in the sale of goods to customers in different regions, the price lists were required to be filed in terms of the provisions contained in Section 4(1) (a) (i) in part-II; and,

iii) as per the guiding principles laid down in the cases referred to above, the assessable value of goods in cases of sales through depots, is to be computed at the ex-factory price only.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

3.50 Undervaluation to the extent of duty element on inputs

Under Section 4 of the Central Excises and Salt Act 1944, read with the Central Excise (Valuation) Rules 1975, where the excisable goods are not sold by the assessee but are used or consumed by him or on his behalf, the value is to be determined on the basis of the comparable goods or cost of production, if the value of comparable goods is not ascertainable.

Three assessees in two collectorates engaged in the manufacture of copper and aluminium coils soap noodles and tram cars took credit of duty paid on the inputs such as copper wire, kraft paper, press pan paper, baking varnish, oil, rosin silicate and motor parts etc., and utilised the same towards payment of duty on finished goods. All the finished products were used captively. While determining the assessable value of the products, the element of duty paid on raw material was not taken into consideration. Non-inclusion of elements of excise duty paid on inputs in the cost-data, led to undervaluation of assessable value of goods. Consequently, duty of Rs.3,68,910 was levied short on the clearance

made during the periods between April 1987 and March 1989.

On the omission being pointed out in audit (October 1988 and March 1989), the department did not accept (December 1988) the objection in one case on the basis of the clarification contained in Board's letter dated 1 July 1986 that for determination of assessable value under Section 4, the notifications giving credit or allowing set off were to be excluded. The stand taken by the department was contrary to the opinion dated 3 October 1985 of the Attorney General of India to the effect that the duty element paid on inputs after availment of credit should form part of the assessable value. The Ministry of Finance in their action taken note on para 4.22(iii) of Audit Report for the year ended 31 March 1987, stated (October 1988) that the matter was being examined in consultation with the Law Ministry. Reply in the remaining two cases has not been received (June 1989).

The Ministry of Finance in two cases have stated (September and November 1989) that the opinion of the Attorney General of India has been sought in the matter and the same has not been received. They have admitted the objection in the third case.

3.51 Sale through related person

As per Section 4(I)(a)(iii) of the Central Excises and Salt Act, 1944, the assessable value of goods, sale of which is arranged through a "related person" is to be determined on the basis of wholesale price charged by such related person from his customers.

An assessee 'A' manufactured fibre glass reinforced plastic cooling towers classifiable under subheading 8419.00 attracting duty at the rate of 15 per cent ad valorem and cleared them without payment of duty upto 2 November 1987 and on payment of duty thereafter to another manufacturer 'B' of cooling tower for eventual sale to his customers in the open market. The department raised a demand for Rs.4.83 lakhs for the year 1986-87 and 1987-88 (upto 2 November 1987) and collected duty thereafter at the rate of 15 per cent ad valorem on the basis of price charged by the assessee 'A' from his customer 'B'. The goods were manufactured mostly (90 per cent cases) out of the raw materials supplied by 'B' on book adjustment basis. Also 'B' supplied technical know how and got the products branded in his name. Besides, out of three directors of the assessee company 'A' two were also directors of company 'B' and such goods were manufactured for exclusive supply to the buyer 'B'. Duty on the products was therefore leviable with reference to the price charged by 'B' who sold them in open market at a higher price. In correct computation of assessable value resulted in short raising of demand of Rs.4.77 lakhs upto 2 November 1987 and short collection of duty of Rs.1.19 lakhs for the period from 3 November 1987 to March 1988.

On the irregularity being pointed out in audit (May 1988) the department did not accept the audit objection and stated (February 1989) that as per CEGAT's decision dated 27 June 1986 (Page 610 ECR Sept.1986) sale value of the manufacturer 'A' was the correct assessable value even though the goods bearing the brand name of 'B' were manufactured out of party's raw materials for exclusive supply to that party.

The contention of the department is not acceptable as:-

i) in the case of M/S.Shree Agency the Supreme Court held (December 1971) that a person who got his goods manufactured by others by supplying raw materials would be the 'manufacturer' as per Section 2(f) of the Act. Hence 'B' was the manufacturer and the price charged by 'B' would be the assessable value;

ii) as per CEGAT's decisions (ELT page 317 1 November 1986) the brand name owner was the related person. When goods were manufactured out of technical know how supplied by the brand name owner and the manufacture was exclusively for the said buyer; and

iii) CEGAT's decision cited by the department is not relevant in this case as the said case was similar to the Cibatul case decided by the Supreme Court where apart from branding of goods, the assessee could sell the goods to others. But in the present case the assessee had no option to sell the goods to others.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

IRREGULAR EXEMPTION TO SMALL SCALE MANUFACTURERS

Various duty reliefs, exemption and special facilities are provided to the small scale manufacturers of specified excisable goods for encouraging production in small scale sector. These concessions are subject to fulfillment of

the conditions specified in the notifications issued in this regard. Some of the cases where these concessions have been availed of irregularly are given in the succeeding paragraphs.

3.52 Incorrect grant of small scale exemption on goods manufactured on behalf of big manufacturers not entitled to small scale exemption

As per Section 2(f) of the Central Excises and Salt Act, 1944, the term 'manufacturer' shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account. The Supreme Court in its judgment dated 15 December 1971 in the case of M/S.Shree Agencies Vs.S.K.Bhattacharjee and others {1977 ELT-J-168(SC)} held that in a case where the buyer supplied the raw materials and specifications to the seller for getting his goods manufactured, the buyer would be considered as a manufacturer under Section 2(f) of the Act ibid. Similar views were held by the Supreme Court in the case of M/S.Bajrang Gopilal Gajabi {1986 (25) ELT 609 (SC)}.

The Central Board of Excise and Customs, in consultation with the Ministry of Law, clarified (20 September 1988) that if the inputs are supplied by the principal manufacturer (supplier of raw materials) for the manufacture of any goods on job work basis, the goods so produced would not be entitled for small scale exemption unless the principal manufacturer himself is entitled to the concession admissible to a small scale manufacturer.

Twenty two small scale manufacturers in six collectorates undertook manufacture of intermediate products on job work basis on behalf of the principal manufacturers who supplied raw materials to the job workers. The job workers cleared the products to the respective principal manufacturers on payment of duty at the concessional rates under a notification dated 1 March 1986 meant exclusively for the small scale manufacturers. As the principal manufacturers were not themselves entitled to the small scale industries concessions, the availment of exemption in duty was irregular and resulted in short levy of duty of Rs.1.60 crores on goods cleared during the period between March 1986 and March 1989.

On the irregularities being pointed out in audit between December 1987 and June 1989, the department accepted (December 1987, March, June, October and November 1988) the objection in respect of six asessees. In respect of other fourteen assessees, the department did not, however, accept the objection and contended that since the asessees were independent manufacturers possessing valid small scale industries certificates, concessions available under the notification dated 1 March 1986 could not be legally denied to them. The contention of the department is not correct as the same is in conflict with the Supreme Court judgments and the Board's clarification referred to above. Reply of the department in the remaining two cases has not been received (November 1989).

The Ministry of Finance did not admit the objections and have stated (November 1989) that the job workers, who are independent manufacturers and independent legal entities by themselves, are eligible to avail of the concessional rate of duty on the goods manufactured from raw materials supplied by others in terms of notification dated 1 March 1986.

The Ministry added that the Board's instructions dated 20 September 1988 do not cover such independent job workers who are independent legal entities by themselves. The Ministry have also observed that on receipt of those goods from the small scale manufacturers, the principal manufacturer who sent the inputs on payment of duty is also eligible to take credit at higher rate under Rule 57B.

The Ministry's stand is not inconformity with the express provisions of notification dated 1 March 1986 and Board's instructions dated 20 September 1988. It has helped the principal manufacturers, who themselves are not entitled to small scale exemption to enjoy exemption from duty as well as to avail higher credit under Rule 57B. It is also worthwhile to mention that in none of these cases, there was any sale of inputs by the principal manufacturers to the job workers and those manufacturers contained to retain the ownership of those goods throughout.

3.53 Irregular grant of exemption to assessees not eligible for small scale benefits

As per a notification issued on 1 March 1986, concessional rate of duty is applicable to a factory which is an undertaking registered with the Director of Industries of any state or the Development Commissioner (Small Scale Industries) as a small scale Industry under the provisions of Industries (Development and Regulation) Act, 1951. However, such registration is

not required in cases (a) where the value of clearance from a factory during the preceding financial year or in the current financial year did not exceed or is not likely to exceed Rs.7.5 lakhs, or (b) where a manufacturer has been availing of small scale exemption under any of the notifications specified therein.

i) An assessee engaged in the manufacture of goods falling under chapter 84 was allowed the concession admissible to small scale industries (S.S.I) under notification dated 1 March 1986 with effect from 1 April 1986 onwards on the strength of a S.S.I. registration certificate issued by a State Government on 11 November 1980. In December 1985 the factory was shifted to its new premises for which a separate licence was obtained by the assessee in 1986. The assessee, who did not obtain a certificate of registration as S.S.I. for the new factory was permitted to continue to avail the S.S.I. exemption on the strength of the earlier certificate issued in November 1980, for the goods cleared from the new factory premises. This was not admissible in the absence of a valid registration certificate for the new factory. The incorrect availment of concession resulted in short levy of duty of Rs.8,45,876 on the clearances made in 1986-87, 1987-88 and 1988-89 (upto January 1989).

The short levy was pointed out in audit in March 1989. The reply of the department has not been received (June 1989).

The Ministry of Finance have stated (November 1989) that the matter is under examination.

ii) A manufacturer of power amplifiers and signalling panel testers falling under chapters 85 and 90 respectively, availed of the benefit of concessional rate of duty available to a small scale industry (S.S.I.) under the aforesaid notification during 1986-87and 1987-88 (upto October 1987) even though his factory was not registered as a small scale Industry either with the Director of Industries of a state or with the Development Commissioner (S.S.I). The manufacturer was not eligible for the concession otherwise also as the value of clearances exceeded Rs.7.5 lakhs and was not already availing of the concession under any of the notifications specified therein. The manufacturer was, therefore, not eligible for clearance of goods at the concessional rate of duty. The irregular grant of concession resulted in short levy of duty of Rs.6.67 lakhs on clearances made from April 1986 to October 1987.

The irregularity was brought to the notice of the department in December 1987 and to the Ministry of Finance in August 1989.

The Ministry of Finance have admitted the objection (November 1989).

3.54 Incorrect grant of exemption on branded goods manufactured on behalf of brand name owners

As per a notification issued on 22 September 1987, which came into force from 1 October 1987, the duty exemption available to small scale manufcturers under notification dated 1 March 1986 shall not apply to the goods where a manufacturer affixes the goods with a brand or trade name (registered or not) of another person who is not eligible for the grant of exemption under the notification dated 1 March 1986. Further, as per an explanation below the latter notification, 'brand name' or 'trade name' includes a monogram, whether or not registered, which is used in relation to such goods for the purpose of indicating or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without indication of the identity of that person.

i) An assessee in the small scale sector, was engaged in the manufacture of revolution and production counters {(commonly known as P.C.meters), (sub heading 9028.00)} attracting duty at the tariff rate of 15 per cent ad valorem. The assessee entered into contracts with other manufacturers for manufacture and supply of the manufacture of aforesid goods with a specified monogram which indicated a connection in the course of trade between the aforesaid goods and other manfuacturers using such name or mark. As such the assessee was not eligible to concessional rates of duty admissible in the aforesaid notification dated 1 March 1986 in respect of clearances of goods with the specified monograms. However, the department allowed the assessee to avail the concessional rates of duty leading to short levy of duty of Rs.8,05,613 during the period from October 1987 to October 1988.

The irregularity was pointed out to the department in November 1988 and to the Ministry of Finance in June 1989.

The Ministry of Finance have admitted the objection and stated (August 1989) that demand of duty for Rs.9,09,760 has since been confirmed.

ii) Another small scale manufacturer of

steering wheel and covers/pad engraved with brand name of a big car manufacturer, cleared the goods at the concessional rate from 1 October 1987 to 2 May 1988. This resulted in short levy of duty amounting to Rs.3,10,667.

On this being pointed out (February 1989) in audit, the department accepted the objection and stated (June 1989) that necessary action was being taken to recover the amount.

The Ministry of Finance have accepted the underassessment (September 1989).

3.55 Legal avoidance of duty

In terms of a notification issued on 1 March 1986 as amended, exemption based on value of clearances would be available to a manufacturer at concessional rates of duty upto an aggregate value of clearance of rupees seventy five lakhs. For the purpose of arriving at the value of clearances, the clearances made for home consumption on or after the first April of any financial year by a manufacturer from one or more factories are to be taken into account.

An assessee manufacturing textile accessories falling under chapters 83 and 84 of the schedule to the Central Excise Tariff Act, 1985 and availing the benefits of the exemption under the aforesaid notification dated 1 March 1986, however, did not include the value of clearance of a wholly owned subsidiary company for arriving at the total value of clearances. The omission to include the value of clearances in 1986-87 and 1987-88 resulted in short levy of duty of Rs.5,40,540. As the total value of clearances exceeded Rs.1.5 crores during 1987-88, the assessee was also not eligible to the benefits of the concessional rate of duty under the notification from April 1988 onwards.

On this being pointed out (June 1988) in audit, the department justified (June/November 1988) the assessment on the ground that the two units were separate legal entities for the purpose of the exemption notification; that the concept of holding company and subsidiary company as related persons would be applicable only for valuation purposes and that each limited company was a manufacturer in itself, entitled to a separate exemptions limit, as held by the Ministry of Law on a similar issue before the Public Accounts committee. The contention of the department, if accepted, would result in avoidance of payment of duty by the principal manufacturers by setting up subsidiary or inter connected companies, so that no single manufacturer will, on paper, own more than one factory and each will enjoy the exemption available to small scale units. Such recourse tc legal avoidance of duty has been adversely commented upon by the Public Accounts Committee in para 54 of its Forty Ninth Report (Eighth Lok Sabha) wherein it was desired that special attention should be paid by the enforcing agencies to ensure that benefits intended to small scale units are not abused or misused.

The Ministry of Finance have stated (November 1989) that the matter is under examintion.

MODVAT (MODIFIED FORM OF VALUE ADDED TAX) SCHEME

Government of India introduced Modvat (Modified form of Value Added Tax) scheme for allowing credit of the duty paid on specified inputs in the manufacture of specified products in respsect of 37 chapters of the schedule to the Central Excise Tariff Act, 1985 with effect from 1 March 1986. This scheme has further been extended to another 37 chapters of the schedule. As a result is that all commodities except tobacco, mineral oils etc., matches, specifed chemicals and textiles and textile articles are covered under the scheme.

Some of the irregularities noticed were as under:

3.56 Irregular availment of duty paid on goods, other than inputs

As per a notification issued on 1 March 1986, in exercise of the powers conferred by Rule 57A of the Central Excise Rules, 1944, credit of duty paid on inputs used in or in relation to the manufacture of final products is allowed to the manufacturer of such final products after he has filed a declaration for it as per Rule 57G of said Rules. However, as per explanation below Rule 57A, inputs do not include machines, machinery, plant, equipment, apparatus, tools or appliances used for producing or processing of any goods or for bringing about any change in any substance in or in relation to the manufacture of the final products.

i) Graphite electrodes

As per CEGAT decision dated 29 August 1985 in the case of Collector of Central Excise Madras Vs.M/S.Muthu Chemical Indus-

tries [1986(26)ELT.581(Tribunal)] electrode is merely a device for delivery of current into the material for reaction. It, therefore, follows that it cannot be treated as raw material for availing credit of the duty paid on inputs used in the manufacture of final products. However, the Central Board of Excise and Customs, vide its letter dated 21 October 1986, clarified that graphite and carbon electrodes which are used in the manufacture of iron & steel and aluminium respectively, satisfy the criterion of inputs as defined in the Modvat Rules. The Board's file leading to the issue of said clarification was called for in audit on 11 January 1988 followed by reminders on 3 June 1988, 25 September 1988, 23 February 1989. The said file has not been sent (November 1989).

a) Six assessees in four collectorates, engaged in the manufacture of iron & steel products (ferro alloys, steel ingots, etc.) classifiable under Chapter 72, brought into the factory duty paid graphite electrodes for use in the electric arc furnace and took Modvat credit of duty paid on those electrodes. Graphite electrodes being in the nature of appliances/equipments used in the electric arc furnace as held by the CEGAT are not eligible for Modvat credit under Rule 57A of the Rules ibid. This resulted in irregular availment of Modvat credit aggregating to Rs.1.22 crores during the period from February 1986 to October 1988.

On the irregularity being pointed out (January, October and December 1987, September and December 1988) in audit, the department did not admit the objection and stated (April 1987, November 1988, January and March 1989) that the credits were admissible to the assessees as the electrodes were regarded as consumables as per the instructions issued by the Ministry of Finance on 21 October 1986. In one case, however, the department issued show cause-cum demand notices on 13 November 1986 and 12 April 1988 in respect of the periods from 15 April 1986 to 31 October 1986 and 15 October 1987 to 31 March 1988, but did not issue show cause-cum-demand notice for the intervening as well as the subsequent periods.

The department's reply is not acceptable as the C.B.E.&C. clarification dated 21 October 1986 is not in conformity with the decisions of the CEGAT in the case of Collector of Central Excise, Madras Vs.Muthu Chemical Industries.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

b) Two units manufacturing fused alumina grains and aluminium oxide abrasive grains (sub heading 2818.90) availed of credit of duty paid on graphite electrodes for payment of duty on the final products. The graphite electrodes were used to generate arc in electric arc furnace in which raw materials were melted. As the graphite electrodes were part of the electric arc furnace which formed part of the plant and the final product did not contain any carbon released from the electrodes they could not be treated as input used in or in relation to the manufacture of the final products. The inadmissible credit availed of amounted to Rs.18,50,415 (i.e., Rs.4,45,621 and Rs.14,04,794) for the period from March 1987 to July 1988 and March 1986 to September 1988 respectively.

On the irregularity being pointed out (October and November 1988) in audit, the department did not accept the objection and contended (June 1989) that graphite electrodes were used as consumables and that credit was admissible as per a clarification of the Ministry of Finance dated 21 October 1986. It was also stated that as per Tribunal's decision (7 February 1989) in the case of Gujarat Alkalies and Chemicals Limited {1989 (41) ELT 424-Tribunal) electrodes were not to be considered as any of the excluded categories and hence the credit was in order.

The department's reply is not acceptable. The graphite electrodes were used as consumables in the electric arc furnace and were not inputs used in or in relation to the manufacture of finished goods. In the case of mercury acting as electrode in the manufacture of caustic soda it was decided (March 1989) by the Ministry that Modvat credit was not permissible for the reason that it was more in the nature of machinery than an input.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

ii) Oxygen and acetylene gases etc.

The Central Board of Excise and Customs also clarified (24 May 1988) that oxygen and acetylene gases used with the help of cutting torch for cutting runners and risers on the castings and for welding purposes are not actually used in the manufacture of finished goods and

therefore cannot be said to have been used in or in relation to the manufacture of the finished product.

a) Acetylene gas (sub heading 2401.10) manufactured in an integrated iron and steel plant was used mainly for cutting and welding of parts of steel products and for cutting of slabs and blooms into specific lengths as per customer's requirement. When assessee's claim for grant of exemption on acetylene gas under the notification of 24 April 1986 was not accepted by the department, he filed two amending classification lists in August 1987 (lists effective from 2 April 1986 and 1 March 1987) claiming exemption under notification of 2 April 1986. Since the acetylene gas was used for cutting and welding purposes and not in or in relation to the manufacture of outputs , grant of exemption to it was incorrect resulting in non levy of central excise duty of Rs.33.80 lakhs during the period from 1 July 1986 to 30 November 1987.

When this was pointed out (January and March 1988) in audit, the department replied (November 1988) that revised classification lists were under scrutiny and a show cause notice has been issued as per audit objection to safeguard government revenue. Subsequently, the department informed (December 1988) that classification lists were approved on 8 September 1988 and that there was no involvement of revenue being short paid or not paid and as such there was no demand.

The fact, however, remains that grant of exemption to acetylene gas used for cutting and welding purposes was contrary to the provisions of the notification issued on 2 April 1986 and also violated the Boards's aforesaid clarification of 24 May 1988. Further report has not been received (May 1989). Similar objections contained in para 10(v) of Audit Report No.11 of 1989 for the year ended 31 March 1988 of the Union Government on Modvat scheme, were reported to the Ministry of Finance in September 1988; their reply has not been received (May 1989).

The Ministry of Finance have admitted the objection (August 1989).

b) An assessee engaged in the manufacture of boiler, road roller, pressure vessels etc. was allowed to avail credit in respect of duty paid on oxygen and acetylene gas (falling under chapters 28 and 29 respectively of the schedule to the Central Excise Tariff Act, 1985) under the aforesaid Rule. As those inputs were used for welding purposes only and not used in or in relation to the manufacture of finished goods, credit of duty paid on those inputs allowed was not in order This resulted in irregular availment of credit of Rs.9.85 lakhs during the period from March 1986 to October 1987.

The irregularity was brought to the notice of the department in January 1988 and the Ministry of Finance in April 1989.

The Ministry of Finance have admitted the objection (September 1989).

c) An assessee manufacturing 'engine valves' (sub heading 8409.00) was utilising oxygen, acetylene and argon gases through the oxyacetylene depositing machine to obtain the required flame for deposition of hard facing materials and for hardening valves. He availed input credit on those gases and used it for payment of duty on finished goods. Since those gases were consumables being used in the tool namely oxyacetylene depositing machine and in a process similar to the one cited in the Board's aforesaid letter dated 24 May 1988, the availment of Modvat credit of duty of Rs.3.08 lakhs in respect of such gases during April to November 1988, was not in order. The amount of credit availed on these gases for the earlier and subsequent period remained to be ascertained.

On this being pointed out (February 1989) in audit, the department (April and June 1989) justified the availment of Modvat credit on gases on the ground that Board's clarification dated 24 May 1988, referred to Modvat credit on gases used for cutting runners and risers of castings only and, therefore, was not applicable in the instant case. It was, further, contended that the gases in the instant case directly contributed to the manufacture of valves. The reply is not acceptable because not only does the Board's letter cited above deny Modvat credit on gases used for cutting runners and risers, but also denies the same when those gases are used for welding purposes because in both the cases the gas is used solely to produce the necessary flame. Further, the principle behind denial of Modvat credit on gases is that they are 'consumables' to the tools. Since no Modvat credit is admissible on tools, apparatus, appliances etc., no credit can be admissible to their consumables.

The Ministry of Finance have stated (November 1989) that the matter is being re-examined.

d) An assessee engaged in the manufacture of tools and tool tips (sub headings 8207.00 and 8209.00) was allowed credit of Rs.1,59,931 towards duty paid on the inputs namely acetone, liquid nitrogen and hydrogen during the period from July 1987 to June 1988. In the manufacturing process acetone was used to prevent oxidation during the process of formation of tungsten carbide and it was recycled in the said process. Likewise liquid nitrogen was used as a cleaning agent in the pipeline and hydrogen as a carrier gas to drive wax vapours out of the furnace and to carry vapours of titanium chloride into the furnace. Thus the aforesaid inputs were used only as an aid in bringing about changes in the manufacture of the aforesaid final products and, therefore, do not fall within the category of inputs used in or in relation to the manufacture of the final products in view of the exclusive provision under Rule 57A ibid. The credit of Rs.1,59,931, therefore, required to be expunged or recovered, but the department allowed the assessee to utilise it for payment of duty on the finished goods cleared for home consumption.

The irregularity was pointed out to the department in August 1988 and to the Ministry of Finance in June 1989.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

e) A manufacturer engaged in the manufacture of parts and accessories of lmotor vehicles falling under different chapters of the schedule to the Central Excise Tariff Act 1985, was allowed credit of Rs.1,01,000 towards duty paid on inputs namely, nitrogen gas, hydrogen gas and name plates during the period from March 1986 to June 1988. In the process of manufacture, the input namely nitrogen gas was fed alongwith methanol into the hot furance, where at an elevated temperature, the dissociated methanol alongwith hydrogen gas created required furnace atmosphere for heat treatment of the inputs in the furnace. Likewise hydrogen gas was used for removing internal and external burrs of work pieces. Further, the name plates indicating the batch number, code number and name of the factory were being affixed to the finished products of the assessee. As such the said inputs namely nitrogen and hydrogen gases were being used only as an aid and the name plates were not used in or in relation to the manufacture of finished products. In terms of notification dated 1 March 1986 and the exclusive provision under Rule 57A, the said inputs do not fall under the category of inputs used in or in relation to the manufacture of the final products. The credit of duty of Rs.1,01,000 was, therefore, required to be expunged or recovered, but the department allowed the assessee to utilise it for payment of duty due on the finished goods cleared for home consumption.

This irregularity was pointed out to the department in August 1988 and to the Ministry of Finance in June 1989.

The Ministry of Finance have stated (November 1989) that the matter is under exami nation.

iii) Molybdenum wire

Two assessees in a collectorate who were availing the facility of Modvat credit, had declared molybdenum wire as one of the inputs under Rule 57G of the Central Excise Rules, 1944. They were bringing molybdenum wire for use in the manufacture of the final product namely 'tungsten filaments' (chapter 85). During the manufacturing process tungsten wire was wound in the form of coils around molybdenum wire and then cut into pieces. Subsequently, those cut pieces were treated in acid medium in which the molybdenum wire got dissolved leaving only the tungsten filament. The molybdenum wire was thus used as an aid in the manufacture of the final product and as such the credit availed on it was incorrect. The total amount of credit availed by the assesssee during the period from April 1986 to December 1988 worked out to Rs.41.70 lakhs approximately.

On the irregularity being pointed out (January 1989) in audit, the department did not admit the objections and contended (March, April and May 1989) that the molybdenum wire was being used in relation to the manufacture of tungsten filament as the wire was a consumable item and its use as an input was within the scope of Rule 57A. This contention is not acceptable because (i) the wire was used only as an aid for the manufacture of the aforesaid final product and (ii) the Ministry of Finance in a case relating to one of the assessees had earlier confirmed the audit objection that the proforma credit allowed on the molybdenum wire under Rule 56A was irregular vide para 2.63(ii) of Audit Report (Indirect Taxes) for the year 1985-86.

The matter was reported to the Ministry of Finance in August 1989. They have stated (October 1989) that the matter is under examina-

tion in consultation with the Law Ministry.

iv) Cutting dies

The Central Board of Excise and Customs clarified in 1981 that "cutting dies" as used by footwear manufacturers were meant for handling manually and they were neither "industrial knives" nor tools designed to be fitted into any other tools. The CEGAT in their order dated 20 July 1987 {1987 ELT 89} also confirmed the views of the Board. Consequently, the benefit of duty free clearance as admissible under a notification dated 10 February 1986 in respect of certain products in the nature of tools designed to be fitted into any other tools etc., is not applicable in the case of "cutting dies" used by footwear manufacturers.

A footwear manufacturer, inter alia, manufactured "cutting dies" for captive utilisation in the manufacture of parts of footwears and cleared the same under sub heading 8208.80 free of duty applying the notification dated 10 February 1986. Incorrect grant of exemption resulted in non levy of duty of Rs.4.44 lakhs during August 1986 to February 1989.

On the irregularity being pointed out (March 1989) in audit, the department stated (March 1989) that action was being initiated in regard to past cases and also to disallow the exemption during subsequent period. The department further stated that the assessments were provisional.

The fact, however, remains that Rule 9B of the Central Excise Rules, 1944 dealing with provisional assessments does not cover cases of underassessment of duty by incorrect grant of exemption. Further reply of the department has not been received.

The Ministry of Finance have admitted the objection (October 1989).

v) Refractory material

An assessee engaged in the manufacture of glazed tiles classifiable under sub heading 6906.10 also manufactured refractory materials classifiable under sub heading 6901.00 for which he claimed exemption from duty, as inputs used in further manufacture of final products in terms of a notification dated 2 April 1986. Refractory material such as settors and bats are used for biscuit firing, for loading of green tiles and bases and pillars are used for gloss firing as holders for glazed coated tiles. The use of these materials being that of appliances in the manufacture of glazed tiles, they are not inputs as per explanation (i) of the notification ibid and, thus, are not eligible for exemption under the above said notification. The incorrect grant of exemption resulted in short levy of duty of Rs.4.22 lakhs on the clearances effected during the period from March to December 1987.

On this being pointed out (July 1988) in audit, the department accepted the objection and stated (June 1989) that show cause notice for the above period is being issued.

The Ministry of Finance have accepted the underassessment (October 1989).

vi) Packing material

The said rule also provides that input includes packing materials but does not include any packing material in respect of which any exemption to the extent of excise duty payable on the value of the packing material is being availed of for packing any final product.

An assessee manufacturing trichloroethylene (sub heading 2901.90) manufactured metal containers also for packing the final product and availed duty exemption for the containers with reference to a notification issued on 2 April 1986 as amended. It was pointed out in audit (December 1986) that as the cost of metal containers had not been included in the assessable value of the final product during the previous financial year (1985-86) the assessee was not eligible to avail the benefit of the said notification, in terms of sub item (iii) of the explanation below that notification. Accordingly, an amount of Rs.3,92,916 being the duty on the cost of metal containers captively used during the period from September 1986 to March 1987 was remitted by the assessee.

It was, however, noticed in subsequent audit (February 1988) that the assessee took duty paid on metal containers as credit in the proforma account prescribed under the Modvat rules. The availment of the credit was also not in order in terms of sub item (iii) of sub para of explanation below Rule 57A which is identical to the condition laid down in sub item (iii) of the explanation below the notification dated 2 April 1986.

On this being pointed out (March 1988) in audit, the department accepted the objection and reported (October 1988/January 1989) issue of a show cause notice for Rs.7,44,884 covering

the period from March 1986 to March 1987.

The Ministry of Finance have stated (November 1989) that demand of Rs.7,44,844 was dropped inadjudication by the Assistant Collector on 7 March 1989. They added that the order has since been reviewed and the Assistant Collector has been directed to file appeal against the order.

vii) Equipment and appliances

A manufacturer of explosives (heading 36.02) availed of credit of duty paid on job charges for getting old and used rhodium / platinum catalyst to gauges repaired / remade / refabricated and used them for screening purposes. As the rhodium / platinum catalyst gauges were equipment / appliances used for screening purposes and not used directly in or in relation to the manufacture of explosives, credit of Rs.2,78,183 allowed during the period from December 1987 to September 1988 was irregular.

The Ministry of Finance have stated (November 1989) that the credit of duty paid is admissible in view of the Board's circular dated 29 June 1989 wherein it has been decided to allowed credit of duty paid on catalysts actually used in the manufacturing process.

The Ministry's reliance on the Board's aforesaid decision is not relevant because the input goods were repeatedly used as appliances/ equipments and when they worn out or became unusable, the assessee got them repaired/remade/refabricated.

viii) Nickel catalyst

A manufacturer of vegetable products was allowed to avail of Modvat credit on 'nickel catalyst' (sub heading 3815.00) and to utilise it towards payment of duty on vegetable products in the manufacture of which 'nickel catalyst' was used. As catalyst simply accelerates or retards a chemical reaction without participating therein and is used repeatedly without being consumed in any way in production of the final product it cannot be identified as an 'input' for the final product. Modvat credit was, therefore, not allowable on 'nickel catalyst' and accordingly, there was irregular availment of credit of Rs.1.14 lakhs during the period from April 1987 to October 1988.

On the irregularity being pointed out (November 1988) in audit, the department did not admit the objection and stated (March 1989) that 'nickel catalyst' was eligible for Modvat credit as an input used in relation to the manufacture of vegetable product, because it plays an important role in its manufacture. The department also stated that a show cause-cum demand notice was going to be issued shortly.

The contention of the department is not acceptable on the following grounds:

An input will be regarded as an input for a finished product only if in the process of manufacture it gets consumed thereby becoming part and parcel of that final product. By the same logic items like machine, machinery, plant, equipment, apparatus, tools or appliances though used for producing or processing of any goods or for bringing about any change in any substance in or in relation to the manufacture of the final products have explicitly been excluded from the list of 'inputs'. The Board have, by issuing a clarification in June 1987, disqualified "titanium coated mild steel electrodes and cutting oil" as "inputs" for the manufacture of iron and steel products.

'Nickel catalyst' not being a consumable item and being suitable for repeated use can not be recognised as an 'input' under Rule 57A.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

3.57 Irregular availment of Modvat credit due to procedural irregularities

i) Irregular availment of Modvat credit without filing declaration or before filing declaration

Rule 57G read with Rule 57H of the Central Excise Rules, 1944, provides that a manufacturer intending to avail the input relief under Rule 57A should file a declaration indicating the description of the inputs intended to be used in the manufacture of the final product and take credit of the duty paid on the inputs received by him after obtaining dated acknowledgement for such declaration. He could also take credit of duty paid on the inputs received by him before filing a declaration if such inputs were either lying in stock on 1 March 1986 or were received in the factory between 1 March 1986 and 31 March 1986.

a) A manufacturer of shock absorbers availed Modvat credit of Rs.31,84,519 during

March 1986 to March 1988 without filing a declaration on the plea that declaration filed by another unit of the same concern was also applicable to this unit. This plea of the assessee was not correct as he had a separate central excise licence and was working in separate premises and hence was required to file a separate declaration.

The irregularity was pointed out to the department in November 1988 and to the Ministry of Finance in August 1989.

The Ministry of Finance did not admit (November 1989) the objection on the grounds that the assessee had another section having a separate licence and that same licence number was shown in the declaration filed on 26 August 1986. They added that although the assesse did not mention the address of that unit on the declaration, but had availed credit in respect of that unit from 30 August 1986 i.e.,4 days after filing the declaration.

The Ministry's reply is not in accordance with the provisions of the Modvat rules.

b) A public sector undertaking submitted a declaration on 11 September 1987 for availing Modvat credit on the input "cryolite" used in the manufacture of aluminium ingots and availed credit on 30 September 1987 amounting to Rs.18.03 lakhs on the inputs received during 4 August to 9 September 1987. The assessee was not entitled to avail credit on "cryolite" received prior to the date of declaration as per the amended provisions of Rule 57H(I)(i) of the Central Excise Rules, 1944.

On the irregularity being pointed out (July 1988) in audit, the department stated (June 1989) that the assessee had debited back the entire amount in May 1989. It, however, contended that the assessee was entitled to transitional credit on such inputs and an application from him was pending with the department for grant of permission. The reply of the department is not acceptable because with the amendment of Rule 57H(I) from 15 April 1987, the department is not empowered to allow credit of the duty paid on inputs received before filing declaration.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

c) As per Ministry's letter dated 20 April 1987, the manufacturer who maintains the accounts of credits chapterwise is required to submit a monthly statement alongwith RT 12 returns indicating separately for each final products, the details of input duty credit availed of to ensure that there is no misuse of Modvat credit.

A manufacturer of television sets and video cassette recorders classifiable under sub heading 8528.00 and 8525.00 respectively was availing the facility of Modvat scheme after filing declarations on 31 March 1986 and 9 August 1986 for the final product television sets. The department allowed the assessee to utilise the credits of duty paid on inputs not only towards payment of duty on the final products television sets but also on parts of television sets such as remote control, cables and transformers manufactured and cleared for home consumption. The assessee, however, declared the aforesaid parts of television sets as final products only on 26 September 1988. Likewise a portion of the Modvat credits taken on the inputs used in the manufacture of video cassette recorders for which the assessee filed declaration under Rule 57G ibid on 11 May 1987, was allowed to be utilised towards the payment of duty due on television sets.

The utilisation of Modvat credits towards payment of duty either on undeclared final products or on the final products in which declared inputs were not used was, therefore, not in order. This resulted in irregular utilisation of credits of Rs.8,40,795 during the period from March to September 1986 which required to be expunged or recovered.

The irregularity was brought to the notice of the department in October 1988 and to the Ministry of Finance in June 1989.

The Ministry of Finance have admitted the objection (August 1989).

d) An assessee engaged in the manufacture of engineering goods falling under chapters 82, 84 and 88 availed of Modvat credit of duty amounting to Rs.2,72,518 (Rs.1,03,612 on 11 April 1988 and Rs.1,68,906 on 31 May 1988) paid on inputs viz, nickel alloy sheets, alloy monel hardware sheets, bolts, nuts and pipes falling under chapter 75 and even though the declarations in respect of such inputs were filed by the assessee only on 27 July 1988 and on 1 August 1988. This resulted in incorrect availment of Modvat credit of Rs.2,72,518.

On the irregularity being pointed out (November 1988) in audit, the department stated

(December 1988) that the assessee had debited the amount of Rs.2,72,518 in his RG 23A Account on 1 December 1988 under protest.

The Ministry of Finance did not admit the objection and stated (August 1989) that prior to 1 March 1988 there was only one sub heading under chapter 75 with the description 'nickel (including wastes and scraps)' and articles thereof and since the assessee declared (27 March 1986) the inputs as nickel and articles thereof the credit cannot be denied just becuase the assesee failed to revise the headings and sub headings after 1 March 1988.

The Ministry's reply is not acceptable as the assessee added the inputs in his declaration vide his applications dated 27 July and 1 August 1988 and not on 1 March 1988. Modvat credit on such inputs was, therefore, permissible only from the dates of those applications and not from 1 March 1988.

e) A manufacturer of tyres and tubes falling under chapter 40 and availing Modvat credit facility, filed a revised declaration on 25 August 1986 adding "rubber chemical retarder" and "dipped fibre glass tyre cord fabric" as new inputs. He also availed of credit amounting to Rs.1,32,784 in respct of these two inputs received prior to the date of filing the revised declaration.

On the irregularity being pointed out (December 1987) in audit, the department intimated (September 1988) that a show cause-cum demand notice would be issued to the unit shortly. Particulars thereof have not been received (April 1989).

The Ministry of Finance have stated (November 1989) that the matter is under examination.

ii) Irregular availment of Modvat credit on undeclared goods

Under Rule 57G of the Central Excise Rules, 1944, every manufacturer intending to take credit of the duty paid on inputs under Rule 57A shall file a declaration with the proper officer of the Central Excise department indicating the description of the final products manufactured in his factory and the inputs intended to be used in each of the said final products and obtain a dated acknowledgement of the said declaration.

a) A manufacturer did not declare cold/ rolled strips and scrap as final products in the declaration filed by him on 23 November 1987. He, however, utilised the credit of duty on the inputs for payment of the duty on the said final products. As these products were not declared as final products the utilisation of the credit was irregular. The irregular utilisation of credits amounted to Rs.29,21,986 for the period from 23 November 1987 to 31 August 1988.

On this being pointed out (December 1988) in audit, the department accepted the objection and stated (June 1989) that a show cause-cum demand notice under the proviso to Section 11A of the Act, would be issued and further progress intimated to Audit.

The Ministry of Finance have admitted the objection (October 1989).

b) A manufacturer of aluminium conductors (heading 76.12) did not declare aluminium ingots (heading 76.01) as inputs for the manufacture of final products in the declaration filed by him on 16 September 1986. He, however, brought aluminium ingots (inputs) and took Modvat credit on the inputs. Since aluminium ingot was not declared as input, Modvat credit was not admissible. The irregular credit thus availed of on the undeclared input amounted to Rs.4,93,837 for the period from December 1986 to January 1988.

On this being pointed out (June 1988) in audit, the department accepted the objection and informed (June 1989) that a show cause notice would be issued. Further report has not been received (July 1989).

The Ministry of Finance have accepted the underassessment been (October 1989).

c) A public sector undertaking engaged in the manufacture of telephone instruments, telecommunication switching equipments, testing equipments etc., opted for Modvat Scheme (Rules 57A to 57I) and took credits of duty paid on inputs namely, nickel chloride, nickel sulphate, stannus sulphate (chapter 28), standard telephone testing set with accessories (chapter 85) and 3 watt generators (heading 85.01). Since the aforesaid inputs were not declared in the declaration filed under Rule 57G, the credit of duty paid on these inputs was not admissible. The department, however,allowed the assessee to avail the credits on these inputs. This resulted in grant of irregular credits of Rs.3,87,676 during the period from March 1986 to July 1988.

On the irregularity being pointed out (November 1988) in audit, the department stated (March 1989) that a credit of Rs.62,932 relating to the input, namely, 'standard telephone testing set' was expunged in February 1989. As regards the credits taken on the remaining items of the inputs the department contended that the availment of credit thereon was in order as the assessee had declared chemicals falling under the headings 28.33 and 28.27 as inputs for plating final products, and generators falling under heading 85.11 as inputs for use in the telecommunication equipments. The department also stated that the 3 watt generators used by the assessee in his final products was declared as falling under the heading 85.11 though the original manufacturer had classified them under heading 85.01.

The contention of the department is not acceptable in audit because :-

i) as per Rule 57G, the manufacturer should file a declaration indicating full description of the inputs to be used. Mere mention of the inputs as chemicals under headings 28.33 and 28.27 would not be sufficient. The need for insisting on full description of input goods has also been reiterated by the Central Board of Excise and Customs in its letter dated 9 February 1988; and

ii) the assessee declared generators (heading 85.11) as inputs whereas the original manufacturer had classified them under heading 85.01. As such the inputs received by assessee can be considered to be classifiable only under sub heading 85.01 until the misclassification is rectified.

The Ministry of Finance have stated (September 1989) that irregular Modvat credit of Rs.1,22,394 on standard telephone tests and accessories and also on undeclared chemicals has been recovered. They added that the assessee had also given an undertaking for keeping sufficient balance in RG23A part II to cover the credit amounts taken in regard to 3 watt generator till their classification dispute is settled.

d) A manufacturer of industrial electric furnaces and ovens (sub heading 8514.00) took credit of Rs.1,19,715 during the period from November 1987 to November 1988 on account of duty paid on inputs, namely electric process control instruments (sub heading 9032.80), heating elements wire (sub headings 7229.30, 7506.20), super heat strips and wire (sub headings 7506.20 and 7505.22), which were not declared as inputs in the declaration filed with the jurisdictional Divisional Officer on 14 August 1987. However, these items were included as inputs only in a declaration filed by the manufacturer on 26 December 1988.

The irregularity was pointed out to the department in January 1989 and to the Ministry of Finance in August 1989.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

iii) Input goods cleared as such

As per Rule 57F of the Central Excise Rules, 1944, inputs in respect of which credit of duty has been allowed may, subject to obtaining prior permission of the Collector, be removed from the factory on payment of excise duty.

A manufacturer of aluminium conductors (sub heading 7612.00) took credit of duty on aluminium wire rods and steel wire core and was allowed to remove the inputs to two units without obtaining the requisite permission and without payment of duty. This resulted in short payment of duty of Rs.3,75,198 during the period from March 1986 to April 1988.

On the irregularity being pointed out (April 1988) in audit, the department admitted the objection and stated (January 1989) that a demand had been raised for the amount on 2 November 1988. Further progress of the case has not been intimated (March 1989).

The Ministry of Finance have admitted the objection (August 1989).

3.58 Incorrect availment of deemed credit

As per order dated 7 April 1986, Government directed that inputs of specified ferrous and non-ferrous metals including waste and scrap of iron (sub heading 7203.10) and waste and scrap of steel (sub heading 7203.20) purchased from outside and lying in stock on or after 1 March 1986, with the manufacturers of the final products may be deemed to have paid duty and credit allowed at the specified rates, without production of documents evidencing payment of duty. The aforementioned order, however, expressly provided that no credit shall be allowed if such inputs are clearly recognisable as non duty paid or charged to nil rate of duty.

The facility of allowing 'deemed credit' in respect of wastes and scraps of iron as well as wastes and scraps of steel was withdrawn under

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

Seven assessees in five collectorates were allowed to take credits, without production of duty paying documents, in respect of specified articles of iron and steel. As the goods were clearly recognisable as non duty paid, the avialment of credits of Rs.30.81 lakhs during the period from March 1986 to April 1988 was irregular.

On the irregular availment of the credits being pointed out (between December 1987 and February 1989) in audit, the department admitted the objections in respect of four assessees. In two cases, however, the department did not admit the objections and stated (January and March 1989) that the credits were allowed because the inputs, viz, waste and scrap of iron and steel were entitled to deemed credit between 1 March 1986 and 28 August 1986. It added that application of the aforesaid withdrawal order dated 29 August 1986 retrospectively was not justified and without any basis. The contention of the department is not correct because even prior to issue of the said withdrawal order dated 29 August 1986 the inputs were clearly recognisable as non duty paid and did not, therefore, fulfil the express condition for grant of deemed credits under the notification dated 7 April 1986. In the seventh case, the reply of the department was not received (November 1989).

The Ministry of Finance have accepted the objections in two cases. In the third case, the Ministry stated (June 1989) that the case was detected by the Range officer and the party was suitably addressed on 27 October 1987 before Audit visited the unit. Subsequent verification by Audit, however, revealed that the letter dated 27 October 1987 was a mere inter range reference seeking verification of the dutiability of certain inputs and was not addressed to the assessee. The assessment for May 1987 disallowing Modvat credit was in fact, made on 25 January 1988 after the irregular availment of the credit was pointed out by Audit on 15 December 1987. In the remaining four cases the Ministry have stated (November 1989) that the matter is under examination.

3.59 Irregular availment of Modvat credit on goods not used in the declared final products

As per Rule 57A of Central Excise Rules, 1944, credit of duty paid on specified inputs is allowed if such inputs are used in or in relation to the manufacture of specified final products and the same may be utilised towards the payment of duty of excise leviable thereon on the final product.

Rule 57F further provides that if any input in respect of which credit under Rule 57A was taken, is not used as such in or in relation to the manufacture of final product, the credit so availed on such inputs shall be reversed.

i) An assessee took Modvat credit of duty paid on batteries, purchased from outside and utilised the said credit towards payment of duty on 'forklift trucks (chapter 84). Such batteries were cleared by the assessee simultaneously with the said finished product as accessory for operating the same and not used as inputs in or in relation to the manufacture of the finished product (forklift trucks). On the same issue in respect of the same assessee for the period prior to 1 March 1986 the CEGAT held {1986 (25)ELT 556 (Tribunal)} that the cost of battery not being the component part would not form part of assessable value of forklift truck. The Modvat credit of duty paid on battery was, therefore, not admissible and resulted in irregular utilisation of Modvat credit of Rs.10.28 lakhs during 1 October 1986 to 31 December 1987.

On the irregularity being pointed out (February 1988) in audit, the department intimated (August 1988) that a show cause-cum demand notice for Rs.10.28 lakhs for the period from 1 October 1986 to 31 December 1987 has been raised and the case is under adjudication.

The Ministry of Finance have admitted the objection (August 1989).

ii) A manufacturer of iron and steel products availed credits in respect of inputs which were not used in or in relation to the manufacture of final products, and also on items used for repair and maintenance of machinery and equipment. Between April 1986 and October 1987, the manufacturer availed credits amounting to Rs.7,45,286 on such items, which were not admis-

sible.

On this being pointed out (December 1987) in audit, the department accepted the objection and stated (July 1988) that show cause notices for Rs.7,49,938 were issued in December 1987 and March 1988. Outcome of the show cause Notices has not been intimated (February 1989).

The Ministry of Finance have accepted the underassessment (August 1989).

iii) A manufacturer of television (T.V.) sets (sub heading 8528.00) was availing facility of Modvat scheme and declared colour T.V.picture tubes as one of the inputs intended to be used in the manufacture of declared final product namely T.V.sets under Rule 57G ibid.

Some of the colour T.V. picture tubes procured by the assessee were damaged or otherwise rendered unfit for use and wasted during the course of manufacture and were removed from the raw material account. As the T.V. picture tubes which were waste or defective cannot be regarded as having been used in the manufacture of T.V.sets, credit of duty of Rs.2,44,200 availed of on 407 wasted colour T.V. picture tubes during the period from March 1987 to September 1988 was required to be expunged or recovered but the department failed to do so.

On the omission being pointed out (October 1988) in audit, the department intimated (April 1989) that the colour picture tubes shown in Form IV as wasted and destroyed have been taken back on stock for further manufacturing, and added that Rs.45,600, being the credit of duty on 76 unusable colour picture tubes has been debited in RG 23A Part II on 23 March 1989.

A subsequent verification of records of the assessee revealed (May 1989) that in all 439 tubes which had been declared by the assessee as waste and defective, were taken back on stock account upto March 1989. The rectificatory action taken at the instance of Audit resulted in safeguarding Government revenue to the extent of Rs.11,26,638.

The Ministry of Finance have confirmed the facts as substantially correct (August 1989).

iv) A manufacturer of copper and articles thereof declared zinc as input for the manufacture of brass sheets and circles but utilised the credit of duty taken on zinc towards payment of duty on copper cathodes. This resulted in irregular utilisation of credit of Rs.6,84,854 during the period from July 1986 to August 1988.

On the irregularity being pointed out (August 1988) in audit, the department accepted the objection on the irregular utilisation of credit on zinc and reported (April 1989) recovery of the irregular credit of Rs.6,84,854.

The Ministry of Finance have accepted the under assessment (November 1989).

v) Rule 57G (3)(a) enjoins upon the manufacturer, intending to take credit of the duty paid on inputs under Rule 57A, to maintain an account of inputs to be consumed in the manufacture of the final product in form RG 23A Part I and II. Rule 57G(4) further requires the manufacturer of final product to submit a monthly return indicating the particulars of the inputs received during the month and the amount of duty taken as credit, alongwith extracts of part I and II of form RG 23A.

Two manufacturers irregularly took credit of duty of Rs.2,45,464 on the inputs (raw materials) which were not accounted for in RG 23A Part I during April 1986 to July 1988.

On this being pointed out (between September 1987 and May 1989) in audit, the department in one case recovered (August 1988) duty of Rs.73,537 by debit to RG 23A Part II in respect of the credit taken during 1987-88 and stated (May 1989) that for the year 1986-87, the assessee had prepared the RG 23A Part I and accounted for the input received and as such duty of Rs.1,04,402 was not recoverable. The contention of the department is not acceptable as no action had been taken against the assessee for contravention of the provision of Rule 57G(3) and (4). Reply in the second case involving duty of Rs.67,525 has not been received (June 1989).

The Ministry of Finance have stated (November 1989) that the matter is under examination.

3.60 Irregular availment of Modvat credit on inputs used in exempted output goods

As per Rule 57C of the Central Excise Rules, 1944, no credit of the duty paid on the inputs used in the manufacture of a final product shall be allowed if the final product is exempt from duty leviable thereon or is chargeable to nil

rate of duty.

i) Pharmaceutical products

a) A manufacturer of pharmaceutical products (chapter 30) availed of credit of the specified duty of Rs.4,70,856 paid between June 1986 to March 1988 on inputs under the Modvat scheme, which was not admissible since the final product, in which those inputs were used, was exempt from levy of duty.

On the omission being pointed out (August 1988) in audit, the assessee debited (August 1988) Rs.4,70,856 in RG-23A Part II. Subsequent credit of Rs.7,87,881 irregularly availed of from April to July 1988 was also reversed in RG-23A Part II in September 1988.

The Ministry of Finance have accepted the underassessment (August 1989).

b) A manufacturer A produced 'ibuprofen' (B.P.), a bulk drug falling under chapter 29, which was exempt from duty in terms of a notification dated 3 April 1986. The assessee, however paid duty and availed Modvat credits of Rs.3,61,391 on account of duty paid on the inputs used in the production of the said bulk drug.

As a result, the subsequent manufacturer B of medicaments, who purchased 'ibuprofen' from manufacturer A was able to avail, credit of duty paid on ibuprofen, which included the element of duty paid on the inputs going into the manufacture of the said drug. By paying duty on ibuprofen, the manufacturer A circumvented the restriction placed in Rule 57C which lays down that no credit shall be allowed in respect of inputs used in the manufacture of exempted outputs.

On the irregularity being pointed out (December 1987) in audit, the department stated (June 1988) that the Modvat benefit was availed by the assessee as per Board's instructions of 15 February 1988 which enabled the assessee either to avail full exemption available or to pay duty on the goods manufactured and avail Modvat credit inspite of the fact that the goods are fully exempt.

The reply of the department is not acceptable as the instructions of the Board dated 15 February 1988 are contrary to the provisions of Rule 57C. The Board's file leading to the issue of its aforesaid order of 15 February 1988 was called for on 9 March 1989; it has not been received (July 1989).

The Ministry of Finance have stated (November 1989) that the issue is under examination in the Board.

ii) Tissue paper

A manufacturer took Modvat credit on tissue paper brought into the factory for the manufacture of waxed paper (sub heading 4811.40) which was used as packaging material for packing the final products (stainless steel blades) manufactured by him. As the waxed paper was exempt from the whole of duty under the notification issued on 28 February 1982 and 1 March 1987, allowing of Modvat credit on tissue paper was irregular. The irregular credit availed of during the period from 1 March 1986 to 31 August 1988 amounted to Rs.3,27,237.

On this being pointed out (September 1988) in audit, the department confirmed the facts and stated (May 1989) that a show cause notice was issued to the assessee and after adjudication duty of Rs.14,303 for the period from May to November 1988 was demanded; duty for the earlier period could not be demanded as it was time barred.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

iii) PVC resins

The Central Board of Excise and Customs in a letter dated 7 January 1987 clarified that an assessee producing both dutiable and exempted final products may be allowed to take credit on all inputs used in the manufacture of final products provided that credit of duty paid on the inputs used in the exempted products is debited in the RG 23A account before the removal of such exempted goods.

An assessee producing both dutiable and exempted electric batteries availed himself of credit of duty paid on PVC resin. The input was used for the manufacture of PVC separators a part of which was used in the exempted stationary batteries. Moreover PVC separators were also cleared at nil rate of duty under Chapter X procedure. The credit of duty paid on PVC resin used in such exempted products was not withdrawn from March 1986 onwards before the removal of exempted goods as required under the aforesaid Board's letter dated 7 January 1987. The irregularity escaped the notice of the department resulting in irregular availment of credit of

Rs.2.86 lakhs (approximately) during the period from March 1986 to December 1987.

On this being pointed out (June 1988) in audit, the department stated (January 1989) that an amount of Rs.2.84 lakhs was surrendered by the assessee by debiting the RG 23A account in July, August and November 1988.

The Ministry of Finance have accepted the underassessment (November 1989).

3.61 Irregular grant of Modvat credit in excess of prescribed limit

i) Printed paper board cartons

As per a notification dated 1 March 1986 issued under Rule 57A and amended on 20 May 1987, the grant of credit of duty paid on paper and paper board has been restricted to Rs.800 per tonne or the actual amount of duty paid, whichever is less.

A manufacturer of 'flash-lights' (heading 85.13) used printed paper board cartons (heading 48.18) for packing and was allowed to avail credit in excess of the limits prescribed above.

On this being pointed out in audit (March 1988), the department recovered Rs.9.57 lakhs from the manufacturer in February/March 1989 being the excess credit allowed during May 1987 to December 1988.

The Ministry of Finance did not admit the objection and stated (October 1989) that the restriction of Modvat credit to Rs.800 per tonne is only in respect of Paper and Paper board falling under chapter 48 and not on articles of paper and paper board. They added that paper cartons being articles of paper and paper board are not covered by the restriction and full credit of duty paid on cartons was available.

The Ministry's reply is not acceptable as the notification dated 1 March 1986 as amended on 29 May 1987 restricted the Modvat credit to Rs.800 per tonne on all paper and paper board falling under chapter 48 other than those falling under sub headings 48.03, 48.06, 48.09, 48.10 and 48.40. As such the said notification does not specifically exclude the cartons (heading 48.19) from the restriction clause and, therefore, credit has to be restricted to Rs.800 per tonne.

ii) Four units engaged in the manufacture of transformers (Chapter 85), used paper and paper board (chapter 48) as input and took credit of duty paid thereon at full rate instead of Rs.800 per tonne and utilised the same towards payment of duty on final product under Modvat Scheme. This resulted in short levy of duty amounting to Rs.4,30,167 during the periods ranging from June 1987 to July 1988.

On the irregularity being pointed out (between September and December 1988) in audit, the department intimated (between February and April 1989) that in one case Rs.59,351 (upto October 1988) as against Rs.38,620 pointed out upto March 1988 and in another case Rs.2,45,243 had been debited in R.G.23A. In yet another case an amount of Rs.29,791 (upto March 1988) had been debited by the assessee.

Realisation of excess credit of Rs.1,08,834 relating to the remaining case has not been intimated (April 1989).

The Ministry of Finance have accepted the underassessment (August 1989).

3.62 Misutilisation of Modvat credit

i) As per Rule 57G of Central Excise Rules, 1944, a manufacturer intending to avail input relief under Rule 57A should file a declaration indicating the description of the final products manufactured in his factory and the inputs intended to be used in the manufacture thereof and take credit of excise duty or additional duty of customs paid on the declared inputs received by him after filing the said declaration. The credit can be utilised towards payment of duty on the final products.

The Central Board of Excise and Customs also issued instructions in September 1988 that in cases where classification of the inputs declared by the assessee under Rule 57G does not tally due to incorrect classification of inputs done by the department of orginating manufcturer, credit can be taken in RG 23A but should not be utilised for payment of duty till the correct classification of inputs is made by the department of originating manufacturer.

A manufacturer of flexible polyurethane foam falling under Chapter 39, declared in the requisite declaration toluene disocyanate falling under Chapter 29 as one of the inputs (mostly imported) on which additional duty of customs was leviable at the rate of 15 per cent ad valorem. It was noticed (July 1988) in audit that the assessee had taken and utilised credit of additional duty

paid on toluene di-isocyanate classifiable under Chapter 39. This resulted in irregular taking and utilisation of credit amounting to Rs.7,64,415 during the period from December 1987 to April 1988.

On this being pointed out (September 1988) in audit, the department intimated (November 1988) that the matter regarding levy of additional duty of customs on toluene diisocyanate under Chapter 39 was under appeal filed by the assesse. However, since credit of duty paid under Chapter 39 instead of under Chapter 29 as declared, was legally not admissible to the assesse, a show cause notice for recovery of Rs.7,64,415 on account of credit irregularly taken and utilised was issued (October 1988). Department subsequently intimated (May 1989) that the assessee had correctly taken credit of duty actually paid as the input was the same as declared but for the change of classification during assessment. The department added that the party has given an undertaking to refund the credit if duty levied on inputs in excess was refunded to him. The reply is not acceptable in view of Board's aforesaid instructions of September 1988.

The Ministry of Finance have repeated (November 1989) the reply already given by the department, which is not acceptable for the reasons stated above.

ii) As per clause (2) of the proviso to notification dated 1 March 1986 issued under Rule 57A of the Central Excise Rules, 1944, the credit of specified duty allowed in respect of inputs could be utilised towards payment of duty of excise leviable under the Central Excises and Salt Act, 1944 on the final products.

A unit manufacturing coated cotton fabrics chargeable to duty under sub heading 5903.19, took credit of basic excise duty paid on inputs but credit amounting to Rs.4,58,872 was utilised towards payment of additional duty of excise leviable on the final product under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 during the year 1987-88. This resulted in misutilisation of the credit of Rs.4,58,872 towards payment of additional excise duty and consequential short payment of such duty in cash.

On the irregularity being pointed out (April 1988) in audit, the department intimated (March 1989) that the entire amount was deposited by the assessee in December 1988.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

3.63 Irregular availment of credit on Railway wagons

"Railway or tramway goods vans and wagons" are classifiable under heading 86.06 of the schedule to the Central Excise Tariff Act, 1985, and chargeable to duty at the rate of 15 per cent ad valorem. Under a notification issued on 20 November 1986, certain specific types of railway wagons classifiable under heading 86.06 are chargeable to specific rate of duty provided no credit on inputs used in the manufacture of such wagons was availed of under Rule 56A or 57A of Central Excise Rules, 1944. This implies that the credit corresponding to final products cleared on payment of specific rate of duty, should be expunged.

A manufacturer of railway wagons (heading 86.06) cleared the goods on payment of duty of Rs.10,06,500 in april 1987 by debiting RG 23A account at the specific rate in terms of aforesaid notification dated 20 November 1986. But subsequently the assessee, rectified the mistake by debiting an equivalent amount in the Personal Ledger Account in August 1987. He, however, simultaneously reversed the entry in the RG 23A account by affording credit entry and the amount of credit was utilised towards the payment of duty on other products. The taking and utilising the aforesaid Modvat credit of Rs.10,06,500 was irregular.

The irregularity was pointed out to the department in December 1988 and to the Ministry of Finance August 1989.

The Ministry of Finance have admitted the objection (November 1989).

3.64 Other irregularities

i) Irregular availment of credit under transitory provisions

As per Rule 57G of Central Excise Rules, 1944, a manufacturer intending to avail input relief under Rule 57A should file a declaration indicating the description of the inputs intended to be used in the manufacture of the final product and take credit of the duty paid on inputs received by him after obtaining the acknowledgement of the declaration. However under Rule 57H(1) credit of duty paid on inputs received by a manu-

facturer before filing of the declaration could be allowed, if such inputs were lying in stock or were received in the factory on or after 1 March 1986, or such inputs were used in the manufacture of final products which were cleared from the factory on or after 1 March 1986 and that no credit had been taken by the manufacturer in respect of such inputs under any other rule or notification.

A manufacturer of tyres and tubes who had been availing of the benefit of credit on specified inputs since March 1986 was allowed a credit of Rs.6,67,062 in August 1986 in respect of countervailing duty paid in April 1986 on synthetic rubber (a specified input) imported in October 1984 under an advance licence on an obligation to export entire quantity of tyres/ tubes manufactured therefrom as part of the obligation was not fulfilled. As the manufacturer could not show that either the inputs or the finished products manufactured therefrom for which credit was allowed were lying in stock as on 1 March 1986, the credit allowed was irregular. The entire credit was utilised towards payment of duty on tyres and tubes in August 1986 resulting in short levy of duty of Rs.6,67,062.

The irregularity was brought to the notice of the department in February 1987 and of the Ministry of Finance in September 1987 and again in March 1989.

The Ministry of Finance have admitted the objection (October 1989).

ii) Misuse of Modvat credit scheme through small scale units

As per Ssection 2(f) of the Central Excises and Salt Act, 1944, the term manufacturer is defined to include not only any person who employs or hires labour in the production or manufacture of excisable goods but also any person who engages in the production or manufacture of excisable goods on his own account. In the case of M/S.Shree Agencies Vs. S.K.Bhattacharjee {1977 ELT J 168 (SC)} the Supreme Court held that where secondary manufacturers (weavers in that case) were not independent manufacturers and the primary manufacturer (a dealer of excisable goods) was in fact the manufacturer who absorbed in his books all the real profits of the weavers, the exemption available to the secondary manufacturer will not be available because the real manufacturer will be the primary manufacturer. In consultation with the Ministry of Law, the Ministry of Finance clarified on 14 May 1982 that a person who supplies raw materials and gets his goods manufactured by another non independent manufacturer on job work basis, remains the primary manufacturer. Duty on the goods produced by the job worker is to be assessed by reference to the primary manufacturer on whose behalf the goods were produced.

A primary (medium scale) manufacturer was availing Modvat credit of duty paid on gold potassium cyanide used as input in the manufacture of gold plated watch cases (sub heading 9111.00). He supplied raw materials to a small scale manufacturer, who availed small scale industries concessions under a notification of 1 March 1986, for converting them into aforesaid input on job work basis. There was no sale or purchase of raw materials/finished product between them. The conversion of raw materials into the aforesaid input was thus undertaken by the small scale manufacturer for and on behalf of the manufacturer of watch cases. Duty on gold potassium cyanide was paid by the job worker at a concessional rate whereas Modvat credit for it was taken by the primary manufacturer of watch cases at a higher rate as provided under Rule 57B of the Central Excise Rules, 1944. During the period from 29 November 1986 to 31 October 1988 the primary manufacturer had thus taken an excess credit of Rs.5,10,364 in the Modvat accounts. Since the activities of the job worker for converting raw materials into the finished product was undertaken for and on behalf of the primary manufacturer who was not eligible for the concessional rates contained in a notification dated 1 March 1986, availment of concessional rate of duty by the job worker was irregular. Thus, the excess credit of Rs.5,10,364 availed by the big manufacturer was incorrect.

On this irregularity being pointed out in audit (December 1988) the department stated (February 1989) that a show cause cum demand notice covering the period from 29 November 1986 to 31 October 1988 was being issued to the assessee. Final report has not been received (May 1989).

The Ministry of Finance have stated (November 1989) that the matter is under examination.

iii) Irregular availment of credit of basic customs duty

As per Rule 57A credit of duty of excise or the additional duty under Section 3 of the Customs Tariff Act, 1975 (i.e. countervailing duty) paid on sepcified inputs is allowed if such inputs are used in or in relation to the manufacture of

specified final products and the same may be utilised towards the payment of duty of excise leviable thereon on the final product.

A leading manufacturer engaged in the manufacture of colour television, television chassis, video cassette recorder etc. falling under chapter 85 availed of credit in respect of custom duty alongwith countervailing duty under the Modvat scheme. Since the assessee was entitled to take credit in respect of countervailing duty only, credit taken by him erroneously in respect of custom duty resulted in excess availment of credit amounting to Rs.3,05,326.

The irregularity was pointed out in audit in April 1988 and again in February 1989; the assessee repaid the amount in April 1988.

The Ministry of Finance have admitted the objection (August 1989).

iv) Availment of differential duty

As per Rule 57E of the Central Excise Rules, 1944, as substituted by notification issued on 1 March 1987, if the duty paid on inputs in respect of which credit has been allowed under Rule 57A is varied subsequently as a result of change of classification of inputs based on the insturctions issued by the Central Board of Excise & Customs, the credit allowed shall be varied accordingly by adjustment in the credit account. This rule was further amended by another notification issued on 15 April 1987, according to which if duty paid on any input is varied subsequently due to any reason, the credit shall be varied accordingly by adjustment in the credit account. It follows that the credit allowed is in respect of the period from 1 March 1987 to 14 April 1987, can be varied only in case of change of classification of the inputs on the basis of instructions issued by the Central Board of Excise & Customs.

An assessee took Modvat credits in respect of the input, namely malt extract in bulk containers (sub heading 1901.90) aggregating Rs.2,21,335 in April 1987 and April 1988, arising (i) due to payment of differential duty by the input manufacturer as a result of withdrawal of exemption from payment of duty on malt extract in bulk containers (paid on 31 March and 1 April 1987) in terms of notification dated 20 March 1987 for the period from 20 March 1987 to 25 March 1987 and (ii) on account of revision of assessable value (paid on 29 February 1988), for the period from 20 March 1987 to 14 April 1987. In terms of the aforesaid provisions of Rule 57E then in force (i.e., upto 14 April 1987), the additional credits taken by the assessee are not in order and were required to be expunged or recovered. The department, however, allowed the assessee to utilise those credits for payment of duty due on the clearances of final products. This resulted in grant of irregular credit of Rs.2,21,335.

The utilisation of inadmissible Modvat credits was reported to the department in October 1988, and to the Ministry of Finance in June 1989.

The Ministry of Finance admitted the objection in respect of the Modvat credit of the differential duty paid prior to 15 April 1987 but did not accept the objection in respect of the credit of differential duty paid after 15 April 1987.

The Ministry's reply is not sustainable as the differential duty paid on 29 February 1988 (i.e., after 15 April 1987) related to the period prior to 15 April 1987. As such its availment was not admissible.

v) Excess availment of credit refunded in instalments

As per Rule 57A of the Central Excise Rules, 1944, read with a notification dated 1 March 1986 issued thereunder (i) the duties of excise under the Central Excises and Salt Act, 1944, (ii) the special duty of excise under the Finance Act and (iii) the additional duty under Section 3 of the Customs Tariff Act, 1975 as the cse may be, paid on inputs shall be allowed as credit when used in or in relation to the manufacture of final products and the credit of duty so allowed shall be utilised towards payment of duty on finished excisable goods provided both inputs and final products are specified under the said rules.

A manufacturer of rubber products working under Rule 57A took credit of Rs.9,73,341 in respect of imported goods which included basic customs duty of Rs.7,42,504. The credit of customs duty so availed by the assessee was irregular. Had the credit not been availed and utilised irregularly, there would have been debit balance both in the Modvat and the Personal Ledger Accounts. The licensee, however, refunded the amount in instalments by debit to Modvat and Personal Ledger Accounts. Since it was a case of delay in adjustment of credit, a

penal action under Rule 173(bb) was also attracted because the manufacturer had violated the provisions of the Modvat Rules. Moreover, the assessee utilised the Government money on which, interest amounting to Rs.1.56 lakhs was chargeable in accordance with the instructions contained in the Central Board of Excise and Customs instructions issued on 20 April 1985.

The matter was reported to the department in March 1988 and to the Ministry of Finance in May 1989.

The Ministry of Finance have stated (August 1989) that an offence case has been booked against the party for wrong availment of credit of customs duty and subsequent delayed adjustment in the credit account. The Ministry added that there is no provision in the Central Excise law to demand interest in such cases.

The Ministry's reply contravenes the Board's instructions dated 20 April 1985.

vi) Non adjustment of duty allowed on refund of duty to the manufacture of inputs

As per Rule 57E of the Central Excise Rules, 1944, if duty paid on any inputs in respect of which credit has been allowed under Rule 57A ibid, is varied subsequently due to any reason resulting in payment of refund to the manufacturer or the importer of the inputs, the credit allowed shall be varied accordingly by adjustment in the credit account maintained in R.G.23A Part II, and if such adjustment is not possible for any reason, by cash recovery from the manufacturer.

An assessee declared aluminium hydroxide/aluminium hydrates as input for the manufacture of certain final products and took credit of the duty paid on the inputs purchased from two manufacturers. As aluminium hydroxide was chargeable to nil rate of duty from 1 March 1986, one of the manufacturers obtained refund of the duty paid on it from March to May 1986. On being demanded by the department, the assessee refunded the credit of duty of Rs.1.05 lakhs availed by him. However in respect of the purchases made from the second manufacturer, the credit of duty of Rs.3,09,559 availed from 1 March 1986 was neither adjusted nor recovered.

This was pointed out (March 1988) in audit, the department stated (August 1988) that Rs.3,09,559 was realised (August 1988) from the assessee.

The Ministry of Finance have accepted the underassessment (August 1989).

IRREGULAR GRANT OF CREDIT FOR DUTY PAID ON RAW MATERIALS AND COMPONENTS (INPUTS) AND IRREGULAR UTILISATION OF SUCH CREDIT TOWARDS PAYMENT OF DUTY ON FINISHED GOODS (OUTPUT)

3.65 Irregular availment of proforma credit under Rule 56A

As per Rule 56A of the Central Excise Rules, 1944, credit for the duty paid on raw material and components is allowed to be utilised towards payment of duty on finished product in the manufacture of which the raw material and components are utilised provided (with effect from 1 April 1987) both the raw material/components and the finished product are notified under the said rule.

A manufacturer of beta naphthol (sub heading 2942.00) was allowed to avail credit of duty paid on hot pressed naphthalene (sub heading 2704.40) for utilisation towards payment of duty on beta naphthol even though both the raw material and the finished product were not specified under Rule 56A. Utilisation of proforma credit of Rs.14,56,487 during the period from July 1988 to December 1988 was, therefore, irregular.

Further, the assessee was allowed to transfer the unutilised balance of Rs.1,84,115 lying in his set off register and which was availed of by him prior to opting for proforma credit under Rule 56A under a notification issued on 6 October 1986 to his credit account in RG23 although the aforesaid rules did not provide for such transfer.

The irregularity was pointed out in audit in January 1989, and to the Ministry of Finance in August 1989.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

3.66 Incorrect availment of excess credit on use of specified fixed vegetable oil in the manufacture of vegetable products

i) As per a notification dated 1 March 1987 as amended, issued under the provisions of Rule 57K of the Central Excise Rules 1944, credit may

be allowed for payment of duty on vegetable products falling under sub heading 1504.00 at the rate of Rs.3,250 per tonne of solvent extracted mustard oil used in the manufacture of such vegetable product subject to specified conditions. According to the condition number (iv) of the aforesaid notification, where credit has been taken in respect of any solvent extracted variety of the oil specified in the table below the notification, the manufacturer shall within five months from the date of taking credit or such extended period as the Assistant Collector may allow, produce a certificate from an officer not below the rank of Deputy Director in the Directorate of Vanaspati, Vegetable oils and Fats in the Ministry of Food and Civil Supplies to the effect that the said oil has been manufactured by the solvent extraction method.

A manufacturer of vegetable products was availing credit on use of fixed vegetable oil (solvent extracted mustard oil) in the manufacture of vegetable products. During the period from 1 April 1987 to 30 September 1987 he availed of credit amounting to Rs.18,07,878 in respect of 556.270 tonnes of solvent extracted mustard oil used in the manufacture of vegetable products. However, as per the requisite certificates 400.161 tonnes of the aforesaid oil was only used. This resulted in excess availment of credit of Rs.5,07,354 on use of 156.109 tonnes of oil manufactured by a process other than the solvent extraction at the rate of Rs.3250 per tonne.

On the omission being pointed out (April 1988) in audit, the department intimated that the period for availment of excess credit has been covered upto December 1987 and a sum of Rs.5,42,084 has been recovered (April and May 1988).

The Ministry of Finace have accepted the underassessment (August 1989).

ii) As per a notification dated 1 March 1987 as amended on 1 March 1988, credit on solvent extracted sun flower oil is also admissible from 1 March 1988.

As per Rule 570 a manufacturer intending to avail the credit on the inputs should file a declaration indicating the description of the inputs intended to be used in the manufacture of the final product and take credit of money on such inputs received by him and used in the manufacture of the final product after obtaining the acknowledgement for the said declaration.

A manufaturer of Vegetable products (sub heading 1504.00) filed the declaration dated 7 March 1988 under Rule 570, which was acknowledged by the department on 9 March 1988 for taking credit on the solvent extrated sun flower oil used in the manufacture of vanaspati. The deparmtnet allowed credit of Rs.1,44,268 on the quantity of 44.39 tonnes of solvent extracted sun flower oil which was in process on 17 March 1988. As credit on inputs intended to be used in the manufacture of final products is admissible only after obtaining a dated acknowledgement of the declaration, the credit of Rs.1,44,268 allowed on the input in process on 17 March 1988 is incorrect.

On this irregularity being pointed out (September 1988) in audit, the department did not admit the objection and contended (January/ February 1989) that the credit was correctly allowed on the said quantity of oil which was in process on 7 March 1988 and hydrogeneted on 9 March 1988. The contention of the department is not acceptable. Rule 57 K read with Rule 57 O does not provide for grant of credit on inputs which were in process prior to date of acknowledgement of declaration.

The Ministry of Finance have repeated (November 1989) the reply given by the department.

The same is not acceptable for the reasons stated above.

NON LEVY/SHORT LEVY OF CESS

3.67 Short levy of cess due to undervaluation

Section 9(1) of the Industries (Development and Regulation) Act, 1951 provides for the levy and collection as cess on all specified goods manufactured or produced, a duty of excise at such rate as may be specified. As per an explanation in the section, the expression 'Value' is the wholesale cash price for which such goods of the like kind and quality are sold or capable of being sold for delivery at the place of manufacture and at the time of removal therefrom, without any abatement or deduction whatsoever except trade discount and the amount of duty (cess) then payable.

As per the Central Excise Laws (Amendment and Validation) Act, 1982, effetive retrospectively where a notification or order fixing any rate of duty leviable under a Central Law provid-

ing for levy and collection of any duty of excise, it shall expressly refer to the provision of the Central Law and it shall not have effect unless it expressly refers to the provision of the Central Law in the Preamble.

i) Motor vehicles

As per a notification issued on 28 December 1983, cess is leviable at the rate of 1/8 per cent ad valorem, on all motor cars, buses, trucks, jeep type vehicles, vans, scooters, motor cycles, mopeds and all other automobiles with effect from 1 January 1984.

Six assessees in three collectorates engaged in the manufacture of motor vehicles, falling under chapter 87, paid cess at the rate of 1/8 per cent of the assessable value approved by the department under Section 4 of the Central Excises and Salt Act, 1944. The exclusion of the central excise duty and sales tax from the value resulted in short collection of cess. The department, however, issued show cause-cum demand notices only on the amount of central excise duty which was claimed as a deduction, without raising any demand due to the exclusion of sales tax from the value.

The non inclusion of the sales tax in the total value resulted in short levy of cess of Rs.9.05 lakhs on clearances of motor vehicles during the periods between January 1984 and December 1988.

The irregularities were pointed out in audit between February 1987 and February 1989.

In 4 cases the department stated (February 1989) that as per CEGAT's decision dated 4 June 1987 in the case of M/S.Telco Limited Vs. Collector of Central Excise, Patna, the central excise duty and the sales tax leviable were to be excluded from the wholesale cash price for determination of the assessble value. It added that in the above cited case, the department has gone in appeal to the Supreme Court against the decision of the CEGAT. It added that the general practice in such cases is to raise demnds on the disputed items. The meeting of the Collectors of Central Excise, which went into the issue also decided (December 1987) that all Collectors should raise demands in order to safeguard Government revenue. The fact, however, remains that while issuing show cause-cum demnd notices the department did not include the amount of sales tax in the assessable value for working out differential amount of cess leviable in those 4 cases.

In the other two cases the deparmtent reported issue of show cause notice for Rs.1.22 lakhs for the period from August 1986 to December 1987. Its reply was silent on the raising of demand for the earlier period from January 1986 to July 1986.

These cases were reported to the Ministry of Finance in April, May and August 1989.

The Ministry of Finance invited (August 1989) reference to their reply to Para 2.71 (b) of Audit Report 1985-86, wherein it was stated that the futher action taken by the Ministry of Industry to re-define 'value' for the purpose of levy of cess has not been received. Further developments have not been reported (November 1989).

ii) Cess on paper

Cess at the rate of 1/8 per cent ad valorem became leviable on paper with effect from 1 November 1980 as per a notification issued under the aforesaid Section 9(1) on 27 October 1980.

Cess on paper was realised from seven manufacturers of paper in three Collectorates on the value exclusive of duty of excise and sales tax. The exclusion of excise duties (basic and special) and sales tax was not correct since those were not duties leviable under the Industries (Development and Regulation) Act. The omission resulted in short levy of cess amounting to Rs.7.10 lakhs on clearance of paper during the different periods between April 1982 and October 1988.

On the irregularities being pointed out (between May 1986 and December 1988) in audit, the department while not admitting the objection stated (April 1989) that the term 'Value' has not been defined in the Ministry of Industry's notification issued under Section 9(1) of Industries (Development & Regulation) Act 1951, under which cess was being levied. Therefore definition of the term 'value' would be taken as per Central Excises and Salt Act, 1944, according to which value does not include the amount of duties of excise, Sales tax and other taxes payable on such goods.

Reply of the department is not acceptable as the issue was discussed in a tripartite meeting held on 7 Febraury 1985 with the Ministry of Law in which the view of Audit was upheld. The Ministry of Finance stated (December 1985) that the issue regarding amendment of Section 9(1) of the Industries (Development and Regual-

tion) Act had been referred by the Ministry of Industries to an expert group for defining the expression 'Value" in relation to levy of cess. No amendment of Section 9(1) of the Industries (Development and Regulation) Act has been made (June 1989).

The Ministry of Finance have since stated (August, September 1989) that further action by the Ministry of Industry to redefine the 'value' for the purpose of levy of cess has not been received.

3.68 NON LEVY OF CESS

i) Jute yarn

Under the Jute Manufacture cess Act 1983, (effective from 1 April 1984) cess is leviable as duty of excise on all articles of jute at the rates specified in the schedule to the Act.

As per Central Excise Laws (Amendment and Validation) Act, 1982, no notification issued under Central Excises and Salt Act, 1944 or rules thereunder granting any exemption from any duty of excise shall have the effect of providing for exemption from the duty of excise leviable under a Central Act other than Central Excise Act, unless such notification expressly refers to the provisions of the said Central Act in the preamble, or by express words, provide for exemption from the duty leviable under the said Central Act.

By a notification issued on 17 March 1972, as amended from time to time under the Central Excise Rules, 1944, jute yarn, twist, thread, rope twine all sorts falling under sub headings 5302.20 and 5607.19 consumed within the factory of production for use in manufacture of jute manufactures falling under Chapter 53,56,57 or 63 are exempt from duty of excise leviable under Central Excise Act. The said notification, however, does not provide, by express words, the exemption of cess leviable under the Cess Act 1983 (another Central Act). Accordingly in the light of Amendment and Validation Act 1982, the above notification shall not have effect in granting exemption to such yarn from cess leviable under Cess Act 1983. This position was also confirmed by the Ministry of Law in October 1986 and accepted by the Board in its letter dated 29 October 1986. Further, there is no other notification exempting such jute yarns from cess. Thus jute yarns when captively consumed in the manufacture of jute products are liable to cess.

A jute mill consumed (May 1984 to September 1987) jute yarn falling under sub heading 5302.20 in the factory of production for manufacture of jute twine (sub heading 5607.19). Cess amounting to Rs.3,22,588 was not levied on the jute yarn consumed.

On the omission being pointed out (September 1987) in audit, the department stated that the demand issued for earlier period was struck down by the Collector (Appeals) on the ground that no cess was payable under proviso below rules 9 and 49 introduced by a notification issued on 9 July 1983, read with Section 3(4) of the Jute manufacture Cess Act 1983. The department also did not consider it necessary to go in appeal to Tribunal.

The stand taken by the department in not going in appeal is not correct because the notification issued on 9 July 1983 which exempted intermediate goods consumed in the manufacture of final product from payment of excise duty did not ipsofacto exempt the goods from the levy of cess as was held by the Law Ministry in October 1986 and accepted by the Board on 29 October 1986. The Board also directed the Collectors that suitable instructions to field formations may be issued and pending assessments may be finalised accordingly. The failure to go in appeal to the Tribunal goes counter to the directions issued by the Board.

The Ministry of Finance did not admit the objection and stated (November 1989) that as per Board's circular dated 9 August 1988, issued in consultation with the administrative Ministry, it has been clarified that cess has to be levied once and that too only on the final products sought to be cleared at exit point for sale from the jute manufacturer's premises. They added that the jute twine made from jute yarn were cleared on payment of cess.

The view expressed by the Ministry of Commerce in regard to levy of cess is at variance to the opinion of the Ministry of Law who in their note dated 28 October 1987 held that cess is leviable both on jute bags and laminated jute fabrics containing 50 per cent or more by weight of jute.

ii) Fents and rags

In terms of Section 3 of the Khadi and Other Handloom Industries Development (Additional Excise duty on cloth) Act, 1953, cess at specified rate is payable on cloth manufactured. Sub-section (2)(e) of Section 5 ibid em-

powers Government to exempt (wholly or partially) cess on any variety of cloth which is exempt (wholly or partially) from basic excise duty.

Two composite mills in two collectorates manufacturing cotton fabrics (chapter 52) and man made fabrics (chapter 55) did not pay handloom cess on fents and rags cleared from their factories with reference to notifications issued on 8 August 1973 and 14 February 1975 under the said Act. The concept of fents and rags as a variety of cloth was done away with for the purpose of levy of basic excise duty with effect from 17 March 1985 and no specific exemption for fents and rags was available from that date. Hence the notifications, exempting fents and rags from cess became inoperative and the clearances of fents and rags without payment of cess was not in order from 17 March 1985. The cess omitted to be collected during the period from 18 March 1985 to 31 March 1989 in respect of the two mills amounted to Rs.2,03,027.

On the omission being pointed out (November 1987/December 1987) in audit, the department did not accept the objections on the grounds that (i) the non payment of cess on fents and rags was in order as the notification exempting them from payment of cess were not rescinded, (ii) notifications dated 17 March 1985 and 28 August 1985 prescribed concessional rate of duty for cotton and man made fabrics including fents and rags and (iii) the 1985 budget instructions specifically stated that fents and rags were to be charged concessional rates of duty based on their value.

The department's contention is not acceptable as the noficication dated 17 March 1985 did not specifically prescribe any concessional rate of duty for fents and rags and the notification dated 28 August 1985 prescribed exemption for polyester fibre only and not for any fabrics. The budget instructions regarding valuation of fents and rags related to determination of assessable value of fents and rags and not any concessional rate of duty for them.

The grant of exemption from payment of cess on fents and rags with effect from 17 March 1985 under notifications dated 8 August 1973 and 14 February 1975 was, therefore, ultravires of the Khadi and Other Handloom Industries Development Act, 1953.

The Ministry of Finance have stated (November 1989) that the matter is under examination

iii) Unprocessed man made and cotton fabrics

As per Rule 2 of the Khadi and Other Handloom Industries Development (Exemption from payment of Excise duty) Rules, 1975 issued by a notification on 1 March 1975 by the Ministry of Industry and Commerce, all varieties of cloth which were for the time being exempted from payment of duty of excise levied under the Central Excises and Salt Act 1944, were also exempted from payment of handloom cess. Thus exemption from payment of cess stood coterminus with the exemption from payment of basic duty of excise.

Unprocessed cotton and man made fabrics were exempted from payment of basic excise duty under notifications issued on 17 March 1985 and 11 October 1982 respectively. These notifications were rescinded with effect from 28 February 1986 consequent upon the enforcement of the Central Excise Tariff Act 1985 from that date. Consequently the aforesaid fabrics stood exempted from payment of handloom cess upto and inclusive of 27 February 1986.

Unprocessed cotton and man made fabrics (headings 52.05, 54.08 and 55.07) were chargeable to 'Nil' rate of duty in the Central Excise Tarif Act 1985 from 28 February 1986. It was held by the Gujarat High Court in the case of M/S.Darshan Hosiery Works Vs. Union of India (1980 ELT 390 GUJ) that exemption from payment of duty under a notification issued is very much different basically and qualitatively from the exemption granted under the statute. As exemption from duty is not the same as chargeable to duty at 'Nil' rate under an Act, the fabrics did not stand exempted from handloom cess.

A composite textile mill manufactured, interalia, unprocessed cotton fabrics and man made fabrics and was allowed to clear for home consumption 1870838 square metres of cloth during the period from 28 February 1986 to 31 July 1987 without payment of handloom cess. This resulted in non levy of handloom cess of Rs.46,771 during the aforesaid period.

On this irregularity being pointed out (August 1987) in audit, the department did not admit the objection and contended (November 1987) that the assessee removed the unprocessed fabrics to his sister concern for processing and for being retrieved by the assessee for clearance as processed fabrics with effective rate of duty and thus no loss of reveneue was involved.

Subsequent review of the records (September 1988) of the assessee disclosed that the unprocessed fabrics removed to his sister concern were not retrieved in full by the assessee and wherever the fabrics were retrieved, no proper accounts of the fabrics removed and retrieved were kept by the assessee. The reply of the department is, therefore, not acceptable to audit.

This was brought to the notice of the department (September 1988). Since the irregularity of non-payment of handloom cess continued even beyond August 1987, the non levy of handloom cess worked out to Rs.1,03,487 on the clearance of 4139480 square metres during the period from 28 February 1986 to 31 July 1988.

The Ministry of Finance have stated (October 1989) that the matter is under examination in consultation with the Ministries of Law and Industrial Development.

iv) Poly coated paper

As per orders dated 27 October 1980 and 3 February 1981 issued under the Industries (Development and Regulation) Act, 1951, cess at the rate of 1/8 per cent ad valorem is leviable from 1 November 1980 on all papers manufactured by an industrial unit having investment of fixed assets in plant and machinery exceeding Rs.20 lakhs and falling under the heading "24 paper and pulp including paper products" of the schedule to the Act, ibid.

A manufacturer of "Poly coated paper" was allowed to clear the product without payment of cess from the date of its imposition although the value of plant and machinery installed in his factory exceeded Rs.20 lakhs. This resulted in non levy of cess of Rs.2.34 lakhs on clearances during the period from 1 July 1985 to 31 March 1989.

The omission was pointed out to the department in May 1987 and to the Ministry of Finance in August 1989.

The Ministry of Finance have stated (September 1989) that the issue whether cess was leviable on waxed paper manufactured from base paper purchased from the market has been referred to the Ministry of Industry (Department of Industrial Development) and the reply thereof has not been received.

DELAY IN RAISING OF DEMANDS

3.69 Demands pending adjudication

Rules 9 and 49 of the Central Excise Rules, 1944, prescribe that excisable goods shall not be removed from any place where they are produced or manufactured or from any premises appurtenant thereto without payment of duty whether for consumption,export or manufacture of any other commodity in or outside such place.

An assessee engaged in the manufacture of resins, falling under the erstwhile tariff item 15A(1) used them captively without payment of duty for the manufacture of wire enamels falling under the erstwhile tariff item 14(II) and goods falling under the erstwhile tariff item 68. Though the department had issued three show cause notices between January and October 1983 involving duty of Rs.5.88 crores to the assessee for non-payment of duty on the resins manufactured and captively consumed in the manufacture of other commodities, for the period from April 1977 to December 1982, these were pending adjudication, as noticed at the time of audit in September 1988. No further action to the posting of the case for a hearing on 4 October 1985 (which was also postponed) had been taken till then. Inordinate delay in the adjudication of these demands has resulted in blocking up of Government revenue to the extent of Rs.5.88 crores.

On this being pointed out (October 1988) in audit, the department stated (July 1989) that the demands issued to the assessee on this account for the earlier periods during the years 1966 and 1967 were subsequently set aside on the basis of the judgment of a High Court to the special civil application filed by the asessee and the issue had again been taken up as a result of amendments made to Rules 9 and 49 of the Central Excise Rules 1944 by a notification issued in February 1982. It was further stated that due to complexity arising out of the decision of the High Court in the matter it has taken time to adjudicate the case.

The department's above reply is not acceptable. After the amendment to Rules 9 and 49 of the Central Excise Rules, 1944 by a notification issued in February 1982, duty was payable on the goods used captively whether in a continuous process or otherwise for the manufacture of other excisable goods. The fact that the case is complex cannot be a reason for delaying the adjudication involving substantial amount of duties

for such a long period.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

3.70 Loss of revenue due to time bar

As per provisions of Section 11A of the Central Excises and Salt Act, 1944, when any duty of excise has been short levied or short paid, a Central Excise Officer may, within six months (five years where suppression of facts is involved) from the relevant date, serve notice on the person chargeable with duty which has not been levied or paid or which has been short levied or short paid requiring him to show cause as to why he should not pay the amount specified in the notice.

i) Demand raised but held as time barred

A public sector undertaking assessee engaged in the manufacture of screws (erstwhile tariff item 52) and components (erstwhile tariff item 68) of wrist watches, was captively consuming them in the manufacture of wrist watches (erstwhile tariff item 44) and the duty on the captively consumed goods was paid on values determined on the basis of cost of production, including profit in terms of Rule 6(b) of Central Excise (Valuation) Rules, 1975. During the course of business, the aforesaid goods namely screws and components of wrist watches were also sold to the dealers of wrist watches at prices which were much higher than the cost of production, declared by the assessee in the approved part IV price lists. The duty on the said goods captively consumed, however, continued to be levied on the cost of production instead of on the price at which they were sold to independent buyers. This omission was realised by the department in August 1981 and show cause-cum demand notices for Rs.1,46,27,006 for the period upto November 1982 were issued and the demand was confirmed by the adjudicating authority in February 1985. On appeal by the assessee the Appellate Collector confirmed (July 1987) demand only for Rs.22,16,858 and held the remaining demands time barred. Had the show cause notice been issued and demand raised in time, loss of revenue of Rs.1,24,10,148 could have been avoided.

On the omission being pointed out (December 1988) in audit, the department stated (January 1989) that sales made at the factory gate were stray cases and therefore could not be deemed as normal prices in Part I of the Price list under provisions of Section 4(1)(a) of the Act. This contention is not acceptable because:

i) determination of the assessable value of goods on the basis of cost of production in place of the wholesale cash prices is valid only when the goods are not sold in terms of Section 4(1)(b) of the Act;

ii) when the goods came to be sold as stray cases or otherwise, the wholesale cash price came to be known from that date and a stray sale price is also a wholesale cash price within the meaning of Section 4(1)(a) of the Act; and (iii) the Appellate Collector and Tribunal have already confirmed the demand to the extent it was not barred by time.

The Ministry of Finance have admitted the objection (November 1989).

ii) Delay in raising demand

Section 11A of the Central Excises and Salt Act, 1944, allows a period of six months from the relevant date for issue of notice for duties not levied, not paid, short paid etc.

a) Prior to 1 August 1984, aluminium forgings were classifiable under the erstwhile tariff item 68-Goods not elsewhere specified. The tariff item 27-Aluminium was amended with effect from 1 August 1984, when aluminium forgings became classifiable under sub item (3) of tariff item 27 with effective rate of duty at 26 per cent ad valorem.

A public sector undertaking manufactured, inter alia, aluminium forgings and was allowed by the department to classify the aforesaid forgings under tariff item 27(1) with exemption from whole of the duty. This resulted in non levy and consequent loss of revenue of duty amounting to Rs.14.24 lakhs approximately on the clearances from 1 August 1984 to 31 October 1985.

The irregularity was brought to the notice of the department in December 1985 and to the Ministry of Finance in May 1989.

The Ministry of Finance have admitted the objection.

b) Tubes, pipes and hoses of vulcanised rubber, other than hardened rubber with or without their fittings e.g. joints, elbows, flanges etc. designed to perform the function of conveying

air, liquid or gas are classifiable under sub heading 4009.92 of the schedule to the Central Excise Tariff Act 1985, and are chargeable to duty at the rate of 30 per cent ad valorem. The Central Board of Excise and Customs also clarified in February 1987 that rubber hoses with fittings were classifiable under the above sub heading.

An assessee, manufacturing rubber hoses of 'H.P' & 'L.P' varieties classified the products under sub heading 8431.00 as parts suitable for use solely and principally with machinery under headings 84.25 to 84.30 and paid duty at the prescribed rate of 20 per cent ad valorem. After receipt of the Board's clarification, the assessee filed a revised classification, of the products classifying them under sub heading 4009.92 and paid duty at the rate of 30 per cent ad valorem with effect from 4 March 1987 onwards. Action was, however, not taken by the department to recover the differential duty amounting to Rs.3.23 lakhs payable on these goods during the period from 1 March 1986 to 3 March 1987.

The irregularity was pointed out to the Collectorate in June 1988 and to the Ministry of Finance in May 1989. The Ministry accepted the objection and stated (August 1989) that a demand for Rs.3,23,167 has been raised.

3.71 Inordinate delay in recovery of central excise duty

As per Section 3 of the Central Excises and Salt Act, 1944, a duty of excise is levaible on all excisable goods manufactured or produced in India. According to Rules 9 and 49 of the Central Excise Rules, 1944, duty leviable on excisable goods is required to be paid by the manufacturer before removal of the goods from the factory and manufacturer is liable to panal action for removal of goods in contravention of these provisions. Rule 230 of aforesaid rules further empowers the excise officers to detain excisable goods and plant or machinery where duty leviable on any goods is owing from or by any producer or manufacturer.

Two saw mills cleared sawn wood (erstwhile tariff item 68) without payment of duty during the period from 18 June 1977 to 31 July 1980 for which offence cases were booked by the department against them. These cases were adjudicated by the Collector on 31 March 1981 and two demands aggregating to Rs.4,33,878 were confirmed, but the money was not recovered.

The delay in recovery of government dues and non raising of demands for clearnces after 31 July 1980 was pointed out in audit in January 1983. The department stated (April 1988) that the assessee's appeal to the Board was rejected in September 1981 and appeal to Tribunal filed in October 1982 was dismissed in November 1986. The Collector intimated (October 1988) that goods worth Rs.42,74,000 were detained under Rule 230.

Though the assessee's appeal to the Tribunal was rejected in November 1986, action under Rule 230 was initiated only in October 1988. This resulted in government dues remaining unrecovered even after 8 years since detection of the offence in 1980.

The Ministry of Finance admitted the objection and have stated (September 1989) that an amount of Rs.2.69 lakhs has been recovered in June 1989 and the matter is in correspondence with the concerned department of the state government for recovery of balance amount.

PROCEDURAL DELAYS AND IRREGULARITIES WITH REVENUE IMPLICATIONS

3.72 Delay in final approval of the classification list

As per Rule 173B (2A) of the Central Excise Rules, 1944, all clearances of excisable goods shall be made only after the approval of the classification list by the proper officer. If the proper officer is of the opinion that on account of any inquiry to be made in the matter, or for any other reason to be recorded in writing, there is likely to be delay in according the approval, he shall either on a written request made by the assessee or on his own accord, allow such assessee to avail himself of the procedure prescribed under Rule 9B of the Central Excise Rules, 1944, for provisional assessment of goods.

The Central Board of Excise and Customs has clarified in March 1976 that all provisional assessment cases, both on account of classification and valuation, should be finalised within a period of three months and in any case not later than six months. These orders were reiterated in subsequent instructions issued in October 1980.

An assessee engaged, inter alia, in the manufacture of sintered bushes and parts, classified his goods under the erstwhile tariff item 68, and claimed exemption from payment of duty as per a notification issued in April 1979 as amended,

in respect of the clearances made for use in further manufacture of excisable goods. The classification lists of such goods, effective from March 1983 and March 1984, were, however, approved provisionally by the department with the opinion that these goods were correctly classifiable under the erstwhile tariff item 34A. The same had not been approved finally till May 1986.

On this being pointed out (May 1986) in audit, the department stated (November 1987) that the jurisdictional Assistant Collector decided (April 1987) to classify the goods under the erstwhile tariff item 34A and the range had also issued a demand for Rs.1.64 crores for the period from March 1983 to February 1986 in July 1987. The classification lists effective from March 1983 filed by the assessee, were finally approved in April 1987, much later than the limit of six months prescribed by the Board, after obtaining the test reports in March 1985 and other reports regarding classification of the product from other Collectorates in July 1985 and show cause notice was issued to the assessee in July 1986. Thus, the delay in final approval of the classification list resulted in financial accommodation of Rs.1.64 crores of duty payable by the assessee for the period from March 1983 to February 1986 upto July 1987. The demand which was confirmed (July 1988) by the Appellate Collector has not been paid by the assessee, who had taken up the matter with the CEGAT for obtaining the stay order (August 1988).

The Ministry of Finance have admitted the delay (August 1989).

3.73 Non levy of interest on arrears of excise duty paid in instalments

The Central Board of Excise and Customs issued instructions to the Collectors on 20 April 1985 that whenever facility of paying arrears of Central excise dues in instalments had been accorded, interest at the rate of 12 per cent per annum (17.5 per cent per annum from 20 April 1985) would be chargeable on monthly basis. The Board withdrew the power to allow payment of Government dues in instalments from the Collectors on 5 August 1985. Subsequently, the Board clarified (1 October 1985) that interest should be charged in all cases of deferment of duty from the date of initial confirmation of demand.

The Ministry of Finance reiterated (16 June 1986) that the instructions dated 20 April 1985 and 1 October 1985 had been issued in the context of cases where payment of central excise dues in instalment had been allowed. They added that since the power of the Collectors for extending the instalment facility stood withdrawn with effect from 5 August 1985, any request for the concession in payment of Government dues in instalments which would have been granted by the Collectors under the earlier orders should be referred to the Ministry with a clear recommendation. Further, mention of the rates of interest should be made only in the Collector's orders in pursuance of the Board's decision to extend instalment facility in specified cases. The Law Ministry also confirmed the legality of the action taken by the central excise department in this regard.

i) A manufacturer of man-made fabrics obtained a stay order from the Delhi High Court (1982) against the payment of duty on goods manufactured by him. Consequent on vacation of stay by the High Court, the assessee obtained a stay from the Supreme Court. The Supreme Court while vacating 'the stay, ordered (September 1983) the assessee to pay 50 per cent of the dues by October 1983 and furnish bank guarantee for the remaining 50 per cent amount.

The assessee could not pay 50 per cent of the dues amounting to Rs.98,37,557 by 31 October 1983 and the Supreme Court allowed (14 December 1983) further extension of time directing the amount to be paid in two instalments on 15 January 1984 and 15 February 1984. The assessee did not, however, make the payment by those dates. The department did not also raise any demand for payment of the dues with interest as per the Board's instructions dated 20 April 1985. However, the duty amount was paid by the assessee on 30 September 1985.

The interest chargeable from 15 January 1984 to 29 September 1985 from the assessee calculated at the rate of 12 per cent per annum upto 19 April 1985 and thereafter at the rate of 17.5 per cent per annum worked out to Rs.22,08,193.

On this being pointed out (March 1986) in audit, the department stated (January 1987) that the objection was based on hypthetical calculation and the interest would have been recovered if it were specified by the court.

As the assessee did not pay the amount by 15 February 1984 as stipulated by the Supreme Court, there was no need for an order of the court to charge interest since there were departental instructions to charge interest in all cases of delay

in payment of dues pending on April 1985.

The Ministry of Finance did not accept the objection and stated (October 1989) that the assessee was not allowed to pay duty in instalments by the department and there was also no order as regard to charging of interest from the court.

The Ministry's reply is not acceptable because as per Board's clarification dated 1 October 1985 interest @ 12 per cent per annum up to 19 April 1985 and @ 17.5 per cent per annum (on monthly basis) would be chargeable.

ii) A State public sector undertaking assessee paid demands of Rs.35,96,121 in five instalments and Rs.13,99,402 in three instalments from the date of finalisation of adjudication orders on 8 May 1985 and 20 October 1987 respectively. The interest due amounting to Rs.5,46,626 was neither paid by the assessee on his own nor collected by the department though a demand of Rs.57,030 being interest due on arrears of excise of Rs.13,99,402 was intimated to the assessee on 30 March 1988 by the department.

On the omission being pointed out (September 1988) in audit, the department stated (January 1989) that the adjudication order dated 8 May 1985 was silent about levy of interest and the interest clause though incorporated in the adjudication order dated 20 October 1987 was subsequently (6 December 1988) deleted. The department further asserted that there was no legal backing in the Central Excise Law for collection of interest on the arrears of duty. The department's reply is not acceptable as it goes counter to Board's instructions dated 20 April 1985 and 1 October 1985. Besides, when the adjudication orders were not in consonance with the said orders of the Board, the department should have gone in appeal against these orders.

The Ministry of Finance have stated (September 1989) that interest due on arrears of Rs.13,99,402 have since been realised. They added that in the adjudication order confirming the demand of Rs.35,96,121 there was no mention of charging interest in the adjudication order, as such, no interest has been demanded.

The Ministry's reply is not acceptable in view of the fact that as per Board's clarification dated 1 October 1985 interest @ 12 per cent per annum upto 19 April 1985 and thereafter @ 17.5 per cent per annum (on monthly basis) would be chargeable.

iii) A manufacturer of bearings was allowed to pay duty provisionally on values which were arrived at after deducting certain post manufacturing expenses from the sale price of his products. After the Supreme Court Judgment in Bombay Tyre International case on valuation under Section 4 of the Central Excises and Salt Act, 1944, post manufacturing expenses under different heads which were previously excluded by the assessee for determination of assessable value were taken into account for computing the assessable value and the total amount of demand confirmed by the department on 17 October 1984 against the unit amounted to Rs.34.05 lakhs. The amount was paid in thirteen instalments starting from October 1984. Subsequently the assessee was asked (February 1986) to pay interest, aggregating to Rs.2,00,308 due on the amount paid in instalments. But the interest was neither paid by the assessee nor any action was taken by the department for its realisation.

On this being pointed out (June 1988) in audit the department stated (March 1989) that the licensee appealed to the Collector to withdraw the demand for interest on the ground that there was no mention of the same in the order for payment of arrears in instalments granted by the proper authority. It added that the issue was under the consideration of the Collector.

Action of the department in not realising the interest is in contravention of the aforementioned instructions of the Ministry since the department realised the amount by allowing instalment facility. Further, the facts remains that even after expiry of more than three years the amount has not been realised.

The Ministry of Finance have admitted the objection (November 1989).

3.74 Abnormal delay in adjudication resulting in financial accommodation

The Public Accounts Committee in their 84th Report (1981-82) had adversely commented about the inordinate delays in finalisation of adjudication proceedings in demand cases. Accordingly the Board issued instructions (January 1983 and March 1986) that demand cases should be adjudicated within a maximum period of six months from the dates of issue of show cause-cum demand notices and delays beyond that period should be brought to the notice of the Collector who would discuss the matter with the adjudicating officers to examine the possibility of their expeditious disposal.

A paper mill submitted four price lists during the period from April 1982 to January 1983 for determination of assessable value of paper on the basis of manufacturing cost and manufacturing profit. Since the sale price of paper was available, the department issued show cause notice on 1 March 1983 for determination of value under Section 4(I)(a) of the Central Excises and Salt Act, 1944. After a lapse of four years the case was adjudicated on 18 February 1987 approving the prices on the basis of Supreme Court judgment in Bombay Tyre International case, which was delivered in October 1983. Even after adjudication was completed the department took another seven months to quantify the demand as Rs.6.41 lakhs which was still to be recovered (December 1987). Abnormal delay on the part of the department to decide the case not only resulted in non-realisation of Government money, but also led to substantial financial accommodation in the shape of interest of Rs.6.35 lakhs calculated on the amount at the rate of 12 per cent 17.5 per cent per annum for the period from November 1983 to June 1989.

On this being pointed out (December 1987) in audit the department intimated (May 1989) that the delay was due to dilatory tactics adopted by the assessee which could not be avoided in view of the requirement of complying with the principle of natural justice.

The fact however remains that :-

a) all assessees have tendency to apply the same tactics to their advantage if not suitably dealt with under Section 14 of the Act; and

b) even after issue of instructions by the Board the cases are not being finalised within six months.

The Ministry of Finance have confirmed the facts as substantially correct (September 1989).

3.75 Non-receipt of rewarehousing certificates

As per Rules 156A and 156B of the Central Excise Rules, 1944, where goods are removed from one warehouse to another under bond, the departmental officer incharge of the warehouse of destination should record warehousing certificate in respect of such goods on their receipt in the warehouse under his charge and send copies of the certificate to the officer incharge of the warehouse of removal and also to the consignee for transmission to the consignor. The consignor should present the said rewarehousing certificate to the officer incharge of his warehouse within ninety days of removal of the goods or such extended period as the Collector may allow. If the certificate of rewarehousing is not received within the stipulated time limit, the consignor shall pay the duty leviable on the consignment.

i) A public sector oil installation cleared 3560.870 kilolitre (at 15°C) of light diesel oil (sub heading 2710.49) under bond for rewarehousing. The rewarehousing certificates of the said consignments were not received back by the departmental officer incharge of the warehouse of removal or the consignor within the stipulated time limit, and hence duty ought to have been demanded on the quantity of oil removed under bond for rewarehousing. Failure to comply with the provisions of the rules resulted in non levy of duty to the extent of Rs.5.54 lakhs.

On the omission being pointed out (February 1988) in audit the department admitted the irregularity and stated (December 1988) that demands for Rs.29.08 lakhs were issued on account of non receipt of rewarehousing certificate which included the amount of duty pointed out in audit.

The Ministry of Finance have stated (October 1989) that out of the total quantity of 3560.870 kilolitres rewarehousig certificate in respect of all quantity excise 305.217 kilolitres has been received and those for the remaining quantity is expected to be received shortly. They added that show cause notices for entire quantity were issued as a precautionary measure only.

The Ministry's reply is silent about the action taken against the assessee for delayed submission of the rewarehousing certificates.

ii) As per a notification dated 30 December 1986 excisable goods cleared for supply to public sector undertakings to be used by them in connection with specified purposes were exempt from duty in excess of the amount calculated at the rate of 10 per cent ad valorem, provided the procedure set out in chapter X of Central Excise Rules 1944 was followed.

A manufacturer of rock roller bits (heading 82.07) assessable to duty at 20 per cent ad valorem had cleared these goods to a public sector undertaking after payment of duty at the concessional rate under the aforesaid notification dated 30 December 1986. It was noticed in

audit (November 1987) that in respect of two consignments of rock roller bits cleared in June 1987, re-warehousing certificates had neither been received nor demands for differential duty amounting to Rs.1.45 lakhs had been raised after expiry of 90 days.

On the omission being pointed out (November 1987) in audit, the department issued a show cause-cum demand notice in February 1988 and confirmed the same in October 1988.

The Ministry of Finance have stated (September 1989) that the assessee had received both the ARs duly acknowledging the receipt of goods at the destination and he has filed before the Collector (Appeals) an appeal against the demand confirmed by the Assistant Collector.

3.76 Delay in lapsing of credit of duty

Under Rule 57H(3) of the Central Excise Rules, 1944, credit of duty paid on inputs by availing exemption issued under a notification dated 4 June 1979 and remaining unutilised on 28 February 1986 could be transferred to Modvat credit account from 1 March 1986 provided that the inputs and the finished product have been specified in the notification issued under Rule 57A ibid. The Board in their letter dated 1 July 1986 clarified that unutilised balance of duty credit on inputs not covered under Modvat would lapse.

A manufacturer of soap had credit balance of Rs.9.93 lakhs on 28 February 1986 in respect of duty paid on acid oil and hardened rice bran oil (both under tariff item 68). These inputs became classifiable under chapter 15 of the schedule to the Central Excise Tariff Act 1985 and were not specified under Modvat scheme from 1 March 1986. As a result, the credit balance was required to be lapsed. Instead of lapsing the credit, the assessee utilised the full amount towards payment of duty on soap during the period from March 1986 to June 1986 when there was no balance in his personal ledger account (P.L.A.). Subsequently, the assessee applied for expost facto permission in September 1986 for transfer of the credit balance which was refused by the Collector and the amount was debited in the P.L.A. in November 1986. The unauthorised utilisation of Rs.9.93 lakhs disregarding the provisions of the rules, therefore, resulted in substantial financial accommodation to the assessee.

The irregularity was brought to the in notice of the department in August 1987 and the Ministry in April 1989.

The Ministry of Finance have stated (August 1989) that necessary measures as required in such cases have been taken by registering an offence case for violation of Rule 57H(3), Rule 9(1) read with Rule 173(G)(1) and 173F and a show cause notice has been issued.

OTHER IRREGULARITIES OF INTEREST

3.77 Clearance of goods without sufficient credit balance in the personal ledger account

As per rules 9 and 49 of the Central Excise Rules, 1944, no excisable goods shall be removed from the place where they are manufactured until excise duty leviable thereon has been paid. The rules also require that in cases where maintenance of Account Current has been permitted, sufficient sum should be deposited periodically to cover the duty due on the goods intended to be removed.

A cigarette manufacturer was permitted by the jurisdictional Collector to clear cigarettes on the basis of cheques deposited from time to time beginning from the month of October 1987 without waiting for their clearance and eventual credit to the exchequer. This procedure was allowed by the Collector on the request from the assessee as a special case. The time lag between the date of issue of cheques and the date of their collection was ranging from one day to sixty six days. This practice of taking advance credits and their utilisation for payment of duty resulted not only in debit balance but also in substantial financial accommodation to the assessee. As the advance credit allowed was in the nature of deemed loan for payment of duty, an estimated amount of interest of Rs.24.44 lakhs calculated at the rate of 18 per cent per annum for the period from October 1987 to July 1988 should have been recovered from the assessee.

The irregularity was pointed out to the department in September 1988 and the Ministry of Finance in July 1989.

The Ministry of Finance have admitted the objection and have stated (October 1989) that the Collector has been asked not to allow such mode of payment of excise duty. They have added that there is no provision for charging interest for such marginal period of deferred payment due to delay in encashment of cheques under Central Excise Law.

The fact, however, remains that money has value and the asessee utilised Government money for considerable periods and must, therefore, pay for it.

3.78 Loss of revenue due to non-filing of appeal against appellate order

In terms of Section 4(4)(d)(ii) of the Central Excises and Salt Act, 1944, value, in relation to any excisable goods, does not include trade discount allowed in accordance with the normal practice of wholesale trade at the time of removal of the goods. The Supreme Court held, in the case of Bombay Tyre International {1984(17)ELT 329 (SC)} that discounts allowed in the trade (by whatever name such discount is described) should be allowed provided the allowance and the nature of discount are known at or prior to the removal of the goods and that trade discounts should not be disallowed only because they are not payable at the time of each invoice or deducted from the invoice price. While elaborating the above judgment in the case of M/S.Madras Rubber Factory Limited, {1987(27)ELT 553 (SC)} the Supreme Court observed that the quantum of discount should be ascertainable at the time of clearance of the goods. An identical view had been taken earlier by CEGAT in the case of M/S.Orient General Industries Limited, {1985(21)ELT 326 (Tribunal)} wherein, it was held that the 'special incentive bonus' ascertainable on the basis of the purchased turnover for the year would be only a sort of reward or gift or incentive for promoting sales since its quantum would be known at the end of the year only and that such items are not permissible deductions, as trade discount. It, therefore, follows that any discount which is not quantifiable at the time of clearance of goods is not admissible for deduction under Section 4 ibid.

i) An assessee manufacturing excisable goods falling under chapters 85,86 and 87 of the schedule to the Central Excise Tariff Act 1985, claimed refund of duty on certain post manufacturing expenses. The Jurisdictional Assistant Collector, while admitting the claims, allowed, among others, refund of duty on 'turnover discount' and 'incentive discount' holding that the nature and rates of discount were known at the time of removal, even though the quantum of discount was not known at the time of removal of the goods, but was worked out later on the basis of quarterly/annual turnover. The abatement of the discount from the value and the consequential refund of Rs.23,11,836 granted (September, October 1987) for the years 1985-86 and 1986-87 based on an order-in-original passed by the Jurisdictional Assistant Collector, therefore, called for review by the Collector under Section 35E of the Act.

On this being pointed out (May 1988) in audit, the department stated (December 1988) that the abatement allowed was in order in terms of Government of India decision in the case of Zandu Pharmaceuticals Works Limited {1982 ELT (723) GOI} and that the turnover discounts and incentive discounts were allowed to all dealers, whereas the 'bonus' allowed by M/S.Madras Rubber Factory Limited, was restricted to a particular class of dealers.

The contention of the department is not acceptable for the reasons stated above. Further, the Government of India decision referred to by the department is not relevant as it has been superseded by the Supreme Court judgments cited above.

Due to the non-filing of an appeal by the department against the order-in-original passed by the Jurisdictional Assistant Collector, there was a loss of revenue of Rs.23,11,836.

The Ministry of Finance have admitted the objection (November 1989).

ii) An assessee producing structural items like trusses, purlins etc., paid duty under heading 94.06 under protest on the ground that no manufacturing activity was involved. The contention of the assessee was accepted by the department and consequently the assessee did not pay duty from January 1987 onwards. It was pointed out (October 1987) in audit that it was not correct to conclude that no manufacture of excisable goods was involved as the steel shapes, angles and sections were removed only after the processes like cutting to sizes, drilling holes, welding etc. Hence the classification of the goods under sub heading 7308.90 of the schedule to the Central Excise Act, 1985 and collection of duty at appropriate rate was asked to be considered.

The department accepted the above contention of Audit; issued show cause notice to the assessee and adjudicated (May 1988) the case demanding duty of Rs.1.87 lakhs. However, on appeal filed by the assessee, the Collector (Appeal) held that the fabrication of roofing structures undertaken by the assessee could not be held as manufacture of excisable goods. The department reported (May 1989) that they did not file an appeal to CEGAT. But in a similar case {M/S.Richardson and Cruddas Limited 1988

(38) ELT 176 (Tribunal)} the CEGAT has held that the process of conversion of iron and steel products into columns, purlins, bracking, etc. amounted to a process of manufacture as the resultant goods had a distinct name, character, and use. Due to non filing of the appeal, there was loss of revenue of Rs.1.87 lakhs for the goods cleared during the period from February 1987 to January 1988.

On this being pointed out (June 1989) to the department, the department stated (July 1989) that in a similar issue Collector (Appeals) has held that trusses, purlins etc. were specifically included in the Central Excise Tariff under the sub heading 7308.90 with effect from 1 March 1988 only and no duty was payable till then and hence they did not file an appeal as the clearances pertained to the period prior to March 1988. The reply is not acceptable in view of the Tribunal's decision cited in para 2 above where the process of conversion was held as amounting to manufacture. Consequent on restructuring of Tariff in March 1988 in alignment with HSN, a more specific head has been incorporated. But the fact remains that even prior to March 1988 the process amounted to manufacture under Section 2(f) of the Central Excises and Salt Act, 1944.

The Ministry of Finance did not accept the objection and have stated (November 1989) that the decision not to appeal against the appellate order was taken by the competent authority considering the relevant aspect as well as the fact that the trusses, perlins etc., have been specifically included under heading 73.08 from 1 March 1988 and demand in question pertained to the period from 28 February 1987 to 31 January 1988 i.e., prior to 1 March 1988.

The Ministry' views that the goods were non excisable prior to 1 March 1988 are not acceptable, as the process of conversion of Iron and Steel products into purlins etc. amounted to manufacture and the final goods cleared by the assessee were excisable and liable to duty.

3.79 Delay in collection of differential duty on escalated cost

As per the instructions issued by the Board in their letter dated 4 October 1980, in the case of running contracts, where there is a price variation clause the goods should be provisionally assessed at the time of clearance and final assessment made as soon as the assessee submits his bills for the escalated value, without waiting for the final acceptance of the increased invoice value by the customers.

A public sector undertaking manufacturing boiler components and spares falling under chapter 84 entered into contracts with customers for supply of products on lumpsum basis. The contract period varied between 36 to 48 months. At the time of clearance of the products, the assessee raised provisional invoices based on which duty was paid. Subsequently, the assessee was raising supplementary invoices periodically for price variations due to increase in cost of raw material and labour. Though duty was also charged in the supplementary invoices, it was not paid to Government account, in contravention of the above mentioned Board's orders.

It was noticed (June 1987/June 1988/ May 1989) in audit that out of 221 supplementary invoices (relating to 11 contracts) involving a total duty of Rs.464.61 lakhs, raised during the period from January 1987 to February 1989 the assessee paid duty of Rs.413.25 lakhs (covering 170 items) only after delay ranging from 5 months to 15 months. Duty of Rs.30.69 lakhs relating to 51 supplementary invoices had not been paid and a duty of Rs.20.67 lakhs raised in the supplementary invoices was withdrawn subsequently.

On the omission to pay duty as and when the supplementary invoices were raised being pointed out in audit, the department stated (July 1987/May 1989) that the assessments were only provisional, that the escalation cost would be taken into account at the time of finalisation of the contract and that suitable action was already initiated to safeguard revenue. it was further argued that the Board's letter did not warrant payment of duty immediately on raising supplementary invoices.

The reply of the department is not acceptable since as per Board's instructions, differential duty on supplementary invoices, should also be demanded immediately after the invoices were raised and the finalisation of the provisional assessment alone should be done as soon as the final invoice was raised. Further the assessee charged the duty on the value shown in the supplementary invoices, but did not remit the same to Government, which was contrary to the provisions of Central Excise Act and Rules.

The Ministry of Finance have stated (November 1989) that the matter is under examination.

3.80 Irregular financial accommodation

As per notifications issued on 15 October 1987 and 3 May 1988, sugar, produced in a factory during specified incentive periods, which was in excess of the average production of the specified base period was exempt from the whole of the duty of excise leviable thereon.

According to clause (3) of the aforesaid notifications the exemption under those notifications could be availed on any quantity of sugar cleared for home consumption which was equivalent to the excess production of sugar.

The Central Board of Excise and Customs had also issued instructions in September 1985, that the rebate was to be given in the form of exemption on the excess production at the time of clearance. No cash refund of duty was, therefore, contemplated.

In a sugar factory, the department sanctioned two refund claims and paid (July and October 1988) an amount aggregating to Rs.2.12 lakhs by cheques. While sanctioning the said refund claims the department had calculated and allowed excess refund of Rs.24,360 on 1015 quintals of brown sugar also (not marketable and could not, therefore, be cleared for home consumption). The incorrect action on the part of the department thus resulted in allowing irregular financial benefit to the assessee.

On the matter being pointed out (November 1988) in audit, the department initially did not accept the objection and viewed (November 1988) that the refunds sanctioned and paid were correct. The department however, intimated (January 1989) that a show cause notice seeking recovery of the amount involved in the audit objection had been issued (December 1988), reported (March 1989) that the amount of Rs.2,12,282 which was erroneously refunded by cheque had been deposited (16 January 1989 to 9 March 1989) and added (February 1989) that a similar refund of Rs.1,01,424 was also granted to another factory.

While replying to the statement of facts (April 1989), the department reiterated (May 1989) their earlier views (November 1988) despite the above corrective action taken by them after communication (December 1988 and February 1989) of Audit views in the matter. Details of action taken by the department in the case of the other factory has not been received (May 1989).

The Ministry of Finance have stated (November 1989) that the refund sanctioned on account of 1,015 quintals of brown sugar has since been recovered from the assessee.

ANNEXURE 3.1

Number of outstanding objections and amount involved

(in crores of rupees)

Sl. No.	Collectorate	Raised upto 1986-87 including the year 1986-87		Raised in the year 1987-88		Total	
		Number	Amount	Number	Amount	Number	Amount
1.	Hyderabad	857	2.79	358	6.16	1,215	8.95
2.	Guntur	87	0.67	57	0.52	144	1.19
3.	Patna	51	4.82	20	9.97	71	14.79
4.	Shillong	24	0.79	5	0.27	29	1.06
5.	Bombay I	90	2.10	73	0.62	163	2.72
6.	Bombay II	55	3.84	48	81.99	103	85.83
7.	Bombay III	186	2.18	142	3.11	328	5.29
8.	Poona	32	1.88	28	0.98	60	2.86
9.	Aurangabad	30	0.50	20	0.31	50	0.81
10.	Goa	5	0.07	6	0.03	11	0.10
11.	Calcutta I	386	41.68	156	20.11	542	61.79
12.	Calcutta II	493	112.96	320	125.48	813	238.44
13.	Bolpur	136	26.58	82	54.05	218	80.63
14.	Chandigarh	113	3.19	112	3.49	225	6.68
15.	Ahmedabad	52	0.64	98	2.30	150	2.94
16.	Baroda	126	2.73	104	4.69	230	7.42
17.	Rajkot	4	0.06	13	1.75	17	1.81
18.	Delhi	239	5.66	155	5.35	394	11.01
19.	Bangalore	36	1.86	103	5.82	139	7.68
20.	Belgaum	22	3.74	37	4.01	59	7.75
21.	Cochin	1	0.03	8	7.94	9	7.97
22.	Indore	334	12.38	354	2.16	688	14.54
23.	Nagpur	23	0.32	21	0.32	44	0.64
24.	Bhubneswar	29	8.23	15	2.17	44	10.40
25.	Jaipur	58	1.14	38	0.82	96	1.96
26.	Coimbatore	55	1.01	63	3.43	118	4.44
27.	Madras	158	2.82	290	4.15	448	6.97
28.	Madurai	12	0.21	12	0.70	24	0.91
29.	Trichy	6	0.95	19	0.84	25	1.79
30.	Allahabad	139	4.82	78	2.20	217	7.02
31.	Kanpur	117	1.49	98	1.84	215	3.33
32.	Meerut	349	8.91	85	3.63	434	12.54
	TOTAL	4,305	261.05	3,018	361.21	7,323	622.26

CHAPTER 4
RECEIPTS OF THE UNION TERRITORIES WITHOUT LEGISLATURES

4.01 Tax and non-tax receipts of Union Territories without legislatures

The trend of tax and non-tax revenue receipts of the Union Territories which do not have a legislature, is indicated below :-

(in crores of rupees)

			Delhi	Chandi-garh	Dadra and Nagar Haveli	Anda-man & Nicobar Islands	Mini-coy & Laksh-dweep	Daman and Diu	Total
A.	Tax Revenue								
	Sales tax	1986-87	379.16	21.93	0.30	Nil	Neg.	N.A.	401.39
		1987-88	431.82	29.29	0.46	Nil	Neg.	0.77	462.34
		1988-89	524.59	36.12	0.37	Nil	Nil	13.24	574.32
	State excise	1986-87	113.30	13.48	0.08	1.90	Nil	N.A.	128.76
		1987-88	131.43	14.03	0.08	1.81	Nil	Nil	147.35
		1988-89	159.40	18.18	0.10	1.45	Nil	1.17	180.30
	Taxes on	1986-87	~30.34	0.75	Nil	Nil	Nil	N.A.	31.09
	goods and	1987-88	~33.26	0.80	Nil	Nil	Nil	Nil	34.06
	passengers	1988-89	~34.73	0.78	Nil	Nil	Nil	0.05	35.56
	Stamp duty	1986-87	20.17	3.97	0.05	0.08	0.02	N.A.	24.29
	and regis-	1987-88	24.73	4.96	0.06	0.10	0.02	Nil	29.87
	tration fees	1988-89	32.72	5.98	0.07	0.11	0.04	0.37	39.29
	Taxes on	1986-87	13.94	0.63	0.18	0.03	Nil	N.A.	14.78
	motor	1987-88	18.58	1.02	0.21	0.03	Nil	Nil	19.84
	vehicles	1988-89	27.07	2.35	0.24	0.03	Nil	0.64	30.33
	Land	1986-87	0.03	Neg.	0.02	0.04	-0.01	N.A.	0.08
	revenue	1987-88	0.01	Neg.	0.14	0.05	0.01	Nil	0.21
		1988-89	0.02	Nil	0.09	0.06	0.01	0.76	0.94
	Other taxes	1986-87	12.73	0.85	Nil	0.04	Nil	N.A.	13.62
	& duties on	1987-88	13.45	0.83	Nil	0.04	Nil	Nil	14.32
	commodities & services	1988-89	14.36	0.74	Nil	0.03	Nil	0.04	15.17
Total - A. Tax		1986-87	569.67	@43.24	0.63	2.09	0.01	N.A.	615.64
Revenue		1987-88	653.28	$52.74	0.95	2.03	0.03	0.77	709.80
		1988-89*	792.89	#66.33	0.87	1.68	0.05	16.27	878.09
Total - B.		1986-87	25.62	33.19	3.54	18.74	1.41	N.A.	82.50
Non-tax		1987-88	23.91	39.42	6.17	19.18	1.81	Neg.	90.49
Revenue		1988-89*	20.37	43.92	11.38	21.53	1.91	3.18	102.29
Total Tax		1986-87	595.29	76.43	4.17	20.83	1.42	N.A.	698.14
and Non-tax		1987-88	677.19	92.16	7.12	21.21	1.84	0.77	800.29
Revenue		1988-89*	813.26	110.25	12.25	23.21	1.96	19.45	980.38

N.A - Not applicable as the U.T. was formed on separation from Goa w.e.f. 30.05.1987.
Neg. - Negligible receipts.
* - Information furnished by the Controller General of Accounts.
~ - Levied and collected by the Municipal Corporation of Delhi as agent of Delhi Administration as per provisions of Section 178 of the Delhi Municipal Corporation Act, 1957.
@ - Includes Rs.1.63 crores on account of Taxes and Duties on Electricity relating to Chandigarh Union Territory.
$ - Includes Rs.1.81 crores on account of Taxes and Duties on Electricity relating to Chandigarh Union Territory.
# - Includes Rs.2.18 crores on account of Taxes and Duties on Electricity relating to Chandigarh Union Territory.

Results of test check of the records of the revenue department of the Union Territory of Delhi conducted during the year 1988-89 are included in the Report of the Comptroller and Auditor General of India; No.3 of 1990 for the year ended 31 March 1989 - Union Government (Delhi Administration). Some of the important cases noticed as a result of test check of the records of revenue department of the other Union Territories without legislatures are mentioned in the succeeding paragraphs.

UNION TERRITORY OF CHANDIGARH SALES TAX

4.02 EVASION OF TAX

Under the Punjab General Sales Tax Act, 1948, as applicable to Union Territory, Chandigarh, every dealer, except those who exclusively deal in goods declared to be taxfree, shall be liable to pay tax on the expiry of 30 days after the date on which his gross turnover, during the year, first exceeds the taxable quantum (Rs.40,000 in the case of manufacturers). Dealer, under the Act, means any person including a Department of Government, who in the normal course of trade, commerce or manufacture which is carried with or without profit motive, and any transaction in connection with, or anciliary or incidental to, such trade, commerce, manufacture.

It was noticed in audit (May 1987) that a dealer (a Government Department) engaged in the manufacture and selling of ready made garments, knitting wool articles and leather goods articles had exceeded the taxable quantum of sales during 1981-82 and was liable to pay sales tax from the same year. However, neither the dealer had paid tax nor applied for registration, nor the department initiated any action to make assessment and levy tax. This resulted in evasion of tax of Rs.56,973 on sales amounting to Rs.9.23 lakhs effected during 1981-82 to 1986-87.

On this being pointed out in audit (May 1987), the department raised (April 1988) demand for Rs.1,14,509 (tax Rs.58,509; penalty Rs.56,000). However, the dealer had preferred (December 1988) an appeal alleging that the articles were sold at cost price or sometimes below the cost price, those were not chargeable to sales tax.

The Ministry of Home Affairs to whom the case was reported in July 1989 have confirmed the facts (September 1989).

4.03 Suppression of purchases

Under the Punjab General Sales Tax Act, 1948, as applicable to the Union Territory of Chandigarh, if a dealer has maintained false or incorrect accounts with a view to suppressing his sales, purchases or stocks of goods or has concealed any particulars of his sales or purchases or has furnished to, or produced before, any authority under this Act or the rules made thereunder any account, return or information which is false or incorrect in any material particulars, he is liable to pay, by way of penalty in addition to the tax to which he is assessed or is liable to be assessed, a sum not exceeding one and a half times but not less than twenty five per cent of the amount of tax to which he is assessed or is liable to be aseessed, excluding the amount to which he has been assessed or is liable to be assessed on the basis of the aforesaid false or incorrect accounts or concealed particulars or false or incorrect account, return or information.

During the audit of Assistant Excise and Taxation Commissioner, Chandigarh, it was noticed (October 1985) that two dealers purchased, without payment of tax, goods valuing Rs.4.59 lakhs (corresponding sales value amounting to Rs.5.51 lakhs) during the years 1979-80 and 1980-81, but did not account for these purchases in their account books. This resulted in suppression of sales and consequential evasion of tax amounting to Rs.56,207. Besides, minimum penalty of Rs.14,052 for suppression of purchases was also leviable.

On the omission being pointed out (April 1986) in audit, the department stated (December 1988) that an additional demand of Rs.50,608 (tax Rs.40,486 : penalty Rs.10,122) had been raised. Report on recovery of demand raised as also reasons for raising lesser demand of tax and penalty has not been received (April 1989).

The case was reported to the Chandigarh Administration and Ministry of Home Affairs in March 1989 and April 1989 respectively and their replies have not been received (November 1989).

4.04 Non-levy of penalty for belated payments of tax

Under Section 10 of the Punjab General Sales Tax Act, 1948 read with rule 20, every registered dealer is required to furnish the return of sales of each quarter within 30 days from the expiry of each quarter alongwith treasury receipt

for payment of tax on these sales. In case the dealer fails to furnish the return by the prescribed date, the assessisng authority shall, after the expiry of such period, proceed to assess to the best of his judgment and the dealer is liable to pay, by way of penalty, in addition to the amount of tax due, a sum not exceeding one and a half times but not less than 10 per cent of the amount of tax to which he is assessed.

A dealer engaged in the business of resale of wine was allowed extension of one month for filing the first three quarterly returns for the assessment year 1984-85. The assessee, however, neither filed the returns nor paid the tax due by the due or extended dates. He, however, submitted all the returns on 30 September 1985. The assessing authority, while finalising the assessment in October 1985, assessed the tax amounting to Rs.4.98 lakhs but omitted to levy minimum penalty of Rs.49,788 for non payment of tax by the prescribed dates.

On this being pointed out in audit (May 1987), the department stated (June 1989) that penalty of Rs.49,788 had been raised. Report on recovery has not been received (September 1989).

The case was reported to the Administrator of the Union Territory and Ministry of Home Affairs in May/September 1989; their replies have not been received (November 1989).

R. Ramanathan

NEW DELHI
The 13-3-1990

(R. RAMANATHAN)
Director of Receipt Audit (INDT)

Countersigned

T. N. Chaturvedi

NEW DELHI
The 13-3-1990

(T. N. CHATURVEDI)
Comptroller and Auditor General of India

ERRATA

Page No.	Para No.	Column No.	Line No.	For	Read
ix	Overview (IV)	2	9 from bottom	Unauthorised	authorised
ix	Overview (IV)	2	4 from bottom	fine of payment	fine on payment
x	Overview (IV)	1	21	etc. currency	currency etc.,
xii	Overview	1	17	V	VII
xvi	Overview (XIV)	2	12	Delete the words 'in the use'	
xviii	Overview XV(b)	1	4	50.96	59.96
xviii	Overview XV(d)	1	12 from bottom	Five	Four
1	CHAPTER 1	Main heading	1	APPRAISALS	SYSTEMS APPRAISAL
15	1.01(8) (i)(B)	Table	22 (against the total)	668	680
31	1.02(7)	Table	13 (against Sl.No.3)	Custom(Prev)	Customs (Prev) Ahmedabad
67	1.04(14)(iv)	2	13	3.49	21.49
72	1.05(4)	Table	9	2.520	2,520
84	2.01	Table (3rd & 4th)	9 (against Imports)	6029.04 5782.06	16029.04 15782.06
85	2.02(i)	Table-5th (value of imports)	Total against 1988-89	21428	21928
86	2.04	1	18(Table)	Insert the word 'Total' against 133.01 and 155.50	
87	2.10	2	6 and 8	Amount** 22.48	Amount 22.48**
125	2.74	2	16	sectior	section
160	3.13(v)	2	21	the	of the
161	3.13(v)(b)	1	27	waster	wastes
166	3.19(ii)(b)	1	16	placed	shaped
195	3.41(v)(b)	1	16 from bottom	leviable	tenable
203	3.50	1	delete lines 20 and 21		
213	3.57(ii)(b)	2	17 from bottom	delete the word 'been'	
218	3.62(i)	2	6 from bottom	disocyanate	di-isocyanate
221	3.64(v)	2	34	cse	case
223	3.66(ii)	1	8 from bottom	57θ	57-O
223	3.66(ii)	2	3	570•	57-O
224	3.67(i)	1	4 from bottom	demnd	demand
229	3.71	1	16 from bottom	panal	penal

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