

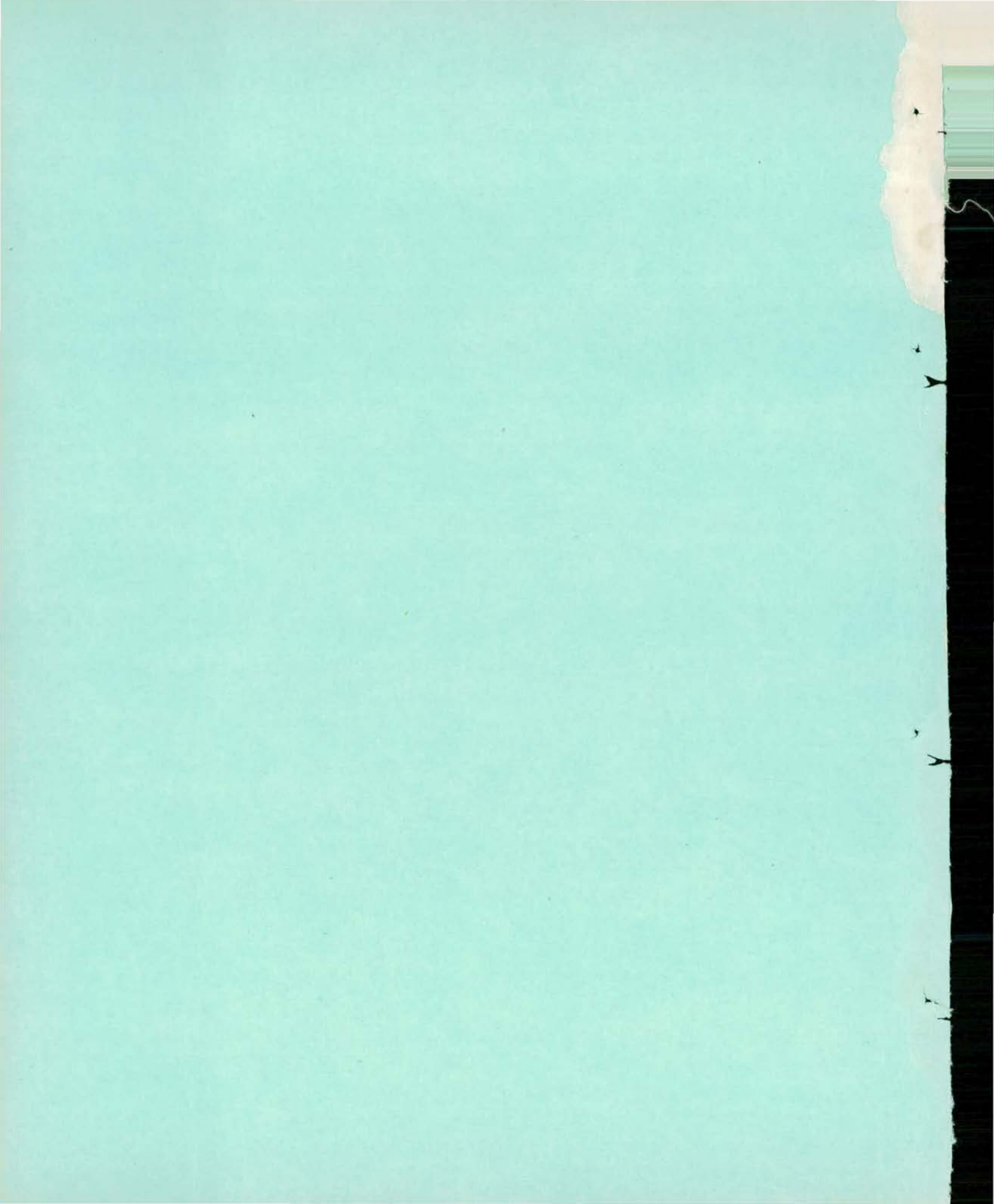


**REPORT OF THE
COMPTROLLER AND AUDITOR GENERAL
OF INDIA**

FOR THE YEAR ENDED 31 MARCH 1996

NO.11 OF 1997

**UNION GOVERNMENT
REVENUE RECEIPTS - INDIRECT TAXES
(CENTRAL EXCISE)**





सत्यमेव जयते

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NO.11 OF 1997

लोक सभा / राज्य सभा
के पटल पर.....
भी रखी गई।

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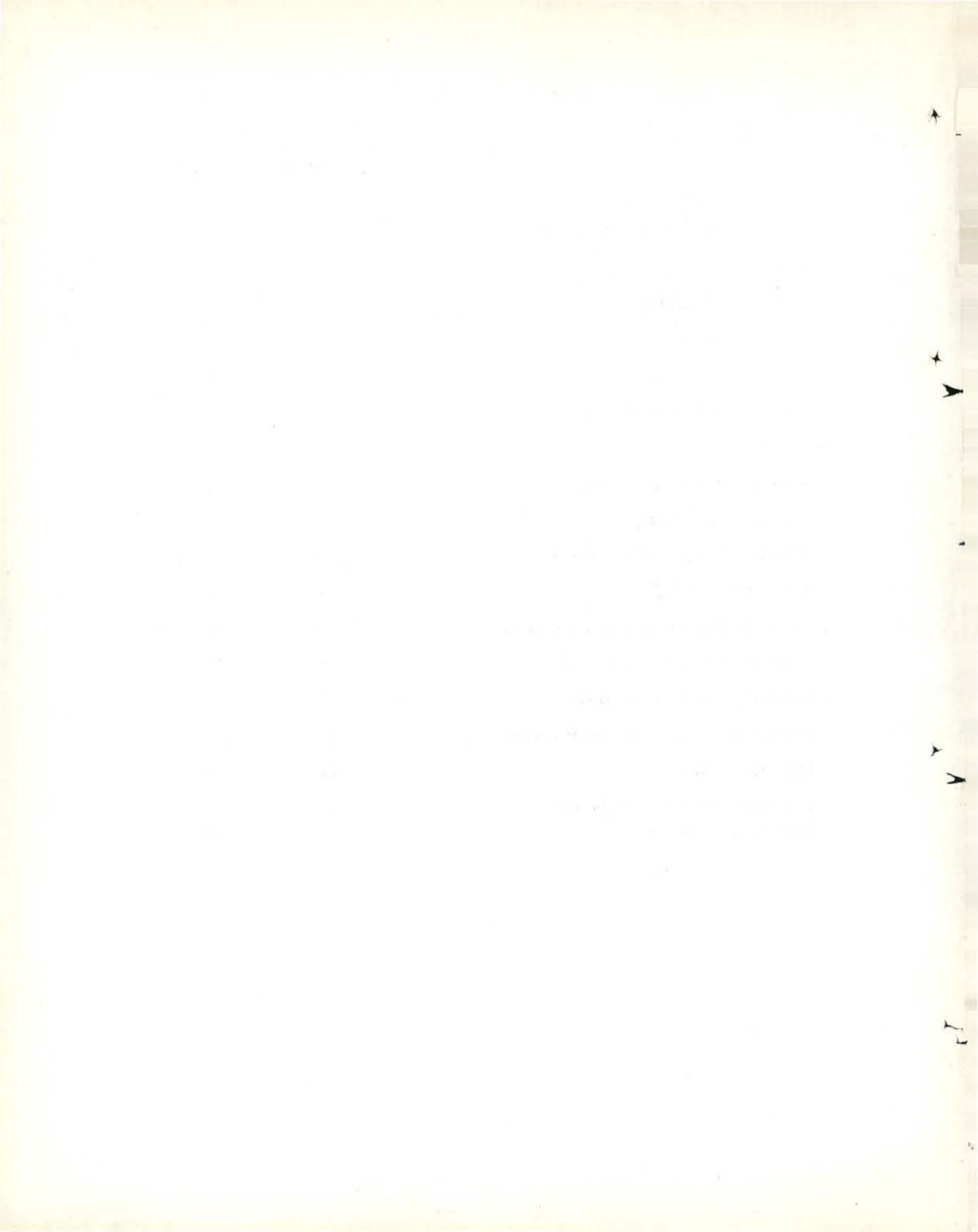
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(CENTRAL EXCISE)**

Price: Inland - Rs 600
Foreign US Dollar 5



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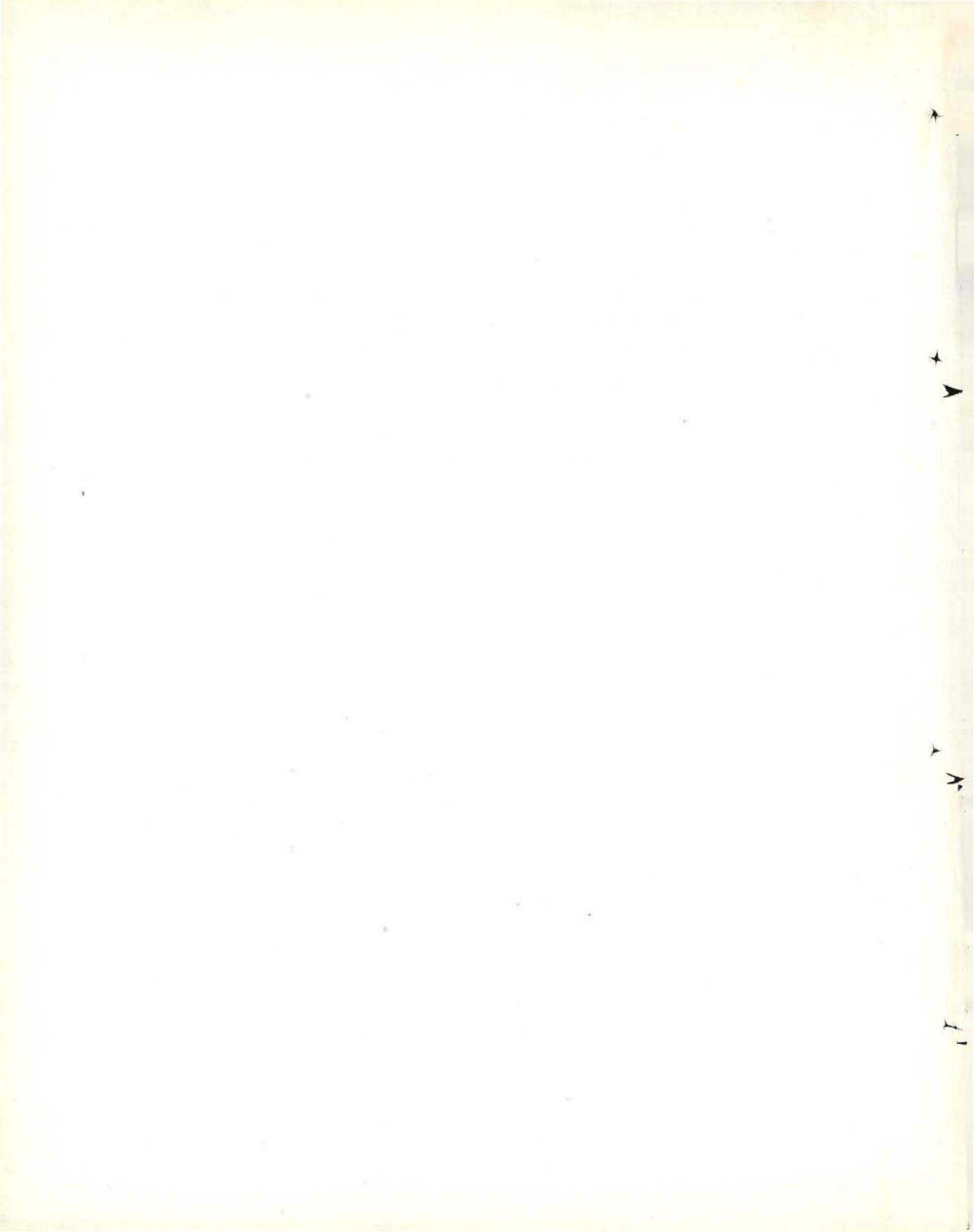


PREFATORY REMARKS

This Report for the year ended 31 March 1996 has been prepared for submission to the President under Article 151 of the Constitution based on the audit of Central Excise Receipts of the Union of India in terms of Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971.

The cases mentioned in the Report are among those which came to notice in the course of audit during 1995-96 and early part of 1996-97 as well as those which came to notice in earlier years but could not be reported earlier.

The Report also covers receipts relating to Union Territories (without Legislatures).



Legends/Abbreviations used in the Report

1. Ministry of Finance	Referred as	The Ministry
2. Central Board of Excise and Customs	-do-	The Board
3. Commissionerate of Central Excise	-do-	Commissionerate
4. Commissioner of Central Excise	-do-	The Commissioner
5. Assistant Commissioner of Central Excise	-do-	A.C.
6. Central Excise Act, 1944	-do-	The Act
7. Central Excise Tariff Act, 1985	-do-	The Tariff Act
8. Schedule to the Central Excise Tariff Act, 1985	-do-	The Schedule
9. Central Excise Rules, 1944	-do-	The Rules
10. Central Excise Valuation Rules, 1975	-do-	The Valuation Rules
11. The Industries (Development and Regulation) Act, 1951	-do-	The Industries Act
12. Harmonized Commodity Description and Coding System Explanatory Notes	-do-	HSN
13. Harmonized System Committee	-do-	HSC
14. Modified Value Added Tax	-do-	Modvat
15. Central Excise Duty	-do-	Duty
16. Countervailing Duty	-do-	CVD
17. Central Government	-do-	Govt.
18. Maximum retail price	-do-	MRP
19. Small Scale Industry	-do-	SSI
20. Personal Ledger Account	-do-	PLA
21. Show Cause Notice	-do-	SCN



OVERVIEW

This report contains 340 paragraphs, featuring individually or grouped together and two reviews having a tax effect of Rs.2903.21 crores. Some of the more significant findings are mentioned below:

I. GENERAL

The net receipts from excise duties during the year 1995-96 amounted to Rs.40,009 crores against budget estimates of Rs.42,579 crores. In case of 36 out of 63 commodities which yielded revenue of more than Rs.100 crores, the actual receipts were less than the estimated revenue. The reasons of variation between budget estimates and actuals were not furnished.

(Paragraphs 1.1 & 1.5)

Value of production increased by 9.5 times between 1980-81 to 1995-96 but central excise receipts increased only 6.1 times for the corresponding period. These receipts were 11.9 per cent of the value of production in 1980-81 but decreased to 7.2 per cent in 1995-96, while the percentage of Modvat credit availed to the total duty increased from 11.7 per cent in 1986-87 to 36.82 during 1994-95 and 42.86 per cent during 1995-96. The steep increase in this ratio coincided with the introduction of Modvat on Capital Goods, credit for dealers invoices and invoice based system.

(Paragraphs 1.3 & 1.4)

46770 cases involving Rs.12730.62 crores of Central Excise duty were pending with different authorities as on 31 March 1996.

(Paragraph 1.8)

II. SYSTEMS APPRAISAL

Invoice based system

An appraisal of the invoice based system introduced with effect from 1 April 1994, revealed the following:

- 185 dealers, without proper premises for storage of excisable goods, were granted registration certificates. In 146 cases, even after cancellation of registration certificates no action was taken to recover Modvat credit of Rs.7.18 crores availed on the basis of invoices issued. About one fifth of the invoices checked were found to be invalid/defective.

(Paragraphs 2.4.2 & 2.4.4)

OVERVIEW

- 85 units (about 9 per cent of the sample), did not file proper declaration, required for clearances to the related persons or to own depots.

(Paragraph 2.4.3)

- The absence of control to ensure that the price charged is as per section 4 of the Act, has resulted in short levy of Rs.56.64 crores in 205 cases.

(Paragraph 2.5.1)

- Modvat credit of Rs.16.19 crores on the basis of invalid documents were noticed in 225 cases, which works out to 15 per cent of the sample audited.

(Paragraph 2.6.1)

Paper and paper board

Test check of records in the Ranges and units manufacturing paper and paper products has revealed the following:

- The payment of excise duty through adjustment of Modvat credit has increased from 15 per cent in 1993-94 to 30 per cent during 1995-96, whereas that through PLA (Cash) it has gone down from 85 per cent to 70 per cent in respect of the same period.

(Paragraph 3.4)

- The irregular grant of exemption was noticed in 27 cases involving non levy of Rs.75.05 crores.

(Paragraph 3.5.1)

- Norms of production were not fixed in any of the units which resulted in suppression of production and consequential non levy of Rs.12.70 crores in 24 cases.

(Paragraph 3.6.1)

- In 6 cases duty of Rs.2.40 crores was not levied for goods consumed captively.

(Paragraph 3.7.1)

- Undervaluation of excisable goods resulted in short levy of Rs.2.38 crores in 43 cases.

(Paragraph 3.8)

- Irregular availment of Modvat credit of Rs.4.58 crores was noticed in 91 cases.

(Paragraph 3.9.1)

III OTHER CASES OF NON LEVY/SHORT LEVY

Short levy/underassessment of central excise duties amounting to Rs.2709.46 crores (excluding those in Systems Appraisal) were noticed but the important findings are given below:-

(Paragraph 1.12)

- A demand for payment of Rs.799.35 crores had been confirmed against a multinational cigarette manufacturing company for evasion of duty. The duty pertains to the period 1983 to 1987 and even though the Government dues remained in the hands of the assessee for its utilisation, payment of interest has not been demanded. The quantum of interest at bank rates, without compounding, works out to Rs.1630.14 crores.

(Paragraph 4.1)

- Four public sector corporations collected excise duty of Rs.831.34 crores on the sale of petroleum products contrary to statutory provisions, the excise duty collected was not remitted to Government.

(Paragraph 4.2)

- Differential treatment by the Board in classification of different brands of prickly heat powders resulted in short collection of duty of Rs.69.08 crores in respect of one brand only.

(Paragraph 4.3)

- Fixation of tariff value of aerated waters at lower rates and its non revision subsequently, resulted in loss of revenue of Rs.31.05 crores.

(Paragraph 4.4)

- Duty not levied on goods consumed captively, production suppressed, shortages in storage and non levy of additional duty of excise amounted to Rs.49.50 crores.

(Paragraph 5)

- Application of exemption notifications on goods, not entitled to exemptions, resulted in short realisation of Rs.25.67 crores.

(Paragraph 6)

— Irregular/incorrect availment of Modvat credit on inputs amounted to Rs.20.93 crores.

(Paragraph 7)

— Irregular availment of Modvat credit on capital goods amounted to Rs.10.28 crores.

(Paragraph 8)

— Irregular availment of Money credit resulted in short recovery of Rs.1.76 crores.

(Paragraph 9)

— Incorrect classification of excisable goods resulted in short levy of Rs.11.13 crores.

(Paragraph 10)

— Undervaluation of excisable goods led to short levy of Rs.7.07 crores.

(Paragraph 11)

— Delay in raising demands or in recovery of confirmed demands resulted in non recovery/loss of revenue amounting to Rs.3.70 crores.

(Paragraph 12)

1. STATISTICAL INFORMATION

1.1 Budget estimates vis-a-vis actual receipts

The budget estimates vis-a-vis actual receipts of central excise duties and number of factories paying excise duty during the year 1995-96 alongwith the corresponding figures for preceding four years are given in the table and the graph:-

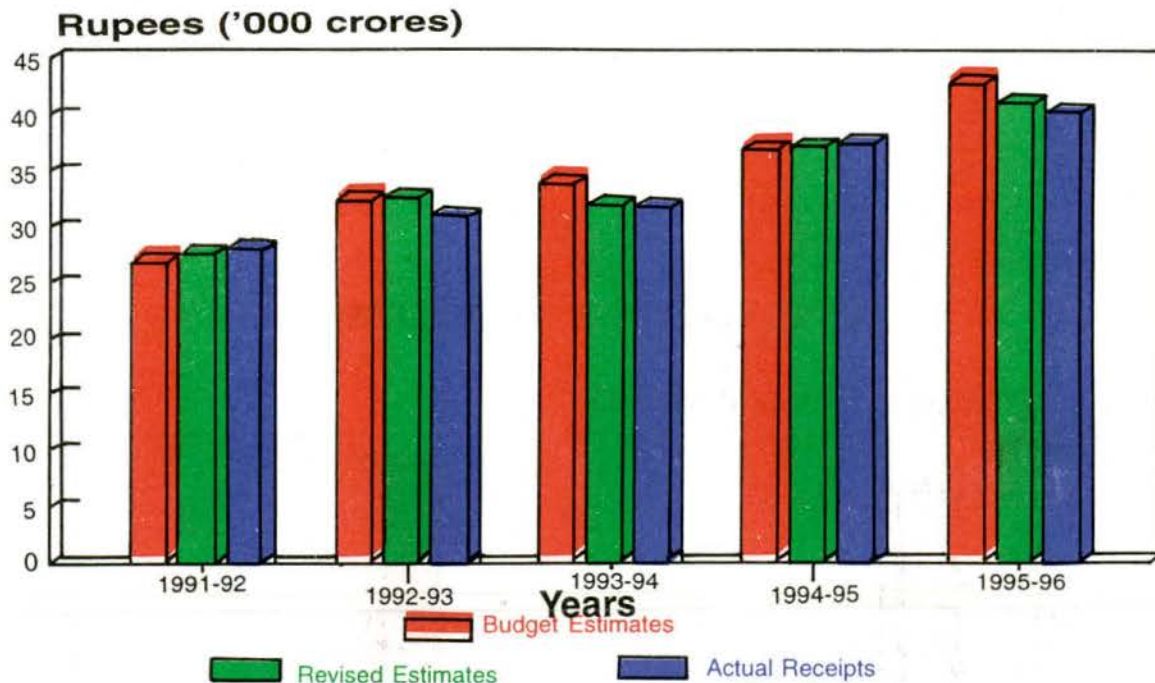
(Amount in crores of rupees)

Year	Budget estimates	Revised budget estimates	Actual receipts	No. of factories paying excise duty
1991-92	26,888	27,696	28,110	77,642
1992-93	32,211	32,500	30,832	84,662
1993-94	33,751	31,750	31,548	@54,454
1994-95	36,732	36,900	37,208	@@52,409
1995-96	42,579	40,767	40,009	—NA—

@ relates to 33 Commissionerates out of 36 Commissionerates

@@ relates to 23 Commissionerates out of 36 Commissionerates

Budget estimates vis-a-vis actual receipts



The reasons of variation between the budget estimates/revised budget estimates and actuals have not been furnished by the Ministry (November 1996). Information relating to the system of data collection, validation, monitoring, methodology used for preparing the estimates, the impact of invoice based system, and extension of Modvat credit to capital goods, were also called for, but no reply has yet been received (November 1996).

1.2 Trend of receipts

The receipts during the year 1995-96 from levy of basic excise duty and from other duties levied as excise duties are given in the table and the graph below alongside the corresponding figures for the preceding year:-

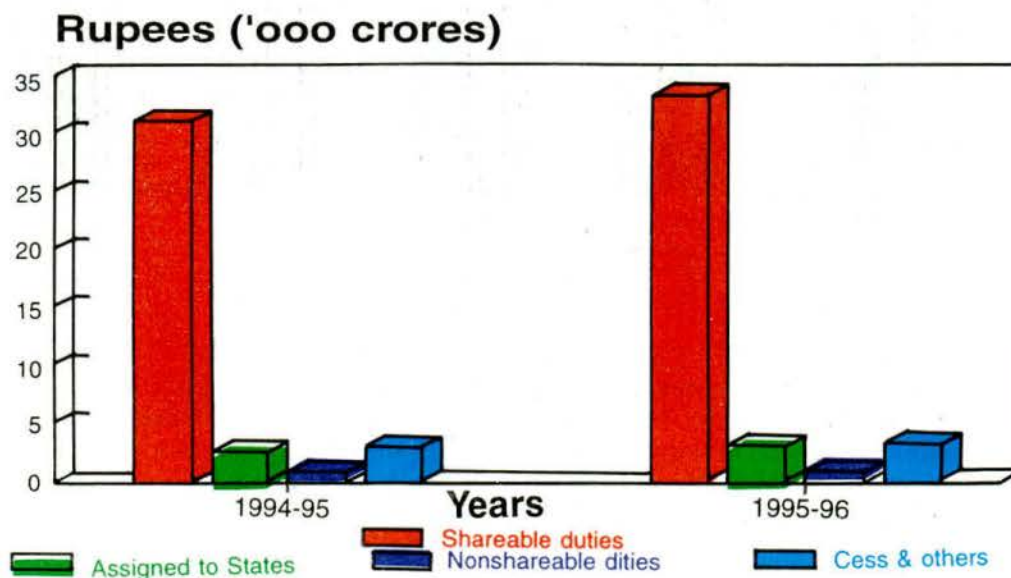
	(Amount in crores of rupees)	
	Receipts from Union Excise duties	
	1994-95	1995-96
A. Shareable duties :		
Basic excise duties	31074.11	33158.07
Auxiliary duties of excise	* -0.61	—
Special excise duties	28.69	19.32
Additional excise duties on mineral products	** -33.52	—
Total (A)	31068.67	33177.39
B. Duties assigned to States :		
Additional excise duties in lieu of sales tax	2549.01	2929.59
Excise duties on generation of power	0.17	0.02
Total (B)	2549.18	2929.61
C. Non-shareable duties :		
Additional excise duty on TV sets	0.03	0.04
Special excise duties	53.64	0.02
Additional excise duties on textiles and textile articles	630.85	594.47
Other duties	0.05	—
Total (C)	684.57	594.53
D. Cess on commodities	2857.13	3097.14
E. Other receipts	48.29	209.92
Total : (A to E)	37207.84	40008.59

Figures furnished by Controller of Accounts (Central Board of Excise and Customs).

* Due to payment of drawback

** Due to refunds

Trend of receipts



1.3 Value of output vis-a-vis central excise receipts

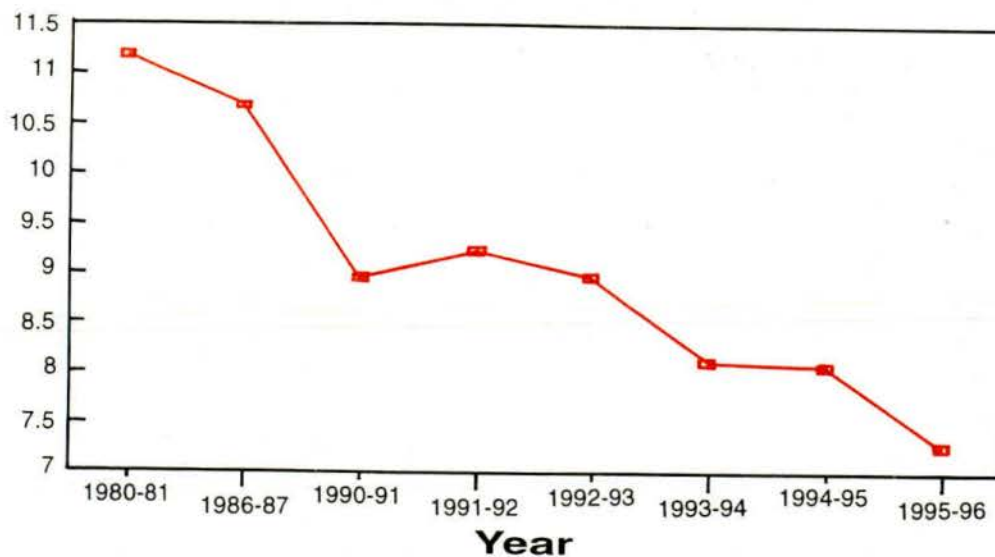
The value of production vis-a-vis receipt of central excise duties through PLA (cash collection) during the years 1980-81 and 1986-87 to 1995-96 are given below :

Year	Value of production	Central Excise	(Amount in crores of rupees)
			Percentage of central excise receipts to value of production
1980-81	58065	6500	11.19
1986-87	134602	14387	10.69
1990-91	274241	24514	8.94
1991-92	305293	28110	9.20
1992-93	345204	30832	8.93
1993-94	390259	31548	8.08
1994-95	*463438	37208	8.03
1995-96	*553920	40009	7.22

* Estimated by audit

The above table reveals that value of output in 1995-96 compared to 1980-81 has increased 9.54 times, whereas increase in the central excise receipts was only 6.15 times. The graph below shows the decline in percentage of central excise receipts to value of output from 11.19 during 1980-81 to 10.69 in 1986-87 to 7.22 during 1995-96.

Percentage of Central Excise receipts to value of projection



1.4 Central excise receipts vis-a-vis Modvat availed

1.4.1 A comparative statement showing the details of central excise duty paid through PLA, its percentage increase over previous year, the amount of Modvat availed, its percentage increase over previous year along with with the value of output etc., during the year 1986-87 to 1995-96 is given in the table below:

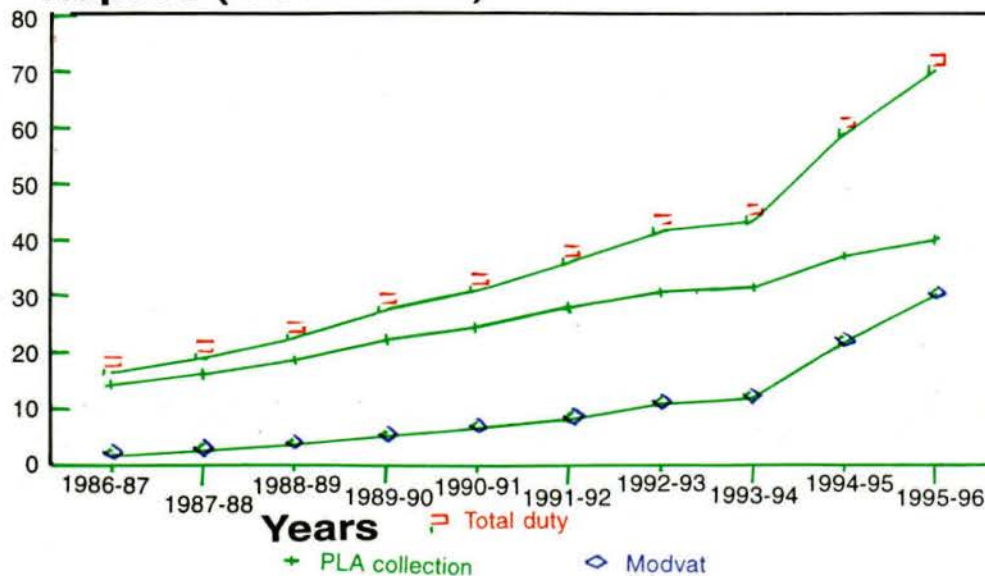
Year	(Amount in crores of Rupees)						
	Central Excise Duty paid through PLA	Modvat availed	Total duty	Value of output	Percentage of PLA collection to value of output	Percentage of Modvat to total duty	Percentage of total duty to value of output
	(a)	(b)	(c=a+b)	(d)	(e)	(f)	(g)
1986-87	14387	1914	16301	134602	10.69	11.74	12.11
1987-88	16345	2820	19165	154070	10.60	14.71	12.44
1988-89	18749	3809	22558	186923	10.03	16.88	12.07
1989-90	22307	5279	27586	232039	9.61	19.14	11.89
1990-91	24514	6496	31010	274241	8.94	20.95	11.31
1991-92	28110	7965	36075	305293	9.20	22.07	11.82
1992-93	30832	10840	41672	345204	8.83	26.01	12.07
1993-94	31548	11896	43444	390259	8.08	27.38	11.13
1994-95	37208	21687	58895	463438	8.03	36.82	12.70
1995-96	40009	30009 ^(P)	70018	553920	7.22	42.86	12.64

(P) Provisional

1.4.2 It will be seen from the table that the percentage of total duty to the value of output fluctuates between 11.13 to 12.70 around a mean figure of 12.02 during the period 1986-87 to 1995-96, indicating that increase in total duty was neutralised by increase in availment of Modvat credit and that collection of duty through PLA as a percentage of the value of output was declining.

Central Excise duty collected through PLA, Modvat availed and Total duty

Rupees ('000 crores)



1.4.3 The graph represents the rate of growth of central excise duty paid through PLA and Modvat availed for the period 1986-87 to 1995-96, a study of which reveal that the percentage of Modvat credit availed to the total duty has increased from 11.74 in 1986-87 to 20.95 in 1990-91 and to 42.86 in 1995-96.

1.4.4 The sharp increase in Modvat during 1994-95 and 1995-96 coincided with extension of Modvat scheme to capital goods, permitting the availment of credit on dealers' invoices and introduction of invoice system.

1.5 Commodities which yielded revenue amounting to more than Rs.100 crores

The commodities (as per budget heads) which yielded revenue of more than Rs.100 crores during 1995-96 alongwith corresponding figures for 1994-95 are as under :

Sl. No.	Budget Head	Description	(Amount in crores of rupees)			Percentage variation of Actual over Budget
			1994-95 (Actual)	1995-96 (Budget Estimates)	1995-96 (Actual)	
1.	102	Iron and steel	2946.26	3360.20	3540.27	5.35
2.	27	Cigarettes, cigarillos or tobacco substitutes	2742.89	2871.85	3426.87	19.32
3.	31	Cement clinkers, cement all sorts	2016.95	2127.25	2180.49	2.50
4.	79	Synthetic filament yarn & sewing thread including synthetic monofilament and waste	1812.93	2069.95	1782.89	(-) 13.86
5.	34	Motor spirit	1523.58	1494.75	1631.45	9.14
6.	61	Plastics and articles thereof	1405.38	1811.00	1396.79	(-) 22.87
7.	128	Motor cars and other motor vehicles for transport of persons	918.22	1008.20	1341.57	33.06
8.	62	Tyres, tubes & flaps	1305.30	1350.30	1286.87	(-) 4.69
9.	36	Refined Diesel Oil	1181.25	1231.30	1155.19	(-) 5.71
10.	45	Organic chemicals	1009.99	1194.00	1133.79	(-) 5.04
11.	119	All other goods falling under chapter 84	992.56	1258.05	979.78	(-) 22.12
12.	130	All other goods falling under chapter 87	738.68	845.90	910.70	7.66
13.	125	All other goods falling under chapter 85	1008.01	1087.60	878.52	(-) 19.22
14.	40	All other goods falling under chapter 27	583.66	638.60	733.24	14.81
15.	46	Pharmaceutical products	658.57	850.80	720.22	(-) 15.35
16.	17	Cane or beet sugar and chemically pure sucrose in solid form	616.48	680.60	716.75	5.31
17.	103	Articles of iron and steel	570.03	695.40	701.54	00.88
18.	71	Paper and paper board, articles of paper pulp or paper or paper board	582.39	720.00	692.87	(-) 3.76
19.	84	Fabrics of man-made staple fibre	592.96	698.10	631.99	(-) 9.46
20.	44	All other goods falling under chapter 28	570.38	718.40	623.08	(-) 13.26
21.	75	Cotton and cotton yarn	586.45	638.00	571.70	(-) 10.39
22.	81	Artificial or synthetic staple fibres and tow including waste	451.94	500.00	518.70	3.74

Sl. No.	Budget Head	Description	(Amount in crores of rupees)			
			1994-95 (Actual)	1995-96 (Budget Estimates)	1995-96 (Actual)	Percentage variation of Actual over Budget
23.	124	Insulated wires, cables and other electric conductors	481.36	570.80	498.00	(-) 12.75
24.	99	Ceramic products	265.16	302.10	464.10	53.62
25.	106	Aluminium and articles thereof	540.95	607.80	458.72	(-) 24.53
26.	60	Miscellaneous chemical products	406.54	566.65	445.21	(-) 21.43
27.	80	Fabrics of man-made filament yarn	502.58	606.85	349.88	(-) 42.34
28.	52	Soap	310.82	386.95	335.97	(-) 13.17
29.	116	Refrigerations and airconditioners & parts thereof	308.38	425.00	329.92	(-) 22.37
30.	23	Miscellaneous edible preparations	226.48	290.35	327.72	12.87
31.	63	All other goods falling under chapter 40	248.70	269.45	310.13	15.09
32.	100	Glass and glassware	261.15	298.55	291.27	(-) 2.44
33.	51	Essential oils and resinoids, perfumery, cosmetics or toilet preparation	313.51	380.00	280.03	(-) 26.31
34.	39	Petro gases/hydrocarbons	200.00	138.70	276.31	99.21
35.	42	Caustic soda and caustic potash peroxides thereof	185.00	191.25	269.07	40.69
36.	35	Kerosene	305.57	387.25	257.62	(-) 33.47
37.	53	Organic surface active agents	206.10	225.00	254.41	(-) 13.07
38.	82	Spun yarn containing Polyester or other Synthetic yarn	204.49	218.45	236.90	0.08
39.	76	All others falling under chapter 52	230.31	235.60	226.55	(-) 3.84
40.	88	Laminated textile fabrics	126.37	112.90	224.44	98.79
41.	49	Paints and varnishes	282.91	356.45	217.80	(-) 38.89
42.	29	Chewing tobacco including kimam	150.79	157.65	216.53	37.34
43.	123	Reception apparatus for radio broadcasting etc.	165.86	220.20	215.40	(-) 02.18
44.	43	Soda ash	181.93	221.65	214.36	(-) 3.28
45.	115	Internal combustion engines and parts thereof, steam and other vapour turbines, hydraulic turbines, turbojets, other engines and motors	202.80	252.00	208.21	(-) 17.37
46.	28	Biris	208.05	217.70	207.46	(-) 4.70
47.	120	Electrical motors and generators, electric generating sets and parts thereof	145.02	132.95	200.64	50.91
48.	24	Natural or artificial mineral waters and aerated waters	144.82	170.50	196.61	15.31
49.	122	Electric accumulators, primary cells and primary batteries	248.18	319.15	194.51	(-) 39.05
50.	114	All other articles falling under chapter 83	89.36	99.30	187.57	88.89
51.	98	All other goods falling under Chapter 68	157.60	182.50	174.55	(-) 04.35
52.	104	Copper and articles thereof	170.87	199.10	173.15	(-) 13.03

Sl. No.	Budget Head	Description	(Amount in crores of rupees)			
			1994-95 (Actual)	1995-96 (Budget Estimates)	1995-96 (Actual)	Percentage variation of Actual over Budget
53.	30	Other than falling under chapter 24	385.61	401.25	169.33	(-) 57.80
54.	118	Ball or roller bearings	195.21	231.75	166.86	(-) 88.00
55.	129	Public transport type passenger motor vehicles and motor vehicles for the transport of goods	138.13	147.45	162.57	10.25
56.	38	Furnace oil	183.58	202.90	146.42	(-) 27.83
57.	21	Preparations of flour starch or milk pastry	127.92	158.60	142.62	(-) 10.07
58.	83	Other man-made blended yarn	129.38	142.95	131.06	(-) 08.31
59.	133	Optical, Photographic, Cinematographic measuring checking, precious parts thereof	105.31	117.80	117.91	00.09
60.	121	Electrical transformers, static converters and inductors	90.04	83.40	111.49	33.68
61.	137	Furnitures, lamps etc.	72.42	85.05	104.12	22.42
62.	41	Hydrochloric acid, Sulphuric acid	61.19	77.65	102.56	32.07
63.	67	Woods and articles thereof	80.60	82.15	101.57	23.63

The percentage variation of actual receipts over estimated receipts ranged between (-) 88.00 and (+) 99.21 (serial No.54 and 34). In case of 36 commodities out of 63 mentioned above, the actual receipts were less than the estimates varying between 2.18 per cent and 88 per cent.

1.6 Cost of collection

The expenditure incurred during the year 1995-96 in collecting Union Excise duties is given below alongwith the corresponding figures for the preceding four years :-

Year	(Amount in crores of rupees)		
	Receipts from excise duties	Expenditure on collection	Cost of collection as percentage of receipts
1991-92	28,110	158.74	0.57
1992-93	30,832	197.17	0.64
1993-94	31,548	223.93	0.71
1994-95	37,208	249.10	0.67
1995-96	40,009	285.47	0.71

(Figures furnished by Controller of Accounts (Central Board of Excise and Customs)),

1.7 Exemptions, rebates, refunds and rewards

(i) Exemptions

The number of exemption notifications in force during the years 1994-95 and 1995-96 aggregated to 309 and 257 respectively.

Estimated revenue foregone by grant of exemptions through issue of notifications by the Ministry during the years 1993-94 to 1995-96 was as under :

Year	(Amount in crores of rupees)			
	Notification issued on the day of presentation of Budget		Other notifications	
	Number	Estimated revenue foregone	Number	Estimated revenue foregone
1993-94	63	105.80	36	N.A
1994-95	62	311.00	81	168.33
1995-96	figures awaited			

(ii) Rebate

Under the Rules, the amount of rebates on excise duty paid on goods exported as also excise duty not levied on goods exported for the period 1993-96 are given below :-

	(Amount in crores of rupees)		
	1993-94	1994-95	1995-96
(a) Rebate under rule 12	53.21	77.18	77.02
(b) Rebate under rule 12A	14.77	5.04	29.03
(c) Duty not levied under rule 13-Revenue foregone as a result of export under bond	1808.45	1583.32	1897.11
(d) Differential duty recovered on unrebated amount of goods exported under bond	1.27	0.02	0.59

Note: Figures relate to 22 Commissionerates

(iii) Refunds

The amount of duty refunded by the department during 1993-96 because of excess collection is given below :-

	(Amount in crores of rupees)		
	1993-94	1994-95	1995-96
Number of cases	1991	2296	2192
Amount of refunds (other than rebate)	46.12	41.31	41.87

Note: Figures relate to 22 Commissionerates

(iv) Reward to informers and departmental officers

The amount of rewards paid to informers and departmental officers and amount of additional duty realised during 1993-96 are as under :

	(Amount in crores of rupees)		
	1993-94	1994-95	1995-96
(a) Amount of rewards paid to informers	26.68	16.42	15.77
(b) Amount of rewards paid to the departmental officers	55.55	34.89	36.19
(c) Additional duty realised as a result of payment of rewards	331.02	261.93	506.83

Note: Figures relate to 22 Commissionerates

1.8 Outstanding demands

The number of cases and amounts involved in demands for excise duty outstanding as on 31 March 1995 and 31 March 1996 are given below:-

		(Amount in crores of rupees)							
		As on 31.03.1995				As on 31.03.1996			
		Number of cases		Amount		Number of cases		Amount	
		More than five years	Less than five years	More than five years	Less than five years	More than five years	Less than five years	More than five years	Less than five years
a)	<u>Pending with</u>								
	Adjudicating officers	3277	6166	266.82	1369.88	4529	10734	389.01	2041.37
b)	<u>Pending before</u>								
i)	Appellate Collectors	310	447	46.76	1011.17	673	604	45.09	1843.79
ii)	Board	2769	270	206.80	219.76	229	365	172.27	90.22
iii)	Government	43	77	27.25	18.33	147	37	75.97	88.86
iv)	Tribunals	2353	1494	418.77	715.80	3237	1907	617.06	460.41
v)	High Courts	553	245	321.77	190.08	468	320	270.01	179.61
vi)	Supreme Court	291	187	71.64	50.96	411	138	6184.88	32.00
c)	Pending for coercive recovery measures	23868	3336	33.57	152.01	22412	559	131.30	108.77
	Total	33464	12222	1393.38	3727.99	32106	14664	7885.59	4845.03

Note: Figures relate to 17 Commissionerates

It may be seen that 46770 cases involving demands amounting to Rs.12730.62 crores was pending on 31 March 1996 with different authorities. Further, number of cases pending with adjudicating authorities have increased from 9443 during 1994-95 involving Rs.1636.70 crores to 15263 cases amounting to Rs.2430.38 crores during 1995-96.

1.9 Failure to demand duty before limitation

Revenue lost on grounds of limitation

The amount of demands for duty barred by limitation owing to demands not having been raised in time during the last three years was Rs.266.72 lakhs as detailed below :-

Year	Amount in lakhs of rupees
1993-94	33.78
1994-95	15.46
1995-96	217.48

Note: Figures relate to 22 Commissionerates

1.10 Seizures, confiscation and prosecution

The number of cases of seizures, confiscation and prosecution relating to excise duties during the last two years are given below :-

	(Amount in lakhs of rupees)			
	1994-95		1995-96	
	Number	Amount	Number	Amount
i) Seizure cases				
a) No. of seizure cases initiated	1060	15648.70	1166	5238.03
b) decided in favour of the assesseees	158	2772.55	100	241.65
c) decided in favour of the department	327	913.80	258	957.73
d) pending decisions	575	11962.35	808	4038.65
ii) Goods seized	213	519.68	134	491.69
iii) Goods confiscated				
a) in seizure cases	314	1330.19	363	1618.98
b) in non-seizure cases	53	428.16	51	41.37
iv) Number of offences prosecuted				
a) arising from seizure	53	220.35	99	8534.18
b) arising otherwise	60	54.80	73	139.05
v) Duty assessed in respect of goods seized or confiscated	476	142.59	533	569.89
vi) Fines levied				
a) on seizure and in confiscation cases	381	616.93	272	106.28
b) in other cases	61	11.10	90	18.66
vii) Penalties levied	546	331.76	327	229.15
viii) Goods destroyed after confiscation	60	9.63	9	1.50
ix) Goods sold after confiscation	52	1.24	25	0.46
x) Prosecution resulting in conviction	4	—	3	14.14

Note: Figures relate to 22 Commissionerates

1.11 Outstanding audit objections

The number of outstanding audit objections as on 30 September 1996 is 20692, involving duty of Rs. 2423.52 crores.

The year wise pendency is as under:-

Upto	(Amount in crores of rupees)	
	No. of objections	Amount
1991-92	6051	496.14
1992-93	8252	862.62
1993-94	10535	1233.65
1994-95	14485	1711.94
1995-96	20692	2423.52

1.12 Contents of Report

This Report includes 340 paragraphs featuring individually or grouped together and two reviews (Invoice based system and Paper and paper boards) arising from important findings from test check in audit and having a total revenue effect of Rs.2903.21 crores. The Ministry/ department has so far accepted the audit observations in respect of 194 paragraphs/reviews included in the report involving Rs.55.06 crores and has given interim replies in 8 cases involving Rs.1657.92 crores. No reply has been received in respect of 109 paras/reviews involving Rs.1155.74 crores from the Ministry.

2. "INVOICE" BASED SYSTEM

2.1 Introduction

The invoice based system was introduced for assessment and clearing excisable goods with effect from 1st April 1994, under which the assessee's invoice served as transport document as well as the basis for determining the assessable value in lieu of the gate pass and the price list. For removal of goods for captive consumption and to a related person, declarations on a proforma prescribed are required to be filed. The value of goods in such cases is to be determined in accordance with the provisions contained in section 4 of the Act, read with the Valuation Rules.

In this system, invoices are required to be issued by the manufacturers/ registered dealers in quadruplicate. The duplicate copy of the invoice is used as a document for availing Modvat credit.

2.2 Scope of Audit

A review was conducted from July 1995 to March 1996 covering the period 1 April 1994 to 30 September 1995 to check the effectiveness of the new system and adequacy of controls to safeguard the interest of revenue. During the review, one month's records of 952 units in 34 Commissionerates and related records of 284 Ranges were examined.

2.3 Highlights

Important findings of the appraisal are as below:

- **185 dealers (about 12 per cent of sample checked) were given the registration certificates though they did not have proper premises. The duty involved amounted to Rs.15.14 crores. In 146 cases, even after cancellation of the registration certificates, no action was initiated to recover the credit (Rs.7.18 crores) availed on the basis of invoices**

issued by these dealers. In respect of 61 per cent of dealers, neither the defacement nor the cross verification of duty paying documents was done, which leaves scope for substantial leakage of revenue.

- 18 per cent of the invoices issued by the manufacturers were incomplete, 7 per cent were either not authenticated or were authenticated by unauthorised persons or had no printed serial numbers and about 82 per cent of the computerised invoices did not bear the names of the authorised signatories, clearly printed and stamped, indicating that basic checks were not properly exercised by the assessing authorities.
- In 85 units, no declarations were filed though the clearances were to related persons/depots or for captive consumption. 34 per cent of declarations submitted were not verified by the concerned Assistant Commissioners.
- Absence of controls to ensure that the invoice prices were as per section 4 of the Act resulted in undervaluation of goods involving duty effect of Rs.56.64 crores in 205 cases.
- Modvat credit of Rs.16.91 crores in 225 cases (about 15 per cent of the sample) was availed on the basis of invalid documents in 29 Commissionerates. Only 25 per cent cross verification of Modvat invoices was conducted by the department.

2.4 Internal control mechanism

2.4.1 The Rules and instructions issued by the Board provide for certain checks to be exercised at the level of Range Superintendent and the Divisional Assistant Commissioner to ensure that invoices issued contain the required information, that the declarations filed are correct, that wrong Modvat credits have not been availed and that duty is correctly determined and paid.

2.4.2 Invoices issued by the manufacturers

The procedure to be followed for issue of invoices has been laid down in rule 52A of the Rules. The invoices should be prepared in quadruplicate with separate printed marking for the buyer, for the transporter, for the department and lastly for the assessee, the obvious purpose being prevention of misuse of the other copies except the one meant for the transporter for availing Modvat.

Test check of invoices issued by the manufacturers revealed the following:

- 40 manufacturers in 7 Commissionerates were found to be unauthorisedly using more than one invoice book. Of these, 3 manufacturers in Chandigarh Commissionerate had used two sets of invoices containing the same serial numbers.

- 26 manufactureres in 7 Commissionerates were not using separate invoice books in respect of clearances for domestic consumption and exports.
- 38 manufacturers in 11 Commissionerates were not getting invoices printed separately in accordance with the provisions of rule 52A and as such the possibility of misuse existed.
- 51 manufacturers in 14 Commissionerates did not intimate to the concerned Range offices the serial numbers of invoices before use, violating the requirement of rule 52A.
- 3 units in 3 Commissionerates issued 42 single invoices involving duty effect of Rs.66.97 lakhs though the goods were cleared in part consignments for which separate invoices were required to be issued.
- In about 88 per cent of the computerised invoices, names of the authorised signatories were not clearly printed or stamped.
- 89 manufacturers in 11 Commissionerates did not intimate the details of software used and continued to issue invoices generated on computers.

A further scrutiny of (3,25,511 invoices) about 11 percent of the invoices issued revealed the following:-

Sl. No.	Nature of irregularity	(Amount in lakhs of rupees)	
		Numbers	Duty involved
1.	Invoices where some of the columns like price of goods, deductions allowed, sales tax and Central Excise registration Number, Range/ Division of customer etc., were left blank	57415 (18%)	26332.06
2.	Invoices not authenticated or authenticated by other than authorised person	11390 (4%)	911.10
3.	Invoices having no printed serial numbers (does not include amount of invoices in respect of 45 units out of 144 in 3 Commissionerates)	7603 (3%)	430.96

The above findings clearly indicate that the basic checks were not being properly exercised. Leakage of revenue arising from such lax exercise of prescribed checks have been discussed in paras 2.5 and 2.6 below.

2.4.3 Declarations filed by manufacturers

Under proviso 2 to rule 173-C(1) of the Rules, declarations in respect of sales to or through related persons, clearance for captive consumption and clearance to other factories of the same assessee are required to be filed with the concerned Superintendent in prescribed proforma at stipulated frequency/interval.

Test check of records revealed that 85 units in 17 Commissionerates did not file any declaration though the clearances were to related persons/ depots or for captive consumption. Among them were the cotton yarn manufacturers (in four Commissionerates) whose products were sold through depots but they did not file any declaration and the department also did not insist reportedly for rapid market fluctuations. Out of the '3796' declarations submitted to the A.C. in 17 Commissionerates, verification was done in respect of only '2501' declarations (66 per cent).

Some illustrative cases with financial implications have been highlighted in para 2.5 below:

2.4.4 Improper registration of dealers

As per rule 57 GG of the Rules, every person who intends to issue modvat invoices shall get himself registered under rule 174. The Board clarified in February 1995 that a dealer intending to issue such modvat invoices should have a 'proper place' to store excisable goods. The godown can either be owned by the registered person or rented or leased.

Scrutiny of 1556 certificates of registration issued to dealers in 23 Commissionerates during the period 1994-95 and 1995-96 (up to September 1995), revealed that:

- in 146 cases under 11 Commissionerates, the registration certificates issued wrongly were subsequently cancelled, but before cancellation the dealers had already issued modvat invoices involving a total modvat credit of Rs.718.32 lakhs. The action to reverse such credits was not initiated by the concerned offices.
- 185 dealers (about 12 per cent of sample) were granted registration though they did not have the proper premises for carrying out legitimate trading activity. It was noticed that in 180 such cases, modvat invoices having a duty effect of Rs.1514.84 lakhs were issued.

Other cases which came to notice during test audit regarding violation of rule 57GG read with the Board's instructions of February 1995 are indicated in Annexure-I.

2.4.5 Scrutiny of returns/records

A registered dealer has to submit extract of RG 23D register with relevant documents within 7 days of the following month to the Range Superintendent for verification and defacement of the modvat invoices. A test check of records at Range Offices in respect of 1358 registered dealers in 24 Commissionerates revealed

that in respect of 61 per cent of dealers defacement/cross verification of duty paying document was not done. It was also found in 3404 invoices issued by 126 registered dealers (9.5 percent) involving Modvat credit of Rs.431.54 lakhs that either serial numbers were not printed or sales tax registration numbers were not given. In three cases, issue of bogus invoices were detected by the concerned Range office, but no penal action was initiated.

2.4.6 The above points indicate that there is no effective control/mechanism for issue of registration certificate to dealers and defacement/verification of duty paying documents to safeguard the interest of revenue.

2.5 Valuation of excisable goods

2.5.1 Non observance of the prescribed controls relating to filing and scrutiny of declarations by the assesseees and the absence of any controls to ensure that the price charged by the assessee in the invoice was in accordance with the provisions of section 4 of the Act, resulted in undervaluation of goods involving duty effect of Rs.56.64 crores in 205 cases. Some of the illustratives cases are given below:

2.5.2 Where price was not the sole consideration for sale

(a) Excess freight collections not included in assessable value

As is well settled, quantum of actual freight is a permissible deduction from the assessable value. But in the case of an assessee in Delhi Commissionerate engaged in the manufacture of motor vehicles (chapter 87), more than the actual freight charges was collected from the buyers. As the excess freight charges were excluded from the assessable value, it resulted in short realisation of duty of Rs.1.65 crores.

The department stated (April 1996) that the Supreme Court in the case of M/s Indian Oxygen Limited vs Collector of Central Excise (1988 (36)ELT 723 (SC)) had held that duty of excise is a tax on manufacture and not a tax on profits made on transportation charges.

Reliance of the department on the above mention court decision is not relevant, as the objection relates to amount deducted in excess of actual freight charges.

(b) Dealer's margin

The Supreme Court in the case of M/s. Moped India Ltd Vs. Assistant Commissioner of Central Excise, Vellore and others {1986 (23) ELT (8) SC} held that commission paid to selling agents is not a permissible deduction from the assessable value, as it is not a trade discount.

An assessee in Bangalore Commissionerate, engaged in the manufacture of tractors allowed his sole selling agent to collect dealers' margin at rates ranging from Rs.5700 to Rs.6500 per tractor from the customers, in order to meet the after sales service charges, cost of sales promotion, etc. However, while determining the assessable value for payment of central excise duty, the dealers' margin was not taken into consideration, resulting in short levy of excise duty of Rs.72.15 lakhs during April 1994 to December 1995.

(c) Interest on advances from customers

The Supreme Court in the case of Metal Box India Ltd. Vs. Collector Central Excise {1995 (75) ELT 449 (SC)} held that notional interest on advances paid by customers to an assessee is required to be taken into account to arrive at the assessable value.

Three assessees of Meerut Commissionerate obtained advances from customers but the notional interest was not included in the assessable value, which resulted in short levy of duty amounting to Rs.1.20 crores.

The department in the case of one assessee stated (May 1996) that action was being taken to raise the demand.

2.5.3 Undervaluation of goods consumed captively

From 1 April 1994, assessees have to file a declaration in respect of captive consumption in Annexure II with the Range Superintendent in triplicate at the beginning of each financial year or as and when there is change in value. Moreover, such value is to be adopted on the basis of value of comparable goods or cost of production including reasonable profit as per section 4 (1)(b) of the Act read with the Valuation Rules.

(a) Non revision of cost data

An assessee in Chandigarh Commissionerate manufacturing different varieties of yarn cleared the yarn for captive consumption during April to September 1994 based on the cost data for the year 1992-93. As the cost data related to an earlier period, it resulted in short levy of duty amounting to Rs.106.42 lakhs during the period April 1994 to September 1994. The department recovered an amount of Rs.47.70 lakhs.

(b) Cost data revised but differential duty not paid

An assessee in Nagpur Commissionerate engaged in the manufacture of soap and glycerine had filed (April 1994) the price list of goods for inter-unit transfer under rule 173-C showing the value of the products viz toilet soap and noodles, based on the cost data of December 1993 and paid duty during 1994-95.

and 1995-96 accordingly. The assessee submitted (November 1995) revised cost data of 1994-95 but did not pay the differential duty on the goods cleared based on revised cost data. This resulted in short levy of duty amounting to Rs.212.96 lakhs for the period from April 1995 to October 1995.

The department stated (February 1996) that the assessment was provisional for want of finalisation of depot prices. The contention of the department is not relevant as the audit objection pertains to non payment of differential duty on the basis of revised cost data.

(c) Comparable price of similar goods not adopted

An assessee in Bhubaneswar Commissionerate engaged in the manufacture of synthetic filament yarn and man made staple fibre cleared 7,32,800 Kgs of polythene terphthalate (P.P. Chips) for captive consumption between July and September 1995. The price of such PP chips as declared by the assessee was much lower than the price at which similar chips were procured from the market by the assessee when there was a shortfall in his own production. The price of PP chips procured from the market to meet part requirement should have been adopted for valuation of chips manufactured and consumed captively. Non adoption of comparable value resulted in short levy of Rs.80.97 lakhs.

2.5.4 Incorrect computation of assessable value

According to the provisions contained in section 4 of the Act read with the Valuation Rules, the assessable value of the goods would include value of all the raw materials used for manufacture of finished goods.

(a) An assessee in Allahabad Commissionerate cleared polyester filament yarn on tariff value fixed by the Government upto 3 July 1995. From 4 July 1995, the value was to be determined under section 4. The assessee determined the value accordingly and paid the differential duty on the clearances made on 4 July 1995. From 5 July 1995 the assessee adopted the assessable value which was equal to the tariff value valid upto 3 July 1995 and was lower than that determined by him for 4 July 1995. This resulted in short levy of duty of Rs.801.22 lakhs on clearances during the period July to December 1995.

The department stated that the value of the said goods would fluctuate depending on the market forces and that it is not binding and not laid down anywhere that the assessable value cannot be lower than the rate fixed by the Government.

The reply of the department is not tenable in view of the fact that value of the goods as recovered from customers (under section 4) was more than the value

as determined by the Government under section 3 of the Act and the assessee had also paid the differential duty for clearances on 4 July 1995 (one day).

(b) Three assessees in Aurangabad Commissionerate did not include the value of 'denaturant' while arriving at the assessable value of the denatured ethyl alcohol. Non inclusion of cost of denaturant in the assessable value resulted in short levy of duty of Rs.50.28 lakhs during the period from April 1994 to November 1995.

2.5.5 Goods sold through depots

The Supreme Court in the case of Collector of Central Excise Vs. Indian Oxygen Ltd. {1988 (36) ELT 723 (SC)} held that when normal price is ascertainable at the factory gate, the said price would be applicable to stock transfers by the assessee to his depots.

(a) A leading manufacturer of television sets in Calcutta Commissionerate, manufacturing colour TV, cleared the goods on payment of duty @ 20 per cent on a value shown in the required proforma. In the said declaration, the assessee claimed deduction on account of "distribution expenses", "interest on stock", etc. As such a deduction was not permissible, it resulted in short levy of Rs.1.01 crores (approx) during the period from 1 April 1994 to 31 March 1995.

The department while admitting the objection in principle stated (May 1995) that a show cause-cum demand notice for Rs.1.64 crores was issued covering the period from April 1994 to March 1995.

(b) Two assessees in (Mumbai I & III Commissionerates) cleared goods at lower value for sales through depot. Although the sale price at the factory gate was available, a lower value was adopted. This resulted in short levy of Rs.117.48 lakhs for the period from April 1994 to October 1995.

The department (in one case) resisted the objection stating that the decision of the Supreme Court in the case of Government of India Vs. Madras Rubber Factory Limited {1995 (77) ELT 433 (SC)} was applicable in this case and depot sales were a different class of sales and such buyers were a different class of buyers.

Reply of the department is not tenable because in case of MRF Ltd. all clearances were through depots and no ex-factory price was available.

(c) An assessee in Jamshedpur Commissionerate entered into an agreement with another assessee to manufacture goods out of raw materials (sheet bars) received from the buyer company on conversion basis and the goods so produced were cleared to different depots/stock yards.

The declaration of value submitted by the assessee did not include in the assessable value, the distribution charges at the rate of Rs.600 per tonne realised from the customers. This resulted in short levy of duty of Rs.278.28 lakhs during the period from 1 April 1994 to 31 July 1995.

(d) Another assessee in Jamshedpur Commissionerate did not include distribution charges in the assessable value of the goods cleared to depot. Thus duty short paid amounted to Rs.14.69 crores on clearances during the period under review.

2.5.6 Other irregularities

(a) Goods cleared without duty paying documents

A Public Sector undertaking in Indore Commissionerate was permitted by the Collector of Central Excise vide his orders dated 15 December 1986 under rule 173G(1)(iv) and 173(11) to raise invoices and pay duty after clearance of goods. Since rule 173C(11) was rescinded with effect from 1 March 1994 and a new rule 173C was introduced under which no such relaxation was permissible, the relaxation already granted to the assessee became invalid with effect from 1 March 1994. In spite of the above change, the assessee continued to avail of the facilities. It was noticed that during the month of February 1995, the assessee issued 183 invoices and paid duty of Rs.112.02 crores after the goods worth Rs.873.57 crores had already been cleared from the factory on the basis of despatch notes containing only the description and quantity of goods but with no particulars of value or amount of duty paid.

(b) Non issue of timely show cause cum demand notice for differential duty

Where on finalisation of the RT.12 returns, the duty payable is found to be more than that paid by the assessee, the differential amount of duty is required to be made good by debit to the personal ledger account/RG.23. part II, after issuing a show cause-cum demand notice under section 11A of the Act.

The department detected a case of non payment of differential duty of Rs.2.03 crores in Bangalore Commissionerate for the clearances made from November 1994 to April 1995 and confirmed the demand in June 1995. However SCN for earlier period involving duty of Rs.3.10 crores could not be issued on grounds of limitations. The non examination of prescribed declarations in time resulted in escape of duty of Rs.3.10 crores for the period April to October 1994.

(c) Clearance at lower assessable value

In 2 other cases in Patna and Jamshedpur Commissionerates value of goods was "lowered" without assigning any reason resulting in short levy of duty of Rs.13.97 lakhs on clearances during the period under review.

2.6 Effect of invoice based system on Modvat

2.6.1 Availment of credit without valid documents

As per rule 57G of the Rules, credit of duty is admissible, only if the inputs are received under the cover of valid documents evidencing payment of duty. With effect from 1 April 1994, Modvat credit can be availed on the basis of duplicate copy of invoice and triplicate copy of Bill of Entry. Registered dealers are also authorised to issue excise invoice on the basis of which buyers can take Modvat credit.

In course of test audit, it came to notice that in 225 cases under 29 Commissionerates, Modvat credits amounting to Rs.16.91 crores were availed on the basis of invalid documents. The detail of such cases are given in the table below:

Sl. No.	Particulars	No. of cases	Duty	Accepted cases	(Amount in lakhs of rupees)			
					Recovery		SCN issued	
					No. of cases	Amount	No. of cases	Amount
1.	Credit taken on original copy of invoice	109	279.87	25	21	23.65	8	37.01
2.	Credit taken on duplicate copy of bills of entry	3	888.73	—	—	—	—	—
3.	Credit taken on invoice issued under rule 100E (free trade zone)	1	123.94	—	—	—	—	—
4.	Credit taken on invoices/ Bills of entry not in the name of the assessee	16	92.66	4	3	6.58	1	3.96
5.	Credit taken on photocopy of Bill of entry	1	17.59	—	—	—	—	—
6.	Credit taken on endorsed invoices	30	66.28	3	2	1.99	2	9.62
7.	Credit taken on supplementary invoices not countersigned by proper officer	1	1.80	1	1	1.80	—	—
8.	Credit taken on Customs duty	9	35.80	7	7	12.03	—	—
9.	Credit taken on assessable value	4	2.66	2	2	0.37	—	—
10.	Credit taken on invoice issued by dealer without movement of goods	1	1.33	—	—	—	—	—
11.	Credit taken on gate passes issued even after 31.3.1994	1	3.42	1	1	3.42	—	—

Sl. No.	Particulars	No. of cases	Duty	Accepted cases	(Amount in lakhs of rupees)		
					Recovery No. of cases	Amount	SCN issued No. of cases
12.	Credit taken on "challans"	1	18.97	—	—	—	—
13.	Credit taken fraudulently	2	2.24	1	1	2.10	—
14.	Credit taken twice/thrice	12	10.42	9	8	9.62	—
15.	Full credit taken on short receipt of goods	9	26.12	5	5	6.29	—
16.	Excess availment of credit	13	13.83	7	7	11.95	—
17.	Credit taken on goods received after 30.6.94 on gate passes issued before 1 April 1994.	12	95.57	8	4	15.48	2 18.33
Total		225	1691.23	73	62	94.46	13 63.50

Of these cases, 138 cases (15 per cent) pertain to the sample. This indicates the extent of perfunctoriness of the check by the department.

(b) Defacement of Modvat invoices not done

According to rule 57 G(4), a manufacturer of final product shall submit, within five days after the close of each month, to the Superintendent of Central Excise, the original documents evidencing payment of duty along with extract of Part I and Part II of Form RG 23A and Superintendent of Central Excise shall, after verifying the genuineness, deface the documents, before 15th of the following month and return the same to the manufacturer.

17 units in 7 Commissionerates did not submit documents involving modvat credits of Rs.72.35 crores during 1994-95 and 1995-96 alongwith extract of RG 23A. The defacement of documents was, therefore, not done.

In 15 Commissionerates 142 manufacturers (76 during 1994-95 and 66 during 1995-96) had availed Modvat credit of Rs.404.69 crores against documents which had not been defaced. Although this provision has been designed to prevent misuse of the afore mentioned documents, the control function was found to be grossly inadequate.

(c) Cross verification of Modvat invoices not done

Test check of records at Ranges revealed that 75 percent of the work relating to verification of duty paying documents was not complete. The purpose of this verification was to prevent availment of fraudulent Modvat credit. The non verification, therefore, defeated this purpose.

The above points were brought to the notice of Ministry (October 1996). Reply has not been received (November 1996).

3. PAPER AND PAPER BOARD

3.1 Introduction

'Paper' became dutiable for the first time in 1955. With the adoption of the Harmonised System of Nomenclature from 28 February 1986, the item fell under chapter 48 of the Schedule. Waste and scrap of paper and paper board were included in chapter 47, while printed boards, newspapers, pictures and other similar products of the printing industry, manuscript, type scripts, charts, plans etc., were covered under chapter 49.

3.2 Scope of Audit

The audit of records relating to the assessment, levy and collection of duty on paper and paper board was undertaken (during July 1995 to March 1996) covering the period 1993-94 to 1995-96. The checks were confined to one month's records of each year. Audit points noticed in the preceding year which could not be incorporated in the earlier year's reports have also been included wherever relevant.

3.3 Highlights:

The results of appraisal contained in the succeeding paragraphs highlight the following:

- **The payment of duty through adjustment of Modvat credit has increased from 15 per cent in 1993-94 to 30 per cent in 1995-96, whereas collection through PLA (cash) has gone down from 85 per cent to 70 per cent in respect of the same periods.**
- **Irregular grant of exemption was noticed in 27 cases involving duty effect of Rs.75.05 crores.**
- **Norms of production were not fixed in any of the units test checked. Non fixation of production norms resulted in suppression of production and consequential short levy of Rs.12.70 crores in 24 cases.**
- **Duty of Rs.2.40 crores was short paid/not paid by 6 assesseees on goods consumed captively.**
- **Undervaluation of excisable commodities in 43 cases led to short levy of Rs.2.38 crores. In about 50 percent of the computer generated invoices, the names of authorised signatories were not indicated, which left scope for leakage of revenue by way of fraudulent avilment of credit.**
- **Irregular Modvat credit of Rs.4.58 crores was availed by 91 assesseees. Of these, in 31 cases Modvat credit of Rs.76.97 lakhs was availed on the basis of invalid documents. The cross verification of Modvat invoices was done by the department only in respect of 38 per cent of the invoices test checked.**

3.4 Statistical information

During the years 1993-94 to 1995-96, the total revenue realised on account of central excise receipts through Personal Ledger Account (PLA) and adjustment through Modvat credit (RG-23) on paper and paper products in the case of 780 manufacturers under 28 Commissionerates was as under:

Year	PLA	RG-23	Total	(Amount in crores of rupees)	
				PLA percentage share	RG-23
1993-94	428.98	76.92	505.90	84.80	15.20
1994-95	490.03	196.75	686.78	71.35	28.65
1995-96	509.63	220.18	729.81	69.83	30.17

The above table shows that payment through the adjustment of Modvat credit has increased from about 15 per cent during 1993-94 to about 30 per cent in the subsequent years. Revenue trend for the year 1995-96 further revealed that percentage share of Modvat credit ranged between 30 and 50 in 7 Commissionerates; and between 50 and 75 in 8 Commissionerates. It may be mentioned that this abrupt increase during 1994-95 and 1995-96 coincides with extension of modvat scheme to cover capital goods and dealer's invoices.

3.5 Exemptions

3.5.1 As per section 5A (1) of the Act, Government is empowered to exempt excisable goods on the whole or any part of the duty leviable thereon conditionally or unconditionally.

Incorrect grant of exemption involving duty effect of Rs.75.05 crores was noticed in 27 cases under 18 Commissionerates. Department has reported issue of show cause notices for Rs.12.20 crores in 3 cases, besides accepting 5 other cases. Some of the important cases of irregular exemption are given in the succeeding paragraphs:

3.5.2 Availment of concessional rate of duty without verifying the percentage of unconventional raw materials used

Notification No.22/94-CE and 24/94-CE dated 1 March 1994 as amended provide for concessional rate of duty on paper and paper boards or articles made therefrom if the same have been manufactured from pulp in a factory and if such pulp contains not less than a specified percentage by weight of pulp made from materials other than bamboo, hardwood, soft wood, seeds (other than sarkanda) or rags. Subsequently on 6 June 1994, the Ministry clarified that the concession would be available to paper and paper board if manufactured from pulp of the required specification regardless of whether the pulp itself was manufactured in the same factory or not.

Even after this clarification the important condition necessary for availment of concessional rate of duty that remained unaltered was the percentage of pulp made out of unconventional source of raw materials and used for the final product.

It has come to notice in course of test audit that no arrangement existed for verification for the specified percentage of pulp from unconventional sources, in the absence of which the aforesaid notification and the clarification are not applicable.

It was seen in case of 9 assesseees in 7 Commissionerates that between April 1991 and November 1995 a duty concession of Rs.57.23 crores had been allowed even though the department had no reliable mechanism to ascertain the percentage of non conventional pulp. Only in 2 cases, the department reported (April 1996) that samples had been drawn for detailed chemical tests. While the department admitted the objection in one case, and is yet to respond in respect of 3 cases, in the balance 3 cases the department relied on the aforementioned notification/clarification without elaborating as to how they satisfied themselves above the conditionality of the minimum percentage of unconventional pulp. The concession allowed was, therefore, highly questionable.

3.5.3 Irregular exemption on newsprints for publication of news paper

Notification No.60/88-CE dated 1 March 1988 exempted newsprint from payment of central excise duty, provided a certificate from Registrar of News paper about authorised entitlement was produced before the concerned A.C.

a) An assessee in Cochin Commissionerate cleared newsprint without payment of duty on the alleged ground that the Registrar had stopped issuing such certificates from April 1995.

The department reported (September 1995) issue of show cause notices demanding duty of Rs.1170.34 lakhs (including cess for Rs.1.46 lakhs) for the clearances from April 1995 to August 1995. The demand is under adjudication.

b) Two assesseees in Indore and Pune Commissionerates had cleared newsprint during the period September 1993 and August 1995 without production of the necessary certificates. This resulted in short levy of Rs.118.86 lakhs. The Ministry admitted the objection in one case and reported confirmation of demand of Rs.36.90 lakhs besides imposing penalty of Rs.10,000.

3.5.4 Irregular exemption on printed paper cartons

An assessee in Delhi Commissionerate engaged in the manufacture of cartons, boxes, bags and other packing containers cleared the goods at concessional rate of duty as per notification dated 1 March 1994 (as amended) by treating the goods as articles made from paper board, contrary to CEGAT's decision {1995 (56) ECR

236 (T)} in the case of Ideal Printers Vs. Collector of Central Excise Bombay. The Tribunal held in that case that a paper carton whether printed or not must be classified as a product of packaging industry and not a product of the paper industry. As such the assessee was not entitled to the benefit of notification dated 1 March 1994 and was liable to pay duty at 20 per cent ad valorem. This resulted in short levy of duty of Rs.1.83 crores from January 1995 to September 1995.

The department did not accept the objection (January 1996) on the ground that the assessee was not using the restricted items of material in the pulp and was rightly entitled for the benefit. The reply is not in conformity with the decision of CEGAT quoted above.

3.5.5 Irregular exemption on duplex board

An assessee in Baroda Commissionerate was manufacturing printed/unprinted cartons/boxes made out of duplex board by stitching processes and availed exemption from June 1994 onwards. Since duplex board cannot be considered as corrugated paper board, the boxes manufactured out of such duplex boards were not eligible for exemption under the notification dated 1 March 1994. This resulted in short levy of duty of Rs.1.22 crores for the period June 1994 to April 1995.

The department reported (January 1996) that SCN for Rs.83 lakhs covering the period from May 1995 to October 1995 had been issued in December 1995 and earlier demand for Rs.1.22 crores was under process.

3.5.6 Irregular exemption on paper based decorative laminated sheets

Paper based decorative laminated sheets are chargeable to concessional rate of duty under notification No.136/89 CE dated 12 May 1989 as amended.

An assessee in Delhi Commissionerate engaged in the manufacture of paper based decorative laminated sheets was manufacturing his product by using a mixture of chemicals and impregnated paper, and compressing the sheets by different processes. Since the product of the assessee was impregnated paper covered with plastic and compressed, the benefit of the notification ibid was not available. The department also confirmed and recovered the demand for clearances made in March 1993, but from April 1993 onward allowed the concession. This resulted in short payment of duty of Rs.55.15 lakhs from April 1993 to February 1994.

The department contended (February 1996) that similar concession was being availed of by other units in other Commissionerates and assessee was not using plastic in the manufacture of laminated sheets. Reply of the department is not tenable as the material being used by the assessee was nothing but plastic classifiable under chapter 39 used in the manufacture of paper based decorative

laminated sheets as declared by the assessee. Further, the demand raised for the month of March 1993 was not contested by the assessee and there was no evidence to show that plastic was eliminated from April 1993 in manufacturing the product.

3.5.7 Exemption with simultaneous availment of Modvat facility

Printed cartons, boxes, containers etc. were chargeable to a concessional rate of duty at 15 per cent ad valorem upto 27 February 1993 by notification No.67/82-CE dated 28 February 1982 and 20 per cent ad valorem thereafter under notification No.30/93-CE dated 28 February 1993 on condition that no Modvat credit had been availed of.

An assessee in Bolpur Commissionerate manufacturing composite containers (printed) was allowed to clear the product on payment of duty at the rate of 15/20 per cent ad valorem under the aforesaid notifications even after availing modvat credit. Thus non fulfillment of the conditions resulted in short levy of duty of Rs.21.78 lakhs during the period from 1 April 1992 to 31 March 1993.

The department contended (May 1994) that proportionate credit on inputs availed of was debited back by the manufacturer, and that such adjustment is not repugnant to the Rules.

The department's contention is not tenable as the assessee availing Modvat credit on inputs has to pay duty on the final products and the notification did not contemplate the reversal of credit later on for availing the concession. Question of adjustment of duty under Modvat rules does not arise in the instant case.

3.5.8 Irregular exemption on printed polyester adhesive laminated paper

As per notification No.20/94-CE dated 1 March 1994, the concessional rate of duty at 20 per cent ad valorem was applicable to all goods falling under sub-heading 4811.30 and 4823.90-other than products consisting of sheets of paper or paper board impregnated, coated or covered with plastics, compressed together in one or more operations.

An assessee in Nagpur Commissionerate engaged in the manufacture of polyethylene coated paper-printed/unprinted in rolls and sheets (sub-heading 4811.30) cleared the goods at concessional rate of duty at 20 per cent ad valorem during 1994-95. As the product was covered with plastic (polyethylene coat) the assessee was not eligible to avail of the concessional rate. This resulted in short levy of duty amounting to Rs.58.88 lakhs during the period 1994-95 and 1995-96 (upto December 1995).

The department has reported (June 1996) issue of SCN for Rs.12.62 lakhs covering clearances for the period from January to May 1996.

3.6 Suppression of production

3.6.1 After the introduction of self removal procedure, it devolved on the department to verify the claims of the assessee by such methods as norms of production, log book of machine, raw material and power consumed, analysis of production trends, etc. In the course of test audit, 24 cases of suppression of production in 8 Commissionerates and consequential non-levy of duty amounting to Rs.12.70 crores were noticed. Some of important findings arising from one or more of the aforementioned methods are narrated below:

3.6.2 A scrutiny of records of an assessee in Chandigarh Commissionerate engaged in the manufacture of writing and printing paper revealed that, as per production norms fixed by the assessee, 3 per cent to 5 per cent soda sulphite was required. It was seen that the assessee consumed 2242 tonne of soda sulphite during the years 1993-94 to 1994-95 and on the basis of his own norms (average), 44833 tonne of writing and printing paper should have been produced. But as the assessee had shown 26757 tonne as his production, the suppression of 18076 tonne of paper and paper board resulted in non levy of excise duty amounting to Rs.2.52 crores (including cess) for the aforementioned period.

The department stated that in the absence of any corroborative evidence, action could not be taken against the assessee. The argument advanced by the department is tenuous since the short levy of duty has been worked out by Audit on the basis of assessee's own norms.

3.6.3 It was noticed from the records of 12 assesseees (in 3 Commissionerates) engaged in the manufacture of paper and paper board that the quantity of production entered in the logbook of machines employed was 33053 tonne more than those made in the excisable records (RGI Register) for the period from April 1993 to March 1995. The department failed to collect central excise duty amounting Rs.838.25 lakhs (including cess).

The department stated in six cases (February 1996) that considerable paper is lost as wastage from cutting, sizing, sorting, packing, etc.

The reply is not tenable because the broke (wastage) in the process of cutting, etc. is negligible as each roll coming out of the machine is kept at standard and specific measurement. Further the assesseees were required to maintain the record for broke (wastage) in the prescribed form but no such records were maintained by them.

In one of the above cases in Bhubaneswar Commissionerate, it was noticed that the production as per machine log book worked out to 41129 tonne (in respect of two out of five machines) during the year 1993-94 and 49098 tonne (in respect

of four out of five machines) during 1994-95, whereas machine production disclosed in the cost Audit Report was 39062 tonne and 46140 tonne respectively. Thus, there was suppression of production of 5025 tonne of paper and paper board (2067 tonne during 1993-94 and 2958 tonne during 1994-95). No final reply from the department has been received (November 1996).

3.6.4 In Hyderabad Commissionerate, in respect of one assessee it was noticed that for the purpose of manufacture of final products, "electricity" was obtained from State Electricity Board, besides generation from their own diesel generators to meet the deficiency.

Scrutiny of power utilisation vis-a-vis production as declared by the assessee revealed that production was abnormally low in the first quarter of 1994-95, and also in the second quarter of 1995-96 compared to average production achieved during the period from 1 July 1994 to 30 June 1995. While the power consumed per tonne of production was 666 units on an average during the period from 1 July 1994 to 30 June 1995, the consumption was 1095 and 1155 units per tonne during the first quarter of 1994-95 and the second quarter of 1995-96 respectively.

Although no norms have been fixed by the department, as required under rule 173E, on the basis of average output vis-a-vis power consumed during the period from July 1994 to June 1995, the shortfall in production during the two above mentioned quarters amounted to Rs.2.49 crores on which the duty liability worked out to Rs.49.81 lakhs.

The department stated that considering the variable factors regarding raw material supply, purification, labour situation, demand and supply, condition of plant and machinery, it is not practicable to fix norms in Hyderabad Commissionerate.

This contention is not acceptable as provision for fixing norms in the rules is to enable the department to prevent evasion of duty. Moreover, as production is a direct function of the power consumed, such wide variation as reported above is not justified and called for necessary action for issue of demand notice.

3.6.5 As per rule 55 every manufacturer, unless specially exempted by the Commissioner, is required to sign and deliver to the proper officer a return in Form RT 5 at the end of every quarter indicating the quantity of raw materials used in the manufacture of excisable goods and the quantity of finished goods manufactured.

An assessee in Bhubaneshwar Commissionerate had shown in the consolidated computerised ledger the consumption of bamboo as 120185 tonne during 1993-94 and 124837 tonne during 1994-95. The RT 5 return (which agreed with the Balance Sheet figure) however exhibited the figures of 118620 tonne and 120254 tonne during 1993-94 and 1994-95 respectively. The short accountal of

bamboo to the extent of 6148 tonne is an indication of suppression of production of paper and paper board, involving non levy of duty amounting to Rs.109.24 lakhs.

3.7 Non levy of duty on excisable goods consumed captively

3.7.1 Non levy of duty on excisable goods consumed captively involving duty effect of Rs.2.40 crores was noticed in 6 cases in 4 Commissionerates. Some of the important cases are narrated below:

3.7.2 Surface printed paper used in packing branded cigarettes

Duty on captive consumption of excisable goods is exempt as per notification No.217/86-CE dated 2 April 1986 and 67/95-CE dated 16 March 1995, provided the inputs and final products are specified in the said notifications.

Three leading cigarettes manufacturers under Calcutta I, Calcutta II and Meerut Commissionerates, procured cigarette papers and printed the brand names of the cigarettes thereon. Such surface printed papers were consumed within the factory for manufacture of cigarettes. Since cigarettes are not specified as final products, the aforesaid exemption was not admissible. As no duty was paid on the captive consumption of surface printed papers, it resulted in non levy of duty Rs.175.99 lakhs between 1 March 1994 and 31 December 1995.

The department in one case contended that what came out of single integrated process of manufacture was cigarette only and not surface printed paper. The department added that chapter note 48 does not provide that the activities of printing tantamount to manufacture. The department, in respect of other unit stated (April 1996) that all the processes were carried out at the same time in the same machine.

The contention of the department is flawed as printing amounts to manufacture because heading 48.11 specifically covers surface printed paper; and charging of duty on the goods in the continuous process of manufacture is also provided under explanation below rule 9 & 49.

3.7.3 Coated printed board (intermediate product) captively consumed in the manufacture of exempted final product

An assessee in Madras Commissionerate inter alia manufactured match cartons out of paper board classifiable under sub-heading 4819.11 and chargeable to Nil rate of duty. During the process of manufacture of these match cartons, an intermediate product viz. coated printed board (sub-heading 4810.90) emerged for which exemption under the notification No.67/95-CE dated 16 March 1995-relating to captive consumption was not available. Such intermediate product was exempted

from payment of duty only when the final product was dutiable. The assessee instead of paying duty on the intermediate product, reversed the modvat credit availed on the inputs. This was irregular and resulted in non levy of duty to the extent of Rs.57.99 lakhs during the period from April 1994 to January 1996.

3.8 Undervaluation of products

43 cases of undervaluation involving non levy of Rs.237.68 lakhs were noticed in 19 Commissionerates. Some of the illustrative cases are given below:-

3.8.1 Non inclusion of packing charges in the assessable value:-

As per section 4(4) (d)(i) of the Act, value in relation to any excisable goods where such goods are delivered at the time of removal in packed condition includes the cost of packing except those which is of durable nature and is returnable by the buyer to the assessee.

The Supreme Court, in the case of Madras Rubber Factory {1995 (77) ELT 433 (SC)} has held that the cost of secondary packing which is generally being resorted to in the course of wholesale trade is includible in the assessable value.

An assessee in Delhi Commissionerate cleared different varieties of papers in packed condition by wrapping them in paper and further packed by using hessian cloth and polythene sheets and finally in corrugated card board boxes. The cost of the boxes and hessian cloth which is neither of durable nature nor returnable was permitted to be excluded from the assessable value which resulted in short levy of duty of Rs.51.94 lakhs on clearances from April 1993 to May 1995.

The department stated (March 1996) that SCN for Rs.84.61 lakhs for the period December 1990 to 7 May 1995 had been issued.

3.8.2 Irregular allowance of trade discount

Trade discount is an admissible deduction from the sale price provided it is in accordance with the normal practice of wholesale trade.

Two assessees in Bhubaneswar Commissionerate had been allowed a sum of Rs.265.95 lakhs during 1993-94 to 1995-96 (up to September 1995) towards additional discount which was not in conformity with normal practice of wholesale trade and was thus not an admissible deduction. A short levy of Rs.53.19 lakhs, therefore, resulted.

3.8.3 Non inclusion of depot expenses in the assessable value

As per decision of the Supreme Court in the case of M/s Madras Rubber Factory {1995 (77) ELT 433 (SC)}, the expenses incurred by the assessee on

account of storage and handling charges cannot be excluded from the sale price except the cost of transportation and insurance charges.

Two assessees in Bhubaneswar Commissionerate charged and collected incidental charges amounting to Rs.215.95 lakhs from the customers during April 1993 to September 1995 to defray expenses at the depots. The amount so collected was not included in the value of the excisable goods and resulted in short levy of Rs.43.19 lakhs at 20 per cent ad valorem.

The department stated that the assessment was a provisional one in view of the stay granted by High Court of Delhi (in case of M/s J.K. Corporation Limited). In the second case the department stated that demand notice would be issued shortly.

3.8.4 Undervaluation of goods sold through stock transfers to corporate office

An assessee in Guntur Commissionerate cleared certain quantities of goods on payment of duty to its corporate office at Hyderabad as stock transfers for ultimate sales. The goods (paper) in reels cleared as such on payment of duty at the factory premises were converted into reams at a cost of Rs.500 per tonne in their corporate office at Hyderabad. Since the reams, packed with wrappers became the final product, the element of conversion charges should form part of the assessable value. Non inclusion of such conversion charges amounting to Rs.33.70 lakhs resulted in short levy of duty amounting to Rs.6.79 lakhs during the period from April 1994 to December 1995.

3.8.5 Non revision of assessable value

Where excisable goods are wholly consumed within the factory of production or cleared as inter unit transfer, the assessable value is to be determined under section 4(1)(b) of the Act read with the Valuation Rules on the basis of either value of comparable goods or cost of production (including a reasonable margin of profit) if the value of comparable goods is not ascertainable. Such value on the basis of cost of production holds good only for one year and that too, only if there is no major fluctuation in the price of raw material or in the margin of profit.

a) An assessee in Bangalore Commissionerate, engaged in the manufacture of 'Cigarette packets' on job work basis on behalf of a principal manufacturer, cleared the goods based on the assessable value arrived at by taking into account the cost of raw material prevailing upto March 1993 as intimated by the principal manufacturer and job charges of the assessee. Though the cost of the raw material had increased in the subsequent year, the rate was not revised. This resulted in short levy amounting to Rs.10.79 lakhs for the period between April 1993 and September 1995. The same was paid by the assessee in November 1995.

b) Two assessees in Ahmedabad Commissionerate were engaged in job work related to printed wrappers on behalf of principal manufacturers and were clearing the final product on payment of duty. Although there was increase in the cost of raw material ranging from 25 per cent to 100 per cent during 1993-94 and 1994-95, such increase was not taken into account while clearing the goods. Conservatively assuming an average increase of 20 per cent in the case of raw material during 1994-95, the short levy worked out to Rs.8.91 lakhs during the year 1994-95.

3.8.6 Lack of control in implementing invoice based system

As per rule 52A and 173C of the Rules and Boards' instructions issued from time to time, assessees are required to maintain separate invoice book for each year, use printed serial number of each invoice, authenticate each invoice by authorised signatories etc. These instructions were also applicable to computer generated invoices.

Examination of 65588 invoices (15 per cent of the test checked units) for the year 1994-95 and 49568 (18 per cent of the test checked units) invoices for the year 1995-96 revealed that in 6901 invoices most of the relevant columns were not filled in and as many as 606 invoices were authenticated by the persons other than the authorised persons. Of the 61 units having a computerised invoice system, 31 units issued invoices without the names of the authorised signatories printed. In respect of 4 units printed numbers were not generated on computers.

During test check of records of a unit in one of the ranges of Jammu Division (Chandigarh Commissionerate), it was noticed that 971 invoices (of which 921 were computerised) were issued by the assessee without intimating serial number of such invoices in advance during April 1994 and March 1996.

Non observance of direction of the Board facilitated issuance of incomplete and irregular invoices by the assessees, leaving scope for misuse and leakage of revenue.

3.9 Misclassification of products

3.9.1 Incorrect classification was noticed in 14 cases in 6 Commissionerates involving duty effect of Rs.15.81 lakhs. Some of the illustrative cases are given below:

3.9.2 Non verification of samples

Section note 1 (f) under chapter 48 lays down that chapter 48 does not cover paper reinforced stratified plastic sheeting, or one layer of paper or paper board coated or covered with a layer of plastic (the latter constituting more than half the total thickness) and that such product will fall under chapter 39. The rate of

duty on goods falling under sub-heading 3920.39 is 30 percent as against 20 percent under sub-heading 4811.30 and 4823.19.

An assessee in Meerut Commissionerate manufactured and cleared glassine paper-poly and poster paper poly which were classifiable under chapter 48 and 39 respectively on the basis of the thickness of the layer of plastic coating. The assessee cleared goods worth Rs.1.39 lakhs only under sub-heading 3920.39 and remaining goods valuing more than Rs.3.50 crores under sub-heading 4811.30 and 4823.19. No samples were drawn to carryout tests in approved laboratories from 1991-92 onwards. For want of details of clearance, the exact amount of non levy could not be quantified. The department was asked to calculate the duty effect.

The department stated (March 1996) that rates of duty under both the items were 20 per cent ad valorem in terms of notification No.15/94-CE dated 1 March 1994 as amended and sample would be drawn for test as and when there was any variation in rates of duty.

The reply of the department is not correct as rates of duty, during 1994-95 under sub-headings 4811.30 or 4823.19 and 3920.39 were 20 per cent and 30 per cent ad valorem respectively and products consisting of sheets of paper or paper board impregnated, coated or covered with plastics were not covered by the notification.

3.9.3 Printed wrappers sized for packing

In accordance with explanatory notes (in HSN) printed wrappers which are sized and are used as packaging material fall under sub-heading 4823.19. These wrappers were exempt from payment of duty till 28 February 1994, but from 1 March 1994 duty was leviable at 20 per cent ad valorem.

Five manufacturers of wrappers in Bangalore Commissionerate, classified the products under sub-heading 4901.90 as other products instead of under sub-heading 4823.19. This resulted in short levy of duty amounting to Rs.7.36 lakhs.

The department contended (February 1996) in respect of two assesseees, that consequent upon printing, the printed wrapper loses its original identity as wrapper paper in terms of chapter note 11 below chapter 48 which states that paper, paper board and articles thereof, printed with motifs, characters or pictorial representations and not merely incidental to the primary use of the goods, fall under chapter 49.

The contention of the department is not tenable in view of the fact that the printed wrappers are exclusively used for packing purpose and the sizing and printing is merely incidental to their primary use.

In the case of four assessees, the department reported issue of show cause notices (December 1995) for Rs.8.01 lakhs, covering the clearances from March 1994 to November 1995.

3.10 Irregular availment of Modvat credits

3.10.1 Irregular Modvat credits involving Rs.4.58 crores availed of by 91 assessees in 24 Commissionerates were noticed in course of test audit. Some of the illustrative cases are given below:-

3.10.2 Credit taken without valid documents

As per rule 57G of the Rules, credit of duty is admissible only if the inputs are received under the prescribed valid documents evidencing payment of duty. From 4 July 1994, registered dealers are also authorised to issue excise invoices on the basis of which the buyer can take Modvat credit.

During test check of records in 14 Commissionerates, it was noticed that 31 assessees had taken Modvat credit of a total amount of Rs.76.97 lakhs on the basis of invalid documents such as; (i) supply slips;(ii) material transfer note; (iii) endorsed invoices; (iv) invoices without the name of the assessee; (v) letter issued by importer not being registered dealer; (vi) photo copies of the original invoices; (vii) extra copy of invoices; and (viii) carbon copies of invoices. The aforementioned credit should have been disallowed at the time of defacement.

3.10.3 Modvat credit on capital goods before commencement of production

The Board vide its circular No.88/88-94 EX. dated 26 December 1994 have clarified that credits of duty paid on capital goods should be taken only when such capital goods are actually employed in the production process and not merely when the goods are received.

Nine assessees in eight Commissionerates engaged in the manufacture of paper and paper board availed of the Modvat credit of Rs.160.34 lakhs between April 1994 and November 1995 in respect of capital goods in contravention to the aforementioned clarification.

In two of these cases the department accepted the objections and reported issue of show cause-cum demand notice for Rs.22.71 lakhs. In two other cases, the department's contention that Board's orders dated 26 December 1994 were applicable to the new units is not tenable as the availment of Modvat credit is admissible only from the date from which capital goods have been utilised in production.

3.10.4 Availment of credit on capital goods and simultaneous claim of depreciation under Income Tax Act

As per rule 57R of the Rules, no credit of the specified duty paid on the capital goods shall be allowed if such manufacturer claims depreciation under section 32 of the Income Tax Act, 1961.

Six assessees in four Commissionerates availed credit of Rs.19.84 lakhs of duty paid on felts, wires, spares and components under rule 57Q during the year 1994-95 and 1995-96. It was noticed from the Annual Accounts of these assessees that the total expenditure inclusive of a portion of duty paid on the items was debited to profit and loss account. This amounted to claiming depreciation to the extent of modvat credit availed. As there is no provision in the Income Tax Act to prevent such irregular practice to show reduced profit and thereby decrease income tax liability, the department should have disallowed the modvat credits availed of.

The department in two cases contended that the assessees had not claimed depreciation on the duty portion and hence the credit availed was in order. The department's reply is not tenable as the assessees had debited the entire amount including the element of duty to the manufacturing accounts.

3.10.5 Clearance of wastes arising from Modvat inputs, without payment of duty

Rule 57F(5) of the Rules provides that the waste arising out of processing input in respect of which credit under rule 57 A has been taken, can be removed on payment of duty, as if such waste was manufactured in the factory.

An assessee in Ahmedabad Commissionerate, availing Modvat credit on input, had cleared waste product without payment of duty amounting to Rs.7.26 lakhs between 1993-94 and 1994-95 (August 1994).

The department stated that waste paper had been cleared at 'nil' rate under Notification 38/90-CE dated 20 March 1990. The reply is not tenable since the unit had availed Modvat credit on input and, therefore, clearance of waste without payment of duty is contrary to the provisions of rule 57F(5).

3.10.6 Non enforcement of controls

Test check of records of 222 units under 25 Commissionerates has revealed the following:

a) Non defacement of Modvat documents

According to rule 57G(4), a manufacturer of final products shall submit, within five days after the close of each month, to the Superintendent of Central

Excise, the original documents evidencing payment of duty alongwith extracts of Part I and II of Form RG 23-A and the Superintendent shall, after verifying the genuineness, deface such documents, before 15th of the succeeding month and return the same to the manufacturer.

In five Commissionerates (Shillong, Surat, Rajkot, Raipur and Bangalore) nine units had availed Modvat credit of Rs.532.88 lakhs during 1993-94 to 1995-96 against documents the defacement of which had not been done. Although this provision has been designed to prevent misuse of the aforementioned documents, there was no response from the department as to why the control function was not exercised.

(b) Modvat invoices not sent for cross verification.

In accordance with the Board's circular dated 28 May 1986, 54092 invoices relating to the year 1994-95 and 1995-96 were required to be sent for cross verification to the originating Range offices but it was noticed that only 34476 invoices (64 per cent) were sent. Verification report in respect of 14017 invoices were not received.

Thus, cross verification work was done only in respect of 38 per cent of the invoices test checked in audit. The absence of an effective system of cross verification of Modvat invoices is a serious defect in rectification of which it is recommended that the department may link all Range offices through computer and develop suitable software for cross verification.

3.11 Physical verification of stock not done

As per rule 223A of the Rules, the stock of excisable goods remaining in a factory, warehouse or store room, licensed and approved, shall be weighed, measured, counted or otherwise ascertained in the presence of proper officer as often as the Commissioner may feel necessary. In case the quantity so ascertained is less than the quantity which ought to have been found in such premises, the keeper thereof shall pay the full amount of duty chargeable on goods found deficient and also a penalty which may extend upto two thousand rupees.

Test check of records of 339 assesseees manufacturing paper and paper boards under 35 Commissionerates, revealed that the physical verification of stock was not conducted even once by the department other than on the days of presentation of Budget in any of the units test checked during the year from 1993-94 to 1995-96.

The above points were reported to the Ministry in September 1996. Reply has not been received (November 1996).

4. TOPICS OF SPECIAL IMPORTANCE

4.1 Interest not levied

For short payment or non payment of duty on account of any reason, duty is recoverable from the manufacturer by invoking provisions of section 11 A of the Act and Rules 9 and 49 of the Rules. But prior to submission of budget proposals in July 1996, there was no provision in the Act or the Rules to charge interest for such non payment or short payment.

In the event of non payment of duty or part payment of duty, the Government dues are available to the assessee for his own purposes which would not have been free of charge had the assessee borrowed the same amount. Considering this aspect, the Supreme Court had laid down in the case of *Oswal Agro* {ECR 5 (SC) 1996} that in such cases interest at bank rates should be charged from the assessee in respect of the entire period during which the Government dues remain with the assessee. The Supreme Court observed in the aforesaid case:

“The money which was legitimately due to the Government has been utilised by *Oswal Agro* in its business. Dealing with such cases which have financial implications involving business houses or companies it is the commercial principles which must be applied by the Court while ordering payment of interest. Had *Oswal Agro*, instead of using the Government money, obtained the said amount of loan from a bank, it would have had to pay interest thereon at the bank rate then prevailing”.

A leading multi-national company, having its registered office at Calcutta and engaged in the manufacture of branded cigarettes, was found guilty of misdeclaration of the retail sale price of cigarettes, resulting in short payment of duty from March 1983 to February 1987. After issuing necessary show cause notices in March/April 1987, demands for payment of arrears of duty, aggregating to Rs.799.35 crores, were confirmed by the Commissioner of Central Excise Delhi vide his order dated 29 December 1995. In adjudicating this case, in the absence of statutory provision no orders as to recovery of interest were passed.

Under rule 7 read with rule 9 and 49 of the rules, the duty becomes payable from the date of clearance of excisable goods. In case of short payment of such duty, it is evident that government dues remain in the hands of the assessee for his utilisation. Following the principles enunciated by the Supreme Court in the *Oswal Agro* case (*Supra*), interest at normal bank rate on the quantum of short payment for the entire period in question should be charged even if the quantum of duty payable had not reached a stage of finality. As the facts of the *Oswal Agro* case would show, such quantum of basic duty payable was also in dispute. The Supreme

Court had to intervene first to determine the duty payable by the Oswal Agro and only thereafter, on the basis of the quantum of duty, to charge interest at normal bank rate. Since in the case of the multi-national company manufacturing branded cigarettes, adjudication orders were silent about recovery of interest, a very large amount of money recoverable as interest would remain unrealised by default unless appropriate steps are taken. On the basis of the present demands, the simple interest at the rate of 18 per cent per annum for the period March 1983 to December 1995 works out to Rs.1630.14 crores.

The Ministry intimated (October 1996) that the matter has been referred to Ministry of Law and Justice for their opinion.

4.2 Central excise duty collected but not paid to Government

As per section 11D(1) of the Act every person who has collected any amount from the buyer of any goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.

Twenty units of four public sector corporations in nine Commissionerates procured customs and countervailing duty paid imported high speed diesel oil, furnace oil, motor spirit, superior kerosene oil and liquified petroleum gas and sold the items together with their indigenous products at the administered price fixed by the Ministry of Petroleum and Natural Gas, charging at 10 per cent ad valorem duty. The central excise duty collected from the customers on imported products was not remitted to Government on the plea that the imported products had already suffered countervailing duty and that no central excise duty was attracted since no further manufacture was involved. Between April 1994 and March 1996, the assessee collected a total amount of Rs.831.34 crores as excise duty from their customers on the sale of imported petroleum products, without remitting it to Government as per section 11D(1) of the Act.

The Ministry admitted the objection in respect of two units and intimated (August and October 1996) confirmation of demand of Rs.5.54 crores. Reply in the remaining eighteen units has not been received (November 1996).

4.3 Different classification for similar products

Pharmaceutical products are classifiable under chapter 30 whereas cosmetics and preparations for the care of the skin are classifiable under chapter 33 of the Schedule.

In para 3.22 of the report of the Comptroller and Auditor General of India for the year ended 31 March 1990 (No.4 of 1991), two cases of incorrect classification of prickly heat powder under chapter 30 as medicaments involving

duty of Rs.1.05 crores were highlighted. The Public Accounts Committee while examining the aforesaid audit para recommended in para 98 of its 24th Report (10th Lok Sabha) that "the Ministry should take immediate steps to ensure rational classification of prickly heat powder keeping in view the revenue interests of Government and also the general usage of the product".

The Committee noted in para 15 of its 68th Report (10th Lok Sabha) that in view of the Ministry's circular dated 17 March 1993, two brands of prickly heat powder were classifiable as cosmetics whereas one other brand was classifiable as medicaments as it contained 1 per cent chlorophensin. The Committee, further, recommended that uniformity should be maintained in the classification of similar excisable products.

The Ministry in its Action Taken reply dated 25 October 1994 intimated that clarification of 17 March 1993 was withdrawn on 19 September 1994 and all prickly heat powders were classified as cosmetics. Contrary to the Action Taken reply, the Board again revised its decision on 28 December 1994, reclassifying one brand of prickly heat powder as medicaments.

Since then differential treatment in classification continues. Audit scrutiny further revealed that;

- i) Chief Chemist and Drug Controller had opined (July 1994/September 1994) that the particular brand merited classification as cosmetics.
- ii) The Chief Chemist (July 1994) also suggested that another reference could be made to the HSC for examination whether the dosages of pharmaceutical substances in the product had adequate therapeutic or prophylactic properties to justify a different classification and the scope of the term 'subsidiary' occurring in note 2 of chapter 33 included products irrespective of their subsidiary pharmaceutical or antiseptic constituents, as this issue was not specifically addressed by the HSN when it recommended classification of one brand of prickly heat powder as medicament.
- iii) As per note 5 below chapter 33, all the three brands were correctly classifiable under heading 33.04 as all the brands were used "to give protection against skin irritants".

The Ministry informed (November 1995) that the difference between duty collected under chapter 30 and the notional duty under heading 33.04 (cosmetics) worked out to Rs.69.08 crores for the period from October 1987 to September 1994 in the two Commissionerates.

4.4 Short levy of duty due to incorrect fixation of tariff value of aerated water

Prior to 1994 Budget, aerated water falling under heading 22.02 was subjected to specific rates of duty but a uniform rate of 50 per cent ad valorem was leviable during 1994-95 and subsequently reduced to 40 per cent from 1995-96.

The computation of assessable value of aerated water was causing problem since there was no factory gate sale and goods were sold through depots. Consequently verification of permissible deductions was not feasible. With a view to checking undervaluation, Government, by notification No.114/95-CE dated 1 November 1995, fixed the tariff values for aerated waters for different sizes of bottles based on MRP of each bottles as under:-

	Size of bottle	Tariff value
a)	For each bottles containing more than 200 ml but not exceeding 300 ml	Rs.2.70 per bottle
b)	For each bottle containing more than 300 ml but not exceeding 500 ml	Rs.3.75 per bottle
c)	For each bottle containing more than 500 ml but not exceeding 1000 ml	Rs.7.50 per bottle

Audit scrutiny revealed that the tariff value for assessment of manufacture of bottles in respect of (b) above should work out to Rs.4.25 as against Rs.3.75 per bottle on the basis of data available with the Ministry.

Similarly the MRP of all the three sizes of bottles had increased in January 1996 and October 1996. But no mechanism existed to collect the market data to take into account the further rise in MRP of the aerated waters and revise the assessable value accordingly to safeguard the interest of Government revenue. Similarly from Budget 1996-97, freight @ 8 per cent of ex-factory price for goods cleared to depots was not a permissible deduction with effect from 1 October 1996 but tariff value was not revised accordingly.

Calculation shows that fixation of tariff value at lower rates and its non revision subsequently resulted in loss of revenue of Rs.31.05 crores (approximately) due to short collection of duty during the period November 1995 to October 1996.

The Ministry stated (November 1996) that at the time of fixing of tariff value, there was no statutory requirement to indicate MRP on aerated water bottles

and since it was virtually impossible to collect actual data from hundreds of bottlers and then arrive at the value, the tariff value had been fixed on the basis of available data and that the revenue trend has been encouraging since fixing of the tariff value.

The reply of the Ministry is not without flaw as Audit has pointed out the fact that the maximum retail price available on record with the Ministry were not taken into account while fixing tariff values. It was also noticed that methodology adopted for arriving at the tariff value for different categories of bottles was neither uniform nor was it spelt out when asked for. Further no mechanism has been devised by the Ministry to collect the data of further rise in the retail price at least in respect of the market leaders and revise the tariff values accordingly.

4.5 Unintended benefit

In terms of notification No.1/93-CE dated 28 February 1993, benefit of exemption was available to small scale industry units having value of clearances not exceeding Rupees 200 lakhs in the previous year, provided the factory was an undertaking registered with the Director of Industries in any State or the Development Commissioner (SSI) as a small scale industry under the provisions of the Industries Act. As per notification of Ministry of Industry of 2 April 1991, the prerequisite for registration of an industrial unit as a small scale one was that investment in plant and machinery should not exceed Rs.60 lakhs.

Notification No.1/93-CE was amended effective from 1 April 1994 by deleting the conditionality of registration. Although, other conditions regarding the value of clearances in the previous year etc., remained same, the condition regarding limit of investment in plant and machinery got omitted as the said condition was included in the notification of Ministry of Industry dated 2 April 1991 and not in the amended notification dated 1 March 1994. But as there is no evidence that the Government proposed not only to do away with the distinction between registered and unregistered SSI units, but also to change the basic condition regarding investment in plant and machinery, the following illustrative case shows that an unit which invested considerably more than Rs.60 lakhs on plant and machinery got the benefit intended for SSI undeservedly.

An assessee, after investment of Rs.12.95 crores on in plant and machinery, started manufacture of colour master batches during 1994-95 and achieved a turnover of Rs.4.72 crores in that year. In view of the fact that the clearances of the assessee in the previous year were nil and that conditionality regarding investment in plant and machinery was no longer a criteria to determine its status as an SSI, the assessee could avail of a benefit of duty amounting to Rs.6.25 lakhs in the first year of his production.

On this being pointed out (December 1995 and February 1996), the department (May 1996) stated the obvious that the assessee was allowed the benefits as he fulfilled the condition stipulated in the amended notification. While the department's reply is tenable within the existing parameters of the notification, the fact remains that a unit investing Rs.12.95 crores on plant and machinery was able to avail of benefits intended for SSI units. As the notification in the present form suffers from an evident lacuna, the observation of the PAC made in its 84th Report (Seventh Lok Sabha), to the effect that "concessions expressly designed for small scale manufacturers was extended to the large scale sector through the device of defective drafting of exemption notification" was brought to the notice of the Government for appropriate action.

Reply of the Ministry has not been received (November 1996).

5 NON LEVY OF DUTY

5.1 Under Rule 53 of the rules, every manufacturer is required to maintain accounts in a prescribed form relating to manufacture of goods and its removal. Rules 9 and 49 prescribe that excisable goods shall not be removed from the place of manufacture or storage unless the duty leviable thereon has been paid. If any manufacturer, producer or licensee of a warehouse removes goods in contravention of these rules or does not account for them, all such goods are liable to confiscation and to a penalty not exceeding three times of the value of goods or five thousand rupees, whichever is greater, under Rule 173Q.

Some of the illustrative cases of non/short account of goods or removal of goods without payment of duty are given in the following paragraphs:

5.2 Duty not levied on goods captively consumed

i) Tow

An assessee engaged in the manufacture of polyester staple fibre (PSF) and partially oriented yarn manufactured tows and consumed the same captively without payment of duty. This resulted in evasion of duty of Rs.23.37 crores during 25 July 1991 to 30 July 1992.

On this being pointed out (October 1992), the Ministry intimated (May 1996) that a SCN for recovery of Rs.20.98 crores has been issued.

ii) Heavy naphtha

Two units of a public sector oil refinery manufactured intermediate products like crude/fuel oil, heavy naphtha, V.B. oil etc., falling under heading 27.10 and cleared such intermediate products within the refinery without payment of duty for manufacture of high speed diesel oil/furnace oil. This resulted in non levy of duty

of Rs.7.24 crores on the clearances of intermediate products during the period from March 1994 to June 1995.

On this being pointed out (September 1995), the department contended (January 1996) that duty was not levied on such intermediate products as per para 91 of the Departmental Instructions on Excisable Manufactured Products (Petroleum Products) which provides that duty should not be charged on intermediate products so long as those were not cleared outside the refinery premises.

The contention of the department is flawed as the exemption can be allowed only by issue of notification by the Government. The provision in the departmental manual to exempt any duty of excise is applicable only when the exemption of duty on such intermediate products is in vogue.

Reply of the Ministry has not been received (November 1996).

iii) Yarn

Two assessees, manufacturing yarns of various counts falling under chapter 52 and 55 produced single ply yarn and used it captively for the manufacture of double ply yarn without payment of duty. This resulted in non levy of duty amounting to Rs.53.17 lakhs during the period from 20 May 1994 to 10 August 1994.

On this being pointed out (November 1994 and January 1996), the Ministry admitted the objection (October 1996).

iv) Bleached fabrics

Two cotton mills manufactured mercerised/bleached fabrics out of grey fabrics and used them in the manufacture of dyed fabrics without payment of duty. This resulted in non levy of duty of Rs.8.25 lakhs on mercerised/bleached fabrics captively consumed during 20 May to 10 August 1994.

On this being pointed out (September 1995), the Ministry admitted the objection in one case (November 1996). Reply in the second case has not been received (November 1996).

5.3 Non levy of duty on account of suppressed production/sales

i) Aluminium wire rods

A comparison of excise records (RG.1 and RT 12) for the year 1992-93 with the balance sheet of a public sector undertaking revealed that 1415 tonnes of aluminium wire rods were not accounted for in excise records but cleared from the factory without payment of duty which works out to Rs.15.64 crores.

On this being pointed out (July 1994), the department stated (January 1995) that the sale of 1415 tonnes of wire rod has taken place from the stock of earlier years lying at different sale centers.

The contention of the department is not tenable as the entire gate sale during 1992-93 was exhibited as sale in the balance sheet and the gate clearances of earlier years were also exhibited as sale in the balance sheet of respective years.

Reply of the Ministry has not been received (November 1996).

ii) Machinery parts

A public sector undertaking engaged in the manufacture of mechanical and electrical equipment, machinery and parts thereof, cleared the goods valuing Rs.3.47 crores in 1993-94 to customers for repairs or replacement without recording in the excise records and without paying duty of Rs.69.58 lakhs.

On this being pointed out (February 1995), the department stated (February 1996) that in view of suppression of production in statutory records and misstatement by the assessee a show cause-cum demand notice for recovery of Rs.201.57 lakhs covering the extended period from January 1991 to March 1995, had been issued (January 1996).

The Ministry confirmed the facts (July 1996).

iii) Steel ingots

The verification of excise records (RG.1 for the year 1993-94) with the balance sheet as on 31 March 1994 of another public sector undertaking disclosed shortage of 4302 tonnes of steel ingots in excise records involving duty effect of Rs.42.73 lakhs.

On this being pointed out (June 1995), the Ministry intimated (October 1996) that the assessee had added 4302 tonnes of steel ingots in RG.1 account (production account) after reconciliation in November 1995. However, penal action taken for this omission has not been intimated.

iv) Yarn

An assessee removed polyester fibre (chapter 53) without payment of duty to job worker for conversion into yarn. But on receipt of yarn from job worker, the assessee used it in the manufacture of fabrics without payment of duty and without recording it in the relevant excise records (RG.1). This resulted in non levy of duty of Rs.11.40 lakhs for yarn received between June and September 1995.

The Ministry admitted the objection and stated (September 1996) that the assessee had paid duty and a penalty of Rs.0.50 lakh had also been imposed.

5.4 Duty not levied on shortages

As per Rule 223 A of the Rules, the stock of excisable goods if found deficient without being accounted for to the satisfaction of the proper excise officer, the owner of such goods is liable to pay the full amount of duty on goods found deficient.

A comparison of annual physical verification report of finished goods by the Executive Director (works) as on 31 March 1994 with the stock account of finished goods (RG.i) of a public sector undertaking manufacturing iron and steel products revealed a shortage of 1874 tonnes of pig iron, 2448 tonnes of steel ingots and 2535 tonnes of galvanised sheets. The duty not levied worked out to Rs.88.98 lakhs.

This was pointed out by audit in December 1994, but the department's/Ministry's reply has not been received (November 1996).

5.5 Additional duty of excise

Two assessees manufactured coated fabrics of cotton falling under sub heading 5901.10 and used it captively in the manufacture of coated abrasives/two sided coated fabrics without payment of additional duty of excise leviable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957. This resulted in non levy of additional duty of excise of Rs.16.55 lakhs on clearances of 288959 metres of coated fabrics during October 1992 to May 1995.

On this being pointed out (May 1994 and 1995), the Ministry admitted the objection (August and October 1996).

5.6 Duty not levied on goods cleared

A public sector undertaking manufactured On Load Tap Changer's spares falling under sub-heading 8538.00 and cleared them to customers without payment of duty of Rs.6.18 lakhs during the period April 1993 to March 1995. On this being pointed out in audit (September 1995), the department stated (May 1996) that a case had been registered against the assessee.

Reply of the Ministry has not been received (November 1996).

5.7 Other cases

In six other cases, of non levy of duty, the Ministry/department have accepted the objection involving duties of Rs.28.46 lakhs and reported recovery of Rs.14.80 lakhs in three cases. Details of these cases are given in table:-

Sl. No.	Particulars	(Amount in lakhs of rupees)	
		Amount accepted	Amount recovered
1.	Cement	8.37	8.37
2.	Iron and Steel	5.89	
3.	Cess on instant tea	4.53	
4.	Waste hydrocarbons	4.29	4.29
5.	Polythene lay flat tube	3.24	
6.	Methanol	2.14	2.14
	Total	28.46	14.80

6. INCORRECT GRANT OF EXEMPTIONS

6.1 As per section 5A(1) of the Act, Government is empowered to exempt excisable goods from the whole or any part of the duty leviable thereon conditionally or unconditionally.

Some of the illustrative cases of incorrect grant of exemption noticed in audit are given in the following paragraphs:-

6.2 Irregular exemption on goods cleared outside the factory

i) Asbestos cement products

In terms of notification No.38/93-CE dated 28 February 1993 as amended, all goods falling under chapter 68 were exempt in which not less than 25 per cent by weight of fly-ash or phospho-gypsum or both, has been used. In order to ascertain the percentage of fly-ash in the final product, the assessee is required to maintain day-to-day account of consumption of fly-ash.

An assessee engaged in the manufacture of asbestos cement (AC) product (chapter 68) availed exemption without maintaining necessary records of day-to-day consumption of fly-ash used in the manufacture of A.C.product from 1992-93 to 1994-95. In the absence of records the department got the samples of the AC product test checked between November 1993 to May 1995 by an approved laboratory (July 1995). The test report failed to certify the existence of prescribed percentage of fly-ash inspite of which the exemption was allowed. This resulted in a short levy of Rs.10.90 crores during 1993-94 and 1994-95.

On being pointed out (September 1995), the Ministry stated (November 1996) that the assessee started maintaining raw material account from 1 December 1992 and that the Chemical Examiner, confirmed the presence of cement asbestos and silicious matter. It also added that the assessee's letter dated 6 July 1993 to Bureau of Indian Standards narrating the manufacturing process proves the presence of fly-ash.

The above reply of the Ministry is not tenable as; (a) the assessee himself intimated (January 1996) that he has started maintaining proper account of consumption of fly-ash in A.C. products only from April 1995; (b) test report (July 1995) did not disclose percentage of fly-ash (c) assessee's letter dated 6 July 1993 explaining manufacturing process does not prove that the products actually contained more than 25 per cent of fly-ash.

ii) Gases

According to notification dated 25 November 1987 and 17 July 1989 LPG and petroleum gases intended for use in the manufacture of propylene and polyisobutylene are exempted from so much of the duty leviable as is in excess of the duty leviable on the quantity of the said goods consumed in the manufacture of end products. The above notifications were withdrawn with effect from 1 March 1994 and reintroduced from 24 June 1994.

A manufacturer of petroleum products claimed exemption on inputs for manufacture of propylene and polyisobutylene during the period 1 March 1994 to 18 April 1994 when the exemption notification on such inputs was not in force. This resulted in short levy of Rs.1.67 crores during 1 March 1994 to 18 April 1994.

On the omission being pointed out (May 1994), the Ministry issued adhoc exemption order No.24/5/95-CX dated 24 March 1995 under section 5A (2) permitting ex post facto exemption on the aforesaid clearances.

iii) Cotton fabrics

By virtue of notification No.253/82-CE dated 8 November 1982, as amended, cotton fabrics falling under chapter 52 when subjected to processes specified in the table annexed to the notification are exempt from central excise duty and additional duties of excise provided that such exemption shall not apply if the said fabrics are subjected to any process specified in the table within the same factory in which they have been subjected to any process other than the specified processes.

The Board clarified on 19 December 1989 that the exemption would be available only when such fabrics were subjected to non specified processes in one factory and then sent to another factory for carrying specified processes only, where duty at appropriate rates had already been paid and the fabrics were not received in bond.

An assessee was receiving under bond hand processed cotton fabrics which did not attract any duty. He carried out specified processes and cleared the same availing the above mentioned exemption. As the requisite conditions were not fulfilled, availment of exemption of duty of Rs.91.75 lakhs during April 1994 to March 1995 was irregular.

On this being pointed out in audit (May 1995), the department stated (July 1995) that a SCN demanding duty of Rs.21.59 lakhs for the period from December 1994 to March 1995 had been issued. Action taken to recover duty for the period prior to December 1994 had not been intimated (November 1996).

Reply of the Ministry has not been received (November 1996).

iv) Flax yarn

As per a notification No.26/95-CE dated 16 March 1995, flax yarn containing 85 per cent or more by weight of flax, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power is chargeable to duty at the rate of 5 per cent ad valorem.

An assessee manufactured blended yarn of flax containing less than 85 per cent flax by weight, with aid of power and cleared it on payment of duty at 5 per cent ad valorem under the aforesaid notification inspite of its inapplicability. This resulted in a short levy of Rs.50.84 lakhs during the period 16 March 1995 to 31 October 1995.

On this being pointed out (November 1995), the Ministry admitted the objection and intimated (October 1996) issue of show cause notices for Rs.52.12 lakhs for the period May 1995 to October 1995.

v) Copolymer of polyester resin

As per notification No.15/94 dated 1 March 1994, polyester resin falling under heading 39.07 are exempt from payment of duty as is in excess of 20 per cent ad valorem.

An assessee manufacturing co-polymers of polyester resin falling under sub heading 3907.99 was allowed to clear the same on payment of duty at the rate of 20 per cent ad valorem under the aforesaid notification. The composition of the product submitted by the assessee disclosed that the product was manufactured from unsaturated dibasic acids, dihydric alcohol etc., alongwith styrene monomer and methyl methacrylate monomer. The product was a copolymer of polyester resin and hence the benefit of exemption notification was not available. The incorrect grant of exemption resulted in short levy of Rs.36.94 lakhs during March 1994 to February 1995.

This was pointed out in November 1995. Reply of the department and the Ministry has not been received (November 1996).

vi) Furnace oil

As per notification dated 1 March 1984 as amended, furnace oil used as feed stock in the manufacture of fertilisers is exempt from duty and liable to concessional rate of duty if it is intended for any other use.

An assessee availed concessional rate of duty on furnace oil used in the production of steam for urea hydrolysis plant for the purpose of pollution control. This resulted in short levy of duty of Rs.22.78 lakhs during April 1993 to February 1995.

On this being pointed out (December 1994), the department stated (March 1996) that demand of Rs.22.78 lakhs has been confirmed (August 1995).

The Ministry admitted the objection (October 1996).

vii) Blended cotton yarn

As per notification No.25/95-CE dated 16 March 1995, cotton yarn not containing synthetic staple fibres are chargeable to duty at concessional rate of 5 per cent ad valorem.

The Supreme Court in the case of M/s. Rajasthan Spinning Mills {1995 (77) ELT 474} held that the exemption notification must be strictly construed and no extended meaning be given to the exempted item to enlarge its scope. Accordingly it was decided that the exemption provided to polypropylene spun yarn was not applicable to polypropylene blended yarn although both the products were classifiable under the same tariff item.

An assessee was allowed to clear blended cotton yarn on payment of duty at concessional rate of 5 per cent ad valorem under the said notification which was applicable to cotton yarn only. The incorrect grant of exemption resulted in short levy of Rs.21.58 lakhs during April 1995 to September 1995.

On this being pointed out (November 1995), the department contended (December 1995) that the exemption was allowed as cotton was predominant in the product. It further stated that the judgement of the Apex Court was not applicable as it related to the tariff which under went modification after introduction of Tariff Act.

Reply of the department is not tenable as the ratio decidendi of the aforementioned judgement of the Supreme Court holds good in the facts and circumstances of the instant case and the principle laid down by the Apex Court has not been reversed.

Reply of the Ministry has not been received (November 1996).

viii) Lubricating preparations

As per notification No.12/94 dated 1 March 1994 as amended on 16 March 1995, concessional rate of duty of 10 per cent ad valorem is leviable on lubricating preparations falling under heading 34.03.

An assessee manufactured certain preparations for use in tanning industries. He classified the product as lubricating preparations under heading 34.03 and availed concessional rate under above notification. As the product was not classifiable under heading 34.03, concessional rate of duty under the above notification was not available. This resulted in short levy of duty of Rs.10.68 lakhs for the period 16 March 1995 to 30 June 1995.

On this being pointed out (July and August 1995), department stated (April 1996) that the differential duty amounting to Rs.28.92 lakhs for the period 16 March 1995 to 31 December 1995 had been confirmed (March 1996).

The Ministry has admitted the objection (September 1996).

ix) Articles of precious metals

Articles remade, refabricated, etc., out of old and used articles of precious metals like gold, silver, platinum, palladium, rhodium etc., were exempt from payment of duty by virtue of notification dated 6 July 1988. The Ministry by notification No.156/90 dated 16 November 1990 inserted an explanation to the said notification making it clear that "article" in relation to gold would mean anything in a finished form but not primary gold in any unfinished or semi finished form including ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires. No definition of the articles in the case of other precious metals such as platinum, rhodium, etc., was given in the explanation.

On the omission being pointed out (June 1994), the Government issued notification dated 16 March 1995 inserting the explanation giving the definition of articles of precious metals other than gold.

6.3 Incorrect grant of exemption of additional duty of excise

As per notification NO.121/94-CE on 11 August 1994, input fabrics were exempt from whole of the duty of excise and additional duties of excise provided final product i.e fabrics were not exempt from payment of whole of the duty of excise.

Two textile mills did not pay duties under the Additional Excise Duties (Goods of Special Importance) Act, 1957, on the input fabrics, consumed captively in the manufacture of the final product which were exempted from basic excise duty. As the basic excise duty on the input fabrics was paid but not the additional

excise duty, the latter was leviable, non payment of which resulted in non levy of Rs.4.44 crores of the additional duty of excise.

On this being pointed out (December 1995), the department contended (April and June 1996) that the exemption was correctly allowed as the notification was issued in accordance with the Supreme Court's decision in the case of M/s. Modi Rubber Limited. It was, however, reported that a demand of Rs.8.07 crores for the period March 1994 to January 1996 has been raised.

Reply of the department is not tenable as the decision of the Supreme Court is not relevant in this case. Audit contention rests on the inapplicability of the exemption notification in the above cases because the final product viz. fabrics was exempt from duty and therefore, the benefit of the notification was not available to the assesseees.

Reply of the Ministry has not been received (November 1996).

6.4 Incorrect grant of adhoc exemption

As per adhoc (special) exemption order issued under section 5A(2) on 4 April 1994 effective upto 31 March 1995, clearances of "prestressed concrete sleepers" (heading 68.07) to "Konkan Railway Corporation Limited.," were exempt from payment of duty for a quantity of 69.56 lakhs sleepers valuing Rs.46.03 crores.

Three assesseees manufacturing prestressed concrete sleepers under heading 68.07 cleared a quantity of 937864 sleepers valued at Rs.62.52 crores upto the period 31 December 1995 without payment of duty under the order issued on 4 April 1994 as amended on 24 November 1994. As the exemption under the said order specified not only the number of sleepers but also the value thereof i.e., Rs.46.03 crores only, duty was leviable on the excess value i.e., on Rs.16.49 crores cleared by the assessee without payment of duty. This resulted in a short levy of Rs.4.18 crores.

On this being pointed out (July 1995 and March 1996), the department stated in one case (December 1995) that a show cause-cum demand notice for Rs.1.32 crores was issued on 29 September 1995. Reply in the remaining two cases has not been received (March 1996).

Reply of the Ministry has not been received (November 1996).

6.5 Incorrect grant of exemption on goods consumed captively

i) Jute cloth

As per notification issued on 2 April 1986, specified inputs manufactured in a factory and used within the factory of production in the manufacture of specified final products are exempt from duty.

Eight jute mills in one commissionerate were allowed to clear jute cloth within the factory without payment of duty, for the manufacture of jute sacks and bags (sub-heading 6301.00) during from 20 May 1994 to 10 August 1994. Since the product was not covered under notification dated 2 April 1986, duty was leviable on jute cloth consumed captively. This resulted in non levy of duty of Rs.1.46 crores during 20 May 1994 to 10 August 1994.

The Ministry admitted (September 1996) the objection in six cases involving duty of Rs.1.21 crores. Reply in the remaining two cases has not been received (November 1996).

ii) Parts of wind mill

In terms of notification dated 25 May 1988, as amended, 'certain specified goods connected with solar and other natural energy' were fully exempt from duty. Parts of such specified goods were also exempt only if produced and consumed within the factory in the manufacture of the specified goods.

Two assessees manufactured "parts" of windmill and "wind generators" and cleared them to another manufacturer of wind mill without payment of duty claiming exemption under 25 May 1988 notification. As the parts were not captively consumed, the benefit of exemption availed was incorrect. This resulted in short payment of duty of Rs.10.73 lakhs.

On this being pointed out (May and October 1995), the department admitted the objection (November 1995).

The Ministry stated (August 1996) that a total demand of Rs.10.73 lakhs has been confirmed in respect of both the cases but one assessee preferred appeal against the demand of Rs.1.40 lakhs.

6.6 Other cases

In 8 other cases of incorrect grant of exemption, the Ministry/department have accepted short levy of duty of Rs.57.28 lakhs. Details of these cases are given below:

(Amount in lakhs of rupees)			
Sl. No.	Particulars	Amount accepted	Amount recovered
1.	Textile softners	15.42	
2.	Roughly shaped forgings	9.54	
3.	Oil rigs	9.78	
4.	Air conditioning system	9.51	
5.	Dry cooler	3.86	
6.	Copper circles	3.73	
7.	Tractor parts	3.06	3.06
8.	Insulating varnish	2.38	
Total		57.28	3.06

7. MODVAT SCHEME ON INPUTS

7.1 Under Modvat scheme, credit is allowed for specified duty paid on specified inputs for manufacture. This credit can be utilised towards payment of duty on specified outputs, subject to fulfilment of certain conditions.

Some of the cases where wrong/irregular availment of credit was noticed in audit are narrated below:-

7.2 Availment of credit without valid documents

As per proviso below rule 57G (2), no credit shall be taken unless the inputs are received in the factory under an invoice issued under rule 52 A, or an AR-1, or Bill of Entry or any other document as may be prescribed by the Government by notification in the official Gazette in this behalf, evidencing payment of duty on such inputs.

Bombay I Commissionerate in its Trade Notice No.57/87 dated 10 August 1987 clarified that Modvat credit can be availed on endorsed bill of entry if the goods are bought by the actual user from the importer on "high sea sales basis". However, where the goods are not purchased on "high sea sales basis", a subsidiary certificate is required to be obtained against such bill of entry for availing Modvat credit.

i) Two assesseees availed of credit of countervailing duty on the basis of endorsed bills of entry received from the importers where the goods were not purchased by the assesseees on high sea. Availment of Modvat credit of Rs.4.16 crores during 1990-91 to 1992-93 on endorsed bills of entry in respect of inputs not purchased on high sea and without obtaining subsidiary certificate, was not in order.

On this being pointed out (August 1994), the Ministry admitted (July 1996) the objection in one case involving duty of Rs.4.03 crores but stated (November 1996) in the second case that non issue of the subsidiary certificate by the superintendent was a procedural lapse.

ii) Five assesseees in five Commissionerates availed of Modvat credit of Rs.48.61 lakhs during September 1988 to December 1993 on the basis of photo copies of the bills of entry/gate passes or without any document in support thereof which was irregular.

On this being pointed out (between May 1990 and January 1995), the Ministry admitted (between July and September 1996) the objection in three cases and reported recovery of Rs.20.04 lakhs and confirmation of demand of Rs.12.47 lakhs. In the fourth case, it was stated that genuineness of the bills of entry under

reference was being ascertained by the adjudicating authority. In the fifth case, it was stated (September 1996) that the credit was allowed on the basis of valid documents but later on assessee lost/misplaced the documents. In the absence of the documents, however, audit is unable to satisfy itself regarding validity of the claim.

7.3 Availment of credit on goods not covered under the scheme

As per rule 57A of the Rules, a manufacturer can avail credit of duty on specified inputs used in or in relation to the manufacture of specified final products. Explanation below rule 57A clarifies that Modvat credit in respect of packaging material can be allowed if the value of the packaging material is included in the assessable value of the specified final product.

i) An assessee availed Modvat credit in respect of duty paid on molecular sieves, N.Pentane, ISO Octane and Hydrogen which were used in the manufacture of normal paraffin (an intermediate product classifiable under sub-heading 2710.99). As 'normal paraffin' was not covered under the scheme, availment of Modvat credit of Rs.3.43 crores during 1992-93 to 1993-94 was wholly irregular.

On this being pointed out (May 1995), the Ministry admitted the objection (September 1996).

ii) Four assessees in three Commissionerates were allowed Modvat credit in respect of duty paid on high speed diesel oil, light diesel oil, transformer oil etc., aggregating to Rs.28.21 lakhs during March 1994 to June 1995. Since these were not specified inputs, availment of credit was not admissible.

On this being pointed out (between November 1994 and October 1995), the Ministry admitted (between June and August 1996) the objection in three cases and intimated reversal of credit of Rs.33.05 lakhs in two cases. In the fourth case it intimated (November 1996) recovery of Rs.34.80 lakhs including penalty of Rs.2 lakhs but also communicated its non acceptance of the objection without assigning any reason.

iii) Four assessees availed Modvat credit in respect of duty paid on steel/aluminium cops, plastic crates, paper tubes etc., which were used as packaging material. As the value of the packaging material was not included in the assessable value of the finished product and was returnable in nature, availment of Modvat credit of Rs.34.52 lakhs during June 1993 to August 1995 was irregular.

On this being pointed out (between August 1994 and October 1995), the Ministry confirmed (May 1996) reversal of credit of Rs.3.42 lakhs in one case and contended (November 1996) in the second case that yarn becomes marketable only when it was wound on aluminium cops and that specific rate of duty was leviable on the product.

The reply of the Ministry is not tenable as the cops were used as an appliance/equipment for winding yarn; these were durable in nature and were returnable by the buyers and the cost of cops was not included in the assessable value of yarn. Therefore, it was clearly excludible from the definition of inputs in terms of explanation below rule 57A.

Reply in remaining two cases has not been received (November 1996).

iv) The Board clarified on 3 March 1988 that the raw material required for making packaging material cannot be considered as packaging material for the purpose of treating the same as 'inputs'.

A manufacturer of shampoo availed of Modvat credit of duty paid on HDPE granules and, through job workers, converted granules into bottles. As granules cannot be held to be ready-to-use packing material, availment of credit of Rs.18.75 lakhs during July 1993 to June 1994 was not in order.

On this being pointed out (August 1994), the department admitted (April 1995) the objection and issued (February 1996) show cause-cum demand notices for Rs.33.68 lakhs.

Reply of the Ministry has not been received (November 1996).

7.4 Duty not levied on waste obtained out of inputs

As per rule 57F(4) (renumbered as 57F (5) from 2 November 1993) of the Rules, any waste arising from the processing of inputs in respect of which credit had been taken may be removed on payment of duty as if such waste is manufactured in the factory.

The Board clarified on 12 January 1993 that the removal outside the factory of the waste and scrap which is obtained during the processing of inputs, would be governed by the provisions of rule 57F(4) and such removal should be made on payment of appropriate duty thereon.

Eleven assesseees manufacturing various excisable goods availed credit of duty paid on inputs and utilised the same towards payment of duty on final product. The waste and scrap arising from the processing of these inputs were cleared without payment of duty. Such clearances contravened rule 57F(4) read with the Board's circular dated 12 January 1993, and resulted in non levy of Rs.2.40 crores of duty between July 1991 to September 1995.

On this being pointed out (between September 1993 and October 1995), the Ministry admitted the objection in four cases (June and September 1996), but in two cases, it contended (November 1996) that nil payment of duty would be treated as duty paid. Ministry's contention is contrary to the provisions of rule 57C

read with rule 57F of Modvat rules which do not recognise nil rate of duty to be the payment of duty. Reply in the remaining five cases has not been received (November 1996).

7.5 Availment of credit on inputs used in exempted final products

According to rule 57C, no credit of specified duty paid on inputs used in the manufacture of final products shall be allowed, if the final products are exempt from the whole of duty of excise leviable thereon or is chargeable to nil rate of duty.

i) An assessee availed Modvat credit on inputs viz., filament yarn and dipped chemicals but did not reverse a credit of Rs.2.01 crores during November 1994 to September 1995 in respect of inputs used in exempted final products.

On this being pointed out (October 1995), the Ministry intimated (October 1996) reversal of credit of Rs.2.01 crores by the assessee and imposition of penalty of Rs.10 lakhs on the assessee for delayed reversal.

ii) Between November 1993 to November 1994, a public sector undertaking availed Modvat credit of Rs.55 lakhs on bought out inputs which were used in the manufacture of exempted power driven pumps. No action was taken to reverse the Modvat credit irregularly availed by the assessee.

On this being pointed out (January 1995), the department admitted (April 1996) the non reversal of Modvat credit but stated that the duty amounting to Rs.1.62 crores on power driven pumps (final product) had been paid by the assessee in March 1995 and hence reversal of input credit was not necessary.

Reply is not tenable as the recovery of duty on exempted final products was a deposit and not duty in terms of Ministry's clarification dated 4 January 1991.

Reply of the Ministry has not been received (November 1996).

iii) Twelve assessees in nine Commissionerates availed of Modvat credit of Rs.1.21 crores during April 1991 to December 1995 on inputs which were used in the manufacture of exempted products. Availment of credit was, therefore, irregular.

On this being pointed out (between September 1994 and April 1996), the Ministry admitted (between June and September 1996) the objection in six cases and reported recovery of Rs.50.61 lakhs. In two cases it stated (May 1996) that the show cause cum demand notices issued were pending adjudication.

Reply in the remaining four cases has not been received (November 1996).

7.6 Availment of credit without declaration

As per rule 57G, a manufacturer intending to avail credit of the duty paid on input under rule 57A shall file a declaration with the proper officer of the Department indicating the description of the final products and the inputs intended to be used in each of the final products and shall obtain dated acknowledgement.

Eleven assesseees under ten Commissionerates availed of Modvat credit of Rs.1.11 crores of duty paid on inputs during September 1992 to November 1995, with out complying with the requirement of rule 57G. Availment of credit was therefore irregular.

On this being pointed out (between October 1993 and January 1996), the Ministry admitted (between May and October 1996) the objection in seven cases and intimated reversal of credit of Rs.37.84 lakhs in three cases. Reply in the remaining four cases has not been received (November 1996).

7.7 Availment of credit on inputs used in research, development or testing work

As per rule 57A, Modvat credit of the duty paid on inputs can be taken if such inputs are used in or in relation to the manufacture of final products.

Three assesseees in three Commissionerates engaged in the manufacture of textile machinery, caustic soda lye, coated fabrics etc., availed Modvat credit of Rs.90.87 lakhs of duty paid on inputs during March 1994 to March 1995. These inputs were used either for research and development work or for testing or in manufacture of outputs other than the declared outputs. Availment and utilisation of credit was therefore irregular.

On this being pointed out (between January and November 1995), the department reported (between July 1995 and October 1996) recovery of duty of Rs.90.87 lakhs.

The Ministry admitted objection in all the three cases (between June and October 1996).

7.8 Availment of credit on inputs written off

As per rule 57F, the inputs in respect of which a credit of duty has been allowed under rule 57A, may be used in or in relation to the manufacture of specified final products for which such inputs have been bought or be removed on payment of duty.

Three assesseees in three Commissionerates bought different inputs and availed Modvat credit on them. The accounts of the assesseees for the years 1990-91 to

1992-93 disclosed that they had written off inputs due to obsolescence but no corresponding credit of Rs.93.28 lakhs was expunged from Modvat account.

On this being pointed out (between September 1993 and January 1996), the department intimated (between May 1995 and May 1996) that out of a demand of Rs.1.59 crores raised in two cases, Rs.49.15 lakhs had been recovered. Its reply in the third case has not been received.

The Ministry confirmed the facts in one case (August 1996). Reply in the remaining two cases has not been received (November 1996).

7.9 Credits availed in excess of the duty leviable

The Board clarified on 4 January 1991 that where an assessee pays excise duty on the exempted goods, it will not be treated as payment of duty but will be treated as deposit with the Government and equivalent credit if availed was required to be reversed.

a) An assessee paid duty of Rs.79.46 lakhs between April 1992 and October 1994 on his manufactured LDP granules and LDP bags and availed credit on the duty paid by him. As the product manufactured and consumed captively in the manufacture of final product was exempt from payment of duty under a notification dated 2 April 1986, the duty paid on those goods was to be treated as "deposit" and not duty. Therefore payment of duty of Rs.79.46 lakhs during April 1992 to October 1994 on exempted inputs and availment of credit of duty so paid was irregular.

This was pointed out in November 1994. Reply of the department/Ministry has not been received (November 1996).

b) Seven assesseees in four Commissionerates purchased inputs on payment of duty at a rate higher than the effective rate and credit thereof was availed of by them. Non restriction of credit to the effective rate of duty resulted in excess availment of credit of Rs.27.77 lakhs during March 1993 to May 1995.

On this being pointed out (between January and December 1995), the Ministry admitted (October 1996) objection in one case, but contended (September 1996 and October 1996) in three cases that credit was availed as per duty paying documents and excise authorities had no jurisdiction to re-assess duty on inputs received. Reply of the Ministry is not tenable as the duty paid in excess of the duty actually payable was to be treated as deposit for which credit was not permissible. Reply in remaining three cases has not been received.

7.10 Availment of credit on inputs sent for job work not received back

As per rule 57F(3), inputs received under rule 57A on which Modvat credit is availed, can be removed outside the factory without payment of duty for test,

repairs or refining etc., provided the inputs/partially processed products, are received back in the factory within the prescribed period or such extended period as the competent officer may allow.

Five assessees engaged in the manufacture of excisable goods removed, under rule 57F(3), inputs on which credit of duty amounting to Rs.21.41 lakhs was taken. The inputs so removed were neither received back from job workers nor was duty of Rs.21.41 lakhs demanded by the department.

On this being pointed out (between march 1995 and February 1996), the Ministry admitted (July and September 1996) objection in four cases and intimated recovery of duty of Rs.12.00 lakhs. Reply in the remaining case has not been received (November 1996).

7.11 Belated availment of credit

According to proviso to sub-rule (2) of rule 57G, effective from 29 June 1995, a manufacturer shall not take credit after six months of the date of issue of invoice/documents specified under first proviso to the said rule.

Two assessees irregularly availed Modvat credit of Rs.19.62 lakhs during July 1995 to September 1995, on the basis of the invoices which were more than six months old.

On this being pointed out (between January and December 1995), the Ministry stated (August and September 1996) that the demands for Rs.26.97 lakhs have been confirmed including the above amount.

7.12 Incorrect retention of credit

As per rule 57F(4A), credit of duty paid on inputs lying in stock or contained in the finished products lying in stock on 16 March 1995 with the manufacturer of tractors (heading 87.01) or motor vehicles (heading 87.02 and 87.04) shall be available for utilisation and the remaining amount of credit shall lapse.

A manufacturer of motor vehicles retained in his Modvat account the credit of duty paid on inputs lying in stock or contained in the stock of finished goods on 16 March 1995, on the basis of the assessable value of inputs which included not only the cost of inputs but also overheads and margin of profit. This resulted in excess retention of Modvat credit of Rs.21.80 lakhs.

On this being pointed out (November 1995), the department admitted (January 1996) the objection and expunged the credit of Rs.21.80 lakhs.

The Ministry have confirmed the facts (October 1996).

7.13 Other cases

In twenty seven other cases of incorrect availment of Modvat credit, the Ministry/department accepted the objection involving Rs.122.00 lakhs of which Rs.82.08 lakhs have been recovered. The details of these cases are as under:-

		(Amount in lakhs of rupees)	
Sl. No.	Particulars	Amount accepted	Amount recovered
1.	Credit on inputs not used in final goods (5)	21.41	11.54
2.	Credit availed on the basis of invalid declarations (3)	14.21	8.60
3.	Short payment of duty on inputs cleared (4)	14.02	6.24
4.	Past duty liability discharged from credit account (2)	12.49	12.49
5.	Credit of additional excise duty (3)	11.52	11.52
6.	Credit taken in PLA without authorisation	9.97	
7.	Credit availed on customs duty	6.51	6.51
8.	Credit availed before the receipt of inputs	6.01	6.01
9.	Credit not expunged on opting out of Modvat scheme	5.58	5.58
10.	Belated availment of credit	4.49	
11.	Availment of credit on inputs returned	4.19	4.19
12.	Credit availed in excess	3.60	3.60
13.	Credit under rule 57H availed without permission	3.09	3.09
14.	Misuse of rule 57F	2.71	2.71
15.	Credit on inputs removed without payment of duty	2.20	
Total		122.00	82.08

8. MODVAT SCHEME ON CAPITAL GOODS

8.1 A scheme for allowing credit of duties paid on specified capital goods used for the manufacture of excisable goods was introduced with effect from 1 March 1994 by insertion of rules 57Q to 57U of the Rules. Some illustrative cases are given below to show wrong/irregular availment of such credit:

8.2 Availment of credit on capital goods used in manufacture of exempted goods

While rule 57Q of the Rules, allows credit of duty paid on specified capital goods for utilisation towards payment of duty on final products, rule 57R debars utilisation of such credit if the capital goods are used exclusively for manufacture of final products which are exempt from duty.

An assessee manufacturing fertilisers availed credit on capital goods viz. "equipment for purge gas recovery plant" to the extent of Rs.1.60 crores during September 1994. As fertilisers were exempt from duty, availment of credit on capital goods used in the manufacture of fertilisers was irregular.

On this being pointed out (November 1994), the Ministry admitted the objection (July 1996) and stated that a show cause cum demand notice for Rs.1.60 crores had been issued.

8.3 Premature utilisation of credit

In regard to application of Rule 57Q, the Ministry clarified on 26 December 1994 that the credit of duty paid on capital goods would be admissible only when such capital goods are actually deployed for production (the terminology used by the Ministry is "when such capital goods enter into production").

i) A public sector undertaking manufacturing wires and cables (chapter 85) availed credit of duty of Rs.1.45 crores paid on capital goods received between March and June 1994 and utilised it during April to September 1994 for payment of duty on goods cleared from other plants of the same factory. Since the new plant for which the capital goods were bought was not installed, utilisation of credit of Rs.1.45 crores was irregular.

On the irregularity being pointed out (August 1995), and inspite of the Ministry's clarification, the department incorrectly contended (September 1995) that there was no restriction in the rule to utilise the credit.

Reply of the Ministry has not been received (November 1996).

ii) Two manufacturers of cold rolled steel strips/band saw blades etc., and sugar took credit of Rs.1.27 crores of duty paid on various machines and equipments purchased during November 1995 to January 1996 and November 1994 to October 1995 respectively for installing/expansion of the plant. One manufacturer had utilised Rs.55.38 lakhs till March 1996 and the other Rs.11.44 lakhs till October 1995. As the erection of new plant was in progress and was yet to be utilised for production, the availment of credit was irregular.

On this being pointed out (November 1995 and March 1996), the Ministry contended (October 1996) that Board's circular was applicable for new units and not to those units which were already in production. The argument is clearly untenable as the pre-condition for availment and utilisation of Modvat credit is that the capital goods must be used for production.

iii) An assessee manufacturing excisable goods falling under chapters 72 and 73 availed credit of Rs.61.31 lakhs of duty paid on capital goods during the period from May 1994 to June 1994 and utilised it while the plants were under construction. Utilisation of the credit for the clearance of finished products manufactured by other plants was evidently irregular.

On this being pointed out (August 1994), the Ministry stated (October 1996) that the department, was aware of the issue and registered a case against the assessee on 30 September 1994.

iv) In eleven other cases, the manufacturers of excisable goods availed credit of Rs.1.12 crores on capital goods and utilised credit of Rs.97.90 lakhs before installation and commissioning of the plant/machinery. This resulted in incorrect utilisation of credit of Rs.97.90 lakhs.

On this being pointed out (between May 1995 and January 1996), the Ministry admitted (between May and August 1996) the objection in four cases. In the fifth case it stated that the machine was put to use by the time the objection was raised and hence no demand could be issued implying thereby that the objection was admitted. In the sixth case it stated (September 1996) that though the rule was not specific about availment of credit only after capital goods were put to use, the assessee, had however paid duty of Rs.2.52 lakhs. In three cases it stated that the Board's circular denied utilisation of credit on capital goods during initial setting up of a factory and not factories already set up. Reply is not tenable as rule 57Q allows credit on capital goods used in the factory for manufacture of outputs. Reply in the remaining two cases has not been received (November 1996).

8.4 Availment of credit on unspecified goods

As per explanation under rule 57Q, "capital goods" means (a) machines, machinery, plant, equipment, apparatus, tools or appliances used for the manufacture of final products; (b) components spare parts and accessories of (a) above; and (c) moulds, dies, generating sets and weigh bridges used in the factory of production. The definition of capital goods was extended by adding sub clauses (d) and (e) covering some more goods such as compressors, transformers, refractories, testing and measuring instruments, loading and unloading machines, fork lift, cranes etc., by notification No. 11/95-CE (NT) dated 16 March 1995.

i) Refractory bricks

Five assessees in four commissionerates engaged in the manufacture of glass and glassware, refractory bricks, iron and steel products etc., availed of credit of duty paid on refractory bricks (chapter 69) and utilised for payment of duty on final products during April 1994 to 15 March 1995. As refractory bricks are included under rule 57Q as capital goods from 16 March 1995, the availment of Modvat credit of Rs.1.12 crores prior to 16 March 1995 was irregular.

On this being pointed out (between November 1994 and March 1996), the Ministry contended in three cases (November 1996) that refractory bricks being part of the furnace, it was treated as capital goods.

Reply of the Ministry is not tenable as refractory bricks was specifically included under the definition of capital goods from 16 March 1995. Had it been considered a part of furnace abinitio, separate mention of refractories under 'capital

goods' would not have been necessary. Reply in the remaining two cases has not been received (November 1996).

ii) Electrical goods

Five assessees in four commissionerates engaged in the manufacture of excisable goods availed and utilised credit of Rs.60.62 lakhs during March 1994 to April 1995 on electrical goods like wires, cables, switch boards, fuse, capacitors, lighting arrester and static convertor etc. Since such goods were not eligible for Modvat credit on capital goods, availment of credit was irregular.

On this being out in audit, (between March 1995 and March 1996), the Ministry admitted the objection in one case and intimated (July 1996) reversal of credit of Rs.7.87 lakhs. In the second case it reported issue of show cause-cum demand notice.

Reply in the remaining three cases has not been received (November 1996).

iii) Testing, checking and measuring equipments

Eleven assessees in eight commissionerates availed and utilised during 1 April 1994 to 15 March 1995 credit of Rs.60.91 lakhs of duty paid on the goods which were used for testing/checking/measuring purposes. As these goods were not used for producing or processing of any goods, availment of credit under rule 57Q was irregular.

On this being pointed out (between March 1995 and March 1996), the Ministry admitted (between June and September 1996) the objection in five cases and intimated recovery of Rs.24.94 lakhs. In the sixth case, it stated that the department was aware of the irregularity and issued SCN on 30 March 1995. In the seventh case, it stated (October 1996) that machine used for checking dies was covered under the definition of capital goods. Reply is not tenable as such machines were included in the definition of capital goods on 16 March 1995 which clearly indicate that these were not covered by the definition of capital goods prior to 16 March 1995. Reply in the remaining four cases has not been received.

iv) Consumable goods

Nine assessees engaged in the manufacture of excisable goods availed during April 1994 to August 1995 credit of Rs.32.10 lakhs of the duty paid on consumable goods like sulphuric acid, gunny bags, empty cylinders, tyres and tubes, rubber cots/pads, kit seals, spares etc., treating them as capital goods. As these goods were not capital goods for the purposes of rule 57Q, credit availed and utilised was irregular.

On this being pointed out (between January 1995 and June 1996), the Ministry intimated (between June and October 1996) reversal/recovery of Rs.23.30 lakhs in six cases and issue of SCN for Rs.3.10 lakhs in the seventh case. Reply in the remaining two cases has not been received (November 1996).

v) Building material

Two assessees availed Modvat credit of Rs.27.64 lakhs during November 1994 to July 1995 on building material, cement and steel structure which were not covered by rule 57Q.

On the irregularity being pointed out in audit (September and November 1995), the Ministry admitted (June and August 1996) the objection and stated that one assessee had reversed credit of Rs.29.73 lakhs for the period June to October 1995 and show cause notices for Rs.23.04 lakhs had been issued to the second assessee.

vi) Material handling equipments

Four assessees engaged in the manufacture of iron and steel products, earth moving machines, motor vehicles and clutch disk availed during April 1994 to February 1995 credit of Rs.28.75 lakhs of duty paid on cranes, aux trolley, fork lifts, trucks etc. As they were not used for producing or processing of any goods but were used for lifting/transporting goods, credit allowed thereon was irregular.

On this being pointed out in audit (between July and November 1994), the Ministry admitted (July and August 1996) the objection in three cases and reported reversal of credit of Rs.4.03 lakhs in two cases and confirmation of demand of Rs.2.49 lakhs in the third case. Reply in the fourth case has not been received (November 1996)

8.5 Availment of credit on the basis of belated declarations

According to Rule 57T(1), every manufacturer intending to take credit of duty paid on capital goods under rule 57Q, shall file a declaration with the A.C. having jurisdiction over his factory. Under the second proviso to Rule 57T(1), where a manufacturer is not in a position to make the declaration and makes the declaration subsequently but within a period of one month or such extended period not exceeding three months as may be allowed by the A.C. from the date of receipt of the capital goods in the factory, the A.C. on sufficient cause being shown, may condone the delay in filing the declaration.

Six assessees in four commissionerates engaged in the manufacture of electronic goods, vehicles, tools and parts availed credit of duty of Rs.47.13 lakhs paid on capital goods on belated declarations filed after three months from the date

of receipt of the capital goods in their factories. There was no evidence of the delay having been condoned. This resulted in irregular availment of credit of Rs.47.13 lakhs between April and December 1994.

On the irregularity being pointed out (between December 1994 and December 1995), the Ministry admitted/confirmed facts (between July and October 1996) in four cases involving duty of Rs.36.57 lakhs. Reply in the remaining two cases has not been received (November 1996).

8.6 Incorrect availment of credit of customs duty

The Modvat scheme for capital goods provides for taking credit of specified duty which does not include basic customs duty.

Two assessees availed credit of the basic customs duty paid on imported capital goods received between June 1994 and March 1995 which resulted in the incorrect availment of credit of Rs.17.68 lakhs.

On this being pointed out (October 1995), the Ministry intimated (May and August 1996) recovery of Rs.17.68 lakhs.

8.7 Other cases

a) In fifteen other cases, the Ministry/department have accepted incorrect availment of credit of Rs.49.67 lakhs, of which Rs.35.22 lakhs had been recovered/reversed in twelve cases. Details of these cases are given in the table below:

Sl. No.	Particulars	(Amount in lakhs of rupees)	
		Amount accepted	Amount recovered
1.	Air compressor	13.74	13.74
2.	Storage tanks, cranes etc.	13.49	13.49
3.	Air conditioners etc. (4)	6.07	2.47
4.	Rotary controllers etc.	5.97	
5.	Parts of furnace burners etc.	2.96	2.96
6.	Castings etc.	2.58	
7.	EPABX colt (Telephone) (3)	2.51	2.51
8.	Fork lift and hoist	1.30	
9.	Hardness testing machine, coordinator etc.(2)	1.05	0.05
	Total	49.67	35.22

b) In para 88 of 104th report (10th Lok Sabha) Public Accounts Committee observed that the excess credit availed was subsequently adjusted/recovered by the assessee. It had thus enabled the assessee to avail of interest free funds at different points of time. Committee further observed that the recent provisions for charging interest made in the Act do not take into account such type of cases. The Committee

therefore recommended that "the Ministry should consider the desirability of incorporating suitable provisions in Law for collection of interest on excess/fraudulent Modvat credit".

Non inclusion of suitable provision for charging interest on irregular availment of Modvat credit on capital goods resulted in foregoing interest of Rs.1.93 crores in 82 cases reported in the above paras.

The Ministry stated (September 1996) that there was no loss of revenue on account of interest in view of the existing provisions. The reply of the Ministry is stricto sensu tenable but if by timely insertion of a clause, as recommended by the PAC, prevents loss of interest to the Government, there does not appear to be any wisdom in resisting it.

9. MONEY CREDIT SCHEME

9.1 Where inputs on which excise duty has been paid are used for manufacture of specified finished goods, monetary (encashable) credit at specified rates is allowed under rule 57K of the Rules, subject to the fulfilment of conditions laid down in the notification issued under that rule.

Some of the illustrative cases of irregular grant/availment of money credit noticed in test audit are mentioned in the following paragraphs:-

9.2 Availment of credit without production of requisite certificates

According to condition (iv) of the notification dated 11 October 1989, where credit has been taken in respect of any solvent extracted variety of the oils specified in the table annexed to the notification, the manufacturer shall, within five months from the date of taking credit or such extended period as the A.C. 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 had been manufactured by the solvent extraction method.

Six manufacturers of vegetable products had availed credit of Rs.97.18 lakhs on use of 3240.631 tonne of solvent extracted sunflower oil, minor oils/mustard oils used in the manufacture of vegetable products during September 1993 to March 1995. The requisite certificates were not produced within the prescribed time limit of five months nor was the period extended by the competent authority. Consequently, the availment of the said credit was irregular.

On this being pointed out between December 1994 and January 1996, the Ministry admitted the objection and intimated (between July and October 1996) recovery of Rs.103.36 lakhs in five cases and issue of SCN for reversing the credit of Rs.2.01 lakhs in the remaining case.

9.3 Irregular availment of money credit

Condition (i) to the notification No.45/89-CE (NT) dated 11 October 1989 provides that the money credit shall be availed only in respect of the quantity of oil subjected to hydrogenation for the manufacture of vanaspati and on the date on which the oil has been so hydrogenated, blended or emulsified.

Two assessees engaged in the manufacture of vegetable products availed money credit on gross quantity of oil issued for hydrogenation instead of actual quantity of oil subjected to hydrogenation. This resulted in irregular availment of money credit amounting to Rs.43.84 lakhs during the period from September 1992 to September 1993 and from October to December 1995.

On this being pointed out (October 1993 and January 1996), the Ministry stated (June 1996) in one case that a credit of Rs.50.55 lakhs for the period September 1992 to September 1993 has been reversed.

9.4 Availment of money credit on inputs used in exempted final products

As per rule 57M(2) of the Rules, credit of money allowed in respect of any inputs shall not be denied or varied on the ground that any intermediate product has come into existence during the course of manufacture of the final products and that such intermediate products are, for the time being, exempt from whole of duty provided that such intermediate products are used within the factory of production in the manufacture of final products on which duty is leviable. If, however, the final product itself is exempt from duty, the above benefit will evidently not be available.

An assessee consumed a part of an intermediate product i.e. fatty acid captively for manufacture of soap but cleared the balance fatty acid without payment of duty under a notification dated 1 March 1989. Availment of credit of Rs.24.67 lakhs in respect of fatty acid cleared without payment of duty was irregular.

On this being pointed out in audit (September 1993), the Ministry admitted the objection and stated (July 1996) that the assessee reversed an amount of Rs.21.63 lakhs leaving a balance of Rs.3.04 lakhs for which a demand was confirmed and a penalty for Rs.10,000 has been imposed.

9.5 Premature utilisation of money credit

According to condition (ii) of notification dated 11 October 1989, the credit taken during any calendar month should be utilised for payment of duty on the final products only after the commencement of the succeeding month.

A manufacturer of vanaspati, soaps and glycerine availing money credit under rule 57 K in respect of vegetable oils used in the manufacture of soaps took

credit of Rs.10.55 lakhs between January 1991 and February 1992 and utilised it in the same month in which credit was availed of in contravention of the notification.

The Ministry accepted the objection and stated (July 1996) that a credit of Rs.10.55 lakhs was disallowed and a penalty of Rs.20,000 has been confirmed by the Jurisdictional Assistant Commissioner.

10. SHORT LEVY DUE TO INCORRECT CLASSIFICATION

10.1 The rates of duty leviable on excisable goods are prescribed under various headings in the Schedule. Some of the illustrative cases of incorrect classification of goods which resulted in short levy of duty are given in the following paragraphs:

10.2 Mixture of vitamins

The Board in a circular dated 17 January 1990 clarified that animal feed supplements which are intermixtures of vitamins and do not contain any other ingredients except solvents, stabilisers or anti oxidants are classifiable as intermixture of vitamins under heading 29.36.

Two assessees in two Commissionerates manufactured different varieties of animal feed supplements and classified them under heading 23.02. As the products manufactured were intermixture of vitamins with solvents, diluents, stabilisers, anti-oxidants etc., used as preservatives, it was correctly classifiable under heading 29.36. The misclassification resulted in short levy of duty of Rs.1.57 crores during the period from April 1992 to March 1995.

On this being pointed out (between October 1993 and July 1995), the Ministry admitted objection in one case in November 1996. Reply in the second case has not been received (November 1996).

10.3 Plastic products

As per Board's order issued on 24 September 1992 under section 37B, the HDPE strips and tapes of width not exceeding 5mm are classifiable under sub-heading 3920.32 and sacks made thereof under sub-heading 3923.90 of the Schedule. Similarly, as per the pre-dominancy of material used, the product "Kraft line bag" is classifiable under sub-heading 3923.90.

Two assessees in two Commissionerates manufactured HDPE strips, fabrics, kraft papers, kraft line bags etc., out of HDPE and classified them under sub-headings 5406.90, 5408.00 and 5409.00 etc. As HDPE predominated in the product, they were correctly classifiable under sub-headings 3920.32 and 3923.90. Incorrect classification resulted in short levy of Rs.1.26 crores during November 1987 to March 1994.

On this being pointed out (September 1991 and February 1995), the department stated (October 1994) in one case that, out of confirmed demand of Rs.27.09 lakhs for the period 20 August 1990 to 11 July 1991, an amount of Rs.16.07 lakhs had been recovered and the balance amount was being recovered. In the second case, it was stated (December 1995) that demands for Rs.1.09 crores for the period April 1994 to February 1995 had been raised and SCN for the earlier period was being finalised.

Reply of the Ministry has not been received (November 1996).

10.4 Machineries and parts thereof

i) Dish antenna

As per the Board's order dated 16 November 1994 issued under section 37B, T.V antenna, booster and parts/component of community antenna television (CATV) or master antenna television (MATV) were classifiable under heading 85.43 as these were not the parts of television receivers .

Two assesseees manufactured dish antenna, direct reception sub system and parts of MATV and cleared them classifying under heading 85.29. In view of the function and use of the items, these were correctly classifiable under heading 85.43. This resulted in short levy of Rs.1.12 crores during the period from April 1990 to March 1994.

On this being pointed out (March and May 1994), the Ministry admitted the objection (September 1996).

ii) Isolators

Electrical apparatus for switching or protecting electrical circuits or for making connections to or in electrical circuits are classifiable under heading 85.35 or 85.36 depending upon the voltage. Parts suitable for use solely or principally with the apparatus of the above headings are covered by heading 85.38.

Two assesseees manufactured isolator metallic, terminal connectors, contacts, operating mechanism, etc., and cleared them under heading 85.35 for assembly at site with the bought out item viz insulator. As the manufactured products themselves were not capable of discharging function of switching etc. of an electrical apparatus described under heading 85.35, these were only parts of such apparatus and were correctly classifiable under heading 85.38. Incorrect classification resulted in short levy of Rs.1.08 crores during March 1993 to January 1994.

On this being pointed out (March and May 1994), the department issued show cause- cum demand notices for Rs.1.62 crores for the period March 1993 to February 1995 but contended that the parts manufactured were capable of independent function of isolator.

Reply of the department is not tenable as the parts manufactured were not capable to perform switching mechanism without supporting insulators. The concerned State Electricity Board also confirmed that the disconnector (isolator) cannot function without insulators.

Reply of the Ministry has not been received (November 1996).

iii) Capacitors/field switches

Board panels (including numerical control panels), consoles, desks, cabinets or other bases, equipped with two or more apparatus falling under heading 85.35 or 85.36, for control or distribution of electricity, are classifiable under heading 85.37.

Two assessees manufactured 'field switches' and 'capacitor switch with control transformers' and cleared them under heading 85.35. As the product was equipped with two or more apparatus falling under heading 85.35 or 85.36 and used for control and distribution of electricity, it merited classification under 85.37. Failure to classify the product correctly, resulted in short levy of duty of Rs.27.59 lakhs during April 1993 to September 1995.

On this being pointed out (January and November 1995), the Ministry admitted objection in one case (August 1996). Reply in the second case has not been received (November 1996).

iv) Remote control

Television receivers are classifiable under heading 85.28 whereas parts thereof are classifiable under heading 85.29.

An assessee manufacturing television sets of heading 85.28 cleared remote control apparatus as spares classifying it under heading 85.26. Since the remote control apparatus were parts of television receivers, it was rightly classifiable under heading 85.29. The misclassification of the product resulted in short levy of Rs.23.34 lakhs during April 1993 to March 1995.

On this being pointed out (May 1995), the Ministry admitted the objection (July 1996).

v) Regulator for fan

Parts and accessories of electric fans are classifiable under sub-heading 8414.99 with a tariff rate of 15 per cent ad valorem. The Board clarified in March 1996 that, when regulators are manufactured and cleared separately and not in combination with fans, these are classifiable as parts and accessories of electric fans under sub-heading 8414.99. If the regulators are cleared along with the fans, these are classifiable under 8414.20.

Three assessees manufactured regulators for electric fans and cleared them on payment of duty at 10 per cent ad valorem after classifying the same under sub heading 8414.20 though the subject goods were not cleared along with electric fans. Since regulators cleared separately were classifiable under sub-heading 8414.99, the misclassification resulted in short levy of duty of Rs.21.22 lakhs during March 1993 to March 1996.

On this being pointed out (March 1995 and August 1996), the Ministry held (July and October 1996) a view contrary to that of the Board and stated that the regulators were parts of fans, classifiable under sub-heading 8414.20. A finality in this matter is essential as otherwise such contrary views send wrong signal to the industry.

10.5 Chemicals

i) Mixtures of gases

Halogenated derivatives of hydrocarbons are classifiable under heading 29.03.

An assessee engaged in the manufacture of refrigerant gases wrongly cleared mixtures of fluoron 11 and fluoron 12 under heading 38.23 from 6 January 1992. This resulted in short levy of duty amounting to Rs.1.04 crores during February 1992 to February 1994.

On this being pointed out (February 1995), the department contended (March 1995) that in terms of note 1 (a) of chapter 29, the headings of chapter 29 apply only to separate chemically defined compounds and that the mixtures of two gases were not such compounds. The reply is not tenable as both the gases are separately chemically defined organic compounds and subsequent mixing amounted neither to manufacture nor change of characteristics of the product; these remained as halogenated derivatives of the hydrocarbons classifiable under heading 29.03.

Reply of the Ministry has not been received (November 1996).

ii) Perfumed chemicals

As per note 1(g) of chapter 29 of the Schedule, organic chemicals which are otherwise classifiable under this chapter, are to be excluded if these include an added anti-dusting agent or a colouring or odoriferous substance rendering the product particularly suitable for specific use rather than for general use.

Two assessees manufactured certain products out of chemicals in which odoriferous substances like fixatore, perfumes etc., were added and cleared them classifying under chapter 29 relating to organic chemicals. The chemicals so produced were meant for specific use in the manufacture of perfumed products and were actually cleared to the manufacturers of agarbatti, dhoop, soap, oil, etc. The

product was therefore classifiable under heading 33.03 relating to perfumes. Incorrect classification of the chemicals resulted in short levy of duty of Rs.14.52 lakhs during April 1988 to March 1990.

On this being pointed out (January 1991), the department intimated (October 1995) that show cause notices for Rs.15.16 lakhs for the period June 1991 to March 1994 had been issued after the products were chemically examined. Details of the demands raised for the period prior to June 1991 has not been intimated.

Reply of the Ministry has not been received (November 1996).

10.6 Mineral products

i) Carbon black feed stock

Heading 27.07 of the Schedule covers oils and other products obtained from distillation of coal tar and similar products in which the weight of the aromatic constituents exceeds that of the non aromatic constituents.

A public sector corporation obtained 'phenol extract' known as carbon black feed stock by solvent extraction process. The product was classified under sub heading 2710.50 but since, after removal of phenol, the extract had only aromatic constituents, the product was correctly classifiable under sub-heading 2707.90. The misclassification of the product resulted in short levy of Rs.95.22 lakhs during February 1992 to August 1993.

On this being pointed out (April 1992 and August 1993), the Ministry accepted (January 1996) the objection for the period February and March 1992.

ii) Rusguard

Anti knock, anti corrosive and other prepared additives for mineral oils are classifiable under heading 38.11 of the Schedule.

An assessee manufactured different varieties of 'rusguard' and cleared them under heading 34.03 instead of heading 38.11. Incorrect classification resulted in short levy of Rs.37.74 lakhs during April 1992 to March 1994.

On this being pointed out (December 1994), the Ministry admitted the objection (June 1996).

10.7 Miscellaneous products

i) Silicones

The Supreme Court in the case of M/s. Hico Products Ltd. Vs. Collector of Central Excise {1994 (71) ELT 339} decided that dimethicone and simethicone are not drugs by themselves or drug intermediates but silicones in primary form.

An assessee manufacturing dimethicone BPC and simethicone USP classified them under sub-heading 3003.20 as bulk drug. The products were correctly classifiable under heading 39.10 as silicones in primary forms. This resulted in short levy of duty of Rs.53.32 lakhs during March 1993 to February 1995.

This was pointed out in March 1995. Reply of the Ministry/department has not been received (November 1996).

ii) Pan chutney

Edible preparations were classifiable under heading 21.07 of the Schedule till 15 March 1995. An assessee who manufactured an edible preparation, called pan chutney, cleared the products at nil rate of duty, classifying under sub-heading 2103.11. This misclassification resulted in short levy of duty of Rs.52.21 lakhs during March 1990 to March 1991 and June 1992 to February 1993.

On this being pointed out (January 1994), the department stated (March 1996) that, out of a confirmed demand of Rs.31.56 lakhs for the period June 1992 to February 1993, duty of Rs.10.50 lakhs has been realised. For the remaining period no demand could be raised because of limitation.

The Ministry confirmed the facts (September 1996).

iii) Steel furniture

As per note (A) under chapter 94 of H.S.N. (page 1574), "furniture" means any "movable" articles (not included under other more specific headings) which are used, mainly with a utilitarian purpose by placing on the floor/ground to equip private dwellings, hotels, offices etc.

An assessee who manufactured articles in the name and style of 'spin pik vertical carousel conveyor', was allowed to clear the goods under heading 84.28 as other lifting, handling, loading or unloading machinery. The product was a mechanical steel rack designed for placing on the floor and for keeping/storing files, books etc., and was fitted with a motor operated device for facility of collecting the required files and books from the racks. As the article was predominantly meant for storing files, etc., it was classifiable as furniture under heading 94.03. Lifting, handling, loading and unloading was not the primary function of this article and thus it should not have been classified as machinery under heading 84.28. The incorrect classification resulted in a short levy of Rs.19.93 lakhs between September 1993 to March 1996.

This was pointed out in April 1995 and again in July 1996. The Ministry stated (August 1995) that the matter was under examination.

iv) Block board

Plywood, veneered panels and similar laminated wood are classifiable under heading 44.08. The Supreme Court in the case of M/s. Wood Crafts products Limited {1995 (77) ELT 23} decided that block board is also classifiable under heading 44.08.

An assessee manufactured block board and cleared it at nil rate of duty classifying the same wrongly under sub-heading 4410.90. The department issued show cause-cum demand notice of Rs.6.62 lakhs for the period November 1992 to July 1993 in October 1993 but without finalising demand notice, finalised the assessment upto December 1994 upholding classification under sub-heading 4410.90. As the product was correctly classifiable under sub-heading 4408.90, there was short levy of Rs.22.15 lakhs from 1 November 1992 to 20 March 1995.

On this being pointed out (December 1995), the Ministry admitted the objection in August 1996.

v) Varnish

Insulating varnish is classifiable under sub-heading 3208.40 whereas varnish other than insulating varnish falls under sub-heading 3208.90.

An assessee manufactured varnish and cleared after classifying it under sub-heading 3208.40. The literature of the product disclosed that the product was manufactured as per ISI specification No.9912 of 1981 which states: "Hot applied coal tar based coatings and their associated primers are normally used during the first application of the coating materials and it is applied as a thin film to metal in order to ensure after drying adhesion of the subsequent protective coating". The sample report of the product could find no evidence that the product was an insulating varnish. From the ISI specification and use, the subject product merited classification as varnish under subheading 3208.90. Failure to classify the product correctly resulted in short levy of Rs.15.44 lakhs during April 1992 to February 1994.

On the mistake being pointed out (July 1994), the department justified (March 1996) the classification under sub-heading 3208.40 on the basis of chemical examiner's report of the sample drawn.

Reply of the department is not tenable as the product was manufactured as per ISI specification and the product was not usable for insulating electric wires and cables. Moreover, the actual end use of the product cannot be determined on the basis of chemical examination.

Reply of the Ministry has not been received (November 1996).

vi) Dash boards

Dash boards for motor vehicles are specifically covered under heading 87.08 as motor vehicle parts as per explanatory notes (B) under heading 87.08 in the HSN.

An assessee manufactured panel sets which comprised of speedometer, thermometer, oil gauge, fuel gauge, ammeter, wire harness and warning light. He classified the products under chapter 90, treating these as measuring or checking instruments. As the instruments were not cleared individually but were cleared in combination with various instruments in a panel, it became dash boards to be used in motor vehicles. Therefore the panel sets were correctly classifiable under heading 87.08 as parts of motor vehicle. The misclassification of the product resulted in short levy of Rs.12.33 lakhs during April 1993 to March 1994.

On this being pointed out (September 1994), the department contended (December 1994) that the product was correctly classified under heading 90.31 as the function of panel sets was for checking and measuring. The reply of the department is not tenable as the panel sets were exclusively manufactured for use in the motor vehicles and hence these were parts of motor vehicle classifiable under heading 87.08 in terms of note 2(b) under chapter 90 read with explanatory note 4 under section XVI of HSN.

10.8 Other cases

In fourteen other cases of incorrect classification, the Ministry/department have accepted the objection involving duty of Rs.110.61 lakhs and reported recovery of Rs.76.16 lakhs in seven cases. Details of these cases are given below:-

(Amount in lakhs of rupees)					
Sl. No.	Particulars (Period)	Classification adopted Hd./SH.	Correct Classification Hd./SH.	Amount accepted	Amount recovered
1.	Aluminium grills (April 1990 to November 1993)	7616.90	84.15	49.20	49.20
2.	Parts of machines (April 1988 to February 1994) (4)	8455.10 84.74 85.38 85.02	8455.90 84.83 84.31 85.03 85.94	22.98	9.60
3.	Parts of photocopier (1994-95)	90.33	90.09	8.51	7.25
4.	Welding wires (April 1994 to July 1995)	7229.90	83.11	7.38	
5.	Plastic and products (April 1990 to February 1994) (2)	3909.51 3907.30	3909.59 3506.00	6.49	

		(Amount in lakhs of rupees)			
Sl. No.	Particulars (Period)	Classification adopted Hd./SH.	Correct Classification Hd./SH.	Amount accepted	Amount recovered
6.	Parts of conveyor (1991-93)	84.28	84.31	5.94	
7.	Cylinder head covers (April 1994 to March 1995)	87.14	84.09	3.35	3.35
8.	Dentist chair (March 1994 to June 1994)	90.18	94.02	2.37	2.37
9.	Circuit breaker (July 1994 to September 1994)	85.35	85.37	2.26	2.26
10.	Livo phos caps (April to May 1995)	3003.30	3003.10	2.13	2.13
Total				110.61	76.16

11. SHORT LEVY DUE TO UNDERVALUATION

11.1 Some of the illustrative cases of short levy due to undervaluation are mentioned below:-

11.2 Additional considerations not included in the assessable value

As per section 4 of the Act, the normal price at which such goods are sold ordinarily 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. In cases, where price is not the sole consideration, the assessable value of the goods, as per the provisions of rule 5 of Valuation Rules, shall be based on the aggregate of the price and money value or additional consideration flowing directly or indirectly from the buyer to the assessee.

i) Interest on deposits

The Ministry clarified on 13 June 1990 that interest accrued on advance deposits made by customers should be included in the assessable value since the manufacturer would have incurred liability to pay interest had he borrowed from banks and therefore it was not necessary to establish separately the nexus between the deposits and the price.

Supreme Court of India in the case of Metal Box India Limited {1995 (75) ELT 449} also upheld the above view and decided that the notional interest on advances made by customer to assessee is to be added to the normal consideration to arrive at the assessable value.

Nineteen assesseees in ten Commissionerates engaged in the manufacture of different excisable goods collected deposits/advances from the buyers and retained

them for certain periods. However, interest earned/accrued on such deposits/advances was not included in the assessable value. This resulted in undervaluation of goods and consequent short levy of Rs.3.17 crores between 1990-91 and 1994-95.

On this being pointed out (between March 1993 and September 1995), the Ministry admitted (between July and November 1996) the objections in five cases. In two cases it contended that no benefit out of deposits was derived by the assessee and hence there was no nexus between the deposits taken and the sale price of the goods.

Reply in the remaining twelve cases has not been received (November 1996).

ii) Escalation charges

As per circular of the Board 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 be made as soon as the assessee submits his bills for the escalated value, without waiting for the acceptance of the customers.

Five assesseees in four Commissionerates manufacturing ships, electronic goods, iron and steel structurals, aluminium conductor and glass bottles raised supplementary bills on the customers for escalation of prices as per contractual terms but duty was not accordingly paid. This resulted in short levy of Rs.79.30 lakhs during November 1989 to March 1995.

On this being pointed out in audit (between September 1993 and June 1995) the department reported (between February 1994 and December 1995) recovery of Rs.32.38 lakhs in three cases and issue of demand of Rs.49.94 lakhs in the fourth case. It was further stated that the assessee in fifth case had agreed to pay duty.

The Ministry admitted (between June and August 1996) the objection in four cases. Reply in the fifth case has not been received (November 1996).

iii) Development charges

Three assesseees manufacturing machinery parts received Rs.121.66 lakhs towards development and dye fabrication charges during the years 1993-94 and 1994-95 but did not include the same in the assessable value. Non inclusion of this additional consideration in the assessable value resulted in short levy of Rs.18.78 lakhs.

On this being pointed out (between December 1994 and March 1996), the Ministry admitted the objection in two cases and intimated (July and September 1996) recovery of Rs.4 lakhs in one case and issue of show cause-cum demand notice for Rs.7.03 lakhs in the second case. Reply in the third case has not been received (November 1996).

11.3 Irregular deduction allowed from assessable value

As per section 4(4)(d)(ii) of the Act, 'value' in relation to any excisable goods does not include trade discount allowed in accordance with the normal practice of wholesale trade.

i) Trade discount

Two manufacturers of electric fans and photographic cameras cleared their goods to regional depots and claimed trade discount of Rs.30 to 40 per piece from assessable value which was allowed by the department. But as the trade discount was not actually passed on to the customers, it resulted in short levy of Rs.85.61 lakhs during April 1993 to September 1994.

On this being pointed out in audit (September and November 1994), the Ministry admitted the objection and stated (June and July 1996) that a demand of Rs.20.48 lakhs was raised in one case, out of which demand of Rs.5.71 lakhs has been confirmed. It was further stated that the amount of short levy in the second case has to be worked out after verification of invoices.

ii) Commission to distributors

The Supreme Court in the case of M/s. Seshasayee Paper and Paper Board Limited {1990 (47) ELT 202}, have held that trade discount allowed to dealers acting as an indenter is in the nature of commission and therefore, not permissible for abatement from assessable value.

Two manufacturers of detergent and batteries were selling their products through distributors, who were allowed distribution discount. Such discounts were deducted from the assessable value of the products. Incorrect abatement of assessable value thus resulted in short levy of Rs.36.95 lakhs during October 1992 to November 1993.

On this being pointed out (January and February 1994), the Ministry admitted the objection in one case and stated (October 1996) that out of confirmed demand of Rs.1.81 crores, the assessee has deposited Rs.54.97 lakhs and for the balance amount a Court stay order has been obtained. In the second case, it contended that the distributor was the buyer of the goods and the transactions were on a principal to principal basis.

The reply is not tenable as the distributor had actually acted as an indenter for procuring orders and arranging delivery and hence deduction on account of commission for services rendered by the distributor was not permissible in terms of the Supreme Court's decision.

11.4 Non revision of assessable value

As per rule 6(b) of the Valuation Rules, if the value of the excisable goods cannot be determined under other provisions of the rules, the value has to be determined on the basis of cost of production or manufacture.

i) An assessee engaged in the manufacture of bulk drugs cleared 59722 kilograms of chloro compound acid during January 1991 to March 1993 to a sister concern and for payment of central excise duty, adopted Rs.516.81 per kilogram as the assessable value on the basis on his cost data for December 1990. Although there was an increase in cost of raw materials, labour charges etc., the value of the product was not revised. Considering the cost of inputs alone as seen from invoices for the year 1991-92, the assessable value worked out to Rs.929.62 per kilogram and consequential short levy was Rs.40.43 lakhs during January 1991 to March 1993.

On this being pointed out (April 1994), the department stated (April 1996) that a SCN demanding duty of Rs.40.43 lakhs had been issued.

The Ministry have confirmed the facts (October 1996).

ii) An assessee manufacturing different varieties of perfumes for the customers on job work basis was paying duty on the price based on the cost of raw materials prevailing in June 1991 although the cost of raw materials had increased more than 10 per cent during 1992-93. Non revision of the price list of the products thus resulted in a short levy of at least (on the basis 10 per cent increase in inputs) Rs.34.15 lakhs during April 1993 to February 1994.

On this being pointed out (March 1994), the Ministry admitted the objection (September 1996) and intimated that show cause-cum demand notice for Rs.57.21 lakhs was issued out of which Rs.18.65 lakhs have been recovered.

iii) An assessee manufacturing goods of "expanded polysheet laminated with PVC jute mat" cleared his products to his sister unit at the rate of Rs.89.38 per square metre and Rs.100 per square metre from April 1995 and 17 August 1995 respectively although the cost of the product worked out to Rs.140 (approximately) based on cost data. Consequently, there was short payment of duty of Rs.15.04 lakhs during April to December 1995.

On this being pointed out (February 1996), the department stated (March 1996) that SCN had been issued for Rs.11.45 lakhs and for the remaining duty of Rs.3.60 lakhs, necessary action was being taken.

Reply of the Ministry has not been received (November 1996).

iv) An assessee engaged in the manufacture of PBC poles was clearing his products on payment of duty on contract price based on the cost of materials which obtained prior to October 1986. Although the cost of inputs like HTS wire, cement, etc., had increased considerably after October 1986, no revision of price was done till June 1994.

On this being pointed out (June 1994), the Ministry intimated recovery of duty of Rs.25.20 lakhs for the years 1990-91 to 1994-95, stating (August 1996) that the department was already seized of the matter. The department, however, initiated action to revise the price and recover duty only after audit objection.

11.5 Incorrect determination of the shrinkage value of fabrics

An assessee engaged in the processing of fabrics received from various cloth merchants grey fabrics falling under chapter 54 and 55 for processing on job charge basis. There was shrinkage to the extent of 6.01 per cent on an average of grey fabrics received for processing. However, the assessee had loaded only 4 per cent of grey fabrics for computation of assessable value though actual shrinkage was 6.01 per cent. The incorrect computation of assessable value resulted in short levy of Rs.18.46 lakhs during 1993-94.

This was pointed out in audit April 1995. Reply of the department/Ministry has not been received (November 1996).

11.6 Other cases

The Ministry/department have accepted short levy of duty of Rs.35.39 lakhs in eight other cases of undervaluation of goods. Details of these cases are given below:

Sl. No.	Particulars	(Amount in lakhs of rupees)	
		Amount accepted	Amount recovered
1.	Value of components not included (2)	10.53	
2.	Non revision of price list (2)	10.50	10.50
3.	Margin of profit and landed cost not included (2)	6.95	
4.	Clearance at lower price	5.23	
5.	Insurance claims not included	2.18	
	Total	35.39	10.50

12. DEMANDS DELAYED OR NOT RAISED

12.1 Some of the illustrative cases of non raising of demand or delay in raising demand are given in the following paragraphs:

12.2 Demands not raised

i) The department issued a SCN to an assessee and adjudicated the case in May 1993, denying the exemption availed by him on the product named "loco hard grease" without, however, quantifying the duty payable. Being aggrieved, the assessee appealed before Collector (Appeals) who rejected the appeal. The assessee thereafter filed a petition before the CEGAT for stay of operation of appellate orders but the CEGAT rejected the stay petition in January 1995 on the grounds that it was infructuous. It was, however, observed in audit that even after the dismissal of the stay petition, no demand has been raised to collect the duty exemption availed of, which works out to Rs.2.62 crores.

On this being pointed out (November 1995 and February 1996), the department stated (December 1995) that action to issue SCN was under process.

Reply of the Ministry has not been received (November 1996).

ii) In six cases, assessees exported bars, galvanised nuts and bolts, glass and glassware, medicaments and denim fabrics etc., under bond, involving duty of Rs.44.40 lakhs between November 1990 and March 1995. Proof of export required to be submitted within a period of six months under rule 13 of the Rules, was not submitted by the assessees. Although duty was required to be demanded by the department for the aforesaid lapse, no action was taken to raise the demand, till the irregularity was pointed out by Audit between June 1994 and December 1995. The department stated between February and May 1996 that duty of Rs.4.39 lakhs has been recovered in two cases. In other two cases, demands for Rs.25.79 lakhs were issued out of which demand for Rs.18.99 lakhs had been confirmed (December 1995). Reply in respect of the remaining two cases has not been received (May 1996).

The Ministry admitted the objections (between August and November 1996) in three cases. In the fourth case, it stated that the duty was recovered before receipt of audit objection in February 1995. It may be mentioned that the objection was discussed with the department on 18 January 1995. Reply in the remaining two cases has not been received (November 1996).

iii) In another case, an assessee cleared HDPE strips/tapes/fabrics woven sacks paying duty under chapter 54/63 but without getting approved classification of the products. The department, however, approved the classification of the products under chapter 39 in February 1993 but no action to recover differential duty of

Rs.42.68 lakhs for the period from April 1990 to July 1990 was taken. Failure of the department in taking timely action, has resulted in blocking of revenue. The interest chargeable at normal bank rates also works out to Rs.36.99 lakhs for the period July 1990 to March 1995.

On the omission being pointed out (between January 1994 and April 1995), the department stated (September 1995) that a show cause-cum demand notice (without charging interest) has been issued in March 1995.

Reply of the Ministry has not been received (November 1996).

iv) In another case, a manufacturer of plastic woven sacks filed two revised classification lists on his own, effective from 20 August 1990 and 20 September 1990 wherein he correctly classified his product under chapter 39. However, the assessee continued to clear his product on payment of duty at a lower rate of 5 per cent instead of 15 and 30 per cent ad valorem during the period June 1990 to 19 September 1990 and 20 September 1990 to 31 October 1990 respectively. Though the revised classification lists submitted during August and September 1990 were approved by the department in May 1991, no demand was raised for recovery of duty of Rs.8.84 lakhs short paid.

On the omission being pointed out (March 1992), the department intimated (December 1995) that demand of Rs.5.35 lakhs was confirmed in April 1995 but the assessee had filed an appeal before the Commissioner (Appeals) against the recovery of the said amount. It was further stated that demand for the period from June 1990 to August 1990 could not be raised as the same was time barred.

Reply of the Ministry has not been received (November 1996).

12.3 Delay in recovery of confirmed demands

In a Commissionerate, demands of Rs.12.06 lakhs confirmed in June 1992 were pending realisation. No action as required under the Act, was initiated to recover the Government dues. This resulted not only in non recovery of Government revenue of Rs.12.06 lakhs but also loss of interest amounting to Rs.6.96 lakhs for the period from July 1992 to August 1995.

The irregularity was pointed out in August 1995. Reply of the department/ Ministry has not been received (November 1996).

13. EXEMPTION TO SMALL SCALE MANUFACTURERS

13.1 Duty reliefs and exemptions are allowed to small scale manufacturers of specified excisable goods under various exemption notifications issued under the Act, subject to fulfillment of certain conditions. A few illustrative cases of non levy or short levy of duty, arising from irregular grant of exemptions are mentioned below:-

13.2 Avoidance of duty

According to notification dated 1 March 1986 as amended if any unit clears excisable goods less than Rs.2 crores for home consumption in a financial year, that unit would be eligible for benefits of full/partial exemption from payment of excise duty on clearances of specified goods upto an aggregate value of Rs.75 lakhs in the succeeding years.

As per notification S.O.2 (E) dated 1 January 1993 issued under the Industries Act, an industrial undertaking is deemed to be controlled by another undertaking if the management control of an industrial undertaking is passed on to another undertaking by way of managing director being common or if the managing director is a director of another industrial undertaking and in such cases, clearances by the controlling and the controlled units are required to be clubbed for purpose of assessment.

An assessee, manufacturing wood working machineries and parts, was 75 per cent owner of another partnership firm (SSI unit) manufacturing same products while his son was the other partner with 25 per cent ownership. Since both the units were under the same management, their total clearances were required to be clubbed in terms of the notification dated 1 March 1986. Non clubbing of clearances of both the units resulted in avoidance of duty of Rs.8.46 lakhs.

On this being pointed out (August 1995), the Ministry stated (November 1996) that the clearances of the SSI units cannot be clubbed as interconnection of the units were not proved by mutuality of interest or common funding or supervisions by one or the other.

The contention of the Ministry is not tenable since 75 per cent ownership of the other unit vested in the hundred per cent owner of the first unit, and as such the first was to be treated as controlled by the assessee in terms of Ministry of Industry notification No S.O. 2 (E) dated 1 January 1993. Moreover, recourse to 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 the committee desired that special attention should be paid by the enforcing agencies to ensure that benefits intended for small units are not abused or misused.

13.3 Benefits availed by units having invalid certificates

In terms of notification No.1/93-CE dated 28 February 1993, benefit of exemption was available to SSI units having clearances not exceeding Rupees 200 lakhs in the previous year, provided the factory was an undertaking registered with the Director of Industries in any State or the Development Commissioner (SSI) as an SSI under the provisions of the Industries Act. As per notification of Ministry

of Industry of 2 April 1991, for registration of an industrial unit as an SSI, investment in plant and machinery should not exceed Rs.60 lakhs.

Eight assesseees in seven commissionerates were allowed SSI concessions as per notification dated 1 March 1986 as amended on 28 February 1993 on the strength of SSI certificates of registration issued by the Director of Industries. It was seen from the Annual Reports and Accounts of the assesseees that the value of investment in the plant and machinery of the units/ancillary units as at the end of the accounting year (prior to 1 April 1994) had exceeded Rs.60/75 lakhs in each of these cases and the assesseees were, therefore not entitled to SSI concession under the above notification. Grant of small scale concession to ineligible units resulted in short levy of duty of Rs.60.27 lakhs (basic and special) in respect of clearances made between April 1992 and March 1994.

The Ministry did not admit the objection and stated (between May and November 1996) that concession to SSI was allowed as per the small scale registration certificate and the value of clearances in the preceding financial year. The Ministry added that an SSI unit had not been defined in the notification allowing exemption/concession for such unit and accordingly the investment limit of Rs.60 lakhs prescribed in the notification No.S.O.232 (E) dated 2 April 1991 issued by the Ministry of Industry has no relevance in the instant cases.

The contention of the Ministry is flawed in view of the specific provisions in the notification dated 1 March 1986 and 28 February 1993 that the exemption in the notification shall be applicable only to a factory which is registered as an SSI/ ancillary unit under the Industries Act, in terms of which the investment in plant and machinery should not exceed the limit of Rs.60/75 lakhs. The absence of any mechanism to check the validity of small scale registration certificate already issued, resulted in irregular availment of exemption/concession.

PAC in para 118 of 32nd Report (10th Lok Sabha) noted with surprise that although the excise duty concessions are extended to the SSI units by the department of Central Excise, the term " Small Scale Industrial Undertaking" has not been defined in the Act or Rules. The Committee recommended that the Act or Rules should be amended to incorporate therein the definition of SSI on the same lines as in the Industries Act.

13.4 Other cases

In four other cases of incorrect grant of small scale exemption, the Ministry/ department have accepted the objections involving duty of Rs.31.08 lakhs and reported recovery of Rs.8.93 lakhs in two cases. Details of these cases are given in the table:

		(Amount in lakhs of rupees)	
Sl. No.	Particulars	Amount accepted	Amount recovered
1.	Exemption availed beyond prescribed limit of clearances (steel containers)	9.19	
2.	Exemption availed without registration (cement)	8.79	
3.	Exemption availed on branded goods of ineligible persons		
	(a) Electrical appliances	7.35	6.14
	(b) Micro earthquake recording system	2.96	
4.	Exemption availed in excess	2.79	2.79
	Total	31.08	8.93

14. OTHER IRREGULARITIES

14.1 Non renewal of bank guarantees

a) An assessee obtained stay on 14 May 1985 from a High Court against recovery of a demand for Rs.3.86 crores on condition that the assessee would furnish bank guarantees and keep them valid till disposal of the writ petition. The bank guarantees furnished by the assessee lapsed in June 1993 (for Rs.0.25 crore), December 1993 (for Rs.3.51 crores) and June 1994 (for Rs.0.10 crore), but no action was taken by the department to get them revalidated till disposal of the writ petition.

On this being pointed out (December 1994), the department accepted the objection and intimated (between May 1995 and February 1996) that a sum of Rs.1.16 crores have been realised and goods worth Rs.1 crore detained.

Reply of the Ministry has not been received (November 1996).

b) Another assessee obtained a stay order in August 1982 from a High Court against the payment of central excise duty of Rs.30.48 lakhs on processed man made fabrics. As per the stay order, fifty percent of the duty was to be in the form of bank guarantee. Accordingly the assessee executed bank guarantees for Rs.16 lakhs. The stay order was vacated in May 1990 but the department could recover Rs.6 lakhs only from the assessee as the bank guarantees had already lapsed. Subsequently, the department recovered Rs.15.33 lakhs till September 1995 leaving an amount of Rs.9.15 lakhs unrealised.

On this being pointed out (November 1995), the Ministry admitted the objection (October 1996).

14.2 Irregular transfer of credit

Two assessee engaged in the manufacture of fluorspar powder and bulk drugs cleared their products on payment of amounts not payable as duty. It was

also observed that most of such amounts was paid through Modvat account. As amounts so paid was not duty but deposits in terms of Board's clarification of 4 January 1991, this resulted in irregular transfer of credit of Rs.1.54 crores during November 1991 to December 1994 to be utilised by the buyer manufacturer. The Board also clarified in 4 November 1992 that end use certificate was not required.

On this being pointed out (May and October 1995), the Commissionerate contended (January and February 1996) in one case that the manufacturer was free to pay duty in terms of CEGAT's decision in the case of M/s. Everest Convertors {1985 (80) ELT (T)}. In the second case, it stated that in the absence of end use certificate, assessee paid duty at higher rate. The contention of the Commissionerate is obviously contrary to the Board's above mentioned clarifications.

14.3 Duty collected but not paid to government

Five assessees in four commissionerates engaged in the manufacture of various products collected excise duty amounting to Rs.87.29 lakhs from their customers during January 1993 to August 1995 through invoices. However, the duty collected was not credited to the government as required under section 11 D of the Act.

On this being pointed out (between July 1994 and January 1996), the Ministry admitted the objection in two cases and intimated issue of show cause-cum demand notices for Rs.58.07 lakhs (September and October 1996). Reply in the remaining three cases has not been received (November 1996).

14.4 Non recovery of duty on non receipt of rewarehousing certificates

As per rule 156 A, when goods are removed from one warehouse to another without payment of duty, the assessee is required to produce the rewarehousing certificates to the proper officer within 90 days from the date of removal of goods or such extended period as the proper officer may allow. In case the rewarehousing certificates are not produced within the stipulated period, the assessee is required to pay the duty leviable thereon.

A public sector undertaking manufacturing machinery had cleared the goods without payment of duty to their other factories/warehouses during 1991-92 to 1994-95. As the required rewarehousing certificates were not produced to the proper officer, action to recover duty of Rs.16.86 lakhs should have been taken by the department.

This was pointed out in December 1995; reply of the Ministry/department has not been received (November 1996).

14.5 Incorrect application of rate of duty

Blended lubricating oils/preparations containing less than 70 per cent mineral oil by weight attracted duty at 20 per cent ad valorem under heading 34.03.

An assessee manufactured blended lubricating oils/preparations containing less than 70 per cent mineral oil by weight and cleared it on payment of duty at lower rate of 10 per cent ad valorem. This resulted in short levy of duty of Rs.10.94 lakhs during the period from 1 March 1994 to 15 March 1995.

On this being pointed out (August 1995), the Ministry admitted the objection and intimated (September 1996) recovery of duty of Rs.10.94 lakhs.

14.6 Clearance of goods without balance in the PLA

Rule 173G(1) requires that in cases where maintenance of account current has been permitted, sufficient amount shall be credited therein periodically so as to cover the duty due on the goods intended to be removed.

An assessee, manufacturing petroleum products, cleared excisable goods against a debit balance in the PLA during 29 June 1994 to 15 July 1994. The clearance of goods without credit balances in the PLA was in contravention to the aforesaid provisions and resulted in a temporary financial accommodation to the assessee to an extent of Rs.41.80 lakhs.

On this being pointed out (October 1995), the department stated (February 1996) that an offence case followed by show cause-cum demand notice was issued on 15 November 1995 without demanding interest as no provision for charging interest in such cases existed in the Act prior to March 1995.

Reply of the Ministry has not been received (November 1996).

14.7 Interest not levied on delayed payment of duty

As per section 11AA of the Act, (as introduced from 16 March 1995) where a person, chargeable with duty determined under sub section (2) of section 11A, fails to pay such duty within three months from the date of such determination, he shall pay, in addition to the duty, interest on such duty from the date immediately after the expiry of the said period of three months till the date of payment of such duty. The rate of interest on such delayed payment of duty has been fixed at 20 per cent per annum as per a notification issued on 29 May 1995.

An assessee manufacturing goods covered by chapters 39 and 54 was issued a demand notice for Rs.814.83 lakhs on 30 September 1994. The said demand was confirmed on 31 March 1995 and the adjudication order was issued on 28 April 1995 directing the assessee to pay the demand immediately. The

assessee paid the said demand in 34 instalments between 28 July 1995 and 16 October 1995 but no interest was demanded by the department.

On this being pointed out (October 1995), the Ministry admitted the objection and stated that SCN for Rs.9.37 lakhs has been issued.

14.8 Irregular availment of rebate

In the case of M/s. Hindustan Petroleum Corporation Ltd., {1995 (77) ELT 256}, the Supreme Court decided that export of goods under bond under rule 13 is permissible only when rebate of duty under rule 12 is admissible.

An assessee was allowed to export aviation turbine fuel (chapter 27) as stores for consumption on board an aircraft on foreign run to Nepal under bond under rule 13. Duty of Rs.24.94 per kilo liter was paid by availing of the rebate under notification No.46/94-CE (NT) dated 22 September 1994 issued under rule 12. Since this contravened the decision of the Supreme Court, it resulted in a short levy of duty of Rs.9.60 lakhs on the clearances made during the period from April 1994 to July 1995.

On the mistake being pointed out (October 1995), the department contended (April 1996) that export to Nepal under bond was allowable under notification No.51/94 (NT) dated 22 September 1994 and the judgement by the Supreme Court was not applicable.

The department failed to clarify as to why the Supreme Court decision was not applicable.

Reply of the Ministry has not been received (November 1996).

14.9 Miscellaneous

1179 other objections involving duty of Rs.9.92 crores were also pointed out. The department has accepted all these objections and reported recovery of an amount of Rs.4.18 crores in sixty four cases.

Annexure-I

Details of infractions in respect of registration of dealers relating to para 2.4.4.

- In 5 cases under 3 Commissionerates, the dealers issued Modvat invoices involving credit of Rs.5.66 lakhs in respect of the goods other than those for which registration certificates were issued. Another dealer in Bangalore Commissionerate issued modvat invoices in respect of goods the credit of which (Rs.9.53 lakhs) was taken on the basis of original copy/extra copy of invoice.
- In 3 cases under Goa Commissionerate, the assesseees were granted registration for carrying out manufacturing as well as trading activity from the same premises;
- 5 dealers under 'Nagpur' Commissionerate, operating from the same premises were granted registration separately without specifying/ verifying their share of occupancy in the premises;
- 9 dealers (3 each dealing with similar goods) were granted dealership registration in respect of 3 premises in Hyderabad Commissionerate. In one of the above cases, an individual was controlling the affairs of 3 dealers/ companies dealing in similar goods;
- registration certificates in 331 cases relating to Bangalore and Bhubaneswar Commissionerates were issued by the Range superintendent on the same date on which applications were submitted by the dealers without proper verification; and
- No internal audit had been conducted and effective monitoring could not be possible without control registers.

15. RECEIPTS OF THE UNION TERRITORIES (WITHOUT LEGISLATURES)

15.1 Tax and non-tax receipts

The tax and non-tax revenue receipts of the Union Territories which do not have Legislature, are given below for the year 1994-95 and two preceding years.

	(Amount in crores of rupees)					
	Chandigarh	Dadra and Nagar Haveli	Andaman & Nicobar Islands	Minicoy & Lakshdweep Islands	Daman & Diu	Total receipts
A. Tax Revenue						
Sales Tax						
1993-94	71.66	2.71	Nil	Nil	18.38	92.75
1994-95	75.09	3.97	Nil	Nil	38.34	117.40
1995-96	92.26	5.09	Nil	Nil	39.22	136.57
State Excise						
1993-94	44.76	0.16	3.51	Nil	3.73	52.16
1994-95	43.99	0.18	5.29	Nil	4.56	54.02
1995-96	43.15	0.16	4.24	Nil	5.22	52.77
Taxes on Goods and Passengers						
1993-94	1.44	Nil	Nil	Nil	Nil	1.44
1994-95	1.64	Nil	Nil	Nil	0.44	2.08
1995-96	1.91	Nil	Nil	Nil	0.54	2.45
Stamp Duty and Registration Fee						
1993-94	8.22	0.42	0.15	0.08	1.42	10.29
1994-95	9.95	0.81	0.21	0.09	1.27	12.33
1995-96	12.10	0.77	0.27	0.10	1.63	14.87
Taxes on Motor Vehicles						
1993-94	2.34	0.57	0.10	Nil	1.02	4.03
1994-95	3.82	0.79	0.11	Nil	1.44	6.16
1995-96	4.49	0.86	0.12	Nil	1.52	6.99
Land Revenue						
1993-94	Nil	0.15	0.17	0.02	0.90	1.24
1994-95	Nil	1.08	0.66	0.02	0.37	2.13
1995-96	Nil	0.23	0.39	0.03	0.43	1.08
Other Taxes and Duties						
1993-94	1.02	Nil	0.05	Nil	0.27	1.34
1994-95	1.08	Nil	0.05	Nil	0.01	1.14
1995-96	1.61	Nil	0.05	Nil	Nil	1.66
Total A. Tax Revenue						
1993-94	134.08	4.00	5.10	0.10	25.97	169.25
1994-95	139.80	6.83	7.64	0.11	46.69	201.07
1995-96	161.00	7.12	6.90	0.13	48.96	224.11
Total B. Non-tax Revenue						
1993-94	5.81	40.60	58.93	3.39	3.91	112.64
1994-95	136.12	40.98	66.91	4.31	6.25	254.57
1995-96	148.93	16.36	65.53	5.08	7.73	243.63
Total - Tax and Non-tax Revenue						
1993-94	251.94	44.61	63.03	3.49	29.89	392.96
1994-95	275.92	47.81	74.55	4.41	52.94	455.63
1995-96	309.95	23.48	72.42	5.20	56.69	467.74

- Figures for 1995-96 are provisional subject to certification of Finance Accounts.

- Total A. Tax Revenue comprises all other Major Heads not specified above.

15.2 Shortfall of revenue due to wrong fixation of minimum bid money

Under the provisions of Andaman Excise Rules, 1934, the Deputy Commissioner shall on or before April 1 every year sell by auction the right to vend liquor at the sanctioned shops. The shops are sold to highest bidders for one year, not below the minimum reserve price fixed by the Deputy Commissioner.

For an auction held on 27 February 1995 to sell the right to vend liquor at the sanctioned shops in the islands for year 1995-96, the total reserve price fixed by the Andaman & Nicobar Administration for 13 shops was Rs.2.83 crores. It was noticed that for 12 shops in the year 1994-95 the reserve price fixed was the same as was fixed for 13 shops during 1995-96. This led to a shortfall of revenue of Rs.15.83 lakhs.

On this being pointed out (December 1995), the Administration stated (January 1996) that suggestion for fixation of minimum reserve price has been noted and that the minimum reserve price for 13 shops has been fixed as Rs.3.07 crores for the year 1996-97. The reply, however, was silent regarding reasons for incorrect fixation of minimum reserve price for the year 1995-96.

Vikram Chandra

(VIKRAM CHANDRA)
Principal Director of Receipt Audit
(Indirect Taxes)

New Delhi
The

Countersigned

V. K. Shunglu

(V.K. SHUNGLU)
Comptroller and Auditor General
of India

New Delhi
The

ERRATA

Page No.	Line	For	Read
vi	9th from top	Rs. 16.19	Rs. 16.91
vii	3rd from top	Paragraph 3.9.1	Paragraph 3.10.1
3	heading of graph	value of projection	value of production

№	Имя	Содержание	Примечание
1	Иванов И.	100 руб.	100 руб.
2	Петров П.	200 руб.	200 руб.
3	Сидоров С.	300 руб.	300 руб.
4	Кузнецов К.	400 руб.	400 руб.
5	Лебедев Л.	500 руб.	500 руб.
6	Зайцев З.	600 руб.	600 руб.
7	Васильев В.	700 руб.	700 руб.
8	Попов П.	800 руб.	800 руб.
9	Смирнов С.	900 руб.	900 руб.
10	Мухоморов М.	1000 руб.	1000 руб.

Итого: