REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

FOR THE YEAR ENDED 31 MARCH 1992

NO. 4 OF 1993

UNION GOVERNMENT
(REVENUE RECEIPTS - INDIRECT TAXES)

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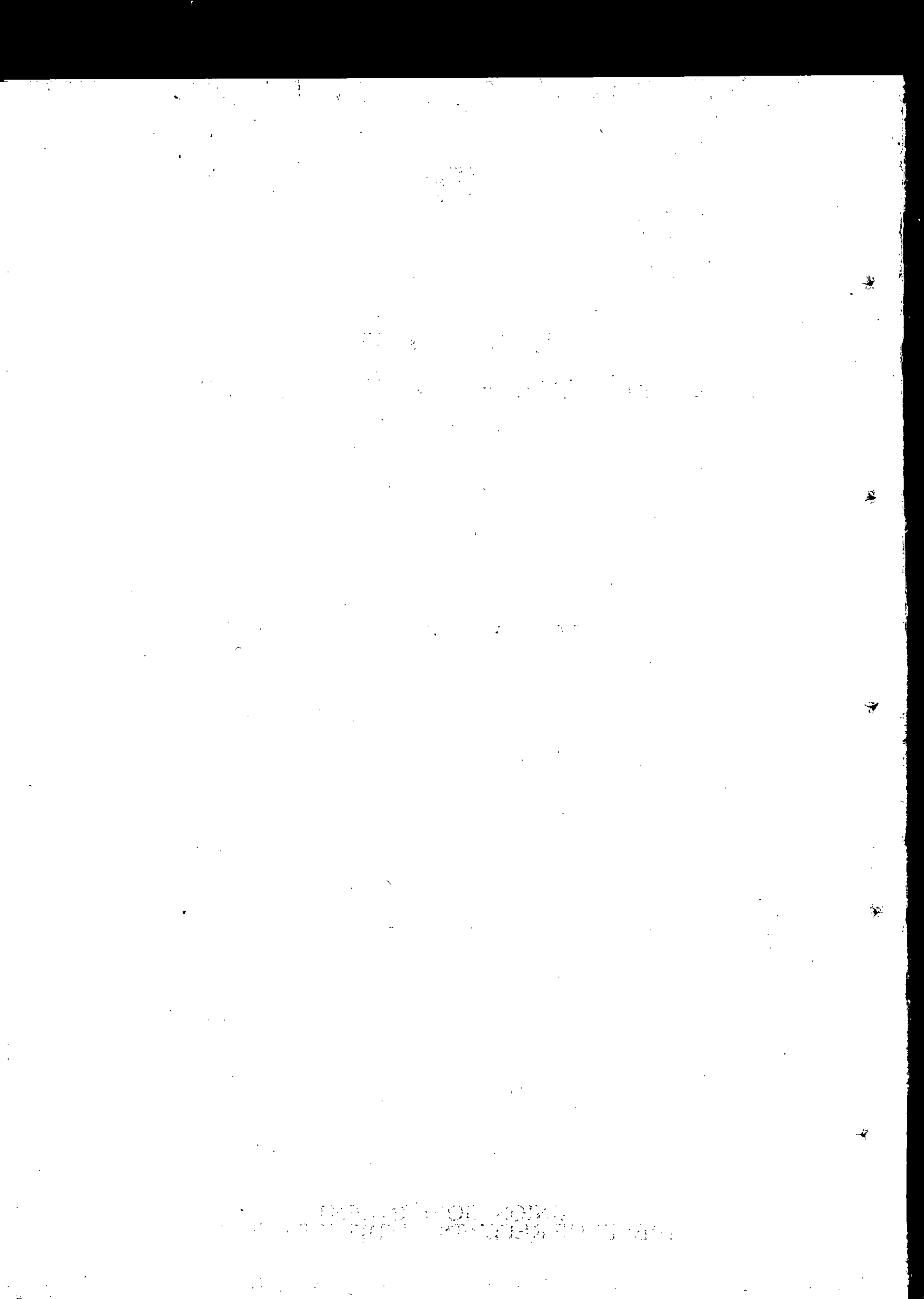

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PREFATORY REMARKS

This Report relates to results of audit of Indirect Taxes of the Union Government for the year ended 31 March 1992 and is arranged in the following four chapters:-

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

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

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

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

OVERVIEW

I. Trend of receipts

The Central Government collected following revenues under Indirect Taxes during the years 1990-91 and 1991-92. The Budget Estimates 1991-92 and Revised Estimates 1991-92 in respect of Customs Receipts and Union Excise duties are also shown against them.

(in crores of rupees)

	Receipts 1990-91	Receipts 1991-92	Budget Estimates 1991-92	Revised Estimates 1991-92	%of variations between R.E & B.E.
Customs Receipts	20532.27	21907.88	26410.00	22895.00	(-)13.31
Union Excise duties	24409.42	27997.73	26414.00	27696.80	(+) 4.86

Cost of collection of customs receipts as a percentage of gross receipts was 0.80 during 1991-92 as against 0.77 during 1990-91, whereas on the central excise side this percentage was 0.61 during the year 1991-92 as against 0.59 in the preceding year (Paras 2.04 & 3.03)

The total tax and non-tax receipts of the Union Territories without Legislature during the year 1991-92 were Rs.1,467.62 crores as against Rs.1209.61 crores during the year 1990-91 (Para 4.01).

II. Results of audit

Results of audit of post assessment records of the Customs and Central Excise departments during April 1991 to March 1992 revealed underassessment of tax and loss of revenue of Rs.248.12 crores as under.

	Underassessment/losses (in crores of rupees)
Customs Receipts	49.89
Union Excise duties	198.23

Underassessments and losses of revenue amounting to Rs.31.82 crores (Customs 9.46 crores; Central Excise 22.36 crores) have been accepted by the Ministry/Department. Recoveries aggregating to Rs.10.23 crores (Customs 4.24 crores; Central Excise 5.99 crores) have been made so far.

Over assessments and short payments in customs receipts amounting to Rs.49.59 lakhs were detected during audit and pointed out to the department.

The number of objections raised in audit till March 1991 and pending settlement as on 30 September 1991 was having a revenue effect of Rs.804.35 crores (Customs 104.42 crores; Central Excise 699.93 crores) (Paras 2.11 & 3.10).

SYSTEMS APPRAISAL

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

III. Import of Sophisticated Textile Machinery at concessional rates of duty against export obligations-

For modernising textile industry by use of sophisticated machinery and to earn foreign exchange through boosting of exports of textile fabrics, concessional rates of customs duty, on imports of sophisticated textile machinery, were made applicable to imports by manufacturer-exporters. This was subject to fulfilment of export obligations over a period of five years from the date of import of machinery and other specified conditions.

OVERVIEW

An appraisal of the scheme of import of `sophisticated textile machinery' made during the period from 1983-84 to 1991-92 alongwith the export obligations fulfilled against such imports was conducted at the Custom Houses/Collectorates. The records of licensing authorities were also scrutinised. The appraisal revealed the following-

i) Non fulfilment of export obligations including `nil' exports during the initial two years of the obligation period leading to non-export of textile products amounting to Rs.2,275.71 lakhs and consequent non-levy of duty amounting to Rs.534.00 lakhs.
(Sub para 7)

ii) Short fall in fulfilment of export obligations with reference to:

(a) Production based performance-leading to short fall in value of exports amounting to Rs.507.95 lakhs and consequent short levy of duty of Rs.64.52 lakhs.

(b) Value based performance leading to shortfall in value of exports amounting to Rs.1,343.37 lakhs and consequent short levy of duty of Rs.329.39 lakhs.
(Sub para 6(A) and 6(B)

iii) Absence of proper co-ordination between Customs and C.C.I.E. authorities for watching the fulfilment of conditions laid down in the exemption notifications for fulfilment of export obligations.
(Sub para 8(i)

iv) Improper monitoring of export obligations resulting in non realisation of foreign exchange due, amounting to Rs.25.68 lakhs in one case alone.
(Sub para 8(iii)

v) Delay in finalisation of cases where period of export obligation had expired.
(Sub para 9)

vi) Short computation in the value of export obligations amounting to Rs.226.39 lakhs.
(Sub para 10(a)

IV. Delay in finalisation and collection of demands

In all cases where the customs as well as central excise duties have either not been levied or not paid, or have been short levied or short paid or erroneously refunded, under the relevant provisions of the Customs Act as well as Central Excises and Salt Act, the department is required to take necessary action to issue show cause notices to the importers/assesses, as the case may be, within the prescribed time limits, for recovery of the amount. This is to be followed by steps for recovery after the confirmation of the demands.

A system review was conducted in various Custom Houses/Collectorates to analyse the pendency position of the confirmed and unconfirmed demands, the time taken to issue the demand notices and confirmation thereof, the period within which the recoveries of the confirmed demands were made, etc.

The system appraisal revealed the following -

A. CUSTOMS -

- 20583 cases of confirmed demands of duty amounting to Rs.21,887.02 lakhs were pending collection.
(Statement I)

- 4587 cases involving duty of Rs.26,692.77 lakhs were pending for more than six months with courts, CEGAT and the departmental Appellate Officers, respectively.
(Statement II)

- There was loss of revenue amounting to Rs.1452.76 lakhs in 1107 cases due to non issue of demands within the time limit prescribed.
(Statement III)

to Rs.1417.65 lakhs due to incorrect grant of concessions was noticed in audit in 30 cases. Of these 26 cases involving short levy of Rs.400.18 lakhs have been accepted by the Ministry and a sum of Rs.174.76 lakhs stands recovered in 17 of these cases. Some of these cases are mentioned below:

- An exemption notification of December 1986 envisaged duty free exemption to a modern carpet plant comprising certain specified machines. However, four consignments, each containing two or three types of machines or equipment and two consignments of Punched Jacquard Card for Jute Carpet, specified separately, but not forming a complete carpet plant, were allowed erroneous exemption. This resulted in short levy of duty of Rs.215.78 lakhs. Ministry of Finance have accepted the objection on incorrect grant of exemption.

  (Para 2.13)

- Hydraulic press, a machine tool, is eligible for concessional rate of basic customs duty at 110 per cent ad valorem in terms of sub serial number 21 of (ii) of the table to a notification dated 1 March 1986, irrespective of its capacity. A consignment of Hydraulic press of 1000 tonnes capacity was incorrectly allowed the concessional rate of 75 per cent in terms of another serial number (iii) of the table to the said notification. This resulted in short levy of Rs.125.51 lakhs. The department has recovered the short levied amount, accepting the mistake.

  (Para 2.14(i)

  In another case of import of Hydraulic press brakes of 250 tonnes capacity, the incorrect concessional rate of 75 per cent ad valorem (basic duty) was allowed under the residual heading of the aforesaid notification of 1 March 1986 instead of 110 per cent ad valorem. The resulting short levy of Rs.6.47 lakhs has been admitted and recovered by the department. Ministry of Finance have accepted the facts.

  (Para 2.14(ii)

- Scientific and technical instruments, apparatus and equipment, spare parts, component parts and accessories thereof but excluding consumable items imported by a Research Institution are eligible for duty free clearance in terms of a notification dated 26 March 1981. Glass blanks, imported by a Government department, were allowed duty free clearance, in terms of the aforesaid notification, treating them as component parts of the scientific and technical instruments. As the goods were semi finished raw glass in the form of cut discs, Audit held the view that the goods were not eligible for duty free clearance, as component parts. Ministry of Finance have accepted the facts and the short levied amount of Rs.24.90 lakhs has since been recovered.

  (Para 2.16)

- Irregular concessions were granted in certain cases inspite of the benefit of the concessional notifications being meant for items used in specified industries and where the items are capable of being used in industries other than specified, production of an end use certificate from the actual user is necessary. Three such cases are illustrated below -

  Propylene Glycol USP, a chemical, which is not solely or predominantly used as a drug, but only used primarily as a solvent in drugs, was imported in several consignments by persons not engaged in the drug industry, and were allowed concessional rates of duty without production of an end use certificate regarding actual usage in drug industry. This resulted in irregular concession of Rs.21.25 lakhs. (Para 2.17)

  In another case of imports of Automatic coil winding machines, which are eligible for concessional rates of duty, if such goods are used in electronic industry, irregular concessional rates of duty (basic and auxiliary) were allowed to manufacturers of two wheeled motor vehicles and fans,

resulting in short levy of duty amounting to Rs.2.75 lakhs. Ministry of Finance accepted the short levy.

(Para 2.20(i)

In another case benefit of concessional rates of duty applicable to import of proofing press designed for use in printing industry was irregularly granted to persons engaged in manufacture of dash board instruments for automobiles resulting in loss of revenue amounting to Rs.2.12 lakhs.

(Para 2.20(ii)

VII. Irregularities in the fixation and payment of drawback

`Drawback' as an incentive to exporters means repayment to the exporter of the duties paid on raw materials and component parts imported and used in manufacture of goods exported. (Section 75(2) of the Customs Act).

The All Industry rates of drawback are determined by the Government under the Customs and Central Excise Duty Drawback Rules, 1971, having regard to the average quantity or value of each class or description of duty paid materials from which a particular class of goods is ordinarily manufactured in India. Accordingly, the drawback rates in respect of various categories of goods specified in the Drawback schedule are reviewed every year after the announcement of the Central Budget, effecting changes in customs and central excise duties.

Under the provisions of the aforesaid Duty Drawback Rules, Government may fix brand rates of drawback for the products exported by a particular manufacturer after considering all relevant facts relating to the proportion in which the materials or components imported are used in production or manufacture of the goods exported and the duties paid on such materials or components.

Seven cases of irregularities in the fixation and payment of All Industry rates of drawback and brand rates of drawback involving an amount of Rs.448.91 lakhs were pointed out in audit. Of

these, six objections involving an amount of Rs.10.90 lakhs have been accepted by the Ministry and an amount of Rs.10.33 lakhs has been recovered. A case of irregular fixation of drawback is given below:

- In respect of `Ready made garments all sorts' exported out of India, an All Industry rate of 9 per cent of F.O.B value was fixed with effect from 20 June 1990. Consequent on reduction of the customs duty on imports of certain embellishments used in ready made garments, the duty drawback rate was revised and it worked out to 7.5 per cent of F.O.B value which was rounded off to 8 per cent of F.O.B value. The rounding off resulted in excess payment of drawback amounting to Rs.430.00 lakhs in respect of ready made garments alone, as seen in a few Custom Houses while conducting test audit.

  (Para 2.23)

VIII. Non levy/short levy of import duties

Imported goods are assessable to duty under Section 12 of the Customs Act, 1962. Non levy/short levy of import duties amounting to Rs.115.01 lakhs in 21 cases was noticed in audit during test check of documents in various Custom Houses/Collectortes. The Ministry have accepted short levy/non levy of duty of Rs.52.19 lakhs in 17 cases. Of these, an amount of Rs.18.22 lakhs has since been recovered in 8 cases. Some of these cases are cited below -

- `Acrylic sheets' imported between March 1990 and October 1990 in eleven consignments were incorrectly assessed to nil additional duty in terms of a central excise exemption notification instead of being levied additional duty at the rate of 35 per cent ad valorem with special excise duty at 5 per cent thereof resulting in short levy of Rs.17.15 lakhs. The department has accepted the short levy. Ministry of Finance have confirmed the facts.

  (Para 2.26(i)(a)

- `Silicon rubber tape' imported during April 1991 was incorrectly assessed to additional duty at Rs.12.60 per kilogram under heading 40.08 of the Central Excise Tariff instead of at the rate of 35 per cent ad valorem under heading 39.20 ibid. The resulting short levy of Rs.6.38 lakhs has been accepted by the department and recovered. Ministry of Finance have confirmed the facts.
  (Para 2.26(i)(b)

- Seven consignments of acrylamide imported between October 1989 and October 1990 were incorrectly classified under heading 38.09 of Central Excise Tariff and allowed duty free assessment in terms of a notification dated 18 June 1987, instead of classifying them under chapter heading 29.26 ibid, resulting in short levy of Rs.5.62 lakhs. Ministry of Finance have accepted the facts.
  (Para 2.26(v)

IX. Short levy of duty due to misclassification

The rates of customs and countervailing duties are given under various headings and sub headings of the schedules to the Customs Tariff Act, 1975, and Central Excise Tariff Act, 1985, respectively. The short levy of duty amounting to Rs.75.25 lakhs due to misclassification of imported goods was noticed in 27 cases. Of these 23 cases were accepted involving short levy of Rs.63.34 lakhs. A sum of Rs.29.98 lakhs has since been recovered in 12 of these cases. Some of the cases are mentioned below:

- Eleven consignments of components of watches including watch screws were incorrectly classified under sub heading 9114.90 of Customs Tariff instead of under heading 73.18 ibid. This resulted in duty being levied short by Rs.10.82 lakhs. Ministry of Finance have accepted the facts.
  (Para 2.27)

- `Inserts', parts of C.N.C. Axle Turning Lathe, were incorrectly classified under heading 84.58 of Customs tariff as Tool holders instead of Cutting tools under

heading 82.09 ibid. This resulted in duty being levied short by Rs.10.79 lakhs. The department has accepted the objection and recovered the amount. Ministry of Finance have accepted the facts.

(Para 2.28)

- 'Oil seals' amplified as motor vehicle components were incorrectly classified under sub heading 8485.90 of the Customs and Central Excise Tariffs instead of assessing them under heading 87.08 ibid, being parts of motor vehicles. This resulted in duty being levied short by Rs.5.32 lakhs. The department has accepted the mistake and recovered the amount. Ministry of Finance have accepted the facts.

  (Para 2.32)

X. Short levy of duty due to undervaluation

In cases where assessment of customs duties is on ad valorem basis the assessable value is to be determined under Section 14 of the Customs Act, 1962 and the Customs Valuation Rules issued thereunder. 17 Cases of short levy due to under valuation involving Rs.82.30 lakhs have been noticed in audit. Of these, 14 cases involving short levy of Rs.61.74 lakhs have been accepted by the Ministry. Recoveries amounting to Rs.19.29 lakhs have been made in 9 of these cases. Some of these cases are mentioned below:

- In respect of ten consignments imported by air and sea between March and December 1989 the element of loading, unloading and handling charges at the appropriate rate includible in terms of rule 9(2) (b) of Valuation Rules, 1988, was not taken into account while determining the assessable value for purposes of levy of duty. This resulted in duty being levied short by Rs.24.86 lakhs.

  (Para 2.35)

- In respect of imported goods sold on high seas by the original buyer to another person, the relevant transaction for determination of

value is the one that takes place on high seas and the last buyer should be regarded as the importer. However, in the case of imports of nickel made by a private limited company who entered into an agreement with two different buyers for sale of this nickel on high seas, the department erroneously adopted the invoice value of the original buyer instead of the high seas sale value pertaining to the last buyer. This resulted in short levy of Rs.18.33 lakhs. The Ministry have accepted the mistake.

(Para 2.36)

- In respect of spare parts (maintenance) for earth station, imported by a Government department on 12 August 1988, 15 per cent of F.O.B value was adopted as the air freight charges instead of the actual air freight charges incurred by the importer. This resulted in short levy of Rs.15.63 lakhs. The department has accepted the mistake.

(Para 2.37)

XI. Irregular grant of refunds

- In cases where an importer presents a bill of entry to the proper officer before actual entry inwards of the vessel, the rate of duty is the rate prevalent on the date of entry inwards of the vessel. Duty amounting to Rs.50.05 lakhs was collected on 3 February 1989, on a consignment of C.N.C grinding machine for which the date of filing the bill of entry as well as the entry inwards of the vessel was 24 January 1989. However, on a refund claim being made by the importer for reassessing the goods on the basis of an exemption notification effective from 1 February 1989, refund of Rs.49.56 lakhs was granted to the importer.

  On the incorrect grant of refund being questioned in audit, the irregular refund of Rs.49.56 lakhs has been accepted and action initiated for recovery. Ministry of Finance have accepted the facts.

(Para 2.40)

XII. Short levy of duty due to application of incorrect rates

Sixteen cases of short levy of duty amounting to Rs.40.94 lakhs due to application of incorrect rates were noticed in audit. Ministry of Finance have already accepted the short levy of Rs.39.89 lakhs in 15 cases. Recoveries amounting to Rs.28.47 lakhs have been made in 12 of these cases. One of these cases is illustrated below:

- Goods described as watch components, imported and cleared under ex-bond bills of entry in January 1991, were charged to auxiliary duty at 30 per cent ad valorem instead of 50 per cent ad valorem prevalent on that date, following the enhancement of auxiliary duty from 30 per cent to 50 per cent ad valorem from 15 December 1990. This resulted in short levy of Rs.18.55 lakhs. The department accepted the mistake and recovered the short levied amount. Ministry of Finance have accepted the facts.

(Para 2.42(i))

XIII. Short levy of duty due to mistakes in computation

- On a consignment of melting scrap of stainless steel weighing 476.716 tonnes, additional duty was levied on 476.716 kilograms by applying the prescribed specific rate of Rs.1,500 per tonne. This resulted in short levy of Rs.7.50 lakhs. Ministry of Finance have confirmed the facts as well as the recovery of the amount short levied.

(Para 2.43)

XIV. Other irregularities

Other irregularities involving non-levy/short levy of duty of Rs.284.10 lakhs were pointed out in 19 cases. Out of this, non levy/short levy of import duty of Rs.201.40 lakhs has already been admitted in 10 cases by Ministry of Finance/Customs department and an amount of Rs.85.10 lakhs has been recovered. Some of these cases are given below:

(a) An appraisal of the import of mink fur, woollen/synthetic rags for spinning yarn, permissible to actual users (shoddy spinners) under O.G.L, conducted at various Custom Houses/Collectorates revealed the following:

(Para 2.45)

- Non levy of statutory rate of duty (instead of concessional rate of duty levied) on serviceable garments amounting to Rs.35.23 lakhs.

  (Sub para 5)

- Irregular clearance of woollen/synthetic rags by persons other than actual users under O.G.L.

  (Sub para 6)

- Non levy/short levy of fine on the insufficiently mutilated synthetic rags imported by shoddy spinners amounting to Rs.28.32 lakhs.

  (Sub paras 6 & 7)

- Irregular procedure adopted in the mutilation of serviceable garments leading to clearance of serviceable garments as such, resulting in avoidance of payment of duty.

  (Sub para 8)

(b) Under Section 72 of the Customs Act, 1962, where the warehoused goods are not cleared from the warehouse even after expiry of the period of warehousing, then the owner of the goods has to pay on demand the full amount of duty together with penalties, rent, interest and other charges payable in respect of such warehoused goods.

In a bonded warehouse, 17 consignments of different goods with duty effect of Rs.102.17 lakhs, bonded during 1988 to 1991, were not cleared within the permitted period of warehousing. Ministry of Finance have confirmed the facts and stated that an amount of Rs.77.17 lakhs towards duty etc., had been realised so far and recovery action for the balance amount is in progress.

(Para 2.46(i)

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

In 29 consignments of dutiable goods, clearance of goods after the expiry of the initial period of warehousing was allowed, without levying interest amounting to Rs.11.58 lakhs. The department as well as the Ministry have accepted the non-levy of interest in respect of 8 cases and recovered an amount of Rs.5.44 lakhs. Reply in respect of the remaining cases has not yet been received.

(Para 2.46(iii)

(d) Television sets with screen size exceeding 55 mm imported between 20 March 1990 and August 1991 were erroneously levied to additional duty (C.V. duty) at the rate of Rs.2,625.00 per piece instead of 50 per cent ad valorem plus special excise duty at 5 per cent thereof. This resulted in short levy of Rs.29.01 lakhs. The department has accepted the mistake and recovered Rs.0.74 lakh so far.

(Para 2.47)

(e) Loss of revenue due to absence of a suitable provision in the Customs Act, 1962

- Under Section 13 of the Customs Act, 1962, if any goods are pilfered after unloading thereof, and before the proper officer has made an order for clearance, the importer will not be liable for payment of duty on such goods. Similarly, if the goods are not unloaded by the steamer agents or the goods meant for unloading at the ports are not accounted for satisfactorily by the steamer agents, the steamer agents are liable for penalty equal to twice the amount of duty under Section 116 of the Customs Act, 1962.

However, duty leviable on goods, if these are missing after landing in the custody of Port Trust/IAAI, due to theft or pilferage, cannot be realised due to lack of a provision in the Customs Act, 1962, or Major Port Trust Act, 1963, holding the custodian responsible for payment of duty in such cases. In two cases alone at a major port, loss of revenue by way of Rs.2.78 lakhs on account of duty leviable on such missing goods under the custody of the Port Trust has been pointed out. The department and the Ministry have accepted the facts of loss but justified the non-levy of duty under Section 13 of Customs Act, 1962.

(Para 2.49)

CENTRAL EXCISE DUTIES

XV. Non levy of duty

Excisable goods can be removed from the place of their production, manufacture, curing or from any approved premises on payment of duty only. A number of cases where excisable goods were removed without payment of duty were noticed in audit. The duty not levied amount to Rs.10.97 crores. Ministry of Finance/Department have accepted the non levy of duty to the extent of Rs.3.05 crores, of which recoveries of Rs.32.80 lakhs have been made so far. Some of these cases are mentioned below:-

(a) Excisable goods consumed captively

- An assessee in Bangalore collectorate manufacturing, inter alia, bolts, nuts and screws (chapters 72 & 74), stamping and laminations (chapter 83) and printed circuit boards (chapter 85) etc., used them for captive consumption in manufacture of telecommunication equipments without payment of duty. Since final product was exempted from duty under an adhoc exemption order, the input goods were liable to duty. This resulted in non levy of duty of Rs.1.82 crores on goods captively consumed during the period from April 1990 to June 1991. Ministry of Finance, while admitting the

objection, have stated that the assessee has since paid the amount of duty due {Para 3.12(i)}.

- A manufacturer of railway wagons in Calcutta II collectorate who also manufactured parts of locomotives within the factory did not pay duty on those parts. This resulted in non levy of duty of Rs.2.58 crores during the period from April 1989 to January 1991 {Para 3.12(ii)}.

- A manufacturer of cement clinkers and cement in Bhubaneswar collectorate availed exemption from payment of duty on lime stone procured from his own mines and outside and consumed captively after grinding the same in the factory of production, although exemption on such captive consumption was not available during the period from 20 March 1990 to 16 September 1990. This resulted in non levy of duty of Rs.57.44 lakhs during the aforesaid period. Ministry of Finance have stated that the show cause notice since issued for duty leviable has been stayed by the Orissa High Court {Para 3.12(iv)}.

(b) Goods cleared as non excisable without obtaining central excise licence

- Two distilleries in Aurangabad collectorate manufactured ethyl alcohol of different strength/grades from molasses and removed such alcohol without payment of duty and also without observing central excise procedure. The department has stated that two show cause notices for Rs.205.21 lakhs are under process of issue {Para 3.13}.

(c) Duty not levied on production suppressed or not accounted for

- A comparison of statistical records with daily stock account of a public sector steel plant in Bhubaneswar collectorate revealed non accountal of 29075.000 tonne of steel products involving duty of Rs.75.05 lakhs. The department has since confirmed demand for Rs.27.05 lakhs under section 11A of the

Central Excises and Salt Act, 1944, besides imposing penalty of Rs.3 lakhs {Para 3.15(i)}.

A cigarette manufacturer in Allahabad collectorate suppressed the consumption of tobacco used in manufacture of cigarettes resulting in non levy of duty of Rs.15.61 lakhs during May 1990 to March 1991. The department has admitted the short accountal of cut tobacco and agreed to raise demand. Ministry of Finance have stated that the matter is under examination {Para 3.15(ii)}.

A comparison of production of jute yarn as per records maintained in quality control department of the factory with those shown in the central excise records maintained by a manufacturer in Bhubaneswar collectorate revealed short accountal of production of jute yarn; resulting in non levy of duty. Ministry of Finance, while admitting the objection, have stated that on further study the collector has found that there was short accountal in the last five years and demand of Rs.14.04 lakhs has since been confirmed alongwith a penalty of Rs.1 lakh {Para 3.15(iv)}.

(d) Clearance of excisable goods without paying duty

- An assessee in Calcutta I collectorate did not pay duty on some machines like dect handing equipment, capstans, winches, crane etc., shown as capitalised in the Balance Sheet. The department also did not demand duty due thereon. This resulted in non levy of duty of Rs.27.98 lakhs on goods capitalised during the years 1988-89 and 1989-90. The department has since recovered a sum of Rs.1.25 lakhs as duty due on one machine. Ministry of Finance have stated that the position in respect of other machines is under examination {Para 3.14(i)(a)}.

- An autonomous body in Hyderabad collectorate entered into 192 agreements on piece rate

with several labour contractors/job workers for manufacture of back clamps, clay clamps and M.S. Stay sets. The assessee provided space within his premises, supplied raw materials and electrical energy to the contractors/job workers but the goods got manufactured were cleared without payment of duty; resulting in non levy of duty. The department has since raised demand for Rs.14.58 lakhs. Ministry of Finance have admitted the objection {Para 3.14(ii)}.

XVI. Short levy of duty due to misclassification

The rates of central excise duties are prescribed under various headings and sub headings of the schedule to the Central Excise Tariff Act, 1985. Short levy of duty of Rs.15.28 crores due to misclassification of excisable goods was noticed. The amount of short levy of duty accepted was Rs.1.25 crores, of which Rs.20.06 lakhs have been recovered so far. Some of these cases are mentioned below:-

(a) Textile materials

- Six assessees in Jaipur collectorate were allowed to clear yarn containing polyester staple fibre in predominance but less than 70 per cent and artificial staple fibre only under sub heading 5504.22 at a lower rate of duty instead of under sub heading 5504.29 attracting higher rate of duty. This resulted in short levy of duty of Rs.12.04 crores on clearances during different periods from April 1991 to January 1992. Ministry of Finance have stated that the matter is under examination {Para 3.17(i)}.

- Another assessee in the same collectorate manufacturing doubled or multifold yarn containing polyester/artificial filament yarn misclassified the product by giving wrong declaration in classification list. This resulted in short levy of duty of Rs.8.23 lakhs during June 1989 to December 1990. Ministry of Finance have admitted the objection {Para 3.17(ii)}.

(b) Machinery and mechanical appliances

- An assessee in Calcutta II collectorate was allowed to clear tape deck mechanism as parts of two-in-one under heading 85.29 (duty rate 15 per cent ad valorem) though the products were parts of tape recorders classifiable under heading 85.22 attracting duty at 25 per cent ad valorem. This resulted in short levy of duty of Rs.72.28 lakhs during 1990-91 alone {Para 3.18(i)}.

- A manufacturer of telecommunication equipments in Cochin collectorate classified cables designed for telecommunication equipment under heading 85.17 (duty rate 20 per cent ad valorem) instead of under heading 85.44 (duty rate 25 per cent ad valorem). This resulted in short levy of duty of Rs.11.69 lakhs during the period from May 1989 to March 1990. The department has stated that demand for Rs.28.17 lakhs for the period from May 1990 to May 1991 has since been confirmed and no action could be taken for earlier period due to operation of time bar. Ministry of Finance have admitted the objection {Para 3.18(ii)(a)}.

(c) Parts of iron & steel

- An assessee in Indore collectorate misclassified the shapes and sections of iron & steel for use as parts in various structures under sub heading 7216.20 instead of under sub heading 7308.90; resulting in short levy of duty of Rs.76.55 lakhs during the period from April 1990 to July 1992 {Para 3.20(i)}.

- Another assessee in Bhubaneswar collectorate was allowed to clear side trimmings of various plates of iron and steel as waste and scrap although the goods were classifiable as plates. This resulted in short levy of duty of Rs.7.11 lakhs during the period from May 1988 to June 1989. The differential duty of Rs.11.67 lakhs for the period from 21 September 1989 to June 1990 has since been recovered and show cause-cum demand notice

for earlier period has been issued. Ministry of Finance have admitted the facts {Para 3.20(ii)}.

(d) Articles of fibre glass

- A manufacturer of articles of fibre glass in Bombay I collectorate classified the products under chapters 84 and 39 instead of under heading 70.14. The misclassification resulted in short levy of duty of Rs.62.58 lakhs during the period from April 1989 to March 1991 {Para 3.19}.

(e) Ultramarine blue

- An assessee in Madras collectorate manufactured and cleared ultramarine blue in 1kg/450gms packing and classified the same under sub heading 3206.10 instead of under sub heading 3212.90; resulting in short levy of duty of Rs.25.89 lakhs on clearances during the period from January to December 1991. The department has accepted the objection and issued show cause notice for Rs.15 lakhs for the period from August 1991 to January 1992 {Para 3.21(i)}.

(f) Ceramic non construction goods

- An assessee in Caluctta I collectorate manufacturing ceramic articles for use by silicate factories as non construction goods classified them under heading 69.01 (duty rate 15 per cent ad valorem) instead of under heading 69.11 attracting duty at 30 per cent ad valorem; resulting in short levy of duty. The department has since raised demand for Rs.23.37 lakhs covering the period of five years. Ministry of Finance have accepted the underassessment {Para 3.21(iii)}.

XVII. Non levy/short levy of duty due to incorrect grant of exemption

As per section 5A(I) of the Central Excises and Salt Act, 1944 government is empowered to exempt excisable goods from the whole or any part of the duty leviable thereon conditionally or

unconditionally. A number of cases involving short levy of duty aggregating to Rs.10.35 crores was noticed in audit. Ministry of Finance/Central Excise department have accepted the objections of short levy of duty of Rs.4.31 crores, of which recoveries of Rs.28.17 lakhs have been made so far. Some of these cases are mentioned below:-

(a) Mineral products

- A manufacturer of petroleum products (carbon black) in Bolpur collectorate also manufactured "off gas" which was consumed as fuel for generating heat in the manufacture of the final product. As no exemption was available on internal consumption of "off gas", duty amounting to Rs.3.48 crores was omitted to be levied during the period from March 1986 to July 1987. Ministry of Finance have stated that two show cause notices demanding duty of Rs.10.31 crores relating to the period from March 1986 to February 1989 have been issued {Para 3.22(i)}.

(b) Electrical machinery and mechanical appliances

- An assessee in Bolpur collectorate was allowed to clear winding wires manufactured out of inputs on which Modvat credit was taken either on payment of concessional rate of duty of 15 per cent ad valorem or at nil rate of duty after surrendering Modvat credit on the inputs used. Simultaneous availment of full exemption on the same goods resulted in short levy of duty of Rs.1.08 crores during the period from April 1990 to March 1991 after allowing set off of credit on the inputs. Ministry of Finance have stated that the matter is under examination {Para 3.23(i)}.

(c) Plastics and articles thereof

- A manufacturer of flexible and rigid PVC films and foils (heading 39.20) in Bombay II collectorate cleared the products on payment of duty at 25 per cent ad valorem which was applicable to PVC films and not to the foils.

The incorrect grant of concessional rate on rigid PVC foils resulted in short levy of duty of Rs.96.27 lakhs during the period from April 1989 to March 1990. Ministry of Finance have stated that the matter is under examination {Para 3.24(i)}.

(d) Articles of copper

- An assessee in Jaipur collectorate manufactured wire bar moulds and used them within the factory for production of copper but did not melt them after such use and sold or transferred them to depots on payment of duty applicable to waste; resulting in short levy of duty. The department admitted the irregularity and stated that a demand for Rs.1.22 crores was under issue {Para 3.26(ii)}.

(e) Products of chemical and allied industries

- An assessee in Madras collectorate manufactured scouring powder (sub heading 3405.40) by reacting linear alkyl benzene with sulphuric acid, with the aid of electric power. The assessee paid duty on the acid slurry obtained during the course of manufacture and availed exemption on the scouring powder treating the goods as manufactured without the aid of power. As power had been used in conversion of linear alkyl benzene and sulphuric acid used in manufacture of scouring powder, duty was leviable on scouring powder. Incorrect grant of exemption has resulted in short levy of duty of Rs.43.15 lakhs (after adjusting duty of Rs.3.85 lakhs paid on acid slurry). Ministry of Finance have stated that the matter is under examination {Para 3.25(i)}.

- Two leading paint manufacturers in Calcutta II collectorate were allowed to clear "thinner" after availing exemption under a notification dated 3 April 1986 though the raw materials were electrically pumped from one section to another for manufacture of thinner and the exemption was not admissible. Incorrect grant of exemption resulted in

short levy of Rs.15.05 lakhs during the period from April 1991 to September 1991. In one case the department has issued show cause-cum demand notice. {Para 3.25(iii)}.

(f) Miscellaneous manufactured products

- A manufacturer of fibre glass crown resin bonded wool in Bombay III collectorate was allowed to clear the product on payment of duty at 20 per cent ad valorem on the ground that the product was other than glass fabrics not impregnated, coated etc., with plastic or varnish. Duty was, however, leviable at 30 per cent ad valorem as the product (fibre glass resin bonded wool) was impregnated/coated with phenol formaldehyde resin. Ministry of Finance have stated (December 1992) that demand for Rs.2.01 crores for the period January 1991 to February 1992 has since been confirmed {Para 3.27(i)}.

- Three tea manufacturers in Shillong collectorate cleared the products on payment of concessional rate of duty at Rs.1.60 per kilogram instead of Rs.3.25 per kilogram. This resulted in short levy of duty of Rs.8.14 lakhs on clearances during the period from 1 March 1988 to 8 September 1988. Ministry of Finance have admitted the objection {Para 3.27(vi)}.

XVIII. Short levy of duty due to undervaluation

In cases where rates of central excise duty depend upon the value of excisable goods, such value is required to be determined under section 4 of the Central Excises and Salt Act, 1944, read with Central Excise (Valuation) Rules, 1975. Short levy of duty amounting to Rs.8.64 crores on account of incorrect valuation of excisable goods was noticed in audit. Ministry of Finance/Department have accepted the short levy to the extent of Rs.4.54 crores, of which recoveries of Rs.79.69 lakhs have been made so far. Some of these cases are mentioned below:-

(a) Price not the sole consideration for sale

- Fifteen assessees in six collectorates (Bombay II & III, Bolpur, Calcutta II, Delhi & Pune) took advance deposits from their customers but did not include the amount of interest received/receivable thereon in the assessable value. This resulted in short levy of duty of Rs.139.19 lakhs during the period between 1987-88 and 1991-92. Ministry of Finance have stated that the collectorates have been advised to keep the matter pending {Para 3.28(i)(a)}.

- Thirteen assessees in six collectorates (Aurangabad, Bangalore, Bombay I & III, Calcutta II & Pune) recovered overdue interest charges on credit sale from their customers. Such interest charges were not included in the assessable value; resulting in short levy of duty of Rs.41.98 lakhs during the period between April 1985 and February 1992. Ministry of Finance have stated that the Board has issued instructions to safeguard revenue interest till the decision of the Supreme Court is received {Para 3.28(i)(b)}.

- A manufacturer of motor vehicles in Bangalore collectorate was allowed the deductions on account of commission comprising of pre delivery inspection and free services to the territorial dealers which resulted in short levy of duty of Rs.13.33 lakhs on clearances of 750 vehicles directly supplied to the customers during the period from 2 March 1990 to 27 May 1992. Ministry of Finance have stated that the matter is under examination {Para 3.28(iii)(a)}.

(b) Non inclusion of value of bought out components

- An assessee manufacturing, inter alia, fludised bed combustion boiler (heading 84.02) in Trichy collectorate cleared two such boilers during the period from December 1988 to March 1989 on payment of duty on certain parts but omitted to pay duty on

bought out component parts. A demand of Rs.1.65 crores covering the clearances from 1985-86 to 1990-91 has since been confirmed by the collector. In addition, a penalty of Rs.5 lakhs has also been imposed {Para 3.29(i)}.

(c) Excisable goods not fully valued

- A public sector undertaking in Calcutta II collectorate paid duty only on fabrication cost excluding the cost of steel material supplied free of cost by the buyers for manufacture of steel structures. This resulted in short levy of duty of Rs.60.05 lakhs during the years 1988 to 1990. Ministry of Finance have admitted the objection {Para 3.31(i)}.

- Another manufacturer in Calcutta I collectorate manufactured/fabricated wrecker equipments and installed them on chassis supplied free of cost by the customers. Non inclusion of the value of chassis in the assessable value resulted in short levy of duty of Rs.53.29 lakhs during the period from May 1987 to February 1990. Ministry of Finance have admitted the objection {Para 3.31(ii)}.

(d) Set off of duty/tax

- Thirteen assessees in three collectorates (Bombay II and III and Pune) engaged in manufacture of excisable goods received sales tax set off during the year 1988-89 to 1990-91. The deductions from the value, allowed in respect of gross sales tax resulted in under valuation and consequent short levy of duty to the extent of Rs.77.98 lakhs. Ministry of Finance have stated that the matter is under examination {Para 3.33}.

(e) Sales through related persons

- A State government undertaking in Indore collectorate engaged in manufacture of straight joint closures sold the goods through the sister concern which was a

related person. The duty was payable at the price being charged by such related person. The goods on clearance were however, charged to duty on lower value. This resulted in short levy of duty of Rs.25.86 lakhs during the period from November 1990 to June 1991. The department has since recovered the entire amount {Para 3.34(i)}.

(f) Assessable value not revised

- A public sector undertaking in Trichy collectorate manufacturing building material like blocks, shelf, slabs (heading 68.07) for captive consumption cleared the goods on payment of duty determined on cost basis. The cost of raw material was, however, not revised based on subsequent project schedules. Non revision of the material cost taken in the assessable value, resulted in short levy of duty of Rs.20.93 lakhs, out of which demand for Rs.16.80 lakhs has since been confirmed and a penalty of Rs.25,0C0 imposed {Para 3.35(i)(c)}.

XIX. Irregular exemption to small scale manufacturers

There are many duty reliefs, exemption and special facilities available to small scale manufacturers of specified goods. These concessions can be availed of subject to fulfilling the conditions given in the various related notifications. It was noticed in audit that some manufacturers availed concessions of Rs.3.27 crores in duty without fulfilling the specified conditions. Ministry of Finance/Department have accepted short levy of Rs.1.12 crores of which recoveries of Rs.11.09 lakhs have have been made so far. Some of the cases are given below:-

(a) Clearance of goods by SSI units without valid registration

- Nine small scale manufacturers in five collectorates (Bombay I & III, Calcutta I & II and Bangalore) cleared various excisable goods which were not included in their

respective registration certificates. This resulted in short levy of duty of Rs.52.76 lakhs on clearances during the different periods between July 1986 and April 1991 {Para 3.36(i)}.

- An assessee manufacturing plywood (chapter 44) in Calcutta I collectorate cleared his product against a provisional registration certificate issued on 6 November 1986 which was valid for one year but the same was not got renewed. The provisional registration certificate was converted into a permanent one with effect from 4 September 1990. The assessee, however, continued to avail the concession. This resulted in short levy of duty of Rs.30.30 lakhs during the period from April 1988 to August 1990. Short levy for the period from 6 November 1987 to 31 March 1988 and 1 September 1990 to 3 September 1990 remains to be ascertained. Ministry of Finance have admitted that there was no valid registration during the aforesaid period {Para 3.36(ii)(a)}.

- Four assessees in four collectorates (Chandigarh, Hyderabad, Meerut and Pune) were allowed to avail the SSI exemption although the investment on plant and machinery had exceeded Rs.35 lakhs in those cases. This resulted in short levy of duty of Rs.26.45 lakhs during different periods between April 1986 and December 1990 {Para 3.36 (iii)(a)}.

(b) Legal avoidance of duty

- A manufacturer of radio of a popular brand name owned by him in Calcutta I collectorate was availing SSI exemption. Three other manufacturers also manufactured radios and twos-in-one of the same brand name and were also allowed to avail individually the SSI exemption on the ground that the brand name owner was a SSI unit, although the value of clearances of branded goods taken together for four factories had exceeded the limit of Rs.2 crores in the preceding year. This resulted in avoidance of duty of Rs.28.14

lakhs during the years 1990-91 and 1991-92 {Para 3.37(i)}.

(c) Goods manufactured on job work basis on behalf of others not entitled to SSI concession

- A small scale manufacturer in Calcutta I collectorate undertook manufacture of LDPE agri-film (sub heading 3920.32) on job work basis on behalf of a big manufacturer and also availed SSI exemption. As the principal manufacturer was not entitled to SSI concession, there was short levy of duty of Rs.22.71 lakhs during the period from 1988-89 to 1990-91. Ministry of Finance have stated that the matter is under examination {Para 3.39(i)}.

(d) Manufacture of branded goods of non SSI beneficiary

- An assessee in Bombay I collectorate manufacturing switch gear parts, electrical lighting or signaling equipments etc., in the brand name of a big manufacturer was irregularly allowed to avail of SSI concession. The department stated that the fact that the assessee was clearing branded goods was not known to them at the time of approval of classification list. Ministry of Finance have confirmed the fact and stated that show cause-cum demand notice for Rs.15.88 lakhs has been issued {Para 3.40}.

(e) Availment of SSI concession beyond the prescribed limit

- An assessee in Madurai collectorate having two units was clearing the excisable goods falling under chapters 72,73 and 86 but while computing the total value of clearances, the clearances of iron and steel articles (chapters 72 & 73) cleared at specific rate of duty was not included. This resulted in short levy of duty of Rs.12.75 lakhs during the period from April 1990 to July 1991. Ministry of Finance have admitted the objection {Para 3.38)(i)(b)}.

XX. Irregularities under Modvat (Modified form of value added tax) Scheme

Under Modvat (Modified form of value added tax) Scheme, the credit of duty paid on specified inputs is allowed to be utilised towards payment of duty on specified outputs subject to fulfilment of certain conditions. Irregular credit of Rs.13.27 crores taken under Modvat scheme in several cases were noticed in audit. Ministry of Finance/Department have admitted objections involving duty effect of Rs.6.21 crores, of which recoveries of Rs.3.45 crores have been made so far. Some of these cases are mentioned below :-

(a) Availment of Modvat credit on goods other than inputs

- Eighteen assessees in ten collectorates availed of Modvat credit of Rs.322.09 lakhs on graphite electrodes for use in running the electric arc furnace for manufacture of iron and steel products and melting rock and steel products and melting rock phosphate during the different periods from April 1987 to December 1991. As graphite electrodes were used as appliances, the availment of Modvat credit was irregular {Para 3.41(i)}.

- An assessee in Vizag collectorate was allowed to avail Modvat credit on carbon paste declared as inputs for manufacture of final products (heading 72.02). As the carbon paste was not an input, credit amounting to Rs.15.15 lakhs was wrongly taken during the period from February 1987 to December 1988 {Para 3.41(ii)(a)}.

- An assessee in Bangalore collectorate was allowed to take credit of duty paid on fibre glass filter mesh. As per technical write up, the said mesh was meant for use as filter in the piston die casting machine to prevent slag and other foreign material. Credit amounting to Rs.5.12 lakhs taken during the period from November 1987 to February 1989 was therefore, irregular. The department has issued nine show cause notices for disallowance of Modvat credits aggregating to

Rs.21.80 lakhs covering the period from December 1987 to November 1991. Ministry of Finance have admitted the objection {Para 3.41(iii)}.

(b) Modvat credit not expunged

- Two assessees in Bolpur and Calcutta II collectorates manufacturing aluminium corrugated sheets/circles out of aluminium ingot availed Modvat credit on ingots towards payment of duty on sheets/circles. As duty paid on final products was less than the credit of duty taken on inputs, surplus Modvat credit amounting to Rs.165.92 lakhs relating to the period November 1988 to April 1991 was required to be reversed. But the assessee utilised the surplus credit towards payment of duty on other final products. The department has admitted the objection in one case and issued a show cause-cum demand notice {Para 3.42(i)}.

(c) Irregular availment of Modvat credit on inputs used in exempted goods

- Six manufacturers of various excisable goods in three collectorates (Calcutta I, Hyderabad and Vadodara) were allowed to pay duty on the finished goods after availing Modvat credit on the inputs although the finished goods were exempt from whole of the duty of excise. This resulted in irregular availment of Modvat credit of Rs.62.78 lakhs on exempted goods during the different periods between September 1987 and June 1991 {Para 3.43(i)}.

- A manufacturer of agricultural tractors and I.C. engines in Delhi collectorate irregularly availed Modvat credit amounting to Rs.30.59 lakhs on certain parts used in manufacture of agricultural tractors of engine capacity not exceeding 1800 cc. (exempted) {Para 3.43(ii)}.

- An assessee in Bombay II collectorate availed credit of duty paid on varnish which was used in manufacture of exempted enamelled wire. This resulted in irregular availment of

Modvat credit of Rs.13.58 lakhs during the period from April 1989 to March 1991. The department has issued show cause-cum demand notice for Rs.16.46 lakhs for the period 1990-91 & 1991-92. Ministry of Finance have admitted the objection {Para 3.43(iii)}.

(d) Irregular availment of credit on goods not declared

- Three assessees in two collectorates (Patna & Bangalore) availed Modvat credit on inputs which were not included in the declarations. This resulted in irregular availment of credit of Rs.40.80 lakhs during different periods between October 1988 and October 1991. The department has since recovered Rs.10.24 lakhs in one case. Ministry of Finance while admitting the objection in one case have stated that the matter is under examination in the remaining cases {Para 3.44(i)(a)(b)(c)}.

- A public sector undertaking in Vizag collectorate engaged in manufacture of machinery (chapter 84) availed credit of Rs.17.95 lakhs in respect of inputs received prior to filing of declaration and also without obtaining permission of the Assistant Collector. Ministry of Finance have accepted the objection and reported recovery of Rs.8.88 lakhs {Para 3.44(ii)}.

(e) Irregular availment of credit on inputs not used

- Two units of a battery manufacturer in Calcutta I collectorate irregularly availed Modvat credit of Rs.33.11 lakhs during the period between January 1988 and July 1991 on certain inputs contained in dry cell batteries which failed to pass voltage test and were cleared without payment of duty. Ministry of Finance have stated that the matter is under examination [Para 3.45(i)}.

(f) Clearance of inputs as such at lower price

- An assessee in Allahabad collectorate availing Modvat credit on miniature bulbs (heading 85.39) used in manufacture of torches (heading 85.13) also cleared the bulbs as such, for sale at higher price but on payment of duty equal to the amount of credit availed on such bulbs. Duty was, however, payable at the price charged from the customers. The department has admitted the objection and stated that demand for Rs.40.79 lakhs for the period from March 1987 to September 1991 was under issue {Para 3.47}.

(g) Irregular availment of credit of customs duty

- Two assessees in two collectorates (Indore & Aurangabad) availed credit of entire customs duty paid on imported goods instead of additional duty leviable under section 3 of Customs Tariff Act. This resulted in irregular availment of credit of Rs.27.65 lakhs. Ministry of Finance have admitted the objections and also reported recovery of Rs.16.45 lakhs in one case {Para 3.46(i)&(ii)}.

(h) Fraudulent availment of credits

- A manufacturer of motor cars in Bangalore collectorate fradulently took Modvat credits of Rs.76.84 lakhs which were more than the duty paid on the inputs mentioned in the gate passes and the excess credits so taken were utilised towards payment of duty on final products, of which a sum of Rs.8.80 lakhs was yet to be recovered. Ministry of Finance have stated that the amount of Rs.8.80 lakhs has since been recovered and two offence cases have also been booked against the assessee {Para 3.48}.

XXI. Irregular grant of money credit

The credit of duty paid on specified inputs is allowed to be utilised on specified finished goods in manufacture of which such inputs are

utilised subject to the fulfillment of conditions specified in the rules. Irregular credits of Rs.86.36 lakhs were noticed in audit. Ministry of Finance/Department have admitted the objections involving credit of Rs.54.39 lakhs, of which recoveries of Rs.39.70 lakhs have been made so far. Some of these cases are mentioned below:-

Irregular grant of money credit under rule 57K

- Two manufacturers of vegetable products in Meerut collectorate availed of the benefit of money credit on fixed vegetable oil including solvent extracted oil used after hydrogenation in the manufacture of vegetable products during the period between October 1989 and October 1990. But they did not reverse credit taken on oil in respect of which the requisite certificates were not obtained from the competent authority. The department has accepted the objection and has since reversed irregular credits of Rs.23.40 lakhs. Ministry of Finance have admitted the objection {Para 3.50(i)(a)}.

- Another assessee in Delhi collectorate engaged in manufacture of vanaspati availed of credit of Rs.15.76 lakhs in respect of 484.823 tonne of solvent extracted mustered oil. As per the requisite certificate only 64.721 tonne of such oil was used. The credit of Rs.13.65 lakhs in respect of 420.102 tonne of such oil was thus not admissible. Ministry of Finance have stated that the assessee has since paid Rs.14.01 lakhs in June 1991 {Para 3.50(i)(b)}.

XXII. Non levy of cess

Cess is a tax on specified goods for the purpose of carrying out measures for the development of production of those goods and welfare matters connected therewith. Non levy/short levy of different cesses amounting to Rs.107.70 crores was noticed in a number of cases in audit. Some of these cases are mentioned below:-

OVERVIEW

(a) Non levy of cess on natural gas

According to para (1) of section 15 of chapter III of the Oil Industry (Development) Act, 1974, cess is required to be collected on natural gas as a duty of excise at such rates as may be specified by issue of notification. As per the Act cess was leviable at the tariff rate of Rs.50 per thousand cubic metres which was further revised to Rs.300 per thousand cubic metres with effect from 12 May 1987 as per the provisions of Finance Act, 1987.

- A public sector undertaking in Shillong collectorate did not pay cess amounting to Rs.98.53 crores on natural gas produced and cleared during the period from 1987-88 to October 1991. The department has since issued show cause notice for Rs.10.55 crores for the period January to June 1991; demand for the earlier period is stated to have been processed but not issued.

Ministry of Finance have stated that the Act contemplated issue of notification specifiying the rate at which cess was payable and since no notification has been issued cess was not collected. But the intention of legislature was to levy and collect cess as is also evident from subsequent upward revision of the rate through Finance Act, 1987. Omission to issue the requisite notification has resulted in non collection of substantial amount of revenue.

(b) Non levy of cess on jute manufactures

- Twenty eight jute mills in three collectorates (Calcutta I & II and Bhubaneswar) consumed jute yarn within their factories for manufacture of jute products but did not pay cess amounting to Rs.9.16 crores during the period from March 1986 to December 1990. Ministry of Finance have stated that necessary steps to amend the Jute Manufactures Cess Act/Schedule is under

consideration of the Ministry of Textiles {Para 3.52}.

XXIII. Procedural irregularities with revenue implications

Incorrect application of stay order

- An assessee running a mini cement plant in Indore collectorate obtained stay order on 28 November 1987 refraining government from collection of central excise duty on cement manufactured and cleared from his factory at a rate in excess of 50 per cent of such duty leviable. The assessee was allowed to continue the benefit of stay order in spite of the fact that in a similar case the Supreme Court had already decided the case on 23 February 1988 in favour of the department. This resulted in short levy of duty of Rs.13.13 lakhs on clearances during the period from February to September 1990. The department has since recovered the entire amount {Para 3.54}.

XXIV. Other irregularities of interest

(a) Omission to demand duty resulting in loss of revenue

- An assessee in Coimbatore collectorate engaged in manufacture of watch was denied the facility of Modvat credit by the department through a letter written to him. But the department omitted to take follow up action for demanding duty. This resulted in loss of revenue of Rs.5.21 lakhs. Ministry of Finance have accepted the fact {Para 3.55}.

(b) Irregular utilisation of arrears of duty paid through PLA

- An assessee in Bombay II collectorate engaged in manufacture and processing of cotton fabrics, man made fabrics and yarn was required to pay Rs.79.06 lakhs as per the orders of the Supreme Court. Accordingly a bank guarantee of Rs.75 lakhs was furnished

by the assessee. The balance amount of Rs.4.06 lakhs was paid by the assessee through bank challans but the assessee simultaneously took credit of the said amount in PLA and utilised the same towards payment of duty on excisable goods. This resulted in excess availment of credit. Ministry of Finance have stated that the excess credit has since been realised. {Para 3.56}.

CHAPTER 1

SYSTEMS APPRAISAL

1.01 IMPORT OF SOPHISTICATED TEXTILE MACHINERY AT CONCESSIONAL RATE OF DUTY AGAINST EXPORT OBLIGATION

Introduction

Textile Machinery falls under chapter 84 of Customs Tariff Act, 1975. In order to modernise textile industry by the use of sophisticated textile machinery and to earn foreign exchange by way of boosting exports, Government notified concessional rates of customs duty on import of sophisticated textile machinery subject to fulfilment of export obligations and other conditions laid down in notification 257-Cus dated 1 September 1983, for the first time, (effective upto 31 July 1985) and this was subsequently renewed from time to time.

2. Concession and obligation

Initially the concession was available to four types of sophisticated textile machinery but subsequently, this was enlarged in 1988-89, 1989-90 and 1990-91 to certain other types of machinery.

(A) The exemption from Customs duty as is in excess of 20 per cent, vide notification no.257/83, increased to 25 per cent vide notification no.157/86 and 35 per cent ad valorem vide notification no.63/89 was subject to fulfilment of certain conditions. In terms of notification no.257/83 dated 1 September 1983 -

i) the exemption was applicable to new machines only.

ii) the importer had to produce to the Assistant Collector of Customs a certificate issued by an officer not below the rank of Joint Chief Controller of Imports and Exports to the effect that:-

(1) The importer had executed a bond

(a) in the case of imported looms specified in the table annexed to the notification, 75 per cent of the goods produced by such looms shall be exported out of India;

(b) in the case of imported rotor spinning machines specified, 75 per cent of the goods produced by such rotor spinning machines, shall be either exported out of India or the goods so produced shall be utilised in the production of fabrics exported out of India; and

(c) the export obligation mentioned at (a) and (b) above shall be fulfilled for a period of five years from the commencement of production on the said looms or the rotor spinning machines as the case may be.

(2) The importer had to undertake to comply with such instructions as were issued by Chief Controller of Imports and Exports to monitor and enforce the fulfilment of said export obligation.

(B) The aforesaid conditions were in force upto 28 February 1986. With effect from 1 March 1986, the conditions mentioned at (a), (b) and (c) above were replaced by the following set of conditions viz.,

(a) in the case of imported looms specified in the table, goods produced by such looms and of value not less than 5 times the value of the machines as determined under section 14 of the Customs Act, 1962, had to be exported out of India within a period of 5 years from the date of importation of the said machines;

(b) in the case of imported Rotor Spinning Machines goods produced by such Rotor Spinning Machines and of a value not less than 5 times the value of the machines as determined under section 14 of the Customs Act, 1962, had to be exported out of India or the goods so produced had to be utilised in the production of fabrics exported out of India within a period of 5 years from the date of importation of the said machines; and

(c) the obligation mentioned in (a) and (b) was over and above the average export performance during the preceding 3 years; and the importer had to undertake to comply with such instructions as were issued by Chief Controller of Imports and Exports to monitor and enforce the fulfilment of the said export obligation.

(C) However, with effect from 1 March 1987 both the sets of conditions ibid were incorporated as alternative conditions by notification no.71/87. Upto 28 February 1989, the concessional rate was limited to only looms and rotor spinning machines. But with effect from 1 March 1989, the concession was extended to other specified machinery also, other than looms and rotor spinning machines.

3. Scope of Audit

The examination of the system of levy and collection of duty on import of sophisticated textile machinery at concessional rate of duty against export obligation was conducted with a view to ascertain that

a) all the conditions prescribed in the notification have been fulfilled by the importers;

b) appropriate action has been taken by the monitoring authority in cases where the export obligations are not fulfilled;

c) the customs authorities have taken necessary steps to watch the fulfilment of conditions specified in the notifications;

d) there was co ordination between the Customs authorities and Joint Chief Controller of Imports and Exports of the region concerned in the implementation of the scheme; and

e) whether the scheme as a whole in its policy planning and implementation at the field level had achieved its purpose of giving an impetus to the exports.

4. Highlights

An appraisal of the scheme involving import of sophisticated textile machinery at concessional rates of duty with a view to boost/promote exports viz., by fulfilment of export obligations, was conducted at the Collectorates/Custom Houses at Madras, Bombay, Cochin, Chandigarh and Kanpur not only with reference to Customs House records but also with reference to records of licensing authorities during November 1991 to March 1992. The results of appraisal are contained in the succeeding paragraphs which highlight the following -

- Short fall in fulfilment of export obligations with reference to-

(a) production based performance - leading to short fall in value of exports amounting to Rs.507.95 lakhs and consequential short levy of Rs.64.52 lakhs.

(b) value based performance - leading to short fall in value of exports amounting to Rs.1343.37 lakhs and consequential short levy of Rs.329.39 lakhs.

(Sub para 6(A) & 6(B)

- Non fulfilment of export obligations including nil exports during the initial two years of the obligation period leading to non-export of textile products amounting to Rs.2,275.71 lakhs and consequential non-levy of duty involving Rs.534.00 lakhs.

(Sub para 7)

- Absence of proper coordination between Customs and C.C.I.E authorities for watching the fulfilment of conditions laid down in the exemption notification.

(Sub para 8(i),(ii)

- Improper monitoring of export obligations resulting in non realisation of foreign exchange due, amounting to Rs.25.68 lakhs in one case alone.

(Sub para 8(iii)

- **Delay in finalisation of cases where period of export obligation had expired. (Sub para 9)**

- **Short computation in the value of export obligations amounting to Rs.226.39 lakhs. (Sub para 10(a)**

5. Statistical information

One of the norms prescribed by the licensing authorities for export performance was -

(a) In the case of looms (imported) 75 per cent of total production of goods therefrom had to be exported.

(b) In the case of Rotor Spinning Machines, 75 per cent of the goods produced by such machines had to be exported either out of India or the goods produced had to be utilised in the production of fabrics exported out of India.

In both the cases, export had to be carried out within 5 years from the date of commencement of production.

The position in respect of imports of looms at Bombay Port is as follows -

Year	Total quantity produced (In metres)	Quantity exported out of India (In metres)	Percentage of exports to total production	Short fall in terms of quantity (In metres)
upto 1985-86	47,05,753	35,13,883	74.67	15,432
1986-87	-	-	-	-
1987-88	58,402	32,042	54.86	11,760
1988-89	36,29,212	22,48,580	61.96	4,73,329
1989-90	1861175	1166944	62.70	2,28,937
1990-91	Nil	Nil	Nil	Nil
1991-92	Nil	Nil	Nil	Nil

It will be observed from the above that in none of the years except perhaps in the year (upto 1985-86), the percentage of exports has not reached the targeted level of 75 per cent of the

quantity produced in any of the years between 1987-88 to 1989-90.

Similarly, in the case of Rotor Spinning Machine (imported), the quantity based export performance vis-a-vis their production in Bombay Collectorate is given below -

Year	Total quantity produced (In metres)	Quantity exported out of India (In metres)	Percentage of exports vis-a-vis production	Short fall in terms of quantity (In metres)
upto 1985-86	Nil	Nil	Nil	Nil
1986-87	22,53,572	14,37,797	63.80	2.52,382
1987-88	31,43,047	19,11,453	60.80	4,45,832
1988-89	41,51,489	24,06,125	57.96	7,07,493
1989-90	50,97,335	35,25,621	69.16	2,97,381
1990-91	-	-	-	-
1991-92	39,915	9,838	24.65	20,098

Here also, the production based export performance has never reached the level of 75 per cent. On the other hand, the percentage was going down from 63.80 per cent in the year 1986-87 to 24.65 per cent in the year 1991-92 except in 1989-90 when it reached 69.16 per cent.

In the case of other textile machines other than those specifically mentioned above, the production based export performance of the units in the Collectorate of Bombay is as follows -

Year	Total quantity produced (In metres)	Quantity exported out of India (In metres)	Percentage of exports vis-a-vis production	Short fall in terms of quantity (In metres)
1989-90	13,10,971	8,28,013	63	1,48,466
(data for the remaining years not available)				

6. Short fall in export obligation

(A) Production based performance

i) A rotor spinning machine was imported by a textile mill in October 1983. The value of the

machine in Indian currency was Rs.12,75,700. The mill also executed a bond with the Joint Chief Controller of Imports and Exports in February 1984 backed up by a bank guarantee for Rs.1,53,463. In terms of P.N.No.53 ITC(PN) 83 dated 17 December 1983, 75 per cent of the production achieved each year by the imported machinery had to be exported for a period of 8 years, subsequently reduced to 5 years, from the date of commencement of production. The total production was 10,84,967 kgs of yarn and the quantity to be exported thereof was 8,13,725 kgs. However, only 14,500 kgs was exported leaving a short fall of 7,99,225 kgs of yarn. The value of yarn not exported amounted to Rs.1,51,20,245.

ii) Similarly a spinning machine was imported in August 1985 by another mill at a cost of Rs.29,28,268. The said mill executed the required bond with a bank guarantee for Rs.3.66 lakhs. Here also the export obligation was 75 per cent of the production achieved each year for a period of 5 years from the date of commencement of production. The production commenced in 1986-87. The total quantity of yarn produced by the mill was 29,55,830 kgs and exports made in 1986-87 and 1987-88 amounted to only 4,58,183 kgs.

Exports ceased from 1987-88 and the goods were diverted to local market resulting in short fall of 17,58,680 kgs involving money value of Rs.3,56,75,408 in export obligation. The importer has approached Ministry of Textiles for extension of the export obligation for a further period of three years from 1 June 1992 to enable them to fulfil the obligation.

Thus, the two importers in the aforesaid cases had failed to fulfil the condition specified in the concessional notification. The Joint Chief Controller of Imports and Exports did neither monitor the fulfilment of annual obligation as required in public notice dated 17 December 1983 nor enforce the bond involving a duty effect of Rs.24.69 lakhs.

iii) 2 open end spinning machines were imported by a unit in September 1984, for a value of Rs.28,76,520 and the export obligations were not

fulfilled (April 1992) though the obligation period of 5 years was over in September 1989. As the importer opted for production based export obligations, shortfall in export obligation could not be worked out. Differential rate of duty and penal interest thereon recoverable from the importer works out to Rs.28.02 lakhs.

iv) Two consignments of shuttleless looms valued at Rs.1,86,089 and Rs.6,84,295 respectively were imported by a Government owned corporation during January 1985, to July 1985. As seen from the records of the Joint Chief Controller of Imports and Exports, Bombay, the importer did not fulfil the export obligations even after the expiry of 5 years. As the importer opted for production based export obligation, shortfall could not be worked out. Total amount of duty and penal interest recoverable from the defaulting importer works out to Rs.11.81 lakhs.

(B) Value based performance

According to notification no.71 (Cus) dated 1 March 1987, the importers who avail of the concessional rates of duty under the scheme have to export 75 per cent of the goods produced with the imported machinery or five times the value of the machinery over a period of 5 years from the date of import of the machinery. Failure to discharge this export obligation renders the importer liable for the payment of duty at the tariff rates in force along with penal interest at 18 per cent per annum on the value of the imported machinery. It was seen in 5 cases, that the importers had not fulfilled the export obligations laid down in the notification even after the expiry of the prescribed period of 5 years. In these cases the Joint Chief Controller of Imports and Exports, Bombay, had neither monitored the fulfilment of export obligations by the importers nor taken any action against the defaulters. The Customs House also did not take any action to ascertain the extent of fulfilment of export obligations from the Joint Chief Controller of Imports and Exports. As a result, the Customs authorities had taken no action (April 1992) to recover the amounts from the defaulting importers

resulting in the non-collection of substantial amounts of revenue as shown below:

i) An automatic shuttleless loom valued at Rs.2,28,000 was imported by an importer during April 1984. As per the records of the Joint Chief Controller of Imports and Exports, Bombay, the unit remained closed since March 1987. The export obligation period was over in April 1989 and no export was made by the unit (April 1992). Differential rate of duty and penal interest thereon recoverable from the defaulting importer amounted to Rs.3.39 lakhs.

ii) Another importer imported shuttleless looms valued at Rs.67,25,289 during November 1986. The export obligation period was over in November 1991 and the unit exported goods worth Rs.261.65 lakhs as against the total export obligation of Rs.336.26 lakhs resulting in a shortfall of Rs.74.61 lakhs. Differential duty and penal interest recoverable from the defaulting importer amounted to Rs.121.36 lakhs.

iii) Machinery worth Rs.1,19,78,200 was imported by an importer during August 1986. The unit did not fulfil the export obligation (April 1992) even though the period of 5 years was over in August 1991. The amount of shortfall could not be worked out as the unit did not furnish the details. Differential duty and penal interest recoverable in this case amounted to Rs.204.64 lakhs.

iv) Four importers have fulfilled the export obligations only partially resulting in a shortfall of Rs.12,68,76,000 (approximately) till the end of December 1991.

7. Non fulfilment of export obligation

As per Public Notice no.53-ITC (PN) 83, dated 17 December 1983, issued by the Chief Controller of Imports and Exports, New Delhi, the importer had to execute necessary bond with bank guarantee with the licensing authority i.e. Joint Chief Controller of Imports and Exports, Bombay, before clearance of the goods through the customs. In terms of the conditions of the bond, the Government was free to invoke the bond amount and

realise the bank guarantee equivalent to the extent of short fall in export obligation in a particular year. The importer had to renew the bank guarantee so as to bring the amount of the guarantee equal to 12.5 per cent of the C.I.F value of the imported machinery.

The licensing authority can also invoke the full value of the bond, if the importer persists in defaulting the export obligation continuously for a period of two years.

i) It was noticed in 3 cases of imports of sophisticated textile machinery at Bombay during 1988-89 that as against the export obligation spread over 5 years, the units did not export any goods till 31.12.91. Short fall due to non fulfilment of export obligations in respect of the 3 units works out to Rs.1,47,70,621.

ii) A spinning mill imported two open end spinning machines in April 1988 and December 1988 with export obligation which was to end in April 1993 and December 1993 respectively. However there were no exports in the initial two years.

iii) Another textile mill imported one open end spinning machine in February 1990. There were no exports till July 1991.

iv) In another case of import of 3 open end spinning machines through Madras Port by three different mills no export has been made so far.

Sl. No.	Month of Import	Assessable value
1.	June 1990	33,03,024
2.	March 1990	33,07,750
3.	September 1989	61,59,158

v) From the records of an assessee, under the jurisdiction of Kanpur Collectorate, it was observed that 24 Sulzer Projectile weaving looms falling under Customs Tariff subheading 8446.30, valued at Rs.5.92 crores, were imported in June 1988, which started production in October 1988. The assessee had furnished indemnity cum surety bond to Joint Chief Controller of Imports and

Exports, Kanpur, binding himself with the conditions set out in the aforesaid notification dated 1 March 1987. The quantity of woollen fabrics manufactured in their mills during October 1988 to February 1992, was 29,15,369 metres, which were being cleared for home consumption only. It was pointed out to the department that the assessee had failed to comply with the export obligation which amounted to Rs.21.28 crores during the period from June 1988 to December 1991. The non fulfilment of export obligation rendered the importer liable to pay the difference in the rate of duty which works out to Rs.5.34 crores (approx).

Reply of the department has not been received (April 1992).

8. Lack of co-ordination between Customs and C.C.I.E authorities and improper monitoring of export obligation resulting in non realisation of foreign exchange due

i) As per notifications of 1986 and 1987 the importers had to export goods five times the value of the machines as determined under section 14 of the Customs Act. The notifications did not, however, bind the Custom Houses to watch the completion of export obligation. In respect of another notification of May 1990, pertaining to imports under the provisions of para 197 of the Import-Export Policy 1990-93, though, there is a condition that the importer has to undertake before the Customs authorities, to pay duty leviable on capital goods but for exemption, in the event of non fulfilment of export obligation. Madras Customs House was addressed in February 1992 whether they were in receipt of the details of completion of export obligation from Joint Chief Controller of Imports and Exports and the fulfilment of condition of export obligation as per this notification of May 1990. Reply has not been received so far (April 1992).

ii) According to the notification Cus 257 dated 1 September 1983, and bond to be furnished by the importer, the Chief Controller of Imports and Exports needed to monitor and watch the fulfilment of export obligations by the importers of textile

machinery. However, it was noticed in audit that the Joint Chief Controller of Imports and Exports, Bombay, neither maintained any records nor devised any system or procedure to watch the fulfilment of export obligations. Infact, the Joint Chief Controller of Imports and Exports, Bombay, apart from issuing a certificate to the effect that requisite bond as per the condition has been executed by the importer did nothing further in the matter. The Customs House, on their part, confined themselves to clearing of the goods of the importers on production of the certificate from J.C.C.I.E and did not take any further steps or devise any system or method to ascertain the due fulfilment of export obligations as per the notification by the importer, although non fulfilment of these obligations rendered the importer liable for the payment of duty on the machinery imported at tariff rates. Further, there was no co-ordination between the Joint Chief Controller of Imports and Exports, Bombay and Customs House in the implementation of this export oriented scheme which involved customs duty concession, leading to the shortfall in exports by the importers remaining undetected in several cases and of differential amount of duty remaining unrealised apart from non realisation of foreign exchange due. The main objective of the scheme viz. the boosting of exports also, therefore, remained unfulfilled.

iii) As per para 1 and 10 of the Public Notice 53-ITC(PN)/83 New Delhi, dated 17 December 1983 and P.N.233-ITC(PN)85-88 dated 4 December 1987, issued by the Government of India, Ministry of Commerce, the importer had to furnish an annual report within 30 days of close of each financial year to the concerned licensing authority with a copy endorsed to Textile Commissioner, Bombay, giving details of goods produced and exports made along with F.O.B value in respect of previous financial year. The Textile Commissioner, in turn, had to endorse it to Joint Chief Controller of Imports and Exports. On receipt of this report the regional licensing authority had to finalise the export obligation for the year and take further action. Further, as per para 5(C) of the bond and as per Public Notice of 17 December 1983, in the event of short-fall in the export obligation in

any particular year, Government was free to invoke the bond amount equivalent to the extent of shortfall in export obligation. Non- adherence to the above condition by the Joint Chief controller of Imports and Exports and improper monitoring of export obligation had resulted in non realisation of foreign exchange due. Infact, in respect of one textile mill in Coimbatore Collectorate, alone, it was noticed that the amount of foreign exchange not realised worked out to Rs.25.68 lakhs.

9. Delay in finalisation of cases where period of export obligation had expired

i) While checking the records maintained by Joint Chief Controller, Imports and Exports, Madras, it was noticed that upto December 1991, 9 bonds executed by five importers remained pending closure even after the expiry of the period of export obligation. No action has been initiated by Joint Chief Controller of Imports and Exports for finalisation of these cases. For example, in the case of import by a textile mill in May 1986, the export obligation expired in May 1991. From the file it could be gathered that some additional particulars were called for from importers in March 1990 and the same had been furnished in April 1990. No further action was taken to finalise the case.

ii) In respect of three machines imported by another textile mill, eventhough the export obligation was completed and details submitted to the Joint Chief Controller of Imports and Exports by the importer within the specified time limit, the bonds remained to be discharged.

10. Short computation in the value of export obligation

(a) It has been prescribed in the notification no.71/87-Cus as amended from time to time that while computing the value of export obligation to be fulfilled by the importers, goods not less than 5 times the value of the machines as determined under section 14 of the Customs Act, 1962, should be exported within a period of 5 years from the date of importation of the machines. While

reviewing the bond, (for fulfilment of the above condition) with the Joint Chief Controller of Imports and Exports, Madras, it was found that in respect of 13 importers only CIF value of the machines was taken as the basis instead of the value determined under section 14 of the Customs Act, 1962. This led to short computation of value of export obligation by Rs.2,26,38,675. The bond format prescribed by Joint Chief Controller of Imports and Exports referred only to the value of the machine as determined under section 14 of the Customs Act, 1962.

(b) It was seen in another Customs House also that some importers who had imported machinery during 88-89 and 89-90 executed bonds for the amount equal to 5 times the C.I.F value of the machinery and not 5 times the assessable value as determined under section 14 of the Customs Act, 1962, contrary to the stipulation in the notification. This led to short computation of value of export obligations and it was contrary to the bond format prescribed by the C.C.I.E.

11. Other Irregularities

i) Autoconers were not covered by customs notification 71/87 during the period between 21 April 1989 to 1 February 1990. 3 nos. of autoconers imported during October 1989 were cleared availing the benefit of the said notification on the basis of interim order of the High Court of Kerala in O.P.No.8489/89. The differential duty involved in this case amounted to Rs.43.30 lakhs.

ii) 2 Nos of autoconers of assessable value Rs.76,72,565 imported in March 1990, were allowed to be cleared on payment of duty at the rate of 25 per cent ad-valorem on the basis of interim orders of the High Court of Karnataka. The duty leviable under notification 71/87-Cus was 35 per cent and 5 per cent auxiliary duty. The differential duty amounted to Rs.11.51 lakhs.

iii) In terms of notification 143/89-Cus dated 21 April 1989 "Autoconers" were omitted from the purview of concessional rate of customs duty available under notification 71/87-Cus dated 1

March 1987. However, it was found that in respect of 7 importers, the benefit of concessional rate of duty was allowed, based on a High Court ruling in writ petition preferred by the importers. The assessments were carried out on a provisional basis during July 1989, to December 1989, by Customs department. The differential duty amounted to Rs.217.49 lakhs.

In all the three aforesaid cases, no follow up action appears to have been taken either by the Customs department or the Joint Chief Controller of Imports and Exports for early vacation of the court's injunction in order to finalise the provisional assessments.

iv) As per letter No.3(7) MAH/84/MPIL/251 dated 13 November 1987 from the Government of India, Ministry of Textiles, Open End Spinning Machines with a rotor speed more than 60,000 revolutions per minute (rpm) only were permissible to be imported under the scheme.

It was seen that 2 Open End Spinning machines having a rotor speed of 50,000 (rmp) each and valued at Rs.7,05,850 were imported by a unit during July 1985. As the rotor speed of the machine imported was less than 60,000 (rmp), concessional rate of duty was not admissible. Differential duty recoverable from the importer worked out to Rs.5.15 lakhs.

v) As per notification of March 1986, in the case of imported "Rotor Spinning Machines" either 5 times the value of the goods produced by such machines or 5 times the value of the goods so produced and utilised in the production of fabrics, had to be exported out of India within a period of 5 years from the date of importation of the said machinery.

It, therefore, follows that in cases where yarn produced in such machines was used for production of fabrics, only the value of yarn consumed in the production should have been taken into account for computing the value of export obligation. However, in respect of two textile mills, it was seen that the value of the fabrics as a whole was adopted. As separate value of yarn

consumed in production of fabrics was not maintained (viz. countwise) by the importer, the short computation of value of exports could not be quantified.

Further, for the purposes of ensuring that export obligations are met with imported machine basic data should be kept. It was found that in the case of a textile mill which imported two machines in August 1989 and February 1990, though the goods of the value of Rs.2.33 crores were exported out of India, during the obligation period, it could not be verified in audit whether the exports were actually relatable to the particular imported machines. The details of exports were to the tune of Rs.60,44,318 from 1 April 1989 to 4 June 1990 and Rs.1,72,56,447 from 5 June 1990 to 8 August 1991. It was not clear as to how far the export obligations could be deemed to have been fulfilled since the average export performance during the preceding 3 years itself was not verifiable. Therefore, the fact that the exports amounting to Rs.1.72 crores made from the goods produced by machine (RD 200 SN 75) imported in February 1990 was not verifiable either. This point was not also verified by the JCCIE at the time of closure of bond nos.14/89-90 and 41/89-90 on 28 August 1991 and 4 February 1992, respectively.

vi) In respect of an importer the High Court had allowed time till 23 November 1989 for paying concessional rate of duty on imported machine. However, it was seen from the bill of entry, that duty was paid only on 23 December 1989. Since duty was not paid within the time set by the High court, duty should have been collected at normal rate (Tariff rate) of 80 per cent ad valorem. The short collection of duty amounted to Rs.18,28,680.

To sum up,

i) There has been non/partial fulfilment of export obligations in several cases.

ii) There has been no proper co-ordination between the Customs department and the Licensing authorities over monitoring the fulfilment of export obligations; and

iii) The objective of the scheme to boost the exports does not appear to have been achieved.

Ministry of Finance stated (December 1992) that the scheme of import of textile machinery at concessional rate of customs duty was being administered by the Ministry of Commerce as it involved non fulfilment of export obligations and the Ministry of Finance was not concerned with it.

Ministry's contention is not acceptable as the exemption from customs duty was issued by the Ministry of Finance subject to fulfilment of certain conditions prescribed therein. As such, it was the responsibility of the Ministry of Finance to monitor the fulfilment of these enduse conditions and to devise a mechanism, if necessary, in coordination with the Ministry of Commerce for watching the fulfilment of the conditions laid down in the concessional notifications.

1.02 DELAY IN FINALISATION AND COLLECTION OF DEMANDS

A. CUSTOMS

Introduction

As per Section 28 of the Customs Act, 1962, in all cases where custom duties have either not been levied or not paid or have been short levied or short paid, the Assistant Collector/Collector of Customs, determines the duty of customs payable, after issue of a proper show cause notice to the person who is liable to pay such duties and consider any representation made by such person. Normally, such duties can be demanded within a period of six months/one year, as the case may be from the relevant date. However, this period can be extended upto 5 years if the non-levy/short levy or non-payment/short payment has been due to fraud, wilful misstatement or suppression of facts or contravention of any provision of the Act or rules by the importer. Where the duty payable by a person is thus determined by the Assistant Collector/Collector of Customs, the person who is liable to pay the amount, shall pay it following

the expiry of the appeal period unless he has obtained a stay order from the appellate authority.

If the amount confirmed is not paid by the importer, then the Assistant Collector of Customs is required, under Section 142 of the Customs Act, 1962, to recover such amount from any money owing to the person who is liable to pay it or recover the amount by attachment and sale of goods belonging to such person. If the amount is not so recovered, the Assistant Collector is required to issue a certificate specifying the amount due from such person to the Collector of the District, in which such person resides, for effecting recovery of such duties as if these are arrears of land revenue.

2. Scope of audit

A test audit of records for the period from 1987-1988 to 1991-1992 relating to finalisation and collection of demands was conducted with a view to see whether the demand notices under Section 28 of the Act were issued in time and the procedures prescribed therein and under Section 142 were followed. The main points examined, in audit included, inter-alia, the following-

i) pendency position of the confirmed demands and the reasons for non-recovery;

ii) pendency position of the unconfirmed demand notices and the action taken to settle them;

iii) pendency position of outstanding fines and penalties;

iv) whether requests for voluntary payment(V.P) were made in cases where the demand notices could not be issued within the time limits prescribed;

v) whether the monitoring mechanism including the accounting and reporting system was proper and adequate;

vi) whether the system evolved for issuing notices and confirmation of demands as well

as the recovery thereof, including maintenance of records therefor, was adequate and systematic; and

vii) whether any time frame had been fixed for following the various stages of adjudication in the context of the need for expeditious finalisation of demands both in the interests of justice and Government revenue.

3. **Highlights**

An appraisal of the delay in finalisation and recovery of demands in the Custom Houses (both sea and air) and combined Collectorates of Customs and Central Excise, all over India including land customs stations was conducted. The results of the appraisal are contained in the succeeding paragraphs which reveals -

(a) 20,583 cases of confirmed demands amounting to Rs.21,887.02 lakhs were pending realisation as on 30 September 1991. (Statement I)

(b) 4,587 cases (Rs.26,692.77 lakhs), were pending with courts, CEGAT and the departmental officers respectively. (Statement II)

(c) There was loss of revenue amounting to Rs.1,452.76 lakhs in 1,107 cases due to non issue of demands on account of time bar.

(Statement III)

(d) In 19 cases with a revenue effect of Rs.27.83 lakhs, the demands could not be issued in time due to delay in forwarding the bills of entry to statutory audit. (Sub para 7(C)(ii)

(e) Duty in respect of 3,663 cases could not be realised due to stay orders from court. (Statement IV)

4. Statistical data

Particulars on various aspects of the finalisation and recovery of the demands have been given in Statements I to IV (annexed).

5. Inordinate delay in recovery of confirmed demands

(A) Bombay Customs House

i) (a) A test check of the records of the Customs House revealed that as on 30 September 1991, about 1390 demands amounting to Rs.602.23 lakhs (approx) were confirmed during the period from 1987 to 1991. Of these, about 1207 cases involving Rs.453.42 lakhs (approx.) were pertaining to the period from 1973 to 1986. The delay in confirmation ranging over a period of 1 year to 14 years in these cases had resulted in postponement of recovery of duty entailing loss of revenue in the form of notional interest amounting approximately to Rs.408.[illegible]7 lakhs (at the rate of 18 per cent for five years from 1987-91).

(b) Out of the aforementioned 1390 confirmed demands amounting to Rs.602.23 lakhs, a sum of Rs.94.51 lakhs involving 492 cases was recovered in various years, following the confirmation, from 1987 onwards upto 1990-91. The remaining 898 demands involving a sum of Rs.507.72 lakhs (approx.) were still outstanding against recovery as on 30 September 1991, without any further action.

ii) Under Section 11 read with Sections 111 to 114 of the Customs Act, 1962, any goods which are improperly imported or exported in contravention of the Import and Export Trade Regulations are liable to confiscation and personal penalties or fines are leviable on the offenders.

In the same Customs House (sea), a test check of the relevant records of the appraising groups, revealed that personal penalties and fines to the tune of Rs.1,287.73 lakhs (approx.) in 1763 cases were also outstanding against recovery as on 30 September 1991, for periods ranging from 1987-88 to 30 September 1991.

The penalties and fines outstanding in the Revenue and Intelligence Unit of the Customs House amounted to Rs.5,442.41 lakhs (approx.) in about 2,037 cases.

(iii) The information as to the action taken under Section 142 of the Customs Act, was furnished in respect of only one group, as under:

Sl. No.	Subject	Cases pertaining to the years 1981 to 1988	Amount Rs.
1.	No.of cases in which detention orders were issued	180	31,40,032
2.	No. of cases in which recoveries were made after detention orders were issued	122	26,03,546
3.	No. of cases where certificate action was taken	1	27,684
4.	No. of cases where no recovery was done due to failure to invoke RR proceedings	57	5,08,802

In respect of the remaining nine groups the information called for has still not been received (April 1992).

(iv) The scrutiny of about 500 case files on the subject produced to audit revealed the following irregularities -

(a) In respect of a consignment of tyres and tubes imported in April 1979, a demand notice for Rs.3.43 lakhs was issued in November 1979 as concessions claimed under the relevant notification were found to be inadmissible.

The demand was confirmed in January 1990. Though the party went in appeal, the Appellate Collector rejected the claim in September 1990. But the short levied amount is yet to be recovered and there appears to be no follow up action, taken in this regard.

(b) In the case of an import, through an exbond bill of entry, a demand on account of differential interest amounting to Rs.1.36 lakhs was raised, based on an internal audit objection of August 1986. The demand was confirmed in April 1989. However, no further follow-up action appears to have been taken.

From the analysis of unconfirmed demands, relating to the period 1 April 1988 to 30 September 1991, it was noticed that about 2629 demands amounting to Rs.3763.50 lakhs (approx.) were outstanding for confirmation at the end of 30 September 1991.

(B) Calcutta Customs House

An aggregate amount of Rs.3,380.40 lakhs remains outstanding as on 30 September 1991, in respect of 1018 cases of different categories of demands raised by the department during the period from 1987-88 to 1991-92. The department stated that necessary action under Section 142 of the Customs Act, 1962, had been taken in 450 cases out of above cases. The department, however, did not even produce the files concerning 285 cases wherein no recoveries could be made inspite of invoking action under Section 142, nor did the department indicate the position of the remaining 568 cases or produce the relevant files.

An interesting case which came to notice during scrutiny of the relevant files is as follows -

In four cases an importer imported Industrial Sewing Machine during January and February 1986. Show-cause-cum demand notices for short levy of duty were served in June 1986 and July 1986 and the department confirmed the demand notices in March 1987, January 1989 and August 1989 respectively. The amount involved was Rs.3,11,779. The department, thereafter, issued notices under S/142 of the Customs Act in November 1987 and February 1990 in respect of the two cases where demand notices had been confirmed in March 1987 and August 1989 respectively. No amount could, however, be recovered in pursuance of the said notices. The department also did not take

any further action. In respect of the remaining two cases, action was not initiated at all u/S 142 ibid. Consequently, the entire amount remained un-realised (March 1992).

(C) Gujarat and Saurashtra Ports

i) Position of demands outstanding against recovery as on 30 September 1991 in respect of Customs House, Kandla is as under:

Year of demand	No.of cases	Amount outstanding (in lakhs)				
		Duty	Interest	Fine	Penalty	Total
1987-88 and earlier years	20	226.85	Nil	-	0.50	227.35
1988-89	2	3.61	Nil	3.75	1.75	9.11
1989-90	11	195.42	Nil	16.80	11.30	223.52
1990-91	9	95.03	Nil	0.50	31.85	127.38
1991-92 (upto 9/91)	3	49.66	Nil	Nil	23.00	72.66
Total	45	570.57	Nil	21.05	68.40	660.02

ii) The number of cases in which such action under Section 142 of the Customs Act, 1962, has not been taken or if taken recovery is still awaited for a considerable period of time, are as under:

(a) Cases outstanding for want of action

Year of demand	No.of cases	Amount outstanding (in lakhs)				
		Duty	Interest	Fine	Penalty	Total
1987-88 and earlier years	6	173.23	-	-	-	173.23
1990-91	5	70.66	-	-	26.15	96.81
1991-92 (upto 9/91)	3	49.66	-	-	23.00	72.66
Total	14	293.55	-	-	49.15	342.70

(b) Cases outstanding even after taking action under Section 142 of the Customs Act, 1962.

Year of demand	No.of cases	Amount outstanding (in lakhs) Duty	Interest	Fine	Penalty	Total
1987-88 and earlier years	8	38.00	Nil	Nil	Nil	38.00

iii) A test check of a few cases of outstanding demands revealed the following:

(a) Five demand notices amounting to Rs.16,67,113 were confirmed by the Dy. Collector of Customs, Kandla, on 6 March 1987.

Recovery action, however, was taken under Section 142 of Customs Act, 1962, only on 20 July 1990, after a period of over 3 years in all the cases.

This has resulted not only in non-recovery but also financial accommodation to the importer and loss of Govt. revenue amounting to Rs.9,37,755, by way of notional interest at the rate of 18 per cent per annum, for over 3 years, on Rs.16,67,113. The Kandla Customs House has replied that final reply will be given after verification of the facts.

(b) In a case of confirmed demand for Rs.7,74,114 (adjudicated by D.C Customs, Kandla, in June 1986), the Court's orders, on the civil writ petition filed by the importer, were vacated on 13 December 1989. However, an amount of Rs.5,74,053 is still to be realised in this case (September 1991). The Kandla Customs House has replied that final reply will be given after verification of the file.

(D) Madras Customs House

i) Outstanding confirmed demands

There were 1289 confirmed demands amounting to Rs.1,226.82 lakhs pending realisation as on 30 September 1991. The status of the demands is as follows:

Sl. No.	Pending with	No.	Amount (Rs. in lakhs)
1.	Courts	20	88.78
2.	CEGAT	23	33.94
3.	Departmental Officers	1246	1104.10
	Total	1289	1226.82

The year-wise analysis of these cases is as given below:

Year	Pending with court		Pending with CEGAT		Pending with departmental officers	
	No.	Amount	No.	Amount	No.	Amount
			(Rs. in lakhs)			
Upto 1988-89	20	88.78	23	33.94	327	57.63
1989-90	-	-	-	-	37	43.72
1990-91	-	-	-	-	774	320.32
1991-92 upto 30.9.91	-	-	-	-	108	682.43
Total	20	88.78	23	33.94	1246	1104.10

In this connection it may be stated that-

(a) The high pendency of cases indicates the need for expediting disposal at every stage.

(b) The pendency of 327 cases (Rs.57.63 lakhs) for over three years and 811 cases (Rs.364.04 lakhs) between 1 and 2 years with the departmental officers shows that adequate attention has not been paid to pursuing the old cases effectively for realisation and the Government revenue remains locked up.

(c) The action taken in respect of 1246 cases of confirmed demands is as follows-

i) In respect of 939 cases wherein the confirmed demands amounting to Rs.1078.76 lakhs were involved, no follow up action has been initiated effectively (March 1992).

ii) In respect of 268 cases involving a revenue of Rs.5.78 lakhs, detention notices were issued after delays ranging from 4 to 5 years from the date of confirmation.

iii) In respect of 39 cases with a revenue effect of Rs.19.56 lakhs, certificate action under Section 142 of the Act has been initiated.

(d) Out of 1246 cases, a test check of 300 cases was conducted. It was seen that in 31 cases (Rs.43.47 lakhs) demands were confirmed after delays ranging between 1 to 6 years but no action had been initiated to realise the confirmed demands. The delay in confirmation and non realisation of the confirmed demands could also be attributed in some measure to the fact that there is no provision in the Act to take necessary follow up action, after the show cause notice has been issued, in a time bound manner.

(e) A test check of 39 cases (referred to in c (iii) above) of confirmed demands amounting to Rs.45.15 lakhs revealed that in these cases refunds/drawback were paid to the imorters inspite of confirmed demands pending against them.

ii) Details of important cases of outstanding confirmed demands

(a) A private limited company, in January 1985, imported components for manufacture of T.V valued at Rs.11,45,094. The import duty amount of Rs.11,80,897 was erroneously computed as Rs.9,94,667. On noticing the mistake, a demand for Rs.1,86,230 was issued on 4 June 1985 and confirmed only on 9 March 1990. Though the demand was due to an arithmetical mistake and did not require any further examination, the department took nearly 5 years to confirm it and action is yet to be initiated to realise the amount (March 1992).

(b) A demand for Rs.2,60,995 was issued in March 1985, for irregular availment of an exemption notification by a private limited company for import of T.V components.

This demand was confirmed in November 1988 after a period of nearly 3 years. The amount is still to be realised (March 1992).

(c) In respect of an import of a consignment of "Projection Lens" by a private limited company in April 1990, a demand for Rs.2,99,564 was issued on 28 June 1990, as the concessional notification applied at the time of assessment was not correct. The demand was confirmed on 5 April 1991, but no action has been initiated thereafter to recover the amount. The demand is still pending realisation (March 1992).

(d) A private limited company imported a feature film "Life classes" (exposed) in February 1990. The goods were valued at US $ 750 omitting the royalty amount of US $ 9250 paid for the goods. Since under the GATT code of valuation royalty paid forms part of the assessable value, a demand of Rs.1,62,077 was issued on 5 March 1990 for the short collection of duty on account of incorrect valuation. There was no response from the importer and the demand was confirmed on 16 April 1991. But no further action has been taken to realise the pending demands (March 1992).

(e) In all the above 4 cases in addition to the demands, there was loss of revenue of Rs.6.5 lakhs by way of interest calculated at 18 per cent per annum.

iii) Delay in confirmation of demands

Under Section 28 of the Act, where any duty has been short levied, the proper officer may, within six months or one year, as the case may be, from the relevant date, serve notice on the person chargeable with duty which has not been levied or which has been short levied, requiring him to show cause why he should not pay the amount specified in the notice.

After considering the representation, if any, made by the person on whom such notice is served, the proper officer shall determine the amount of duty due from the person and thereupon such person shall pay the amount so determined.

Ordinarily, a period of at least 15 days is given to the party to represent against such a demand notice. The notice also indicates that if no representation is received or the party does not appear within the time given the proper officer could proceed to determine the amount on the basis of evidence before him. Then, an order is issued in writing accordingly and the party is required to pay the confirmed amount. If the amount is not paid, and no stay has been obtained, the recovery proceedings must be initiated.

(a) A review of the records maintained in the appraising groups showed that in 3567 cases involving a revenue of Rs.12,750.58 lakhs, notices for demands were issued under Section 28 of the Act but these remained unconfirmed till 30 September 1991. The year-wise analysis of the unconfirmed demands is as under.

Year	No. of cases	Amount (Rs. in lakhs)
1987-88	1500	5648.58
1988-89	649	1714.43
1989-90	555	1536.79
1990-91	580	2156.69
1991-92 (upto 30.9.91	283	1694.09
Total	3567	12750.58

This delay in confirmation of demands has resulted in, apart from non-realisation of revenue and consequential financial accommodation to the importer, loss of revenue to Government by way of interest as well.

(b) In an appraising group, out of the total number of 742 cases of unconfirmed demands amounting to Rs.2356.20 lakhs, the number of cases relating to Public Sector Undertakings and Government Departments alone account for 498 cases amounting to Rs.1848.93 lakhs as indicated below.

(Rupees in lakhs)

Year	Total unconfirmed demands		Public Sector Undertakings		Government Deptts.	
	No.	Amount	No.	Amount	No.	Amount
1986-87	241	938.65	80	513.55	3	5.54
1987-88	391	761.52	305	662.49	6	12.63
1988-89	55	302.24	54	292.94	1	9.32
1989-90	24	103.82	20	66.41	3	37.34
1990-91	19	88.08	14	82.11	1	4.77
1991-92 (upto 30.9.91)	12	161.89	9	11.35	2	150.48
Total	742	2356.20	482	1628.85	16	220.08

Thus, the Public Sector Undertakings and the Government Departments alone account for 79 per cent of the total pendency of unconfirmed demands in that group. In all the cases, it was observed that after issue of demand notices under Section 28 of the Act, neither the Customs House took any further action to either confirm or withdraw the demands nor did the Public Sector Undertakings and the Government Departments evince any interest in settling the demand notices, though they were regular importers.

(c) Out of 3567 cases referred to in sub para (a) above a test check of 500 cases was conducted and it was found that in 48 cases there was no justification for the undue delay in confirmation of demand notices since these cases involved indisputable issues like,

i) incorrect rate of auxiliary duty;

ii) incorrect/non levy of additional duty;

iii) incorrect adoption of exchange rate; and

iv) error in calculation of duty etc.

The delay in Confirmation of demands has resulted in an indirect financial accommodation to the importers as well as loss to the Government to the tune of Rs.20.46 lakhs by way of interest at the rate of 18 per cent per annum.

iv) Illustrative cases of outstanding unconfirmed demands

(a) A Collectors' conference, held in June 1984, decided that the concessions under the customs notification no.208/81 were not applicable to the import of "Folly Ballon Catheters". In view of that decision, Madras Customs House issued a Tariff circular in April 1988 providing for obtaining bank guarantees from importers of their material to safeguard the revenue interest if the assessments were made at concessional rates provisionally. In respect of an import of a consignment of "Folly Ballon Catheters" made by a private importer in August 1986, concessions under the notification were allowed but no bank guarantee was obtained. A demand notice for Rs.22,95,053 was subsequently issued on 29 November 1986 under Section 28 of the Act. But, thereafter, the department took no action to recover the demand (March 1992).

(b) A private limited company imported some machinery in September 1990. A demand notice for Rs.6,53,23,452 was issued on 4 September 1990 under Section 28 of the Customs Act, as the importer failed to produce the invoices, purchase order, packing list etc., at the time of assessment. Neither has the importer produced the documents for finalisation of the demand nor has the department taken any further action (March 1992).

(c) In respect of imports of "surgical instruments" by various importers during 1988, 11 demand notices amounting to Rs.48,42,563 were issued in June 1988, on the ground that the concession extended to them under notification no.208/81 was not correct. Eventhough the demand notices were pending for more than 3 years, no action has been taken (March 1992).

(d) A private limited company imported component parts for "Maruti Van" in August and September 1986 and availed concessional rate of duty under customs notification no.254/84. As the concession allowed under the notification was found to be incorrect, 9 demand notices amounting to Rs.83.43 lakhs were issued between January and April 1987.

No action thereafter has been initiated to confirm and realise the demands (March 1992).

(e) Certain medical equipments imported by various private importers during the period June 1989 to September 1989 were initially assessed to concessional rate of duty at 40 per cent ad valorem under customs notification no.65/88 dated 1 March 1988. Subsequently, it was found that the goods were correctly assessable to duty at the standard rate of 100 per cent ad valorem and therefore 21 demand notices amounting to Rs.47.56 lakhs were issued during the period between November 1989 to December 1989. But no follow up action has been taken to confirm and realise the demand (March 1992).

(f) A Public Sector Undertaking imported "Fuji photographic colour paper" in jumbo rolls during 1988. The goods were assessed to duty at the concessional rate under customs notification no.216/88. However, it was found that the importer did not fulfil the conditions laid down in the notification, therefore, 9 demand notices for Rs.106.35 lakhs were issued between July 1988 and December 1988. The department has not taken any further action to finalise the case (March 1992).

v) Delay in realisation of personal penalties imposed under section 112 of the Customs Act, 1962

Section 112 of the Act provides for levy of penalties for improper importation of goods and also for certain other specified offences. If the penalties imposed are not paid, different measures for their realisation including certificate action are prescribed under Section 142 ibid.

(a) The position of personal penalties pending realisation as on 30 September 1991 in respect of the Collectorates indicated below is as follows:

Collectorate	No. of cases	Amount (Rs. in lakhs)
Madras	2526	373.62
Trichy	4238	176.54
Guntur	3	1.80
Total	6767	551.96

(b) The year-wise analysis of the pendency is as follows:

Year	No. of cases	Amount (Rs. in lakhs)
upto 1987-88	4707	238.03
1988-89	589	75.28
1989-90	364	42.17
1990-91	699	40.08
1991-92 (upto 30.9.91)	408	156.40
Total	6767	551.96

(c) A test check of both the closed and pending files relating to personal penalties indicated that in cases where the personal penalties were levied in addition to the absolute confiscation of the goods under Section 111(d) of the Act, the recovery became impossible in as much as all the letters sent to these persons were returned undelivered stating that the party had either left the address long back or the address was incorrect.

(E). Delhi Collectorate

i) Delay in recovery of confirmed demands

(a) 873 cases of confirmed demands of duty and fines and penalties outstanding against recovery, involving Rs.2,881.80 lakhs, were pending in the Collectorate as on 30 September 1991. Out of these 873 cases, action for recovery of demands under Section 142 of the Customs Act, 1962, was stated to have been taken in 407 cases involving Rs.93.46 lakhs and as a result thereof recovery of Rs.0.38 lakh was made in two cases. This

position, however, could not be verified as the demand registers required to be maintained in the prescribed proforma were incomplete and full particulars about the action taken to recover the amount of demands and the recovery, if any, were not recorded therein.

(b) A review of 106 files of importers revealed demands amounting to Rs.3000.55 lakhs in these cases were pending recovery as on 30 September 1991. It was also observed that action under Section 142 of the Customs Act, 1962, for recovery thereof was initiated in 52 cases only involving Rs.2377.93 lakhs. No such action was initiated in the remaining 54 cases involving Rs.622.62 lakhs. Also, in 39 out of 52 cases where action under Section 142 of the Customs Act, 1962, was initiated, revenue recovery certificates as prescribed in Section 142(C) were not issued. Thus complete action had been initiated only in 13 cases involving Rs.11.30 lakhs. Even in these 13 cases no amount had been actually recovered.

ii) Delay in confirmation of demands

(a) In 9 cases demands involving Rs.633.99 lakhs were not even confirmed after the issue of show cause notices. In 8 of these cases involving Rs.631.24 lakhs, the show cause notices were issued during January to September 1990.

The department stated in May 1992, that three of these cases involving Rs.274.96 lakhs had been finalised by issue of "No objection certificate" and the documents furnished by the importers in two cases (amounting Rs.27.21 lakhs) were under examination. The department also stated that the documents for finalisation in one case (Rs.7.07 lakhs) had been furnished by the importer to JCCIE from whom reply was awaited and three cases (amount Rs.324.75 lakhs) were under consideration for taking further action under the provisions of the Customs Act, 1962.

(b) In one case, show cause notice was issued on 22 May 1990, with a corrigendum on 26 July 1990, asking the importer to pay a demand of Rs.1.77 lakhs on certain goods and why the remaining goods imported vide B.E. No.215997 dated 14 March 1990,

should not be confiscated. Though the importer replied to the show-cause notice the demand was neither confirmed nor withdrawn.

The importer also imported another machine and cleared it, vide B.E No.109908 dated 12 October 1989, after paying customs duty of Rs.9.52 lakhs. According to an Intelligence Report sent by the Deputy Collector to the Collector in October 1990, the importer should have paid duty amounting to Rs.23.37 lakhs according to the correct classification. This resulted in an evasion of duty amounting to Rs.13.85 lakhs. Further action taken in the matter was not on record.

iii) Delay in confirmation of demands and in issue of detention notice

In 62 cases the time taken between the date of issue of show-cause notice and the date of confirmation ranged from 8 to 84 months as detailed below:

Time taken	Number of cases
6 to 9 months	6
9 to 12 months	5
1 to 2 years	30
2 to 3 years	8
3 to 4 years	8
4 to 5 years	4
5 to 6 years	Nil
6 to 7 years	1
Total	62

In 19 out of 62 cases, the time taken in issue of detention notice from the date of confirmation was upto three months cases, 3 to 6 months in 11 cases, 6 to 9 months in 3 cases more than 9 months in 5 cases.

iv) Loss of interest

There were no specific orders for levy of interest for the period of delay in depositing the amount of demands. In 7 cases wherein the demands were recovered, no interest was charged

and recovered for the period of delay. The total amount of notional interest worked out to Rs.3.77 lakhs in these cases.

Further, in one case, demand-cum-show cause notice was issued on 24 August 1991 asking the importer to deposit the customs duty amounting to Rs.6.59 lakhs as the goods imported were got cleared by presenting two forged challans dated 1 January1989 and 17 May 1989 for Rs.5.69 lakhs and Rs.0.90 lakh respectively. The cases were adjudicated on 30 December 1991 and a penalty of Rs.one lakh was imposed on the importer. The amount of duty was deposited on 9 March 1991 without interest. The amount of notional interest at the rate of 18 per cent, from the date of presenting the forged challans to the date of depositing the amount of duty, works out to Rs.2.52 lakhs.

(F) Vizag Collectorate

In the case of an importer who imported a second hand paper machine with accessories and spares from U.K., it was found that a demand of Rs.59,715.00, confirmed during September 1989, towards differential duty leviable on finalisation of provisional assessment, could not be realised so far. The validity of the bank guarantee for Rs.20,000 executed by the importer had, however, expired on 8 December 1984 and there was no renewal. As there was no response from the importer a detention notice was issued to all Custom Houses but this did not serve the purpose. As a last resort, a certificate under Section 142(1)(C) of Customs Act, 1962, was issued to the concerned District Collector in October 1991. The realisation particulars thereon are yet to be received. When the lapse of the department to get the bank guarantee renewed resulting in non-realisation of the confirmed demand was pointed on 11 February 1992 the Assistant Collector accepted the same and stated that a Special Watch Register has been opened to guard against such lapses in future. The matter was reported to the concerned Collector on 3 April 1992. Reply thereon has not been received (April 1992).

(G) Allahabad, Kanpur, Meerut and Patna Collectorates

i)(a) As per monthly Technical Report and other records maintained by the aforesaid Collectorates confirmed demands amounting to Rs.195.01 lakhs were pending realisation in 118 cases as on 30 September 1991. Out of the above, 4 demand cases involving Rs.44.33 lakhs have been stayed by the Supreme Court and CEGAT, New Delhi (one demand case of Meerut Collectorate involving Rs.0.45 lakh stayed by the Supreme Court and 3 demand cases of Allahabad Collectorate involving Rs.43.88 lakhs stayed by CEGAT). No action has been taken by the department for vacation of the stay orders granted by CEGAT.

(b) The delay in realisation of confirmed demands has resulted in loss of Rs.21.85 lakhs by way of notional interest at the rate of 18 per cent per annum for the period of pendency after close of the financial year in which the demands were confirmed.

ii) A test check of the records of Kanpur, Meerut and Patna Collectorates revealed that personal penalties amounting to Rs.140.92 lakhs in 3688 cases and redemption fines amounting to Rs.20.05 lakhs in 165 cases were pending realisation on 30 September 1991.

On the reasons for delay in recovering the sums being enquired in audit (January to March 1992), the department stated that pursuasive action had been initiated. No specific reasons for delay were given (April 1992).

(H) Indore Collectorate

i) Customs duty of Rs.7,55,243 and penalty of Rs.82,30,000 were recoverable in seven cases as a result of adjudication orders passed by the Collector during the years 1988-89, 1989-90 and 1990-91. No recovery particulars were found noted in 335-J Register maintained in the Collectorate. No systematic procedure was followed by the department for pursuance of recovery by evolving a uniform pattern of monitoring and control. This

resulted in delay in recovery of confirmed demands.

On this delay being enquired in audit (January and February 1991), the department stated (December 1991) that the concerned Assistant Collectors had been requested for recovery of the dues and payment particulars were awaited. This reply is not tenable for the following reasons:

(a) No systematic procedure had been followed for keeping an effective watch and pursuance of the recovery after noting the contents of the adjudication orders in 335 J Register with reference to any periodical return prescribed for the purpose.

(b) In some cases penalties were imposed on persons residing out of state (M.P). There was, however, nothing on record to indicate that any procedure was laid down for pursuance of recovery in such cases.

ii) Removal of goods from one warehouse to another warehouse is governed by section 67 of the Customs Act, 1962, read with Warehoused Goods (Removal) Regulations, 1963. As per Regulations 3 and 4, the person requesting removal of goods from one warehouse to another warehouse in different towns is required to execute a bond of a sum equal to the amount of import duty and the person executing the bond is required to submit a certificate issued by the proper officer at the place of destination that the goods have arrived at the place. In case there is a shortage, duty is to be paid on such shortage in terms of the bond.

In Indore Collectorate, a manufacturer of manmade filament yarn imported certain raw materials. The consignments, thereafter, were moved under bond from Bombay to be warehoused at Ujjain C.W.C. Customs bonded warehouse. It was noticed in audit (February 1992) that no customs duty was recovered in respect of shortages of imported goods observed at the time of rewarehousing. Non realisation of customs duty on such shortages was pointed out in audit on earlier occasions also but the department took the plea

that recovery of duty was subject to the jurisdiction of Assistant Collector (Customs) Bombay, with whom the party had executed the bond.

The scrutiny of records of the unit revealed that in each case of shortages, the assessee had filed a claim with the jurisdictional Assistant Collector for remission of duty under Section 23 of the Customs Act, 1962, endorsing a copy to the Assistant Collector (Customs) Bombay. It was, however, seen that neither the jurisdictional Assistant Collector took any decision over the claims for remission of duty nor did the Assistant Collector (Customs) Bombay initiate any action for recovery of customs duty under Section 142 of the Customs Act, 1962, even after a period of six to seven years.

On this being pointed out, the department stated (February 1992) that it was a matter of jurisdiction between both the Assistant Collectors. The fact, however, remains that inordinate delay in taking adequate steps for recovery of customs duty due to lack of co-ordination between the two concerned Assistant Collectors of Customs resulted in blocking of Government revenue to the extent of Rs.5,69,975 from the years 1984-85 to 1991-92.

The matter was reported to the Collector, Customs and Central Excise (March 1992); reply is awaited.

(J) i) Cochin Customs House

(a) A consignment of 32 packages of unprinted laminates, imported by a private limited company, was classified under heading 76.03/03(2) and assessed to duty accordingly. Subsequently, the department held that the material was classifiable as aluminium foil and assessable to duty at a higher rate. The party was served with a demand notice for short levy of Rs.2,71,000 in March 1980 and it was confirmed for Rs.2,52,309 in December 1981. The party went in appeal and as per orders of the Appellate Collector, a personal hearing was granted to the party and subsequently the short levy was confirmed at Rs.2,52,309 in January 1983. But no action was taken by the department for

recovery till a reminder was issued in August 1983. By then the company wound up and the party left the place. Inordinate delay on the part of the department to take timely action thus resulted in a revenue loss of Rs.2.52 lakhs.

(b) On ex-bond clearance of 2.1 tonnes of low density polyethelene based sheathing/insulation compound by a private company in May 1990, the department issued a demand notice for Rs.2,08,209 short levied, to the party in September 1990. On the request of the party, the department extended the time limit for remittance of short levy thrice upto 30 November 1991. The amount is still pending recovery for want of effective steps.

ii) Air Cargo Complex, Trivandrum

(a) A consignment of transducers was imported by a private company in May 1989. Internal audit department had pointed out a short levy of duty of Rs.11.21 lakhs in November 1989. A demand for this amount was issued on 4 December 1989 by the department. No further action was taken to realise the amount.

(b) A consignment of colour video monitor, video camera, video tapes and accessories imported by a Government Company in December 1989 was cleared duty free under notification no.70/81. This was objected to by I.A.D as consumer electronic items could not be considered as scientific and technical instruments or equipments under the said notification. A provisional demand for Rs.9.38 lakhs was issued in June 1990. The demand has not been finalised till date.

(K) Patna Collectorate

i) A total number of 124 cases of confirmed demands, involving Rs.21.56 lakhs, were pending recovery till 30 September 1991 and this has been included in Statement I.

ii)(a) Out of the 124 cases stated above, in 41 cases pertaining to the year 1987-88 and earlier years involving Rs.0.39 lakh relating to importation of oil cake and timber, Collector of Customs requested (November 1991) the Indian

Embassy at Kathmandu, Nepal, to intimate action taken to recover arrears of demand as the importers possessed the address of Nepal. Reply has not been received.

(b) In respect of 69 cases of 1989-90 relating to importation of kachcha bristles (hog/pig hair) involving Rs.19.54 lakhs the demands were stated to be under process of realisation.

(c) Details of 1 case for 1987-88 and earlier years involving Rs.0.17 lakh and 10 cases relating to 1988-89 involving Rs.1.04 lakhs in respect of the Assistant Collector, Motihari were not made available to audit.

6. Cases pending adjudication

On the adverse comments of the Public Accounts Committee in their 84th Report (1981-82) 7th Lok Sabha, the Central Board of Excise and Customs issued (17th January 1983) instructions for expeditious finalisation of pending demands, by prescribing time bound programme that the demand cases were to be decided within a maximum period of six months from the date of issue of show cause cum demand notices. The cases which could not be adjudicated within this period, were to be reported to the Collector with precise reasons for non-adjudication. Thereupon, the Collector/Additional Collector/Deputy Collector were to prescribe a suitable time limit by which time the Assistant Collector should adjudicate the cases. If still the cases could not be decided within such extended limit, the matter had to be further examined to consider the reasons for delay and further directions were to be issued to the Assistant Collector.

(A) Calcutta Customs House

It was noticed that adjudication of 741 cases involving duty of Rs.17,340.26 lakhs remained pending for decision as on 30 September 1991 for varying periods. The department could not, however, furnish the yearwise details of the said cases. Abnormal delay in adjudication had contributed in these cases to undue financial accommodation to the parties. The Government also

sustained a loss of revenue, in the shape of notional interest to the tune of Rs.4,111.55 lakhs, on the financial accommodation in respect of Rs.14,417.56 lakhs involved in the cases pending recovery for more than six months .

It was noticed that only the total no. of cases which could not be adjudicated within 6 months were reported monthly to the Collector without indicating the duty involved in each case and the period for which each case remained unadjudicated. The relevant files did not also contain any order of the competent authority fixing the time limit for adjudication in each case.

A few interesting cases with substantial duty effect are high lighted below:

i) One importer imported V-Bix-400 copying machinery in May 1986 and cleared the goods free of duty under a notification issued in August 1976. I.A.D observed in September 1986 that exemption allowed in the case was irregular. Accordingly the department issued a show cause cum demand notice in October 1986, for payment of short levy of duty amounting to Rs.1,16,409.79. It was pursued through reminders issued in January 1987 and July 1991. The time lag between January 1987 and July 1991 was attributed to misplacement of the relevant file. No confirmed demand notice was, however, issued in this case nor did the party respond to the show cause cum demand notice. Consequently, the demand remained unadjudicated till date (March 1992).

ii) In the case of an import of `Heating Tube Inserts', at an Air Cargo Complex, the department issued, in August 1984, a show cause-cum demand notice for payment of short levy of duty of Rs.44,992.73 and the same was subsequently confirmed in November 1987. Party having not tendered the payment, the notice u/S 142 of the Customs Act, 1962, was issued in March 1988. In pursuance of an appeal preferred by the importer, the Appellate Collector set aside the demand notice in June, 1988, for denovo decision of the case. The department asked the importer between September 1988 and January 1990 to submit the

relevant catalogue/drawing/technical write up etc. In August 1991 the department issued a reminder to the party with the observation that if nothing was heard from them by 30 August 1991 the case would be decided on merits without further reference to them and they would be liable for payment of duty amounting to Rs.44,992.73. Although more than 3 years have elapsed since then, the case has not yet been adjudicated.

(B) Gujarat and Saurashtra ports

i)(a) In these ports, in the following cases there has been an abnormal delay in adjudication which has resulted in not only non realisation of Government dues but also led to substantial financial accommodation to the assessee/importers in the shape of non levy of interest.

Year	Cases decided between six months to one year		Cases decided between one to two years		Cases decided between two to three years		Cases decided beyond 3 years		Total (Rupees in lakhs)	
	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.
1988-89	-	-	-	-	-	-	-	-	-	-
1989-90	191	6.23	-	-	-	-	1	172.58	192	178.81
1990-91	80	1.26	-	-	-	-	-	-	80	1.26
1991-92 upto 9/91	-	-	-	-	-	-	-	-	-	-
Total	271	7.49	-	-	-	-	1	172.58	272	180.07

It was also noticed that a list of cases which could not be decided/adjudicated within a period of six months by the Divisional Officers was not sent to the Collector and no suitable time limit had been fixed in these cases.

(b) Position of cases pending for decision as on 30 September 1991 in respect of Collectorate, Kandla, is as under:

Cases	Period	No.	Amount (Rupees in lakhs)
i)	Less than six months	95	611.55
ii)	Six months to one year	489	464.55
iii)	One to two years	11	11.58
iv)	Two to three years	1	1.20
v)	Above three years	3	10.51
	Total	599	1099.39

In this port also the list of cases which could not be adjudicated within six months by the Divisional Officer was not sent to the Collector of Customs, Kandla. No suitable time limit was fixed in respect of these cases.

ii) A show cause cum demand notice, issued on 30 November 1988, by the Deputy Collector of Customs, Customs House, Kandla, for evasion of duty of Rs.7,80,132 by way of undervaluation of imported PDPE, against M/s Gujarat State Export Corporation, Gujarat, Ahmedabad, was adjudicated by the Collector of Customs, Kandla, on 15 May 1991, confirming the demand of Rs.7,80,132 and imposition of penalty of Rs.3,00,000 on the party. The demand was confirmed after nearly two and half years. This has resulted not only in financial accommodation to the party and non recovery of Govt. revenue but also led to loss of Rs.3,80,746 by way of notional interest at the rate of 18 per cent per annum. The A.C Cus. I.A.D has replied that reply will be furnished shortly after verification of the records.

iii) A show cause cum demand notice was issued on 18 September 1990 against one importer by the Asstt. Collector, Customs, Kandla, for import of 200 tonnes of HDPE at the rate of US $ 750 pmt. C.I.F value was enhanced to US $ 1205 tonnes. The demand was adjudicated and confirmed by the Collector of Customs, Kandla, in March 1991 and accordingly Customs House, Kandla demanded Rs.14,18,941 duty difference at the rate US $ 1205 pmt. and penalty Rs.6,00,000 from the party on 26 March 1991.

It was noticed from the show cause notice that the Customs House, Kandla, was aware of the

price of the goods imported which was not less than US $ 1205 pmt., during investigation conducted between 5 October 1988 and 26 October 1988, but show cause notice cum demand was issued on 18 September 1990 i.e. after a delay of almost 2 years under Section 28 of the Customs Act, 1962, resulting in delay in adjudication and - consequential non realisation of Government revenue of Rs.5,07,764 by way of notional interest at the rate of 18 per cent per annum on Rs.20,18,941. The A.C- Cus I.A.D, Kandla, has replied that reply will be sent after verification of records.

iv) It was noticed from the register of show cause cum demand notices that in the following number of cases demand notices were issued after expiry of six months from the date of filing of bill of entry.

(Rupees in lakhs)

Year	Group-I		Group-II		Gr.-III		Group-IV		Group-V	
	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.
1987-88 and earlier years	12	19.75	3	11.27	-	-	3	13.75	1	5.83
1988-89	3	2.13	3	15.70	-	-	7	15.86	6	153.31
1989-90	-	-	1	3.75	-	-	9	12.93	3	41.60
1990-91	-	-	2	17.49	-	-	9	9.84	3	147.87
1991-92 (upto 9/91)	-	-	-	-	-	-	-	-	-	-
Total	15	21.88	9	48.21	-	-	28	52.38	13	348.61

Date of final assessment was not recorded in the register of demands and the case files were not made available to audit, therefore, audit could not verify the time barred cases.

The delay in issue of show cause cum demand notices has resulted in delay in adjudication and financial accommodation to the importers/exporters.

(C) Meerut, Allahabad and Patna Collectorates

The records in the aforesaid collectorates revealed that 59 cases involving duty of

Rs.3,213.64 lakhs were pending adjudication for more than six months as on 30 September 1991.

The pendency of the cases beyond six months was not reported to the concerned Collectors for fixing the time limit for disposal of the cases as required by the Board.

On the matter being pointed out in audit (January to April 1992), it was reported that the cases could not be adjudicated for want of certain information.

Further progress towards finalisation of the cases is awaited (April 1992).

(D) Jaipur Collectorate

i) It was seen in audit that against 29 show cause cum demand notices pending as on 1 April 1988 and 31 issued by the department during the period from April 1988 to September 1991, adjudication orders in respect of three cases only were passed within the prescribed period. Two cases were decided over a period of two to three years and another two cases between six months to one year, leaving a balance of 53 cases involving duty amounting to Rs.235.10 lakhs.

Age wise position of cases pending as on 30 September 1991 is as under;

Sl. No.	Period	No.	Amount (Rupees in lakhs)
1.	beyond three years	30	158.13
2.	two years to three years	5	31.84
3.	One year to two years	12	35.84
4.	Six months to one year	2	6.02
5.	less than six months	4	3.27
	Total	53	235.10

ii) Delay in adjudication by the Assistant Collectors in 46 cases not only resulted in non realisation of Govt. revenue amounting to Rs.204.35 lakhs but also led to substantial financial accommodation to the importers and resulted in loss of revenue in the shape of non

levy of notional interest which works out to Rs.109.12 lakhs calculated at the rate of 17.50 percent per annum.

iii) Three cases in which the Collector/Additional Collector, Customs, Jaipur could not finalise adjudication within the prescribed period resulting in financial accommodation to the importers and loss of interest are commented below:

a) In the case of a hundred per cent Export Oriented Unit which failed to discharge the export obligations, the unit was allowed to withdraw from the E.O.U scheme on 26 May 1989 by the Ministry of Industry, Department of Industrial Development, subject to payment of all customs and excise duties on the imported capital goods and indigenous goods (raw material and consumables). When the manufacturer failed to pay customs duty amounting to Rs.14.63 lakhs, the department seized the machinery and goods of the unit on 22 September 1989 and served a show cause cum demand notice on 15 March 1990, but the case remains to be adjudicated, resulting in non recovery of duty amounting to Rs.15.82 lakhs and notional interest of Rs.2.89 lakhs.

The matter was reported to the department on 11 March 1992. Their reply has not been received.

b) Another importer imported 740 kilograms rough cubic zirconia, uncut and unset, as per invoice No.GB/185/89 dated 8 September 1989, from Hong Kong through Air Cargo Complex, Jaipur and filed a bill of entry dated 22 September 1989 for clearance. The goods were declared as rough cubic Zirconia (III grade-inferior) and CIF value was mentioned as 15 US dollars per kilogram. The goods were assessed to duty accordingly. However, subsequently, a case was made out for undervaluation and on the value of the goods at an average price of 65.8 U.S dollars per kilogram the differential duty amounting to Rs.6,54,314 was worked out and a show cause cum demand notice issued on 24 March 1990 by the Collector. Demand case has, however, not been adjudicated so far (March 1992) resulting in non-recovery of duty of

Rs.6.54 lakhs and notional interest of Rs.1.17 lakhs from 24 September 1990 to 30 September 1991.

7. Loss of revenue due to time bar

In respect of cases where any duty of customs has not been levied or short levied or erroneously refunded, provisions of time bar as laid down under Section 28 of the Customs Act, 1962, apply.

The Supreme Court in the case of union of India and, others Vs- Madhumilan Syntex Pvt. Ltd. (1988(35)ELT-349(S.C) has held that unless the show cause cum demand notice was issued, the department was not entitled to the recovery of any dues.

Accordingly, to safeguard revenue the Board, vide letter F.No.67/17-88 (CX.2) dated 18 August, 1988, have observed that the field officers must take due care of the legal formalities in the process of realisation of the dues and revenue should not suffer simply for want of fulfilment of the provisions of law.

(A) Bombay Customs House

i) A scrutiny of the relevant registers maintained in the department for pursuing voluntary requests for revenue due from importers do not indicate the outstanding items of the previous years pending recovery. Hence, from the registers pertaining to the years from 1987 to 1991, it was observed that around 576 cases involving short levy of duty of Rs.821.06 lakhs (approx.) are outstanding for recovery as on 30 September 1991. Of these, 28 cases involving short levy of Rs.23.54 lakhs relating to the period from 1987 onwards pertain to the objections raised by Central Revenue Audit.

ii) On a test check of certain entries in the voluntary less charge registers pertaining to the years 1987 to 1990, it was noticed that five cases involving short levy amounting to Rs.14.76 lakhs (approx.) noted therein were due to late raising of the objections by internal audit and four cases amounting to Rs.7.82 lakhs (approx.) were due to late raising of demands by the groups though the

objections were issued within the time limit of 6 months.

iii) In four cases of import of `both sides coated art paper', `cellulose acetate' and `P.V.C suspension grade', the less charge demand cases were closed, accepting the orders in appeal in favour of the importers on the ground of insufficient documentary evidence to show that the demand notices were actually served in time. The total loss of revenue due to the negligence of the department in serving the notices in time amounted to Rs.1.25 lakhs.

(B) Calcutta Customs House

Scrutiny of the files produced to audit revealed four time barred cases involving loss of revenue to the tune of Rs.84,317.87. Out of these, in three cases involving revenue of Rs.53,277.84, the parties expressed their unwillingness to honour the voluntary payment demand. In another case involving revenue of Rs.31,039.00, the short levy was pointed out by I.A.D in March 1987 on clearance from a bonded warehouse in November 1986. The department, however, instead of issuing show-cause cum demand notice on that account within the time limit, issued voluntary payment demand notice in July 1987. The relevant file was, thereafter, lost. A part file was reconstructed and a reminder was issued in October 1987. The department also did not take any further action in this regard.

(C) Madras Customs House

i) In the course of review of the relevant registers maintained in I.A.D and various appraising groups it was noticed that in 62 cases demand notices for Rs.31.18 lakhs were not issued as the time limit for the issue of demand notices under Section 28 had expired in these cases. Requests for voluntary payments were made, instead. However, these requests have not yet been honoured (March 1992).

ii) As per the recommendation of the P.A.C in their 84th Report (1981-82) the bills of entry have to be forwarded to the Customs Receipt Audit

wing within 120 days from the date of assessment for raising the objections within the time limit. On a test check of the assessments made for the period from September 1986 to March 1988, it was noticed that in 19 cases documents were forwarded to the statutory audit after 120 days from the date of assessment. Consequently, the objections could be issued only after the expiry of the time limit of six months. Therefore, demands for Rs.27.83 lakhs could not be issued under Section 28 of the Act and only requests for voluntary payments were issued which are yet to be honoured by the importers (March 1992).

(D) Delhi Customs House

i) In 33 cases involving Rs.69.94 lakhs demand cum show cause notices were issued after the expiry of the prescribed period of six months from the date of payment of duty. The extent of delay ranged upto 40 months. Demands in 10 cases were set aside by the Collector of Customs (Appeal) when representations against the show cause notices were made by the importers. This has resulted in loss of revenue amounting to Rs.6.09 lakhs.

ii) In 3 cases, involving an amount of Rs.2.46 lakhs, the Collector of Customs asked the Assistant Collector to re-issue the demand-cum-show cause notices after invoking the provisions under Section 142 of the Customs Act, 1962, but the needful was not done.

iii) Out of the remaining 20 cases, there were stay orders in 3 cases from CEGAT/High Courts, one case was pending with CEGAT and in 16 cases, no action was taken after issue of detention notices/adjudication orders.

(E) Jaipur Collectorate

An importer took clearance of components of instruments, imported through Bombay Port, from bonded warehouse, Kota, during June 1982 to December 1983 through 17 ex-bond bills of entry. On the basis of objections raised by Internal audit at Bombay and communicated to the Unit by post under intimation to the department, the

Assistant Collector, confirmed the demands vide orders issued between 28 September 1986 and 19 February 1987. The amount of demand in respect of 15 cases worked out to Rs.9,35,967. (The details of two cases were not available on record). The importer, however, filed appeals against the above decisions taking the plea that the demands were time barred. The Collector (Appeals), New Delhi, vide order dated 9 December 1987, set aside the orders and remanded the cases for denovo adjudication after taking into account the above plea of the appellant and giving an opportunity to the importer to explain the case in person. Further action taken by the department during last four years was not on record. Revenue amounting to Rs.9.36 lakhs, meanwhile, continues to be locked up.

The matter was reported to the department on 9 March 1992 and again on 3 April 1992; reply has not been received.

8. Non levy of interest on arrears of duty paid in instalments

(A) Bombay Customs House

Under the provisions of the Customs Act, 1962, duty assessed on the goods is to be paid before an order for `out of charge' is given by the customs authorities and then only the imported goods are to be released. There is no provision for payment of duty in instalments in the Customs Act of 1962.

While citing P.A.C's comments in its 151 report (1988-89) on duty accepted in instalments, without charging of interest, thereby granting financial accommodation to the assessee, audit enquired as to whether such practice was being followed in the Customs House. It was reported that the department did not follow such a practice and a `nil' statement was furnished by them.

i) On a test check of records, it was, however, noticed that a consignment of second hand plant and equipment involving duty of Rs.345.12 lakhs was allowed to be cleared in January 1989, on part payment of duty of Rs.50 lakhs, with a condition

that the remaining amount of duty would be paid by the importer in four equal instalments with interest at 12 per cent starting from May 1989. This was allowed with the concurrence of Ministry of Finance, Department of Revenue, New Delhi. However, only one instalment due in May 1989 was paid by the party in June 1989. Remaining instalments along with interest thereon remain unrecovered.

In response to audit observation (March 1992), the department replied (March 1992) that the importers were personally asked to pay the balance of duty and interest which was disputed by them on the ground that the plant and machinery were damaged and pilfered and that the goods be allowed to be re exported under section 74 of the Customs Act, 1962. The request of the importer was stated to have been rejected by the department (September 1990). No action seems to have been taken thereafter, to enforce the Personal Deposit Bonds also. The customs duty amounting to Rs.2,21,34,191 plus interest thereon amounting to Rs.81,52,660 is still outstanding for recovery (March 1992).

ii) In a case of import of parts of `Haul Pack' made during February and March 1988, by a Public Sector Undertaking, ten demand notices involving Rs.74.50 lakhs were issued during February 1988 to March 1988 on account of misclassification. Except one demand notice for Rs.1.33 lakhs, on which an appeal was filed, all other demands totalling Rs.73.17 lakhs were confirmed and admitted by the importer in March, 1989. The importers' request for adjustment of Rs.73.17 lakhs against the drawback of Rs.92.45 lakhs due to them was acceded to in September 1989. Accordingly, an amount of Rs.30.07 lakhs was set off against a drawback amount due to the party. The balance of Rs.44.43 lakhs is yet to be recovered (January 1992). Recovery of sums due to Government by way of adjustment towards future drawback payments in instalments also resulted in financial accommodation to the importer. Reply of the department has not been received.

(B) Calcutta Customs House

The department did not maintain any records in respect of cases where the importers paid duty in instalments. Scrutiny of the files produced to audit, however, revealed two cases where the Customs House, Calcutta, realised payment of customs duty in instalments without any interest. The duty involved was Rs.31,35,961 in aggregate. In both the cases, the importer paid instalments on their own without any application and there was nothing on record to the effect that the department had formally permitted them to do so.

For payment of duty in instalments in these cases, Government sustained loss of revenue in the shape of interest to the tune of Rs.3,22,105 calculated at the rate of 18 per annum from relevant dates.

9. Non realistion of duty due to stay orders from courts

Though in their 170th Report of 7th Lok Sabha, the PAC had recommended the formation of a separate cell to monitor the legal cases for proper presentation and revenue realisation, the department has not been having the details of court cases decided, total amount of revenue blocked up and subsequently realised on vacation of stay orders, judgements etc.

The cases which are pending in various courts/tribunals on account of disputes arising out of classification, valuation, rate of duty etc, in some of the Custom Houses/Collectorates are as follows:

i) In the Bombay Customs House, as against the total number of 3380 cases in respect of which appeals have been filed during the years 1988-89 to 1991-92, the department had moved the courts for vacation of stay only in 3195 cases, of which, the department succeeded in getting the stay vacated in 3110 cases. It was seen during test check of six Appraising groups that in 930 court cases alone, the revenue blocked on account of pendency in courts worked out to 1929.46 lakhs with the backing of bank guarantee of Rs.719.04

lakhs. The position in respect of the remaining cases is not readily available.

In the same Customs House, 83 cases of appeals were filed with CEGAT during the years 1988-89 to 1991-92 while the department succeeded in getting the stay vacated in 9 cases, for the same period.

ii) In respect of Calcutta Customs House, the cases under the `stay orders' of CEGAT for the period 1988-89 to 1991-92 (upto 30 September 1991), were stated to be 144, out of which the department moved for vacation of stay orders in 143 cases but they succeeded in getting the stay vacated only in 20 cases. The department could not indicate the position of 123 cases nor were the relevant files produced to audit. In the lone remaining case out of 144, where the department had not moved for vacation of the stay orders, the stay order of CEGAT was granted with the direction for disposal by special branch of CEGAT at Delhi. It was seen that an amount of Rs.14.53 lakhs was pending realisation in that case.

In the Custom Houses/Collectorates in Gujarat/Saurashtra ports, 21 and 2 cases were pending with CEGAT and Appellate Collectors respectively for the period 1987-88 to 1991-92 and the amounts involved in litigation were Rs.152.99 lakhs and Rs.126.33 lakhs, respectively.

In Delhi Collectorate, 10 cases were reported to be pending in the Tribunal/High Courts as on 30 September 1991, involving duty demand of Rs.23.61 lakhs.

10. Other irregularities

(A) Calcutta Customs House

i) Delay in finalisation of provisional assessment

A consignment of Brass Dross (18,890 tonnes) of CIF value Rs.1,15,705.92 was imported in February 1987. The department assessed the goods provisionally, subject to the test report against a personal bond valid upto January 1988. The test

report received in March 1987 revealed that the goods were Brass-Waste and were chargeable to a higher rate of duty. But the department issued the `demand-notice' nearly a year later in February 1988 for Rs.62,337.00, followed by reminders issued in June, December 1988 and January 1990, but no reply from the party was received. The party did not also turn up for the personal hearing fixed by the department in January 1990 and July 1990. The department then issued the confirmed demand letter in March 1991. The same came back to the department with the postal remark "left without address". No further action was taken to trace the party and the amount is yet to be realised especially since no bank guarantee had been secured from the party for provisional assessment to safeguard the Government revenue. Even the personal bond obtained had expired before initiation of the proceedings for finalisation of the provisional assessment.

ii) Non enforcement of CEGAT's order

In an appeal against a confirmed notice issued in August 1987 for payment of short levy of duty amounting to Rs.9,09,882.68, CEGAT granted a stay order in the case in July 1989 and directed the party to deposit 25 per cent of the amount demanded. It was seen that the party deposited only Rs.1,13,735.33 in December 1989 as against Rs.2,27,470.00. The department neither realised the short fall of Rs.1,13,735.33 nor pursued the case further.

Statement of facts in this connection was issued on 24 February 1992. Reply has not yet been furnished by the department.

(B) Madras Customs House

A private limited company imported capital goods, spares and raw materials etc., during 1985, through two major ports for its 100 per cent export oriented units (EOU) and deposited them as "bonded goods" without payment of duty. As the importer could not complete its export obligation the facility extended to the 100 per cent EOU was withdrawn as directed by the Government in their letter dated 1 January 1987. A notice of demand

for Rs.6,48,47,003 towards duty and interest was issued on 24 September 1991 but no further action has been taken to recover the amount (March 1992).

To sum up, the review indicates that though the Customs Act provides for a time limit for issuing the demand notices and the executive instructions issued by the CBEC/Ministry of Finance require that effective watch must be kept on both raising of demands as well as the recovery of the dues, the conclusions to be drawn from the study are that-

i) the demands, though raised, were not always within the time limit;

ii) there were inordinate delays in adjudication of the demand notices ranging upto fourteen years;

iii) the confirmation of the demand notices was not always, within a reasonable time limit, followed by steps to recover the dues by either enforcement of bond/bank guarantee or certificate action under Section 142 etc.;

iv) no specific time limit is laid down under Section 142 of the Act as to the period within which -

a) the detention notices must be issued,

b) certificate action for recovery through the district collectorates must be initiated, etc.

v) no sustained efforts have been made to ensure speedy vacation of stay orders granted by CEGAT/Courts in order to realise the revenue locked up for years, in many cases.

vi) Finally, it was also noticed that control registers were not maintained properly to monitor the progress of finalisation and recovery of demands. These registers were also not reviewed periodically, as per the executive instructions issued by the Central Board of Excise and Customs.

The matter was referred to Ministry of Finance in November 1992; their reply has not been received (December 1992/January 1993).

Statement I

Recovery of demands

Sl. No.	Collectorate/ Customs House	Outstanding demands as on 30 September 1991 No. of cases	Amount of duty
			(Rupees in lakhs)
1.	Bombay (Sea & Air)	*2,661	2,179.36
	Goa	21	14.77
	Pune	98	361.54
2.	Calcutta	1,018	3,882.00
3.	Madras	5,078	1,109.04
	Trichy	4,254	183.40
	Coimbatore	2	15.23
	Guntur	11	731.81
4.	Delhi	873	2,881.80
5.	Ahmedabad (Prev.& C.Ex.)	1,889	8,378.96
	Rajkot	5	24.33
	Kandla	63	962.61
6.	Cochin (including air cargo Trivandrum)	257	188.96
7.	Vizag	37	158.59
8.	All other Collect-orates/Ports	4,316	814.62
	Total	20,583	21,887.02

* Figures from the year 1987-88 onwards only.

Statement II

Abnormal delay - Adjudication

Sl. No.	Collectorate	Pending finalisation more than 6 months	
		No. of cases	Amount of duty
			(Rupees in lakhs)
1.	Bombay (Sea & Air)	2,127	2,668.54
	Goa	-	-
	Pune	12	534.97
2.	Calcutta	676	14,417.56
3.	Madras	-	-
	Trichy	-	-
	Coimbatore	-	-
	Madurai	-	-
4.	Delhi	373	457.23
5.	Ahmedabad (Prev.& C.Ex.)	60	1,026.36
	Rajkot	160	670.02
	Kandla	540	1,070.74
6.	Cochin	344	300.19
7.	Vizag	21	1,576.31
8.	All other Collect-orates	274	3970.85
	Total	4,587	26,692.77

Note: In addition to the above, 1214 cases involving an amount of Rs.7,753.11 lakhs has been pending for less than six months (as on 30 September 1991) in all the Customs/Central Excise Collectorates.

Statement III

Time bar cases

Sl. No.	Collectorate	Upto and From 1987-88 to 1991-92 (upto 30 Sept. 1991) No. of cases	Amount of duty
			(Rupees in lakhs)
1.	Bombay (Sea & Air)	*576	821.06
	Goa	2	1.65
	Pune	-	-
2.	Calcutta	465	598.29
3.	Madras	62	31.18
	Trichy	-	-
	Coimbatore	-	-
	Madurai	-	-
4.	Delhi	-	-
5.	Ahmedabad (Prev.& C.Ex.)	-	-
	Rajkot	-	-
	Kandla	-	-
6.	Cochin	-	-
7.	Vizag	-	-
8.	All other Collect-orates	2	0.58
	Total	1,107	1,452.76

* Figures for Bombay is from 1987-88 only

Statement IV

Cases stayed by Court/Tribunal

Sl. No.	Collectorate	1988-89 to 1991-92 (upto 30 Sept. 1991)		Cases got vacated by the department	
		No. of cases	Amount of duty	No. of cases	Amount of duty
			(Rupees in lakhs)		
1.	Bombay (Sea & Air)	3,380	N.A	3,110	104.56
	Goa	3	-	-	-
	Pune	-	-	-	-
2.	Calcutta	144	-	20	-
3.	Madras, Trichy, Coimbatore and Madurai	43	-	-	-
4.	Delhi	27	-	-	-
5.	Ahmedabad (Prev.& C.Ex.)	7	-	1	0.25
	Rajkot	3	-	2	11.50
	Kandla	18	-	-	-
6.	Cochin	7	-	-	-
7.	Vizag	16	-	-	-
8.	All other Collect-orates/Ports	15	-	-	-
	Total	3,663	-	3,133	116.31

B. CENTRAL EXCISE

Introduction

As per provisions of Section 11A of the Central Excises and Salt Act, 1944, when any duty of excise has not been levied or has been short levied or short paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with duty which has not been levied or paid or which has been short levied or short paid or erroneously refunded, requiring him to show cause why he should not pay the amount specified in the notice.

Where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of the Act or Rules, the Collector, Central Excise may demand duty within five years.

The Asstt. Collector of Central Excise or the Collector, Central Excise, as the case may be, shall, after considering the representation if any made by the person on whom show cause notice is served, determine the amount of duty due from the person and thereupon such person shall pay the amounts so determined.

2. Scope of audit

The scope of audit was primarily designed to test check the efficiency of the system of issue of show cause-cum demand notices in case of duty not levied/short levied or erroneously refunded, confirmation of demands and collection thereof. In particular the following aspects were seen:-

i) Whether show cause-cum demand notices were issued within the prescribed period;

ii) whether the show cause-cum demand notices were finalised promptly;

iii) whether demands confirmed were recovered promptly;

iv) whether there was any loss of revenue to government, due to non observance of legal provisions, leading to demands becoming time barred;

v) whether action was taken by the department in time for vacation of stay granted by Courts for recovery of government revenue.

3. Highlights

A review of records relating to 34 collectorates for the period from 1988-89 to 1991-92 (up to September 1991) was conducted during 1991-92. The results of review are contained in the succeeding paragraphs, which high light the following :-

- **Appropriate action was not taken for recovery of demands for duty confirmed by the department. In 48265 cases demands for duty amounting to Rs.2,820.68 crores confirmed by the department were pending recovery (September 1991) (Para 4).**

- **In 15268 cases involving Rs.2,140.93 crores show cause-cum demand notices were not adjudicated for more than six months (Para 5).**

- **Failure to issue show cause-cum demand notices within the limitation period, resulted in loss of revenue of Rs.39.76 crores in 293 cases (Para 6).**

- **Non levy of interest on arrears of central excise duty paid by the assessees in instalments amounted to Rs.46.31 crores in four cases alone (Para 7).**

- **In 2327 cases (1988-89 to September 1991) revenue of Rs.560.50 crores was blocked due to stay granted by various Courts/Tribunals, out of which in 175 cases involving Rs.52.04 crores only stay was got vacated by the department (Para 8).**

- **Miscellaneous irregularities include non raising of demands, (Rs.10.67 crores), loss of revenue due to delay in filing appeal and improper maintenance of control register (Para 9).**

4. Inordinate delay in recovery of confirmed demands

On confirmation of demands by the adjudicating authority for duty not levied, short levied or erroneously refunded, the assessees are required to pay the dues. In case the assessee fails to make the payment, the procedure laid down in Section 11 of the Central Excises and Salt Act, 1944 for recovery of the dues, is to be followed which lays down that the officer empowered by the Central Board of Excise and Customs to levy such duty or require payment of such dues, may (i) deduct the amount so payable from any money owing to the person or (ii) recover the amounts by attachment and sale of excisable goods belonging to such person and (iii) if the amount is not so recovered he may prepare a certifcate signed by him specifying the amount due from the person, and send it to the Collector of the District where such person resides or conducts his business for recovery as arrears of land revenue.

A review of the records revealed that a large number of demands confirmed by the department were pending recovery. The position at the close of 1988-89 to 1991-92 (upto September 1991) is indicated below. Collectorate-wise position is given in statement I.

Year	No. of cases	Amount in crores
1987-88 and earlier	29799	1229.37
1988-89	33612	1456.65
1989-90	37815	1754.18
1990-91	43605	2485.43
1991-92 (up to Septmeber 1991)	48265	2820.68

It would appear that the position of confirmed demands pending recovery has almost doubled at the close of September 1991 as compared to the position at the close of 1988-89.

Appropriate action was not taken for recovery of confirmed demands. Some of the cases are illustrated below :-

(a) An assessee in Calcutta II collectorate manufacturing, inter alia, Railway wagons did not include the value of free supply items like Axle, boxes etc., for payment of duty on wagons. Accordingly a dispute arose between the department and the assessee. The assessee went in appeal before Supreme Court where it was decided on 16 July 1991 (ECR page 289 of 15 August 1991) that value of free supply items would be included in the value of railway wagons. Therefore, the department raised demand of Rs.13.14 crores for the period from 1 March 1979 to November 1986 but the duty demanded was not realised even after the judgement of the Supreme Court (16 July 1991).

The matter was pointed out to the department in audit (October 1991); reply has not been received.

(b) A manufacturer of Tread Rubber and other products in Belgaum collectorate removed such manufactured goods without payment of duty as if the production related to 13 (thirteen) exempted dummy units. Such irregular removal of goods pertaining to the period from April 1981 to September 1985 resulted in non levy of duty of Rs.2.86 crores vide adjudication order dated 25 August 1986. A writ petition filed in the High Court of Karnataka by the manufacturer was dismissed in Novmeber 1990. The department took up the matter of recovery of duty in December 1991 after a lapse of one year with the assessees' bank. The department, however, did not take any action under rule 230 or under section 11 with the Collector of District for realisation of revenue.

This was brought to the notice of the department (February 1992). Their reply has not been received (June 1992).

(c) In respect of an assessee manufacturing paper and paper board in Bolpur collectorate several demands aggregating to Rs.2.81 crores were confirmed by the adjudicating authority for the period from 28 June 1979 to 7 November 1986. The manufacturer had executed bank guarantee for Rs.47.49 lakhs out of total demand of Rs.2.81 crores. In the meantime the factory was closed on 31 October 1983 and the jurisdictional Assistant Collector lodged a claim for Rs.2.33 crores to the official liquidator appointed by the High Court of Calcutta on 1 August 1990 to recover the outstanding government dues. But the liquidated unit had not left sufficient assets to meet the dues on account of central excise duties. Inordinate delay in recovery of Rs.2.33 crores was pointed out in audit in August 1991.

The department while not admitting the objection contended (November 1991) that the adjudicating officer passed order on 28 June 1979 with direction to revise the amount so demanded. Accordingly the Range Officer submitted revised calculation on 18 December 1982 for issuance of revised adjudication orders. The party then filed an appeal before the collector (Appeals) and subsequently to the appellate tribunal where the same was pending. In the mean time the factory was closed and the Assistant Collector lodged a claim to the official liquidator on 1 August 1990. It was further stated that the action under section 11 could not be enforced as the matter was under dispute and the decision from the highest authority was pending. The assets of the company were sold by the order of the High Court, Calcutta and the purchaser was not liable for payment of the dues of erstwhile company.

The department's reply is not tenable on the following grounds :-

i) The adjudicating authority passed order on 28 June 1979 to revise the calculation and the Range Office took three years time just to calculate the revised demand which proves inordinate delay in taking prompt action for recovery of government money;

ii) the department did not take initiative to move the case before the Tribunal against the appeal filed by the manufacturer.

iii) the department lodged claim for Rs.2.33 crores to the liquidator on 1 August 1990 when no possibility of recovering the amount due to government was feasible. Had effective steps been taken from time to time as soon as the demand was confirmed, government dues of Rs.2.33 crores could have been recovered.

(d) A show cause notice was issued (13 March 1987) to a manufacturer of cigarettes in Bangalore collectorate demanding a differential duty of Rs.1.20 crores on 10,47,654 packets of cigarettes of a particular brand cleared during the period from December 1985 to September 1986. The demand was confirmed by the Collector on 12 August 1988 alongwith a penalty of Rs.1.20 crores. The assessee filed an appeal against the order, before CEGAT, Madras (August 1988). The CEGAT, Madras in their order dated 25 January 1989 transferred the case to Special Bench, CEGAT, New Delhi subject to a predeposit of Rs.20 lakhs by the assessee, which was deposited by the assessee.

An advocate was engaged by the department to conduct the above case vide Government of India, Ministry of Finance, Department of Revenue, New Delhi letter dated 6 June 1989. An application for early hearing was filed by the Chief Departmental Representative, New Delhi on 20 March 1991, as the amount involved exceeded Re.one crore. The application came up for hearing on 6 June 1991 but was adjourned to 15 June 1991 as none appeared for the appellants. Meanwhile the advocate submitted his resignation to all his briefs of Government of India (12 June 1991). CEGAT, New Delhi in their order dated 3 September 1991 rejected the application of the department for early hearing (20 March 1991) as they were not able to get any response as to whether the department was interested in pursuing the application or not.

No stay had been granted on the assessees' petition but the government dues to the extent of

Rs.2.20 crores remained uncollected for a period of over 3 years and 6 months.

Reply to the statement of facts issued to Collector in March 1992 has not been received (April 1992).

(e) An assessee in Chandigarh collectorate (hundred per cent export oriented unit) engaged in manufacture of printed circuit boards (chapter 85) imported duty free raw material and cleared its product for domestic consumption/sale without payment of central excise duty. The department issued a show cause notice in January 1987 and the case was adjudicated after one and a half years. The demand for duty of Rs.141.56 lakhs including personal penalty of Rs.40 lakhs against the assessee was confirmed on 6 September 1988, when the unit had already closed down. On action under section 11 of the Central Excises and Salt Act, 1944, being initiated in December 1988, the revenue authorities confirmed the fact in February 1989 that the unit had been closed down for the last few years. The delay in taking appropriate action resulted in non recovery of duty of Rs.141.56 lakhs.

This was brought to the notice of the department in March 1992); reply has not been received.

(f) Ten assessees in Bhubaneswar collectorate manufacturing T.V. cabinets were availing SSI concession under a notification dated 1 March 1986. As they were not eligible to avail the SSI concession, the department confirmed demands for differential duty of Rs.73.14 lakhs for the period October 1987 to August 1990. The assessees went in appeal before the Collector (Appeals), who held the adjudication orders to be void. The department went in appeal to CEGAT, which held (November 1990) that the assessees were not entitled to SSI concession, and set aside the order of the Collector (Appeals). No steps were taken for recovery of demand.

(g) An assessee in Delhi collectorate, manufacturing T.V. cabinets was claiming SSI exemption under a notification dated 1 March 1986.

As the assessee had cleared goods exceeding Rs.1.50 crores during the year 1987-88, he was not entitled to SSI exemption during 1988-89. The department issued show cause-cum demand notice for Rs.46.46 lakhs in April 1988. The demand was confirmed in November 1989 but no action was taken for recovery of the confirmed demand.

(h) A unit in Jaipur collectorate manufactured yarn out of non cellulosic synthetic fibre and cleared the same under erstwhile T.I. 18(iii)(i) at a lower rate of duty instead of under T.I. 18(iii)(ii) chargeable to duty at a higher rate. The demand for Rs.57.59 lakhs was confirmed by the Assistant Collector on 20 March 1986 and the appeal filed by the assessee was rejected on 30 May 1990. The department failed to recover the demand by taking action under rule 230 of the Central Excise Rules, 1944. Meanwhile the unit was sold and the demand was still outstanding.

In case of another assessee in the same collectorate a demand of Rs.19.63 lakhs including penalties relating to the period August 1985 to 2 February 1988 was confirmed by the department in December 1989. The appeal of the assessee was also rejected by the CEGAT on 14 June 1990. No action has been taken to recover the demand by attachment of assets and excisable goods by the department and the demand was pending recovery (March 1992).

This was brought to the notice of the department (March 1992); reply has not been received (April 1992).

(i) A manufacturer of plywood in Belgaum collectorate manufactured and cleared veneered particle Board during the period from 1 November 1973 to 31 December 1977. Differential duty of Rs.52.16 lakhs was demanded on account of undervaluation in five different show cause cum demand notices issued during the period from October 1975 to January 1978.

The department, however, adjudicated the cases after a lapse of 11 to 13 years and demand for Rs.39 lakhs was confirmed (18 December 1989).

The abnormal delay in adjudicating the case resulted in non recovery of of Rs.39 lakhs for over 12 years.

On this being pointed out in audit (January 1992), the department confirmed the facts and stated that the matter was under correspondence with the Board (January 1992).

5. Delay finalisation of show cause-cum demand notice

The Public Accounts Committee in their 84th Report (1981-82) 7th Lok Sabha had adversely commented upon the inordinate delay in finalisation of adjudication proceedings in demand cases. Accordingly, the Board issued instructions (17 January 1983 and March 1986) that demand cases should be adjudicated within a maximum period of six months from the date of issue of show cause-cum demand notices and delays beyond that period should be brought to the notice of the Collector who would discuss the matter with the adjudicating officers to examine the possibility of their expeditious disposal.

A test check of records revealed that 15,268 cases involving duty of Rs.2,140.93 crores were pending adjudication (30 September 1991) for more than six months as per details given below (collectorate-wise position is given in statement II)

Period	No.	Amount (in crores)
More than 6 months but less than 1 year	4686	317.06
More than 1 year but less than 2 years	4241	1065.98
More than 2 years but less than 3 years	2272	108.33
More than 3 years	4069	649.56

Some of the cases of abnormal delay in adjudication of show cause-cum demand notices are given below:-

(a) Five assessees in Bombay I collectorate were issued show cause-cum demand notices in respect of `printing paste' manufactured and captively used by the textile manufacturers during the period December 1987 to February 1991 amounting to Rs.117.45 lakhs. The notices have not been adjudicated so far.

The delay in adjudicating the demand cases, resulting in blocking up of government revenue to the tune of Rs.117.45 lakhs was pointed out in audit (October 1991). The department stated (January 1992) that classification of `printing paste' is still under consideration and would be taken up for finalisation as soon as the matter is settled by the Board.

(b) An assessee in Aurangabad collectorate was clearing some of his final products under chapter X procedure without payment of duty. A show cause notice was issued in March 1990 by the department for reversal of the Modvat credit of Rs.43.91 lakhs availed on the inputs utilised on the goods cleared at nil rate of duty. The case has not been adjudicated so far (January 1992).

Reply to the statement of facts issued in March 1992; has not been received (April 1992).

(c) An assessee in Trichy collectorate was manufacturing ceramic products. He was also manufacturing plaster of paris moulds for captive consumption. The department issued show cause-cum demand notices, for Rs.39.23 lakhs on these moulds from March 1987 to February 1989 on the ground that these were tools and hence not eligible for exemption. But the show cause-cum demand notice has not been adjudicated by the department so far.

This was brought to the notice of the department in March 1992; reply has not been received (April 1992).

(d) A show cause-cum demand notice of duty for Rs.36.03 lakhs was issued to an assessee in Madurai collectorate in February 1986. The assessee filed a writ in High Court of Madras against the above demand and the same was dismissed in January 1989. Even after the

dismissal the department had not confirmed the demand to enforce recovery.

This was brought to the notice of the department in March 1992; reply has not been received (April 1992).

(e) An assessee in Bombay I collectorate manufactured and cleared in February 1983 television sets without payment of duty. A show cause-cum demand notice for Rs.14.72 lakhs for not paying central excise duty on the television sets valued at Rs.56.09 lakhs, was issued to him in May 1983. The case has not been adjudicated so far.

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

6. Loss of revenue due to time bar

As per provisions of section 11A of the Central Excises and Salt Act, 1944, the Central Excise Officer is required to issue show cause-cum demand notice for recovery of duty not levied or short levied or erroneously refunded within a period of six months. The notice may be issued by the Collector of Central Excise within five years where fraud, collusion or any wilful misstatments or suppression of facts is involved so that the demand may not be held as time barred.

The Supreme Court in the case of Union of India Vs. Madhumilan Syntax Private Limited & others {1988 (35) ELT 349 (SC)} has held that unless the show cause notice was issued under section 11A of Central Excises and Salt Act, 1944, the department was not entitled for recovery of any dues. Accordingly the Board in their letter dated 18 August 1988 issued instructions that the field officers must take due care of the legal formality in the process of realisation of the dues and revenue should not suffer simply for want of fulfilment of the compliance of Law. It was also emphasised that if cases are lost by the department and government revenue suffers because of non compliance of law, the concerned Collector should be held responsible for such lapse and such cases should be dealt with seriously.

A test check of records revealed that in 293 cases demands aggregating to Rs.39.76 crores for the period 1987-88 to 1991-92 (upto September 1991) were held as time barred because of non issue of show cause notices or delay in issue of show cause notices within the prescribed period; resulting in loss of revenue to government as per details given in the statement III.

Some of the cases are given below :-

(a) A show cause-cum demand notice for Rs.251.07 lakhs was issued by the department in December 1987 for the period January 1982 to January 1986 to an assessee in Bombay I collectorate on the ground that the assessee manufactured and cleared 'Hermetically sealed compressors' under the guise of repairs, without payment of duty and without following the prescribed procedure under the central excise rules.

The above show cause notice was transferred to Pune collectorate as per the Board's order (July 1987) and was confirmed by the Collector of Central Excise in November 1990. A draft show cause notice for the period February 1986 to November 1990 for the demand of Rs.1,542.08 lakhs was submitted to Collector (Judicial) Central Excise, on 3 January 1991 who observed that the proper course would have been to issue simple show cause notices covering the period of six months.

Accordingly the Superintendent of Central Exicse issued show cause-cum demand notice for the period from 1 August 1990 to 31 December 1990 only and no show cause-cum demand notice for the period 1 February 1986 to 31 July 1990 amounting to Rs.1,417.38 lakhs was issued due to operation of time bar.

It would appear that the earlier demand for the period from January 1982 to January 1986 was confirmed for the extended period upto 5 years whereas the same treatment was not given in respect of demand for the latter period.

The statement of facts was issued to the department in December 1991; reply has not been received (April 1992).

(b) A manufacturer in Bolpur collectorate of "Ultra Marine Robin Blue" cleared it in small packs of 1 Kg. and 100 gms. for domestic use on payment of duty at the rate of 10 per cent ad valorem classifying the product under sub heading 3206.19. As the product was rightly classifiable under 3212.90 with a duty rate of 20 per cent ad valorem there was short levy of duty of Rs.30.24 lakhs for the period from April 1989 to December 1990. The department issued show cause-cum demand notices from January 1991 onwards. But, no demand was raised for the period from April 1989 to December 1989 though the issue was within the knowledge of the department as the same issue was raised by audit in respect of the same manufacturer in another collectorate and reported in the Audit Report 1988-89 (para 3.29). This resulted in a loss of revenue of Rs.30.24 lakhs due to time bar.

This was pointed out in audit to the department (August 1991) which admitted the objection and stated (October 1991) that demand was raised only after the issue of trade notice from the Collectorate and demand for the period from April 1989 to December 1989 could not be raised since the provision of section 11A(1) could not be enforced as there was no wilful suppression on the part of the assessee. Hence the amount was hit by the clause of time bar.

The fact, however, remains that the department could have avoided the loss of revenue had the demand been raised after the objection was reported in the Audit Report of 1988-89 in respect of the same manufacturer in other collectorates which was also accepted by the Ministry.

(c) An assessee in Shillong collectorate was charged for evading central excise duty on the excisable goods cleared by him for the period 1 January 1981 to February 1984. A show cause-cum demand notice was issued on 30 December 1985 by Deputy Director (Anti evasion) of the department. Collector, Customs and Central Excise, Shillong vide his adjudication order dated 30 June 1989 confirmed demand for payments of Rs.27.55 lakhs due to undervaluation and unauthorised removal of goods and penalty of Rs.5 lakhs. The assessee

preferred an appeal against the order to CEGAT which set aside the case in favour of the assessee on the ground that the show cause notice was issued by the Deputy Director (Anti Evasion) and not by the Collector who was the competent authority in the instant case.

Thus due to technical lapse on the part of the department, the demand was barred by limitation resulting in loss of revenue.

This was brought to the notice of the department in January 1992; reply has not been received (April 1992).

(d) An assessee in Bombay II collectorate was issued a show cause-cum demand notice by jurisdictional superintendent on 31 December 1985 as to why central excise duty amounting to Rs.18.98 lakhs payable on technical charges collected from the customers in respect of goods cleared during the period January 1983 to March 1985 should not be recovered.

The show cause notice was set aside by the Collector of Central Excise on 17 June 1991 as the show cause notice issued under the signature of superintendent of Central Excise was in contravention of the provisions of sub section (1) of section 11A of the Act and therefore illegal.

As the show cause notice was not issued by the competent authority, there was loss of revenue to government amounting to Rs.18.98 lakhs.

Statement of facts was issued to the department in January 1992; reply has not been received (April 1992).

(e) An assessee in Baroda collectorate, engaged in manufacture of Acrylic plastic sheets was availing exemption under notification dated 1 March 1986 up to 28 February 1988 and thereafter under another notification dated 1 March 1988. The assessee was also manufacturing Methyl Methacrylate Monomer (MMM) an intermediate product, out of imported plastic scrap, and consumed captively in the manufacture of Acrylic Plastic Sheets without payment of duty. A show

cause-cum demand notice issued in October 1988 was adjudicated by the Collector in September 1989 confirming duty of Rs.184.17 lakhs on Acrylic Plastic Sheets. The duty amounting to Rs.36.01 lakhs payable on Methyl Methacrylate Monomer which was captively consumed during the period from April 1986 to April 1988 was not demanded on the plea that since exemption on final products was being denied, duty on intermediate product was not confirmed. On an appeal by the assessee, the Tribunal held that exemption to Acrylic Plastic Sheets could not be denied on grounds of emergence of MMM at intermediate stage. The Tribunal further held that MMM was marketable and hence liable to excise duty, but as there was no suppression of facts or misdeclaration demand was barred by limitation. This resulted in loss of revenue of Rs.36.01 lakhs.

This was brought to the notice of the department in March 1992; reply has not been received (April 1992).

(f) An assessee in Hyderabad collectorate engaged in manufacture of `Vaccum and gas filled bulbs' also manufactured parts of bulbs namely filaments, aluminium bipin caps and lead wire and consumed these parts in manufacture of bulbs without payment of duty.

However, the assessee was not eligible for exemption from payment of duty in respect of the parts of bulbs manufactured and consumed by him in manufacture of bulbs not exceeding 60 watts as final product (bulbs) was exempt from the whole of duty of excise. It was seen in Audit that the assessee had asked the department (15 December 1986 and 27 January 1987) to permit him to pay the duty payable on such parts of bulbs. The department neither replied the assessee nor demanded duty on such goods till November 1988.

The Department's inaction was pointed in audit (January 1989). However, the department booked an offence case against the assessee and issued a show cause notice in January 1990.

Further proceedings in respect of the aforesaid show cause notice were dropped by the

Collector of Central Excise, (23 March 1991) as show cause notice was not issued in time.

Delay in issue of show cause-cum demand notice for the period from April 1986 to 31 July 1988 resulted in loss of revenue of Rs.33.90 lakhs. This was brought to notice of the department (July 1991) which accepted the mistake (August 1991).

(g) A show cause-cum demand notice was issued (February 1991) to an assessee in Bombay II collectorate engaged in manufacture of dipped nylon belting fabrics for Rs.23.61 lakhs for the period March 1986 to June 1987 on the ground that the assessee had deliberately misclassified the product as `dipped nylon belting fabrics' under heading 54.09 instead of rubberised textile fabrics under heading 59.05.

The adjudicating authority in August 1991 dropped the proceedings on the ground that the demand was time barred; resulting in loss of revenue of Rs.23.61 lakhs.

Statement of facts was issued to the department in January 1991; reply has not been received (April 1992).

(h) An assessee in Ahmedabad collectorate manufacturing articles of aluminium availed Modvat credit during the period December 1987 to March 1989 on the basis of gate passes which had been endorsed more than once. This was contrary to the Board's instructions dated 10 April 1986.

On the irregularity being pointed out in audit (May 1990), the department admitted the objection and stated that such irregular credit availed amounted to Rs.7.44 lakhs but no demand could be raised as it had become time barred.

7. Non levy of interest on arrears of excise duty

The Public Accounts Committee in para 1.39 of their 170th Report (7th Lok Sabha) had recommended that there should be a provision in the Central Excises and Salt Act, 1944, for charging interest

on arrears of excise duty. But no such provision has been made so far.

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

A test check of records revealed that demands for duty were paid by the assessee in instalments, but no interest was levied by the department.

A few cases where interest was not levied on arrears of duty paid in instalments are given below :-

(a) Recovery of government revenue of Rs.23.45 crores for the period prior to September 1984 was pending from an assessee in Chandigarh collectorate. The assessee made payment of a total sum of Rs.15.60 crores in 7 instalments during the period March 1987 to March 1991. Notional loss of interest not levied on arrears of central excise duty paid in instalments amounted to Rs.42.69 crores (upto 30 September 1991).

This was pointed out to the department (March 1992); reply has not been received.

(b) A demand of Rs.3.39 crores was confirmed against an assessee in Patna collectorate by the Collector (Appeals) in February 1986. The assessee paid a sum of Rs.2.73 crores in eleven instalments, leaving a balance of Rs.65.66 lakhs still to be paid. Notional loss of revenue due to non levy of interest amounted to Rs.2.59 crores.

This was brought to the notice of the department in June 1992; reply has not been received.

(c) In another case in the same collectorate a demand for Rs.13.12 crores was confirmed by the

Collector of Central Excise, against an assessee in July 1990, on account of non payment of duty on escalation charges realised by the assessee during the period 1 March 1975 to 2 February 1989, on different types of machines manufactured by him. The assessee had paid a sum of Rs.7.16 crores before confirmation of the demand. Against the balance of Rs.5.96 crores, the assessee paid Rs.3.30 crores in three instalments (February and March 1991) and Rs.2.66 crores was still to be paid. The notional loss of revenue due to non levy of interest, amounted to Rs.92.10 lakhs.

This was pointed out to the department (June 1992); reply has not been received.

(d) An assessee manufacturing paper and paper board in Bhubaneswar collectorate went on appeal in the High Court of Calcutta against the order of the Collector (Appeals) Central Excise, Calcutta (November 1982) and was permitted to make payments of the dues of excise duty in eighteen monthly equal instalments.

The assessee paid the arrear of Central excise duty of Rs.78 lakhs in eighteen monthly instalments commencing from July 1989 to December 1990. However, the interest at the rate of 17.5 per cent per annum on monthly basis was neither paid by the assessee nor demanded by the department. The interest on the payment of arrears from the date of orders issued by the High Court worked out to Rs.10.86 lakhs.

On this being pointed out in audit (February 1991), the department stated (August 1991) that the High Court, Calcutta had not ordered for recovery of interest from the assessee for payment of central excise duty in instalments.

But, the fact remains that interest was payable as per the Board's instructions.

The matter was brought to the notice of the department in February 1992; reply has not been received (April 1992).

8. Non vacation of stay orders from the court

The Supreme Court in its judgment pronounced on 30 November 1984 in the case of Assistant Collector of Central Excise, West Bengal Vs. Dunlop India and others regarding stay of excise dues to government, observed that the practice of passing interim orders would be an exception and not a rule. The court further observed that no government business can be carried on merely on bank guarantee and liquid cash is necessary for running the government. The Public Accounts Committee (Seventh Lok Sabha) in para 1.37 of their 170th Report recommended that there should be a separate Directorate in the Central Board of Excise and Customs as also suitable cells in all the major collectorates to pursue and keep a watch on all cases of litigation relating to excise and customs and to ensure that departmental cases are not allowed to fall through because of default or inadequate presentation.

Accordingly the Committee in para 1.9 of their 9th Report (Eighth Lok Sabha) desired that the government should review all cases pending in courts in the light of the aforesaid judgment and take all steps to get the stay orders vacated and dues collected immediately.

A test check of records revealed that 2327 cases involving revenue of Rs.560.50 crores relating to the period 1988-89 to 1991-92 (upto September 1991) were blocked due to stay granted by the Supreme Court, High Courts and Tribunals, out of which 175 cases involving revenue of Rs.52.04 crores only were got vacated by the department (i.e., in 8 per cent of cases). (Statement IV)

Some of the cases where action was not taken by the department for vacation of stay are given below :-

(a) An assessee in Hyderabad collectorate manufacturing `asbestos fibre' from his mines as well as by importing asbestos fibre from abroad, was paying central excise duty since 1 April 1976 (under erstwhile tariff item 22(F)) in respect of the asbestos fibre manufactured by him and was

paying additional duty of customs in respect of asbestos fibre imported. The assessee filed a writ petition in 1978 in the Delhi High Court questioning the validity of Tariff item 22(F) itself and stopped paying the central excise duty and additional customs duty duly executing necessary bonds and bank guarantees to cover the duties payable by him on asbestos fibre. The assessee's writ petition was dismissed by the Delhi High Court on 23 May 1980. The assessee filed a civil appeal alongwith a stay application in the Supreme Court. The Supreme Court in its adinterim order dated 29 July 1980 granted stay subject to the condition that the assessee keeps the bank guarantees already given by him alive and furnishes fresh bank guarantees for subsequent clearances, and posted the stay application for hearing on 2 March 1981. As per a letter dated 1 February 1988 of the range officer addressed to the Collector of Central Excise, the amount payable by the assessee in the above case was Rs.628.34 lakhs relating to the period 1978 to 13 August 1982 (Rs.10.91 lakhs as arrears of central excise duty and the balance of Rs.617.43 lakhs as the additional customs duty payable on imported asbestos fibre). This amount is covered by bank guarantees that are renewed from time to time and kept alive by the assessee.

The department was showing in their returns that the demand was covered by stay orders of the Supreme Court. However, as seen from the Supreme Court case file of the Collectorate, the Supreme Court's orders dated 29 July 1980 are ad interim in nature as the stay application was posted for hearing on 2 March 1981.

The department, did not even ascertain whether any stay was granted beyond 2 March 1981 and if so to get the stay vacated.

On this being pointed out in audit (December 1991), the department replied (January 1992) that the ministry was addressed to pursue the matter with the Central agency section for vacation of stay and early posting of the case for hearing.

(b) Invoking the extended provision under Section 11A, a show cause notice was issued by the

Collector, Trichy for Rs.342.79 lakhs for the period 1 April 1983 to 31 August 1988 to a cement manufacturer on ground of undervaluation under section 4 of the Central Excises and Salt Act, 1944. The case of under valuation was detected on 27 October 1988 and the assessee obtained interim stay (1989) against the operation of show cause notice. The counter affidavit was sent to Collector of Central Excise, Trichy on 6 March 1990. The Asstt. Collector (Legal) Trichy collectorate enquired in February 1991 from the office of the Collector Central Excise, Madras whether the counter affidavit was filed in the court. Copy of the Counter affidavit was again sent by Asstt. Collector, Trichy on 3 December 1991 with a request to process the case.

For the subsequent period upto December 1988, another show cause-cum demand notice was issued on 10 March 1989 for Rs.1.33 lakhs which was also stayed by the Court in April 1989. The latter writ petition was dismissed (July 1991) with the observation that it was open for the petitioner to submit within three weeks from the date of order a reply to the show cause-cum demand notice and the appropriate authority would pass orders on merit within 8 weeks from the date of reply to show cause-cum demand notice. In as much as interim stay was operative in the other writ petition, the Asstt. Collector asked for clarification whether the case may be adjudicated before the vacation of stay against show cause-cum demand notice for Rs.343 lakhs.

The assessee went on appeal against the orders of High Court in July 1991 which was rejected by High Court, Madras but granted 3 weeks time from 14 August 1991 to file reply.

The assessee obtained interim stay operating from 1989 and no action has been taken for vacating the stay. This was pointed out to the department in March 1992; reply has not been received.

(c) Two assessees in Shillong collectorate were issued show cause-cum demand notices aggregating to Rs.174.18 lakhs by the department in January and April 1987 respectively on account of

undervaluation of plywood manufactured and cleared by them. The assessees, however, filed writ petitions in the Guwahati High Court against the above show cause-cum demand notices and obtained stay order (No.592/1987 and 1242/1988). The department filed counter affidavits in August 1989 and January 1990. No action has been taken thereafter to get the stay vacated.

Reply to the statement of facts issued to Collector (June 1992) has not been received (November 1992).

(d) Consequent on the orders of Appellate Collector's orders (November 1986) an assessee in Ahmedabad collectorate filed refund claim of Rs.245.58 lakhs in January 1987. On scrutiny it was found that the assessee was entitled to refund of Rs.118.03 lakhs which was paid in June 1987. Simultaneously, the department filed an appeal with the Tribunal and also issued show cause notice in July 1987. On receipt of the Tribunal's decision of March 1988, which was in favour of the department, the show cause notice was adjudicated in May 1988 confirming the demand of Rs.118.03 lakhs. The assessee filed Special Civil application in Supreme Court who granted exparte stay order in June 1988. It was also seen that the assessee had not passed on the refund amount to customers. No action, however, was taken for vacation of stay order.

Reply to statement of facts issued to the department in March 1992 has not been received.

(e) In case of an assessee in Bombay I collectorate the department deducted from the cum duty price declared by the assessee the effective basic excise duty, to arrive at the assessable value, while the assessee claimed deduction of basic excise duty at tariff rate. The disputed demand for the period 7 November 1981 to 12 May 1983 amounted to Rs.204.45 lakhs. On an appeal filed by the assessee, the High Court stayed the recovery on the condition that the assessee should pay 50 per cent of the demand in cash and execute a bank guarantee for the balance. The assessee, however, paid a sum of Rs.68 lakhs only. The

amount of Rs.136.45 lakhs was blocked for over 9 years.

The department replied (March 1992) that the Collector of Central Excise New Delhi and the Ministry of Finance, New Delhi were being requested repeatedly to get the stay order vacated.

Reply to statement of facts issued to the department in March 1992 has not been received.

(f) An assessee in Madras collectorate manufactured acetylene gas by reacting Calcium Carbide with water. The acetylene so manufactured was captively consumed within the factory in manufacture of tricholro ethylene. Demands for recovery of excise duty on acetylene gas manufactured during the period 1977-78 to 1981-82 were raised by the department for a sum of Rs.44.66 lakhs. The assessee obtained stay from the Supreme Court (March 1983) restraining the department raising further demands subsequent to 1981-82. The recovery of Rs.44.66 lakhs was also stayed by the order. The duty involved upto March 1986 in respect of acetylene gas captively consumed in the manufacture of Trichloro Ethylene worked out to Rs.100.75 lakhs. The stay order was not got vacated.

Reply to the statement of facts issued to the department in March 1992 has not been received.

(g) An assessee in Shillong collectorate was issued show cause-cum demand notice for Rs.84.55 lakhs for non payment of duty on `resin', classifiable under tariff item No.15A. The assessee preferred an appeal in the Gauhati High Court. The Court directed (December 1982) him to furnish bank guarantee against the demand and also instructed (February 1990) the concerned Asstt. Collector for denovo adjudication of the case. The concerned Asstt. Collector in his denovo adjudication order (August 1990) directed the assessee to submit classification and price list of the product against which the assessee again went to the Guwahati High Court and stay order was granted in October 1990. The department has

not moved for getting the stay order vacated (May 1992).

Reply to statement of facts issued to the department in March 1992 has not been received.

(h) A demand of Rs.65.89 lakhs alongwith penalty of Rs.10 lakhs was confirmed against an assessee in Cochin collectorate in December 1988. The assessee preferred an appeal before the CEGAT, Madras. The CEGAT in their order dated 3 July 1989 directed the petitioners to make a predeposit of Rs.6.5 lakhs on or before 16 October 1984 pending disposal of appeals. The CEGAT also granted stay of the recovery of the balance duty and entire penalty subject to the compliance of the order. Further extension was granted upto 31 July 1990 by the CEGAT. As the assessee failed to comply with the orders of the CEGAT, the case was dismissed by the CEGAT under section 35F of the Central Excises and Salt Act, 1944. The assessee took up the matter before the High Court of Kerala and the High Court granted interim stay to the assessee (September 1990).

No action was taken by the department to get the stay vacated for realising duty and penalty of Rs.75.89 lakhs.

The matter was brought to the notice of the department in March 1992; their reply has not been received.

9. Miscellaneous irregularities

(A) Non raising of demands

i) Non receipt of re-warehousing certificates

As per rule 156A and 156B of the Central Excise Rules, 1944, where goods are removed from one warehouse to another under bond, the departmental officer incharge of the warehouse of destination should record warehousing certificate in respect of such goods on their receipt in the warehouse under his charge and send the copies of the certificate to the officer-in-charge of the warehouse of removal and also to the consignee for transmission to the consignor. The consignor

should present the said warehousing certificate to the officer-in-charge of his warehouse within ninety days of removal of the goods or such extended period as the Collector may allow. If the certificate of rewarehousing is not received, within the stipulated time, the consignor shall on demand pay the duty leviable on the consignment.

(a) A public sector undertaking in Raipur collectorate cleared railway track construction material (rails) falling under sub heading 7302.10 on payment of concessional rate of duty under a notification dated 13 May 1988 by following chapter X procedure. Eventhough rewarehousing certificates were not received within the stipulated period, demands for differential duty amounting to Rs.902.41 lakhs were not raised by the department.

On the omission being pointed out, the department stated (August 1991) that compliance would be reported after examining the cases.

(b) A public sector oil installation, in Ahmedabad collectorate, cleared 719.831 kilolitres of Motor spirit 942.50 kilo litres of High Speed diesel oil and 360.840 kilolitres of Aviation Turbine fuel between December 1990 and June 1991 under bond for rewarehousing. The rewarehousing certificates of these consignments were not received by departmental officers-in-charge of warehouse of removal within the stipulated time limit and hence duty should have been demanded on the quantity of oil removed for rewarehousing. Failure to comply with the rules resulted in non levy of duty to the extent of Rs.21.58 lakhs.

The omission was pointed out in January 1992. Reply has not been received.

ii) Non receipt of proof of export

Under rule 13 of the Central Excise Rules, 1944, read with notification issued under rule 12, excisable goods can be exported without payment of duty under bond, but the proof of export is required to be furnished to the Asstt. Collector, Central Excise within a period of six months from the date on which the goods were first cleared

from the producing factory or such extended period (not exceeding two years) as might be allowed by the Collector of Central Excise in any particular case. According to rule 14A an exporter who fails to furnish proof of export within the prescribed period shall upon demand forthwith pay the duty leviable, on such goods and shall also be liable to pay penalty subject to a maximum of Rs.2,000.

(a) An assessee in Raipur collectorate did not furnish proof of export involving duty of Rs.1.04 crores within the stipulated period. The department did not raise any demand for non furnishing of proof of export.

Reply to the statement of facts issued to the department in January 1992 has not been received.

(b) An assessee in Jaipur collectorate cleared black and white television picture tubes involving duty of Rs.28.66 lakhs for export under bond during the period February 1990 to December 1990 for which proof of export was not furnished. No demand for duty was raised.

Reply to the statement of facts issued to the department in April 1992 has not been received (April 1992).

(c) An assessee in Pune collectorate removed a consignment for export in July/August 1989 without payment of duty amounting to Rs.10.02 lakhs. The department granted extension for submission of proof of export upto December 1990, but proof of export was not submitted by the assessee upto March 1992. The department did not issue a show cause-cum demand notice for payment of duty amounting to Rs.10.02 lakhs (February 1992).

Reply to the statement of facts issued to the department in April 1992 has not been received (June 1992).

(B). Non-remittance of predeposits

i) In respect of a manufacturer of liquid nitrogen and oxygen in Bangalore collectorate, a demand was confirmed on 10 June 1988 for Rs.7.77 lakhs and a penalty of Rs.one lakh imposed. On an

appeal by the aggrieved party, CEGAT issued a stay order subject to a predeposit of Rs.4 lakhs on or before 30 June 1989 which was later extended to 19 February 1990. The appeal was dismissed on 19 February 1990 as no predeposit was made. On reappeal, the case was again dismissed on 19 February 1991 and predeposit was not made. As stay granted was conditional to predeposit, the department should have proceeded to recover the duty demanded in the adjudication order. The demand has not been realised till date (February 1992).

Reply to the statement of facts issued to the department in April 1992 has not been received (June 1992).

ii) A demand was raised on 26 June 1990 on an assessee in Bangalore collectorate for Rs.5.32 lakhs for not following chapter X procedure in respect of removal of goods from one premises to another during the period from 6 March 1985 to 31 March 1987. A penalty of Rs.10,000 was also imposed on the assessee . On appeal by the assessee, the CEGAT gave a stay subject to pre deposit of Rs.2.5 lakhs on or before 31 January 1991. The date was extended first to 27 March 1991 and then to 31 October 1991 on appeal by the assessee. However, predeposit had not been made so far. The duty of Rs.5.32 lakhs demanded alongwith penalty of Rs.10,000 had also not been realised (February 1992).

Reply to the statement of facts issued to the department in April 1992 has not been received (June 1992).

(C) Loss of revenue due to non filing of appeal within the specified time

i) As per section 35E(2) of the Central Excises and Salt Act, 1944, the Collector of Central Excise may call for and examine the record of any proceeding in which and adjudicating authority sub-ordinate to him has passed any decision or order for the purpose of satisfying himself as to the legality and propriety of such decision or order and may direct such authority to apply to Collector (Appeals) for the determination of such

points arising out of the decision or order. As per section 35E(3) ibid, no such order should be made after the expiry of one year from the date of decision or order of the adjudicating authority.

As per orders of the jurisdictional Asstt. Collector (28 May 1987) an assessee in Bombay I collectorte manufacturing various parts of refrigeration and air conditioning machinery was allowed to avail small scale exemption on 148 items as claimed by the assessee. The above orders of the Asstt. Collector was reviewed by the Collector of Central Excise under section 35E(2) of the Central Excises and Salt Act, 1944 who passed an order (8 September 1988) directing the Asstt. Collector to file an appeal before the Collector (Appeals). The Collector (Appeals) set aside (April 1989) the Asstt. Collector's orders except for 12 items with the result that the assessee was not eligible for the concessions on the remaining items. The assessee filed an appeal against the order of the Collector (Appeals) before CEGAT and the CEGAT held (January 1991) that as the order passed by the Collector under section 35E(2) was passed after the time limit of one year the show cause notice issued to the assessee was time barred.

Failure on the part of the department to review the case in time under section 35E resulted in loss of revenue of Rs.5.58 lakhs.

Reply to the statement of facts issued to the department in March 1992 has not been received.

(D) Non-maintenance/improper maintenance of control register

The Central Board of Excise and Customs issued instructions on 28 July 1980 that a register of show cause-cum demand notices issued and confirmed/realised by the department should be maintained in two parts, in the prescribed proforma to keep watch over speedy finalisation of show cause-cum demand notices and realisation of confirmed demands. The registers should be maintained both at the Divisional level and range level and within four days of the close of the month, an abstract should be put up to the Asstt.

Collector/Superintendent/Range for scrutiny of the pendency and indicating the further follow up action.

A test check revealed that

i) In Division VII of Madras collectorate, Divsion III of Coimbatore collectorate, Divisions II,VI,VII of Hyderabad collectorate and in Anand Division of Baroda collectorate the registers were not maintained

ii) In cases where the register was maintained, entries were not up-dated.

iii) In Ahmedabad collectorate, in one division nine cases of confirmed demands amounting to Rs.514.73 lakhs adjudicated between July 1985 and October 1991 and in Rajkot collectorate, four demands amounting to Rs.2.35 lakhs confirmed between September 1981 and June 1982 were not found entered in the register.

iv) The register was also not generally reviewed by the jurisdictional Asst. Collector.

The appraisal was sent to Ministry of Finance in October 1992; reply has not been received (December 1992).

STATEMENT I
Confirmed demands pending recovery

(Para 4)

Sl. No.	Collectorate	Outstanding demands as on 30.09.1991 No. of cases	Amount of duty (Rs. in lakhes)
1.	Bombay I	1907	4997.03
2.	Bombay II	816	84755.00
3.	Bombay III	472	4809.47
4.	Aurangabad	5002	2473.23
5.	Goa	41	55.94
6.	Pune	438	4066.53
7.	Calcutta I	717	1455.47
8.	Calcutta II	8493	24813.34
9.	Bolpur	387	1409.48
10.	Delhi (UT)	643	8017.90
11.	Delhi	313	4227.06
12.	Chandigarh	852	4757.43
13.	Ahmedabad	1032	14340.49
14.	Rajkot	263	1886.23
15.	Vadodra	1024	12591.42
16.	Madras	503	3334.28
17.	Coimbatore	2405	1757.04
18.	Trichy	534	771.23
19.	Madurai	922	1338.80
20.	Hyderabad	2296	2803.09
21.	Guntur	534	2305.85
22.	Visakhapatnam	96	289.91
23.	Indore	962	1072.11
24.	Raipur	478	1147.38
25.	Allahabad	4623	1609.34
26.	Kanpur	643	1481.65
27.	Meerut	1605	1977.39
28.	Cochin	519	7630.06
29.	Bhubaneswar	762	1336.85
30.	Jaipur	530	2263.82
31.	Shillong	217	496.85
32.	Patna	7030	68328.54
33.	Bangalore	658	6486.59
34.	Belgaum	289	687.45
35.	Nagpur	259	294.14
	Total	48265	282068.39

STATEMENT II
Abnormal Delay in adjudication

(Para 5)

Sl. No.	Collectorate	Cases Pending finalisation as on 30 September 1991 for more than six months	
		No. of cases	Amount of duty (Rs. in lakhes)
1.	Bombay I	2474	85010.36
2.	Bombay II	1495	4736.00
3.	Bombay III	1324	31843.91
4.	Aurangabad	523	3596.87
5.	Goa	216	2151.66
6.	Pune	315	2510.40
7.	Calcutta I	NIL	NIL
8.	Calcutta II	644	11641.33
9.	Bolpur	NIL	NIL
10.	Delhi (UT)	149	605.79
11.	Delhi	121	806.94
12.	Chandigarh	654	1557.63
13.	Ahmedabad	535	13129.31
14.	Rajkot	199	5474.67
15.	Vadodra	807	4841.39
16.	Madras	410	1628.23
17.	Coimbatore	1380	5295.07
18.	Trichy	107	4205.23
19.	Madurai	661	2001.48
20.	Hyderabad	97	203.94
21.	Guntur	69	10610.31
22.	Visakhapatnam	34	257.45
23.	Indore	393	1649.37
24.	Nagpur	158	2586.26
25.	Allahabad	97	203.94
26.	Kanpur	320	556.89
27.	Meerut	548	3660.76
28.	Cochin	263	570.40
29.	Bhubaneswar	275	1011.81
30.	Jaipur	230	2053.40
31.	Shillong	67	4551.41
32.	Patna	100	1486.44
33.	Bangalore	239	1497.88
34.	Belgaum	303	2063.23
35.	Nagpur	61	93.25
	Total	15268	214093.01

STATEMENT III
Time bar cases

Sl. No.	Collectorate	From 1987-88 to 1991-92 (upto September 1991)	
		No. of cases	Amount of duty (Rs. in lakhes)
1.	Bombay I	5	1418.32
2.	Bombay II	6	599.00
3.	Bombay III	5	4.67
4.	Aurangabad	27	29.39
5.	Goa	2	5.00
6.	Pune	17	473.44
7.	Calcutta I	1	1.37
8.	Calcutta II	Nil	Nil
9.	Bolpur	2	73.12
10.	Delhi (UT)	Nil	Nil
11.	Delhi	1	1.84
12.	Chandigarh	26	20.71
13.	Ahmedabad	12	418.13
14.	Rajkot	13	46.18
15.	Vadodra	34	69.72
16.	Madras	5	8.36
17.	Coimbatore	13	162.46
18.	Trichy	6	23.52
19.	Madurai	Nil	Nil
20.	Hyderabad	Nil	Nil
21.	Guntur	Nil	Nil
22.	Visakhapatnam	2	4.70
23.	Indore	11	260.41
24.	Raipur	4	36.88
25.	Alllahabad	Nil	Nil
26.	Kanpur	Nil	Nil
27.	Meerut	6	17.47
28.	Cochin	37	60.53
29.	Bhubaneswar	7	15.07
30.	Jaipur	12	135.67
31.	Shillong	1	0.36
32.	Patna	4	54.21
33.	Bangalore	11	12.47
34.	Belgaum	7	8.73
35.	Nagpur	16	14.49
	Total	293	3976.22

STATEMENT IV

Cases stayed by Court/Tribunal

Sl. No.	Collectorate	1988-89 to 1990-92 (upto September 1991)		Cases got vacated by department	
		No. of cases	Amount of duty (Rs. (in lakhs)	No. of cases	Amount of duty (Rs. in lakhs)
1.	Bombay I	73	11645.86	4	197.01
2.	Bombay II	137	10400.00	34	1352.00
3.	Bombay III	68	148.89	6	148.89
4.	Aurangabad	201	1644.29		
5.	Goa	7	11.08		
6.	Pune	37	3298.95		
7.	Calcutta I	12	561.23		
8.	Calcutta II	NIL	NIL		
9.	Bolpur	54	795.32		
10.	Delhi (UT)	NIL	NIL		
11.	Delhi	278	4207.35	2	1.30
12.	Chandigarh	36	300.84		
13.	Ahmedabad	66	5192.01	8	83.99
14.	Rajkot	3	14.48		
15.	Vadodra	90	3169.75	51	2490.47
16.	Madras	Nil	NIL		
17.	Coimbatore	244	913.72		
18.	Trichy	41	146.51		
19.	Madurai	142	860.85	18	372.36
20.	Hyderabad	4	23.71	3	NA
21.	Guntur	22	47.72	1	NA
22.	Visakhapatnam	12	612.78		
23.	Indore	57	754.51		
24.	Raipur	10	318.95		
25.	Alllahabad	52	368.13	4	NA
26.	Kanpur	21	233.77		
27.	Meerut	Nil	Nil		
28.	Cochin	55	379.45		
29.	Bhubaneswar	56	711.21		
30.	Jaipur	25	72.64	2	1.00
31.	Shillong	63	630.00	1	NA
32.	Patna	Nil	Nil		
33.	Bangalore	244	1414.51	7	40.23
34.	Belgaum	100	6164.34	34	516.32
35.	Nagpur	117	1007.49		
	Total	2327	56050.34	175	5203.57

1.03 Rubber and articles thereof

Introduction

Central Excise duty was levied for the first time on rubber products on 24 April 1962 under a new item 16A in the first schedule to the Central Excises and Salt Act, 1944. After the introduction of the Central Excise Tariff Act, 1985, replacing the schedule I ibid with effect from 28 February 1986 rubber and articles thereof have been covered under chapter 40. This chapter covers not only natural rubber but also synthetic rubber such as styrene butadiene rubber, Isoprene rubber and so on. The chapter also covers goods made of rubber in combination with other articles.

2. Revenue

The excise duty realised from rubber and articles thereof during the years 1988-89 to 1990-91 and the number of production units involved are given below :-

Year	Number of units	Revenue realised (Rs. in crores)
1988-89	1047	793.89
1989-90	1200	774.18
1990-91	N.A,	N.A.

3. Central Excise control

The central excise control over the manufacturers of rubber and articles of rubber is of two types viz., (i) physical control and (ii) record based control under self removal procedure. Manufacturers of tyres, tubes and flaps having investment on plant and machinery exceeding Rs.20 lakhs are covered by physical control. Smaller units of tyres, tubes and flaps having investment on plant and machinery upto Rs.20 lakhs and manufacturers of rubber and articles of rubber other than tyres, tubes and flaps are covered by self removal procedure.

4. Scope of Audit

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

(a) that the classification of various rubber products was correctly determined;

(b) that the duty exemption was granted by the correct application of the exemption notification;

(c) that there was no suppression of production or short accountal of production;

(d) that the assessable value was correctly computed;

(e) that there were no irregularities in the clearances of goods as other equipments under chapter X procedure;

(f) that the Modvat benefit was correctly availed;

(g) that the physical verification of the stock of excisable goods was conducted as per central excise rules and duty on shortages was demanded and collected;

(h) that duty was levied on excisable goods consumed captively.

5. Highlights

A review on the system of assessment, levy and collection of excise duties on rubber and rubber articles falling under chapter 40 for the period 1988-89 to 1990-91 was conducted. The results of the review are contained in the succeeding paragraphs which highlight the following :-

- **Incorrect classification of excisable goods resulted in short levy of duty of Rs.7.28 crores (Para 6).**

- **Non levy of duty amounted to Rs.2.64 crores (Para 7).**

- **Irregular credits of Rs.2.60 crores were taken under Modvat scheme (Para 8).**

- **Concessions to the extent of Rs.2.01 crores were wrongly availed by units not entitled to small scale concession (Para 9).**

- **Incorrect availment of concessional rates of duty resulted in non-levy/short levy of duty of Rs.1.39 crores (Para 10).**

- **Other irregularities include non fixation of norms of production, non maintenance of accounts of principal raw material and goods manufactured and consumed captively.**

6. Short levy of duty due to misclassification

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

A test check of records revealed short levy of duty of Rs.7.28 crores due to misclassification of rubber and articles thereof in thirty one cases. Some of the cases are given below:-

i) Camel back

As per note 9 of chapter 40 of the schedule to the Central Excise Tariff Act, 1985, the expressions plates, sheets and strips occurring in headings 40.01, 40.02, 40.03, 40.05 and 40.08 apply only to plates, sheets and strips and to blocks of regular geometric shape, uncut or simply cut to rectangular (including square) shape, whether or not printed or otherwise, surface worked but not otherwise cut to shape or further worked.

An assessee in Madras collectorate manufacturing, inter alia, unvulcanised rubber

strips having a raised portion at the centre with side walls classified the product under heading 40.05 as compounded rubber and paid central excise duty at 15 per cent ad valorem under a notification dated 29 July 1986. But, the assessee mixed certain vital chemicals with the compounded rubber received from another unit owned by him and the same was extruded in the form of strips having raised portion at the centre with side walls and they were cleared to be used as input directly in manufacture of new tyres as tread and side wall portion of tyres. As the products manufactured by the assessee has been further worked in the form of camel back with side walls and used as tread and side wall portion of new tyres, they were classifiable under sub heading 4006.10 attracting specific rate of duty at Rs.12.60 per kilogram.

The incorrect classification resulted in short levy of duty of Rs.3.38 crores for the period from April 1990 to July 1991. The under assessment for the earlier and subsequent periods remains to be ascertained.

The matter was brought to the notice of the department (March 1992); reply has not been received (April 1992).

ii) Compounded rubber

As per explanatory notes (pages 586 to 589 in Harmonised Commodity Description and Coding System (HSN), compounded rubber in the form of plates, sheets and strips are to be classified only under heading 40.05 while other profile shapes are classifiable under heading 40.06. The Board, in their letter dated 10 November 1989 also clarified that compounded rubber not in the form of camel back or other profile shapes would merit classification only under heading 40.05 and not classifiable under heading 40.06.

Five assessees in Madras collectorate, four assessees in Coimbatore collectorate and one assessee in Madurai collectorate manufactured compounded rubber in sheet form with uniform thickness and cleared them on payment of duty at the concessional rate under a notification dated 1

March 1988, after classifying the product under sub heading 4006.10. As the product was correctly classifiable under heading 40.05 and the same were cleared only to the tyre retreading units for retreading/repairing of old tyres, the correct rate of duty applicable was 40 per cent ad valorem (tariff rate) and the concessional rate of duty of 15 per cent ad valorem under a notification dated 29 July 1986 could not be extended to the assessees.

The incorrect classification and consequent availment of concessional rate of duty resulted in short levy of duty of Rs.1.05 crores from April 1988 to March 1991.

This was brought to the notice of the department in March 1992; reply has not been received (April 1992).

iii) Tyres and tubes

Pneumatic tyres of rubber used on vehicles or equipment designed for use "off the road" and their inner tubes are classifiable under sub heading 4011.91 and 4013.91. Rule 3(c) of the Rules for the Interpretation of the excise tariff provides that whenever goods are classifiable under two or more headings, they must be classified under the heading which occurs last in the numerical order among those which equally merit consideration. Further, it was judicially held {1978 ELT J-15 (Karnataka) and (1981 ELT 315 Government of India} that the word `road' would mean a public road or high way, so if any vehicle has to traverse some time on the road for reaching the destination for use off the road, it does not make the vehicle designed for use on the road, since the use of the vehicle on the road is only incidental and it is mainly designed for off the road purposes.

(a) A tyre manufacturer supplied to the Defence department tyres for use in Kolas Vehicles intended for carrying immobilised battle tanks on their trailers from forward areas. The assessee classified the tyres under sub heading 4011.60 as tractor tyres and cleared them on payment of duty.

Since, the kolas vehicles were used for "off the road" purposes in the battle area, the tyres were correctly classifiable under sub heading 4011.91 attracting duty at 60 per cent ad valorem. The misclassification of the tyres resulted in short levy of duty of about Re.1 crore for the period from January 1985 to April 1990. The short levy for the subsequent period remains to be ascertained.

On this being pointed out in audit (January 1991), the department justified (September 1990/March 1991, July 1991 and March 1992) the classification under sub heading 4011.60 on the ground that the tyres are tractor tyres since they were fitted to kola tractors intended for towing trailers for transportation of tanks and that the tractors travelled mostly on roads till the battle area was reached.

The contention of the department is not acceptable, since the Kolas vehicle is meant for bringing the tanks from the battle area and therefore has necessarily to travel "off the road". Further, the tractors specially designed for transportation of battle tanks are not used on public road or highway and hence such vehicles are not covered by note 2 to chapter 87 which refers only tractors meant for the transport of tools, seeds, fertilisers or other goods. As per note tractor means vehicles constructed essentially for hauling or pushing another vehicle. Moreover, Ministry of Defence have also clarified that the kolas vehicle is a cross country tractor and it is meant for towing trailors for transportation of tanks. A cross country tractor is generally used for "off the road purposes only". Even if it is conceded that since the tyres equally merit classification under sub heading 4011.60 (as tractor tyres) and under sub heading 4011.91 (off the road use), then they should have been classified only under the latter heading, in view of rule 3(c) of the rule for the interpretation of the tariff.

(b) Another manufacturer in Calcutta II collectorate manufactured tyres and tubes which were designed to be used on forklifts for the purpose of lifting and movement of goods not on

public roads and discharged duty at the rate of 28 per cent ad valorem and Rs.32 or 34 each respectively after classifying them under sub heading 4011.99 and 4013.99 respectively. The forklift being not a vehicle or an equipment, designed for use on the roads, the tyres and tubes meant for them were classifiable under sub heading 4011.91 and 4013.91 respectively and duty was payable at the rate of 66 per cent ad valorem and Rs.400 or Rs.420 each respectively. This had resulted in short levy of duty of Rs.25.86 lakhs on clearances made during the period from April 1988 to December 1989.

On this being pointed out in audit (December 1991), the department did not admit the audit objection and stated (March 1992) that forklift being not mentioned in the HSN, classification was done as per Board's circular dated 12 April 1990. The department also stated that a show cause-cum demand notice had been sent to the Collector of Central excise for approval as a precautionary measure and the licensee had been paying duty under sub heading 4011.91/4013.91 with effect from April 1990 under protest.

Contention of the department is not acceptable as the demand raised in April 1990 against the assessee was the result of audit objection raised in April 1990. Further the Ministry of Finance had admitted the objection in August 1990 in a similar case reported in para 3.19(i)(b) of Audit Report 1989-90.

Further developments have not been received (April 1992).

iv) Bare seats

Articles of cellular rubber are classifiable under sub heading 4016.11 of the schedule to the Central Excise Tariff Act, 1985, with tariff rate of duty at 60 per cent ad valorem. Seats and parts thereof are classifiable under heading 94.01 ibid with tariff rate of duty at 25 per cent ad valorem. Parts and accessories of motor vehicles of heading 87.11 to 87.13 are classifiable under heading 87.14.

As per note 2(a) of section XVII, the expression "Parts and accessories" do not apply to the articles of vulcanised rubber other than hard rubber (heading 40.16) whether or not they are identifiable under section XVII (chapter 86 to 89). Further, note 1(a) of chapter 94 provides that chapter 94 does not cover pillows or cushions of chapter 40.

In the case of M.M. Rubber Company Limited, CEGAT held {1984 (15) ELT 198 T} that (i) latex foam, sponge, cushion seats in unfinished or nacked form cleared by a firm cannot be called a part or accessory of motor vehicles because those cannot be used as such, (ii) no doubt they are purchased by manufacturers of motor vehicles but they have to carry on further manufacturing operation thereon like stitching the leather or rexin cover before the seats become ready for use, (iii) a part or accessory of motor vehicle is one which is ready for fitment to the motor vehicles either as original equipment or as replacement and (iv) the subject goods in unfinished naked form, therefore, are not classifiable under parts of motor vehicles but under rubber products in all its forms and varieties such as pillows, cavity sheeting chair cushions, scooter seats, bus seats etc.

Thus, seats of cellular rubber of motor vehicles merit classification under chapter 40 only.

Contrary to the aforesaid provision and decision, Ministry in their circular dated 23 October 1990 clarified that bare seats of a kind used for motor vehicles except two wheelers merit classification under heading 94.01 and those of two wheelers under heading 87.14. This resulted in short levy of duty of Rs.70.96 lakhs on clearances of latex foams, sponge cushion seats in unfinished or naked form by two manufactures in Bangalore Collectorate and one manufacture in Ahmedabed collectorate during the period between April 1988 and November 1991. This omission was brought to the notice of the department in October/March and December 1991. The department replied in two cases (March 1992) that the classification of the goods were based on the

clarification issued by the Ministry on 23 October 1990 and a demand of Rs.5,56,317 was issued as precautionary measure to the assessee in Ahmedabad collectorate. The contention of the department is not sustainable in view of the aforesaid decision of CEGAT. Reply in respect of the other case has not been received (March 1992).

v) Rubber articles

Other articles of vulcanised rubber other than hardened rubber are classifiable under sub heading 4016.19 attracting duty at the rate of 15 per cent ad valorem.

An assessee in Meerut collectorate engaged in manufacture of rubber articles, viz., door seal, door channel, door rubber etc., to be used in motor cars (Ambassador, Fiat and Gypsy etc.) was clearing said articles in sets duly packed specially to be used in specific cars. The product was classified under subheading 4008.29 (nil rate) instead of under 4016.19 (15 per cent ad valorem). Incorrect classification of the product resulted in short levy of duty of Rs.33.39 lakhs in respect of six items only cleared during the period from April to November 1991.

The matter was reported to the department in February 1992; reply has not been received (April 1992).

vi) Cover compound

By virtue of a notification dated 1 April 1968 as amended, all rubber products, in the form of plates, sheets and strips unhardened and unvulcanised falling under heading 40.05 are exempt from the whole of the duty of excise leviable thereon provided no credit of the duty paid on the inputs used in the manufacture of the said goods has been availed of under rule 56A or 57A of the Central Excise Rules, 1944. However, the same goods are chargeable to 15 per cent ad valorem with reference to a notification dated 29 July 1986 under which there is no such restriction regarding availment of credit. The Board also clarified on 24 February 1981 that splicing compound used for repairing of conveyor belt would

be classifiable under erstwhile tariff item 16A(2) and the same was not eligible for exemption under the notification dated 1 April 1968, since the product was not distinguishable from cushion compound falling under sub heading 4006.10 (for which the exemption was not applicable). On the same analogy `cover compound' used in the repair of conveyor belts was classifiable under the sub heading 4006.90 and not under heading 40.05 and hence, the exemption could not be extended to the said goods.

One assessee in Madras collectorate and another in Madurai collectorate manufactured `cover compound' classifiable under sub heading 4006.90 and cleared the same without payment of duty with reference to the notification ibid. As the duty exemption was applicable only to products falling under heading 40.05, the assessees were not eligible to clear their final products without payment of duty. The duty omitted to be collected on the clearances made form April 1988 to March 1991 amounted to Rs.15.81 lakhs.

The misclassification was brought to the notice of the department in January 1992 and April 1992; reply has not been received (April 1992).

vii) Cot and aprons

As per note 1(a) below section XVI of the Central Excise Tariff Act, 1985, articles of a kind used in machinery or mechanical or electrical appliances or for other technical uses, of unhardened vulcanised rubber are covered under heading 40.16 which attracts duty at 15 per cent ad valorem.

An assessee manufacturing synthetic rubber cots, and aprons and clearer covers used in textile machinery, classified the products under subheading 4009.99 and cleared at nil rate of duty. This classification was decided by the Collector of Central Excise (Appeals), Bombay on the basis of Bombay High Court Judgement dated 7 March 1990 {1990 (49) ELT 170 (Bom)} wherein it was decided that aprons and cots were nothing but piping and tubing which were cut into small parts without changing the original piping and tubing

characteristic. A test check revealed that all cots and aprons and clearer covers manufactured by the assessee did not retain the original characteristic of piping and tubing but were subjected to grooving, levelling etc., separately after cutting them into specific length. Also the clearer covers were punched with holes on it. As such the original characteristic of piping and tubing was not retained and therefore these goods were classifiable under sub heading 4016.99 as articles of a kind used in machinery attracting duty at 15 per cent ad valorem. Misclassification of the product, resulted in short levy of duty of Rs.11.76 lakhs during the period from April 1990 to November 1991. Reply to the statement of facts issued (March 1992) has not been received.

viii) Vacuum brake hoses

Tubes, pipes and hoses of vulcanised rubber, other than hard rubber with or without fittings and designed to perform the function of conveying air, gas or liquid are classifiable under sub heading 4009.92 attracting duty at 30 per cent ad valorem.

An assessee in Bombay III collectorate manufacturing "vacuum brake hoses used for vacuum brake applications of wagons in Railways" classified the product from 1 March 1989 under sub heading 4009.99 at nil rate of duty for the reasons that they were used for creating vacuum and not for performing the functions of conveying air, gas or liquid. This was approved by the department.

These hoses manufactured by the assessee were used in vacuum brakes for wagons in railways. Vacuum brake is an alternate form of air-brake which is an energy conversion mechanism used to retard, stop or hold a vehicle or generally any moving element, the activating force being applied by a difference in air pressure and it operates by maintaining lower pressure in the actuating cylinders. Thus, it is clear that the vacuum brake functions on the principle of difference in air pressure brought to vacuum level. In this process air is withdrawn from the hose pipes. As such, the vacuum brake hoses were classifiable

under heading 4009.92 attracting duty at thirty per cent ad valorem. The misclassification resulted in short levy of duty of Rs.10.51 lakhs.

The irregularity was pointed out in audit in Mach 1991; reply of the department has not been received (April 1992).

ix) Hose assembly

Sub heading 4009.92 covers, inter alia hoses of vulcanised rubber, other than hard rubber with or without fittings and designed to perform the function of conveying air, gas or liquid with a duty liability of 30 per cent ad valorem. The CEGAT in the case of Collector of Central Excise Vs. Aerolax Hose Private Limited {1989 (39) ELT 681} held that the hose assembly made from unvulcanised unhardened rubber is classifiable under sub heading 4009.92.

An assessee in Patna collectorate, manufacturing hose assembly from unhardened vulcanised rubber, with metallic fittings classified the product under sub heading 8431.00 instead of under sub heading 4009.92. The incorrect classification resulted in short levy of duty of Rs.4.92 lakhs on clearances of 14,425 Nos. of hose assembly with or without fittings during the period from July 1988 to March 1989.

The short levy was pointed out in audit in April 1992; reply of the department has not been received (April 1992).

x) Air pillows

Articles of vulcanised rubber other than hardened rubber are classifiable under heading 40.17 (renumbered as 40.16 with effect from 1 March 1987) of the schedule to the Central Excise Tariff Act, 1985. "Air pillows" made of vulcanised rubber sheets, therefore, merit classification under the same heading. The explanatory note (6) to heading 40.16 of the Harmonised System of Nomenclature (HSN) also lends support to such classification.

An assessee in Patna collectorate classified "air pillows" under heading 42.01 as "travel goods" and the department approved the same. The misclassification of the product resulted in short levy of duty amounting to Rs.2.57 lakhs from 1 April 1988 to 31 March 1992.

The misclassification was brought to the notice of the department in January 1992; reply has not been received (April 1992).

xi) Vulcanising solution

Compounded rubber unvulcanised in primary form plates, sheets or strip is classifiable under heading 40.05 attracting duty at 40 per cent ad valorem. The Central Board of Excise and Customs clarified on 7 December 1988 that vulcanising solution is a mixture of rubber, sulphur, organic solvents etc., and is classifiable under heading 40.05.

CEGAT in the case of Elgi Polytex Limited {1988 34 ELT 404 T} held that rubber cements or block vulcanised cement used as adhesive in retreading, of tyres is not classifiable under heading 40.05, but under heading 35.06. A similar decision of CEGAT in the case of Abhilash Rubber product was not accepted by the Government and Civil appeal has been filed on 20 December 1990 in the Supreme Court {1990 91 53 ELT A 81}.

Two assesses in Bangalore collectorate were allowed to classify the goods unvulcanising solution under heading 35.06 with rate of duty of 15 per cent ad valorem. This resulted in short levy of duty of Rs.2,42,271 during the period from April 1988 to December 1991.

On the omission being pointed out (October and January 1991), the department in one case stated that the subject goods were captively consumed and was exempt under notification dated 1 April 1967 and the classification of the goods under heading 35.06 was in order in as much as the vulcanised cement was not predominent with rubber and the clarification issued by the Board was not applicable. The contention of the department that the goods were captively consumed is not

correct for the reason that the assessees had cleared the goods for home consumption as per the details observed from assessee's records. As regards the other point, it may be mentioned that the contention of the department is not in conformity with the aforesaid contention of the Ministry.

No reply has been received in the other case (April 1992).

7. Non levy of duty

Under rule 9 read with rule 173G of the Central Excise Rules, 1944, no excisable goods should be removed from any place where they are produced, manufactured or cured whether for consumption, export or manufacture of any other commodity in or outside such place unless the excise duty leviable has been paid.

A test check of records revealed non levy of duty amounting to Rs.2.64 crores in thirty one cases. Some of the cases are given below:-

I Goods cleared without payment of duty

i) Excisable goods cleared as non excisable

Rubberised coir matting made of coir and rubber are liable to duty at 30 per cent ad valorem under sub heading 5702.90.

Six assessees in Cochin collectorate engaged in manufacture of rubber products obtained Coir products without payment of duty and used them in manufacture of rubberised coir mats/mattings/carpets etc., and cleared the final product without payment of duty treating them as the product of coir industry. This was irregular because once the coir products are cleared from coir industrial unit for further processing by rubber based industrial unit and a new rubberised product is obtained it loses the character of coir industry. Non levy of duty on such rubberised product worked out to Rs.1.35 crores for the period from 1988-89 to 1991-92.

ii) Non levy of duty on goods consumed captively

As per a notification issued on 2 April 1986, specified excisable goods manufactured and used within the factory as inputs in or in relation to manufacture of specified final products are exempt from the whole of the duty of excise leviable thereon, provided the final products manufactured therefrom are not exempt from the whole of duty leviable thereon.

(a) Tyre bead wire ring

Eight assessees in six collectorates manufactured tyre bead wire rings classifiable under sub heading 7326.90. These rings were used by the units within the factory without payment of duty in manufacture of different types of tyres including original equipment tyres and animal driven vehicles tyres which were exempted from the whole of the duty thereon. The benefit of the exemption from duty, therefore, was not available to the bead wire rings manufactured and used captively in manufacture of such tyres. No duty, however, was demanded which resulted in non payment of duty amounting to Rs.13.77 lakhs on bead wire rings used in the exempted tyres cleared by the units from April 1988 to December 1991.

The irregularity was pointed out in audit (December 1991/February 1992); reply of the department has not been received.

(b) Compounded rubber

A unit in Calcutta I collectorate manufactured compounded rubber (heading 40.05) and used a part of it in manufacture of exempted footwear (chapter 64). The assessee used to expunge Modvat credit taken on inputs for manufacture of compounded rubber finally utilised for manufacture of exempted footwear. But, duty payable on such compounded rubber was not paid. This resulted in duty being not levied by Rs.14.40 lakhs during the period from November 1989 to October 1990.

On the irregularity being pointed out in audit (January 1991), the department stated (July

1991 and October 1991) that intermediate products were chargeable to duty only when such goods were not used captively and sold as such in the market. A show cause-cum demand notice had been issued in this regard as a precautionary measure.

Contention of the department is not acceptable as the exemption under notification dated 2 April 1986 was not applicable because compounded rubber was used in manufacture of footwear which were exempt from duty.

(c) Pasty/liquid compounded rubber

Another assessee of the same collectorate manufactured compounded rubber in pasty/liquid form and used the same captively without payment of duty for further manufacture of hard rubber cell boxes of stationery batteries falling under heading 85.07. Hard rubber cell boxes being parts of stationery batteries were fully exempted from duty under a notification issued on 10 February 1986. Duty was, therefore, leviable on pasty/liquid compounded rubber consumed captively. This resulted in non levy of duty for Rs.6.40 lakhs for the period from 1 April 1988 to 31 March 1991.

On the irregularity being pointed out in audit (September 1991), the department did not accept the audit objection and stated (September 1991) that there was no bar to avail of the benefit of notifications issued on 2 April 1986 and 1 March 1986 (small scale exemption).

Reply of the department is not acceptable in audit as goods falling under heading 40.05 were not covered under notification dated 1 March 1986 and exemption under notification dated 2 April 1986 was not available as the compounded rubber was used in exempted output.

(d) Reinforcing agent/antidegradation compound

A large tyre and tube manufacturer in Calcutta II collectorate manufactured rubber compound and used the same within the factory for manufacture of exempted variety of tyres and tubes viz., ADV, Power tillers, cycle etc., without

payment of duty. For manufacture of rubber compound the assessee also got manufactured products (i) prepared reinforcing agent, (ii) Anti-degradation compound or preparation (antioxidising agent) by sending the required inputs to an outside job worker under rule 57F(2) of the Central Excise Rules, 1944, but did not discharge any duty leviable on the same.

The above two products were completely different from their inputs and attained marketable characteristics. As such the same were classifiable under headings 38.23 and 38.12 respectively attracting duty at 15 per cent ad valorem for their captive consumption on exempted variety of tyres and tubes.

The assessee, however, did not discharge any duty on the same although the notification dated 2 April 1986 was not applicable. This had resulted in non levy of duty of Rs.5.26 lakhs during the period between April 1986 and January 1989.

On the irregularity being pointed out in audit (February 1989), the department accepted the audit objection and stated (February 1992) that two show cause-cum demand notices had been issued on 13 August 1991 for Rs.58.65 lakhs for the period September 1986 to March 1991.

Further developments have not been received (April 1992).

(e) Feeding bottles

Section 2(f) of the Central Excises and Salt Act, 1944, defines `manufacture' to include any process incidental or ancillary to the completion of a manufactured product. The Supreme Court in the case of M/s. Narne Tulaman Manufacturers Private Limited {1988 (38) ELT 566} had held that assembly of duty paid components would amount to manufacture if it brings into existence a new product known to the market and the mere fact that the manufacturer bought out certain parts would not change the position.

An assessee in Bombay III collectorate manufacturing "Rubber Nipples" for feeding bottles

and classified the product under sub heading 4014.90 attracting duty at 15 per cent ad valorem. The assessee as a SSI unit also availed exemption under notification dated 1 March 1986. The assessee also cleared rubber nipples duly fitted in feeding bottles (of glass or plastic). The rubber nipples attached to the bottles bring about a new product viz., feeding bottles.

Though the feeding bottles were cleared by the assessee, the duty was paid only on the value of the rubber nipples manufactured by the assessee without taking into account the value of the bottles (bought out items). No classification list was also filed by the assessee for feeding bottles although cleared. The plastic feeding bottle attract duty at 15 per cent ad valorem under sub heading 3926.90. The glass feeding bottles attract duty at 25 per cent ad valorem under heading 70.15.

This resulted in short levy of duty of Rs.5.25 lakhs on clearances of feeding bottles between April 1990 and March 1991.

On the irregularity being pointed out in audit (September 1991), the department stated that the glass bottles are duty paid bought out items and the plastic bottles are exempt from duty and levying of duty on these items is not correct. The assessee does not manufacture feeding bottles but brings (bottles) from outside and hence the filing of classification list for feeding bottles does not arise.

The contention of the department is not acceptable in audit as a new product known to the market as feeding bottles was cleared by the assessee which was dutiable at 15 per cent and 25 per cent ad valorem under sub heading 3926.90 or 7015.00 respectively.

II Irregularities in clearance of goods for job work

As per rule 57F(2) of the Central Excise Rules, 1944, a manufacturer with the permission of the proper officer may remove the inputs as such or after partial processing to a place outside the

factory for the purpose of manufacture of intermediate products, necessary for manufacture of final products. The intermediate products so manufactured should be returned to manufacturer of final product for further use in manufacture of final product.

(a) In case of M/s.Asian Paints (India) Limited (1990 50 ELT 76-T) CEGAT held that there was no provision in law for the transfer of any intermediate goods from one factory to another factory of the same manufacturer for manufacturing the final product which was covered by Modvat scheme (rules 57A to 57I of the Central Excise Rules, 1944), without payment of duty. Thus the scheme provides for taking of the credit in a particular unit and availing of the same in the same unit at the time of clearance of intermediate goods to his another factory.

Contrary to the aforesaid decision, an assessee in Bangalore collectorate was allowed to remove rubber hoses, couplings, caps and nipple sets from his factory to another unit for manufacture of final product viz., rubber hose assembly (sub heading 4000.92) without payment of duty under rule 57F(2) of the said rules. This resulted in non levy of duty of Rs.56.22 lakhs on clearance of semi finished goods during the period from April 1988 to October 1991.

On the omission being pointed out in audit (November 1991), the department have stated (November 1992) that a show cause notice has since been issued in February 1992.

(b) A public sector tyre manufacturer in Bangalore collectorate had cleared raw materials to a job worker for conversion into masticated rubber (heading 40.05) in terms of rule 57F(2) read with the notification dated 25 March 1986. A test check of challans received from two job workers by manufacturer disclosed that the said job workers sent 1736.124 tonnes of masticated rubber through the said challans during the period from April 1989 to November 1991; whereas manufacturer of tyres had accounted for 1612.173 tonnes in the register prescribed during the said period. Thus 123.951 tonnes of masticated rubber

involving duty effect of Rs.18.56 lakhs was received short at the destination of manufacturer. However, duty was not demanded by the department for such transit losses.

On this omission being pointed out in audit (January 1992), the department stated (February 1992) that (i) the contention of audit was not correct and to get the correct picture such raw material (input) "moved out" and "received into" the factory from the job worker from the inception of rule 57F(2) had to be taken and (ii) this was the peculiar difficulty faced by manufacturer and a reference has been made to the Central Board of Excise and Customs in January 1987. The contention of the department is not acceptable for the reason that the objection mainly relates to transit losses and such transit losses can not be linked up with the matters as stated by the department.

(c) An assessee in Madras collectorate availed Modvat credit on inputs used in manufacture of `Nylon Tyre Cord warpsheet' and cleared them without payment of central excise duty to his sister unit under rule 57F(2) after expunging the proportionate Modvat credit availed on the inputs. Since, the assessee had not maintained separate accounts for inputs and finished goods in respect of job work done by him under rule 57F(2) and also not correctly followed the procedure set out in the rule, there were differences in quantities of Modvat inputs used in manufacture of final product (viz.), `Nylon Tyre Cord Warpsheet' and Modvat credit expunged.

The incorrect procedure adopted by the assessee after November 1989, resulted in short-reversal of Modvat credit to the extent of Rs.2.16 lakhs for the period from April 1990 to November 1991. The short reversal for the period from November 1989 to March 1990 remains to be ascertained.

This was pointed out in audit (February 1992); reply has not been received.

8. Irregular availment of Modvat credit

Government of India introduced modified form of value added tax (MODVAT) scheme for allowing credit of duty paid on the specified input used in or in relation to manufacture of specified product with effect from 1 March 1986. Rubber and rubber products falling under chapter 40 are covered under the scheme from the said date.

Irregularities in implementation of the scheme in respect of rubber and rubber products were noticed in test audit in one hundred and six cases involving duty of Rs.2.60 crores. Some of the cases are given below :-

i) Credit availed without or wrong filing of declaration

As per rule 57G of the Central Excise Rules, 1944, a manufacturer intending to avail the input relief under rule 57A should file a declaration indicating the description of inputs intended to be used in each of the final product and take credit of the duty paid on the inputs received by him after obtaining a dated acknowledgement for such declaration. Further, the proforma for declaration to be filed under rule 57G has specific columns for the description of the final product, and its tariff classification as well as description of inputs and its tariff classification against each final product, besides the column to indicate the nature of the inputs, whether raw material or component etc.

(a) Three assessees in Bangalore collectorate and two assessees in Belgaum collectorate were allowed to take Modvat credit aggregating to Rs.65.41 lakhs without obtaining a detailed declaration under rule 57G in respect of inputs used in each final product. The assessees only submitted a declaration to the proper officer indicating all the inputs required for manufacture of different kinds of final products. Further, such declaration would not provide an opportunity to the department to verify whether the inputs mentioned in the declaration would be required in or in relation to manufacture of the final product concerned. Therefore, the credits so taken

without any detailed description of inputs required to each output resulted in irregular availment of credit of Rs.65.41 lakhs in the aforesaid cases.

On the irregularity being pointed out in audit (between October 1991 and February 1992), the department in one case, where credit of Rs.43.12 lakhs was involved stated (March 1992) that the issue was being examined and defects would be regularised under intimation to audit. Final reply has not been received. Replies in the remaining cases have also not been received.

(b) Three assessees in Indore collectorate engaged in manufacture of tyres availed credit in respect of tread rubbers (sub heading 4006.10) and beds (sub heading 4006.90) which were not declared as inputs in their declaration filed on 15 April 1989. The credit of duty paid was, however, availed of and utilised during the period from 15 April 1989 to 2 October 1989. The irregular availment of credit amounted to Rs.8.89 lakhs.

The irregularity was brought to the notice of the department in February 1992; reply has not been received.

(c) An assessee in Meerut collectorate took credit of Rs.8,30,410 between February 1989 to April 1991 on account of duty paid on spray dried and filter precipitated silica, (sub heading 2804.90) di-phenyl guardine (subheading 3812.00) and Reinforcing agent SI 69 received in the factory as input for use in manufacture of the final products and utilised the same towards payment of duty thereon. These inputs were not included in the declaration filed by the assessee from time to time and hence availment of Modvat credit on these inputs was irregular.

On the matter being pointed out in audit, the department accepted the audit objection and recovered the amount by Rs.2.54 lakhs (September 1990) relating to inputs other than reinforcing agent. Reply in respect of reinforcing agent (Rs.5.76 lakhs) has not been received.

ii) Modvat credit on exempted goods

As per rule 57C of the Central Excise Rules, 1944, no credit of specified duty paid on inputs, used in manufacture of a final product, shall be allowed if the final product is exempt from the whole of the duty of excise leviable thereon or is chargeable to `nil' rate of duty.

(a) ADV tyres

As per notification dated 1 March 1988, ADV tyres of the specified size are chargeable to `nil' rate of duty.

A unit in Indore collectorate, cleared 3457 ADV/HC tyres at `nil' rate of duty under the said notification but did not reverse the Modvat credit availed in respect of inputs which had gone in their manufacture. This resulted in irregular availment of Modvat credit amounting to Rs.22.69 lakhs during the period from April 1988 to August 1991.

The irregularity was brought to the notice of the department in February 1992; reply has not been received.

(b) Air bags and bladders

Two assessees (one each in Bombay III and Jaipur collectorate) manufacturing tyres, tubes and flaps and also air bags and bladders falling under chapter 40 availed of Modvat credit of duty paid on inputs. Between April 1988 and November 1991, the assessees availed credit of Rs.18.25 lakhs on the inputs used in manufacture of air bags and bladders.

As the air bags and bladders manufactured by the assessees and used within the factory of production for manufacture of tyres, were exempt from payment of duty under a notification dated 1 April 1967, modvat credits availed on inputs used in manufacture of air bags and bladders on which no duties were paid were not available to the assessees in terms of rule 57C of the Central Excise Rules, 1944.

On the irregularity being pointed out in audit (December 1991 and April 1992), the department issued show cause notice for Rs.10,48,253 in one case. Reply in the other case has not been received.

(c) OE parts

Two assessees (one each in Meerut and Cochin collectorate) manufacturing `rubber tyres, tyre tubes and flaps of chapter 40' were availing Modvat credit on manufacture of rubber products, some quantity of which were cleared as `OE' parts without payment of duty. The assessee in Cochin collectorate did not reverse Modvat credit of Rs.5,40,453 relating to OE tyres cleared duty free during the period from April 1988 to May 1991. The assessee in Meerut collectorate reversed the credit on the basis of calculations certified for the year 1987-88 instead of actual data of the years 1988-89, 1989-90 and 1990-91, thereby resulting in the total short reversal of duty amounting to Rs.13.03 lakhs in respect of two assessees.

The irregularities were reported to the department (January 1992); replies have not been received.

(d) Cut tyres and tubes

Cut tyres and tubes are exempt from payment of duty under a notification dated 10 December 1986. The Central Board of Excise and Customs in consultation with the Ministry of Law decided on 13 May 1988 that `cut tyres and tubes' are not `waste refuse or by product' but are itself `final product'. As such Modvat credit will not be admissible by virtue of rule 57C of the Central Excise Rules, 1944.

Four assessees (two in Indore collectorate and one each in Jaipur and Chandigarh collectorates) engaged in manufacture of tyres and tubes, obtained cut tyres and tubes during the course of manufacture. Such cut tyres were cleared under exemption of duty under the said notification. Element of Modvat credit shared by such quantity of inputs, that had gone in

manufacture of such cut tyres and tubes, was required to be reversed which was not done. The amount of such irregular Modvat credits worked out to Rs.10.34 lakhs during the period from September 1988 to December 1991.

The matter was brought to the notice of the department in December 1991 and February 1992. The department in two cases replied (March 1992) that the assessees were entitled to avail the credit on inputs in cut tyres/tubes (i.e., waste and scrap) in terms of rule 57D(i) of Central Excise Rules, 1944. The reply is not acceptable as it is not in conformity with the advice of the Ministry of Law. Reply in remaining two cases has not been received.

(e) Polythene sheets

An assessee in Delhi collectorate availed Modvat credit on polythene sheets and other inputs used in manufacture of rubber compound during the period 1986-87 to 1989-90. The polythene sheet was used for preserving of rubber compound and rubber compound so manufactured out of duty paid inputs was used in manufacture of air bags/bladders which were consumed in the manufacture of final product (tyres) cleared under chapter X procedure at nil ate of duty. This resulted in irregular availment of Modvat credit of Rs.2.95 lakhs.

On the irregularity being pointed out in audit, the department stated (November 1990) that polythene sheets were used in relation to the final product and not in relation to input and rule 57C was limited to the inputs used in the final product only. As regards inputs used for manufacture of air bags/bladders, the department admitted (February 1992) that the air bags/bladders were invariable inputs for manufacture of tyres. But nothing was said about reversing of Modvat credit. As the assessee had cleared the final products i.e., tyres at nil rate of duty under chapter X procedure, Modvat credit used on goods cleared as such was required to be reversed.

(f) Tyres and tubes

A large tyre and tube manufacturer in Calcutta II collectorate manufactured inter alia, rubber products like ADV tyres and tubes, cycle tyres and tubes falling under chapter 40 and cleared the same without payment of duty as per notification issued in this regard. The assessee however, used to expunge duty credit on the inputs contained in such exempted goods at the end of each month but the amount of expungement made always remained less than that of actual duty credit availed of by the licensee.

This had resulted in short expungement of duty credit for Rs.2.57 lakhs during the period from April 1991 to September 1991 in respect of the input carbon black alone.

On the irregularity being pointed out in audit (December 1991), the department admitted the audit objection and stated (March 1992) that an amount of Rs.3.14 lakhs had been recovered.

iii) Irregular utilisation of Modvat credit

As per rule 57F(3) of the Central Excise Rules, 1944, credit of specified duty allowed in respect of any inputs may be utilised towards payment of duty of excise on any of the final products in or in relation to manufacture of which such inputs are intended to be used in accordance with the declaration filed under sub rule 1 of rule 57G. Further, as per Ministry's letter dated 20 April 1987, a manufacturer who maintains the accounts of credit chapter-wise is required to submit a monthly statement alongwith RT.12 returns indicating separately for each final product the details of inputs, duty credit availed of to ensure that there is no misuse of Modvat credit. This relaxation did not over rule the basic principle of the said scheme that the credit of duty paid on the inputs should be utilised only on those products for manufacture of which such duty paid inputs has actually been brought or in manufacture of which they could be used.

(a) An assessee in Bangalore collectorate engaged in manufacture of seats for two wheelers (heading

87.14), seats for motor vehicles, other than 2 wheelers (heading 94.01) and mattresses, pillows, etc. (heading 94.04) was availing facility of Modvat scheme after filing declarations from time to time. The department allowed the assessee to maintain the account of credits chapter wise in terms of the aforesaid instructions of the Ministry. The department had, however, not insisted upon the assessee to submit a monthly statement alongwith RT.12 returns indicating separately for each final product the details of input duty credit availed of in terms of the aforesaid Ministry's letter dated 20 April 1987. This resulted in mis-utilisation of Modvat credit of Rs.51.13 lakhs during the period from April 1988 to November 1991.

The irregularity was brought to the notice of the department in December 1991. Reply of the department has not been received (march 1992).

(b) As per advice of the Ministry of Law circulated under the Board's letter, dated 4 January 1991 it is not the sweet will of manufacturer to pay duty on exempted goods. If a person deposits any amount in the name of excise duty which is not leviable by law, the amount so deposited will not be in the nature of duty; it will be only in the nature of deposit with the government.

An assessee in madras collectorate availing exemption under a notification dated 1 March 1986 as amended applicable to small scale units received the inputs, aluminium washers and crown, from another assessee under the procedure prescribed in rule 57F(2) for further processing and manufacturing of rubberised moulded valves/crown assembly. Even though, no duty was required to be paid by the assessee on the clearances of such processed goods he paid central excise duty from April 1988 onwards. The amount paid by the assessee was only a deposit and not duty under Central Excises and Salt Act, 1944. This enabled another big manufacturer to avail higher notional credit under rule 57B of the Central Excise Rules, 1944, on the goods cleared by the assessee on payment of duty without availing exemption. The incorrect availment of

higher notional credit worked out to Rs.3.68 lakhs for the period from April 1988 to March 1991.

The irregular availment of higher notional credit was brought to the notice of the department in January 1992; reply has not been received (April 1992).

(c) A joint undertaking of central and state governments in Belgaum collectorate engaged in manufacture of Iron and Steel articles and rubber products (chapter 72,73,84 and 40) was allowed to maintain a single RG23A part II for inputs used in manufacture of the said final product for purpose of utilisation of credit of duty taken on the inputs used in manufacture of each final product. It was observed in audit that the said undertaking had utilised credits of duty taken on the inputs used in manufacture of rubber products towards payment of duty due on clearances of iron and steel products. This resulted in irregular utilisation of Modvat credit of Rs.4.47 lakhs during the period from February 1989 to January 1992.

The irregularity was pointed out in audit (March 1992); reply thereto has not been received (March 1992).

(d) A manufacturer in Meerut collectorate availed of credit of the specified duty of Rs.2,35,817 paid on adhesive between February 1987 and February 1988 under Modvat scheme which was not admissible since these inputs were not used in the final product.

On the omission being pointed out in audit (August 1991), the department has stated that a show cause notice is under issue by the Collector.

iv) Availment of credit before receipt of inputs

As per the Modvat scheme, Modvat credit can be availed only on the date of receipt of document or the date of receipt of inputs whichever is later. Further, as per rule 57J of the Central Excise Rules, 1944, read with the notification dated 20 June 1986 issued thereunder, where the inputs move directly from the manufacturer of

inputs/importers to the manufacturer of intermediate products (job worker) the manufacturer of final products receiving the intermediate products from the job worker may avail credits of duty paid on inputs, used in manufacture of such intermediate products provided the said intermediate products are accompanied by the documents evidencing payment of duty on the inputs used in them. The credit of duty on such inputs shall be taken only after the intermediate products are received by the manufacturer of final product.

An assessee engaged in manufacture of inner rubber tubes for tyres in Belgaum collectorate had imported butyl rubber (Synthetic rubber) and moved such imported goods from the place of customs clearances directly to his job workers for conversion into masticated rubber (Master batch) for use in manufacture of the aforesaid final product. It was seen in audit, that the assessee was allowed to take credit of countervailing duty paid on such inputs before the arrival of intermediate product in his factory. This resulted in irregular grant of credit of Rs.14.49 lakhs during the period from March 1990 and onwards. This also led to financial accommodation to the assessee for payment of duty due on the clearances of his final product.

This irregularity was pointed out in audit in February 1992; reply thereto has not been received (March 1992).

9. Irregular exemption to small scale manufacturers

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

A number of SSI notifications issued prior to March 1986 were rescinded and a comprehensive notification dated 1 March 1986 incorporating the

essential features of the earlier notifications was issued and given effect to from 1 April 1986. The conditions stipulated for concessions under this notification indicated a set of criteria to identify units concerned.

A test check revealed short levy of duty of Rs.2.01 crores in twenty seven cases. Some of the cases are discussed below :-

i) Legal avoidance of duty

Large scale avoidance of duty in eight tread rubber units involving Rs.130.88 lakhs was noticed in Bangalore and Belgaum collectorates whose modus operandi was as follows :-

(a) In Bangalore collectorate, members of one family had registered four independent units and obtained four L4 licences from the range office for manufacture of tread rubber. The dealings of all the four units were managed by a member of the said family, through general power of Attorney executed by the proprietors concerned. The manufacturing unit of precured tread rubber was being used, by another unit by sending the raw materials under rule 57F(2) of the Central Excise Rules, 1944, for manufacture of the precurred tread rubber. Similarly the other two units exchanged semi-finished product for conversion into finished product, whenever need for such conversion arose.

All these factors taken together would establish the fact that those units were set up with the sole idea of securing the benefit of lower rate of duty for tread rubber by keeping the exemption limits within the notification thereby resulting in escapement of revenue of Rs.12.32 lakhs during the years 1988-89 to 1991-92.

On the irregularity being pointed out in audit (between October 1991 to February 1992), the department contended (March 1992) that the audit contention was purely based on presumption and assumption and could not be taken as an evidence unless fact was proved on documentary evidence. This contention of the department is not correct for the reason that the audit objection was based

on the aforesaid facts and in such cases the department is certainly entitled to lift the mask of corporate entity, if, the conception was used for tax evasion or to circumvent tax obligation, in terms of CEGAT decision contained in METEOR SATELLITE {1985 22 ELT 81 T}. It was also observed by the Tribunal in the case of SARANG products {1989 43 ELT 81 T} that when two firms belong to one joint Hindu family, the value of clearances of both the firms are to be clubbed together.

(b) Another small scale manufacturer of tread rubber in the same collectorate availed of the aforesaid exemption notification for payment of duty. The factory of the said manufacturer was situated adjacent to another manufacturer of tread rubber and the said another manufacturer was closely related to the proprietor of the former unit. Further, a part of the cushion compound manufactured in the latter factory was being cleared to the former factory for manufacture of tread rubber. The department did not, however, include value or quantity of clearance of another small scale manufacturer for arriving at the total value of clearances. This resulted in escapement of duty of Rs.28.03 lakhs during the period from 1988-89 to 1991-92 (November 1992).

On this being pointed out in audit (December 1991), the department contended (February 1992), that under the circumstances brought out by audit if it was taken as legal avoidance of duty, the notification granting concessional rate of duty did not have the purview to deal with the situation and there was no clear cut law in the present instance. This view of the department is not in conformity with the CEGAT decision contained in the case of the METEOR SATELLITE and it was also observed by CEGAT in the case of Kwality Steel Industries {1989 43 ELT 775 T} that two units although registered separately are not independent of each other, if proprietor of one unit is wife of the proprietor of another unit and in such a case clearances from both the units are on behalf of one person and have to be clubbed together.

(c) Similarly, in case of five assessees in the same collectorate it was noticed in audit that three assessees engaged in manufacture of foam products were allowed to avail the exemption separately as contained in notification dated 1 March 1986. A partner having common interest in two units was interested in the business of his own proprietary third unit. In other words, the said three units having common business interest were controlled by the said partner as all the units were engaged in manufacture of different types of foam products. Therefore, the value of clearances of three units were required to be taken together as the said units have been bifurcated only with a view to avail of the benefit of the exemption and to deprive the state of its legitimate tax. Such legal avoidance was also noticed in another case of two assessees engaged in manufacture of Tread Rubber. Such avoidance of duty worked out to Rs.62.71 lakhs during the period from 1988-89 to 1991-92.

On this lapse being pointed out in audit (October 1991), the department contended (January 1992) that, as long as the units are separate entities, the exemption granted under any notification should not be denied. This contention of the department is not in conformity with the Supreme Court's decision in the case of Juggilal Kamalapat {1969/73/ITR/702/SC} wherein it was held that the assessing authority are entitled to pierce the veil of Corporate personality and look at the reality of the transaction and pay regard to economic realities behind the legal facade and the authorities have power to disregard the corporate entity if it is used for tax evasion or to circumvent tax obligation or perpetration of fraud.

(d) The Tribunal in the case of S.F.India {1988 33 ELT 636 T} held that when a unit is raised for hiding and camoflouging the manufacturing activity of another unit, the same is not to be treated an independent manufacturer and clearances of both the units are to be clubbed as being of one manufacturer. It was also held by the Tribunal in the case of "Sarang product" that, when two firms belong to one Joint Hindu family, the value of

clearances of both the firms are to be clubbed together.

Three manufacturers of Tread rubber and tyre Flaps in Belgaum collectorate were allowed the exemption from payment of duty in terms of notification dated 1 March 1988 and 11 November 1985. It was noticed in audit that the proprietors/partners of said firms were interested in the business of other three units in Belgaum collectorate, where the said persons were also proprietor/partners of the other said firms. Besides, all these firms belonged to Joint Hindu Family concern. In view of the aforesaid legal pronouncements value of clearances of the other three firms were includible in the value of clearances of the connected individual firm. The department did not, however, initiate action in this regard. This resulted in escapement of duty of Rs.27.82 lakhs during the period from 1988-89 to 1991-92 (February 1992).

This was brought to the notice of the department (January 1992 and February 1992), the reply thereto has not been received (March 1992).

ii) Branded goods manufactured in SSI units

As per para 7 of notification dated 1 March 1986, as amended on 22 September 1987, the exemption contained in the former notification will not apply to the specified goods, where the manufacturer affixes such goods with a Brand name or Trade name (registered or not) of another person who is not eligible for the grant of exemption under the said notification.

Under explanation VIII of the aforesaid notification brand name or trade name shall mean brand name or trade name, whether registered or not, that is to say, name or a mark such as a symbol, monogram, label etc., which is used in relation to the specified goods for the purpose of indicating or so as to indicate a connection in the course of trade between such specified goods and some persons using such name or mark with or without any indication of the identity of that person. A similar provision has also been made/inserted in the notification dated 11

November 1985 in respect of tyres, tubes and flaps of rubber manufactured by small scale units.

Irregularities in extending the said provisions were noticed in five cases in Bangalore collectorate.

Some of these cases are given below :-

(a) An assessee in Bangalore collectorate manufacturing rubber hose assemblies for supply to well known public sector undertaking was allowed to clear the branded goods to the said public sector unit at a concessional rate of duty in terms of the notification dated 1 March 1986. This resulted in short levy of duty of Rs.4.17 lakhs on the value of Rs.39,75,470 during the years 1988-89 to 1991-92 (upto October 1991).

On the irregularity being pointed out in audit (November 1991), the department stated (March 1992) that the department was not aware of the fact of clearance of branded goods and the matter would be examined in order to initiate the recovery proceeding under section 11A of the Central Excises and Salt Act, 1944.

(b) A manufacturer of moulded foam products in the same collectorate entered into an agreement with a trader for supply of foam pillows to his branches situated in various parts of the country. The agreement, inter alia, provided that (i) orders for bare foam pillows would be placed on the firm (ii) such bare foam pillows would be delivered to the tailoring contractor for providing clothing to the foam pillows and for fixing his trade name "Kurlon". (iii) The pillows when covered with cover and packed in polyethylene bags (supplied by the trader) displaying the trade description of the goods would be despatched to the respective destinations alongwith manufacturer's gate passes, invoices and the labour bill of tailoring contractor under the manufactuer's supervision. A scrutiny of the records of the manufacturer further disclosed that (a) the manufacturer in order to get his price increase had furnished details of the manufacturing cost including the cost of cloth cover incurred by tailoring unit in his letter

dated 7 September 1990 and (b) the partners of the said tailoring unit were close relatives (wives) of the partners of the manufacturing unit. These factors taken singly, and cumulatively established that the manufacturer was entrusted with a work of supplying the branded goods. since the goods were being sold in market indicating a connection between the goods and brand name owning firm, availment of SSI exemption was irregular and had resulted in loss of revenue of Rs.16.10 lakhs during the period from April 1987 to December 1991.

On this lapse being pointed out in audit (January 1992), the department stated (February 1992) that the objection raised by audit was known to the department earlier to the date of audit and the department has already initiated investigation processing prior to visit of audit. The fact, however, remains that no legal remedial action was taken by the department so far (March 1992) eventhough such irregular removal of goods pertained to the period from April 1987 and onwards.

(c) An assessee in Madras collectorate manufacturing goods falling under chapter 40, cleared part of the goods affixing the brand name of other manufacturers who were not eligible for the benefits of small scale exemption notification and the balance on payment of duty at concessional rates under the above mentioned notification. However, for the purpose of computing the limit of first clearances of Rs.75 lakhs, the value of clearances of the specified goods at full rate of duty was omitted to be included. Though show cause notice was issued for 1989-90, the case was adjudicated (August 1990), dropping further proceedings. Consequently, the clearances made at full rate of duty was also not included in 1990-91.

As para 7 is independent of para 3 of the notification, clearance of branded goods is also includible for computing the limit of Rs.75 lakhs. Omission to file appeal against the orders of the Divisional Officer resulted in loss of revenue of Rs.4.53 lakhs for the years 1989-90 and 1990-91.

This was pointed out by audit in June 1991; reply from the department has not ben received.

iii) Clearance of goods against wrong registration certificate

As per a notification issued on 1 March 1986, concessional rate of duty is applicable to a factory which is an undertaking registered with the Director of Industries of any State or the Development Commissioner (Small Scale Industries) as a small scale industry under the provisions of Industries (Development Regulation) Act, 1951. The value limit of plant and machinery under the provisions of the Industries (Development and Regulations) Act, 1951 for small scale registration is Rs.35 lakhs.

(a) An assessee in Bombay I collectorate manufacturing rubber moulded articles (heading 40.16) attracting central excise duty at fifteen per cent ad valorem, cleared the goods at concessional rate of duty at five per cent ad valorem on the first clearances of Rs.75 lakhs under the exemption notification ibid. The balance sheet of the assessee reflected that the value of plant and machinery as on 31 March 1989 and 31 March 1990 was Rs.41.88 lakhs and Rs.48.30 lakhs respectively. As the value of plant and machinery had exceeded the limit of Rs.35 lakhs during the years 1989-90 and 1990-91, the assessee was not entitled to clear the goods at a concessional rate of duty applicable to small scale industry.

The incorrect grant of exemption during the years 1989-90 and 1990-91 resulted in short levy of duty of Rs.15.75 lakhs.

On the irregularity being pointed out in audit (October 1991), the department did not accept the objection stating that the authority issuing the certificate had declared that the unit had obtained the SSI status and there is no reason why the unit should be denied the entitlement to the benefit extended to SSI unit on the ground of value of plant and machinery which is not mentioned in the notification dated 1 March 1986.

The reply of the department is not acceptable in view of the provisions of the Industries (Development and Regulation) Act, 1951 according to which the monetary limit of Rs.35 lakhs being the investment in plant and machinery is mandatary, to be eligible for the benefits as a small scale unit. The assessee ceased to continue as a SSI unit as his total investment on plant and machinery exceeded the limit of Rs.35 lakhs. The absence of any mechanism to check the validity of SSI certificate already issued to the assessee has resulted in irregular availment of exemption.

Statement of fact was issued to the department (February 1992) reply has not been received (April 1992).

iv) Irregular grant of exemption on uncovered goods

As per notification dated 1 March 1988 as amended, tread rubber, camel back, cushion compound, cushion gum, tread packing strips falling under chapter 40 are chargeable with duty at concessional rates mentioned therein. Precurred tread rubber (vulcanised rubber) is classifiable under sub heading 4008.21 at tariff rate of duty at Rs.12.60 per kg. from 20 March 1990. The concessional rates of duty leviable under the aforesaid notification are not available to the precurred tread rubber for the reason that no specific reference has been made in the notification. Further, the description of goods mentioned in the exemption notification more specifically refers to the description of goods under sub heading 4006.10. Thus, any contention that exemption in terms of notification dated 1 March 1988 is also available to the precurred tread rubber falling under sub heading 4008.21 on the ground that the tread rubber which is one of the materials mentioned in the notification would cover precurred or tread rubber, is not acceptable.

Three manufacturers of the precurred tread rubber in Bangalore and Belgaum collectorates were allowed to clear the said goods for home consumption at the concessional rate of duties in terms of the notification dated 1 March 1988.

This resulted in short levy of duty of Rs.12.06 lakhs during the period from March 1990 to January 1992.

This irregularity was pointed out in audit (Between October 1991 and January 1992); reply thereto has not been received.

v) Loss of revenue due to simultaneous availment of small scale exemption under two notifications

As per notification dated 11 November 1985, tyres, tubes and flaps cleared by a manufacturer from one or more factories upto a value of Rs.50 lakhs in a financial year are eligible for a concessional rate of duty at 50 per cent of the duty leviable provided the aggregate value of clearances of the said goods during the preceding financial year had not exceeded rupees two crores. In view of the fact that concessions in the matter of payment of excise duties under notification dated 1 March 1986 are available to industrial units on clearances of specified goods, a manufacturer can avail himself of either of the two facilities, but he is not eligible to avail of both the notifications simultaneously.

Two assessees manufacturing tyre flaps (sub heading 4012.19) in Belgaum collectorate was allowed to avail both the aforesaid SSI notifications simultaneously on the clearance of the aforesaid goods. This resulted in short levy of duty of Rs.4.77 lakhs on the clearances of goods valued at Rs.25,18,288 (41002 numbers) during the period from December 1989 to February 1992 (except from 1 April 1990 to 15 May 1990).

This was pointed out in audit (January 1992 February ,1992); reply thereto has not been received.

vi) Short levy due to simultaneous availment of full SSI exemption and Modvat

The Board clarified on 8 August 1988 that Modvat benefits and full exemption can be availed simultaneously in respect of products manufactured out of the same raw material provided separate

accounts are maintained for manufacture of both category of final products right from the raw material stage to the finished stage.

An assessee in Madras collectorate manufacturing compounded rubber in the form of sheets/strips (ultimately cleared to tyre retreated units), tubes and tyre flaps and availing the credit of duty paid on inputs under rule 57A of the Central Excise Rules, 1944, cleared the compounded rubber in the form of sheets/strips and tubes on payment of central excise duty at concessional rates with reference to notification dated 1 March 1988 and 11 November 1985 (as amended) and tyre flaps without payment of duty under notification dated 1 March 1986 as amended applicable to SSI units, after expunging the input credit pro rata. As the assessee had taken credit on the inputs for the manufacture of tyre flaps also and since separate accounts were not maintained for dutiable and nondutiable final products from raw material stage to the finished stage, he had to pay central excise duty on tyre flaps also. The duty omitted to be collected in this regard during the period from August 1989 to March 1990 and from 29 June 1990 to February 1991 amounted to Rs.3.51 lakhs.

On this being pointed out in audit (May 1991), the department replied (October 1991) that the assessee availed exemption in respect of tyre flaps as per notification dated 1 March 1986 as amended and paid duty for the other two items. The inputs being common one, they expunged the credit pro rata used in manufacture of tyre flaps based on the chartered Accountants certificate.

The reply of the department is not acceptable, since in the instant case, all the goods manufactured are specified in the notification dated 1 March 1986. Therefore, simultaneous availment of exemption and duty payment was not in order.

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

Exemptions from duty on rubber and rubber products falling under chapter 40 have been

notified from time to time under rule 8(1) of the Central Excise Rules, 1944, (now, Section 5A of the Central Excises and Salt Act, 1944). Such notifications generally provide for specific condition for availment of the exemptions.

Seventeen cases of incorrect grant of exemption resulting in short levy of duty of Rs.1.39 crores were noticed in test audit. Some of the cases are given below :-

i) Rubber sheets/compound

As per a notification dated 1 April 1968 as amended, all rubber products in the form of plates, sheets and strips, unhardened whether vulcanised or not, and whether combined with any textile material or otherwise (other than the products which are made either wholly or partly of rubber and which are used for resoling or repairing of tyres including the products commonly known as tread rubber, camel back, cushion compound, cushion gum, tread gum and tread packing strips) falling under heading 40.05 are exempt from the whole of duty of excise leviable thereon, provided that no credit of duty paid on the inputs used in manufacture of the said goods has been availed of under rule 56A or 57A of the Central Excise Rules. The Board of Excise and Customs in their letter dated 8 August 1988 had clarified that Modvat benefit and full exemption from payment of duty could be availed simultaneously provided separate accounts were maintained for manufacture of both category right from the raw material stage to the finished stage.

(a) A unit in Indore collectorate, engaged in manufacture of tyres, was availing of the benefit of Modvat scheme on the inputs used. The assessee, was, however, allowed to clear the rubber sheets from 13 March 1989 under full exemption of duty under the aforesaid notification. This resulted in incorrect grant of exemption of duty of Rs.44.26 lakhs during the period from 13 March 1989 to 31 August 1991.

The matter was brought to the notice of the department in February 1991; reply has not been received.

(b) Similarly an assessee in Trichy collectorate manufacturing `Compounded rubber' (subheading 4005.00) cleared it without payment of duty with reference to notification dated 1 April 1968 after expunging the input credit pro rata. The duty omitted to be collected on the clearances made during the period from April 1988 to March 1991 due to irregular availment of exemption under the said notification worked out to Rs.13.91 lakhs.

This was brought to the notice of the department in April 1992, its reply has not been received.

(c) An assessee in Hyderabad collectorate manufacturing rubber compounds viz (1) envelope compound (2) cement compound (3) `D' ring compound and (4) Gum compound classifiable under heading 40.05 cleared the product without payment of duty under the said notification to his office situated at a different place outside the state. It was seen that the product was not cleared as such from that place but was used in the process connected with the manufacture of compounded rubber usable for retreading, repairing or resoling of rubber tyres and as such exemption was not applicable for these products. This resulted in short levy of duty of Rs.45.27 lakhs during the period from November 1988 to July 1991.

On the irregularity being pointed out in audit (December 1989), the department stated (October 1992) that three show cause-cum demand notices aggregating to Rs.30.57 lakhs had been issued for the period March 1990 to July 1991. The show cause notice for Rs.12.03 lakhs for the period from September 1990 to February 1991 was confirmed by the Assistant Collector in September 1991. The department has filed an appeal with the CEGAT against the order of Collector (Appeals) setting aside the orders of the Assistant Collector. The matter is reported to be pending with CEGAT (October 1992).

ii) ADV tubes

As per a notification issued on 25 July 1991, tubes of rubber of a kind used in animal drawn

vehicles are chargeable to duty at concessional or nil rate depending on size specified therein.

An assessee in Allahabad collectorate cleared such tubes of 16X4, 15X3.50, 17X3.50 for handcarts at concessional or nil rate during 25 July 1991 to 30 November 1991 though these sizes were not specifically mentioned in the aforesaid notification. Incorrect grant of exemption resulted into short levy of Rs.3.40 lakhs.

The matter was reported to department in February 1992; reply has not been received (March 1992).

iii) Splicing repair sheet

The Central Board of Excise and Customs clarified on 24 February 1981 that Splicing Compound used in repairing conveyor belt would be classified as Tread Rubber and Cushion Compound and accordingly the same would not get the benefit of exemption notification issued on 1 April 1968 as these products are excluded for exemption in the notification.

A large tyre and tube manufacturing unit in Calcutta II collectorate manufactured splicing repair sheet for conveyor belt cleared the same without payment of duty as per the notification dated 1 April 1968 as amended. Incorrect grant of exemption thus resulted in short levy of duty for Rs.15.04 lakhs during the period from May 1990 to October 1991.

On the irregularity being pointed out in audit (December 1991), the department, while not admitting the audit objection stated (March 1992) that the tariff advice was based upon the erstwhile tariff items and, therefore, would be treated as redundant with the introduction of the Central Excise Tariff Act, 1985.

The contention of the department is not acceptable as the purpose of tariff advice was not only to classify splicing repair compound used in conveyor belt but to clarify the scope of the notification dated 1 April 1968 which excludes

such products from the purview of the exemption. The notification is still in vogue.

iv) Rubber solution

By virtue of a notification dated 29 July 1986, compounded rubber unvulcanised in primary form or plates, sheets or strips alone are chargeable to duty at 15 per cent ad valorem. The Board, in their letter dated 8 February 1988, clarified that rubber solution manufactured from natural rubber in an organic solvent like Toluene is classifiable under heading 40.05 and such solution could not be treated as primary form of natural rubber.

An assessee in Madras collectorate and another assessee in Madurai collectorate manufacturing rubber solution (sub heading 4005.00) by the process of dissolving compounded rubber insolvents (toluene) cleared it on payment of duty at 15 per cent ad valorem. The assessee under Madurai collectorate admitted that the product in question is not in primary form and that it had attained a stage. As the concessional rate of duty at 15 per cent ad valorem under notification ibid was applicable only to the product in primary form, it could not be extended to a rubber product which had attained a finished stage. So, the assessee was liable for payment of duty at the tariff rate of 40 per cent ad valorem. The incorrect availment of concessional rate of duty on the clearances made from April 1988 to March 1991 resulted in short levy of duty of Rs.5.59 lakhs.

This was pointed out in audit in February and March 1992. Reply of the department has not been received.

11. Short levy due to undervaluation

As per the provisions of section 4 of the Central Excises and Salt Act, 1944, where goods are assessable to duty ad valorem the normal price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of

removal, would be assessable value provided the price is the sole consideration for sale.

A test check of records in seven collectorates revealed short levy of duty amounting to Rs.73.87 lakhs in thirteen cases due to undervaluation. Some of the cases are detailed below:-

i) Dealers margin

As per decision of the Supreme Court in the case of M/s. Moped India Limited, Vs. A.C., of Central Excise, Vallor and others {1986 (23 ELT B-sC}, commission paid to the selling agents on any account are not identifiable as trade discount and hence the same will not qualify for deduction in determining assessable value of goods for the purpose of levy of excise duty under the Act.

An assessee in Jaipur collectorate produced rubber particles and rubber solutions and sold them through dealer and distributors. Duty was paid on the price abating the dealers margin which was irregular. This resulted in short levy of duty of Rs.49.82 lakhs on clearances during 1990-91.

The matter was reported to department in January 1992; reply has not been received.

ii) Cost of inputs

As per clarification issued by the Board on 8 May 1990, credit of duty availed by the assessee on the inputs under rule 57A of the Central Excise Rules, 1944, would not go to reduce the cost of manufacture of the output goods. As such, the assessable value determined on the basis of cost data will invariably include the excise duty/additional duty (CVD) of Customs paid on raw material/components irrespective of the fact that Modvat credit had been availed thereon.

An assessee in Indore collectorate, manufactured compounded rubber sheets, tread rubber and beads and cleared them for manufacture of tyres. The assessee was availing Modvat under rule 57A of the Central Excise Rules, 1944.

As per cost data submitted by the assessee effective from 8 March 1989, items relating to margin of profit, bank interest charged on raw material and excise duty paid on inputs were either totally excluded or were included partially while determining the assessable value of these goods. The undervaluation, thus resulted in short levy of duty to the tune of Rs.14.55 lakhs on the clearances effected during the period from May 1988 to September 1991.

The matter was brought to the notice of the department in February 1992; reply has not been received (March 1992).

iii) Cost of covers

The Supreme Court in the case of M/s. Bombay Tyres international and others held that where the sale of goods in the course of wholesale trade is effected by the assessee through its sales organisation at a place or places other than the factory gate, the price at which excisable articles is sold at such place or places is to be taken as the value of excisable goods after deduction of only the cost of transportation including the transit insurance of goods from the factory gate to the place or places where it is sold, but without deducting publicity expenses, cost of storages, expenses of sale organisation etc., incurred by the assessee.

An assessee in Bangalore collectorate engaged in manufacture of matresses and pillows of cellular rubber was allowed to clear his goods from the factory without covers to the duty paid godown of the assessee. The covers were subsequently got stitched through job workers and the goods were despatched to his customers. There was no sale of such goods at the factory gate and actual sales took place at his sales depots/godowns. The goods cleared from the factory gate without covers were subjected to levy of duty on ad valorem basis without including the cost of covers in the assessable value. The omission to include the cost of covers in the assessable value of the goods resulted in short levy of Rs.2.12 lakhs on the clearances made

during the period from February 1988 to October 1991.

On the omission to levy of duty on such covers being pointed out in audit, the Collector contended (June 1990) that as the mattresses/pillows were not provided with covers at the time of clearance from the factory gate, the cost of covers was not includible in the assessable value and covers provided at the instance of customers in his sales depots would not amount to manufacturing activity. The contention is not acceptable for the reason that there was no sale at the factory gate and the entire production was sold through his sales depots. In such circumstances, the cost of covers is also includible in the assessable value in terms of aforesaid judgment of the Supreme Court.

12. Non fixation of norms of production

Rule 173D of the Central Excise Rules, 1944, requires a manufacturer to furnish to the Assistant Collector of Central Excise, information regarding the principal raw material and quantity of such material required for manufacture of unit quantity of such excisable goods.

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

i) Test check of records of 397 assessees in 23 collectorates (Annexure I) revealed that norms of production were not prescribed. In the absence of norms fixed, no independent method to verify the

correctness of production of finished goods accounted for by the units was available. Omission to prescribe norms of production was brought to the notice of the department between January 1992 and April 1992; reply has not been received.

ii) As per the norms adopted in adjudication cases in Bangalore and Belgaum collectorates, use of one kilogram of carbon black would produce three kilograms of tread rubber. It was noticed in audit that the production accounted for in central excise records in respect of six manufacturers of tread rubber fell short during the years 1988-89 to 190-91 in comparison to the accepted norm of production involving central excise duty of Rs.16.93 lakhs. Some of the cases are detailed below :-

(a) A manufacturer of tread rubber (sub heading 4006.10) in Belgaum collectorate had utilised 64700 kgs. of carbon black to produce 126547.200 kgs. of tread rubber during the period from April 1991 to October 1991. As per the aforesaid norm, the production of tread rubber by the manufacturer during the said period fell short by 67553 kgs. involving duty effect of Rs.7.56 lakhs. The department did not investigate the reasons for such low production.

The matter was reported to the department in February 1992; reply has not been received.

(b) A review of production records (form IV) maintained by a manufacturer in Belgaum collectorate disclosed that 164662 kilograms of tread rubber were produced by utilising 80475 kgs. of carbon black, which resulted in short accounting to 76763 kgs. of tread rubber in comparison to the said accepted norm of production, involving duty effect of Rs.4.22 lakhs during the period from April 1988 to March 1990. Such short accountal of production was not examined by the department on the ground that no norm for production was prescribed by the proper officer. Such scrutiny of production of goods would be required for the reasons that tread rubber produced by the manufacturer was being used

in his retreading unit and the retreading unit was not within the purview of central excise control.

The facts were reported to the department in February 1992; reply has not been received.

(c) Another manufacturer in Belgaum collectorate engaged in production of tread rubber for use in his retreading unit had accounted short his production to the extent of 17650 kgs. involving duty effect of Rs.2.34 lakhs during the year 1989-90. The department did not initiate action for scrutiny of such short fall.

The omission was brought to the notice of the collectorate in January 1992; reply thereto has not been received.

13. Non maintenance of accounts of raw materials and out put

Under Central Excise Rules, 1944, a manufacturer of excisable goods is required to maintain raw matrial account (form IV) and submit at the end of each quarter to the proper officer, a return (RT 5) indicating therein the quantity of principal raw materials used in manufacture of excisable goods, and the quantity of each description of finished goods produced.

A test check of records revealed that 163 units in twelve collectorates (Annexure II) manufacturing goods falling under chapter 40 did not maintain an account of principal raw materials used (form iv) and submit quarterly returns prescribed under rule 55 (RT.5). The department did not insist upon the manufactures to maintain such records. Thus the purpose for which accounts were prescribed were defeated. In the absence of account of principal raw materials a co-relation of production of finished goods and consumption of raw materials was not possible.

Omission to prescribe principal raw material for units manufacturing goods of chapter 40 and non maintenance of accounts was pointed out to the department between January 1992 and November 1992; their reply has not been received.

14. Physical verification of stock

As per provisions of rule 223A of the Central Excise Rules, 1944, the stock of excisable goods remaining in a factory, warehouse or storeroom licensed or approved for the storage of such goods shall be weighed, measured counted or otherwise ascertained periodically (annually up to 1989-90) in the presence of the proper officer. Where the quantity so ascertained is less than the quantity of which ought to be found in such premises after taking into account receipts and deliveries and making such allowance for waste as may be in accordance with the instructions issued by the Ministry of Finance dated 26 October 1979, the owner of such goods shall unless the deficiency be accounted for to the satisfaction of the proper officer be liable to pay the full amount of duty chargeable on such goods as are found deficient and also a penalty which may extend to two thousand rupees.

Test check revealed that physical verification of stock of excisable goods was not conducted in any year during the year 1988-89 to 1990-91 as for example :-

Collectorates	No. of units where physical verification not conducted (1988-89 to 1990-91)
Jaipur	9
Bombay II	27
Bombay III	12
Cochin	31

15. Other topics of interest

i) Irregular clearance of goods under self removal procedure

As per notification dated 10 February 1986 issued under rule 173A of the Central Excise Rules, 1944, tyres, tubes and flaps falling under chapter 40 of the Tariff schedule except those manufactured in an industrial unit in which the sum tctal of the value of capital investment made from time to time on plant and machinery installed

therein, is not more than 20 lakhs, are not governed by the provisions of chapter VII-A of the said rule (i.e., self-removal procedure). Thus, tyres, tubes and flaps manufactured in specified units are governed by the physical control system to be exercised by the department. Further, while determining the sum total of the capital investment made from time to time, only the face value of the investment at the time when such investment was made shall be taken into account in terms of explanation given in the said notification.

Two assessees engaged in manufacture of tubes and flaps of rubber for use in tyres in Belgaum collectorate were allowed to clear the goods after determining the duty payable on such clearance under self removal procedure. It was seen in audit from their balance sheet for the year ended on 31 March of each financial year in respect of both the assessees that their capital investment on plant and machinery was ranging from Rs.26.03 lakhs to Rs.38.88 lakhs during the year 1986-87 to 1990-91 in one case and in the other case Rs.113.10 lakhs as on 31 March 1990.

Since their capital investment on plant and machinery had exceeded to Rs.20 lakhs from the date of commencement of production and clearance of goods, the production and clearance of goods should have been under physical control system of the department. Contrary to this requirement, the assessees were allowed to clear the goods involving duty effect of Rs.91.28 lakhs under self removal procedure during the years 1988-89 to 1991-92. This resulted in gross violation of the provision of rule 173A thereby very purpose of regulating the clearances of the goods under physical supervision of the department was defeated.

This lapse was brought to the notice of the department in February 1992. Reply thereto has not been received (March 1992).

ii) Irregular refund of duty

A manufacturer engaged in manufacture of rubber conveyor and transmission belts (sub

heading 4010.90) submitted classification list with effect from 1 April 1987 showing central excise duty leviable at 30 per cent ad valorem under a notification dated 1 March 1987 and started paying duty accordingly from the beginning. On 30 September 1987 the assessee filed a refund claim amounting to Rs.10,50,000 for the period 3 April 1987 to 15 August 1987 on the ground that the aggregate value of the clearances for the preceding year 1986-87 was erroneously shown as exceeding Rs.150 lakhs and actually they were entitled for concession under a notification dated 1 March 1986 as amended. The amount was calculated by claiming nil rate of duty for first clearance upto Rs.15 lakhs and at 20 per cent, thereafter upto aggregate clearance of Rs.75 lakhs under sub clause a (ii) of the notification ibid.

The divisional officer after adjudication allowed refund of Rs.8.08 lakhs (Rs.7.40 lakhs in cash and Rs.0.68 lakh by credit in RG23A part II) treating Rs.10.50 lakhs as cum duty price. Since the assessee was also availing Modvat facility during this period, his case was required to be decided under sub clause a (i) instead of sub clause a (ii) of the notification ibid. The omission resulted in grant of excess refund amounting to Rs.2.31 lakhs.

On the omission being pointed out in audit, the department contested the point (January 1990) on the ground that during material time, assessee was paying duty at full rate and was availing Modvat. Subsequently when he became aware that he was entitled to benefit under notification ibid, it was open to him either to avail of full duty exemption of first Rs.15 lakhs or to clear his goods at concessional rate of duty and avail Modvat facility, the assessee opted for full exemption upto Rs.15 lakhs and reversed the Modvat credit availed. The reply of the department is not tenable because it is not in conformity with the provisions of rule 57G, as no option can be exercised retrospectively.

iii) Irregular clearance of goods for captive consumption

(a) A unit in Indore collectorate, engaged in manufacture of tyres, also manufactured compounded rubber, tread rubber and beads as intermediate products and used them captively in manufacture of tyres. The assessee had neither declared these products as inputs nor maintained any production/clearance records (R.G.I, R.T.5, R.T.12 etc.) as prescribed in central excise rules.

The irregularity was pointed out in audit in October 1991, followed by the statement of facts in February 1992; reply has not been received (March 1992).

(b) Another unit in the same collectorate manufactured compounded rubber, tread rubber and beads and used them captively in manufacture of tyres. The assessee had not obtained any licence under rule 174 ibid, for manufacture of such compounded rubber, tread rubber and beads. Besides, the assessee had neither submitted any classification list nor maintained any production/clearance records in respect of such goods.

The matter was brought to the notice of the department in February 1992; reply has not been received.

The appraisal was sent to Ministry of Finance in October 1992; reply has not been received (December 1992).

ANNEXURE I

Non fixation of norms during 1988-89 to 1990-91

S.No.	Collectorate	No. of assessees
1.	Ahmedabad	3
2.	Baroda	11
3.	Chandigarh (Punjab)	30
	Chandigarh (HP)	3
4.	Bhubaneswar	4
5.	Hyderabad	
6.	Guntur	24
7.	Nagpur	6
8.	Delhi (Delhi)	60
	Delhi (Haryana)	48
9.	Patna	6
10.	Jaipur	7
11.	Bombay I	8
12.	Bombay II	4
13.	Bombay III	20
14.	Pune	17
15.	Aurangabad	4
16.	Goa	2
17.	Meerut	15
18.	Allahabad	1
19.	Kanpur	8
20.	Cochin	29
21.	Indore	22
22.	Bangalore	
23.	Belgaum	65
	Total	397

ANNEXURE II

Non maintenance of raw material account and non submission of RT 5 return

S.No.	Collectorate	No. of assessees
1.	Ahmedabad	3
2.	Baroda	14
3.	Chandigarh (Punjab)	34
4.	Bhubaneswar	4
5.	Delhi (Delhi only)	60
6.	Meerut	10
7.	Allahabad	1
8.	Kanpur	3
9.	Jaipur	4
10.	Indore	7
11.	Bangalore	
12.	Belgaum	23
	Total	163

CHAPTER 2

CUSTOMS RECEIPTS

2.01 Trend of receipts

The net receipts from customs duties during the year 1991-92 after deducting refunds and drawback paid alongside the budget estimates and actual figures for the preceding year 1990-91 are given below:

(Rupees in crores)

Customs Receipts from	Actual Receipts 1990-91	Actual Receipts 1991-92	Budget estimates 1991-92	Revised budget estimates 1991-92
	***	***	***	
Imports*	20,895.69	21,799.65	27,014.69	22,760.65
Exports	0.95	29.01	0.15	0.50
Cess on exports	35.56	47.98	45.61	44.35
Other receipts	236.10	778.74	297.15	@ 1,000.00
Gross total receipts	21,168.30	22,655.38	27,357.60	23,805.50
Deduct refunds	133.80	87.43	190.60	110.50
Deduct drawback**	502.23	660.07	757.00	800.00
Net receipts	20,532.27	21,907.88	26,410.00	22,895.00

* This amount includes additional (Countervailing) duty leviable under Section 3 of the Customs Tariff Act, 1975 and auxiliary duty leviable under Section 3 of the Finance Act, 1991.

** This amount does not include drawback allocated towards excise duty.

*** As per Pr. Chief Controller of Accounts records.

@ Includes Rs.755 crores from sale of confiscated gold and silver.

The increase in gross revenue collection was mainly on account of more realisation of duty than anticipated from ores, slag and ash, petroleum oils and oils obtained from bituminous minerals other than crude; inorganic chemicals; soap, organic surface active agents and artificial waxes and project imports. The above increases have been partly offset by decrease in the revenue from import duties in respect of animal or vegetable fats and oils; man-made filaments; man-made staple fibres; primary materials of iron and steel; zinc; aircraft and vessels and baggage.

2.02 Portwise collection

i) Import duty collected during the years 1990-91 and 1991-92 are given below portwise as per the available information furnished by Ministry of Finance.

Port of Entry	Bills of entry (In hundreds)		Value of imports (Rupees in crores)		Import duty (Rupees in crores)	
	1990-91	1991-92	1990-91	1991-92	1990-91	1991-92
Bombay	1,385	1,069	10,243	15,901	7,529	7,187
Calcutta	729	587	3,212	3497	2,492	2,836
Madras	990	862	4,605	4,491	2,994	2,945
Kochi	53	41	650	31	311	352
Goa	22	15	110	230	57	75
Kandla	96	54	1,403	1,818	863	978
Visakha-patnam	36	30	1,382	1,550	721	872
Delhi	1,322	2,738	837	924	1,072	1,049
Other Ports (*)	2,904	N.A	9,905	19,355	4,923	5,524
Total	7,537	(***)5,396	32,347	47,797	(a)20,962	(b)21,818

(a) Differs from the accounts figure of Rs.20895.69 crores.

(b) Differs from the accounts figure of Rs.21,799.65 crores.

(ii) The value of exports, export duty collected and amount of drawback paid during the years 1990-91 and 1991-92 are given portwise as per available information furnished by Ministry of Finance.

Port of Export	No. of shipping bills (In hundreds)		Value of exports (Rupees in crores)	
	1990-91	1991-92	1990-91	1991-92
Bombay	2,661	2,763	7,474	16,970
Calcutta	949	797	1,988	2,668
Madras	1,393	940	3,523	4,569
Kochi	316	320	1,334	1,645
Goa	14	6	371	505
Kandla	130	109	978	1,550
Visakhapatnam	51	18	720	1,026
Delhi	5,013	2,268	2,471	859
Other Ports	(*)3,650	(**)N.A	12,746	14,036
Total	14,177	(***)7221	31,605	43,828

(*) The figure does not include the Bills of Entry & Shipping Bills in respect of Allahabad, Kochi (C.Ex.), Coimbatore, Hyderabad, Nhava Sheva, Rajkot and Sahar Airport.

(**) Not made available by Ministry of Finance (December 1992).

(***)It does not include figures of remaining collectorates.

(Rupees in crores)

Port of Export	Export duty collected		Amount of drawback paid	
	1990-91	1991-92	1990-91	1991-92
Bombay	-	-	174	205
Calcutta	-	-	21	28
Madras	1	7	77	86
Kochi	-	-	6	11
Goa	-	4	-	-
Kandla	-	-	53	33
Visakhapatnam	-	1	-	-
Delhi	-	1	70	121
Other Ports	-	3	121	207
Total	(a)1	(b)16	522	691

(a) Differs from account figure of Rs.0.95 crores.
(b) Differs from account figure of Rs.29.01 crores.

2.03 Imports and Exports and receipts from duties thereon

Value of goods imported and exported during the last two years and collections from duties on imports and exports, classified under statistical headings are given in Annexures 2.1 to 2.4 to this chapter.

2.04 Cost of collection

The expenditure incurred on collection of customs duties during the year 1991-92 alongside the figures for previous year are given below:

(Rupees in crores)

	Cost of collection on	1990-91	1991-92
A-1	Revenue-cum-import export and trade control functions	27.37	32.82
A-2	Preventive and other functions	134.99	148.42
	Total	162.36	181.24
	Cost of collection as percentage of gross receipts	0.77	0.80

2.05 Searches, seizures and confiscations

The number of searches conducted and seizures effected by the Customs Officers in recent years, as per information made available by Ministry of Finance are given portwise in Annexure 2.5 to this chapter.

The number of cases of confiscation of goods imported or attempted to be improperly exported as per information made available by Ministry of Finance are given in Annexure 2.6.

2.06 Exemptions

i) Exemption notifications under Section 25(1) of the Customs Act, 1962

The number of notifications issued and amount of revenue forgone during the period 1989-90 to 1991-92 are given below:

Year	No. of notifications issued under section 25(1)	Amount of revenue forgone (Rupees in crores)
1989-90	308	(-)71.26
1990-91	177	*(+)1,541.85
1991-92	278	(-)1,582.04

* As against the total gain of revenue of Rs.1,705.03 crores due to the Budget notifications 16-153 of 20 March 1990 and the notifications of 15 December 1990 enhancing the levels of custom duties during the whole year, the operation of other notifications had resulted in duty being foregone to the extent of Rs.163.18 crores, thus resulting in net gain of Rs.1,541.85 crores.

ii) Ad hoc exemptions

Under Section 25(2) of the Customs Act, 1962, the Central Government may, if it is satisfied that it is necessary in the public interest so to do, by special order in each case, exempt, under circumstances of an exceptional nature to be stated in the order, any goods from the payment of customs duty, where such duty is leviable. The number of such exemptions issued and availed of during the year 1991-92 and the preceding two years are given below:

		1989-90	1990-91	1991-92
i)	Number of exemptions issued and availed of	126	62	232
ii)	Total duty involved (Rupees in crores)	* 1,073.72	** 372.80	1,150.30
iii)	Number of cases having a duty effect above Rs.10,000	124	61	84
iv)	Duty involved in cases at (iii) above (Rupees in crores)	1073.72	372.80	1,150.30

* = These figures do not include the figures of Customs Central Excise, Bhubneshwar, Bangalore, Allahabad, Thane, Meerut, Patna, West Bengal, Rajkot and Bombay-III.

**= These figures do not include the figures of Customs and Central Excise, Delhi, Baroda, Bhubneshwar, A.C.C Bombay, Bangalore, Pune, Allahabad, Thane, Hyderabad, Madurai, Meerut, Nagpur, Patna, Shillong,Indore and Rajkot.

2.07 Verification of end use where exemption from duty was conditional

As per provisions of Section 25 of the Customs Act, 1962, the Central Government may, if it is satisfied and it is necessary in the public interest so to do, by notification in the official gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of the duty of customs leviable thereon. When Government imposes an end use condition, a bond is obtained from the importer which is enforced for recovery of duty, in case the condition of end use is not fulfilled.

Information on value of goods exempted from duty subject to end use condition, the amount of duty involved, value of end use bond held by customs authorities and the number of cases where fulfilment of end use condition was verified during the last three years, as furnished by Ministry of Finance, is given in Annexure 2.7.

2.08 Arrears of customs duty

The amount of customs duty assessed upto 31 March 1992 which was still to be realised on 30 June 1992 was Rs.88.47 crores in respect of twenty three Custom Houses/Collectorates.

2.09 Time barred demands

Of the demands raised by the department up to 31 March 1992 which were pending realisation as on 30 June 1992, recovery of demands amounting to Rs.4.87 crores raised in twenty four Custom Houses and Collectorates was barred by limitation.

2.10 Write off of duty

Customs duties written off, penalties abandoned and exgratia payments made during the year 1991-92 and the preceding two years are given below:

(Rupees in lakhs)

Year	Amount
1991-92	28.76
1990-91	*30.03
1989-90	1.29

* **Report from West Bengal(P), Coimbatore and Aurangabad Collectorates not received.**

2.11 Pendency of audit objections

The number of audit objections raised in audit upto 31 March 1991 and the number pending settlement as on 30 September 1991 in the various Custom Houses and combined Collectorates of Customs and Central Excise are given below.

Outstanding objections and amount involved

(Rupees in lakhs)

Sl. No.	Name of Custom House/ Collectorate	Raised upto 1989-90		Raised in 1990-91		Total	
		Number	Amount	Number	Amount	Number	Amount
1.	Delhi	146	65.18	32	95.12	178	160.30
2.	Hyderabad	70	12.55	23	-	93	12.55
3.	Guntur(A.P & T.N)	15	-	7	0.38	22	0.38
4.	Visakhapatnam	5	2.39	5	11.73	10	14.12
5.	Patna (Prev.)	-	-	13	294.19	13	294.19
6.	Ahmedabad,	16	652.53	3	4.72	19	657.25
7.	Ahmedabad(Prev.)	26	207.70	5	8.06	31	215.76
8.	Baroda	13	74.31	2	0.41	15	74.72
9.	Kandla	17	230.77	4	81.33	21	312.10
10.	Rajkot	1	22.38	-	-	1	22.38
11.	Madras	1563	811.00	708	102.38	2271	913.38
12.	Tiruchirapalli	52	0.21	16	0.03	68	0.24
13.	Coimbatore	5	-	2	0.15	7	0.15
14.	Bangalore	8	0.02	8	-	16	0.02
15.	Kanpur	19	11.69	-	-	19	11.69
16.	Allahabad	63	83.15	11	185.19	74	268.34
17.	Meerut	31	488.74	3	4.82	34	493.56
18.	Calcutta	315	1726.44	147	818.66	462	2545.10

(Rupees in lakhs)

Sl. No.	Name of Custom House/ Collectorate	Raised upto 1989-90		Raised in 1990-91		Total	
		Number	Amount	Number	Amount	Number	Amount
19.	Calcutta(prev.)	95	1207.74	19	67.00	114	1274.74
20.	Shillong	38	272.89	16	11.73	54	284.62
21.	Bhubneshwar	1	2.74	1	26.28	2	29.02
22.	Kochi & Kerala out ports	46	29.85	13	22.61	59	52.46
23.	Bombay (Sea)	135	2064.39	29	288.60	164	2352.99
24.	Bombay (Air)	83	272.25	27	59.23	110	331.48
25.	Nhava Sheva	2	3.48	7	19.84	9	23.32
26.	Jaipur	43	46.53	29	39.04	72	85.57
27.	Chandigarh	6	11.20	1	0.54	7	11.74
	TOTAL	2814	8300.13	1131	2142.04	3945	10442.17

The outstanding objections fall under the following categories:-

Sl. No.	Categories of objections	Amount (Rs. in lakhs)
1.	Short levy due to misclassification	1,137.77
2.	Short levy due to incorrect grant of exemption	1,835.81
3.	Non levy of import duties	619.25
4.	Short levy due to undervaluation	307.01
5.	Irregularities in grant of drawback	184.71
6.	Irregularities in grant of refunds	408.21
7.	Irregularities in levy and collection of export duty	10.20
8.	Other irregularities	5,866.35
9.	Overassessment	72.86
	Total	10,442.17

Ministry of Finance stated (October 1992) that the pendency of audit objections was kept under constant review and the Collectors were being instructed to settle the pending audit objections.

2.12 Results of audit

Test check of records in Custom Houses/Collectorates conducted in audit during the year 1991-92 revealed short levy of duties, irregularities in the fixation and payments of drawback and loss of revenue amounting to Rs.25.81 crores. The department has accepted short levies and irregularities in the payments of drawback amounting to Rs.9.46 crores. Of these the department has recovered short levies/excess payment amounting to Rs.4.24 crores. Over assessments and short payments by the department, detected in audit and pointed out to the department, also amounted to Rs.49.59 lakhs.

Some of the important irregularties, noticed in audit, are given in the following paragraphs categorised as follows:

a) Short levy of duty due to incorrect grant of exemption
b) Irregularities in the fixation and payment of drawback
c) Non levy of import duties
d) Short levy of duty due to misclassification
e) Short levy of duty due to undervaluation
f) Irregular grant of refunds
g) Short levy of duty due to application of incorrect rates
h) Short levy of duty due to mistakes in computation
i) Short levy of export duty
j) Other irregularities

System studies on imports of sophisticated textile machinery at concessional rate of duty against export obligation and delay in finalisation of demands (Customs) were also conducted. The results of study are contained in paragraphs 1.01 and 1.02(A) of this report.

The studies revealed non levy/short levy of customs duty amounting to Rs.2,408.00 lakhs.

SHORT LEVY OF DUTY DUE TO INCORRECT GRANT OF EXEMPTION

2.13 Machines and equipment for carpet plant

In terms of a notification of December 1986 as amended, certain items specified in the schedule to the said notification were fully exempted from basic customs duty and additional duty. Auxiliary duty in respect of the goods covered by the said notification was also fully exempted under a separate notification issued in May 1989. Modern carpet plant comprising a number of specified machines and equipments was shown against serial number 10 of the said notification of 1986. This notification of 1986 was replaced by notification no.1/91 and by an amending notification no.7/91, dated 16 January 1991, an explanation was inserted stating that for the words "modern carpet plant comprising the following machines and equipments" the words "modern carpet plant comprising any one or more of the following machines and equipments" shall be substituted.

Four consignments, each containing two or three types of machines or equipments and two consignments of `Punched Jacquard Card for Jute Carpet'specified in serial no.10 of the aforesaid notification of 1986 imported through a major Customs House, were assessed to duty (June, July, October, November and December 1989) applying the aforesaid notifications. It was pointed out (November 1989, January, April and May 1990) in audit that the subject goods were not entitled to such exemption since the notification would apply to a complete modern carpet plant and not to any individual machine or equipment indicated against serial no.10 of the notification. The incorrect grant of exemption resulted in duty being levied short by Rs.2,15,78,000.

The department stated (February and March 1990) that nowhere in the notification it had been stipulated that all the machines were to be imported and therefore, benefit of the notification could not be denied.

The department's views are not acceptable.

The fact remains that the exemption notification is specific for `modern carpet plant' comprising a number of machines or equipments and not for any individual machine or equipment. The very fact that the Government have since amended (vide amending notification no.7/91) sl.no.10 of the table in notification no.1/91 which has replaced the aforesaid notification of 1986, supports audit view.

Ministry of Finance have confirmed the facts and accepted the objection.

2.14 Hydraulic press and press brakes

(i) In terms of a decision taken at the Conference of Collectors of Customs, held in July 1989, `Hydraulic Press', a machine tool classifiable under sub heading 8462.41 of Customs Tariff, when imported, falls under serial number (ii) 21 of the table to a notification dated 1 March 1986, irrespective of its capacity and is subject to levy of basic customs duty at the rate of 110 per cent ad valorem, with auxiliary duty at the rate of 5 per cent ad valorem and free of additional duty.

One Hydraulic press of 1000 Tonnes capacity with spares and accessories, imported (November 1990) by an organisation under Ministry of Railways, through a major Customs House, was incorrectly assessed against serial number (iii) of the table to the aforesaid notification and levied to basic customs duty at the rate of 75 per cent ad valorem, with auxiliary duty at the rate of 5 per cent ad valorem and free of additional duty. This resulted in duty being levied short by Rs.1,25,50,553.

On this error being pointed out in audit (July 1991), the Customs House admitted the objection (March 1992) and stated that the short levied amount had since been recovered.

Ministry of Finance have confirmed the facts.

(ii) Prior to 25 July 1991, `Hydraulic Press Brakes', irrespective of their capacity, attracted

basic customs duty at 110 per cent ad valorem in terms of a notification of March 1986.

A Hydraulic press brake of 250 tonnes capacity, imported through a major Customs House, by a public sector undertaking (October 1989), was incorrectly assessed to basic customs duty at 75 per cent ad valorem under the residuary heading of the aforesaid notification. This resulted in duty being levied short by Rs.6,47,385.

The Customs House accepted the objection and stated (March 1992) that the short levy had been recovered.

Ministry of Finance have confirmed the facts.

2.15 Spares for paper making machinery

In terms of a notification dated 1 March 1986, component parts of paper making machinery and component parts of machine tools for working metals are chargeable to basic customs duty at a concessional rate of 40 per cent ad valorem and 35 per cent ad valorem respectively. Auxiliary duty of customs in respect of goods covered by the aforesaid notification was fully exempted under a separate notification issued on 31 May 1990.

Eight consignments of spare parts for paper making machinery, six consignments falling under sub heading 8439.90 and two consignments of spare parts of machine tools falling under sub heading 8466.93 of Customs Tariff, imported during April 1990 and March 1991 were incorrectly assessed allowing concession under the aforesaid notification. This was objected to in audit (October 1990, August, September and October 1991) on the ground that the components and not spares were eligible for the concessional assessment under the notification of March 1986. The incorrect grant of exemption resulted in duty being levied short by Rs.40,07,612.

The department defended their original assessment stating that the issue was decided in the Tariff Conference held in December 1988 and accordingly the term components had to be

interpreted liberally so as to include spares also.

On the other hand, the CEGAT has clearly stated that there was a distinction between component parts and spare parts and clarified this in their decision in the case of M/s Vaz Forwarding Pvt., Ltd, Vs Customs Collector, Calcutta (ELT 1989(43) 358(Trib).

The matter was reported to Ministry of Finance in September 1992; their reply has not been received (December 1992).

2.16 Glass blanks

In terms of a notification dated 26 March 1981, as amended, scientific and technical instruments, apparatus and equipment including spare parts, component parts and accessories thereof but excluding consumable items imported by a Research Institution are eligible for duty free clearance subject to certain conditions specified therein.

Three consignments of "Zerodur Glass Blanks" imported by Indian Space Research Organisation of the Department of Space, in September and November, 1990, were cleared through an air cargo complex without payment of duty under the aforesaid notification. A perusal of the write up of the goods indicated (June 1991) that the goods were semifinished raw glass in the form of cut discs for manufacture of lenses, prisms, windows etc. It was, therefore, pointed out in audit (June 1991) that the goods being raw materials and not scientific instruments or their parts as such, were ineligible for the benefit of duty free clearances. The resultant duty foregone amounted to Rs. 24,90,018.

Though the department, initially, admitted the objection and recovered the short levy, they stated in reply to the statement of facts (December 1991) that the goods, being high quality semifinished glass blanks cut to size and shape and imported according to the requirements, would qualify for the duty exemption. The department further stated that the benefit under the

notification could not be denied, when the imports were certified by the Administrative Ministry.

The department's reply is not acceptable for the reason that the blanks as imported cannot be considered as parts of the scientific or technical equipment to merit assessment under the said notification. Further, as per the Tariff Conference decision of April 1985, it is for the Customs department to verify whether the item is a scientific instrument etc. or not though the Administrative Ministry might certify the goods as essential for research.

Ministry of Finance had already accepted this principle in D.P. 26/90-91.

Ministry of Finance confirmed the facts and stated that the short levied amount had since been recovered.

2.17 Propylene Glycol USP

Pharmaceutical chemicals i.e, chemicals having prophylactic or therapeutic value and used solely or predominently as drugs are assessable to customs duty at the rate of 60 per cent ad valorem with reference to a notification dated 17 February 1986 effective from 28 February 1986. This notification is not applicable to propylene glycol, a chemical, which is not solely or predominantly used as a drug but used primarily as a `solvent' in drugs. The Tariff Conference of Collectors of Customs held in July 1990 also opined that `Propylene Glycol USP' is classifiable under sub heading 2905.32 of the Customs Tariff and assessable to basic customs duty at 30 per cent ad valorem plus Rs.5 per kilogram in terms of a notification dated 1 March 1987. As for additional duty, it is payable at the tariff rate under sub heading 2905.90 of the Central Excise Tariff at 15 per cent ad valorem. A concessional additional duty of 5 per cent ad valorem was made applicable to `Other bulk drugs' under a central excise notification dated 1 March 1988 even if used as `solvent' for drugs, provided an end use certificate to the effect that the goods were used as such or as an ingredient in any drug formulation was produced.

Several consignments of propylene glycol USP imported, between January and September 1990, by persons not engaged in the drug industry and who also did not produce end use certificates were assessed to duty by extending the benefits available under the aforementioned notifications dated 17 February 1986 and 1 March 1988 respectively. On the incorrect grant of concession being pointed out (August 1990 to January 1991) in audit, the Customs House justified (October and December 1991) the assessment on the ground that it was done with reference to the certificates issued by the Assistant Drug Controller of India that the goods conformed to Pharmaceutical grade. As for additional duty, the Customs House argued that the notification dated 1 March 1988 did not have any built in condition regarding end use. Reliance was also placed on a decision of CEGAT dated 26 March 1991 which held that when a notification does not impose a condition regarding proof of actual use, the benefit thereof could not be denied to an importer eventhough he is not engaged in the particular industry.

The argument is not correct in view of the aforementioned Conference's decision (July 1990) and Government of India's clarification issued on this point on 6 March 1990 making end use certificates imperative when the product had other uses. The short collection of duty in 47 assessments worked out to Rs.21,25,405.

The matter was reported to Ministry of Finance in August 1992; their reply has not been received (December 1992).

2.18 Helium in liquid form

As an export measure, Government of India, Ministry of Finance, introduced a scheme for duty free imports of goods specified for use in manufacture of products to be exported out of India by 100 per cent Export Oriented Undertakings. Under notification no.13/81, goods imported by 100 per cent Export Oriented Undertakings are exempted from payment of basic customs, auxiliary and additional duties for use in manufacture of resultant export products. The

scheme also covered goods manufactured by these units for supply to ONGC, Oil India Ltd., and Gas Authority of India, for their projects in India against global tenders; subject to production of certificates for receipt of the resultant products by these undertakings.

While conducting audit of a 100 per cent Export Oriented Unit during, November 1990, it was seen that the firm imported `Pure Helium Liquid' in tankers, duty free. The helium was transferred into the form of gas to be filled in cylinders for supply to the ONGC, through pipe lines and compressor. The process of conversion of liquid helium into gaseous stage for supply to ONGC did not amount to "manufacture" as mentioned in notification no.13/81 and as held by the Central Board of Excise and Customs vide their letter F.No.119/4188-C.Ex.3 dated 11 November 1988. As such the unit did not qualify to be treated as a manufacturing unit for the purpose of the aforesaid notification.

The imports of helium and the spares for use in the process of conversion of liquid helium to gas are, therefore, neither covered by notification no.13/81, in its express terms of `manufacture' for supply to ONGC nor regularised by any specific exemption under Section 25(2) of the Customs Act for non levy of duties leviable under the Customs Act.

On a clarification for non levy of duty under relevant Tariff headings sought by the Excise authorities, the Board vide their letter dated 10 June 1991, intimated that the issue of an ad hoc exemption order for import of helium by the importer in this case was under active consideration and pending final decision the goods could be released on bond without insisting on bank guarantee.

The resultant loss of revenue, due to irregular application of notification no.13/81, in 34 cases of helium, imported during the period from May 1986 to October 1990, valued Rs.4,30,62,391 and 2 spare parts consignments valued Rs.1,21,178 (June 1992), amounts to Rs.9,54,01,611.

Ministry of Finance stated (December 1992) that in the absence of a definition of the term `manufacture' in the Customs Act, 1962, it would not be proper to determine the scope of exemption in the notification 13/81-Cus with reference to the definition of the term `manufacture' applicable for levy of excise duty. Ministry of Finance contended that the `EXIM' Policy had given much wider definition to the term `manufacture' and argued that it would not be correct to interpret the term uniformly for different statutes. The Ministry also pointed out in this context that the Board of Approvals had decided to grant 100 per cent E.O.U status to the firm after considering its activity and hence justified the grant of exemption in this case.

The fact remains that both the Customs Act, 1962, as well as notification no.13/81 issued thereunder do not define the term `manufacture' for purposes of levy of customs duty including additional duty. Since additional duty being equal to excise duty for the time being leviable was also exempt, it is only appropriate that the definition of the term manufacture as existing in the Central Excises and Salt Act, 1944, is applied in the absence of any other statutory definition. Alternatively, the need for a separate definition of the term `manufacture' under the Customs Act, 1962, as amended from time to time is called for.

2.19 Parts for assembly/manufacture of automatic circuit breakers

(i) In terms of the notification no.60-Cus dated 1 March 1987, as amended, `Automatic Circuit Breakers', falling under Customs Tariff heading 85.36 and parts thereof falling under Customs Tariff heading 85.38, for a voltage not exceeding 1000 volts, are exempted from customs duty in excess of 40 per cent ad valorem and as per notification no.109/91, such goods assessed under the notification no.60/87 are exempted from auxiliary duty in excess of 40 per cent ad valorem. These benefits are however not extendable to `Automatic Circuit Breakers and parts thereof' for a voltage exceeding 1000 volts falling under heading 85.35/85.38.

(a) Out of a consignment of four different components, two items viz; `Control Blocks and Resorbit Roller' imported in July 1991 as parts for assembly/manufacture of automatic circuit breakers of heading 85.35 (for a voltage exceeding 1000 volts) under notification no.155/86, benefit of the aforesaid notifications was extended by an Air Customs Collectorate in September 1991. It was pointed out by audit (February 1992) that since the subject goods were parts for manufacture of articles falling under heading 85.35, the rate leviable for them as per sl.no.2 of notification no.155/86, was the rate applicable to the article under notification nos.60/87, 65/86, 59/87, 156/86, 68/86 and 124/90.

`Circuit breakers for a voltage exceeding 1000 volts', not being exempted under any of these notifications, the goods were leviable to duty at the standard rates of 40 per cent (basic customs) and 50 per cent auxiliary duty.

The incorrect application of the exemption notification resulted in duty being levied short by Rs.1,48,677.

The department accepted and recovered the short levied amount in March 1992.

Ministry of Finance have confirmed the facts.

(b) Four consignments of "parts of switchgear" and one consignment of "parts of circuit breaker" for use in circuits over 1000 volts were cleared between December 1988 and February 1990 and assessed to duty applying the aforesaid notification.

It was pointed out in audit (September 1989 and August 1990) that since the subject goods falling under heading 85.38 were actually parts of articles falling under heading 85.35, they were not eligible for the exemption granted in the aforesaid notification. Incorrect grant of exemption resulted in duty being levied short by Rs.1,81,085.

The department stated (November 1989 and December 1991) that since heading 85.38 was

mentioned in the notification, parts of electrical articles of heading 85.35 are also covered by the notification, if they are used in circuits of 400 volts and above.

The reply is not acceptable. The electrical apparatus falling under headings 85.35 and 85.36 are of similar nature except that the former heading relates to articles for a voltage exceeding 1000 volts and the latter to those for a voltage not exceeding 1000 volts. By not mentioning heading 85.35 in Serial No.II of the notification, the exemption has been restricted to articles of and parts thereof for 400 volts and above but not exceeding 1000 volts. It was only from 26 July 1990, that the heading 85.35 has been included in the notification, the description of the goods against the serial remaining same.

Ministry of Finance have confirmed the facts.

(ii) Parts suitable for use solely or principally with the apparatus falling under heading 85.35 of the Customs Tariff are classifiable under sub heading 8538.90 and when imported, chargeable to basic customs duty at the effective rate of 55 per cent ad valorem with 50 per cent auxiliary duty in terms of notification no.134/86. In addition, 15 per cent additional duty and 10 per cent special excise duty are also leviable on these goods.

A consignment of components consisting of `right hand moulding, left hand mouldings and central mouldings' for `Onload Tap Changers' for use in 33KV/66KV circuits and another consignment of 214 nos. of `contact fingers' for use in circuit breakers of over 1000 volts, imported through a major Air Collectorate during August 1991, was classified under Customs Tariff sub heading 8538.90 as parts of goods falling under sub heading 8535.29. The goods were assessed to basic customs duty at 40 per cent and auxiliary duty at 40 per cent under notifications nos.60/87 and 109/91 respectively. Additional duty at 15 per cent with special excise duty at 10 per cent was also levied.

It was pointed out in audit (January and February 1992) that the goods though classified

under sub heading 8538.90, being parts of goods under heading 85.35 for use in circuits above 1000 volts, were not exempted by the aforesaid notifications, but were leviable to duty at 55 per cent (basic) in terms of notification no.134/86 and 50 per cent (auxiliary duty).

The incorrect application of rate resulted in duty being levied short by Rs.2,67,204 in both the cases.

The department admitted the objection in respect of the consignment of `contact fingers' and recovered the consequential short levied amount of Rs.1.09 lakhs.

Ministry of Finance have since confirmed the facts in respect of both the consignments.

2.20 Automatic coil winding machine and proofing press

(i) In terms of notification no.78/89-Cus dated 1 March 1989, as amended, Automatic Coil Winding Machines falling under sub heading 8479.81 of the Customs Tariff are exempted from payment of basic customs duty in excess of 30 per cent ad valorem and the whole of additional duty of customs, if such goods are used in the electronic industry. The goods covered by the aforesaid notification are also assessable to auxiliary duty at a concessional rate of 30 per cent ad valorem under a separate notification issued in March 1990.

In terms of departmental order issued on 22 June 1989 whenever benefit of a notification employing the expression "for use" is extended it should be ensured that such concessions are extended only to those classes of "actual users" mentioned in such notifications. As per the amended order issued on 28 July 1989 positive proof of the "actual use" became necessary.

(a) A consignment of "Automatic Coil Winding Machine" was classified under sub heading 8479.81 and assessed (April 1990) to duty applying the aforesaid notifications in a major port.

It was pointed out in audit (October 1990) that since the subject goods were imported for use by a manufacturer of two wheeled motor vehicles and not for use in electronic industry, these were not eligible for the exemption granted under the aforesaid notifications. The goods were liable to be assessed to basic customs duty at 70 per cent ad valorem, auxiliary duty at 30 per cent ad valorem and additional duty of customs at 15 per cent ad valorem. The incorrect grant of exemption resulted in duty being levied short by Rs.1,46,804.

The department admitted the mistake and stated (October 1991) that efforts were being made to realise the short levied amount.

Ministry of Finance have confirmed the facts.

(b) In another Collectorate, another consignment of Automatic Coil Winding Machine, imported by a private importer was allowed at the concessional rates of duty, under the above mentioned notifications (February 1990). When the incorrect grant of exemption to the manufacturer of fans, not being in accordance with the class of electronic industry users as contemplated in the exemption notification, was pointed out in audit (August 1990), the Customs House contended that as long as the goods were capable of being used in the industry, the goods were eligible for the concession (July 1991). Reply of the Customs House is not acceptable as manufacturing of fans cannot be held to be falling under the category of electronic industry as contemplated in the notification ibid nor did the importer produce positive proof of the automatic coils having been used in electronic industry as required in the departmental order dated 28 July 1989.

The short levy of duty in this case amounted to Rs.1,28,843.

Ministry of Finance have confirmed the facts.

(ii) A notification dated 19 June 1980 allows concessional duty at the rate of 35 per cent ad valorem with auxiliary duty at the rate of 5 per cent ad valorem to certain specified machinery

designed for use in printing industry which are otherwise liable to basic customs duty at a concessional rate of 35 per cent ad valorem with auxiliary duty at the rate of 45 per cent under an exemption notification dated 1 March 1987.

One number second hand `Proofing Press' imported (February 1990) by a unit, engaged in manufacture of `Dash Board Instruments for Automobiles', was incorrectly subjected to levy of basic customs duty at the rate of 35 per cent ad valorem with auxiliary duty at the rate of 5 per cent ad valorem though the concessional rates were applicable only to printing industry in terms of the aforesaid notification of June 1980. This resulted in duty being levied short by Rs.2,12,334.

On this error being pointed out in audit (September 1990), the Customs House justified their original assessment (March 1992) stating that in terms of Appraising Departmental order of 1990, if an item listed in the notification is capable of use only in that industry mainly/predominantly the benefit shall be given, whether the importer is an actual user or trader. According to the department, the concession in this case was extended to the importer because he was an "actual user".

The reply of the Customs House is not acceptable due to the following:

a) The notification ibid is basically industry oriented and the said notification extends concession to goods designed for use in `Printing Industry' and the importer does not fall under the category of `Printing Industry' since he is engaged in manufacture of `Dash Board Instruments for Automobiles'. This fact is not disputed by the Customs Department.

b) As per details in page 1137 of Harmonised Description of Commodity and Coding System, machines and apparatus falling under heading 84.25 to 84.78 have to be classified with reference to the field of industry in which they are used regardless of their particular

function in that field. As the imported goods would fall under chapter sub heading 8443.19 classification should be with reference to the field of industry only.

c) The departmental order dated 14 February 1990 clarifies that the particular items for which the benefit of the notification is sought should be used in the particular industry which is mentioned in the notification. The proofing press in the present case is not used in printing industry.

Ministry of Finance stated (November 1992) that the matter was being further examined.

2.21 Styrene acrylic nitrile resin

Styrene acrylic nitrile resin is classified under sub heading 3903.20 and attracts basic customs duty at the rate of 100 per cent ad valorem under notification no.49/90 dated 20 March 1990.

On a consignment of Styrene acrylic nitrile resin (345 kilograms), having an assessable value of Rs.2.49 lakhs, imported in August 1991, the department levied customs duty at the rate of Rs.1000 per tonne instead of 100 per cent ad valorem. This resulted in duty being levied short by Rs.3.03 lakhs.

On the objection being pointed out (January 1992), the department accepted it and stated that the short levied amount had been recovered (June 1992).

Ministry of Finance have confirmed the facts.

2.22 Parts of fuel injection pumps

Fuel injection pumps and parts thereof were classifiable under sub headings 8413.30 and 8413.91 respectively of the Schedule to the Customs Tariff Act, 1975. However, as per note 1 of Chapter 98, as on 1 March 1987, the parts of machinery, equipments, appliances and instruments of Chapters 84, 85, 86 and 90 if imported into India, were classifiable under heading 98.06.

Therefore, parts of fuel injection pumps were leviable to basic duty under heading 98.06 at the rate of 100 per cent ad valorem under notification no.68/87-Cus dated 1 March 1987 plus 40 per cent auxiliary duty and 15 per cent additional duty. Another notification of the same date also provided a lower rate of basic customs duty at 45 per cent and full exemption from additional duty on parts of goods falling under certain headings but specifically excluded parts of sub heading 8413.30.

It was noticed by audit (January 1988) that the department allowed clearance of parts of fuel injection pumps valuing Rs.2,12,112, on 31 March 1987, from a warehouse, levying duty at the lower rate of 45 per cent instead of the correct rate of duty at 100 per cent, resulting in short levy of duty amounting to Rs.1,98,289.

The irregularity was pointed out to the department (February 1988) but the department did not admit the objection initially (March 1989). Later, on re-examining the case it issued a show cause-cum-demand notice (March 1991) for duty amounting to Rs.1,98,289.

Ministry of Finance have confirmed the facts.

IRREGULARITIES IN THE FIXATION AND PAYMENT OF DRAWBACK

2.23 Excess payment due to fixation of higher rate of drawback

Rules 3 and 4 of the Customs and Central Excise Duties Drawback Rules, 1971, provide for determination of All Industry rate for payment of drawback. Such rates are worked out as a broad average of the duties paid on raw materials and components used in manufacture of the export products. Accordingly, the drawback rates in respect of various categories of goods specified in the schedule to the rules ibid are revised from time to time after any change in the effective rates of duties of customs and central excise.

Consequent upon the change of such duties effected by the Central Budget of 1990-91, the All

Industry rates of drawback were revised with effect from 20 June 1990 and a rate of 9 per cent (cus.4; c.ex.5) of the F.O.B value fixed for "S.S.No.2707 - Ready made garments, all sorts..."

Subsequently, the basic customs duty was reduced from 100 per cent to 40 per cent ad valorem, auxiliary duty of customs reduced from 45 per cent to 5 per cent and the whole of the additional duty exempted in respect of certain embellishments used in the ready made garments with effect from 24 October 1990. As a result, the duty incidence on customs on all sorts of ready made garments was reduced by 1.5 per cent. As such the All Industry rate of drawback for "S.S. 2707 - Ready made garments, all sorts" was to be reduced by 1.5 per cent with effect from 22 January 1991.

The Ministry, however, after reducing 1.5 per cent from the existing rate of 9 per cent again rounded it off to 8 per cent. As a result, though the exporters were getting relief of duty by 1.5 per cent of F.O.B value by way of the aforesaid reduction, actual rate of drawback was reduced by 1 per cent of the F.O.B value of the exports only, 0.5 per cent of F.O.B value of the exports thus being fortuitous payments.

On this being pointed out in audit in February 1991, the Ministry have stated that the rate was rounded off from 7.5 per cent to 8 per cent taking into consideration the Drawback Review Committee's recommendations that " a liberal view may be taken in fixing up All Industry rates in the matter of rounding off. The ad valorem rates should be multiple of 1 per cent".

The Ministry's view is not tenable since the exercise was purely limited to the reduction of the rate to the extent the customs duty incidence on embellishments was reduced. Hence there was no occasion warranting the second rounding off once again. Further, the present occasion was only meant for revision of the existing rate and it was not a case of fixation of rate afresh where only the rounding off has been recommended by the Review Committee.

A statement of facts was issued in September 1991, in reply to which the Ministry have put forward the same recommendation of the Review Committee.

It has been ascertained from the Ministry that during the period from 22 January 1991 to 24 October 1991 i.e during the validity of the above rate of drawback an amount of Rs.68.75 crores has been paid as drawback under S.S 2707 at the rate of 8 per cent. As such the amount of fortuitous payment would work out to Rs.4.30 crores at the rate of 0.5 per cent.

The above excess payment arrived at is exclusive of the payments made at Bombay (Sahar) Air port, and Delhi - two major Custom Houses and from the Central Excise Collectorates of Hyderabad and Cochin.

Ministry of Finance stated (December 1992) that the All Industry rate of drawback for readymade garments was reduced from 9 per cent to 8 per cent of F.O.B value on account of decrease in duty incidence by 1.5 per cent of F.O.B value in respect of certain embellishments. Ministry argued that this rate of 8 per cent was arrived at by deducting 1.5 per cent from 9 per cent (9% - 1.5% = 7.5%) and then rounding it off to next multiple of 1 per cent in accordance with the recommendations of the Drawback Review Committee.

The Ministry have conceded the fact that actual duty incidence on readymade garments worked out to 7.5 per cent of F.O.B value only after excluding the duty incidence on embellishments. Thus, this was not a case of fixation of drawback afresh. Further, the rate of 9 per cent of F.O.B value initially announced was fixed after duly taking into consideration the variable factors. Even then, the rate had worked out to 8 per cent of F.O.B value only which was further enhanced to 9 per cent of F.O.B value taking a liberal view, as conceded by the Ministry itself. Hence, there is no justification now for rounding off the rate from 7.5 per cent to 8 per cent once again.

2.24 Irregular fixation of drawback

As per Section 76(i)(b) of the Customs Act, 1962, no drawback shall be allowed in respect of any goods the market price of which is less than the amount of drawback due thereon. Market price has been defined under Section 2(30) ibid as the wholesale price of the goods in the ordinary course of trade in India.

Brand rate of drawback at the rate of Rs.316.63 per kilograms for export of 4179 kgs of "Colour-Chem Violet FFR Ex. Highly Cone" by an exporter of Bombay was fixed by the Drawback Directorate in January 1988.

It was pointed out in audit (June 1989) that the present market value (PMV) as per the relevant shipping bills ranged between Rs.160.56 to Rs.216.20 per kg. As the drawback rate fixed was higher than the prevailing market price of the export goods, the drawback amount of Rs.13.23 lakhs fixed for the entire quantity of 4179 kgs.of export product was irregular.

The Drawback Directorate, however, reported (March 1991) that only 1650 kilograms of product had been exported resulting in excess payment of Rs.5.22 lakhs.

Ministry of Finance have confirmed the facts and stated that the amount of Rs.5.22 lakhs has since been recovered.

2.25 Irregular grant of drawback (brand rate)

As per provisions of Rule 6 and 7 of the Customs and Central Excise Duties Drawback Rules, 1971, for the export of goods, when an All Industry rate of drawback under Rule 3 is not available or that rate/amount is inadequate, Government may sanction a brand rate to that exporter. Brand rate of drawback is to be allowed only if the All Industry rate of drawback determined under rule 3 or 4, is less than four fifth of the actual drawback amount payable. All the conditions specified in the sanction order should be satisfied for the payment of drawback.

Brand rate of drawback at the rate of Rs.2243 per set of `20" Colour T.V sets with Remote Control' was allowed (April 1990) to an exporter for export of 560 sets during the period from 7 February 1990 to 31 May 1990.

It was pointed out in audit (September 1991) that in the relevant period the All Industry rate of drawback for that item (under S.S No.4708(b) was Rs.1800 which was more than four fifth of the drawback allowable as the brand rate. As such no brand rate could be allowed in this case.

Ministry of Finance had accordingly withdrawn the brand rate in December 1991 and requested the Collector of Customs, Delhi, to recover the drawback amount paid in excess to the exporter under the said brand rate letter.

The amount recoverable from the exporter would be Rs.2.48 lakhs, being the difference of brand rate and All Industry rate of drawback for 560 sets.

Ministry of Finance have confirmed the recovery of the amount paid in excess.

NON LEVY/SHORT LEVY OF IMPORT DUTIES

2.26 Non levy/Short levy of additional duty

(i) (a) In terms of serial no.32(ii) of a Central Excise notification issued on 1 March 1988 (as amended), Acrylic sheets falling under heading 39.20 of the Central Excise Tariff are totally exempt from the levy of excise duty if they are produced out of specified materials on which the excise duty has already been paid. Otherwise, they are liable to excise duty under sl.no.32(iii) at the rate of 35 per cent ad valorem, special excise duty at the rate of 5 per cent thereon was also leviable with effect from 20 March 1990.

The Collectors' Conference decided, in September 1989, that the benefit of total exemption from central excise duty under sl.no.32(ii) being a conditional one, would not be applicable to imported Acrylic sheets/off cuts. Consequently, imported Acrylic sheets are liable

to levy of additional duty at the rate of 35 per cent ad valorem with special excise duty at the rate of 5 per cent thereon.

In respect of eleven imports of Acrylic sheets between March 1990 and October 1990 (i.e subsequent to the decision) by six importers, through a major Customs House, the goods were found to have been assessed free of additional duty. When the non levy of additional duty in the cases was finally pointed out by audit in January 1991, the Customs House admitted the objection (January 1992) and stated that action was being taken to recover the short collection of duty amounting to Rs.17,15,017 by enforcing demands and by asking for voluntary payment.

Report on recovery has not been furnished so far (February 1992).

Ministry of Finance have confirmed the facts.

(b) Plates, blocks, sheets, strips, rods and profile shapes of vulcanised rubber other than hard rubber fall under heading 40.08 of Central Excise Tariff. However, plates, sheets, films, foils and strips of plastics, non-cellular are classifiable under heading 39.20 of the Tariff.

One consignment of `Silicon rubber tape' was classified (April 1991) under heading 40.08 of the aforesaid Tariff and assessed to additional duty at Rs.12.60 per Kilogram.

It was pointed out (September 1991) in audit that the imported item being product of plastic, non-cellular, was classifiable under heading 39.20 of the Tariff attracting additional duty at the rate of 35 per cent ad valorem. The misclassification resulted in duty being levied short by Rs.6,37,959.

The department admitted (January 1992) the mistake and stated that the short levied amount had been recovered in October 1991.

Ministry of Finance have confirmed the facts.

(c) In terms of item 35 of a central excise notification, dated 1 March 1988, as amended, Plastic films other than regenerated cellulose, if produced out of goods falling under heading 39.01 to 39.05 of Central Excise Tariff are eligible for the concessional rate of duty at 25 per cent ad valorem, if the central excise duty or the additional duty thereon had already been paid. When this condition is not satisfied, the duty payable is 35 per cent ad valorem under item 32 (iii) of the notification ibid. In other words, item 35 is not attracted in the case of imported goods.

A consignment of metalised plastic films imported in February 1990 was assessed to additional duty at the lower rate of 25 per cent ad valorem. It was pointed out (March 1991) in audit that additional duty was correctly leviable at the higher rate of 35 per cent in view of the aforecited position. The resultant short collection of Rs. 92,877 was pointed out for recovery.

The Customs House admitted the objection (October 1991) and stated that action had been initiated to recover the short collection on voluntary payment basis. Report on recovery has not been received (December 1991).

Ministry of Finance confirmed the facts and stated (December 1992) that efforts for voluntary payment of the short levied amount were being made as the demand notice had become time barred.

(ii) On a consignment of re-imported repaired aeroplane engine (f.o.b value U.K Pound 423409), the bill of entry was presented on 26 September 1991. The correct rate of exchange applicable on that date was U.K. Pound 3.060 for Rs.100. However, the rate of exchange of U.K.Pound 3.2980 for Rs.100 was incorrectly applied by the department. This resulted in short recovery of customs duty amounting to Rs.0.30 lakh.

On this being pointed out (September 1991), the department informed, in November 1991, that the amount of short levy had been deposited by the importer in November 1991.

Further, the repaired aeroplane engine re-imported for an assessable value of Rs.146 lakhs was assessed to basic customs duty under sub heading 8803.30 of Customs Tariff Act, 1975, at 3 per cent ad valorem with total exemption from the levy of auxiliary duty and additional duty under notification nos.99/81-Cus dated 1 April 1981 and 204/76-Cus dated 2 August 1976.

It was pointed out in audit that the exemption from additional duty was not admissible under the aforesaid notification as the re-imported item, being an aeroplane engine classifiable under sub-heading 8407.10, was not a part/spare part of goods falling under chapter 88 keeping in view note 2(e) to Section XVII. The aeroplane engine re-imported was, therefore, liable to be charged to basic customs duty at the rate of 3 per cent ad valorem under notification no.145/77-Cus dated 9 July 1977 with additional duty at 15 per cent ad valorem under chapter heading 88.02. Non application of relevant notification resulted in short levy of additional duty amounting to Rs.22.93 lakhs.

The department admitted that the aeroplane engine was re-imported after repairs abroad but stated that the said goods were correctly classified under sub heading 8803.30 read with 8802.30 and no countervailing duty was leviable under the notification dated 1 April 1981 ibid. The contention of the department was not acceptable for the reasons that the notification dated 1 April 1981 ibid was applicable to parts/spare parts of aeroplanes and not to aeroplane engines which can not be considered as parts/spare parts of aeroplanes in view of the restraint imposed under the sectional note 2(e) to Section XVII.

Ministry of Finance stated (September 1992) that the aeroplane engine was a spare part of the aeroplane as per the decision taken in a Collectors' Conference of March 1990 and hence the aeroplane engines were eligible for exemption under notification 99/81-Cus dated 1 April 1981.

The Ministry's reply is not relevant in the context of the H.S.N and the Tariff introduced

w.e.f 28 February 1986, according to which aircraft engines are considered as distinct and separate equipment classifiable under heading 84.07 of Customs Tariff Act, 1975, due to the statutory provisions contained in Section note 2(e) to Section XVII. An exemption notification which had been issued under the erstwhile Tariff unless suitably amended, cannot take precedence over the Section notes. Hence the aeroplane engine cannot be considered as a part of the aeroplane and cannot be brought within the ambit of heading 88.03 of Customs Tariff Act, 1975.

(iii) In terms of a central excise notification no.67/83 dated 1 March 1983, various types of bulbs/lamps falling under heading 85.39 of the Central Excise Tariff are liable to concessional rate of additional duty subject to fulfilment of certain conditions. One of the conditions for purposes of classification of bulbs or lamps is that the wattage, length or diameter of bulbs or lamps should be as prescribed in the Indian Standard Specifications.

Goods described as tungsten halogen gas filled studio lamps, compact fluorescent lamps, energy saving fluorescent lamps, fluorescent lighting tubes etc., and halogen gas filled bulbs as spares for cinema equipment, imported by various companies through an Air Cargo Complex and a major Customs House between April 1989 and March 1991 were assessed to additional duty at concessional rates in terms of the aforesaid notification. A perusal of the writeup of the goods (October 1989-November 1991)indicated that the imported goods were not eligible for the concessional rate of duty and no explicit specifications were prescribed for these bulbs/lamps as required under the said notification. The incorrect application of exemption notification resulted in duty being levied short by Rs.11.55 lakhs.

The Customs House justified the application of the lower rate of duty and stated (March/November 1991) that in the absence of I.S. specifications the question of satisfying I.S. specifications did not arise. It was further added that the notification should be interpreted

in such a way that the bulbs and lamps should satisfy the I.S specifications wherever applicable or relevant. The reply is not acceptable as the notification is very specific on the satisfaction of I.S specifications and does not give any scope for liberal interpretation in a restricted way as suggested by the department. Thus the benefit of the notification cannot be extended liberally to such goods which do not satisfy the I.S specifications.

Ministry of Finance stated (December 1992) that the explanation II given below notification no.67/83-CE provides that for determining the type or nomenclature or classification the definition, as well as testing, prescribed in I.S.I should be adopted. The Ministry argued that this would be applicable only in those cases where specifications had been laid down by Bureau of Indian Standards. The Ministry contended that this did not mean that articles which did not have B.I.S specification would not fall within the scope of the notification. The Ministry was, therefore, of the view that the benefit of the said notification could be held as applicable to all articles irrespective of the fact whether or not specifications for these had been laid down by B.I.S.

The Ministry's reply is not acceptable for the following reasons-

i) The notification is specific on B.I.S standards and hence the condition prescribed therein cannot be rendered redundant;

ii) Even the Supreme Court in the case of Coromandal Fertilisers Ltd. Vs U.O.I-1984 ELT(17) page 607 has clearly stated that "the explanation added to the notification also forms a part of the notification itself. The notification has to be construed as a whole and in properly interpreting the notifications, the explanation which has been added to the notifications cannot be ignored";

iii) The scope of the `explanation' in the notification would be rendered redundant if

the conditions as prescribed in the explanation, which are part of the notification, were not intended to be fulfilled; and

iv) The department has infact gone in appeal, upholding the views of audit, in a similar case decided by Collector (Appeals), Madras in Appeal no.C.3/206/91 dated 22 July 1991.

(iv) Flat rolled products of iron or non alloy steel of a width of 600 mm or more, clad, plated or coated are classifiable under Customs Tariff heading `72.10' when imported into India. The goods if coated/plated with tin, lead, chromium, aluminium, plastics etc., get classified under the sub-headings 7210.10, 7210.20, 7210.30 etc.. All other coated/plated/clad sheets fall under the residual sub heading 7210.90. In terms of notification no. 80/90 (Cus) `all goods' except those which are Tin plated and Chromium plated (sl.no.9(iii) are exempted from levy of customs duty in excess of Rs.5000 per tonne. While Tin plated prime products attract duty at the rate of 35 per cent ad valorem (sl.no.9(i)(a), all its seconds, defectives, cuttings, waste etc. are leviable to specific rates of Rs.7000 per tonne (sl.no.9(i)(b).

Thirty nine consignments of Tin Plate Secondaries `Misprints' - 1914 tonnes, imported through a major Customs House, during June 1990 to August 1991, were assessed under Customs Tariff sub headings 7210.12/7210.90 as `Tin plated steel' and duty was levied at the rate of Rs.5000 per tonne under (sl.no.9(iii) of notification no. 80/90. Additional duty was levied at 15 per cent with 5 per cent special excise duty under Central Excise Tariff sub heading 7210.90.

Audit pointed out(January, March, May, June, July 1991, February 1992) that defective Tin plates (secondaries) of sub heading 7210.12 attracted duty at the rate of Rs.7000 per tonne under (sl.no.9(1)(b) of notification no.80/90 as against the rate of Rs.5000 per tonne levied (under sl.no.9(iii) thereof). Considering the rate of additional duty at Rs.1,300 per tonne for the goods under Central Excise Tariff sub heading

7210.20, <u>the short levy of duty amounted to Rs.28.34 lakhs</u>.

The department stated (December 1991) that the goods had undergone surface printing after the coating of `Tin' and since surface printing is also coating, the goods are to be classified according to the last process of coating. It was claimed that the assessment of the goods under sub heading 7210.12 as Tin plates was a mistake and the goods were classifiable under sub heading 7210.90 as `other plated - coated steel sheets'.

The department's reply was not accepted due to the following reasons-

The goods imported are `Tin plate secondaries' or `Defective tin sheets' and known as such in the trade parlance. The process of coating by printing has no relevance to the importers as they are mere misprints. It is well settled by a series of Supreme Court/High Court decisions that when the tariff entry is ambiguous and there is a dispute about the classification of goods under different tariff headings, the classification is to be decided based on how the item is known in the trade parlance. The goods imported i.e. `Tin plate secondaries' therefore are assessable as such only and not as `other coated sheets/plates'.

Ministry of Finance stated (December 1992) that the goods imported are known in the trade as only `misprints' referring to the defects in the latter process of coating with printing and not to the former process of tin plating. They also stated that the issue is under further examination, in consultation with the Chief Chemist.

The fact remains that the issue involved is one of incorrect grant of exemption. Under notification no.80/90 there is a specific entry namely sl.no.9(i)(b) which includes inter alia "seconds, defectives, cuttings and waste". Therefore, irrespective of the process of coating involved i.e tin plating or surface printing as long as the items are established as seconds,

defectives, cuttings and waste, they will attract duty @ Rs.7,000 per tonne under sl.no.9(i)(b).

(v) Separately defined elements of compounds are excluded from chapter 38 of the Customs Tariff as well as Central Excise Tariff by virtue of the chapter notes in both the Tariffs. Acrylamide, a well defined organic chemical, would, therefore, be classifiable under sub heading 2926.90 of the Customs Tariff and under heading 29.26 of the Central Excise Tariff.

Seven consignments of acrylamide imported through a major port by three private importers, between October 1989 and October 1990, were classified under sub heading 3809.91 of the Customs Tariff and levied to basic customs duty at 70 per cent ad valorem with auxiliary duty at the rate of 45 per cent ad valorem. For purposes of additional duty, the goods were classified under heading 38.09 of the Central Excise Tariff and allowed free of duty in terms of a central excise notification dated 18 June 1987 (as amended).

It was pointed out (June 1990 to July 1991) in audit that the goods, as seen from the test report, were well defined organic compound correctly classifiable under headings 2926.90 and 29.26 of the Customs and Central Excise Tariffs respectively. Though there was no change in the rates of basic customs and auxiliary duties, the goods were liable to levy of additional duty at 15 per cent ad valorem with special excise duty at 5 per cent thereon under heading 29.26 of Central Excise Tariff. The short collection of additional duty in the seven cases amounted to Rs.5,62,129.

The department accepted the objection (October 1991) and stated that action had been initiated to recover the short collection of duty.

Report on recovery has not been received (October 1991).

Ministry of Finance, while confirming the facts and the short levy pointed out in audit, stated (April 1992) that the more appropriate heading for classification would be 2924.10 of Customs Tariff against 2926.90 ibid.

(vi) In terms of central excise notification no.59/88 issued in March 1988, printed carton boxes, containers and cases falling under chapter 48 of the Central Excise Tariff and made wholly out of paper or paper board of headings/sub headings 48.04, 4805.11, 4805.19, 4807.91, 4807.92, 48.08 and 4811.10 are exempted from the whole of the duty of excise leviable thereon.

Three consignments of printed shoe boxes, imported during May 1991 to July 1991, were allowed the benefit of the above mentioned notification without ascertaining the chapter heading under which the material used for the manufacture of shoe boxes fell.

On being pointed out (November 1991 and January 1992), the irregular grant of exemption in three assessments, resulting in short collection of Rs.3,52,446, the Customs House admitted the objection in one case and recovered (February 1992) the short collection amounting to Rs.60,117.

Ministry of Finance have confirmed the facts in respect of all three cases.

(vii) As per notification no.172/89-Cus, the goods falling under Customs Tariff sub heading 8443.90 are chargeable to basic duty at 35 per cent ad valorem with auxiliary duty at 50 per cent ad valorem. The additional duty is leviable at 10 per cent and 5 per cent thereof is payable as special excise duty under central excise notification no.69/90.

On a consignment of 'CNP-Spare parts for super intaglio machine' imported in July 1991, basic customs duty, auxiliary duty and additional duty were levied at the rate of 35 per cent, 50 per cent and nil respectively under sub heading 8443.90 of Customs Tariff Act, 1975, by extending the benefit of notification no.59/87(Cus).

It was pointed out (February 1992) in audit that the notification nos.172/89 and 59/87 were applicable in the case of goods falling under sub heading 8443.90 ibid and accordingly these were chargeable to basic customs duty and auxiliary duty at 35 per cent ad valorem and 50 per cent ad

valorem respectively with additional duty at 10 per cent ad valorem plus 5 per cent thereof as special excise duty.

The irregular grant of exemption resulted in duty being levied short by Rs.2,68,161.

Ministry of Finance have confirmed the facts.

(viii) As per customs notification no.2/85-Cus dated 1 January 1985, Cable insulating, impregnating and filling compounds falling within Chapter 38 or 39 of the Customs Tariff, when imported into India, are exempted from the duty of customs leviable in excess of 40 per cent ad valorem. However, additional duty is leviable at rates based on its classification under Chapter 38 or 39 of the Central Excise Tariff.

A consignment of `Cable filling compound-NAPTEL 924' consisting of `blends of polybutenes and waxes', imported during July 1989, was assessed to duty at 40 per cent ad valorem under sub heading 3823.90 of Customs Tariff Act, 1975, read with customs notification no.2/85 dated 1 January 1985. Additional duty was levied at 15 per cent ad valorem only under sub heading 3823.00 of Central Excise Tariff.

Since the imported goods consisted mainly of `Polybutene' - a polymer, audit pointed out the correct classification under Customs Tariff heading 39.02 and the additional duty leviable at 40 per cent ad valorem under Central Excise Tariff heading 39.02.

The misclassification of the goods resulted in additional duty being levied short by Rs.2,66,096.

A similar para (para 2.35(iv) was featured in the Audit Report 1989-90. But action taken reply for the same is yet to be received.

Ministry of Finance have confirmed the facts.

(ix) Under a central excise notification dated 23 December, 1985 synthetic rubber latex captively consumed for further manufacture of synthetic

rubber, is exempted from the whole of duty of excise leviable thereon.

An importer imported 32 tonnes of `Styrene butadiene latex', a variety of synthetic rubber latex, which was warehoused without payment of duty in May 1990, and cleared between September 1990 and March 1991, on payment of appropriate customs and auxiliary duties. Exemption from additional duty was allowed in terms of the aforesaid notification of 23 December 1985. As the goods were imported from Japan and not manufactured and consumed in the same factory, grant of exemption from additional duty was not correct.

Incorrect grant of exemption resulted in additional duty being levied short by Rs.2,46,017 (including interest of Rs.17,540).

On this being pointed out (September 1991) in audit, the department accepted the objection and recovered Rs.2,46,017.51 (September 1991).

Ministry of Finance have confirmed the facts.

(x) Carbon and other copying papers and transfer papers are classifiable under heading 48.09 of Central Excise Tariff. As per proviso (vi) to exemption notification no.44/86-CE dated 10 February 1986, the aforesaid items were excluded from the purview of the concessional rate of excise duty (as also additional duty) notified thereunder. As such, these goods attract the tariff rate of 40 per cent ad valorem as additional duty with 10 per cent special excise duty thereof.

On a consignment of `Kureha Carbon Fibre - KGF 200-Paper', imported through a major Air Customs Collectorate in September 1991, while classifying the goods correctly under heading 48.09 of Customs and Central Excise Tariffs, the additional duty was levied at the concessional rate of 10 per cent ad valorem plus Rs.1680 per tonne with 10 per cent thereof as special excise duty, invoking the aforesaid notification of 10 February 1986, besides levying the basic customs and auxiliary duties at the appropriate rates.

It was pointed out in audit (February 1992) that since carbon and other copying papers, transfer papers were not covered within the purview of the exemption notification cited above, the levy of additional duty should have been at the tariff rate of 40 per cent ad valorem with 10 per cent special excise duty thereof. The irregular grant of exemption resulted in additional duty being levied short by Rs.1,83,745.

Ministry of Finance confirmed the facts and stated that short levied amount had since been recovered.

(xi) In terms of a Customs notification dated 18 August 1983 and a central excise notification dated 17 March 1985, T.V. tuners are assessable to basic customs duty at 50 per cent ad valorem, auxiliary duty at 25 per cent ad valorem with total exemption from additional duty. Electronic tuner with control tuning or operating units or any combination equipment incorporating the operating unit would not be eligible for the concessional assessment, in the absence of specific mention in the said notification.

Electronic tuners with control tuning/operating units imported and cleared through a warehouse in December 1986 were classified under sub heading 8529.90 of the Customs Tariff Act and the benefit of the concessional rate of duty under the aforesaid notifications was allowed. The Internal Audit Department of the Customs House reviewed the assessment and pointed out the inapplicability of the customs notification to the subject goods and a short collection of Rs.2,31,467 was recovered in April 1990. On a further scrutiny of the assessment it was noticed in audit (July 1990) that additional duty exemption to the tune of Rs.1,02,558 was also granted which was not in order as the benefit could be extended only to T.V.tuners and not to Electronic tuner with control tuning operating units. The total short collection on this account amounted to Rs.1,72,401 including bond interest of Rs.69,843.

The Customs House admitted the objection and stated (January 1992) that a sum of Rs.20,000 was

collected. Report on recovery of the balance amount has not been received.

Ministry of Finance, while confirming the facts, stated (December 1992) that the importers had voluntarily paid Rs.30,000 so far, since the demand could not be issued in time due to operation of time-bar.

(xii) Television Cameras fall under heading 85.25 and Television Receivers including video monitors under heading 85.28 of both the Customs and Central Excise Tariffs.

On a consignment of "Fully automatic industrial grade closed circuit television camera along with accessories" and "monitor mount with bracket for ceiling suspension" both amplified as components of Industrial furnace, while basic customs duty was levied (July 1991) under heading 85.25 and 85.28 respectively of the Customs Tariff, additional duty was charged at 15 per cent ad valorem under heading 84.17 of the Central Excise Tariff as Industrial furnaces.

It was pointed out in audit (January 1992) that the subject goods being Television camera and Television monitor were classifiable under heading 85.25 and 85.28 respectively of the Central Excise Tariff attracting additional duty at 25 per cent ad valorem. The misclassification resulted in duty being levied short by Rs.1,10,336.

Ministry of Finance have confirmed the facts.

SHORT LEVY OF DUTY DUE TO MISCLASSIFICATION

2.27 Watch screws

By virtue of chapter note 1(C), watch screws are excluded from the purview of chapter 91 and are appropriately classifiable under sub heading 7318.15 of the Customs Tariff Act, 1975. They, thus, fall outside the scope of notification dated 28 February 1985, as amended.

Eleven consignments of components of watches imported between June 1987, November 1988, October 1989 and April 1990 through a major Customs House

included watch screws which were incorrectly classified under sub heading 9114.90 and customs duty was levied at 10 per cent/30 per cent ad valorem with appropriate auxiliary duty and nil additional duty, extending the benefit of the aforesaid notification dated 28 February 1985, as amended.

It was pointed out in audit that since the screws were correctly classifiable under heading 73.18 of the Customs Tariff Act, 1975, they were not eligible for the concessional assessment under the aforesaid notification which was applicable to items classifiable under Chapter 91 and Chapter 85 (from 1 March 1988).

The Customs House, while admitting the objection in respect of classification under sub heading 7318.15, defended the extension of benefit of the aforesaid notification by citing the Supreme Court's judgement in case of M/s Jain Engineering Co Vs Collector of Customs, ELT 87(32) (3) SC, wherein the Supreme Court had observed that if certain goods figure under a particular notification which is clear from the description of the notification, the benefit of the notification cannot be denied to the goods on the sole ground that due to inartistic drafting of the notification the heading under which such goods are falling, is not finding place in the notification.

The reply of the Customs House is not acceptable since Ministry of Finance in a similar case of import of Stepper Motor have accepted the view that components not falling under Chapter 91 were not eligible for concessional assessment under the said notification prior to its amendment on 1 March 1988 vide para 2.41 of the Comptroller and Auditor General's Audit Report for the year ended 31 March 1989.

<u>The short levy of duty as per the demand (ad hoc) raised by the Customs House in respect of seven of the aforesaid objections was Rs.10,82,268</u>. The short levy of duty in respect of the remaining objections is not ascertainable as the Customs House has not furnished their split up value.

Ministry of Finance have confirmed the facts and intimated recovery of short levied amount of Rs.1,64,897 in respect of two objections. The remaining cases are stated to be pending adjudication.

2.28 Interchangeable tools

(i) Tool holders for machine tools of headings 84.56 to 84.65 are classifiable under heading 84.66 of the Customs and Central Excise Tariffs. Plates, sticks, tips and the like for tools, unmounted, made of sintered metal carbides or cermets are, however, classifiable under heading 82.09 of the said Tariffs.

A consignment of `Inserts', parts of C.N.C axle turning lathe falling under heading 84.58 of Customs Tariff was amplified as tool holders and classified (July 1991) under heading 84.66 of the aforesaid Tariffs.

It was pointed out in audit (December 1991) that insert is a tool bit which as per technical books, is a piece of cutting material inserted in a forged carbon steel tool holder and hence the imported goods being cutting tools and not tool holders were appropriately classifiable under heading 82.09. The misclassification resulted in duty being levied short by Rs.10,79,453.

The department admitted (May 1992) the mistake and stated that the short levied amount had been recovered in April 1992.

Ministry of Finance have confirmed the facts.

(ii) Parts of machines of headings 84.56 to 84.65 are classifiable under heading 84.66 of the Customs and Central Excise Tariffs. Interchangeable tools for machine tools are, however, classifiable under heading 82.07 of the said Tariffs.

A consignment of `Shear set with punches' was classified (August 1990) under heading 84.66 as parts of Combined punching and shearing machine of heading 84.62 of the aforesaid Tariffs and assessed to basic customs duty at 35 per cent ad

valorem and additional duty at 10 per cent ad valorem.

It was pointed out in audit (February 1991) that as per technical books a shear is a cutting tool having two opposing blades between which a material is cut and hence the imported goods `shear set with punches' were classifiable as interchangeable tool under sub heading 8207.90 and heading 82.07 of the Customs and Central Excise Tariffs respectively attracting basic customs duty at 60 per cent ad valorem and additional duty at 20 per cent ad valorem. The misclassification resulted in duty being levied short by Rs.2,14,790.

While admitting the fact that a shear set is a set of metal blades, the department expressed the view (December 1991) that the imported goods were not interchangeable tools but parts of a combined shearing and punching machine.

The view of the department is not acceptable in audit because, as per explanatory notes (pages 1109-1110) of Harmonized Commodity Description and Coding System, heading 82.07 covers tools which are unsuitable for use independently, but are designed to be fitted into machine tools of heading 84.57 to 84.65 for punching, pressing, cutting metals. Moreover, tools for pressing, stamping or punching are to be classified under the heading 82.07 as specified therein. The imported goods consisting of shear knife, punch and special round die button are to be fitted in combined punching and shearing machine of heading 84.62 for performing the aforesaid functions and are, therefore, classifiable under heading 82.07 in terms of the aforesaid explanatory notes. In addition, articles of chapter 82 are excluded from the purview of chapter 84 in accordance with note I(K) to Section XVI of Customs Tariff.

Ministry of Finance have confirmed the facts and stated (November 1992) that the short levied amount had since been recovered.

2.29 Endless band of steel track chains and steel balls

(i) In terms of note I (ij) to Section XVI of the Schedule to the Customs Tariff Act, 1975, Endless belts of metal wire or strip are excluded from the purview of chapter 84 of the Tariff and instead fall under Section XV covering heading 73.14 of the said Tariff.

One consignment of `ironing band endless' amplified as specially designed part for ironing/plating machine for leather processing was classified under sub heading 8453.90 and assessed (December 1990) to basic customs duty at the effective rate of 35 per cent ad valorem.

It was pointed out (June 1991) in audit that the imported goods being endless band of steel fell under sub heading 7314.19 and were excluded from the purview of chapter 84 of the Tariff in terms of the aforesaid section note. It was held in audit after a scrutiny of catalogue of the goods that the goods were appropriately classifiable under sub heading 7314.11 as stainless steel items attracting basic customs duty at 155 per cent ad valorem. The misclassification resulted in duty being levied short by Rs.3,18,353.

The department stated (February 1992) that since sub heading 7314.19 covers woven products, the subject goods not being woven products were not classifiable under the same sub heading. The department added that the goods being accessory for ironing and plating machine, their assessment under sub heading 8453.90 was correct as per note 2(b) to Section XVI.

The department's reply is not acceptable. As per description of heading 73.14, cloth (including endless bands) are woven products which fall under sub heading 7314.11 and 7314.19, the former of which is expressly meant for the products of stainless steel. According to Harmonised Commodity Description and Coding System Explanatory Notes (Page -1024) the products under heading 73.14 may be in rolls, in endless bands (e.g for belting) or in sheets, whether or not cut

to shape. The imported goods being endless band made of stainless steel were classifiable under sub heading 7314.11. Further, note 2(b) to Section XVI, referred to by the department, relates to parts covered by chapter 84. Since this section does not cover endless belts of metal wire or strip falling under Section XV as per note 1 (ij), the inference drawn is irrelevant.

Ministry of Finance have confirmed the short levied amount but suggested that the correct classification of goods would be under sub heading 7326.90.

(ii) According to note 2(a) of Section XV of the Customs Tariff, chain and parts thereof, of iron or steel (heading 73.15) are "parts of general use". As per note 1(g) of Section XVI of the aforesaid Tariff "parts of general use" are excluded from the purview of chapter 84.

Two consignments of `Track Chain', amplified as specially designed parts of excavator/shovel, were classified (October 1990 and March 1991) under sub heading 8431.49 as parts of articles of heading 84.29.

It was pointed out in audit (April and September 1991) that since the subject goods were chains of iron or steel, they were appropriately classifiable under heading 73.15 as parts of general use and not under heading 84.31 in terms of the aforesaid notes. The misclassification resulted in duty being levied short by Rs.2,09,351.

The department stated (January and February 1992) that the imported goods were not chains but endless tracks which are fitted with track shoes, a part of excavator/shovel and as such, in terms of explanatory notes (page 1208) of Harmonised Commodity Description and Coding System they were classifiable under heading 84.31 as parts of excavator/shovel.

The department's reply is not acceptable. In the invoice the goods were described as track chain. In the bill of entry they were also amplified as crawler chain. As per explanatory

notes, referred to by the department, chains are classifiable under heading 84.31 provided they are presented with the excavating etc. machinery and those presented separately are assessable under heading 73.15. The subject goods being chains imported without the machinery concerned were appropriately classifiable under heading 73.15. Further, according to explanatory notes (Page 1026) heading 73.15 covers chains of iron or steel, even if fitted with terminal parts, accessories, regardless of their dimensions, process of manufacture or, in general, their intended use.

Ministry of Finance, while reiterating the assessment already made, argued (September 1992) that track chains are also known as track link assembly according to C.C.C.N's opinion. The Ministry contended that the track link assembly identifiable as suitable, after fixing with shoes as `Tracks' for use solely or principally with a bulldozer is to be classified as parts of a bulldozer under sub heading 8431.49. The Ministry felt that track link assembly which is equally suitable for a bulldozer or other machines of Section XVI or for vehicles of Section XVII will be classifiable under heading 8485.90. The Ministry, therefore, concluded that track chains are specially designed parts of hydraulic shovel excavator.

The fact remains that the Ministry's reply has not met the point regarding classification under heading 73.15 in terms of explanatory note (page 1026) of H.S.N already referred above. Further, it is also relevant to point out that note 2 to Section XV in respect of parts of general use covering specifically goods falling under chapter heading 73.15 has an overwhelming statutory character for superseding all other headings for classification of parts of general use.

(iii) Steel balls, though identifiable as parts of grinding machine falling under heading 84.74 of Customs Tariff Act, 1975, are assessable under heading 73.26 of Customs Tariff in terms of note 6 to chapter 84 ibid.

Solid Balls amplified as parts of Pulveriser (coal grinding machine) were classified under sub heading 8474.90 and assessed (December 1990) to basic customs duty at 35 per cent ad valorem.

It was pointed out in audit (July 1991) that the imported goods being steel balls for grinding machine were classifiable under heading 73.26 attracting basic customs duty at 100 per cent ad valorem in terms of the aforesaid chapter note. The misclassification resulted in duty being levied short by Rs.2,02,079.

The Collectorate admitted (December 1991) the mistake and stated that efforts were being made to realise the short levied amount.

Ministry of Finance have confirmed the facts.

2.30 Refill filling and assembly machine

In terms of explanatory notes at page 1184 of HSN, Customs Tariff sub heading 8422.30 covers inter-alia machines for filling of containers like tubes, ampoules etc., with devices for closing which are subjected to levy of basic customs duty at the rate of 70 per cent ad valorem, auxiliary duty at the rate of 50 per cent ad valorem and additional duty at the rate of 20 per cent ad valorem with 5 per cent special excise duty thereon.

Two consignments of "HUTT-Refill filling and assembly machine type MFA 500," imported (August 1990, April 1991) through a major Customs House were incorrectly classified under the residual sub heading 8479.89 of Customs Tariff and subjected to levy of basic customs duty at the rate of 35 per cent ad valorem, auxiliary duty at the rate of 45 per cent/50 per cent ad valorem and free of additional duty under exemption notification no.59/87-Cus dated 1 March 1987. This had resulted in customs duty being levied short by an aggregate sum of Rs.7,05,818.

On this error being pointed out in audit (December 1990, October 1991), the Customs House stated (November 1991, February 1992) that heading 84.22 covered only machines for filling and

closing of containers and that ball point refill tubes are not containers in the same sense as referred to in heading 84.22.

The reply of the Customs House is not acceptable since 8479.89 is a residual heading referring to machines having individual functions which could not be classified any where else in the chapter and heading 84.22 is more specific for machines for filling, closing and sealing including 'tubes' as per details in page 1137 in HSN explanatory notes. Further, as per the general arrangement of chapter 84 classification under heading 84.22 is determined with reference to function of machine.

A demand notice has been issued (October 1991) by the Customs House. Details of recovery have not been received (March 1992).

Ministry of Finance stated (December 1992) that refill filling and assembly machine has twin functions of filling the ball point refill tubes and then assembling the refill tubes with ball tip. The Ministry added that both the functions were equally important and can be considered to be principal functions or purposes of the machine. Ministry, therefore, felt that sub heading 8479.89 would be more appropriate, in view of note 7 of chapter 84.

The fact remains that in the scheme of heading/sub heading, given under chapter 84, there is a specific entry for `Machinery for filling, closing, sealing, capsuling or labelling bottles, cans, boxes, bags or other containers' and the function of the imported item is squarely covered by this entry (8422.30). Thus note 7 of chapter 84 is not attracted in the instant case and in terms of the H.S.N explanatory notes also, the item cannot be classified under the residual entry 8479.89, so long as there is a specific entry covering the case.

2.31 Filter papers

In terms of chapter note 7 of chapter 48 of Customs Tariff, chapter heading 48.05 would cover only paper in strips or rolls of a width exceeding

15 cm or rectangular sheets with one side exceeding 15 cm in the unfolded state. Therefore, circular filter paper and filter papers which are not of the above mentioned specifications would merit classification under chapter heading 48.23 and assessable to basic customs duty at 100 per cent ad valorem and auxiliary duty at 45 per cent ad valorem. With reference to a central excise notification no.135/89 dated 12 May 1989, additional duty is leviable at 12 per cent ad valorem.

Filter papers of various sizes which do not fall under the specifications mentioned in para supra, imported during February 1990 to February 1991, were classified under chapter heading 48.05 and levied to custom duty at 100 per cent ad valorem plus 45 per cent ad valorem and `nil' additional duty.

It was pointed out (September 1990 to August 1991) in audit that the correct classification would be under sub heading 4823.90. The resultant short collection amounted to Rs.6,44,942. The Customs House admitted (June 1991) the short collection in one case amounting to Rs.1,58,309 and in the remaining cases, no reply has been received so far.

Ministry of Finance, while admitting the objection, however, stated (January 1993) that filter papers were cut to size and shape in this case and hence would correctly fall under sub heading 4823.19. The Ministry also stated that the consequential short levy would be Rs.5.67 lakhs only.

2.32 Oil seals

Parts of motor vehicles are classifiable under heading 87.08 of both Customs and Central Excise Tariffs and are assessable to basic customs duty at 100 per cent ad valorem and additional duty at 20 per cent ad valorem.

Two consignments of `Oil Seals' amplified as motor vehicle components, imported in April 1991, were, however, classified under sub heading 8485.90 of the aforesaid Tariffs and assessed

(April 1991) to basic customs duty at 55 per cent ad valorem and additional duty at 15 per cent ad valorem. It was pointed out (September 1991) in audit that the imported goods, being parts of motor vehicles, were classifiable under heading 87.08 attracting duties at the higher rates. The misclassification resulted in duty being levied short by Rs.5,31,965.

The department admitted (December 1991) the mistake and stated that the short levied amount had been recovered.

Ministry of Finance have confirmed the facts.

2.33 Synthetic resins and cellulose derivatives

(i) Two consignments of goods described as "Bayderm Bottom SMS" imported through a major port, during February and June 1991, were classified as a "Resin Tanning Agent" under heading 32.02 of both Customs and Central Excise Tariffs and levied to basic customs duty at the rate of 45 per cent ad valorem in terms of a customs notification dated 21 February 1987, with auxiliary duty of customs at the rate of 5 per cent ad valorem in terms of a customs notification dated 31 May 1990. Additional duty was levied at the standard rate of 15 per cent ad valorem with special excise duty at 5 per cent thereon.

It was pointed out in audit (July and December 1991) that as seen from the test report, the imported goods were an aqueous dispersion of synthetic resin (polyurethane) and may not be considered as resin tanning agent. Consequently, the goods were more appropriately classifiable as Synthetic Resin (Polyurethane) under sub headings 3909.50 and 3909.60 of Customs and Central Excise Tariffs respectively and leviable to basic customs duty at the rate of 100 per cent ad valorem, in terms of a customs notification dated 20 March 1990 with auxiliary duty of customs at the standard rate of 50 per cent ad valorem. Additional duty was leviable at the rate of 40 per cent ad valorem in terms of a central excise notification dated 1 March 1988, with special excise duty at 5 per cent thereon. In both the

cases, this resulted in duty being levied short by Rs.3,82,910.

The department admitted the objection and recovered the short collection (February 1992).

Ministry of Finance have confirmed the facts.

(ii) Cellulose and its chemical derivatives not elsewhere specified or included in primary forms i.e liquids, pastes, lumps, powders, granules flakes etc., get classified under Customs Tariff heading 39.12, while plates, sheets, foils, strips etc. made thereof are classifiable under heading 39.20. Under a notification dated 20 March, 1990, Cellulose acetate butyrate in primary form is exempted from levy of customs duty in excess of 55 per cent ad valorem, while foils made thereof are leviable to duty at 100 per cent ad valorem.

Out of a consignment of 56.24 square metres (4 rolls of running length of 37 metres) of `Raw foils for x`ray screens' made of cellulose acetate butyrate, imported through a major air Collectorate in July 1991, 30.65 square metres of foils were allowed to be cleared duty free under DEEC scheme. On the remaining 25.59 square metres of foils customs duty was levied at 55 per cent under Customs Tariff sub heading 3912.12 read with the aforesaid notification of 20 March 1990. Additional duty was also levied at 15 per cent with 5 per cent special excise duty under heading 39.12 of Central Excise Tariff.

The test report for the goods recorded on the bill of entry described the goods as "small cut piece of sheet composed of polymer based on cellulose acetate butyrate and inorganic matter". However, since the invoice and the description on the bill of entry showed the goods to be `Raw foils for X'ray screen - in Jumbo Rolls' in running length of 37 metres (width 32 cm, 44 cm.), it was pointed out (December 1991/March 1992) in audit that the correct classification for the goods was under sub heading 3920.79. The goods under serial no.20(iii) of notification no.49/90, attracted customs duty at 100 per cent ad valorem and auxiliary duty at 50 per cent. Additional

duty leviable was 35 per cent under Central Excise Tariff heading 39.20.

The misclassification resulted in short levy of duty amounting to Rs.1,27,412.

Reply of the department has not been received.

The matter was reported to Ministry of Finance in July 1992; their reply has not been received (December 1992).

2.34 Parts of fire alarm

Goods described as Fire Sense Linear Detection Cable and Line Detection Interface, forming part of fire signal alarm, imported through a major Customs House by a private party in December 1988, were assessed to basic customs duty under sub heading 9032.89 of the first schedule to the Customs Tariff Act, 1975, as automatic controlling unit for fire fighting equipment at 40 per cent ad valorem with nil auxiliary duty and additional duty at 15 per cent ad valorem.

It was pointed out in audit (March 1989) that the goods imported did not control or regulate by themselves the temperature as seen from the write up. They merely passed on the signals to the fire control panel, the signal being for rise of the temperature beyond the required level. As per the explanatory notes at page 1382 of CCCN, Automatic Fire Alarm consists of two parts - a detecting part and a signalling part and fire alarms are also based on the variation in electrical resistance. The detecting and transmission elements, are not, thus, complete automatic or regulating instruments by themselves. They have to be treated as parts of fire alarm (heading 85.31 of CTA) and would merit classification under heading 98.06 attracting customs duty at 100 per cent ad valorem in terms of a notification issued on 1 March 1987, with auxiliary duty at 45 per cent ad valorem and additional duty at 15 per cent ad valorem. The resultant short levy of duty worked out to Rs.1,63,436.

The Customs House admitted the objection.

Ministry of Finance have confirmed the facts.

SHORT LEVY OF DUTY DUE TO UNDERVALUATION

2.35 Short levy due to non inclusion of the element of loading, unloading and handling charges

According to Rule 9(2) of the Customs Valuation (Determination of price of imported goods) Rules 1988, the value of the imported goods for the purposes of subsection (1A) of Section 14 of the Customs Act, 1962 (52 of 1962) and Customs Valuation Rules 1988 shall be the value of such goods for delivery at the time and place of importation and shall include:

a) the cost of transport of the imported goods to the place of importation;

b) loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation; and

c) the cost of insurance.

Provided that in the case of goods imported by air and where the actual cost and charges referred to in clauses (a), (b) and (c) above are not ascertainable such cost and charges shall be sixteen per cent of the free on board value of such goods.

Provided further that in the case of goods imported other than by air and the actual cost and charges referred to in clauses (a), (b) and (c) are not ascertainable, such cost and charges shall be twenty one per cent of the free on board value of such goods.

(i) On two consignments of goods imported by air and sea (March and July 1989) actual freight and insurance charges at flat rate of 1.125 per cent were added to the F.O.B value without taking into account the element of handling, loading and unloading, in the determination of assessable value.

It was pointed out in audit (December 1989 and January 1990) that the charges of loading, unloading and handling and the cost of insurance being not ascertainable, the assessable value should have been determined by adding sixteen per cent of free on board value in case of importation by air and twenty one per cent of free on board value in case of importation by sea. This resulted in duty being levied short by Rs.18,36,606.

The department admitted (January 1992) the mistake and stated that efforts were being made to realise the short levied amount.

(ii) While determining assessable value of seven consignments imported between 9 September 1988 and 27 October 1989, loading, unloading and handling charges were not taken into account and insurance at a flat rate instead of actuals was considered due to non availability of figures.

It was pointed out in audit between January and July 1990 that the charges of loading, unloading and handling and the cost of insurance being not ascertainable, the assessable value of the goods should have been determined by adding twenty one per cent of the free on board value. This resulted in duty being levied short by Rs.5,38,169.

In respect of two consignments the Collectorate stated (August and October 1990) that insurance was added to cost and freight (C & F) value to arrive at the cost, insurance and freight (C.I.F) value and 1 per cent of C.I.F value was added as handling charges for determination of assessable value.

In respect of four consignments they added (October and November 1990) that the elements of (a),(b) and (c) being available, law existing at the relevant time did not support addition of 21 per cent of free on board value. Reply in respect of the remaining consignment has not been received (July 1992).

The department's replies are not acceptable. Handling charges and actual cost of insurance not

being ascertainable, a flat rate of 21 per cent of F.O.B value was required to be added to arrive at the assessable value as per the aforesaid Valuation Rules. Loading, unloading and handling charges (element `b') in respect of four consignments not factually being ascertainable, the Collectorate added 1 per cent of CIF value as handling charges and insurance (element `c') at percentage rate instead of actuals which was contrary to the provisions of the rules ibid.

(iii) In terms of Rule 9(2) of the Customs Valuation Rules 1988, the value of imported goods shall include loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation. As per a notification issued on 19 December 1989 such charges were to be at 1 per cent of F.O.B value of the imported goods, irrespective of the actual charges incurred.

In respect of a consignment of automatic band coiler with tools and accessories cleared through an air Customs House during December 1989, the assessable value was worked out by including only the actual handling charges of Rs.1585 as against 1 per cent of F.O.B value amounting to Rs.1,11,230.

The non inclusion of landing charges as stipulated in the notification, resulted in under valuation and consequential short levy of Rs.1,13,117 which was pointed out by audit in October 1991.

Reply of the department has not been received (June 1992).

The aforesaid three cases were reported to Ministry of Finance in July and September 1992; their reply has not been received in all three cases (December 1992).

2.36 Short levy due to adoption of incorrect value in the assessment of goods sold on high seas

In its letter dated 3 November 1988, Ministry of Finance had clarified that in respect of imported goods sold on high seas by the original

buyer, the relevant transaction for determination of value is the one that takes place on high seas and the last buyer should be regarded as the importer. In the CBEC's letter dated 20 June 1990, it was mentioned that adopting the sale price at high seas for purpose of valuation is within the provisions of GATT Valuation Code. Therefore, sale price of goods sold on high seas constitutes transaction value for the purpose of valuation of imported goods.

A private limited company imported five consignments of nickel (January to March 1991) and entered into an agreement with two different buyers for sale of this nickel on high seas. As per the agreement which was pasted with the bills of entry the sale had been effected at the rate of Rs.2,10,000 per tonne, Rs.1,78,000 per tonne and Rs.1,90,000 per tonne for 18 tonnes, 19.793 tonnes and 36 tonnes respectively. The goods were assessed provisionally pending confirmation of the correctness of the classification based on test by the chemical laboratory. While assessing for levying customs duty, the invoice value instead of the high seas sale value had been adopted.

On pointing out in audit (July/August 1991) the incorrect valuation and the resultant short collection of Rs.18,33,239 the Customs House replied (November 1991) that at the time of assessment no agreement was found pasted to the bills of entry. The Customs House further stated that subsequently the records could have been tampered with to avoid payment of sales tax. It was also stated that action had been initiated against the original importer and clearing agent in consultation with the Sales Tax Department.

To a statement of facts issued (December 1991) informing the Customs House that irrespective of any other action against the importer, the assessable value had to be revised as per the decision of the Collectors' conference of July 1990 and a short collection of duty of Rs.18,33,239 recovered, no reply has been received (June 1992). The adoption of the invoice value instead of the high seas sale value in addition to the short collection has also resulted in an undue benefit to the importer.

Ministry of Finance, while confirming the facts, stated (January 1993) that only the duty on service charges amounting to Rs.6,10,221.50 would be includible in the assessable value and not the licence premium paid by the high seas sale buyer to the original importer. Action against the Customs House Agent and the original importer was being taken in this regard.

The Ministry's reply regarding non inclusion of licence premium is not acceptable for this was in the nature of expenses incurred in connection with the importation of the goods, the same can not be ignored in view of the Ministry's clarification dated 20 August 1990.

2.37 Short levy due to non-inclusion of actual freight charges on goods imported by air

In terms of a customs notification, dated 1 January 1987, maximum air freight was fixed at 15 per cent of the F.O.B. value of goods. The above notification was rescinded on 10 August 1988. Again, another notification was issued on 10 August 1988 fixing the maximum freight charges at 16 per cent of F.O.B. value with effect from 16 August 1988 for arriving at the assessable value of goods imported by air. Accordingly, during the period between 10 August 1988 and 15 August 1988, actual amount of freight charges incurred would form part of the assessable value.

On a consignment of `Maintenance spare parts for C 200 Micro Earth Station' imported by a Govt. Department, on 12 August 1988, through air, the assessable value was incorrectly arrived at by taking into account 15 per cent of F.O.B. value as freight charges instead of the actual air freight charges incurred.

On this being pointed out (September 1989) in audit, the department admitted the objection and stated that the importer had been asked to pay the short collection of duty of Rs.15,62,585 voluntarily. Report on recovery has not yet been received (February 1992).

The matter was reported to Ministry of Finance in May 1992; their reply has not been received (December 1992).

2.38 Short levy due to application of incorrect rates of exchange

As per proviso to Section 14(1)(a) of the Customs Act, 1962, the rate of exchange for conversion of value expressed in foreign currency in respect of any imported goods is the rate of exchange in force on the date of presentation of the bill of entry.

(a)(i) In respect of a consignment of `Lithium Hydroxide Monohydrate', imported through a major Customs House during July 1991, the rate of exchange of U.S. Dollars 4.7200 for Rs.100 was applied for determining the assessable value as against the correct rate of exchange of U.S. Dollars 3.8350 for Rs.100 applicable. This resulted in under valuation and consequential short levy of duty amounting to Rs.5,95,664.

On this being pointed out in audit (February 1992) the department admitted the objection and recovered the short levied duty (February 1992).

Ministry of Finance have confirmed the facts.

(ii) In the case of an import where into bond bill of entry was presented on 10 June 1991, the rate of exchange of US dollars 5.095 equivalent to Rs.100 was adopted as against the correct rate of U.S dollars 4.7600 eqivalent to Rs.100 prevalent from 7 June 1991. This resulted in duty being levied short by Rs.1,42,161.

On this incorrect exchange rate being pointed out in audit, the short levied duty of Rs.1,42,161 was realised in March 1992.

A review of other bills of entry covered by bond dated 12 June 1991 had been suggested for recovery of possible short collection but the results of the review have not been received (May 1992).

Ministry of Finance have confirmed the facts.

(b) In respect of a consignment of `Steel Sheets-Electrical Grade' imported through a major Customs House during October 1990, the rate of exchange of Japanese Yen 754.50 equivalent to Rs.100 was applied for determining the assessable value as against the correct rate of Japanese Yen 693 equivalent to Rs.100 applicable. This resulted in duty being levied short by Rs.3,07,872.

On this being pointed out in audit (July 1991), the department admitted and recovered the short levied duty in September 1991.

Ministry of Finance have confirmed the facts.

(c) On a consignment of `Intex Plate', the bill of entry was presented on 14 February 1991. The correct rate of exchange applicable as on that date was Deutsche Mark 7.7625 for Rs. 100 as against the rate of 8.4225 for Rs. 100 incorrectly applied by the department. This resulted in duty being levied short by Rs. 2,31,534.

On this being pointed out in audit (July 1991), the department admitted the objection and recovered the short levied duty.

Ministry of Finance have confirmed the facts.

2.39 Short levy due to adoption of incorrect value of scrap

According to section 17 of the Customs Act, 1962, imported goods can be assessed only after an entry for such goods has been made under section 46 ibid. As per section 65, clearance of waste arising out of manufacturing operations under bond in a bonded warehouse for home consumption is permissible on payment of duty as if the goods had been imported into India in that form.

170 metric tonnes of steel scrap, which arose during the process of manufacture under bond in a warehouse owned by a Government Company, was cleared for home consumption on payment of duty during 1991. The assessment of the scrap was done 3 to 15 months prior to the filing of exbond bills of entry for home consumption. As a result the assessable value determined in each case was very

low when compared to the sale price of the steel scrap even after allowing a profit margin of 10 per cent. The total amount of short levy of duty in these cases worked out to Rs.1,82,450. On the irregularity being pointed out by audit in January 1992, the department admitted the fact in June 1992, but expressed certain practical difficulties in complying with the provisions of the Act for valuation of scrap. The assessment done prior to the filing of bills of entry had affected revenue adversely. The assessment should have been done strictly, according to rules, at the time of clearance only.

However, the fact remains that the department has not acted in accordance with the provisions of sub section 2(a) of Section 65 of Customs Act, 1962, by not resorting to valuation of scrap at the time of clearance for purposes of determining the duty.

The matter was reported to Ministry of Finance in September 1992; their reply has not been received (December 1992).

IRREGULAR GRANT OF REFUNDS

2.40 Irregular grant of refund by application of incorrect exemption notification

In terms of section 15(1)(a) of the Customs Act, 1962, the rate of duty applicable to imported goods is the rate prevailing on the date on which the bill of entry in respect of such goods is presented under section 46 ibid. If, however, a bill of entry has been presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards.

In respect of a consignment of `CNC Precision Internal Grinding Machine with its accessories and spares' imported by a Government department, the date of presentation of the bill of entry and the date of entry inwards of the vessel carrying the goods was 24 January 1989. The goods were assessed at the rate of duty applicable on that date and the duty of Rs.50,05,306 was collected on

3 February 1989. Upon a refund application of the importer claiming concession at nil rate of duty under notification no.16/89-Cus of 1 February 1989 the machinery portion was re-assessed and an erroneous refund of Rs.49,56,414 was authorised (August 1990).

It was pointed out (April 1991) in audit, followed by a statement of facts (December 1991), that under section 15(1)(a) of the Act, the rate of duty prevailing on 24 January 1989 only would be applicable and the refund based on the notification of 1 February 1989 was not correct. The department admitted (March 1991) the objection and stated that action was being initiated to recover the erroneous refund. Report of recovery has not been received (March 1992).

Ministry of Finance have confirmed the facts.

SHORT LEVY OF DUTY DUE TO APPLICATION OF INCORRECT RATES

2.41 Basic customs duty

(i) In terms of a customs notification issued in February 1986, insecticide, pesticide and fungicide chemicals are leviable to basic customs duty at 60 per cent ad valorem, while other organic compounds are leviable to such duty at 70 per cent ad valorem.

Twenty four consignments of goods described as N-Methyl 2-chloro Aceto Acetamide, a chemical falling under heading 29.42 of the Customs Tariff, cleared from a warehouse under the control of a major Customs House, during the period from March to August 1989, were assessed to basic customs duty at 60 per cent ad valorem. These goods were totally exempt from the levy of additional duty in terms of an ad-hoc exemption order issued on 20 April 1989 under section 25(2) of the Customs Act.

It was pointed out in audit (October 1989 to May 1990) that the goods would attract basic customs duty at 70 per cent ad valorem in view of the fact that it was not a pesticide chemical by itself but only an organic compound used in

manufacture of mono protophos technical a pesticide chemical.

The Customs House, after obtaining the opinion of the Deputy Chief Chemist, accepted the objection (February 1992) and stated that action had been initiated to recover the short levied amount of Rs.6,66,150 in respect of the cases pointed out by audit.

Results of review action in respect of other similar clearances have not been intimated so far.

Report on recovery has not been furnished (December 1992).

Ministry of Finance have confirmed the facts.

(ii) Parts of television glass shells/bulbs are classified under sub heading 7011.20 and attract concessional duty at the rate of 35 per cent (basic) plus 5 per cent (auxiliary) plus nil (CVD) under notification no.344/86-Cus dated 16 June 1986.

On a consignment of black and white television glass shells/bulbs having an assessable value of Rs.51,44,251, imported in April 1989, the department levied basic customs duty at the rate of 30 per cent instead of 35 per cent ad valorem. This resulted in duty being levied short by Rs.2.57 lakhs.

On this being pointed out in audit (July 1991), the department admitted the mistake (December 1991) and intimated that the importer had deposited the short collection of duty (December 1991).

Ministry of Finance have confirmed the facts.

(iii) By a notification issued in March 1986 as amended from time to time, goods falling under headings 84.56 to 84.65 were assessable to duty at concessional rates. While certain specified goods, including Valve Face Re-grinding Machines, were assessable at 110 per cent ad valorem, unspecified goods were assessable at 75 per cent ad valorem.

Two consignments of Valve Seat Grinding Machines, imported in October 1989, were classified under heading 84.60 and assessed to duty at 75 per cent ad valorem.

It was pointed out in audit (March 1990) that the article `Valve Face Re-grinding Machine' was specified in the notification and was liable to duty at 110 per cent ad valorem. As there was no difference between Valve Seat Grinding Machine and Valve Face Re-Grinding Machine the subject goods were assessable at 110 per cent ad valorem. The application of incorrect rate resulted in duty being levied short by Rs.1,04,504.

The department sought to justify the assessment with the observation that the imported items were Grinding Machines for Valve Seat and not for Valve Face, though it recovered the short levied duty of Rs.1,04,504 (December 1990).

The reply is not acceptable. That the Grinding Machine for Valve Seat is not different from Re-grinding Machine for Valve Face, is clear from the fact that apart from confirmation of the demand and recovery of the short levied amount, subsequent clearance, in November 1991, of such machines was amplified by the importer as Valve Face Re-grinding Machine.

Ministry of Finance, stated (October 1992) that `Valve seat' and `Valve Face' are two different items and hence Valve Seat Grinding Machine and Valve Face Re-grinding Machine cannot be considered to be one and the same. The Ministry, therefore, argued that Valve Seat Grinding Machine would be correctly assessable to duty under Sl.No.(iii) of notification no.154/86-Cus dated 1 March 1986.

The fact remains that the customs authorities have been assessing identical goods, subsequently imported in November 1991, after amplifying the description, as `Valve Face Re-grinding Machine'.

2.42 Auxiliary duty

(i) Goods described as watch components, imported through a major Customs House and cleared under

ex-bond bill of entry in January 1991, were assessed to basic customs duty under heading 91.14 at 30 per cent ad valorem, with auxiliary duty at 30 per cent and nil additional duty in terms of a notification issued on 28 February 1985 as amended. However, auxiliary duty had been enhanced from 30 per cent to 50 per cent as per a notification dated 15 December 1990.

It was pointed out in audit (July 1991), that since the goods were cleared from the warehouse on 18 January 1991, auxiliary duty would be leviable at 50 per cent instead of the collection made at 30 per cent. The short collection including bond interest worked out to Rs.18,55,231. The Customs House admitted the objection and recovered the amount.

Ministry of Finance have confirmed the facts.

(ii) Crude petroleum and several other goods were imported by a public sector undertaking during the period from 15 December 1990 to 11 March 1991. These were assessed to auxiliary duty at the rate of 45 per cent ad valorem under notification no.178/90-Cus dated 31 May 1990. Auxiliary duty at 50 per cent ad valorem was leviable on these goods under notification no.284/90-Cus dated 15 December 1990. This resulted in short levy of auxiliary duty amounting to Rs.3,64,341.

This was pointed out in March 1992.

Ministry of Finance have confirmed the facts.

(iii) The concessional rate of auxiliary duty available to all imported goods under notification no.178-Cus dated 31 May 1990, at the rate of 45 per cent ad valorem, was withdrawn with effect from 15 December 1990 under a customs notification no.284/1990. This resulted in the goods covered by the said notification attracting 50 per cent as auxiliary duty from that date.

On three consignments of (i) Titanium dioxide (ii) P.V.C resin and (iii) Aluminium alloy plates imported during the period December 1990 to February 1991, auxiliary duty was levied at 45 per cent ad valorem as against the correct rate of 50

per cent applicable as per the aforesaid notification.

On the resultant short levy of Rs.1,05,710 being pointed out by audit in June & July 1991, the department accepted and recovered the same in July/October 1991.

(iv) Cyclopropylamine and Marlex High Density Polyethylene, cleared from a bonded warehouse under the jurisdiction of a major Customs House, on 15 December 1990 and 17 December 1990, were levied to auxiliary duty at the effective rate of 45 per cent ad valorem.

It was pointed out (May 1991) in audit that the goods were correctly leviable to auxiliary duty at the standard rate of 50 per cent ad valorem in terms of an amending notification issued on 15 December 1990. Short collection of duty (including bond interest) in both the cases amounted to Rs.98,838.

The department admitted the objection (January and March 1992). While the short collection of duty of Rs.40,341 in respect of clearance made on 15 December 1990 was recovered in December 1991, recovery particulars of Rs.58,497 in respect of clearance made on 17 December 1990 have not been furnished (April 1992).

Ministry of Finance confirmed the facts and stated (September 1992) that the short levied amount has since been recovered.

SHORT LEVY OF DUTY DUE TO MISTAKES IN COMPUTATION

2.43 Mistakes in computation of duty

A consignment of melting scrap of stainless steel weighing 476.716 tonnes imported in April 1991, through a major Customs House, was charged to basic customs duty and auxiliary duty. Additional duty at the effective rate of Rs.1,500 per tonne was, however, collected on 476.716 kilograms of the aforesaid scrap. This resulted in duty being levied short by Rs.7,50,078.

On the mistake being pointed out in audit (September 1991), the Customs House admitted it and recovered the short levied amount (October 1991).

Ministry of Finance have confirmed the facts.

SHORT LEVY OF EXPORT DUTY

2.44 Short collection of export duty due to incorrect grant of drawback allowed on export of E.I. Tanned Cow Leather

Hides, skins and leathers tanned and untanned, falling under heading 14 of Export Tariff Schedule, attract export duty at 15 per cent ad valorem under a customs notification dated 6 January 1981 as amended. In respect of East India Tanned Cow Leather under claim of drawback, the procedure followed was to collect the appropriate export duty on such goods after adjusting the drawback payable thereon at the prescribed All Industry Rate.

On thirty two consignments of `E.I.Tanned Cow Leather', exported through a major Customs House in June 1989, export duty was incorrectly collected after allowing drawback at the rate of Rs.2.50 per kilogram even though the drawback on the said item was withdrawn with effect from 1 June 1989. This resulted in export duty being levied short by Rs.1,34,769.

When this mistake was pointed out in audit (October 1989) the department accepted the objection (February 1992) and recovered a sum of Rs.1,17,078 in 28 cases.

Ministry of Finance confirmed the facts and stated (October 1992) that the short levied amount of Rs.1,34,769 had been fully recovered.

OTHER IRREGULARTIES

2.45 Irregularities in the importation of mink fur and other serviceable garments in the guise of woollen/synthetic rags and adjudication of cases thereof

Introduction

Under the Import Policy of Government of India for 1985-88 and 1988-91, pre-mutilated woollen and synthetic rags for spinning yarn were allowed to be imported by actual users under O.G.L and such goods attracted concessional rate of duties as per notifications issued from time to time.

Noticing that serviceable garments were being imported in the guise of woollen/synthetic rags, the Central Board of Excise and Customs issued instructions in September 1988, vide letter No.F.445/4/87-Cus IV dated 26.9.88, which inter alia provided that

i) since importation of rags under O.G.L was allowed to actual users and strictly `actual users' of rags could only be spinners of shoddy yarn, it would be necessary to treat those who were not spinners of shoddy yarn as `not actual users' and on this account to deny the benefit of the O.G.L to their imports;

ii) rags that were not completely pre mutilated in terms of I.T.C Policy, were to be treated as not eligible for import under the O.G.L. In the case of such importation, the goods were liable, prima facie, to confiscation;

iii) in respect of imports of serviceable garments and of such pieces of parts of garments as could be put together again and made into complete serviceable garments, it had been decided that in order to wipe out the margin of profit of the import, a fine of 250 per cent of the value of the goods should be imposed; and in addition, a personal penalty of 25 per cent of the value of the goods should also be imposed on those who imported

such goods, since the importers, in these cases, were out to exploit the Import Policy by way of resale of garments. The garments released on payment of such fine need not be mutilated since the margin of profit would have been wiped out by the fine. So far as the duty to be levied was concerned, the concessional duty allowed for import of mutilated garments would not be admissible in these cases. The statutory rate of duty would have to be charged;

iv) the import of pre-mu tilated rags by the `shoddy manufacturers' who were actually not shoddy manufacturers was to be treated as unauthorised, since only those with spinning units could be considered `actual users'. In the case of these persons the goods could be released on payment of a fine of 100 per cent subject to their mutilation to the satisfaction of the Mutilation Committee; and

v) the import of garments or insufficiently mutilated rags by shoddy spinners, who were actual users of such goods, would involve a technical violation in as much as the goods, though imported by and meant for actual users, would not satisfy the terms of the O.G.L. In these cases, the goods could be released after adjudication on imposition of a nominal fine of 10 per cent of the value of goods and on proper mutilation to the satisfaction of the Mutilation Committee.

(2) Scope of Audit

The examination of the import of mink fur, woollen/synthetic rags allowed under the Import Trade Policy for the years 1985-88 and 1988-91 for the actual users under O.G.L was undertaken with a view to see that

i) the importation of rags permitted under O.G.L was actually granted to `Actual users' (who are actual users with spinning units) only and it was not allowed to non spinners of yarn.

ii) the importation of rags which were not completely pre-mutilated in terms of I.T.C Policy were not allowed under O.G.L and due action under law by way of confiscation was carried out against such imports with the imposition of adequate quantum of fine and penalty (in order to wipe out the margin of profit enjoyed by such unscrupulous importers) apart from denying the facility of concessional rate of duty in such cases.

iii) that the adjudication of cases was conducted keeping in view the guidelines issued by the Ministry in September 1988 and that proper procedure prescribed in connection with the mutilation of serviceable garments was followed by the Customs /Central Excise authorities.

(3) Highlights

An appraisal of the import of mink fur, woollen/synthetic rags for spinning yarn by actual users (shoddy spinners) under O.G.L was conducted with reference to particulars of imports made during the period 1987-88 to 1991-92 at the ports of Bombay, Madras, Tuticorin, Gujarat, Vizag, Delhi and Collectorate at Chandigarh. The results of such appraisal conducted between October 1988 and March 1992 are contained in the succeeding paragraphs which highlight the following-

- **Non levy of statutory rate of duty (instead of concessional rate of duty levied) on serviceable garments amounting to Rs.35.23 lakhs (sub para 5);**

- **Irregular clearance of woollen/synthetic rags by persons other than actual users under O.G.L (sub para 6);**

- **Non levy/short levy of fine on the insufficiently mutilated synthetic rags imported by shoddy spinners amounting to Rs.28.32 lakhs (sub paras 6 & 7);**

- **Irregular procedure adopted in the mutilation of serviceable garments leading to clearance of serviceable garments as such, resulting in avoidance of payment of duty.**

(4) Statistical information

i) Details of importation of woollen/synthetic rags during last five years through Custom Houses of Gujarat are as under:

Name of Customs House: Customs House, Kandla

Year	No. of Bills of Entry	Weight of goods (MTs)	C.I.F Value of goods (Amount in Rupees)	Duty assessed/collected (Amount in Rupees)
1987-88	152	5937.447	2,94,12,288	59,30,254
1988-89	123	4514.960	2,79,80,341	57,65,117
1989-90	38	1712.134	88,45,457	22,42,436
1990-91	Nil	Nil	Nil	Nil
1991-92	Nil	Nil	Nil	Nil
Total	313	12164.541	6,62,38,086	1,39,37,807

ii) The details of cases of importation of woollen rags/synthetic rags adjudicated by the Collector of Customs are as under:

Name of Customs House: Customs House, Kandla

Year	No. of cases	year of import	C.I.F value of the goods	Fine imposed (Amount in Rupees)	Penalty imposed (Amount in Rupees)
1987-88	4	1987-88	16,54,168	13,36,000	3,14,000
1988-89	8	1987-88	14,54,438	1,10,000	3,77,000
1989-90	23	1988-89	33,00,097	3,70,000	8,99,000
1990-91	-	-	-	-	-
1991-92	-	-	-	-	-
Total	35		64,08,703	18,66,000	15,90,000

Out of 35 cases adjudicated only 11 cases were made available for audit scrutiny. Remaining files were not made available to audit as the files were stated to be not readily traceable.

Vizag Customs House

The details of woollen/synthetic rags imported during the year 1990-91 through Vizag port are as under:

Year	Number of Bills of Entry	Duty collected (Rupees in lakhs)
1990-91	36	29.09

Tuticorin Customs House

Year	Number of Bills of Entry	Quantity in kilograms	Assessable value	Amount of duty	Redemption fine/ penalty
			(Rupees in lakhs)		
1990-91	76	31,27,811	298.46	94.68	347.24

iii) The details of woollen/synthetic rags imported during October 1988 to March 1992 through I.C.D and C.F.S are as under:

Name of Customs House: Customs House, Delhi

Name of the Unit	Year	No.of Bills of Entry	Weight of goods imported kg	C.I.F Value of goods imported	Duty, fine, penalty collected
				(Rupees in lakhs)	
I.C.D	1988-89 (1.10.88 to 31.3.89)	168	42,88,917	304.55	101.32
	1989-90	151	37,68,372	347.08	77.23
	1990-91	121	28,60,954	268.05	100.90
	1991-92	114	31,96,950	285.63	116.72
C.F.S	1988-89 (1.7.89 to 21.3.90)	187	51,30,130	415.64	108.74
	1990-91	148	38,57,021	331.00	89.09
		889	2,31,02,344	1951.95	594.00

The details of cases of importation of serviceable garments, woollen/synthetic rags adjudicated are as follows:

Name of the Unit	year of import	No. of cases	C.I.F value of goods (Rupees in lakhs)	Fine/penalty imposed
I.C.D	1988-89	34	48.82	18.80
	1989-90	4	4.94	1.36
	1990-91	5	11.12	0.15
	1991-92	5	25.41	0.88
C.F.S	1989-90	5	12.45	12.69
	1990-91	6	14.14	13.37
		59	116.88	47.25

Out of 11 cases pertaining to Container Freight Stations, in 2 cases the importers had filed appeals in CEGAT and decision was awaited and in 2 other cases the files were not made available. In 4 cases, Delhi High Court had ordered release of goods after proper mutilation.

The information in respect of Inland Container Depots unit was gathered from B.E Register, Register of Offences and Penalties and Register of Adjudication Cases, as the same were not made available. Out of 48 cases the importers had filed appeals in CEGAT in 11 cases and the decision was awaited.

iii) Bills of entry of CIF value of Rs.29.16 lakhs in 3 cases pertaining to C.F.S were not filed by the importers. These cases were adjudicated in March, 1991 and penalty of Rs.2 lakhs in each of 2 nonexistent units was imposed and in the third case no penalty was imposed since there was no claimant of goods. The cases for disposal of the unclaimed goods were referred to the concerned officer only in January, 1992. As per the entries in the Register of Offences and Penalties, bills of entry of C.I.F value of Rs.39.32 lakhs in 7 cases pertaining to I.C.D were not filed and penalty of Rs.6.50 lakhs was imposed therein and the goods were disposed of for a sum of Rs.14.77 lakhs.

(5) Irregular procedure followed in the mutilation of serviceable garments and application of concessional rate instead of the tariff rate

i) Four consignments of pieces of parts of garments, not properly mutilated and which could be put up together again and made into complete serviceable garments, weighing 64 MTS involving C.I.F value of Rs.4,87,780 were imported by a woollen mill of Kanpur, in October and November 1987, through Kandla Customs House. The goods were cleared, for home consumption at the concessional rate after adjudicating the case, by the Collector of Customs and Central Excise in February 1988 and on imposing a fine of Rs.5,50,000 in lieu of confiscation, under section 125 of the Customs Act, 1962 and imposing penalty of Rs.1,00,000 under section 112(a)(i) of the said Act vide O.I.O dated 22 February 1988. No condition for proper mutilation was specified in the order of adjudication.

On examination, the goods were found to be cut pieces of trousers, the leg portion of trousers having been cut from waist portion and one leg portion was cut into two pieces from the middle. The goods were not completely mutilated as per Public Notice of 13 December 1985, issued by the Customs House, Bombay.

Fine at the rate of 250 per cent of C.I.F value was leviable to the extent of Rs.12,19,450 and penalty at the rate of 25 per cent of value was leviable to the extent of Rs.1,21,945. Against this fine of Rs.5,50,000 and penalty of Rs.1,00,000 were levied. Concessional rate of duties were not applicable but the goods were allowed to be cleared for home consumption at the concessional rate of duties instead of the standard rate. This resulted in irregular grant of exemption amounting to Rs.98,529.75.

On the irregularities being pointed out (in May 1992), the Asstt. Collector, Customs, I.A.D, replied that the Board's instructions were merely guidelines for adjudication and the adjudicating

authority had applied his own mind as per merits of the case.

Reply of the department is not acceptable in as much as while the quantum of fine/penalty leviable may be within the discretion of the adjudicating officer, the non levy of duty at the tariff rate as against the concessional rate was not, since the duty was not intended as a deterrent against the offence (unlike penalty or fine). In fact non levy of the duty of Rs.7,89,925 legally leviable on such goods being allowed without proper mutilation amounted to foregoing/loss of statutory revenue.

ii) In respect of 9 importers, it was seen that the imported goods were actually restitchable garments cut into 2/4 pieces. As the importers were not actual users and the goods were in a restitchable condition, a redemption fine at 250 per cent of the value of the goods with personal penalty at 25 per cent of value of the goods amounting to Rs.28,60,607 should have been imposed on the goods on adjudication, in accordance with the instructions of the Board cited in the introductory para, instead of the amount of Rs.1,50,135 levied by the department. The goods were also allowed to be cleared at the concessional rate of duty admissible to rags instead of the tariff rate of duty at 100 per cent basic duty with 45 per cent auxiliary duty and nil additional duty. Total short levy of duty works out to Rs.27,33,107.

(6) Irregular clearance of woollen/synthetic rags allowed to persons other than actual users under O.G.L

i) Two consignments of old synthetic rags weighing 39713 kilograms and valued at Rs.2,71,236 were imported by a woollen mill, which was manufacturing shoddy, blankets, shawls and lois, through Kandla Customs House of Gujarat. As the goods were not as per specification laid down in the Public Notice issued by Bombay Customs House and neither as per conditions No.12 and No.37 of conditions of import under O.G.L, Appendix 6 of Import Policy 1985-86, the goods were allowed for home consumption after adjudication and imposition

of penalty of Rs.75,000 by the Collector of Customs and Central Excise under O.I.O dated 31 October 1988. In adjudication, the goods were found liable to confiscation under Section III(d), III(m) and III(o) of the Customs Act, 1962, but goods were neither confiscated nor any fine was imposed in lieu of confiscation but released on levy of penalty.

The certificate of registration as small scale industrial unit, dated 24 February 1988, issued by the Director of Industries, Dehradun, disclosed that the importer was a manufacturer of shoddy blankets, shawls and lois and not a manufacturer of shoddy yarn. Therefore, a fine to the extent of Rs.2,71,236 (at the rate of 100 per cent of CIF value) in accordance with the instructions of the Board was leviable but not levied. This has resulted in loss of Government revenue amounting to Rs.2,71,236.

On pointing out the omission in application of the Board's instructions (May 1992) the Asstt. Collector, Customs, I.A.D., replied that the Board's instructions were merely guidelines for adjudication. The adjudicating authority had applied his own mind in deciding the case.

ii) Three consignments of old synthetic rags, weighing 30 tonnes and valued at Rs.1,54,639.17 were imported by a textile unit which was manufacturing shoddy blankets and handloom cotton fabrics, in January 1988, through Kandla Customs House.

As the goods were insufficiently mutilated, the case was adjudicated and the goods were allowed for home consumption by the Collector of Customs and Central Excise subject to proper mutilation after imposing a penalty of Rs.50,000 under section 112(a)(i) of the Customs Act, 1962, under his O.I.O dated 10 August 1988, but without any fine leviable as per instructions of the Board.

The report of 11 March 1988, received from the Central Excise authority, New Delhi, in respect of other cases of the same importer revealed that the importer was manufacturing

shoddy blankets and handloom cotton fabrics and the woollen rags were being sent to another spinning mill for spinning purposes. Thus it was clear that the importer was not having a spinning unit in his own factory. However, no fine was levied.

Fine to the extent of Rs.1,54,639 was leviable but not levied relying on Gujarat High Court's judgement given in Special Civil application No.399, 1055 and 1698 of 1988 (dated 19.4.1988) in respect of import of insufficiently mutilated woollen/synthetic rags, by two shoddy spinners. The High Court had held that Kandla Customs House should also follow the same policy as applied by Bombay Customs House, which was allowing clearance of insufficiently mutilated rags after arranging for further mutilation at the port and levying personal penalty only. In the present case, the importer was not even a shoddy spinner i.e. not an actual user.

On pointing out this omission, May 1992, the department stated that the reply would be given after verifying the facts.

iii) One consignment of pre-mutilated synthetic rags, weighing 19.912 tonnes valued at Rs.1,15,015, was imported by a woollen mill of Haryana through Kandla Customs House, in November 1986. Certificate issued by the Director of Industries, Haryana, revealed that the importer was engaged in activity of manufacture of woollen and shoddy blankets, lois, shawls. Thus the importer was not manufacturer of shoddy yarn and therefore, he was not an actual user. Fine to the extent of Rs.1,15,015 (100 per cent of CIF value) was leviable as per the Board's instructions, but the case was not adjudicated nor any fine imposed and the goods were allowed to be cleared for home consumption at the concessional rate. This has resulted in loss of Government revenue amounting to Rs.1,15,015.

On the omission being pointed out (May 1992), the Asstt. Collector, Customs, I.A.D., Customs House, replied that as per practice in the assessment group in case of first import details regarding industrial licence, SSI Registration

etc. were being called for. For subsequent import, the documents were not called for. Thus the department has not disputed the fact that the importer was not an actual user and the department has infact admitted the fact of non verification.

iv) Seven consignments of woollen/synthetic rags, weighing 267.374 tonnes and valued at Rs.20,99,182, were imported by two importers during July 1988 to May 1989 and they were allowed to be cleared for home consumption. The importers had not given any details or declaration of actual users or having a spinning unit in their factory. The Customs House had neither obtained such a declaration nor verified nor recorded whether the importers were actual users. In its absence, the importers should not have been allowed the concession admissible to actual users and fine to the extent of Rs.20,99,182 was leviable as per instructions of the Board which was not levied. Infact no adjudication was done in these cases.

On the omission being pointed out, the Asstt. Collector, Customs, I.A.D, Customs House, replied that as per practice in assessment group in case of first import of any importer documents like industrial licence, S.S.I certificate etc., were being called for and for subsequent imports, such documents were not called for.

Thus, in these seven cases, the goods were allowed without verifying whether the importers were actual users or not as no details or report is available alongwith the bills of entry either.

(7) Importation of insufficiently mutilated synthetic rags by shoddy spinners violating terms of O.G.L

i) Seven consignments of synthetic rags, valued at Rs.10,19,214, were imported by four importers, shoddy spinners through Kandla Customs House, between August 1988 and November 1988, under entry 626, list 8, Appendix 6 Part-I of Import Policy 1988-89.

As the goods were insufficiently mutilated, the Collector of Customs and Central Excise adjudicated the cases of the importers in May 1989

and June 1989 and the goods were cleared for home consumption by imposing a penalty to the extent of Rs.2,81,000 in the seven cases and subject to proper mutilation. As per the Board's instructions, of September 1988, a fine of 10 per cent of the value of the goods was to be imposed on import of insufficiently mutilated garments by shoddy spinners for the technical violation involved. However, goods were allowed to be cleared without levy of fine. This omission resulted in non levy of fine amounting to Rs.1,01,921 in respect of the seven cases.

On the omission being pointed out, (May 1992), the Asstt. Collector, Customs, I.A.D, Customs House, Kandla replied (May 1992) that the instructions were merely guidelines for adjudication. The adjudicating authority had applied his own mind depending on the merit of the cases.

In all these cases the importers have appealed to the Tribunal against levy of penalty and the cases are pending with the Tribunal.

ii) Madras Collectorate

Eight consignments of synthetic rags were imported by a private importer during the period 1 January 1990 to 30 June 1992. Though the imported rags did not conform to the standards of mutilation prescribed, Additional Collector of Customs had taken a lenient view and allowed the goods to be cleared without penalty in view of the importer's declaration that there would not be any further import of rags without mutilation as per the standards prescribed. The total value of eight consignments being Rs.9,10,595, the penalty leviable, as per instructions of the Board, amounted to Rs.91,060. It is also seen from the importer's letter in the file that further mutilation was required to be carried out by importer at the factory premises. The connected bills of entry which were not made available so far have been requisitioned from the department.

(8) Irregularities noticed in the procedure adopted and followed in the mutilation of serviceable garments

As per Government of India, Ministry of Textiles' letter No.F.34/46/wool/8 dated 1 October 1986, consignments of woollen/synthetic rags are subject to 100 per cent inspection by the mutilation team consisting of representatives from the offices of the Textile Commissioner and Joint Chief Controller of Imports and Exports, Bombay, before customs examination and clearance at Bombay Port. In case the goods are not found to be properly mutilated, they are subject to 100 per cent mutilation under the supervision of the mutilation team before customs examination and clearance. The Central Board of Excise and Customs, in its letter dated 17 December 1985 (which is approved by the Ministry of Finance), observed that it would be advantageous to have an independent scrutiny of the consignment by the mutilation team and a second check by Customs by resorting to percentage examination so that the risk of abuse by collusion could be minimised.

i) During review of the records relating to import of woollen and synthetic rags it was seen that only 20 per cent of the consignment was examined by the mutilation team instead of 100 per cent checking prescribed by Government of India. It was also stated by the Director, O/O the Textile Commissioner that the procedure had been amended vide note dated 4 October 1989 from the Collector of Customs, Bombay. It was seen that the Collector's order dated 4 October 1989 quoted above only specified the percentage of the consignment to be physically examined by the appraising group of the Customs department. As seen from the records of the office of the Textile Commissioner, Government of India have not issued any amendment to the letter dated 1 October 1986, reducing the quantum of consignments to be inspected to from 100 per cent to 20 per cent.

The cent per cent check of the consignment was stipulated to prevent the possibility of import of serviceable garments in the guise of rags and consequential evasion of customs duty.

The reduction in the quantum of checking was not, therefore, in the interest of revenue.

ii) After an importer has entered the imported goods by presenting a bill of entry, the imported goods, without undue delay, are required to be inspected/tested by the proper officer before levying duty on such goods. A test check of import of consignments of woollen/synthetic rags revealed that the inspection carried out varied from less than 10 per cent to 100 per cent in I.C.D and C.F.S. The quantum/percentage prescribed for inspection to be carried out by the various authorities was not strictly observed.

(9) Other miscellaneous irregularities

i) As per condition 12 of the conditions governing import under O.G.L, woollen or synthetic rags are allowed to be imported by actual users under O.G.L, Appendix 6 of Import Policy 1985-88, subject to the contract being registered with Textile Commissioner in the manner as laid down in condition 11. As per condition 37 (i) of the condition governing imports under O.G.L, Appendix 6 of Import Policy 1985-88, woollen/synthetic rags are to be allowed only when these are imported in completely pre-mutilated condition. Further, proper mutilation should be as per Public Notice issued by the Customs House. In this connection, suitable guidelines have been issued by the Principal Collector of Customs, Bombay, vide Public Notice dated 13 December 1985.

Seven consignments of woollen/synthetic rags, weighing 262.220 tonnes and valued at Rs.12,19,921, were imported by two importers during August 1987 to November 1987 and these were allowed by a major Customs House without obtaining any details regarding registration of import contract with Textile Commissioner and without examination of the goods as to whether the goods were woollen/synthetic rags and whether they were properly mutilated or not as no examination report was recorded on the bills of entry.

Further, the importers did not file any supporting documents for being actual users e.g.,

copy of industrial licence, S.S.I certificate etc. in support of their claim.

This has resulted in irregular importation of woollen/synthetic rags to the extent of Rs.12,19,921 without imposition of any fine leviable as per instructions of the Board. Moreover, the import was allowed at concessional rates. In the absence of any examination report indicating the goods to be woollen/synthetic rags, the concessional rate allowed was incorrect, resulting in short levy of duty amounting to Rs.2,46,180.

On the irregularities being pointed out, (May 1992), the Asstt. Collector, Customs, I.A.D, reiterated (May 1992) that as per prevalent practice, details about actual users etc. are verified at the time of first importation by the importer and not on each subsequent occasion. The reply is not tenable as the point regarding non availability of verification report of proper mutilation is not disputed.

ii) Under the Import Policy (April 1988 - March 1991) the import of woollen/synthetic rags, shoddy wool in completely pre-mutilated condition is allowed by actual users under O.G.L. As per item 11 of the conditions governing import of rags under O.G.L, it is subject to the contract being registered with the Textile Commissioner, Bombay, vide I.T.C order No.2/88-91 dated 30 March 1988. The imports are to be made only after the connected contract has been stamped by the Textile Commissioner, as evidence of such registration and one copy of the same is required to be produced before the Customs at the time of clearance of goods. A check of files in the I.C.D and C.F.S units revealed that requisite copy of the contract was not found/placed therein in majority of cases and the status of the importer being the actual user was not ascertainable.

iii) Review of adjudication cases/appellate orders

A review of adjudication orders passed in 6 cases pertaining to I.C.D revealed that the goods imported were not completely mutilated in all the cases. Redemption fine/penalty was imposed in 4

out of 6 cases and in the remaining 2 cases, no fine/penalty was imposed.

(10) Cases pending in appeal with the Tribunal

The number of cases in which appeals have been filed before CEGAT and are pending are as under:

Number of appeals filed with Tribunal	1989-90
CEGAT, New Delhi	5
CEGAT, Bombay	2
Total	7

In the above cases, the appeals were filed in 1989-90 against the adjudication orders of the Collector of Customs and Central Excise for imposition of penalty in respect of cases of import of woollen/synthetic rags imported by four importers during 1988-89.

To sum up, it is evident that-

i) the guidelines issued by the Ministry of Finance for checking the abuse of import of serviceable garments in the garb of woollen/synthetic rags have not been effectively followed;

ii) lack of proper procedure for mutilation of serviceable garments and improper mutilation of serviceable garments before clearance as a result of adjudication or otherwise has resulted in the serviceable garments reaching the market;

iii) imports of serviceable garments by importers other than actual users (shoddy spinners) have resulted in avoidable loss of revenue as well as foreign exchange;

iv) the Customs authorities have not discharged their responsibility effectively to ensure that serviceable garments were released after proper mutilation; and

v) the irregular clearance of serviceable garments allowed to importers in respect of 9 cases cited in paras 5, 6 and 9(i) resulted in total loss of revenue of Rs.63.55 lakhs - 28.32 lakhs by way of non levy/short levy of fine and Rs.35.23 lakhs by way of consequential short levy of duty.

The matter was reported to Ministry of Finance in October 1992; their reply has not been received (December 1992).

2.46 Non recovery of duty and interest on warehoused goods lying beyond the expiry of the bond period

In terms of Section 72 of the Customs Act, 1962, where any warehoused goods have not been removed from the warehouse on the expiry of the period of warehousing, the proper officer may demand and the owner of such goods shall forthwith pay the full amount of duty chargeable together with penalties, rent, interest and other charges payable in respect of such goods. If the owner fails to pay any amount demanded, the warehoused goods may be detained and sold by the proper officer after issuing notice to the owner.

(i) While checking the records of a private bonded warehouse, it was noticed (December 1991) that 17 consignments of different dutiable goods imported through a major Customs House and warehoused under bond during the years 1988 to 1991 were not cleared within the period of warehousing.

The revenue that remained unrealised, worked out to Rs.102.17 lakhs, on account of the delay in clearance of goods and non initiation of action as contemplated in Section 72 of the Act. This was brought to the notice of the department in December 1991.

Ministry of Finance confirmed the facts and stated (November 1992) that 15 bonds had since been ex-bonded and an amount of Rs.77.17 lakhs towards duty and interest had been realised therefrom. The Ministry added that persuasive

action had been initiated for recovering the balance amount.

(ii) In a bonded warehouse of another Collectorate (July 1989) it was noticed that an importer was allowed to deposit 180 bags of Synthetic resin under Section 61 of the Customs Act, 1962, for three months and this period expired on 7 July 1988. Only 20 bags were removed by July 1988 and the party neither asked for nor was granted any extension of time for retaining the remaining goods in the warehouse. No action was also initiated to raise a demand in terms of Section 72(1)(b) of the Customs Act.

On this being pointed out (July 1989), the department replied (May 1990 and March 1991) that the importer had subsequently cleared the goods in September 1989 on payment of duty of Rs.4,57,768 and interest of Rs.1,03,468. The department also admitted the procedural lapse (August 1991).

Ministry of Finance have confirmed the facts.

iii) As per section 61(2) of the Customs Act, 1962, where any goods remain warehoused beyond a period of one year/three months as the case may be, interest at such rate not exceeding 18 per cent per annum, as fixed by the Central Board of Excise and Customs, is required to be paid on the amount of duty on the warehoused goods for the period from the expiry of the period of one year/three months till the date of clearance of the goods from the warehouse. The Board had fixed the rate of interest at 18 per cent per annum by a notification issued on 20 September 1988. The Board may, in public interest, in exceptional cases, however, waive by special order, the whole or part of any interest payable under the aforesaid sub section.

(a) An assessee was allowed clearance of warehoused goods in 21 cases, without levying interest amounting to Rs.6,13,930, in contravention of the aforesaid provisions of the Act read with the notification dated 20 September 1988.

The omission was pointed out in audit (February 1991). A statement of facts was issued (May 1992).

Ministry of Finance have confirmed the facts.

(b) Eight consignments of Nylon tyre yarn, Polyester staple fibre, Natural rubber and Synthetic resin, imported through a major port and warehoused under section 59 of the Act, were allowed to be cleared free of duty under advance licences obtained subsequently. The clearances were effected after the expiry of the initial warehousing period.

Interest amounting to Rs.5,44,283, leviable under the aforesaid Section 61(2) of Customs Act, 1962, was not charged and collected.

On this being pointed out in audit (January 1991), the department admitted the objection.

Ministry of Finance have confirmed the facts.

2.47 Irregular grant of concessions to goods imported under Baggage/Transfer of Residence Rules

(i) As per the Finance Bill 1990, all `T.V sets, imported as baggage, of screen size exceeding 55 cms' attract additional duty at 50 per cent ad valorem, with 5 per cent thereof as special excise duty with effect from 20 March 1990. Additional duty leviable on any imported goods under Section 3 of the Customs Tariff Act, 1975, is calculated based on the landed cost of the goods which is the sum total of the value of the goods and the custom duties charged thereon.

a) While auditing the baggage declaration forms and duty demand receipts pertaining to the baggage clearances effected through the unaccompanied Baggage Centre of a major Customs House (sea and air) during the month of April 1991, it was noticed in audit (July 1991), that `T.V sets of screen size exceeding 55 cms' were being charged to additional duty at the rate of Rs.2,625 per piece instead of 50 per cent ad valorem plus 5 per cent (special excise) thereof chargeable. 39

cases for the month of April 1991 were pointed out and the department was requested to re-examine the issue involved.

On the incorrect assessment being pointed out, the department issued less charge demands in all the 39 cases pointed out by audit, along with another 320 cases where clearances were effected on or after, 20 March 1990. However, a test check of the demand so raised revealed that the additional duty worked out by them was not based on the landed cost of the goods, but only on the value of the goods with out taking into account the element of custom duties. The short levy of duty in all the 377 (sea customs 359 cases; air customs 18 cases) cases worked out to Rs.16.11 lakhs. The incorrect application of rates was pointed out by audit in July and August 1991.

The department stated (October 1991) that demand notices were issued by them to the passengers, for the period from June 1990 to August 1991, for differential duty amounting to Rs.29.01 lakhs and out of this, an amount of Rs.73,366 has been recovered so far. In respect of 18 cases relating to Air Customs, no reply has been received so far.

b) In another sea customs Collectorate the short levy in respect of the 32 similar cases pointed out by audit, pertaining to the period from April 1990 to May 1991, worked out to Rs.93,385. The department admitted the objection (January 1992). Report on recovery has not been received (May 1992).

The matter was reported to Ministry of Finance in July and August 1992; their reply has not been received (December 1992).

ii) The baggage articles not allowed free of duty under Rule 3 of the Transfer of Residence Rules, 1978, are chargeable to duty at 25 per cent ad valorem under notification no.137/90-Cus. The notification enlists some baggage articles, including personal computer, for levy of customs duty at 25 per cent.

A computer system with two monitors, printer etc., valued at Rs.1,00,000, was allowed to be cleared in July 1991 through a major Air Customs Collectorate under the Transfer of Residence Rules charging duty at 25 per cent ad valorem, extending the benefit of the aforesaid notification.

It was pointed out (October 1991/March 1992) in audit that as the imported item valued at Rs.1,00,000 was not a `personal computer' but a `computer system' comprising monitors, printer etc., it was covered neither under notification no.137/90-Cus nor under Rule 4 of Transfer of Residence Rules, 1978, where professional equipments upto a value of Rs.50,000 are allowed to be imported duty free by passengers having high technical/professional qualifications. Accordingly, customs duty would be leviable at 350 per cent ad valorem on the entire value of Rs.1,00,000. This resulted in duty being levied short by Rs.3,25,500.

Reply from the department has not been received (June 1992).

The matter was reported to Ministry of Finance in September 1992; their reply has not been received (December 1992).

(iii) A statute or the rules framed thereunder are applicable to a legal `Person' subject to `Person's rights and obligations'. A minor under the Indian law has no contractual capacity. The Transfer of Residence Rules, 1978, are statutory rules applicable to personal and household effects of a person on a bonafide transfer of residence to India.

The unaccompanied baggage consisting of colour TV, VCR, Washing machine, Video Camera, Fridge, Music system, Electric lights, valued at Rs.58,300 belonging to a minor girl, who stayed abroad for 4 years from the age of 7 or earlier, was cleared on production of document styled as Power of Attorney (on Rs.20 non judicial stamp paper, attested by a Notary Public), authorising her brother to receive the baggage. This `Power of Attorney' was only a sworn affidavit of the minor, which the minor was not competent to

execute. The above goods cannot be considered as household goods or personal effects when she had no earning capacity. The irregular grant of transfer of residence concession, based on declarations having no validity under the law, resulted in short levy of duty of Rs.1,32,480. This was pointed out in audit in January 1992.

In their reply (April 1992), the department stated (July 1992) that though the passenger is a minor, the benefit cannot be denied as the rules make no difference between a major and minor.

The reply is not acceptable as the minor has no juridical status and the concept of `bonafide transfer of residence to India' cannot be made applicable to a minor.

Ministry of Finance stated (January 1993) that there was no bar for grant of benefits to a minor, nor was there any requirement of verification of earning capacity of the minor. The Ministry further stated that though there may be a procedural lapse in accepting the power of attorney executed by a minor, on merit, the grant of transfer of residence benefits were in order. The 13 items mentioned in the notification no.137/90-Cus. were permissible to a family and not to each member of a family.

The Ministry's reply appears to be contradictory. If the 13 items mentioned in the notification ibid are allowable to the family as a whole, it is not understood how a `minor' can acquire the legal status for entering into contractual obligations on behalf of the whole family for the purpose of enjoying duty free concessions under the `Transfer of Residence Rules' which are having a statutory character.

2.48 Unintended financial accommodation to importers due to delay in finalising cases covered by investigations of Special Valuation Branch

In terms of an investigation circular issued by a major Customs House in August 1989, O.E components imported and kept in the ware house by a private importer had been permitted to be

utilised as spares for after sales service after enhancing the invoice value by twenty per cent. The pending provisional assessment had to be finalised accordingly.

Based on the investigation circular (August 1989) ibid, three cases of provisional assessments, relating to 1986, were finalised during March 1991, realising short collection of duty amounting to Rs.26.50 lakhs. It was pointed out in audit (January 1992) that the delay in finalisation resulted in unintended financial accommodation to the importer and delay in improving the ways and means position of the Government. The notional loss of interest was calculated as Rs.7.15 lakhs at the rate of 18 per cent per annum.

The Customs House, while admitting the delay in finalisation of the cases, stated that there was no provision to realise interest under Section 18 of the Customs Act, in such cases.

There appears to be no effective monitoring system in the Special Valuation Branch for ensuring timely follow up action in respect of multinational companies on the basis of circulars issued by the Special Valuation Branch.

The matter was reported to Ministry of Finance in September 1992; their reply has not been received (December 1992).

2.49 Loss of revenue due to non availability of a provision in the Act

Under Section 13 of the Customs Act, 1962, if any goods are pilfered after unloading thereof and before the proper officer has made an order for clearance, the importers shall not be liable to pay the duty leviable on such goods. In terms of Section 48 of the Act, if any goods are not cleared within 45 days from the date of unloading thereof at the customs station, such goods may, after notice to the importer and with the permission of the proper officer, be sold by the person having the custody thereof. As per section 116 of the Act, if the quantity of the goods unloaded from the conveyance is short of the

quantity to be unloaded at the destination and the shortage is not satisfactorily accounted for, the person in charge of the conveyance shall be liable to a penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or the deficient goods as the case may be. In respect of the goods imported by sea and lying uncleared the Port Trust have been appointed as the custodian.

(i) In respect of a consignment of "Konica Colour Films", imported (November 1988) through a major sea port, a bill of entry for customs clearance of the goods was presented on 22 November 1988 and duty assessed on 24 November 1988. But the goods were not cleared till September 1989. At the request of the importer, customs examination of the goods was done on 25 September 1989 and a shortage of 4,890 rolls of films was found.. A duty remission of Rs.1.70 lakhs was, therefore, allowed under section 13 of the Customs Act, 1962.

When audit asked (May 1990) the Customs House to explore the possibility of realising the revenue remitted, the Customs House replied (January 1991 and January 1992) that for the action initiated by the department (August 1990) against the steamer agent under section 116 of the Act for shortages, it was held by the adjudicating authority that the shortages were on account of pilferage at the Port Trust and not because of short landing. The department further stated that there is no provision in the Customs Act, 1962, to take action against the custodian of the goods for negligence resulting in the pilferage of the item in their custody. Thus, the Customs House contended that the grant of remission was in order and there was no loss of revenue.

Another consignment of CKD/SKD components imported by a private importer through a major sea port (May 1980) was over carried to another sea port and brought back in bond, by rail, by the agent of vessel concerned, after proper check by customs authorities in September 1980. The importer had filed a bill of entry with end use certificate for clearance of goods in December 1980. But during the survey the goods were found emptied from the containers. The consignment was,

therefore, abandoned (December 1980). The end use bond was also cancelled (November 1985).

It was pointed out (February 1987) in audit that action had to be initiated against the steamer agent under section 116 of the Customs Act, 1962, for the short landed goods. The non realisation of duty in this case was to the tune of Rs.1,07,920.

The department initially agreed with audit (February 1990), but while replying to the statement of facts, issued in July 1990, stated that the loss of the goods in question was due to the pilferage attracting Section 13 of the Customs Act, 1962, hence no action was taken against the steamer agents. It was also stated that no provision existed in the Customs Act, to take any action against the custodian for pilferage. The fact, however, remains that there is a revenue loss to the tune of Rs.2.78 lakhs in both the cases for the following reasons-

i) Before allowing the remission in the first case, the Customs House did not insist on the importer to obtain and produce a certificate from the Port Trust that the goods were landed in good condition.

ii) The goods in the first case were lying in the Port Trust uncleared for more than 275 days, but no action was taken by the custodian after the expiry of 45 days to dispose of the goods as required in Section 48 of the Customs Act, 1962.

iii) While there is a provision in the Customs Act, 1962, under Section 116, to recover the loss of revenue from the steamer agent in respect of the short landed goods, there is no such provision in the Act to recover the loss for shortages occurred under the custody of the Port Trust.

iv) Under Section 43 of the Major Port Trust Act, 1963, when the Port Trust issues a receipt under Section 42 of the Act to the shipper for the goods landed then the Port Trust is responsible as a bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872, to the shipper and consignee only (importer). But the Act is silent

about liability of the Port Trust to pay duty on the pilfered goods.

Thus due to lack of a provision in the Customs Act, 1962, authorising action to be taken against the custodian for the shortage/pilferage of goods occurred under their custody, there accrued a revenue loss of Rs.2.78 lakhs. Also, there was a delay of three months in conducting the survey in the second case by the clearing/steamer agents and customs.

Ministry of Finance stated (January 1993) that remission of duty was allowed in both the aforesaid cases under Section 13 of the Customs Act, 1962. The Ministry added that no action under Section 116 of the Act could be taken against steamer agents as there was no short landing.

The fact remains that the pilferage of goods had taken place while the goods were in the custody of the custodian, i.e the Port Trust, which is responsible as a bailee to the shipper and consignee under the aforesaid provisions of the Contract Act, 1872. However, there is no provision or liability either in the Customs Act, 1962, or in Major Port Trust Act, 1963, making the custodian responsible/ liable for duty on such goods that had been landed but subsequently missing from their custody.

2.50 Fraudulent clearance of goods against fake duty free replenishment licences

i) An importer, having a factory for processing manmade fabrics under the Collectorate of Customs and Central Excise, Baroda (Gujarat), imported 14,100 kilograms of polyester filament yarn under Open General Licence and warehoused the same in his private bonded warehouse at Surat, between March 1986 and December 1986. In January 1988, a firm of Ahmedabad was allowed to clear the warehoused goods, without payment of duty, on the basis of a request made by the importer stating that the goods being out of fashion he was not in a position to clear the same and the said firm of Ahmedabad might be allowed to clear the goods against the REP Licence (No. P/K 2955688 dated 27

November 1986) held by him. It was noticed that in support of the request made by the importer, permission purported to have been granted by the Joint Chief Controller of Imports and Exports, New Delhi, as well as a letter dated 28 December 1987 purported to have been issued by the Asstt. Collector of Customs, Bombay, intimating that the said licence had been registered in Bombay Customs House, were produced by the importer and the proprietor of the said firm of Ahmedabad.

However, in response to a letter dated 1 February 1988, from the Asstt. Collector of Central Excise, Surat to the Asstt. Collector of Customs Bombay, intimating the latter about having allowed clearance of goods werehoused at Surat (the initial import having been made through Bombay Port) against REP licence No.2955688 of the firm of Ahmedabad, the Asstt. Collector of Customs, Bombay, sent a wireless message on 21 March 1988 stating that as the said licence did not figure in the weekly bulletin issued by the licensing authority, it appeared to be fake and advised suitable further action.

Subsequent enquiries and investigations in the premises of the firm holding the duty free replenishment licence at Ahmedabad led to the recovery of incriminating documents, rubber stamps etc., which evidenced wilful conspiracy to defraud by obtaining clearance of warehoused goods against false duty free replenishment licences.

A show cause notice was issued to the importer on 30 August 1988 demanding customs duty of Rs.30.64 lakhs and interest thereon as well as other penalties for violations of the provisions of the Customs Act, 1962. The firm of Ahmedabad holding the fake duty free replenishment licence was also served with a show cause notice for violation of provisions of the Customs Act, 1962. The case is pending adjudication.

ii) Another importer at Ankleshwar, having a factory for texturising yarn and belonging to the same group of concerns as in (i) above, imported polyester filament yarn weighing 9999 kilograms and warehoused the same in the public bonded warehouse at Ankleshwar in October 1986. 2640

kilograms of yarn were cleared by the importer, in December 1986, on payment of duty of Rs.4,92,448. The clearance of the remaining yarn weighing 7359 kilograms was made, in November 1987, against a fake duty free replenishment licence (No.3049300 dated 10 December 1986) in the name of the same firm of Ahmedabad mentioned in sub para (i) above, adopting the same modus operandi of producing fake letters. The fraudulent clearance made by the importer and the same parties resulted in duty being levied short by Rs.15,24,559. The department issued a show cause notice to the importer, on 23 September 1988 demanding the aforesaid amount of duty and the interest leviable together with penalties imposable for violation of the provisions of the Customs Act, 1962. The department also issued a show cause notice to the other parties connected with the removal of goods. The case is pending adjudication.

The aforesaid two fraud cases reveal a lacuna in the procedure followed in allowing the clearances without first verifying or confirming the authenticity of the documents produced in support of import licences. The duty free replenishment licences conferred substantial benefits on the importer in the form of supply of raw materials at international prices and saving on customs duties. The licences being freely transferable enabled the holder of the licence to obtain premium on its transfer. The fact that the monetary benefits are very large and the absence of any monitoring mechanism, either in the offices of the licensing authorities or in the Custom Houses, over the utilisation of such licences after their issue, coupled with the free transferability of these duty free licences, indicated a procedural lacuna which contributed to the perpetration of the fraud. In reply to the factual note issued on 9 March 1990, the department did not accept the audit objection stating (March 1992) that the duty free clearance of imported polyester filament yarn were allowed from the bonded warehouses in terms of provisions of notification no.126/85, dated 12 April 1985, only after presentation of REP Licence No.PK/2955688 dated 27 November 1986 and another licence No.PK/3049300 dated 1 December 1986 and other relevant documents viz. permission granted

by the Jt.Chief Controller of Imports and Exports, New Delhi, consent letter of the importers and on execution of bonds under the Customs Act and on filing of bill of entry for clearance of warehoused goods. The department further stated that on enquiry conducted by the officers of the Bombay Customs, subsequent to clearance of goods, regarding the genuineness of the REP licences issued to the party, it transpired that the licences were bogus and forged and consequently the department took all the remedial steps including issue of show cause notices for duty amounting to Rs.45.88 lakhs. The department's reply is not acceptable to audit for the following reasons:-

Although the department has contended that the clearances have been allowed in accordance with the provisions of notification no.126/85-Cus and after obtaining the relevant documents and bonds prescribed in the Customs Act, 1962, yet they could not detect the forgery committed by the importers due to a procedural lacuna detailed below:

i) The production of duty free replenishment licence was made permissible at the time of clearance of goods from warehouse by a person other than the importer of the goods also;

ii) Neither was it made incumbent on the Customs Officers at the port of import that the permission for warehousing should be granted only after verifying the relevant documents including licences whose genuineness could have been verified at the major Customs House with reference to Licence Bulletin etc.; and

iii) Clearance of goods from warehouse by a person other than the importer of goods at the time of initial warehousing was permitted without prior verification of such I.T.C licences, although the facility of access to verification with reference to Licence Bulletins etc., is not available at the warehousing stations or in the interior land customs stations where facility of warehousing had been allowed.

Ministry of Finance, while confirming the facts, stated (December 1992) that there was no procedural lapse as allowing clearance of the goods from the warehouse on production of duty free replenishment licence by a person other than the importer was permissible under the law. While the clearance of goods at the port of import was allowed under O.G.L policy of AM 1985-88, the forged licence was produced only at the point of clearance from the warehousing station. The Ministry argued that the clearance of goods would have been delayed had prior verification of replenishment licence been insisted upon.

The fact remains that there is a lacuna in the procedure in as much as the Customs Officers in the interior warehousing stations do not have ready access facility to Licence Bulletins for on the spot verification of licences produced, while the facility of clearance on the basis of licences, produced by the importers including third parties, has been accorded at these warehousing stations disregarding the risk to Government revenue.

2.51 Incorrect grant of exemption on the shortage of import of steel melting scrap

In terms of a notification dated 15 July 1977, imported steel melting scrap used in electric arc furnace is exempted from the levy of whole of customs duty. Auxiliary duty at the rate of 15 per cent was leviable under another notification dated 28 February 1984. Additional duty also was fully exempt by virtue of a notification of 1 January 1979 as amended.

Three parties imported steel melting scrap weighing 31,822.600 tonnes (April 1984) through a major Customs House. Assessments were made under the aforesaid notification after executing three enduse bonds for the differential duty payable on the goods at the normal rate and the concessional rate available vide notification ibid. The end use bonds were cancelled (December 1984), based on the certificate given by Port Trust for only 31,143.760 metric tonnes as against 31,822.600 metric tonnes.

As there was a discrepancy between the manifested quantity and quantity consumed in electric arc furnace, audit suggested (February 1985) recovery of short collection of duty on the quantity of mild steel scrap amounting to 678.840 metric tonnes short landed.

The Customs House initially stated (March 1985/September 1988) that enduse bonds were cancelled based on the Board's instructions dated 31 May 1982. Action taken for short landing under Section 116 of Customs Act, 1962, would be intimated shortly. After protracted correspondence, the Customs House replied (July 1991) that the importers had paid duty on the manifested quantity, as indicated in the bill of lading, which was an approximation based on the draft survey measurements and it was not possible to ascertain the exact quantity actually landed. Hence it would not be fair to take action against steamer agents under Section 116 of the Customs Act.

The reply from the department is not acceptable since no documentary evidence was made available to audit to verify the payment of duty as indicated in the bill of lading which was called for (October 1991).

As notification dated 15 July 1977 supra is a conditional one, duty had to be collected for the quantity short landed or not accounted for, on merits, as the condition stipulated in the notification had not been fulfilled.

Loss of revenue amounted to Rs.4,09,290 for 678.840 metric tonnes.

The matter was reported to Ministry of Finance in September 1992; their reply has not been received (December 1992).

2.52 Delay in disposal of seized and confiscated goods

As per Section 110 of the Customs Act, 1962, the proper officer (of the Customs Department), if he has reason to believe that any goods are liable to confiscation under the Act, may seize such

goods, but in respect thereof, he has to give notice under clause (a) of Section 124 within six months of the seizure of the goods or such extended period as the Collector may allow as per the provisions of the Act. The seized goods are required to be confiscated and disposed of in accordance with the provisions of the Customs Act, 1962.

The Central Board of Excise and Customs issued (22 May 1984) instructions for classifying the confiscated goods under the following four categories and prescribing the period of retention for each category as noted there against.

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

(i) As per the Stock Taking and Inspection Report of `A' warehouse by the D.P.O, Regional Unit, Bombay, as on 10 November 1990, there were 5665 packages outstanding for disposal from the year 1960 onwards. The value of 2892 packages as available, amounted to Rs.60.41 lakhs. As the value of the remaining 2773 packages was not on records, it was not possible to ascertain the sale proceeds that could have been fetched. No vigorous action was taken either to dispose of the packages lying over 30 years or to ascertain their value from the old records.

(ii) Delay in disposal of perishable and hazardous goods.

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

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

a) During the course of audit (September 1991), it was seen from the Destruction Register, maintained in `A' Warehouse, that 5694 kgs of Lactose BP valued at 1,70,820 was destroyed during May 1990 as this was unfit for human consumption due to long storage. Presumably, the goods destroyed belonged to the left over balance in case file no.SG 46/60-A WH No4/60 where a total consignment of 42 packages (22000 kgs) was reported seized in 1960. It was observed by audit, in 1989, that of the 42 packages seized by the department, only 22 packages were available for disposal and the remaining packages were found

empty when the final orders for disposal were issued in 1985.

The reasons for the storage of goods without disposal for over 30 years and the loss of revenue involved by way of pilferage/deterioration etc. called for from the department have not been communicated.

b) Another case pending for disposal lying in the warehouse (file no.S.G 10/60-A/W.h 25/60) was that of Gambier Rounds seized in 1960. The Gambier Rounds (Khatha) were valued by the importer at Rs.1,58,298. The department valued it at Rs.8,81,515 on its seizure. However, the Asstt. Drugs Controller, while examining the goods in July 1978 valued it at Rs.15 lakhs though the expiry date on the drums was shown as December 1976. He suggested a drawal of fresh sample for test by the Director, Central Drugs Laboratory, Calcutta. The department stated that the goods were lying there for want of disposal orders as the same were under Court proceedings. Further progress in the matter has not been communicated.

c) It was also seen from the Warehouse Register that a large number of packages containing chemicals were lying undisposed of from the year 1960 onwards, resulting in substantial loss of revenue to the Government, which could not be quantified in the absence of their value. In 4 cases of different chemicals seized during the years 1977, 1978 and 1988, the value worked out to Rs.2.87 lakhs.

d) 95 packages of Life Saving Drugs received in the `A' Warehouse in March 1991, for which no value was shown, were pending for disposal. Long storage of these medicines would result in deterioration. The potency period in these cases may even have expired thus becoming unfit for human consumption and resulting in loss of revenue to Government.

The department stated (October 1991) that the drugs remained unsold though put to auction in July 1991 to October 1991.

(iii) Delay in disposal of other perishable goods

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

(i) Liquor, (ii) Primary Cells and Primary Batteries including Re-chargeable Batteries, (iii) Wrist Watches including electronic wrist watches, watch movements, parts or components thereof (iv) All electronic goods including Television sets, Video Cassette recorders, Tape recorders, Calculators, Computers, components and spares thereof including diodes, transistors, integrated circuits etc., and (v) Dangerous drugs and psychotropic substances.

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

A perusal of the records maintained in `A' Warehouse revealed that no action was initiated by the concerned authority to invoke the provisions of sub section 110(IA) ibid for expediting the disposal of seized goods. The stock position of liquor, electronic goods etc. confirmed the above fact. As the value in respect of these items was not available the quantum of revenue loss could not be worked out. A few cases where the value was available revealed that Audio Cassettes valued at Rs.4.60 lakhs (1988) Electrical parts valued at Rs.0.72 lakhs (1981) and TV/VCRs valued about Rs.1 lakh (1989-91) were lying undisposed. The department stated that the goods were lying in the warehouse for want of disposal orders/fixation of prices by JPC.

The matter was reported to Ministry of Finance in September 1992; their reply has not been received (December 1992).

CUSTOMS
ANNEXURE-2.1

Value of imports - commodity-wise

(referred to in para 2.03)

The value of imports made during the financial year 1990-91 and 1991-92 according to major sectional headings in the Indian Trade Classification (revised) are given below. The figures compiled by the Director General Commercial Intelligence and statistics and given out by Ministry of Commerce have been indicated. The figures within brackets are in respect of some of the goods included in the respective sectional headings

(Rupees in crores)

Sl. No.	Commodities	1990-91	1991-92
1.	**Food and live animals chiefly for food including**	**435**	**520**
	a) Cereals and cereal preparations	(182)	(141)
	b) Milk and cream	(4)	(8)
	c) Cashewnuts	(134)	(266)
	d) Fruits and nuts excluding cashew nuts	(106)	(104)
	e) Sugar	(9)	(1)
2.	**Crude materials inedible except fuel**	**2798**	**2396**
	a) Crude rubber (including synthetic and reclaimed)	(226)	(182)
	b) Raw cotton	(-)	(-)
	c) Synthetic & regenerated fibres	(56)	(48)
	d) Raw wool	(182)	(199)
	e) Crude fertilizer	(347)	(440)
	f) Sulphur & unroasted iron pyrites	(278)	(299)
	g) Metaliferrous ores and metal scrap	(1528)	(1015)
	h) Other crude minerals	(181)	(213)

Sl. No.	Commodities	1990-91	1991-92
		(Rupees in crores)	
3.	**Mineral fuels, lubricants and related materials**	**11606**	**14166**
4.	**Chemicals and related products not elsewhere specified**	**5161**	**7057**
	a) Organic Chemicals	(1442)	(1462)
	b) Inorganic chemicals	(847)	(2061)
	c) Dyeing and tanning substances	(168)	(155)
	d) Medicinal & Pharmaceutical products	(468)	(456)
	e) Fertilizers, manufactures	(1141)	(1520)
	f) Artificial resins,Â plastic materials	(1095)	(1403)
5.	**Manufactured goods**	**8740**	**9403**
	a) Pulp, paper, paper boards and manufacture thereof	(1042)	(894)
	b) Textile yarn fabrics and madeup articles	(443)	(343)
	c) Pearls, precious stones and semi-precious stones	(3738)	(4822)
	d) Iron and steel	(2113)	(2154)
	e) Non-ferrous metals	(1102)	(840)
	f) Manufacture of metals	(302)	(350)
6.	*** Machinery and Transport equipment**	**7140**	**6302**
	a) Machinery other than electric	(3768)	(3841)
	b) Electrical machinery	(1702)	(1556)
	c) Transport equipments	(1670)	(905)
7.	**Professional, scientific controlling instruments etc.**	**1060**	**1041**
	GRAND TOTAL : (Including others)	**43193**	**47851**

* It includes Project goods & Machine tools

CUSTOMS
ANNEXURE-2.2

Value of exports - commodity-wise

(referred to in para 2.03)

The value of exports made during the financial years 1990-91 and 1991-92 according to major sectional headings in the Indian Trade Classification (revised) are given below. The figures compiled by the Director General Commercial Intelligence and Statistics and given out by Ministry of Commerce have been indicated. The figures within brackets are in respect of some of the goods included in the respective sectional headings.

(Rupees in crores)

Sl. No.	Commodities	1990-91	1991-92
1.	**Food Items**	4670	6797
	a) Meat and meat preparations	(140)	(231)
	b) Marine Products	(960)	(1439)
	c) Cashew Kernels	(447)	(672)
	d) Fruits and vegetables	(213)	(349)
	e) Processed fruits, juices and other items	(213)	(333)
	f) Sugar and sugar preparations (incl. molasses)	(38)	(144)
	g) Coffee	(252)	(313)
	h) Tea	(1070)	(1132)
	i) Spices	(234)	(372)
	j) Oil meals	(608)	(929)
	k) Cereals	(495)	(883)
2.	**Beverages and Tobacco**	263	377
	Tobacco unmanufactured, Tobacco refuse	(193)	(312)
3.	**Crude materials inedible except fuels**	2808	2853
	a) Mica including splittings and Mica waste	(35)	(35)
	b) Raw cotton	(846)	(316)
	c) Sesame and Niger seeds	(91)	(103)

(Rupees in crores)

Sl. No.	Commodities	1990-91	1991-92
	d) H.P.S. Groundnuts	(56)	(8)
	e) Castor oil including derivatives	(66)	(128)
	f) Shellac	(18)	(25)
	g) Iron ore	(1049)	(1433)
	h) Ores and minerals other than iron ore and Mica	(647)	(805)
4.	**Mineral, fuels, lubricant and related materials**	**947**	**1037**
5.	**Chemicals and related products**	**3189**	**4775**
6.	**Manufactured goods classified according to materials except pearls, precious, semi-precious stones and carpets, hand made leather and leather manufactures including readymade garments and clothing accessories**	**7272**	**10557**
	a) Cotton, yarn, fabrics etc.	(2100)	(3209)
	b) Man made textiles	(407)	(823)
	c) Woollen fabrics	(21)	(73)
	d) Readymade garments and clothing accessories	(4012)	(5412)
	e) Coir manufactures	(48)	(70)
	f) Jute manufactures including twist and yarn	(298)	(388)
	g) Natural silk textiles	(235)	(347)
	h) Mill made carpets	(151)	(235)
7.	**Engineering Goods**	**3443**	**4861**

(Rupees in crores)

Sl. No.	Commodities	1990-91	1991-92
8.	**Miscellaneous manufactured articles including handicrafts, gems and jewellery**	**8820**	**11530**
	a) Gems and jewellery	(5247)	(6750)
	b) Handicrafts	(402)	(596)
	c) Carpets handmade	(519)	(1000)
	d) Leather and leather manufactures	(2566)	(3076)
	e) Sports goods	(86)	(108)
	TOTAL OF EXPORTS AND RE-EXPORTS **(Including others):**	**32553**	**44042**

CUSTOMS
ANNEXURE-2.3

Import duty collections classified according to budget heads

(referred to in para 2.03)

The import duty collected during the years 1990-91 and 1991-92 is given below classified according to budget heads.

(Rupees in crores)

Sl. No.	Commodities/budget heads	1990-91	1991-92
1.	Fruits, dried and fresh	93	92
2.	Animal or vegetable fats and oil and their cleavage products' prepared edible fats, animal or vegetable fats	428	148
3.	Petroleum oils and oils obtained from bituminous minerals, crude	3146	3344
4.	Petroleum Oils and oils obtained from bituminous mineral other than crude	555	731

(Rupees in crores)

Sl. No.	Commodities/budget heads	1990-91	1991-92
5.	Other mineral fuels, oils, waxes and bituminous substances	365	366
6.	Inorganic chemicals	261	425
7.	Organic chemicals	1467	1471
8.	Pharmaceutical products	13	12
9.	Dyes, colours, paints and varnishes	164	155
10.	Plastic and articles thereof	1332	1781
11.	Rubber and articles thereof	290	322
12.	Pulp, paper, paper board and articles thereof	217	204
13.	Silk	16	21
14.	Man made filaments	350	96
15.	Man made staple fibres	46	30
16.	Primary materials of iron and steel	538	393
17.	Iron and non-alloy steel	808	864
18.	Stainless steel	136	149
19.	Other alloy steel, hollow drill bars and rods	299	341
20.	Articles of Iron and Steel	364	488
21.	Copper	505	530
22.	Nickel	84	99
23.	Aluminium	48	44
24	Lead	39	28

CUSTOMS
ANNEXURE -2.4

Export duty and cess (referred to in Para 2.03)

The collections of export duty and cess are given below classified under budget heads.

(Rupees in crores)

Sl. No.	Budget head	Export duty		Export cess	
		1990-91	1991-92	1990-91	1991-92
1.	Coffee	Nil	Nil	2	3
2.	De-oiled groundnut meal	Nil	Nil	Nil	Nil
3.	Tabocco (unmanu-factured)	Nil	Nil	1	2
4.	Marine Products	Nil	Nil	6	9
5.	Cardamom	Nil	Nil	Nil	1
6.	Mica	Nil	3	1	2
7.	Hides, skins and leathers	Nil	Nil	Nil	Nil
8.	Lumpy iron ore	Nil	Nil	Nil	3
9.	Iron ore fines (including blue dust)	Nil	Nil	Nil	Nil
10.	Chrome concentrate	Nil	Nil	Nil	Nil
11.	Other articles	1	13	11	11
12.	Other agricultural produce under A.P. Cess Act, 1940	Nil	Nil	6	9
13.	Under other budget heads	Nil	Nil	8	Nil

CUSTOMS
ANNEXURE - 2.5

Searches and seizures (referred to in para 2.05)

Searches and seizures	1989-90		1990-91		1991-92	
	Coastal	Town	Coastal	Town	Coastal	Town
A. Total No. of searches and seizures						
Bombay	8	5	67	1212	81	856
Delhi	-	603	N.A	N.A	-	659
Madras	88	858	N.A	N.A	61	908
Calcutta	323	738	2325	615	90	4
Ahmedabad(P)	16	348	N.A	N.A	70	470
Kochi	503	212	543	164	11	95
TOTAL	**938**	**2764**	**2935**	**1991**	**313**	**2992**
B. Value of goods seized (Rs.in lakhs						
Bombay	26.61	17.61	5691	15876	1138.45	12929.45
Delhi	-	616.00	N.A	N.A	-	618.26
Madras	32.30	1788.98	N.A	N.A	5.22	1426.68
Calcutta	958.60	955.60	4743	2005	524.47	296.20
Ahmeda-bad(P)	1130.60	276.70	N.A	N.A	3477.73	2218.30
Kochi	175.29	107.69	169	129	25.00	39.00
TOTAL	**2323.40**	**3762.58**	**10603**	**18010**	**5170.87**	**17527.89**
C. Number of seizure cases, adjudicated upon and resulting in levy of duty and penalty of imprisonment						
Bombay	1	2	47	408	38	343
Delhi	-	764	N.A	N.A	-	33
Madras	73	148	N.A	N.A	268	112
Calcutta	N.A	N.A	1817	21	-	-
Ahmedabad(P)	10	178	N.A	N.A	37	155
Kochi	1	15	401	155	11	92
TOTAL	**85**	**1107**	**2265**	**584**	**354**	**735**

N.A = Not made available by Ministry of Finance (December 1991).

CUSTOMS
ANNEXURE - 2.6

Confiscation (referred to in para 2.05)
(Value of rupees in lakhs)

Description	Bombay No.	Bombay Rs.	Madras No.	Madras Rs.	Kochi No.	Kochi Rs.	Delhi No.	Delhi Rs.	Ahmedabad(P) No.	Ahmedabad(P) Rs.	Calcutta No.	Calcutta Rs.	Total No.	Total Rs.
A. Motor vehicles														
1. Confiscated but pending disposal on 31 March, 1991	24	16	15	5	-	-	8	N.A	12	18	-	-	59	39
2. Confiscated during 1991-92	31	24	4	2	16	90	-	-	3	5	1	1	55	122
3. Cleared during 1991-92	41	33	9	1	9	81	1	4	1	1	-	-	61	120
4. Balance on 31 March, 1992	14	7	10	6	7	9	7	N.A	14	22	1	1	53	41

Description	Bombay Rs.	Madras Rs.	Kochi Rs.	Delhi Rs.	Ahmedabad(P) Rs.	Calcutta Rs.	Total Rs.
B. Trade goods (value)							
1. Confiscated but pending disposal on 31 March, 1991	813	1176	88	8198	42	659	10976
2. Confiscated during 1991-92	442	2142	87	601	21	260	3553
3. Cleared during 1991-92	716	1834	22	261	30	207	3070
4. Balance on 31 March, 1992	539	1484	153	8538	33	712	11459

CUSTOMS
ANNEXURE - 2.7

Exemption from duty subject to end use verification

(referred to in para 2.07)

(Rupees in crores)

		1989-90	1990-91	1991-92
(a)	Value of goods imported on which duty exempted			
	Bombay	1320.49	2179.86	329.44
	Delhi	46.03	N.A	345.33
	Madras	298.65	N.A	394.72
	Calcutta	16.18	17.55	85.97
	Ahmedabad(P)	288.60	N.A	208.89
	Kochi	N.A	5.91	N.A
	TOTAL	**1969.95**	**2203.32**	**1364.35**
(b)	Amount of duty forgone			
	Bombay	425.00	361.00	220.88
	Delhi	42.45	N.A	501.42
	Madras	290.86	N.A	255.77
	Calcutta	18.76	11.95	69.39
	Ahmedabad(P)	744.54	N.A	272.32
	Kochi	N.A	3.86	N.A
	TOTAL	**1521.61**	**376.81**	**1319.78**
(c)	Value for which bond taken by Custom House			
	Bombay	426.40	423.49	220.88
	Delhi	50.82	N.A	60.68
	Madras	287.32	N.A	354.65
	Calcutta	18.74	11.95	35.39
	Ahmedabad(P)	724.54	N.A	228.48
	Kochi	2.03	3.87	2.22
	TOTAL	**1509.85**	**439.31**	**902.30**
(d)	Number of bonds in respect of which end use condition verified during the year			
	Bombay	3,230	1769	2671
	Delhi	1420	N.A	3240
	Madras	4958	N.A	6200
	Calcutta	458	344	564
	Ahmedabad(P)	194	N.A	152
	Kochi	119	149	117
	TOTAL	**10379**	**2262**	**12944**

		1989-90	1990-91	1991-92
(e)	Value of bonds brought forward from previous year for verification of end use condition			
	Bombay	212.95	14106.56	221.10
	Delhi	97.01	N.A	6.52
	Madras	161.45	N.A	254.54
	Calcutta	11.06	7.83	35.14
	Ahmedabad(P)	46.84	N.A	54.46
	Kochi	0.26	4.54	N.A
	TOTAL	**529.57**	**14118.93**	**571.76**
(f)	Value of end use bonds carried forward to next year for verification of end use condition			
	Bombay	286.95	1428.59	253.76
	Delhi	87.39	N.A	120.52
	Madras	185.82	N.A	198.64
	Calcutta	15.23	8.05	8.22
	Ahmedabad(P)	41.75	N.A	44.00
	Kochi	0.52	5.36	2.42
	TOTAL	**617.66**	**1442.00**	**627.56**
(g)	Number of end use bonds pending cancellation			
	Bombay	3,334	2837	-
	Delhi	2698	N.A	-
	Madras	4,783	N.A	1682
	Calcutta	425	290	56
	Ahmedabad(P)	144	N.A	-
	Kochi	119	170	-
	TOTAL	**11503**	**3297**	**1738**

		1989-90	1990-91	1991-92
(i)	Of above number pending for adjudication or appeal			
	Bombay	Nil	483	-
	Delhi	Nil	N.A	1
	Madras	Nil	N.A	-
	Calcutta	Nil	Nil	49
	Ahmedabad(P)	Nil	N.A	-
	Kochi	Nil	170	-
	TOTAL	**Nil**	**653**	**50**

		1989-90	1990-91	1991-92
(ii)	Of above number pending decision in High Court			
	Bombay	Nil	Nil	-
	Delhi	N.A	N.A	-
	Madras	Nil	N.A	-
	Calcutta	11	2	7
	Ahmedabad(P)	Nil	N.A	-
	Kochi	Nil	Nil	-
	TOTAL	**11**	**2**	**7**

N.A= Not made available by Ministry of Finance (December 1992).

CHAPTER 3
UNION EXCISE DUTIES

3.01 Budget estimates vis-a-vis actual receipts

The budget estimates vis-a-vis actual receipts of central excise duties during the year 1991-92 alongside the corresponding figures for preceeding four years are given below :-

*(in crores of rupees)

Year	Budget estimates	Actual receipts
1991-92	27,696.00	27,997.73
1990-91	24,500.00	24,409.42
1989-90	22,702.18	22,307.25
1988-89	18,172.37	18,749.81
1987-88	16,825.79	16,345.34

* Figures furnished by the Ministry of Finance in December 1992.

3.02 Trend of receipts

During the year 1991-92 total receipts from Union Excise duties amounted to Rs.27,997.73 crores*. The receipts during the year 1991-92 from levy of basic excise duty and from other duties levied as excise duties are given below alongside the corresponding figures for the preceding year:-

		Receipts from Union Excise duties	
		1990-91*	1991-92**
		(in lakhs of rupees)	
A.	Shareable duties :		
	Basic excise duties	1830560.73	2102249.14
	Auxiliary duties of excise	17.90	5.56
	Special excise duties	91620.96	181818.50
	Additional excise duties on mineral products	---	---
	Total (A)	1922199.59	2284073.20

		Receipts from Union Excise duties 1990-91*	1991-92**
B.	Duties assigned to states :		
	Additional excise duties in lieu of sales tax	156125.90	193896.41
	Excise duties on generation of power	0.08	---
	Total (B)	156125.98	193896.41
C.	Non-shareable duties :		
	Additional excise duty on T.V.sets	3337.63	2146.38
	Regulatory excise duties	---	---
	Auxiliary duties of excise	9.63	0.01
	Special excise duties	1335.69	15772.83
	Additional excise duties on textiles and textile articles	28025.39	34750.41
	Other duties	1.73	27.86
	Total (C)	32710.07	52697.49
D.	Cess on commodites	292630.69	265042.12
E.	Other receipts	37275.45	4063.96
	Total : (A to E)	2440941.78	2799773.18

* Figures furnished by the Ministry of Finance in December 1992.

ii) The trend of receipts in the last five years and the number of chapters and headings (each with a separate rate against it under which the commodities were classified for purposes of levy of duty) are given below:-

Year	Receipts from union excise duties (Rs. in crores)	Number of chapters	Number of headings	Number of factories paying excise duties
1991-92	27,997.73	91	894	***77,642
1990-91	24,409.42	91	912	**75,094
1989-90	22,307.25	91	903	*68,880
1988-89	18,749.03	91	912	71,444
1987-88	16,345.34	91	811	60,822

* Figures furnished by the Ministry of Finance cover 30 collectorates.
** Figures furnished by the Ministry of Finance cover 31 collectorates.
*** Figures furnished by the Ministry of Finance cover 33 collectorates.

iii) The number of commodities each of which yielded excise duties in excess of Rs.100 crores the number of commodities which yielded receipts between Rs.10 crores and Rs.100 crores and the number of commodities which yielded less than Rs.10 crores per year, during the year 1991-92 and alongside corresponding figures for the preceding four years are given below (figures in bracket give percentage to total receipts):-

Year	*Number of commodities each yielding receipts		
	above Rs.100 crores	between Rs.10 crores and 100 crores	below Rs.10 crores
1991-92*	50	50	37
	(89.5)	(10)	(0.5)
1990-91*	46	51	42
	(88)	(11)	(1)
1989-90*	45	53	41
	(87)	(12)	(1)
1988-89	27	157	602
	(60)	(33)	(7)
1987-88	19	142	652
	(57)	(35)	(8)

* Figures furnished by the Ministry of Finance are on the basis of Budget Heads.

iv) The Budget Head wise details of commodities which yielded revenue amounting to more than Rs.100 crores during 1991-92 are as under :

Sr. No.	Budget Head	Description	*Amount (in crores of rupees)
1.	27	Cigarettes & cigarillos of tobacco or tobacco substitutes	2387.07
2.	79	Synthetic filament yarn & sewing thread including synthetic monofilament and waste	1874.55
3.	34	Motor spirit	1245.09
4.	31	Cement clinkers, cement all sorts	1280.73
5.	119	All other goods falling under chapter 84	962.07
6.	36	R.D.Oil	702.84
7.	62	Tyres, tubes & flaps	810.74
8.	102	Iron and steel	1090.61
9.	125	All other goods falling under chapter 85	690.20
10.	17	Cane or beat sugar and chemically pure sucrose in solid form	597.99
11.	130	All other goods falling under chapter 87	672.60
12.	61	Plastics and articles thereof	792.12
13.	40	All other goods falling under chapter 27	432.75
14.	46	Pharmaceutical products	425.73
15.	128	Motor cars and other motor vehicles for transport of persons	778.64
16.	106	Aluminium and articles thereof	653.12
17.	81	Artificial or synthetic staple fibres and tow including waste	301.36
18.	71	Paper and paper board, articles of paper pulp or paper or paper board	387.93
19.	45	Organic chemicals	632.74
20.	103	Articles of iron and steel	339.85
21.	35	Kerosene	246.05
22.	80	Fabrics of man-made filament yarn	310.52
23.	84	Fabrics of man-made staple fibre	283.67
24.	124	Insulated wires, cables and other electric conductors	271.06
25.	129	Public transport type passenger motor vehicles and motor vehicles for the transport of goods	270.71
26.	51	Essential oils and resinoids, perfumery, cosmetics or toilet preparation	263.23
27.	28	Biris	188.36
28.	44	All other goods falling under chapter 28	314.56
29.	100	Glass and glassware	235.27

Sr. No.	Budget Head	Description	*Amount (in crores of rupees)
30.	116	Refrigerations and airconditioners & parts thereof	270.67
31.	120	Electrical motors and generators, electric generating sets and parts thereof	255.68
32.	99	Ceramic products	227.75
33.	75	Cotton and cotton yarn	215.75
34.	49	Paints and varnishes	239.40
35.	63	All other goods falling under chapter 40	180.55
36.	122	Electric accumulators, primary cells and primary batteries	145.92
37.	115	Internal combustion engines and parts thereof, steam and other vapour turbines hydraulic turbines, turbojets, other engines and motors	181.59
38.	52	Soap	186.34
39.	60	Miscellaneous chemical products	194.34
40.	53	Organic surface active agents	164.05
41.	121	Electrical transformers, static coverter and inductors	144.23
42.	126	Railway or tramway locomotive rolling stock and parts thereof etc	134.31
43.	123A	Electronic components including T.V. picture tubes	156.21
44.	24	Natural or artificial mineral waters and aerated waters	134.52
45.	42	Caustic soda and caustic potash peroxides thereof	110.64
46.	118	Ball or roller bearings	141.94
47.	23	Miscellaneous edible preparations	104.20
48.	76	All others falling under chapter 52	111.19
49.	82	Spun yarn containing Polyester or other Synthetic yarn	124.34
50.	122A	Consumers electronic goods - others	131.94
		Total	22997.72

* Figures furnished by the Ministry of Finance in December 1992 cover 34 collectorates out of 36 collectortes.

v) Cess is levied and collected by department of Central Excise on tea, coffee, tobacco, beedi, onion, copra, oil and oil seeds, salt, rubber, jute, cotton fabrics, rayon and artificial silk fabrics, woollen fabrics, man made fabrics, paper, iron ore, coal and coke, limestone and dolomite and crude oil under various Acts of Parliament in order to provide for development of respective industries and to meet organisational expenditure on welfare of workers in the respective industries. The yield* from levy of cess in the last three years and the names of commodities are given below:-

(in crores of rupees)

Sr. No.	Commodities	Receipts from cess during 1989-90	1990-91*	1991-92*
1.	Crude oil	2928.66	2730.05	2430.70
2.	Handloom cess (cotton)	4.96	0.11	0.10
3.	Tea	8.07	10.95	10.92
4.	Paper	4.33	4.50	5.52
5.	Sugar	137.38	147.79	161.36
6.	Beedi	12.06	12.03	12.22
7.	Jute manufactures	8.09	9.61	16.17
8.	Automobiles	8.84	10.13	10.33
9.	Cotton	0.06	0.03	0.21
10.	Vegetable oils	0.38	0.16	0.05
11.	Miscellaneous	6.46	0.95	2.84
	Total receipts from cess	3119.29	2926.31	2650.42

* Revised figures furnished by the Ministry of Finance in December 1992.

3.03 Cost of collection

The expenditure incurred during the year 1991-92 in collecting Union Excise duties are given below alongside the corresponding figures for the preceding four years :-

*(in crores of rupees)

Year	Receipts from excise duties	Expenditure on collection	Cost of collection as percentage of receipts
1991-92	27,997.73	172.00	0.61
1990-91	24,409.42	144.48	0.59
1989-90	22,307.25	133.93	0.60
1988-89	18,749.81	117.78	0.63
1987-88	16,345.34	112.14	0.69

* Figures furnished by the Ministry of Finance in December 1992.

3.04 Exemptions, rebates, refunds and rewards etc.

(i) Exemptions

In the Central Excise Tariff, the number of sub headings (each with a rate against it) under which the excisable commodities are required to be classified was 1702 during the year 1990-91 and 1707 during the year 1991-92. The number of exemption notifications in force during the years 1990-91 and 1991-92 numbered 487 and 518 respectively (excluding 60 and 61 general exemptions in force during the said years respectively). The largest number of exemption notifications were in force in respect of the following commodities :-

Sr. No.	Chapter	Description	Number of exemption notifications in force during 1990-91	1991-92
1.	28	Inorganic chemicals	38	40
2.	40	Rubber and articles thereof	25	27
3.	84	Machinery and mechanical appliances	24	27
4.	48	Paper	25	26
5.	27	Mineral fuels	24	26
6.	85	Electrical Machinery and equipment	20	24
7.	54	Man-made filaments	21	21
8.	87	Motor vehicles and parts thereof	15	16
9.	53	Vegetables textiles, fibres etc.	14	15
10.	32	Dyes, colours, paints and varnishes	10	10

The amount of revenue foregone by grant of exemptions through issue of notifications by the Ministry of Finance under sub sections (1) and (2) of section 5A of the Central Excises and Salt Act, 1944 during the year 1991-92 was as under :

	No. of cases	Estimated amount of duty involved *(in crores of rupees)
Under sub section (1)	3151	6139.21
Under sub section (2)	287	90.80

* Figures furnished by the Ministry of Finance in December 1992.

(ii) Rebate

Under the Central Excise Rules the amount of rebates on excise duty paid on goods exported as also excise duty not levied on goods exported, in recent years are given below :-

*(in crores of rupees)

		1989-90	1990-91	1991-92
(a)	Rebate under rule 12	99.96	177.88	288.28
(b)	Rebate under rule 12A	97.00	10.86	14.04
(c)	Duty not levied under rule 13- Revenue foregone as a result of export under bond	1378.63	1005.89	1501.22
(d)	Differential duty recovered on unrebated amount of goods exported under bond	N.A.	N.A.	N.A.

* Figures furnished by the Ministry of Finance in December 1992 cover 34 collectorates.

(iii) Refunds

The amount of duty refunded* by the department in recent years because of excess collection is given below :-

	1989-90	1990-91	1991-92
Number of cases	6047	4296	140
Amount of refunds (in crores of rupees) (other than rebate)	57.95	158.89	69.77

* Figures furnished by the Ministry of Finance in December 1992 cover 34 collectorates.

(iv) Reward to informers and departmental officers

The amount of rewards paid to informers and departmental officers and amount of additional duty realised as a result of payment of rewards in recent years are as under :

*(in lakhs of rupees)

		1989-90	1990-91	1991-92
(a)	Amount of rewards paid to informers	15.08	84.27	91.76
(b)	Amount of rewards paid to the departmental officers	27.22	174.88	161.52
(c)	Additional duty realised as a result of payment of rewards	147.67	2812.55	228.85

* Figures furnished by the Ministry of Finance in December 1992 cover 34 collectorates.

3.05 Outstanding demands

The number of demands for excise duty outstanding* for collection and the amount of duty involved as on 31 March 1992 are given below :-

		Relating to			
		1990-91 and earlier years		1991-92	
		Number of cases	Amount (in crores of rupees)	Number of cases	Amount (in crores of rupees)
(a)	Pending with Adjudicating officers	12554	1576.31	8241	702.60
(b)	Pending before Appellate Collectors	1362	83.14	877	54.68
(c)	Pending before Board	112	28.76	181	91.29
(d)	Pending before Government	965	3.38	31	14.02
(e)	Pending before Tribunals	3370	375.26	1801	252.22
(f)	Pending before High Courts	1957	804.79	800	110.87
(g)	Pending before Supreme Court	632	183.63	227	137.03
(h)	Pending for coercive recovery measures	5810	111.62	1734	238.41
	Total	26762	3166.89	13892	1601.12

*Figures furnished by the Ministry of Finance in December 1992 cover 34 collectorates.

3.06 Provisional assessments

The assessments to excise duties which have been done provisionally for various reasons and the amount of estimated revenue involved are indicated below :-

		Relating to			
		*1990-91 and earlier years		*1991-92	
		Number of cases	Duty involved (in lakhs of rupees)	Number of cases	Duty inolved (in lakhs of rupees)
a)	Pending decision by Courts of Law	926	41294.30	693	3808.62
b)	Pending decision by Govt. of India or Central Board of Excise & Customs	58	431.57	185	2597.15

		Relating to			
		*1990-91 and earlier years		*1991-92	
		Number of cases	Duty involved (in lakhs of rupees)	Number of cases	Duty inolved (in lakhs of rupees)
c)	Pending adjudication by the department	194	2793.38	250	2171.28
d)	Pending finalistion of classification lists	2284	37428.65	1443	6103.90
e)	Pending finalisation of price lists	4204	96514.01	2651	43710.68
f)	Other reasons	1256	12879.58	820	2690.29
	Total	8922	191341.49	6042	61081.92

* Figures furnished by the Ministry of Finance in December 1992 cover 34 collectorates.

3.07 Failure to demand duty before limitations and revenue remitted or abandoned

(i) Revenue not demanded before limitation

The total amount* of demands for duty barred by limitation and not realisable owing to demands not having been raised in time during the last three years was Rs.1049.12 lakhs as detailed below :-

Year	Amount* (in lakhs of rupees)
1991-92	235.32
1990-91	495.86
1989-90	317.94

* Figures furnished by the Ministry of Finance in December 1992 cover 34 collectorates.

(ii) Revenue remitted or abandoned

The amount* of revenue remitted, abandoned or written off during the last two years are given below :-

		1990-91* and preceding year		1991-92*	
		Number of cases	Amount (in lakhs of rupees)	Number of cases	Amount (in lakhs of rupees)
Remitted due to :					
a)	Fire	77	6.56	41	25.80
b)	Flood	25	12.18	5	4.24
c)	Theft	3	0.56	1	0.07
d)	Other reasons	120	90.68	77	16.30
	Total	225	109.98	124	46.41
Abandoned or Written off due to :					
a)	Assessee having died leaving behind no assets	161	526.72	144	0.58
b)	Assessee untraceable	402	6.65	221	14.22
c)	Assessee left India	--	--	--	--
d)	Assessee incapable of payment of duty	2309	105.48	462	49.45
e)	Other reasons	2834	3.53	23	70.22
	Total	5706	642.38	850	134.47

* Figures furnished by the Ministry of Finance in December 1992 cover 34 collectorates for 1989-90, 1990-91 and 1991-92

3.08 Writs and Appeals

(i) Writ petitions pending in courts

Number* of writ petitions involving excise duties which were pending in courts as on 31 March 1992 are given below:-

	In Supreme Court	In High Court
Pending for over 5 years	1477	2147
Pending for 3 to 5 years	481	1044
Pending for 1 to 3 years	344	1219
Pending for not more than 1 year	1483	634
Total	3785	5044

* Figures furnished by the Ministry of Finance in December 1992 cover 34 collectorates.

(ii) Appeals pending with others

The number* of appeals and petitions pending with Collectors/Board/Government as on 31 March 1992 are given below :-

		With Collectors	With Tribunal	With Board	With Govt.
a)	Number of appeals instituted during 1991-92	2993	3902	27	10
b)	Pending as on 31 March 1992 {out of (a) above}	1324	3925	19	7
c)	Number of appeals/petitions instituted in earlier years and pending on 31 March 1991	1164	8821	58	64
d)	Pending as on 31 March 1992 {out of (c) above}	463	7823	41	28
	Total (b) & (d)	1787	11748	60	35

* Figures furnished by the Ministry of Finance in December 1992 cover 34 collectorates.

(iii) Details of appeals/references disposed of

The number* of appeals and references filed before Collectors (Appeals), the Tribunals and the High Courts and Supreme Court and numbers disposed of are given below :-

			Relating to 1990-91 and preceding years	Relating to 1991-92
1.	a)	Number of appeals filed before Collectors (Appeals)	5053	2791
	b)	Number of appeals disposed of during 1991-92 out of (a) above	3648	1647
2.	a)	Number of appeals filed before the Tribunal by the assessees	2513	1975
	b)	Number of appeals decided during 1991-92 in favour of the assessees	561	403
3.	a)	Number of appeals filed before the Tribunals by the department	1132	1391
	b)	Number of appeals decided in favour of the department during 1991-92	627	213
4.	a)	Number of appeals filed in the High Courts by the assessees	285	381
	b)	Number of appeals disposed of in favour of the assessees during 1991-92	206	265

			Relating to 1990-91 and preceding years	1991-92
5.	a)	Number of appeals filed by the department before the High Courts	40	40
	b)	Number of appeals decided in favour of the department during 1991-92 (including appeals filed by assessees)	161	269
6.	a)	Number of appeals filed in the Supreme Court by assessees	66	104
	b)	Number of appeals decided in favour of the assesses during 1991-92	88	56
7.	a)	Number of appeals filed in Supreme Court by the department	263	247
	b)	Number of appeals decided in favour of the department during 1991-92	6	38

* Figures furnished by Ministry of Finance in December 1992 cover 34 collectorates.

3.09 Seizures, confiscation and prosecution

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

		*1990-91 and preceding year		*1991-92	
		Number	Amount (in lakhs of rupees)	Number	Amount (in lakhs of rupees)
(i)	Seizure cases	5775	26572.24	2811	21308.86
(ii)	Goods seized	8846	10673.62	1707	20159.70
(iii)	Goods confiscated				
	a) in seizure cases	6926	3364.30	844	1391.08
	b) in non-seizure cases	604	7315.99	566	7641.92
(iv)	Number of offences prosecuted				
	a) arising from seizure	183	439.40	224	2697.35
	b) arising otherwise	263	4663.19	57	4264.78
(v)	Duty assessed in respect of goods seized or confiscated	2791	6527.20	1374	3600.71
(vi)	Fines levied				
	a) on seizure and in confiscation cases	4299	2741.39	1109	140.29
	b) in other cases	401	742.84	131	21.96
(vii)	Penalties levied	3564	877.69	1451	1165.26
(viii)	Goods destroyed after confiscation	44	14.87	6	0.04

		*1990-91 and preceding year		*1991-92	
		Number	Amount (in lakhs of rupees)	Number	Amount (in lakhs of rupees)
(ix)	Goods sold after confiscation	125	3.70	26	11.23
(x)	Prosecution resulting in conviction	18	4.89	4	1.67
	Total	33839	63941.32	10310	62404.85

* Figures furnished by the Ministry of Finance in December 1992 cover 34 collectorates.

3.10 Outstanding audit objections

The number of objections raised in audit upto 31 March 1991 in 34 collectorates and which were pending settlement as on 30 September 1991 was 12683. The duty involved in the objections amounted to Rs.699.93 crores. Details are given in Annexure 3.1 to this chapter.

The outstanding objections broadly fall under the following categories :-

(in crores of rupees)

Sr.No.	Nature of objection	Amount
1.	Short levy of duty due to misclassification	130.34
2.	Short levy of duty due to incorrect grant of exemption	88.61
3.	Non-levy of duty	69.19
4.	Short levy of duty due to undervaluation	84.06
5.	Exemption to small scale manufacturers	8.76
6.	Irregular grant of credit for duty paid on inputs and irregular utilisation of such credit	119.18
7.	Cess	15.26
8.	Irregular rebates and refunds	19.18
9.	Demands for duty not raised	8.82
10.	Others	151.61
11.	Internal Audit	4.92
	Total	699.93

The paragraph was sent to Ministry of Finance in September 1992; reply has not been received (December 1992).

3.11 Results of audit

Test check of records in audit in the various Central Excise Collectorates including check of excise records of licensees manufacturng excisable commodities revealed under assessment of duty and losses of revenue amounting to Rs.170.90 crores.

The irregularities noticed broadly fall under the following categories :-

(a) Non levy of duty
(b) Short levy of duty due to misclassification
(c) Short levy of duty due to incorrect grant of exemption
(d) Short levy due to undervaluation
(e) Irregular exemption to small scale manufacturers
(f) Irregular availment of Modvat credit
(g) Irregular grant of money credit and Irregular utilistion of such credit
(h) Non levy/Short levy of cess
(i) Irregular grant of refunds
(j) Procedural delays and irregularities with revenue implications
(k) Other irregularities

System studies on the following areas of administration of the Central Excise department were also conducted. The results of those studies are contained in this report.

i) Delay in finalisation and collection of demands
ii) Rubber and articles thereof

The studies also revealed non levy/short levy of central excise duty amounting to Rs.27.33 crores.

Of these Ministry/Department have accepted short levies/underassessments to the extent of Rs.22.36 crores . Recoveries aggregating to Rs.5.99 have been made so far.

Some of the important cases are mentioned in the succeeding paragraphs :-

NON LEVY OF DUTY

Under rule 9 read with rule 173G of the Central Excise Rules, 1944, no excisable goods should be removed from any place where they are produced, manufacutred or cured whether for consumption, export or manufacture of any other commodity, in or outside such place unless the excise duty leviable has been paid.

Some of the important cases of non levy of duty noticed in audit are given below :-

3.12 Non levy of duty on goods consumed captively

i) Components of telecommunication equipment

Telecommunication equipment classifiable under heading 85.17 of the schedule to the Central Excise Tariff Act, 1985, is assessable to duty at 20 per cent ad valorem. As per orders dated 17 April 1989 and 12 April 1991 issued under section 5A(2) of the Central Excises and Salt Act, 1944, the Government exempted telecommunication equipment of a specified value manufactured by a public sector undertaking and supplied to a particular customer during a specified period from the whole of the duty leviable thereon.

As per a notification issued on 2 April 1986, specified goods manufactured in a factory and captively used as inputs in the manufacture of specified final products are exempt from payment of duty provided the said final products are not exempt from duty or are not chargeable to nil rate of duty. It follows, therefore that duty is payable on goods manufactured in a factory and used in the manufacture of exempted final products.

A public sector undertaking manufactured inter alia, bolts, nuts and screws (chapter 72 and 74), stampings and laminations (chapter 83) and printed circuit boards (chapter 85) etc., for captive use as inputs in the manufacture of telecommunication equipment and cleared the said equipments without payment of duty under the aforesaid adhoc exemption orders. Since the final

product was exempt from duty, the aforesaid inputs were not eligible for exemption under the notification dated 2 April 1986 and duty was required to be paid on the said inputs. Neither the assessee paid the duty on his own nor did the department levy and collect it. In the absence of availability of details of the actual quantity and value of inputs, it was estimated in audit that inputs of a value of Rs.9.24 crores (25 per cent of the value of final products) involving a duty of Rs.1.82 crores (Rs.1.77 crores and .05 crore at an average rate of 18.75 per cent) were captively consumed during the period from April 1990 to June 1991.

On the non levy of duty being pointed out in audit (December 1990 and December 1991), the department stated (November 1991) that the assessee was working out the details of duty payable.

Ministry of Finance while admitting the objection have intimated (July 1992) that the assessee had since paid the duty due.

ii) Parts of railway locomotives

Parts of railway locomotives or rolling stock are classifiable under heading 86.07 of the schedule to the Central Excise Tariff Act, 1985. As per note 2(e) of chapter 86 `coach works' are also covered by heading 86.07. As per explanatory notes to HSN, `bodies' of railway locomotives fabricated for mounting on underframes are considered to be the parts of railway locomotives or rolling stock falling under heading 86.07 ibid.

As per a notification dated 20 November 1986, certain railway coach units and wagons falling under chapter 86 are eligible for concessional rates of duty subject to the condition that no credit of duty on any of the inputs used in the manufacture of coaches and wagons has been availed of under rule 56A or 57A of the Central Excise Rules, 1944.

Both the chapters 73 and 86 being notified under Modvat scheme, duty paid on parts of railway wagons (inputs) whether obtained from outside or

manufactured in the factory of production of wagon can be taken as credit to be utilised for payment of duty on finished products. However, by issue of notification dated 2 April 1986, "inputs" manufactured within the factory as well as got manufactured from outside on job work basis and used in the manufacture of finished goods, covered under Modvat scheme, were fully exempted from payment of duty in order to minimise the maintenance of elaborate records for availing Modvat. Availment of such exemption, therefore, tantamounts to taking of credit under Modvat and this procedure can only place all manufacturers (whether procuring the inputs on payment of duty for taking Modvat credit or producing those for captive consumption or procuring from outside on job work basis) on the same footing. Thus concessional rate on wagons would apply only if the duty on components is paid first and no credit is availed of under rule 57A.

A public sector undertaking fabricating `coach works' and `bodies of wagons' of different railway locomotives falling under heading 86.07 ibid consumed them captively without payment of duty for further manufacture of finished railway coach units and wagons falling under chapter 86 which were in turn, cleared on payment of duty at concessional rate as prescribed in the notification dated 20 November 1986. Non levy of duty on `coach works' and `bodies of wagons' captively consumed amounted to Rs.2.58 crores during the period from April 1989 to January 1991.

On this being pointed out in audit (March 1991), the department did not admit the objection and stated (July 1991) that in relation to manufacture of railway coaches various processes had to be undergone stage by stage and mere processing upto a stage was not complete for the final products which could come into market to be bought and sold. It further added that the above processing upto a stage did not tantamount to manufacture. In respect of wagon bodies the department took similar stand and added that the provisions of notification dated 2 April 1986 remained silent.

The department's reply is not acceptable since (i) as per chapter note/explanatory notes to HSN, the subject goods were `manufactured goods' classifiable under heading 86.07 (parts); (ii) as the tariff heading read with chapter note was clear, application of other tests was not necessary; and (iii) the subject goods also did not attract the exemption under notification dated 2 April 1986 in view of availment of concessional rates on finished products under another notification dated 20 November 1986.

Ministry of Finance did not admit the objection and stated (November 1992) that the exemption under notification dated 2 April 1986 (issued under rule 8(1), section 5A(1) of the Central Excises and Salt Act, 1944) can not strictly be considered as an input duty relief and the manufacturer has not, in fact, availed of any credit of duty paid on the inputs used in the manufacture of parts, under dispute.

Ministry's reply is not acceptable as the availment of exemption under the notification dated 2 April 1986 on the inputs captively consumed tantamounts to availment of duty relief under rule 57A.

Moreover, Ministry's stand leads to different treatment given to manufacturers bringing the duty paid goods and availing Modvat credit on inputs, not eligible for concessional rate of duty and those who consume the inputs captively without payment of duty but allowed to avail of the concessional rate. This has never been the intention in the Central Excise Law.

iii) Textile products

Fabrics of man made filament yarns (excluding fabrics covered by heading 54.12) woven on looms (other than handlooms) and subjected to certain specified process/processes (which includes the process of heat setting) are classifiable under heading 54.09 of the schedule to the Central Excise Tariff Act, 1985, attracting only additional duty under the Additional Duties of Excise (Goods of Special Importance) Act, 1957. Heading 59.09 however covers, on the other hand,

textile products and articles of a kind suitable for industrial use. The Central Board of Excise and Customs clarified on 10 August 1988 that as can be seen from chapter note 6 (now 7) to chapter 59, all descriptions of heading 59.09 refer to textile products or articles which can directly go for industrial use. The Board also held that tyre cord fabric after weaving still remains fabric falling under heading 52.05 (not 59.09) as it is not yet ready for industrial use directly.

An assessee manufactured man made fabrics out of polyester monofilament yarns by weaving on looms (other than handlooms) and subjected them to the processes of heat setting and stretching. They were then cleared internally without payment of duty for further manufacture of dandy roll covers (for paper mill machinery) according to specific design/specification by means of cutting and sewing with the aid of power. Such articles were cleared on payment of duty under heading 59.09. But the fabrics manufactured for captive consumption were still fabrics falling under heading 54.09. They became textile products or articles falling under heading 59.09 when they were made ready for industrial use by applying further processes. Since chapter 54 is not covered by Modvat scheme, no duty free consumption of such fabrics was allowable. Additional duty not having been levied on captive consumption of such fabrics falling under heading 54.09, there had been non levy of duty (additional) of Rs.1.87 crores during the period from April 1990 to November 1991.

On the mistake being pointed out in audit (January 1992), the department while admitting the fact of manufacture of such fabrics stated (April 1992) that

i) as per note 7(b) of chapter 59 the subject goods were correctly classifiable under heading 59.09; (ii) though such fabrics normally come under heading 54.09 they were basically industrial textile articles of heading 59.09; and (iii) no duty was leviable on the subject fabrics as they were not marketable in terms of the Supreme Court's

decision in the case of Bhor Industries Limited {1989 (40) ELT 280 (SC)}.

The department's reply is not acceptable since (i) note 7(b) of chapter 59 speaks about textile articles and not the fabric. Heading 59.09 covers those goods which can directly go for industrial use as clarified by the Board on 10 August 1988. Fabrics in the instant case can not directly go for use in paper machinery until they are cut to size and sewed and hence they are not covered by heading 59.09;

ii) the Board's clarification on tyre cord fabric is relevant and according to the ratio of such decision, fabrics manufactured for further manufacture of dandy roll would come under heading 54.09;

iii) whether the subject fabrics are marketed or not in the instant case, those are marketable in nature and are capable of being bought and sold. These are distinct and identifiable products of heading 54.09 and hence the Supreme Court's decision is not relevant in the instant case; and

iv) as per rules 9 and 49 of the Central Excise Rules, 1944, duty was leviable on fabrics captively consumed.

The irregularity was reported to Ministry of Finance in August 1992; reply has not been received (November 1992).

iv) Lime stone

Under a notification dated 13 November 1986, lime stone in any form (heading 25.05 of the schedule to the Central Excise Tariff Act, 1985), was exempted from the whole of the duty of excise provided such lime stone was used within the factory of production for the manufacture of cement clinkers and cement. The exemption was withdrawn by issue of a notification dated 20 March 1990 but was again restored by issue of another notification dated 17 September 1990. Thus no exemption on such lime stone removed for

use in the factory of production in the manufacture of cement clinkers was available during the period from 20 March 1990 to 16 September 1990.

A manufacturer of cement clinkers and cement availed the said exemption on lime stone during the period from 20 March 1990 to 16 September 1990 procured from his own mines and outside and captively consumed after grinding the same in his factory of production. Removal of lime stone without payment of duty resulted in escapement of duty of Rs.57.44 lakhs during the period from 20 March 1990 to 16 September 1990.

On the mistake being pointed out in audit (March 1991), the department stated (June 1992) that a show cause notice for recovery of central excise duty was issued to the assessee in April 1992. The department, however, argued that the issue had been detected by them on 11 April 1991.

The contention of the department is not correct because the objection was communicated to them through an initial audit memo issued on 25 March 1991. Besides, the department's reply was silent about the booking of offence case by the department, if any, against the assessee before receipt of the initial audit memo.

Ministry of Finance have stated (November 1992) that the show cause notice for duty leviable during the period from 20 March 1990 to 16 September 1990 has been stayed by the Orissa High Court, and final comments will be furnished after the case is adjudicated.

v) Bauxite, kaynite etc.

As per note 2 of chapter 25 of the schedule to the Central Excise Tariff Act, 1985, heading 25.05, inter alia, covers only products which have been washed, crushed, ground, powdered etc., but not products that have been roasted, calcined or obtained by mixing.

An assessee engaged in the manufacture of refractory bricks and ceramic articles obtained bauxite, kaynite, diaspore (ores of aluminum) and

got the same crushed, ground and powdered. Such powder in admixture with several varieties of ground clay was used captively without payment of duty and without observance of central excise formalities in the manufacture of refractory bricks including ceramic articles (chapter 69). Since the product was classifiable under heading 25.05 attracting duty at the rate of 12 per cent ad valorem as per the chapter notes ibid, the licensee was liable to discharge duty at appropriate rates even for its captive consumption during the period from 28 February 1986 to 28 February 1987 when there was no exemption notification/Modvat scheme permitting the use without payment of duty. This resulted in non levy of duty amounting to Rs.7.68 lakhs during the period of clearance from 28 February 1986 to 28 February 1987.

On this being pointed out in audit (September 1989), the department issued (February 1991) a show cause-cum demand notice for Rs.7.68 lakhs for the relevant period for clandestine removal of the product.

Ministry of Finance did not admit the objection and have stated (December 1992) that note 2 to chapter 25 does not state that the process of roasting, calcining and mixing is a process of manufacture but it merely lays down the scope of coverage of headings 25.01, 25.03 and 25.05.

The Ministry's reply is not acceptable in view of the following:-

i) Section 3 of the Central Excises and Salt Act, 1944, lays down that there shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and at the rates set forth in the schedule to the Central Excise Tariff Act, 1985;

ii) the goods in question are specifically covered under tariff sub heading 2505.00 by virtue of note 2 to chapter 25 of the

schedule to the Central Excise Tariff Act, 1985; and

iii) as per rule 1 of the Rules for Interpretation, classification shall be determined according to terms of the headings and any relative section or chapter notes.

3.13 Goods cleared as non excisable - Ethyl alcohol

Ethyl alcohol was chargeable to duty under heading 22.04 of the schedule to the Central Excise Tariff Act, 1985, during the period from 1 March 1986 to 28 February 1989 and again from 1 March 1990 to 15 May 1990. From 16 May 1990, the goods were, however, exempted from duty.

As per Central Board of Excise and Customs letter dated 18 September 1989, the issue relating to levy of duty on ethyl alcohol by the Central Government was under the consideration of the Supreme Court and show cause-cum demand notices issued in this regard by the central excise officers were required to be kept in abeyance till the case was decided by the Supreme Court.

The Supreme Court in the case of M/s. Synthetics and Chemicals Limited etc., Vs. State of Uttar Pradesh held (25 October 1989) that the State legislature had no authority to levy duty on or to tax industrial alcohol which is not fit for human consumption and that such duty or tax could be levied only by the Central Government. This position was reiterated by the Board in their letter dated 27 December 1990.

Two distilleries in a collectorate engaged, inter alia, in the manufacture of ethyl alcohol of different strength/grades from molasses in their distilleries removed such alcohol outside without payment of duty and also without observing any central excise procedure. The department did not initiate any action to levy duty on such excisable goods. The assessees cleared 6915027 (approximately) litres of ethyl alcohol during 1988-89 without payment of central excise duty. The department was also requested (February 1992)

to workout the amount of non levy of duty on the excisable goods cleared from 1987 onwards.

On the irregularity being pointed out in audit (February 1992), the department stated (June 1992) that two show cause-cum demand notices for Rs.176.90 lakhs and Rs.28.31 lakhs had been submitted to the Collector covering the period 1987-88.

The irregularity was reported to Ministry of Finance in September 1992; reply has not been received.

3.14 Clearance of excisable goods without paying duty

i) Under rule 9 read with rule 173G of the Central Excise Rules, 1944, no excisable goods should be removed from any place where they are produced, manufactured or cured whether for consumption, export or manufacture of any other commodity, in or outside such place unless the excise duty leviable thereon has been paid.

(a) An assessee manufacturing different machines and machineries like dect handling equipment, capstans, winches, crane etc., falling under different chapters utilised a part of the production within the factory. Neither the assessee paid duty of his own nor did the department levy duty on these machines/machineries shown as capitalised in the balance sheet of the assessee. This resulted in non levy of duty for Rs.27.98 lakhs on the goods capitalised during the years 1988-89 and 1989-90.

On the omission being pointed out in audit (August 1991), the department intimated (May 1992) that duty for Rs.1.25 lakhs in respect of one variety of machine (capstans) has been paid on 28 February 1992. Action taken in respect of other machines has not been reported (June 1992).

Ministry of Finance have stated (December 1992) that position in respect of other machines is under examination.

(b) A manufacturer of suppressor transformers, semi-conductors and other electric and electronic equipment (chapter 85 and 90) manufactured plant and machinery including testing equipment to test the final products at a cost of Rs.31,27,369 and installed them within the factory without payment of duty amounting to Rs.4.69 lakhs.

On the omission being pointed out in audit (March 1990), the department admitted the objection (November 1990) and subsequently reported (March 1992) that a show cause-cum demand notice for Rs.4.93 lakhs has been issued (January 1992).

Ministry of Finance have stated (October 1992) that the amount specified in the show cause notice had been confirmed and a penalty of Rs.50,000 imposed.

ii) An autonomous body of the State Government entered into 192 agreements on piece rate with several labour contractors/job workers for manufacture of i) back clamps, ii) stay clamps, and iii) M.S. stay sets falling under sub heading 7326.90 (7308.90 prior to 1 March 1988) of the schedule to the Central Excise Tariff Act, 1985. The assessee provided space within his premises, supplied raw materials, electrical connectors and energy to the contractors/job workers and got the goods manufactured and cleared them at nil rate of duty on the ground that the goods were manufactured by the job workers. The irregular clearances at nil rate resulted in non levy of duty of Rs.7.93 lakhs during the period from 1 September 1987 to 31 October 1988.

On the irregularity being pointed out in audit (May 1989), the department intimated (January 1992) that a show cause notice for Rs.14,58,442 towards duty leviable on the clearances during the period from 1 September 1987 to 31 March 1991 was issued by the Collector in November 1991.

Ministry of Finance have admitted the objection (August 1992).

iii) An assessee engaged in the manufacture of titanium dioxide used hydrochloric acid for leaching reduced ilmenite. The waste arising in the manufacturing process of titanium dioxide is made into a slurry. The slurry containing ferrous, ferric and other metalic chlorides is discharged to the effluent treatment plant known as acid regeneration plant where furnace oil and air are burnt at about 400°C. The ferrous and ferric (and other) chlorides in the slurry react with water and produce hydrogen and hydrogen chloride. This hydrogen chloride is sent to the 'preconcentration roaster' where it is dissolved in water to form hydrochloric acid which is used in the ilmenite beneficiating plant for manufacture of beneficiated Ilmenite. The assessee did not pay any duty on hydrochloric acid as the Collector (Appeals) accepted the view held by the assessee that the acid recovered from the process waste represented unused hydrochloric acid used for manufacturing operations which had actually suffered duty initially and the process did not amount to manufacture. But the order of the Collector (Appeals) did not cover the hydrochloric acid produced by chemical reaction in the 'spray roaster' of effluent treatment plant. The duty not levied on hydrochloric acid regenerated during the period July 1985 to March 1986 amounted to Rs.6.56 lakhs (approximately).

The matter was reported to the department in January 1990 and to Ministry of Finance in May 1992.

Ministry of Finance accepted the objection technically (November 1992) and added that issue of demands for short levy under section 11A pertaining to the period from July 1985 to March 1986 was not feasible due to lapse of four years.

The contention of Ministry is not tenable as the department could have raised the demand by invoking provisions of the extended period of five years under section 11A, had the action been initiated immediately after the irregularity was pointed out by Audit in January 1990.

3.15 Duty not levied on production suppressed or not accounted for

As per rule 53 of the Central Excise Rules, 1944, every manufacturer is required to maintain an account of stock in prescribed form (RG.I) wherein he is required to enter, inter alia, the (a) quantity of goods manufactured; (b) quantity of goods removed on payment of duty; and (c) quantity delivered from the factory without payment of duty for export or other purposes. Rules 9 and 49 of the said rules further provide that excisable goods shall not be removed from the place of manufacture or storage unless the duty leviable thereon had been paid. Provisions of rule 173D require that every manufacturer should furnish information regarding the principal raw materials and the quantity of such raw materials required for the manufacture of unit quantity of finished excisable goods. He is also required to file periodical returns (RT.5) to the proper officer indicating the quantity of raw materials used in the manufacture of excisable goods and the quantity of finished goods manufactured.

i) A comparison of the annual statistical records with daily stock account (RG.I) of a public sector steel plant manufacturing iron and steel products falling under chapter 72 of the schedule to the Central Excise Tariff Act, 1985, revealed that clearances of 29075.990 tonne of slabs, C.R.coil, C.R.No. rejected bottom plates, H.R.coils and rejected ingot moulds were short accounted for in the R.G.I account during the year 1987-88. This resulted in non levy of duty amounting to Rs.75.05 lakhs.

On the irregularity being pointed out in audit (October 1988), the department issued a show cause-cum demand notice (December 1990) for recovery of Rs.27.59 lakhs under rule 9 of the Central Excise Rules, 1944, read with section 11A of the Central Excises and Salt Act, 1944, out of which demand for Rs.27.05 lakhs on excess clearance of 16232.73 tonne of slabs, C.R.Coil, C.R.No. and rejected ingot moulds was confirmed (September 1991) besides imposing a penalty of Rs.3 lakhs.

The irregularity was reported to Ministry of Finance in August 1992; reply has not been received.

ii) An assessee manufacturing cigarettes out of cut tobacco (the principal raw material) accounted for production of cigarettes as per a prescribed norm based on consumption of a unit weight of the raw material. During the process of manufacture some cigarettes of irregular lengths or sizes, called `sorts' and broken cigarettes were produced alongwith those of the desired size. The sorts and broken cigarettes were subsequently ripped open to retrieve the tobacco which was recycled for manufacture of normal sized cigarettes.

In order to arrive at the actual quantity of tobacco consumed, the weight of `sorts' and broken cigarettes was deducted from the quantity of cut tobacco initially fed into the manufacturing process. It was noticed in audit that the manufacturer deducted the gross weight of `sorts' and broken cigarettes instead of the net weight of retrieved tobacco for the purpose of calculating the actual consumption of tobacco. Since the gross weight of sorts and broken cigarettes included the weight of paper wrapper, which was not the principal raw material, the tobacco consumption was suppressed to that extent resulting in suppression of actual production of cigarettes. Short levy of duty due to suppression of production during the period from May 1990 to March 1991 alone amounted to Rs.15.61 lakhs.

On the omission being pointed out in audit (May 1991) the department admitted the short accountal of cut tobacco and agreed to raise demand thereon. As regards levy of duty on the suppressed production of cigarettes, the department stated that manufacture of cigarettes and its subsequent removal without payment of duty will be more a matter of presumption.

The reply of the department is not tenable as the production of cigarettes was being worked out on the basis of weight of cut tobacco used in the manufacture of cigarettes.

Action taken for recovery of duty on cut tobacco as well as cigarettes not accounted for during this and earlier period have not been received (April 1992).

Ministry of Finance have stated (August 1992) that the matter is under examination.

iii) An assessee engaged in the manufacture of metal containers (chapters 72 & 73) was using printed metal/tin sheets as principal raw materials. Each sheet weighing around 980 gms would normally produce 12 containers. Giving adequate allowance for wastage, the number of containers that could be manufactured out of 144290 kg. of printed sheets used in 1989-90 would be 14.72 lakhs whereas production as per assessee's records was only 10.23 lakhs. Since the assessee was not required to furnish the requisite information in terms of rule 173D, the norms of production under rule 173E were not determined and the shortfall in production remained unreconciled. The short accountal of production (4.49 lakhs containers) resulted in non levy of duty of Rs.3.19 lakhs during 1989-90 alone.

On this being pointed out in audit (November 1990), the department intimated (April 1992) that the demand would be raised against the assessee to safeguard government revenue and that the assessee would be directed to furnish information regarding principal raw material under rule 173D based on which action regarding determination of normal production would be intimated.

The matter was reported to Ministry of Finance in August 1992; reply has not been received.

iv) A comparision of production of jute yarn as per records maintained in quality control department/RT.5 return with those shown in the central excise records (RG-1/daily production slips) by a manufacturer of jute products revealed that jute yarn to the extent of 384.888 tonne, produced during the year 1989-90 was short accounted for. The amount of central excise duty leviable on short accountal of production in the

central excise records during 1989-90 alone worked out to Rs.2.92 lakhs.

On the non levy of duty being pointed out in audit (September 1990), the department stated (December 1991) that show cause-cum demand notice was issued on 29 May 1991 by the Collector, Central Excise for recovery of central excise duty amounting to Rs.29.23 lakhs covering the period from April 1986 to March 1990.

Ministry of Finance while admitting the objection have stated (July 1992) that on further study, the Collector had found that there was short accountal in the last five years and demand amounting to Rs.14.04 lakhs was confirmed alongwith a penalty of Re.1 lakh.

3.16 Duty not levied on transit, storage and handling losses and shortages

i) Transit losses

Rule 156A read with rule 173N of the Central Excise Rules, 1944, provides for the removal of excisable goods in bond from a factory or warehouse to another subject to observance of the procedure laid down therein. On arrival of the goods at the warehouse of destination, the departmental officer in charge of that warehouse is required to record re-warehousing certificates and send copies to officer in-charge of the warehouse of removal and to the consignee for transmission to the consignor. Rule 156B enables the Range Superintendent of consignor's factory to demand duty from the consignor if the re-warehousing certificate is not received by him within 90 days of removal of goods or such extended period as the Collector may allow or if received, it shows a shortage not explained to his proper satisfaction.

(a) An assessee sent base mineral oil falling under chapter 27 from plant I to their another unit falling under the jurisdiction of another range under bond for re-warehousing. It was seen during audit that base mineral oil involving a duty of Rs.5.22 lakhs was received short at the warehouse of destination as per respective re-

warehousing certificates. No demand had been raised by the department on this transit loss.

On the irregularity being pointed out in audit (April 1990), the department stated (May 1990 and June 1991) that the matter had been reported to Superintendent of consignor unit to recover the duty on transit loss.

Ministry of Finance have stated (August 1992) that show cause notice for Rs.29.39 lakhs has been issued by the concerned Superintendent incharge of the warehouse of removal which incidentally falls within the jurisdiction of a different collectorate.

(b) A public sector oil refinery cleared 5451 kilo litres of motor spirit falling under chapter 27 in September 1989 under bond for rewarehousing. It was noticed in audit (November 1991) that rewarehousing certificate had been received for the quantity of 5285 kilo litres only in February 1990 and that another 166.042 kilo litres of motor spirit involving duty of Rs.3.93 lakhs had been received short at the warehouse of destination. However, demand for duty in respect of shortage in motor spirit had not been raised by the department.

On the matter being pointed out in audit (November 1991), the department intimated (June 1992) that show cause notice demanding duty on the transit losses had since been issued in March 1992.

Ministry of Finance have stated (December 1992) that the show cause notice has been adjudicated and recovery of Rs.2.64 lakhs has been made.

NON LEVY/SHORT LEVY OF DUTY DUE TO MISCLASSIFICATION

The rates of duty applicable to excisable goods are indicated under various headings of the schedule to the Central Excise Tariff Act, 1985. Wrong classification of a product under a different heading results in incorrect levy of duty. Some of the important cases of

misclassification leading to non/short levy of duty, noticed in audit are given below:-

3.17 Textile materials

i) Yarn not blended with cotton

Prior to 25 July 1991 (Budget 1991), yarn in which polyester staple fibre predominated was chargeable to duty under sub heading 5504.21 or 5504.22 or 5504.29 of the schedule to the Central Excise Tariff Act, 1985. Yarn containing polyester staple fibre in predominance but less than 70 per cent and cotton only was chargeable to lower rate of duty of Rs.3 per kilogram under sub heading 5504.21. Yarn containing polyester staple fibre in predominance but less than 70 per cent and cotton plus any one or more of ramie or artificial staple fibre was classifiable under sub heading 5504.22 and chargeable to duty at Rs.6 per kilogram. Yarn containing polyester fibre in predominance but less than 70 per cent and artificial staple fibre only, therefore, merited classification under sub heading 5504.29 and was chargeable to duty at Rs.20 per kilogram. Duty rates were revised to Rs.6 per kg. (5504.21), Rs.8 per Kg. (5504.22) and Rs.12 per Kg. (5504.29) with effect from 25 July 1991.

Six assessees under a collectorate were engaged in manufacture of yarn containing synthetic staple fibre. It was noticed in audit that yarn containing polyester staple fibre in predominance but less than 70 per cent and artificial staple fibre only was being classified under sub heading 5504.22 whereas it was classifiable under the sub heading 5504.29 as other type of yarn not containing cotton in any proportion. The blend of the yarn in question did not contain cotton fibre which is essential for its classification under the sub heading 5504.22. The incorrect classification of the yarn resulted in short levy of duty amounting to Rs.12.04 crores on clerances during the different periods from April 1991 to January 1992.

On the incorrect classification being pointed out in audit (November 1991 to March 1992) the

department did not admit the objection and stated that :-

(a) for classification of yarn under sub heading 5504.21 it should contain polyester staple fibre and cotton. Again for classification of yarn under sub heading 5504.22 it should contain polyester fibre and may contain any of the material out of cotton, ramie or artificial staple fibre; and

(b) even if polyester/cotton yarn falls under sub heading 5504.21 as well as under sub heading 5504.22 the classification will be done under sub heading 5504.21 only and charged duty at Rs.3 per Kg. as per para 3(a) of the rules for interpretation.

The contention of the department is not acceptable because :-

i) for classification under sub heading 5504.21, yarn should be of polyester staple fibre and cotton whereas for sub heading 5504.22, it should be of polyester staple fibre containing cotton and either ramie or artificial staple fibre; and

ii) if yarn containng polyester in predominance and any one out of cotton or ramie or artificial staple fibre is chargeable to duty under sub heading 5504.22 (as contended by the department) then the entry under sub heading 5504.21 becomes redundant. There was no need of separate sub heading 5504.21 prescribing lower rate of duty for yarn containing polyester and cotton.

Ministry of Finance have stated (December 1992) that the matter is under examination.

ii) Multifold yarn containing filament yarn

Yarn in which polyester staple fibres predominate and containing cotton, ramie or artificial staple fibres is chargeable to duty under sub heading 5504.22 of the schedule to the Central Excise Tariff Act, 1985. If such yarn contains other textile material, for example,

filament yarn, the same is chargeable to duty at higher rate under sub heading 5504.29. Yarn having predominance of artificial staple fibre containing polyester staple fibre is chargeable to duty under sub heading 5506.21. If such yarn contains other textile material (filament yarn) the duty is chargeable at higher rate under sub heading 5506.29.

An assessee, manufacturing different varieties of yarn and paying duty on doubled or multifold yarn, filed classification list for yarn containing polyester staple fibre in predominance and artificial staple fibre under sub heading 5504.22, and yarn containing artificial staple fibre in predominance and polyester staple fibre under sub heading 5506.21. It was, however, noticed in audit that the assessee brought 33100 kilograms of artificial filament yarn and 1881 kilograms of polyester filament yarn during the period between June 1989 and January 1990 and used it in the manufacture of doubled or multifold yarn, but disclosed it as fibre in the statutory central excise records. As the resultant yarn contained filament yarn, it was chargeable to duty under sub headings 5504.29 or 5506.29. But the duty was paid at lower rate under sub headings 5504.22 or 5506.21. The misclassification resulted in short payment of duty.

On the mistake being pointed out in audit (November 1990), the department while holding that the assessee had concealed the facts, issued show cause notice to the assessee (January 1991) demanding differential duty amounting to Rs.8.23 lakhs in respect of 151668 kilograms of such yarn cleared between June 1989 and December 1990.

Ministry of Finance have admitted the objection (September 1992).

3.18 Machinery & machanical appliances

i) Tape deck mechanism (TDM)

`Two-in-one' is a composite machine, a radio and a tape-recorder combined together in a common housing; parts of which are in general classifiable under heading 85.29. But parts,

usable solely or principally with any of the units of the two-in-one merit classification as parts of that particular unit, under heading 85.22 (as parts of tape-recorder) or under heading 85.29 (as parts of radio) as the case may be.

`Tape deck mechanism (TDM)' is an inbuilt mechanical device meant for use solely or principally with a tape/cassette recorder for winding or unwinding tapes and usually consists of two reel supporting brackets at least one of which is connected with a micromotor enabling it to be rotated at some desired speed. Heading 85.22 of Harmonised System of Nomenclature (HSN) specifically includes an apparatus of a particular description and also suitable for identical use and, therefore, supports classification of the parts under the corresponding heading (85.22) of the schedule to the Central Excise Tariff Act, 1985.

The Board, in their circular dated 29 March 1975 admitted independent entity of each of the appliances in a two-in-one which is indicative of preference in matters of classification of their parts under respective generic headings. In a subsequent circular dated 6 April 1979, the Board clearly identified TDM as a mechanical component part of a tape/cassette recorder which also strengthened the view regarding classification of the parts (TDM) under heading 85.22.

An assessee manufacturing TDM was allowed by the department to clear it as parts of two-in-one under heading 85.29 on payment of duty at 15 per cent ad valorem though the parts were clearly recognisable as being used solely or principally with a tape-recorder. In view of HSN's specific inclusion of the parts under heading 85.22 and as per Board's clarifications of 29 March 1975 and 6 April 1979, the product was identifiable as an essential and integral mechanical component/part of a tape/cassette recorder and hence it was appropriately classifiable under heading 85.22 attracting duty at 25 per cent ad valorem. Failure to classify the product under heading 85.22 resulted in short levy of duty of Rs.72.28 lakhs on the clearances made during 1990-91 alone.

The objection was communicated to the department in June 1991 and to Ministry of Finance in August 1992. Reply has not been received (December 1992).

ii) Wires & cables

According to note (2) to section XVI of the schedule to the Central Excise Tariff Act, 1985, parts of machines which are goods included in any of the headings of chapter 84 or 85 (other than headings 84.84 and 85.48) are in all cases to be classified in their respective headings.

Insulated wires and cables are classifiable under heading 85.44 and are assessable to duty at an effective rate of 25 per cent ad valorem under a notification dated 10 February 1986.

(a) A manufacturer of telecommunication equipments classified cables designed for telecommunication equipments under heading 85.17 as ILT spares and paid duty at 20 per cent ad valorem instead of at 25 per cent ad valorem. This resulted in short levy of Rs.11.69 lakhs for the period from May 1989 to March 1990 alone.

On this being pointed out in audit (October 1990), the department admitted the objection and stated (March 1992) that duty amounting to Rs.28.17 lakhs relating to the period from May 1990 to May 1991 was demanded and confirmed (December 1991) and that no action could be taken for recovery of the amount relating to earlier period due to limitation of time.

Ministry of Finance have admitted the objection (November 1992).

(b) An assessee was manufacturing a product called "water cooled cable" and clearing it on payment of duty at 15 per cent ad valorem under heading 85.38 as parts of electrical apparatus to be used in arc melting furnace. The product is a specially designed component for supply of high voltage current and is made of an inner core of perforated rubber tube which is coiled with 8 stranded bare copper wire and the whole arrangement is inserted in a rubber hose pipe

which serves as insulation and also prevents the bare copper wire from getting heated by circulation of cold water. The manufacturing process as well as trade parlance test clearly indicate that the product is classifiable under heading 85.44 attracting duty at 25 per cent ad valorem under notification dated 10 February 1986 as amended. No action was taken by the department for proper classification of the product and the classification list submitted by the assessee on 30 may 1986 classifying the product under heading 85.38 from 1 March 1986 was allowed to continue. Absence of any action on the part of the department for more than five years leads to the conclusion that the department had no objection to the classification under heading 85.38. This resulted in short levy of duty for Rs.7.79 lakhs on the clearances made from January 1989 to November 1991.

This was pointed out to the department in December 1991 followed by statement of facts in March 1992. No reply was received from the department (July 1992).

On subsequent verification it was noticed that the department had issued a show cause notice (July 1992) demanding differential duty for the period from December 1991 to May 1992 and another demand covering five years period was under issue.

Ministry of Finance have stated (November 1992) that the matter is under examination.

iii) Parts of coal cutting machines

Coal cutting machines are classifiable under heading 84.30 and chargeable to duty at the rate of 15 per cent ad valorem, while the parts of coal cutting machines are classifiable under heading 84.31 of the said schedule attracting duty at 20 per cent ad valorem.

An assessee, besides manufacturing other machinery items, and doing repairing of coal cutting machines, was also manufacturing parts of coal cutting machines. In repair of such machines, the parts were also replaced and new parts were fitted and duty was paid at the rate of

15 per cent ad valorem on such parts as against 20 per cent ad valorem under sub heading 84.31. The misclassification of the product resulted in short levy of duty amounting to Rs.6.46 lakhs during the period from July 1988 to March 1990.

On the irregularity being pointed out in audit (November 1990), the department accepted the objection and stated (February 1992) that the differential duty had since been demanded from the party.

Ministry of Finance, while admitting the objection, intimated (August 1992) that the demand for differential duty of Rs.7.67 lakhs was under adjudication.

iv) Air washers

As per a notification issued on 1 March 1986, parts and accessories of refrigerating/air conditioning appliances and machinery, all sorts falling under heading 84.15 or 84.19 are chargeable to duty at 40 per cent ad valorem.

An assessee manufacturing air washer and parts thereof was allowed to clear the products under heading 84.19 on payment of duty at 15 per cent ad valorem under a notification issued on 1 March 1986 on the ground that these goods do not perform the function of air conditioning/refrigeration although the same products, as per a circular letter issued by the Ministry on 25 September 1986, are classifiable as parts/accessories of air conditioning/refrigerating machinery. The same assessee manufacturing air conditioner also manufactured impeller/propeller of fan for air conditioner and cleared them as spares on payment of duty at 15 per cent ad valorem as parts of fan under sub heading 8414.99. The fan inside an air conditioner is an integral part of that machine. It had neither seperate existence as a fan nor could it function independently as a fan. Consequently there is no question of it being brought to the market for being bought and sold as a fan. This view is also supported by the CEGAT decision dated 5 January 1989 {1989 (21) ECR 12 (CEGAT)}. These products are, therefore,

classifiable as parts of air conditioner under heading 84.15. Incorrect classification thus, resulted in short levy of duty for Rs.6.17 lakhs during the period from April 1987 to June 1991 (since updated).

On the incorrect classification of air washer and impeller/propeller being pointed out in audit (October 1989), the department, while not admitting the audit objection, stated (December 1989 and February 1990) that (a) air washer is a device for clearing atmospheric air which is used in industrial ventilation system and not for air conditioning/refrigerating system; (b) as per note 2(a) of section XVI parts of fan would be classifiable under sub heading 8414.99 as fan is specifically mentioned in sub heading 8414.20 even if the propeller or impeller is suitable for use solely or principally in air conditioner.

Contentions of the department are not acceptable as :-

i) air washer has been shown as parts, accessories of goods falling under sub heading 8415.00, 8418.00 or 8419.00 by the Ministry in the circular dated 25 September 1986 after taking expert views with stipulation that duty on it is payable at 40 per cent ad valorem. Even the department in respect of another product viz., air handling unit similar to air washer have approved the classification as parts/accessories of air conditioning/ refrigerating appliances with duty at 40 per cent ad valorem; and

ii) the fan inside the air conditioner is not commercially known as fan. It is an integral part of the air conditioner. Impeller/ propeller of fan meant exclusively for air conditioner and suitable for use solely with the air conditioner as admitted by the department. Section note 2(a) is not applicable and the classification would be governed by section note 2(b). A similar issue of classification of stator and rotor (parts of electric motor) for compressor was decided by the Board in consultation with DGTD under a circular dated 13 December 1989

as falling under sub heading 8414.21 (parts of gas compressor used in air conditioning machinery) instead of under heading 85.03 (parts of electric motor).

The matter was reported to Ministry of Finance in July 1992; reply has not been received (December 1992).

3.19 Articles of Fibre glass

Heading 70.14 of the schedule to the Central Excise Tariff Act, 1985 covers glass fibres and articles thereof, whether or not impregnated, coated, covered or laminated with plastics or varnish. By virtue of the additional clause `whether or not etc' in the Central Excise Tariff, all articles of glass fibre, including those impregnated etc. with plastics would fall within the scope of heading 70.14 only.

An assessee engaged in manufacture of articles of fibre glass, such as reservoirs, tanks, pressure vessels etc. made out of fibre glass/fibre glass mats falling under heading 70.14 classified these products under chapters 84 and 39 and claimed small scale exemption under a notification issued on 1 March 1986. Heading 70.14 covers all articles of fibre glass, whether or not impregnated, coated, covered or laminated with plastics or varnish. As this heading is more specific than the headings under chapters 39 and 84, the products were correctly classifiable under heading 70.14. The incorrect classification resulted in short levy of duty amounting to Rs.62.58 lakhs for the period from April 1989 to March 1991.

On the irregularity being pointed out in audit (April 1991), the department accepted the objection and stated (January 1992) that classification effective from 1 April 1990 was reviewed by the Collector of Central Excise and for current classification effective from 1 April 1991 show cause notice has been issued for correctly classifying the product under heading 70.14 attracting duty at 35 per cent ad valorem.

Action taken for the period 1989-90 and further developments of the show cause notice issued have not been intimated (March 1992).

Ministry of Finance, did not accept the objection and stated (August 1992) that the goods were not classifiable under heading 70.14 as fibre glass did not impart the essential character in terms of rule 3(b) of the rules of interpretation.

Ministry's reply is not acceptable as

i) rule 3(b) is applicable in case where the goods can not be classified by reference to rule 3(a), according to which the heading which provides the most specific description shall be preferred. In the instant case, the description under heading 70.14 is most specific to the products under reference; and

ii) the Board, in their telex dated 26 May 1986 had clarified that synthetic resin bonded glass fibre laminated sheets, though has a hard and rigid character is classifiable under heading 70.14.

3.20 Products of Iron & Steel

i) Parts of structures

Heading 73.08 of the schedule to the Central Excise Tariff Act, 1985, explicitly covers excisable goods of description: structures and parts of structures of iron or steel, plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures of iron or steel. As per harmonised commodity description and coding system explanatory notes the heading 73.08, inter alia, covers sections prepared by bending the metal, for use in structures and heading 72.16 does not cover such steel structures. Instructions issued by the Central Board of Excise and Customs on 21 November 1990 also reiterate that cold rolled formed shapes and sections prepared for use in structures should be appropriately classifiable under sub heading 7308.90 and chargeable to duty at 15 per cent ad valorem.

An assessee was manufacturing by cold rolled process, shapes and sections of steel for use as parts in various structures e.g. shutters, roofing frame work, door bins etc., from hot/cold rolled steel strips and skelp as inputs. The articles so manufactured by the assessee, although classifiable under sub heading 7308.90 were erroneously classified under sub heading 7216.20. The misclassification resulted in short levy of duty amounting to Rs.36.90 lakhs on their clearances during the period from April 1990 to May 1991.

The irregularity was pointed out in audit in July 1991 followed by statement of facts issued in December 1991. Subsequent verification revealed furhter short levy of duty of Rs.39.65 lakhs for the period from June 1991 to July 1992.

Ministry of Finance did not accept the objection and stated (September 1992) that there was no evidence to support the assumption that the angles, shapes and sections were prepared for use in structures so as to be covered by sub heading 7308.90.

The fact, however, remains that sections manufactured by the assessee have been cleared mainly to the fabrication or construction engineers who are manufacturing rolling shutters, other structural or parts from such sections.

Incidently it may be pointed out that in a similar case in para 3.15(i)(c) of Audit Report for the year ending 31 March 1991 (No.4 of 1992), Ministry of Finance had admitted the objection.

ii) Sheets & plates

As per note 6 to section XV of the Central Excise Tariff Act, 1985, (as amended) the waste and scrap of iron and steel (heading 72.04) was redefined to mean as referring to metal waste and scrap from the manufacture or mechanical working of metals and metal goods definitely not usable as such because of breakage, cutting up, wear or other reasons. The CEGAT, New Delhi in the case of M/s. Tata Iron and Steel Company Limited Vs. Collector of Central Excise, Patna {1987 (12) ECR-

681} held that a cut piece from rail or sheared portion of a plate, axle and channel would still remain a rail, plate axle and channel though of inferior standard. Further, as per clarification issued by Ministry of Finance in their circular dated 21 September 1989, heading 72.04 would cover only such waste and scrap as would generally be used for melting and consequently would not cover re-rollable scraps. Such waste and scrap which is not for remelting is, thus, to be classified in the other appropriate headings of the tariff.

A public sector steel plant was allowed to clear side trimmings obtained in course of manufacture of various plates of iron and steel (chapter 72) and cleared them as waste and scrap. As these materials were usable as sheets or plates in other industries, these ought to have been cleared on payment of duty as sheets or plates (sub heading 7208.11/7211.21). The incorrect classification resulted in short levy of duty of Rs.7.11 lakhs on clearances during the period from May 1988 to June 1989. Short levy for the period July 1989 onwards could not be calculated for want of details of clearances.

On the irregularity being pointed out in audit (November 1989), the department stated (November 1991), that the differential duty of Rs.11.67 lakhs relating to the period from 21 September 1989 to June 1990 had since been recovered from the assessee. The department added (June 1992) that show cause notice covering the period pointed out in audit has been issued in April 1992. Particulars of show cause-cum demand notice issued for the period prior to 21 September 1989 and report on confirmation of demand/recovery have not been received.

Ministry of Finance have admitted the facts (November 1992).

3.21 Other miscellaneous manufactured products

i) Ultra marine blue

Colouring matters in bulk form are classifiable under heading 32.06 and when put up in unit containers for domestic or laboratory use,

they are classifiable under heading 32.12. The Board in their letter dated 7 December 1990 clarified that ultra marine in bulk form is to be classified under sub heading 3206.10 and in small packings, under sub heading 3212.90.

An assessee manufacturing ultra marine blue and clearing them in 1 kg/450 gm packings, classified the same under sub heading 3206.10 instead of under sub heading 3212.90. The incorrect classification has resulted in short levy of duty of Rs.25.89 lakhs during the period from January 1991 to December 1991.

On this being pointed out in audit (February 1992), the department accepted the objection relating to 450 gm packings and reported (May 1992) issue of show cause notice for Rs.15 lakhs for the period from August 1991 to January 1992. Further developments have not been received.

Ministry of Finance have stated (December 1992) that the assessment has not been finalised and classification list has not been approved.

Ministry's reply is, however, silent on the issue of misclassification and reasons for abnormal delay in finalisation in spite of the Board's clarification issued on 7 December 1990.

ii) Fittings of base metal - Zinc

Clasps, frames, buckles etc., of base metals for use in made up articles such as clothing, footwear, hand bags, travel goods, etc., besides rivets, beats and spangles, all made of base metals are covered under heading 83.08 (83.07 prior to 1 March 1988). Heading 83.02 covers inter alia base metal mountings, fittings etc., suitable for use in trunks, chests, caskets or the like. Accordingly diecast lugs made of zinc for use as fittings for attaching handles in suitcases, brief cases and attachees are classifiable under heading 83.02.

Three assessees in a collectorate, engaged inter alia, in manufacture of `die-cast lugs' of zinc for use as fittings in suit cases, brief cases and attachees cleared the same on payment of

duty at 15 per cent ad valorem under heading 83.08 (83.07 prior to 1 March 1988) on the basis of classification lists approved by the department from time to time. As the die cast lugs made of zinc, a base metal, were for use as fittings in suit cases, brief cases and attachees, they were correctly classifiable under heading 83.02 attracting duty at 20 per cent ad valorem. The incorrect classification of die cast lugs resulted in total short levy of Rs.5.41 lakhs on clearances made upto November 1989 by two assessees and December 1989 by the third assessee.

On the matter being pointed out in audit (January 1990), the department initially did not accept the audit objection but subsequently the audit point was discussed in the tariff conference of Collectors of Central Excise, North Zone held at Jaipur on 8 and 9 February 1991. The conference agreed with the contention of Audit and recommended classification of the product under heading 83.02. The recommendation of the conference was accepted by the Central Board of Excise and Customs who issued a circular on 27 February 1991 to that effect. The department thereafter communicated (August 1991) acceptance of the audit objection and informed that the demands were being raised.

Details of demands raised, confirmed and recovered have not been received (March 1992).

Ministry of Finance have admitted the objection (August 1992).

iii) Ceramic non-construction goods

Refractory ceramic goods such as bricks, blocks, tiles and similar refractory ceramic construction goods are classifiable under heading 69.01 of the schedule to the Central Excise Tariff Act, 1985, with a rate of duty at 15 per cent ad valorem whereas ceramic articles which are not considered as construction goods, are classifiable under heading 69.11 ibid with a higher rate of duty at 30 per cent ad valorem (as other ceramic articles).

An assessee manufacturing ceramic articles line checkers, hot plate insulators and burners principally for use by silicate factories as non-construction goods classified them under heading 69.01 and cleared them on payment of duty at the rate of 15 per cent ad valorem although such articles being in the nature of non-construction goods ought to have been classified under heading 69.11 attracting duty at 30 per cent ad valorem. This resulted in short levy of duty of Rs.2.04 lakhs during the period from February 1990 to July 1990 alone.

On the mistake being pointed out in audit (September 1990), the department, while admitting the objection stated (March 1992) that a show cause-cum demand notice for Rs.23.37 lakhs covering the period of five years from May 1986 to March 1991 had been issued in May 1991. Further development has not been received (April 1992).

Ministry of Finance have accepted the under assessment (December 1992).

iv) Other vehicles - travel trailers

Trailers and semi-trailers; other vehicles not mechanically propelled; parts thereof are classifiable under heading 87.16 attracting duty at 20 per cent ad valorem. Prefabricated buildings, on the other hand are classifiable under heading 94.06 attracting duty at 15 per cent ad valorem. Chapter note 4 under chapter 94 states "for the purposes of heading 94.06, the expression `prefabricated building' means buildings which are finished in the factory or put up as elements, cleared together, to be assembled at site, such as housing or work site accommodation, office, schools, shops, garages or similar buildings".

An assessee engaged in manufacture, inter alia, of mobile bunk houses, cleared 13 mobile bunk houses to ONGC by classifying the goods as prefabricated houses under heading 94.06 on payment of duty at 15 per cent ad valorem only during the period from April 1988 to May 1989. The bunk houses manufactured and cleared are correctly classifiable under heading 87.16 as the

same are trailer houses fitted on wheels. The assessee named them as "Deccan Travel Trailers" in his brochure. The misclassification resulted in short levy of duty of Rs.1.26 lakhs during the period from April 1988 to May 1989 alone.

On this being pointed out in audit (April 1990), the department stated (March 1992) that this was a case of clandestine manufacture and clearance without seeking approval of classification and by suppressing proper description of goods in the statutory documents and that action would be taken to initiate proceedings for demanding duty.

The matter was reported to Ministry of Finance in August 1992; reply has not been received (December 1992).

NON LEVY/SHORT LEVY OF DUTY DUE TO INCORRECT GRANT OF EXEMPTION

As per section 5A(1) of the Central Excises and Salt Act, 1944, Government is empowered to exempt excisable goods from the whole or any part of the duty leviable thereon conditionally or unconditionally. Some of the important cases of short levy of duties due to incorrect grant of exemption, noticed in audit, are given in the succeeding paragraphs:-

3.22 Mineral products

i) Off gas

Mixture of crude gases containing carbon monoxide, hydrogen and other combustible materials obtained in the manufacture of carbon black and used as fuel within the factory for generating heat is a by-product known as `off gas' and attracted duty at the rate of 12 per cent ad valorem under heading 27.05 of the schedule to the Central Excise Tariff Act, 1985.

An assessee manufacturing carbon black (chapter 28) by using petroleum oil in `oil furnace process' obtained 40 per cent as final product (carbon black) and the rest as `off gas' containing inter alia, carbon monoxide and

hydrogen. This `off gas' is consumed captively as fuel for generating heat in order to manufacture the final product. As no exemption has been granted to the said product the assessee was liable to discharge duty on the same at 12 per cent ad valorem. But, neither any duty had been levied nor paid by the assessee for internal consumption of the product `off gas'. This resulted in non levy of duty to the tune of Rs.3.48 crores during the period from 1 March 1986 to 31 July 1987.

On the irregularity being pointed out in audit (August 1987), the department stated (May 1988) that they were already seized of the matter as per the memo of their internal audit department dated 18 September 1987. Subsequently (December 1988), the department contended that the product being vented out in atmosphere would not attract duty in terms of the Board's letter dated 6 September 1988 and accordingly the objections raised at their end were being dropped.

The contention of the department is not acceptable on the following grounds :-

(a) the objection was raised by Audit in August 1987 prior to the issue of internal audit memo (18 September 1987); and

(b) the Board's letter dated 6 September 1988 is not relevant in the instant case as the product `off gas' is not vented out in atmosphere but is used within the factory as fuel for generation of heat to obtain the final product. Subsequently, the Collector in his demi-official letter (February 1992) stated that a show cause notice on the subject was pending finalisation.

The duty involved for the period 1 August 1987 to 28 February 1989 also needs to be worked out.

Ministry of Finance have stated (December 1992) that two show cause-cum demand notices for Rs.10.31 crores relating to the period 1 March 1986 to 29 February 1989 have been issued after the classification list filed by the assessee was

approved on 29 January 1988. The assessee has, however, gone in appeal before CEGAT.

ii) Lubricating greases

As per a notification issued on 11 May 1984 as amended, blended or compounded lubricating oils and greases that is to say, lubricating oils and greases obtained by straight blending of mineral oils or by blending or compounding of mineral oils with any other ingredients are exempt from whole of the duty of excise leviable thereon under section 3 of the Central Excises and Salt Act, 1944, provided that such blended or compounded lubricating oils and greases are produced out of such mineral oils on which appropriate duty of excise leviable under section 3 of the Central Excises and Salt Act, 1944, or the additional duty of customs leviable under section 3 of the Customs Tariff Act, 1975, has been paid. Further, as per the explanation thereunder, all stocks of mineral oils obtained by a manufacturer for producing lubricating oil and greases except such stocks as are clearly recognisable as being non duty paid shall be deemed to have discharged appropriate duty of excise leviable under section 3 of the Central Excises and Salt Act, 1944, or the additional duty of customs leviable under section 3 of the Customs Tariff Act, 1975.

An assessee engaged in manufacture of blended or compounded lubricating greases falling under sub heading 2710.80 bought lubricating oil (mineral oil) and manufactured the final product lubricating greases by mixing them with other items like fatty acid, alkaline and other additives etc., and cleared the same without payment of duty availing the exemption under the aforesaid notification. It was seen during audit that the input (mineral oil) was not duty paid item and the manufacturer of the said input had cleared them without payment of duty availing exemption under the same notification issued on 11 May 1984. Since the mineral oils purchased by the assessee were clearly recognisable as non duty paid, the availment of exemption in respect of the final product manufactured by the assessee was not in order. This resulted in non levy of duty to

the extent of Rs.1.58 lakhs during the period from October 1989 to December 1989 alone.

The irregularity was pointed out to the department in January 1991 and to Ministry of Finance in July 1991.

Ministry of Finance did not accept the objection and have stated (November 1991) that the manufacturer of mineral oil was actually availing small scale exemption under a notification issued in March 1986 and that it was reported through oversight as exempted in terms of the notification issued on 11 May 1984.

Ministry's reply is not acceptable for the following reasons:-

i) the assessee had clearly stated in December 1988 that the mineral oil (lubricating oil-brand name Filol-C-30) which was exempted in terms of the notification issued in May 1984 was used in their blended or compounded lubricating greases which were exempted under the notification issued on 11 May 1984 as amended. The supplier's letter of December 1988 and the approved classification list of the original manufacturer of the said oil (Filol-C-30) also confirmed the above point; and

ii) on verification of the approved classification list of the manufacturers of the lubricating oil it was seen that these were filed claiming concessional rate of duty under the notification issued in March 1986 in part II of the said list. However, the products blended lubricating oils under brand names Filol-C-30, Filol-C-40 etc. were specifically shown as exempted goods under the notification issued on 11 May 1984 in part III of the list which was also approved by the department.

Subsequent verification revealed that the department has issued show cause-cum demand notices for Rs.34.43 lakhs covering the period from February 1987 to February 1992.

On the irregularity being again reported, Ministry of Finance did not admit the objection and have stated (December 1992) that mineral oil (Filol Spray Oil) can not be considered as non duty paid since it was clerared at Nil rate of duty under notification dated 1 March 1986 (as even under notification dated 11 May 1984).

Ministry's reply is not specific to the point raised in audit, that the input goods were specifically mentioned as exempted under notification issued on 11 May 1984, the payment of duty thereon did not arise. Ministry's reply is also silent on show cause-cum demand notices issued by the department.

3.23 Electrical machinery and mechanical appliances

i) Winding wires of copper

As per a notification issued on 10 February 1986 as amended from time to time, winding wires (heading 85.44) made of copper are chargeable to concessional rate of duty at 15 per cent ad valorem. If, however, the winding wires were manufactured from certain inputs of copper on which no credit of duty paid on such inputs was taken under rule 57A of the Central Excise Rules, 1944, then the goods would be exempted in full. There is no provision in the notification that for the same product full exemption can be taken for part of the production and other part can be cleared on payment of concessional rate of duty.

An assessee manufactured winding wires out of inputs on which Modvat credit was taken. He was allowed to clear the product in two ways viz., i) on payment of concessional rate of duty at the rate of 15 per cent ad valorem; and ii) without payment of duty after surrendering credit on the inputs. Simultaneous availment of full exemption on the same product during the same period has, therefore, resulted in non levy of duty for Rs.1.08 crores during the period from April 1990 to March 1991 after allowing set off of credit on the inputs.

On the irregularity being ponted out in audit (June 1991), the department did not accept the audit objection (September 1991) on the plea that the goods could be cleared without payment of duty when the benefit of Modvat credit was not availed.

Stand of the department is not acceptable on the following grounds :-

i) as per the notification dated 10 February 1986 as amended, full exemption was admissible provided the manufacturer had not taken the Modvat credit under rule 57A. In the instant case the assessee had already taken Modvat credit. As such the assessee was not entitled to full exemption;

ii) there is no one to one correlation between the inputs and final prdoucts under the Modvat scheme. Once the assessee had started taking Modvat credit on inputs under rule 57A he had to pay duty on the final product; and

iii) the notification does not contemplate the reversal of credit to avail full exmeption on any or some of the goods.

Ministry of Finance have stated (December 1992) that the matter is under examination.

ii) Electrical switching apparatus

Electrical apparatus for switching electrical circuits or for making connections to or in electrical circuits, such as switches, plugs, sockets and lamp holders are classified under sub heading 8536.90 with duty at 20 per cent ad valorem. As per a notification issued on 1 March 1986 all goods falling under sub heading 8536.90 other than (i) switches, plugs, sockets, all kinds (including lamp holders) and starters for flourescent tubes; and (ii) motor starters are eligible for a concessional rate of duty at 15 per cent ad valorem.

A manufacturer cleared printed circuit board type connectors at the concessional rate. They were used for giving connections for electrical and electronic circuits in industrial

telecommunications, computer and in general electronic appliances. The connectors had two parts, one male portion called plug and the other female portion called socket which provided compatible contacts. As plugs and sockets of all kinds were ineligible for the concessional rate as per the notification, clearance of the connectors of special type of plug and socket at the concessional rate was not in order. The resultant short levy of duty worked out to Rs.67.48 lakhs for the period from April 1989 to December 1990.

On the irregularity being pointed out in audit (January 1991), a show cause notice was issued (April 1991) by the department demanding differential duty amounting to Rs.24.85 lakhs for the period from September 1990 to February 1991. It was, however, withdrawn on adjudication (January 1992) holding that the product in question was not one type of plug and socket. Collector also contended (March 1992) that connectors were different from plugs and sockets.

The department's stand is not acceptable, as the connectors function like plugs and sockets and are rather more sophisticated than the ordinary plugs and sockets, having varying applications. The concessional rate which is denied to plugs, sockets, all kinds, cannot be applied to the connectors.

The matter was reported to the Ministry of Finance in August 1992; reply has not been received (December 1992).

iii) Ancillary for telecommunication purposes

"Electric wires and cables of copper, aluminium or other metals and alloys" classifiable under heading 85.44 of the schedule to the Central Excise Tariff Act, 1985, are chargeable to duty at 20 per cent ad valorem as per a notification dated 10 February 1986 as amended, if used as overhead or underground telecommunication wires and cables; over ground (laid on the ground) telecommunication wires and cables supplied on specific demand for telecommunication purposes, excluding internal housing cables, ancillary for telecommunication purposes.

A public sector undertaking manufacturing wires and cables falling under heading 85.44 also manufactured and cleared `PVC insulated switch board wires and cables on payment of duty at 20 per cent ad valorem on the strength of serial no.3 of the notification dated 10 February 1986. Such wires and cables were nothing but ancillaries for telecommunication purposes which were specifically excluded from serial no.3 of the above notification. Hence the duty on the above products was leviable at 25 per cent ad valorem as per serial no.4 of the above notification. Incorrect grant of exemption resulted in short levy of duty of Rs.33.49 lakhs (up dated) on the clearances made during the period from 10 February 1986 to 31 March 1990.

On the irregularity being pointed out in audit (August 1989), Ministry of Finance did not admit the audit objection stating that the assessee had been manufacturing wires and cables which were used for the telecommunication purpose. However, show cause-cum demand notice for Rs.33.49 lakhs covering the period from 10 February 1986 to 31 March 1990 has been issued by the concerned Collector of Central Excise on 30 January 1991 considering the fact that the subject goods were nothing but ancillaries for telecommunication purpose.

The reply of Ministry is not to the point raised in audit as to whether the switchboard wires and cables fall in any of the three categories mentioned in the notification ibid. Switch board wires and cables do not come under the categories of overhead, underground and overground telecommunication cables but are ancillaries excluded for the purpose of concessional rate of duty. Hence duty was leviable on the same at 25 per cent ad valorem instead of at 20 per cent ad valorem.

Ministry of Finance have stated (December 1992) that the matter is under examination.

iv) Stamping and lamination

As per a notification issued on 10 February 1986 as amended `parts of power driven pumps

primarily designed for handling water' were exempt if (i) the said parts were used in manufacture of the said power driven pumps; and (ii) if such use was elsewhere than in the factory of production of the said parts, the procedure set out in chapter X of the Central Excise Rules, 1944, was followed. The Government clarified on 28 August 1990 that stamping and lamination were not parts of power driven pumps and did not qualify for exemption under the said notification.

A manufacturer of power driven pumps used stamping and lamination captively without payment of duty availing exemption under the above notification, which was not admissible. This resulted in short payment of duty of Rs.4.30 lakhs during the period from April 1990 to March 1991 alone. The assessee, however, started paying duty from April 1991.

On the irregularity being pointed out in audit (June 1991), the department intimated (March 1992) that two show cause-cum demand notices, one for Rs.1,76,184 for the period from January 1991 to March 1991 and another for Rs.11,36,595 covering the extended time limitation of five years had since been issued. The demand for Rs.1,76,184 was confirmed (December 1991) and second demand for Rs.11,36,595 was pending adjudication (April 1992).

Ministry of Finance have stated (November 1992) that the show cause notice for Rs.11,36,595 has also been confirmed (June 1992) and added that reasons for delay in issue of show cause notices are under examination.

3.24 Plastics and articles thereof

i) P.V.C. foils

As per item No.30(ii) of a notification issued on 1 March 1988, as amended, all other goods of polymers of vinyl chloride (PVC) classifiable under heading 39.20 are exempted from payment of duty of central excise in excess of the amount calculated at 35 per cent ad valorem and the films (other than of regenerated cellulose) (item No.35) are exempt from payment of duty in

excess of the amount calculated at 25 per cent ad valorem, if produced out of goods falling under headings 39.01 to 39.15 on which the duty of excise leviable thereon has already been paid.

An assessee engaged in manufacture of flexible and rigid PVC films and foils falling under heading 39.20 cleared these products at 25 per cent ad valorem in terms of item No.35 of the above notification. As the rate of 25 per cent ad valorem under item No.35 of the notification was applicable only to films and not to foils, the clearance of rigid PVC foils, rigid PVC thermoforming foils and rigid PVC thermoforming foil (PVDC coated) at 25 per cent ad valorem instead of at 35 per cent ad valorem under item No.30 (ii) of the notification resulted in incorrect availment of exemption and consequent short levy of duty amounting to Rs.96.27 lakhs for the period from April 1989 to March 1990.

On the irregularity being pointed out in audit (July 1990), the department did not accept the objection and stated (August 1990/January 1992) that both the films and foils cleared by the assessee were of thickness less than 0.25 mm and were one and same except that in the market/trade the films were known as "sunblis thermofoming foil". It was also stated that as per chapter note 15 under chapter 39 `films' meant a sheeting of thickness not exceeding 0.25 mm.

The department's reply is not acceptable in view of the Supreme Court' decision in the case of Collector of Customs V/s. M/s. K. Mohan and Company {1989 (43) ELT 811 (SC)} wherein it was held that the distinction between `films', `foils' and `sheets' should be based on trade understanding also and not according to scientific and technical meaning only. It was also held by the Supreme Court that plastic films are distinct and separate from plastic sheets or foils. As the product in this case is known as foil in the market it is to be treated as foil only for the purpose of availment of exemption also.

Ministry of Finance have stated (December 1992) that the matter is under examination.

ii) Polyethylene compound

As per a notification issued on 1 March 1988 as amended, polyethylene and copolymers of ethylene having specific gravity of less than 0.94 and falling under sub headings 3901.10 and 3901.90 (serial No.01 of the Table appended to the notification) are chargeable to concessional rate of duty at 30 per cent ad valorem. Plastic materials made from polyethylene granules are, however, not covered by serial No.01 of the notification and would attract duty at 40 per cent ad valorem under serial No.42 of the same notification.

An assessee manufacturing polyethylene black compound from polyethylene resin, ethylene vinyl acetate carbon black and prepared waxes was allowed to clear it on payment of duty at the concessional rate of 30 per cent ad valorem although the product being plastic material, duty was payable thereon at 40 per cent ad valorem. Incorrect grant of exemption resulted in short levy of duty for Rs.30.21 lakhs on the clearances made from July 1991 to December 1991.

The irregularity was pointed out to the department in January 1992 and to Ministry of Finance in August 1992.

Ministry of Finance have stated (December 1992) that the matter is under examination.

iii) Polyester polyols

As per a notification issued on 1 March 1986, as amended, polyester resins falling under sub heading 3907.91 are exempt from the central excise duty as is in excess of 20 per cent ad valorem.

An assessee engaged, inter alia, in manufacture of polyester polyols classified them under sub heading 3907.99 and cleared them on payment of duty at 20 per cent ad valorem in terms of the said notification. As per the Deputy Chief Chemist's report (August 1984/August 1985), the product was an organic polymer in the form of a lump and was an artificial poly condensation product. Later, the Deputy Chief Chemist opined

(October 1987) that the erstwhile tariff item 15A had provision to include other materials besides resins and plastics and he felt that this product as an artificial poly condensation product can come within the purview of explanation II to the erstwhile tariff item 15A. Thus it was clear that the product though classifiable under sub heading 3907.99 was not resin. Therefore, the concessional rate of duty of 20 per cent ad valorem available to polyester resin was not applicable to the polyester polyols manufactured by the assessee. The incorrect grant of concession resulted in short levy of duty of Rs.1.35 lakhs during the period from April 1988 to July 1989 alone.

On this being pointed out in audit (August 1989), the department, while not accepting the objection, stated (July 1990) that as per the subsequent report of the Deputy Chief Chemist (June 1990) these polyols are saturated polyester polymers of low molecular weight and that they are also referred to as `resins' although they do not have any film forming property.

The department's reply is not acceptable since these polyols do not have any film forming property, which is an important physical property of the resins. They cannot, therefore, be called as `resin' and as such they are not eligible for concessional rate under the notification issued on 1 March 1986.

On subsequent verification it was, however, seen that the department had since issued show cause notices demanding duty of Rs.19.53 lakhs covering the period from March 1982 to February 1988 which were pending adjudication. The show cause notice issued for Rs.0.94 lakh for the period from March 1990 to March 1992 has been confirmed by the department in June 1992 and the classification list in respect of this product had also been finally approved under sub heading 3907.99 at 60 per cent ad valorem denying the concessional rate of duty under the notification issued in March 1986 as amended.

The matter was reported to the Ministry of Finance in September 1992; reply has not been received (December 1992).

3.25 Products of chemical & allied industries

i) Scouring powder

As per a notification issued on 15 July 1977, as amended, scouring powder falling under heading 34.05 is exempted from payment of duty if no power is used in its manufacture. The Supreme Court have held in the case of Standard Fire Works Industries that, as the cutting of wire, and treatment of paper were carried on with the aid of power, the assessee was not entitled to exemption in respect of fire works manufactured by him. The Central Board of Excise and Customs had also clarified in June 1987 that exemption would be available only in cases where power had been used in the earlier stage of manufacture of raw materials and not in respect of the processes performed during the stage of conversion of raw material into finished manufactured product.

An assessee was manufacturing scouring powder (Sabena) falling under sub heading 3405.40 by reacting linear alkyl benzene with sulphuric acid, in M.S. vessel with the aid of electric power. The assessee had declared linear alkyl benzene and sulphuric acid as principal raw materials for the manufacture of scouring powder (finished product). During the process of manufacture, acid slurry was obtained and mixed with soap, water etc., by mechanical process (hand operated). The assessee paid duty on the acid slurry arising during the course of manufacture, and availed exemption on the scouring powder under the aforesaid notification of 15 July 1977. As power has been used in the conversion of linear alkyl benzene and sulphuric acid into the finished product (scouring powder) duty should have been levied on the scouring powder and not on the slurry which arose during manufacture of the final product. This resulted in net short levy of duty of Rs.43.15 lakhs on clearances of scouring powder during 1989-90 alone (after adjusting the duty of Rs.3,84,794 paid on acid slurry).

On this being pointed out in audit (August 1991), the department contended (December 1991) that acid slurry is the raw material for manufacture of scouring powder, and as no power was used thereafter, the exemption availed was in order.

The contention of the department is not acceptable as the raw materials declared by the assessee himself for manufacture of scouring powder were linear alkyl benzene and sulphuric acid, and not the acid slurry. Since power was used in further processing of raw materials for manufacture of finished product (scouring powder) the exemption was not applicable.

Ministry of Finance have stated (November 1992) that the matter is under examination.

ii) Bulk drugs

As per a notification issued on 1 March 1988, other bulk drugs, falling under chapter 28,29 or 30 are exempted from so much of the duty of excise as is in excess of five per cent ad valorem and the expression" bulk drugs" shall have the same meaning assigned to it in the Drugs (Prices Control) order 1987. Further, the Board vide their circular letter issued on 6 March 1990 had also clarified that for the purpose of availing exemption under the said notification, it would be necessary to insist upon the end use certificate in order to satisfy that the bulk drugs have actually been put to use as specified in Drugs (Price Control) order, 1987.

Seven assessees in three collectorates engaged, interalia, in manufacture of bulk drugs, cleared them on payment of duty at a concessional rate in terms of the notification issued on 1 March,1988 to traders without obtaining the end use certificates. The department also did not insist upon the end use certificates. Test check revealed that in one case the bulk drug was actually utilised in manufacture of cosmetics (Fair & Lovely) and in another case it was finally used in manufacture of `tooth powder'. Duty should, therefore, have been levied at the tariff rate of 15 percent ad valorem instead of at the

concessional rate. This resulted in short levy of duty to the extent of Rs.37.23 lakhs (approx). during the different periods between July 1989 and September 1991.

On the irregularities being pointed out in audit (between October 1990 and February 1992), the department has stated (November 1990 and September 1992) that in two cases show cause-cum demand notices for Rs.219.86 lakhs have been issued; and Rs.7.60 lakhs recovered through RG 23A part II in third case. In fourth case the department admitted the objection as the bulk drugs were used for cosmatics. The department's reply in remaining three cases has not been received.

Ministry of Finance did not admit the objection and have stated (December 1992) that the notification dated 1 March 1988 does not stipulate that the exemption would be available subject to end use verification and the Board has also modified its earlier instructions for end use verification in respect of bulk drugs specified in the second schedule of the Drugs (Prices Control) Order.

Ministry's reply is not acceptable because as per explanation to notification dated 1 March 1988 read with the definition of `bulk drugs' and formulation as provided in Drugs (Prices Control) Order, 1987, it becomes necessary for any manufacturer of other bulk drugs to prove that such bulk drugs are actually meant to be used as such or as ingredients in any drug formulations.

iii) Thinner

Under a notification issued on 3 April 1986 as amended `thinners' falling under sub heading 3814.00 and made without the aid of power are exempt from whole of the duty leviable thereon. If however, the process of pumping raw materials from one section of the factory to another for the purpose of manufacture of thinner was carried on with the aid of power, the exemption notification would not be applicable. The Supreme Court in their judgment passed on 17 July 1991 in the case of M/s. Rajasthan State Chemical Works {1991 (55)

ELT 444 (SC)} held that if any operation is integrally connected with further operations which result in the emergence of manufactured goods and such operation is carried on with the aid of power, the manufacture must be deemed to be carried on with the aid of power.

Two leading paint manufacturers engaged in manufacture of thinner from toluene, xylene etc., were allowed to clear end product and avail exemption under the notification dated 3 April 1986 though the raw materials were electrically pumped from one section of the factory to another for the purpose of manufacture of thinner. The incorrect grant of exemption resulted in non levy of duty of Rs.15.05 lakhs for the period from April 1991 to September 1991.

On the irregularities being pointed out in audit (November 1991), the department did not accept the audit objection in one case and stated (March 1992) that i) manufacturing process of thinner was yet to be started when power was used for pumping the raw materials only; and ii) Supreme Court judgment is not applicable in this case as the lifting of raw materials from the underground storage tank for use in manufacture of thinner is not so integrally connected with further operations and also it is not a continuous process.

Contention of the department is not acceptable as :

(a) pumping/lifting of raw materials to other place has no purpose other than manufacture of thinner;

(b) Supreme Court judgment is clearly applicable as it was held that any process including pumping/lifting of raw materials with the aid of power for the purpose of manufacture of final product would be treated as manufacture with the aid of power.

In the other case the department intimated (April 1992) that a show cause-cum demand notice for the period from April 1991 to January 1992 had been issued (February 1992).

a) the concessional rate is applicable only to goods manufactured with a valid drug licence which had lapsed;

b) mere submission of application for renewal of drug licence would not mean that the goods have been manufactured under and in accordance with a licence issued under the Drugs and Cosmetics Act, 1940; and

c) there is a potential threat of loss of revenue as a subsequent visit (May 1992) revealed that the factory was under closure.

Ministry of Finance did not accept the objection and have stated (November 1992) that the Directorate of Drugs Control have stated that the licence in question (expired on 31 December 1989) is deemed to be valid until final decision on reneweal application is taken.

The fact, however, remains that the licence was not renewed after 31 December 1989. In the absence of a valid licence the exemption availed during the relevant period was irregular.

3.26 Products of base metals

i) Iron & steel products

As per a notification issued on 20 May 1988 (as amended), the final products falling under chapters 72 and 73 of the Central Excise Tariff Act, 1985, specified in column 3 of the table annexed to the notification were exempt from payment of duty, if they were manufactured from the duty paid inputs specified thereagainst in column 2 of the said table and no credit of duty paid on such inputs had been taken under rule 56A or 57A of the Central Excise Rules, 1944.

As per Ministry of Finance circular issued on 21 September 1989, heading 72.04 would not cover an article which could be converted into another article by heat rolling without its being necessary to rebuild the metal first. The heading 72.04 would, therefore, cover only such waste and scrap as would generally be used for remelting and consequently would not cover rerollable scrap.

Such waste and scrap have to be classified in the other appropriate headings.

Three assessees were engaged in manufacturing, by rerolling process of M.S.rounds, bars, angles and channels (headings 72.14 and 72.16) from mild steel (M.S.) scrap and rail scrap as input purchased from traders in open market. The goods so manufactured were cleared under full exemption of duty under the said notification. Neither the MS scrap nor the rail scrap as rerollable scrap/material has been specified as input in the said notification. Thus goods manufactured from such non specified inputs were not entitled to exemption of duty and were, therefore, chargeable to duty at Rs.500 and Rs.600 per tonne from 1 March 1989 and 20 March 1990 respectively. The incorrect grant of exemption resulted in short levy of duty amounting to Rs.37.32 lakhs on clearances during the period from April 1989 to January 1992.

On the irregularity being pointed out in audit (July and December 1990), the department justified (March 1991) the correctness of grant of exmeption of duty by stating that the MS/rail scrap purchased from outside and used by rerollers would not, in fact, be treated as waste and scrap; such material would fall under residuary items like angles, shapes and sections of chapter 72.

The contention of the department is not correct as the material purchased from outside and used by the manufacturers on rerolling mills is simply rerollable material which has not been specified as input in the said notification.

Ministry of Finance have stated (October 1992) that the matter is under examination (November 1992).

ii) Articles of copper

Wire bar moulds of copper are chargeable to duty under sub heading 7419.91 of the schedule to the Central Excise Tariff Act, 1985, at 15 per cent ad valorem. In terms of a notification dated 1 August 1984, these are exempt from whole of the duty subject to the conditions that these are

intended for use by a primary producer during manufacture of copper and products thereof in the factory of production itself and are melted either during or after such use in the said factory.

An assessee manufactured wire bar moulds and used them within the factory for production of copper but did not melt them after such use in the factory and sold them or transferred to depots on payment of duty at the rate of Rs.3465 per tonne applicable on copper scrap. As the moulds were not melted in the same factory, these were chargeable to duty at 15 per cent ad valorem. The assessee cleared 25.578 tonne of wire bar cut moulds for home consumption during April 1991 alone on which duty amounting to Rs.3.47 lakhs was leviable at the rate of 15 per cent ad valorem on the approximate value of Rs.22,05,343 whereas duty amounting to Rs.93,059 applicable on scrap was paid. This resulted in short levy of duty amounting to Rs.2.54 lakhs in one month alone. Though the assessee cleared 406.022 tonne of wire bar cut moulds during the period from April 1990 to April 1991 but differential duty could not be worked out as the value was not made available.

On this being pointed out in audit (August 1991), the department admitted the irregularity and stated (March 1992) that a demand for Rs.1.22 crores was being issued.

The matter was reported to Ministry of Finance in May 1992; reply has not been received (December 1992).

3.27 Miscellaneous manufactured products

i) Fibre glass resin bonded wool

Heading 70.14 of the schedule to the Central Excise Tariff Act, 1985, covers glass fibres and articles thereof whether or not impregnated, coated, covered or laminated with plastic or varnish. As per a notification issued on 10 February 1986 as amended, glass fibres falling under heading 70.14 other than fabrics impregnated, coated, covered or laminated with plastics or varnish are chargeable to "nil" rate of duty; and all goods other than the goods

impregnated, coated, covered or laminated with plastic or varnish attracted duty at 20 per cent ad valorem. As no such exemption was available for glass fabrics impregnated, coated etc., with plastic or varnish, they would attract duty at the tariff rate of 30 per cent ad valorem upto 29 February 1988 and 35 per cent ad valorem thereafter.

An assessee manufactured fibre glass crown resin bonded wool, classified it under the sub heading 7014.00 and claimed exemption to clear at "nil" rate of duty under the aforesaid notification, on the ground that the product was glass fabrics not impregnated, coated etc., with plastic or varnish. However, the department allowed the assessee to clear the goods on payment of duty at the concessional rate of 20 per cent ad valorem on the ground that the product was other than glass fabrics not impregnated, coated etc., with plastic or varnish. The assessee manufactured the glass wool and the same was impregnated/coated at a high temperature with the aqueous solution of phenol formaldehyde resin. Due to the high temperature the water in the solution got evaporated and only the resultant phenol formaldehyde resin got impregnated on the glass wool. Thus the fibre glass resin bonded wool manufactured by the assessee was the glass fibre impregnated/coated with phenol formaldehyde resin and would not be entitled to any exemption under the notification issued in February 1986, but would be chargeable to duty at 30 per cent ad valorem upto February 1988 and at 35 per cent ad valorem thereafter. Differential duty payable for one month during 1990-91 worked out to Rs.10.88 lakhs (approximately) on an average.

On this being pointed out in audit (January 1991) the department intimated (January 1992) that a show cause notice had since been issued to the assessee for an amount of Rs.50.32 lakhs covering the period from January 1991 to June 1991 in August 1991.

Ministry of Finance have stated (December 1992) that demand for Rs.2.01 crores for the period from January 1991 to February 1992 has since been confirmed.

ii) Molten blast furnace slag

As per a notification issued on 1 March 1988, goods falling under chapter 26 of the schedule to the Central Excise Tariff Act, 1985, were exempted wholly. By an amendment of the said notification with effect from 25 July 1991, this exemption became conditional and all goods falling under the said chapter were exempted provided no credit of duty paid on inputs used in manufacture of said goods had been taken under rule 56A or 57A of the Central Excise Rules, 1944.

A public sector undertaking manufacturing iron and steel and products thereof (chapters 72, 73 and 26 etc.) availed of Modvat credit under rule 57A of the Central Excise Rules, 1944, on the inputs used in manufacture of `molten blast furnace slag' (sub heading 2619.00) and continued to clear the said product without payment of duty even after the amendment of the notification dated 1 March 1988. Since credit on inputs required for the final product had already been availed of by the assessee, exemption was not admissible to molten blast furnace slag cleared with effect from 25 July 1991 onwards. Irregular grant of exemption resulted in non levy of duty for Rs.15.50 lakhs during the period from 1 August 1991 to 29 February 1992.

The omission was pointed out in audit to the department in March 1992 and to Ministry of Finance in August 1992.

Ministry of Finance have stated (December 1992) that in respect of slag obtained in steel melting shops where ferro alloys are charged, the exemption may not be available as credit of duty paid on ferro alloys is availed of, and further necessary action is being taken in the matter.

iii) Embroidered fabrics

As per rule 96ZH of the Central Excise Rules, 1944, the Collector may permit a manufacturer, who manufactures embroidery in piece, in strips or in motifs with the aid of vertical type of automatic shuttle embroidery machine to avail of the special procedure set out in chapter V (E-IX)

of the Central Excise Rules, 1944. Further as per rule 96ZI ibid, having regard to the average production of the embroidery per machine and any other relevant factor, the Central Government may, by notification in the official gazette, fix from time to time, the rate per metre length of such machine, per shift or per day/per week subject to such conditions and limitation as it may think fit to impose and may fix different rates for such machines employed in manufacture of different varieties of the embroidery or of the embroidery done on different varieties of base fabrics or for machines working at different speeds or for machines installed during different periods.

As per a notification issued in August 1982, as amended, the rate of duty per metre length of the machines per shift in respect of cotton fabrics (embroidered) is Rs.13.80 and that of man made fabrics (embroidered) is Rs.15.35.

An assessee engaged in embroidery work on cotton fabrics and man made fabrics was paying duty under compounded levy rates as mentioned in the aforesaid notification. The length of the machine as declared by the assessee for payment of duty under compounded levy rates was 13.84 metres. However, as the imported machines used by the assessee were having double frames and thereby in single operation machine lengths of fabrics embroidered were double, the metre length of the machine with reference to the length of fabrics should have been taken as 27.68 metres (13.84 X 2). As the assessee was paying duty on the four embroidery double framed machines by taking the length of a machine as 13.84 metres, there was short levy amounting to Rs.12.81 lakhs (approximately) during the period from April 1989 to December 1991.

On this being pointed out in audit (February 1992), the department stated that the notification issued in August 1982 does not anywhere mention about the number of frames and the rate of compounded levy was also per metre length of machine with reference to fabrics and further since the machines were originally having one frame and run by only one motor the length of

machine appeared to be correctly declared and the duty was also levied correctly.

The department's reply is not acceptable for the following reasons :

The rate of duty is "rupees per metre length of the machines per shift". This has to be read with reference to the working capacity of the machine with reference to the length of fabrics embroidered. In this case when the machine has a double frame the net result would be, that two machine length of fabrics could be embroidered at the same time and, therefore, for levying duty also the metre length of the machine with reference to the double frame should have been considered.

The matter was reported to Ministry of Finance in September 1992; reply has not been received (December 1992).

iv) Footwear

In terms of a notification dated 1 March 1987, footwear classifiable under sub heading 6401.11 of the schedule to the Central Excise Tariff Act, 1985, are assessable to duty at an effective rate of 15 per cent ad valorem . Under another notification dated 10 February 1986, footwear of a value not exceeding Rs.60 per pair was exempt from payment of duty.

An assessee engaged in the manufacture of footwear falling under heading 64.01 of the schedule to the Central Excise Tariff Act, 1985, transferred 144 varieties of footwear to his godowns by stock transfer for actual sale to customers. The assessee declared maximum wholesale price as more than Rs.60 per pair in a number of cases and worked out the assessable value as less than Rs.60 per pair by excluding/deducting trade discount and excise duty and cleared the said footwears without payment of duty by availing exemption under the notification issued in February 1986. As the duty was not payable, the deduction of excise duty from the wholesale price was not correct and has resulted

in non levy of duty of Rs.11 lakhs during the period from April 1990 to November 1991.

On the irregularity being pointed out in audit (December 1991) the department did not accept the objection and stated (March 1992/July 1992) that since the duty was payable at 15 per cent basic excise duty plus 10 per cent special excise duty, the abatement on account of duty payable was also to be allowed for determining the value for availing exemption.

The department's above contention is not acceptable. In this case since the excise duty was not payable as the value was calculated as not exceeding Rs.60 per pair, its deduction from the value was not in order. Further, the action on the part of the assessee amounted to collection of duty from customers and retaining the same with him without depositing it to government account.

In a similar case featured in para 3.35(i) of Audit Report for the year ended 31 March 1990, Ministry of Finance had admitted the objection.

The matter was reported to Ministry of Finance in September 1992; comments have not been received (December 1992).

v) Glass lamp shades

Lamp and lighting fittings are classifiable under heading 94.05 of the schedule to the Central Excise Tariff Act, 1985, and chargeable to duty at the rate of 35 per cent ad valorem. However, all goods other than those made of glass and falling under aforementioned heading are allowed exemption in excess of 15 per cent ad valorem under a notification issued on 10 February 1986 as amended on 20 March 1990.

A small scale assessee engaged in manufacture of glass lamp shades was allowed to clear his product on payment of duty at a concessional rate of 5 per cent ad valorem under a notification dated 10 February 1986 read with notification dated 1 March 1986 as amended. Since all the fittings in glass lamp shades consisted of glass mirror, glass sheets and light fittings and were

marketed as glass lamp shades, they were eligible for concessional rate of 25 per cent under notification dated 10 February 1986 because the product was to be treated as made of glass. Incorrect grant of exemption resulted in short levy of duty of Rs.8.69 lakhs on the clearances during the period 26 June 1989 to 31 March 1990.

On this being pointed out in audit (November 1990), the department reported (November 1991) issue of show cause-cum demand notice for Rs.4,58,693 for the period from November 1990 to March 1991 in May 1991. Issue of demand for the earlier period was stated to be under examination. Subsequently the department informed (February 1992) that the case had been adjudicated and demand confirmed (February 1992) in respect of items where weight of glass predominated. Particulars of demand confirmed have not been intimated. Simultaneously, it was also stated that the glass contents by weight do not predominate in their lamps and light fittings, hence demand may not sustain.

The contention of the department is not tenable as glass constitute essential character of the product and these were known as glass lamp shades in the market. As such exemption under notification dated 10 February 1986 was not admissible.

Ministry of Finance have stated (November 1992) that the matter is under examination.

vi) Tea

Tea packed in unit containers of content exceeding 25 grams but not exceeding 20 kilograms, whether or not ordinarily intended for sale to consumers in that pack, is classifiable under sub heading 0902.12 and is leviable to duty at Rs.3.25 per kilogram with effect from 1 March 1988. As per a notification dated 11 March 1986, such tea is liable to concessional rate of duty of Rs.1.10 per kilogram provided it is produced out of tea falling under sub heading 0902.19 on which duty has already been paid and no credit of such duty is availed of under rule 57A.

Three assessees manufactured tea falling under sub heading 0902.12 out of tea falling under sub heading 0902.19 on which no duty had been paid. They, however, cleared their final product on payment of duty at Rs.1.60 per kilogram instead of at Rs.3.25 per kilogram. This resulted in short levy of duty of Rs.8.14 lakhs on 493492 kilograms of tea cleared during the period from 1 March 1988 to 8 September 1988.

On the irregularity being pointed out in audit (July 1990 and May 1991), the Assistant Collector concerned stated (January 1991) that the matter had been referred to the concerned Collector.

Ministry of Finance have admitted the objection (November 1992).

vii) Woven sacks

As per a notification dated 3 April 1986 as amended, woven sacks made of polymers of ethylene or propylene falling under heading 63.01 are exempted from the whole of duty of excise leviable thereon provided such sacks are not woven on circular looms. Fabrics meant for sacks are woven on looms and not the sacks. As such the aforesaid exemption is not applicable to sacks manufactured from fabrics woven on circular looms. The woven sacks manufactured out of fabrics woven on circular looms are, therefore, not eligible for the aforesaid exemption. This was also clarified by the government by inserting an explanation (20 March 1990) to the aforesaid notification.

An assessee manufacturing plain unlaminated sacks and bags made of HDPE/PP fabrics woven on circular looms classified the product under heading 63.01 and paid duty at 8 per cent ad valorem till 14 January 1990 under a notification dated 27 April 1988. However, he filed a revised classification list on 15 January 1990 claiming `nil' rate of duty under the notification dated 3 April 1986 which was approved by the department on the same day. Accordingly the assessee cleared goods worth Rs.86,73,667 during the period from 17 January 1990 to 26 March 1990 without payment of duty. The approval of the revised classification

list was not correct as the woven sacks manufactured by the assessee would be deemed to have been manufactured on circular looms. The incorrect grant of exemption resulted in non levy of duty of Rs.7.29 lakhs on clearances of woven sacks during the period from 17 January 1990 to 26 March 1990.

Ministry of Finance have admitted the objection (September 1992). Information regarding particulars of recovery has not been received.

SHORT LEVY DUE TO UNDERVALUATION

As per the provisions of section 4 of the Central Excises and Salt Act, 1944, where goods are assessable to duty ad valorem, the normal price at which such goods are ordinarily sold by the assessee to a buyer in the course of the wholesale trade for delivery at the time and place of removal, would be the assessable value provided the price is the sole consideration for sale.

3.28 Price not the sole consideration for sale

Where price is not the sole consideration for sale, as per provisions of rule 5 of the Cental Excise (Valuation) Rules, 1975, the assessable value of the goods shall be based on the aggregate of such price and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee. If the assessee arranges sale of goods in the course of wholesale trade to or through a related person the normal price of such goods sold through a related person shall be deemed to be the price at which these are ordinarily sold by the latter in the wholesale trade to the independent buyer.

i) Interest charges

The Central Board of Excise and Customs in their circular dated 4 May 1988 clarified that the interest charged by the units selling their goods on credit to customers, whether by direct sale or by routing their documents through banks would form part of the price of the goods. The Board had accordingly clarified that interest charges referred to as "delayed payment charges",

"interest on receivables", or "credit charges", etc., should, therefore, be included in the assessable value of the goods. They also had directed that pending disposal of the review petition filed by them against a contrary judicial pronouncement, assessing officers should include such interest charges while determining the assessable value of the goods in conformity with the stand taken by the department, by resorting to provisional assessments.

(a) Fifteen assessees in six collectorates took advance deposits from their customers but did not include the amount of interest received/receivable thereon in the assessable value. Non inclusion of this additional consideration resulted in undervaluation of goods and consequent short levy of duty of Rs.139.19 lakhs during the period between 1987-88 and 1991-92.

The cases were reported to the department between January 1991 and May 1992 and to Ministry of Finance between March and September 1992. In two cases the department accepted the objection and recovered an amount of Rs.5,58,645 from one of them; and issued show cause notices in another case.

Ministry of Finance have stated (September and December 1992) that the Collectors have been advised to keep the matter of inclusion of interst charges in assessable value pending as the same is under examination in the Central Board of Excise and Customs.

(b) Thirteen assessees in six collectorates engaged in manufacture of excisable goods, recovered overdue interest charges on credit sales from their customers. It was seen during audit that such interest charges were neither included in the assessable value and duty discharged nor the department had issued show cause notices as per Board's letter dated 4 May 1988. The department had also not resorted to provisional assessment as per Board's directives. This resulted in short levy of duty of Rs.41.98 lakhs during the different periods between April 1985 and February 1992.

The irregularities were pointed out in audit to the department between December 1988 and May 1992 and to Ministry of Finance between May and September 1992.

Ministry of Finance have stated (October to December 1992) that the Board has issued instructions to safeguard revenue interest till the decision of the Supreme Court on department's revision petition.

ii) Non-inclusion of the vlaue of design/drawings etc.

As per instructions issued by the Ministry of Finance on 9 September 1977 where goods are cleared in knocked down condition to be assembled at site, the clearance being spread over a period of time against a particular contract, the central excise duty is to be assessed provisionally on the invoice value till the contract is over. This value would include, apart from the value of own manufactures of the assessee, cost of bought out items including customs duty in respect of imported goods, cost of design and drawing. As per advice of the Ministry of Law, circulated by the Central Board of Excise and Customs dated 23 December 1983, if the agreement to sell goods includes payment by the buyers to the assessee towards "technical know how" (engineering designs and drawings etc.), then such payments should be taken into consideration for computing assessable value for the purpose of levy of central excise duty.

(a) A manufacturer of engineering goods of iron and steel of chapter 84 entered into several contracts for supply of machines/machinery parts etc. The contract provided for payment on account of design, drawing and engineering fees to the assessee. But while determining the assessable value of the product the aforementioned charges realised from the buyers were excluded. As a result there was short payment of duty amounting to Rs.29.62 lakhs.

The short levy was pointed out to the department in September 1991 and to Ministry of Finance in September 1992.

Ministry of Finance, while not accepting the objection, have stated (December 1992) that there being no nexus between the charges for technical know-how for the project and the goods under assessment, there is no question of their inclusion in the assessable value.

The contention of Minsitry is not acceptable in view of the Board's instuctions mentioned above issued in consultation with Ministry of Law.

(b) An assessee engaged in manufacture of plant and machinery falling under sub heading 8419.00 also undertook contracts on job basis at customer's site for manufacture of tanks classifiable under sub heading 7309.00. The contract with the buyers provided for payment of charges towards design, fabrication, erection, testing etc. However, no duty was paid on such tanks either by the assessee or by the customers. The non levy of duty worked out to Rs.4.48 lakhs in respect of two contracts alone which were undertaken by the assessee in January 1988 and April 1988.

On the irregularity being pointed out in audit (March 1990), the department, while not accepting the objection stated (January 1991 and June 1991) that the water storage tanks fabricated at site were attached to the earth and it had assumed the essential characteristics of immovable property. These water storage tanks would not, therefore, be considered as goods under section 2(d) of Central Excises and Salt Act, 1944, and could not be charged to duty. The department further stated that show cause-cum demand notice for the period from August 1988 to September 1989 for Rs.15.28 lakhs had been submitted to the Collector for approval and issuance under section 11A of the Central Excises and Salt Act, 1944. For the period from October 1989 to March 1990 a show cause notice had been issued in July 1990.

The contention of the department is not acceptable since heading 73.09 specifically covers water storage tanks and hence the entire tank assembled/erectecd at site attracts duty. Further the plant comes into existence only after assembly of all parts/components at site and, therefore,

the department's contention that the tank is an immovable property which does not attract duty is not acceptable. Issue of a notification on 20 March 1990 specifically exempting structures falling under heading 73.08 fabricated at site of construction work also supports the views of Audit.

Ministry of Finance have repeated (December 1992) the department's reply without giving further grounds.

iii) Dealer's commission/margin

(a) The Supreme Court in the cases of M/s. Coromandal Fertilisers Limited {1984 (17) ELT 607 SC} and Sheshashai Papers {1990 (47) ELT 202 SC} held that commission paid to selling agents is not deductible from the assessable value as a trade discount because such a commission is paid to an agent for the services rendered by him for procuring orders. It was pointed out in the said cases that the commission paid was not a trade discount within the meaning of explanation to section 4 of the Central Excises and Salt Act, 1944, and would not call for any deduction.

An assessee engaged in manufacture of motor cars (heading 87.03) was selling his products entirely through the authorised dealers and had allowed dealer's commission ranging from Rs.2700 to Rs.5400 per vehicle (depending upon the nature of the vehicle) to such dealers and deducted such dealer's commission from the assessable value of the said motor cars. As per agreements made with the dealers, such dealer's commission comprised, inter alia, after sales service charges such as pre-delivry inspection and free services. Such commission charges were, therefore, not allowable as deduction from the wholesale price. It was also seen in audit from certain sales invoices of the manufacturer that the said dealer's commission was realised from the customers in respect of direct supply of cars from the factory and the amount so realised was shown as commission payable to his territorial dealers. Taking all these aspects into consideration, the so called commission allowed from the assessable value was inadmissible and has resulted in short levy of

duty of Rs.13.33 lakhs on clearance of 750 vehicles directly supplied to the customers from the factory gate during the period from 22 March 1990 to 27 May 1992.

On the irregularity being pointed out in audit (July 1991 - June 1992), the department contended (April 1992) that the claim of the assessee on account of dealer's commission is allowable because, the commission payable was ascertainable prior to the removal of goods and the dealer was aware of the same by virtue of the agreement. In support of the above contention the Collector cited the decision of Bombay High Court in the case of M/s. Raymond Woollen Mills {1992 (38) ECR 504 (Bombay).

The contention of the department is not acceptable for the reason that the case cited by the department refers to the commission payable to the agents as a part of the agency agreement and not for any service rendered by the agents, whereas in the case under reference dealer's commission paid includes services rendered by the dealers in the nature of post manufacturing expenses. As such the decision quoted by the department has no relevance to the case under consideration.

Ministry of Finance have stated (December 1992) that the matter is under examination.

(b) As per decision of the Supreme Court in the case of M/s. Moped India Limited Vs. Assistant Collector of Central Excise, Vellore and others {1986 (23) ELT 3 (SC)} commissions paid to the selling agents on any account are not identifiable as trade discount and hence the same will not qualify for deduction in determining assessable value of goods for the purpose of levy of excise duty under the Act.

A manufacturer of light commercial motor vehicles effected sales of the vehicle to customers directly. He collected certain additional amount at varying rates towards "dealers margin" from the customers and claimed deduction therefor in the price lists. Since the commission paid to the dealers in the case of

direct sales to customers cannot be equated with `trade discount', no deduction was admissible in the price lists. The amount was, therefore, includible in the assessable value for the purpose of levy of central excise duty. Non inclusion of these additional realisations of Rs.87.20 lakhs in the assessable value had resulted in short levy of duty of Rs.9.16 lakhs during the year 1989-90.

On the irregularity being pointed out in audit (April 1991) the department stated (July 1992) that a show cause-cum demand notice had been issued to the assessee in May 1992. Further progress of adjudication has not been intimated.

Ministry of Finance have stated (November 1992) that the matter is under examination.

iv) Discount

(a) Trade discount

As per provisions of section 4 of the Central Excises and Salt Act, 1944, trade discount is an admissible deduction from the selling price provided that i) such discount is not refundable to the manufacturer on any account; ii) it is allowed in accordance with the normal practice of the wholesale trade in respect of such goods; and iii) it is allowed at the time of removal.

An assessee was engaged in manufacture of different varieties of aluminium foils, aluminium powder, flakes of various grades and aluminium paste etc., falling under headings 76.07, 76.03 and sub heading 3206.11 respectively. All manufactured goods were cleared on payment of duties at selling prices shown in price lists filed in part I for sale in wholesale trade. However, for sale to traders who were nominated by the assessee as wholesale dealers the price lists were filed in part II offering a trade discount of 7.5 per cent from the prices declared in part I, for sale in wholesale trade of the same goods. Thus in respect of the same products and also of other products for which the price lists were filed in part I, no trade discount was allowed to wholesale buyers in general. Therefore, the second condition mentioned above for allowing

trade discount as a deduction from the sale price not being satisfied, the trade discount allowed as a deduction from the prices declared for sale to wholesale dealers by filing the price list in part II for the specified products sold to them with a view to allowing trade discount only to them was not in order. The assessee was allowed to claim an amount of Rs.34.09 lakhs as trade discount on the sales made to wholesale authorised dealers during April 1990 to July 1991 which resulted in short levy of duty amounting to Rs.9.19 lakhs.

On this being pointed out in audit (September 1991), the department did not accept the objection and stated (March 1992) that the assessee had allowed the trade discount of 7.5 per cent to his wholesale dealers as per the proviso (i) to section 4(1) of the Central Excises and Salt Act, 1944, by filing the price list in part II and these traders were appointed by the assessee under an agreement for purchase of aluminium foil under the terms and conditions set out in the agreement which was made for catering to a number of small users of aluminium foil to whom the assessee could not reach.

The department's reply is not acceptable for the following reasons :-

i) in respect of the same products and also of other products for which the price lists were filed in part I no trade discount was allowed to wholesale buyers in general. Filing of the price lists in part II for the specified products sold to wholesale dealers with a view to allowing trade discount only to them was not in order. The wholesale dealers are also buyers in the wholesale trade and were appointed by the assessee only because of their proven ability to sell the goods and financial soundness etc.; and

ii) the trade discount when not allowed to any wholesale trader other than wholesale authorised dealers would mean that it was not a discount allowed in accordance with the normal practice of the wholesale trade as per proviso to section 4(ii) of the Central Excises and Salt Act, 1944. The Central

Excise Act does not permit different assessable value for same class of buyers.

The matter was reported to Ministry of Finance in July 1992; reply has not been received (December 1992).

(b) Turnover discount

As per section 4(4)(d)(ii) of the Central Excises and Salt Act, 1944, value in relation to any excisable goods excludes only trade discount (such discount not being refundable to the manufacturer on any account whatsoever) allowed in accordance with the normal practice of the wholesale trade at the time of removal of such goods sold or contracted for sale. However, turnover discount is not held to be permissible deduction from the wholesale cash price to arrive at the assessable value.

An assessee manufacturing electric fans (classifiable under sub heading 8414.20) filed the price lists in part I claiming deductions, inter alia, on account of quantity discount. In anticipation of their reaching the targets set for each quarter, quantity discounts were allowed to the dealers who were permitted to make good of the shortfall in the target, if any, in subsequent quarter. The discounts, however, were not completely passed on in the previous quarter in cases where the targetted number of fans were not removed by the dealers. It was thus in the nature of turnover discount only. The deductions claimed were also not completely passed on in cases where the prescribed number of fans were not removed by the dealers. Short levy on this account worked out to Rs.23,077 (approx) during the period from April 1990 to March 1991 alone. The exact amount of short levy could not be worked out for want of details with the assessee.

On this being pointed out in audit (May 1991) the department stated (December 1991) that show cause-cum demand notice for Rs.24.46 lakhs covering the period from April 1991 to September 1991 had since been issued to the assessee. Further report on adjudication of demand has not been received.

Ministry of Finance have stated (December 1992) that show cause notices for duty leviable on denial of quantity discount are under adjudication.

v) Cost of tools and development charges

An assessee engaged in manufacture of goods falling under chapters 83,84,85,87 and 91 of the schedule to the Central Excise Tariff Act, 1985, was clearing the final goods on payment of duty based on the invoice value, the permission for which was granted under rule 173C(11) of the Central Excise Rules, 1944. The assessee was also claiming exemption from payment of duty on powder compacting moulds and parts thereof for captive consumption under a notification issued on 2 April 1986.

On scrutiny of the relevant records it was seen that the assessee was recovering the cost of tools and development charges from the buyers through debit notes. The assessee had also made it clear to the buyer that the cost of tool and development charges were not refundable. As these tools were used in the manufacture of the final product, the above charges should have been included in the assessable value of the products manufactured. During the period from 1 April 1989 to 31 March 1991 the assessee had recovered an amount of Rs.37.98 lakhs from the buyers towards the cost of tools and development charges but did not include this amount in the assessable value. Non inclusion of this amount in the assessable value of the final products resulted in undervaluation and consequent short levy of duty amounting to Rs.7.97 lakhs.

On the irregularity being pointed out in audit (December 1991), the department accepted the objection and stated (July 1992) that show cause notices had since been issued for the period from September 1991 to February 1992. As regards the previous period, quantification of the amount of differential duty payable is reported to be in progress.

Ministry of Finance have stated (November 1992) that the matter is under examination.

vi) Packing charges

As per section 4(4)(d)(i) of the Central Excises and Salt Act, 1944, value in relation to any excisable goods where such goods are delivered at the time of removal in a packed condition includes the cost of such packing except the cost of packing which is of a durable nature and is returnable by the buyer to the assessee. The Supreme Court in the case of M/s.Bombay Tyres International held that cost of packing whether primary or secondary is to be included in the assessable value.

In the case of M/s. Sathe Biscuits and Chocolate Company Limited Vs. Union of India {1984 (17) ELT 39 (Bom)} the Bombay High Court had held that the tin container and corrugated fibre cartons are secondary packings, which is necessary for putting the excisable article in the condition in which it is generally sold in the wholesale market at the factory gate and therefore, the cost of those packings was includible in the assessable value of biscuits.

An assessee manufacturing biscuits was allowed to exclude from the assessable value the cost of card board boxes and tin packings, which were sold in such packing to wholesale dealers. Non inclusion of the cost of such card board boxes and tins in the assessable value of the excisable goods resulted in short levy of duty amounting to Rs.7.13 lakhs during the period from 1 April 1987 to 31 March 1990.

The undervaluation was pointed out in audit to the department in February 1991 and to Minsitry of Finance in May 1992.

Minsitry of Finance have stated (November 1992) that the question of deduction of the card board boxes and tin packagings from the wholesale value in case of another assessee had been examined and decided by the Asstt. Collector in October 1989 which was upheld by the Collector (Appeals) and CEGAT. The party however, filed an appeal in the Supreme Court which is pending. The Minsitry's specific comments in the instant case have not been received (December 1992).

vii) Escalation charges

As per the instructions issued by the Central Board of Excise and Customs in their letter dated 4 October 1980 in the case of running contracts, where there is a price variation clause, the goods should be provisionally assessed at the time of clearance and final assessment made as soon as the assessee submits his bills for the escalated value, without waiting for the final acceptance of the increased invoice value by the customers.

A state public sector undertaking engaged in manufacture of electrical goods falling under chapter 85 of the schedule to the Central Excise Tariff Act, 1985, had supplied its products to various buyers under agreements, which provided for a price variation clause in respect of goods manufactured and supplied. Accordingly the assessee raised demands for payment of duty but amount of duty due on such escalation charges was not paid as soon as demands were raised in terms of the Board's aforesaid instructions dated 4 October 1980. The differential duty was paid only when demands were accepted and paid by the customers. The delay in collection of revenue resulted in financial accommodation to the manufacturer. It was noticed in audit that the differential duty of Rs.28.47 lakhs was realised after lapse of four to twelve months from the date of raising of demands for escalation charges, which provided him financial accommodation in the shape of interest at 17.5 per cent per annum, aggregating to Rs.3.59 lakhs to the assessee for the delayed payments of duty.

On the irregularity being pointed out in audit (January 1992), the department stated (July 1992) that a show cause-cum demand notice for Rs.124.08 lakhs covering the years 1986-87 to 1990-91, was issued in February 1992 for evading the duty legally due to government.

Ministry of Finance have stated (December 1992) that the matter is under examination.

viii) Turnover tax

As per section 4(4)(d)(ii) value in relation to any excisable goods chargeable to duty ad valorem does not include sales tax and other taxes payable on such goods. The Supreme Court in their judgement delivered on 14 November 1983 {ECR Page 2233 D December 1983) in the case of M/s.Bombay Tyre International held that Turnover tax if proved to have been paid should be allowed to be deducted from the sale price in order to arrive at the assessable value.

An assessee A manufacturing soaps and cosmetics on behalf of another assessee B on job work basis was allowed to deduct turnover tax from the prices declared by B, although A did not pay any turnover tax since his annual turnover was within the exemption limit fixed by the State Government. This resulted in short levy of duty of Rs.3.56 lakhs on the clearances made from April 1990 to February 1992.

On the mistake being pointed out in audit (April 1992), the department stated (April 1992) that show cause cum demand notice for Rs.1,13,501 had been issued and action taken for issuing show cause cum demand notices for the balance amount.

Ministry of Finance have admitted the objection (November 1992).

3.29 Excisable goods assembled partly out of duty paid parts/components

Section 2(f) of the Central Excises and Salt Act, 1944, defines manufacture to include any process incidental or ancillary to the completion of a manufactured product. In the case of M/s. Dayaram Metal Works (P) Limited {1985 (20) ELT 392} & M/s. Indopaint Enterprises {1988 (36) ELT 513 (T)} the CEGAT had observed that once completely manufactured goods were supplied to the customer, the simple fact that the manufactured articles were supplied, not after assembly but in CKD condition would not make any difference to the question and that the value of entire raw material or all parts which go into the making of manufactured article shall have to be taken into

account. The Supreme Court in the case of M/s. Narne Tulaman Manufacturers Private Limited {1988 (38) ELT 566} had held that assembling of duty paid components would amount to manufacture if it brings into existence a new product known to the market and the mere fact that the manufacturer bought out certain parts and manufactured certain parts and paid duty on the manufactured parts would not change the position because parts and products are separately dutiable.

i) An assessee manufacturing interalia `fludised bed combustion boiler' (heading 84.02) cleared two such boilers during the period from December 1988 to March 1989 after payment of duty on certain parts but omitted to pay duty on other components on the ground that they were bought out items. Similarly, with respect to a contract entered into for supply and erection of pressure parts and other components for conversion of B & W boiler into fludised bed combustion boiler (heading 84.02) with fabrication of ducting structurals (sub heading 7308.90) and de-aerator (heading 84.02), the assessee cleared during the period from April 1988 to September 1988, certain parts on payment of duty and certain other parts without payment of duty for the same reason stated above. In both the cases, the assembly of components brought into existence a new item known in the market and known under the excise tariff and hence the payment of duty on certain parts alone as against the entire value of the goods was not in order for the reasons stated in para 1 supra. The total duty omitted to be levied on bought out components for the above clearances alone worked out to Rs.4.41 lakhs.

On the irregularity being pointed out in audit (September 1989), the department contended (October 1989) that the value of bought out components need not be included as no manufacturing activity was carried out at the assessee's end. It was further stated (May 1990) that since the goods assembled at site were fixed to the ground and not intended to be moved, it would not become `goods' attracting duty, in view of Board's clarification dated 21 April 1989.

Ministry of Finance to whom the case was reported in August 1990 did not admit the objection and stated that both parts and components of boiler manufactured and bought had discharged duty liability due on these. These components were assembled piece by piece on a part embedded to earth. Thus, no boiler came into existence before installation and as such no further duty liability arises.

The reply is not acceptable as the mere attachment to earth does not mean that the goods were permanently fixed to earth so long as they could be dismantled and reassembled. Even as per Board's clarification cited duty would be payable on parts and components if together they could be considered effluent treatment plant (ETPs) in unassembled/disassmebled condition. This is in accordance with rule 2(a) of rules for interpretation of the Tariff.

Subsequent verification revealed that the show cause notice issued by the department in March 1991 has been adjudicated in January 1992 confirming demand of Rs.1,65,25,984 covering the period from 1985-86 to 1990-91 by invoking the extended period of five years in terms of proviso to sub section (1) of section 11A of the Central Excises and Salt Act, 1944. In addition, a penalty of Rs.5 lakhs has also been imposed on the assessee.

The matter was reported to Ministry of Finance again in August 1992; reply has not been received (December 1992).

ii) An assessee entered into contract with a customer for supply and assembly of continuous casting machine. The assessee manufactured the aforesaid machine partly out of goods manufactured in his factory and partly out of bought out goods. However, the duty was paid by the assessee only on the value of goods manufactured in his factory without taking into account the value of bought out items. Non inclusion of the cost of bought out items which had gone into the making of the entire machine and also charges on account of supervision of erection and commissioning of project, engineering fees etc., in the assessable

value has resulted in undervaluation and consequent short levy of duty to the extent of Rs.26.30 lakhs.

On this being pointed out in audit (April 1989), the department did not accept the objection and stated (October 1990) that as clarified by the Board in their letters dated 21 April 1989 and 18 April 1990 only such parts/components which are superficially attached or bolted to a proposed foundation on the ground do not become `immovable property' as they can be easily unbolted and brought out and sold and, therefore, are to be included in the value for assessment of the goods which are cleared in the knocked down condition and assembled/erected at site. The value of bought out items which were not manufactured in the assessee's factory and which were cleared on payment of duty and directly delivered to the site for their being fitted to the plant (immovable property) need not, therefore, be included for assessment on the assessee's account, irrespective of the fact that such parts were procured or despatched to site at the instance of assessee.

The department's reply is not acceptable since the machinery manufactured by the assessee is covered specifically under heading 84.54 and the entire machinery/plant assembled at site attracts duty. Further the plant/machinery comes into existence only after assembly of all parts including bought out components at site and therefore the contention that it is an immovable property which does not attract duty is not acceptable. Issue of a notification on 20 March 1990 specifically exempting structures falling under heading 73.08 fabricated at site of construction work also supports the views of Audit.

Ministry of Finance did not admit the objection and stated (November 1992) that the concerned Collector had no jurisdiction over the activity of fabrication/erection/commissioning of plant and machinery at site outside the collectorate.

The contention of the Ministry is not acceptable. The assessee's clearances formed part

of a contract and as such the concerned Collector ought to have possessed prior knowledge of the manufacturing activity. Minsitry of Finance clarified on 9 September 1977 that where goods are cleared in parts against a particular contract, duty is to be assessed provisionally on inidividual clearances and at the time of final assessment, duty should be levied on value of the product in completely assembled condition. As regards the jurisdictional authority , the central excise department is one and the matter should have been sorted out between the two collectorates.

iii) An assessee engaged in manufacture of control systems (sub heading 9032.80) supplied them at the contracted price to various customers. The assessee assembled the aforesaid product in his factory, partly out of goods manufactured and partly out of goods bought out from outside. The process of manufacture and emergence of the identified and contracted final excisable product was complete only on assembly. While the value attributable to the goods manufactured in his factory was included in the assessable value and duty was paid on such clearances, the value attributable to bought out goods used in the goods manufactured in his factory was not included in the assessable value. Due to undervaluation in respect of three contracts pertaining to the period September 1989 to December 1990 amounting to Rs.78,89,966 there was short levy of duty of Rs.12.43 lakhs.

On this being pointed out in audit (April 1991), the department accepted the objection and stated (March 1992) that show cause notice for the period from April 1991 onwards had since been issued and that in respect of the period prior to April 1991 the same was being finalised early.

Ministry of Finance have stated (August 1992) that the matter is under examination.

iv) An assessee manufacturing, inter alia, yarn cleaning installation (heading 84.48) paid duty on the parts manufactured in the factory but omitted to include the cost of tensioner brackets bought and supplied alongwith the other parts in the

assessable value of the installation. As the bought out item is an integral part of the installation and the contract is for supply of the machine in complete form only, the value of the bought out item is also includible in the value for levy of duty. Omission to include the same resulted in short levy of duty of Rs.4.34 lakhs for the period from November 1990 to September 1991 alone.

On this being pointed out in audit (December 1991), the department admitted the objection and stated (October 1992) that the show cause notice issued by the department on the issue had been adjudicated by the Collector, confirming a demand of Rs.16,37,564 for the period from 20 January 1987 to 31 May 1991 with a penalty of Rs.10,000.

Ministry of Fiannce have admitted the objection (November 1992).

v) An assessee manufacturing fruit drink `frooti' (sub heading 2202.90) in paper packet cleared the products in paper board cartons containing twenty seven pieces in each carton. The assessee also purchased sucking pipes (straws) for consumption of the product and after cutting into desired lengths supplied twentyseven pieces in a packet. The value of such straw packet was, however, not reckoned alongwith the value of the product in carton for making payment of duty although a sum of rupee one had been realised through sales invoices from the customers in addition to the value of the product. As (i) the product can not be consumed without straw which invariably accompanies each packet sold; and (ii) each packet of the product bears a soft point equal to the diameter of the straw in order to push the straw to facilitate consumption of the drink, the straw is an indispensable item for consumption of the product. As such, value of the straw should form part of the assessable value of the product as per provisions of section 4 of the Central Excises and Salt Act, 1944. Non inclusion of the value of the same in the assessable value of the product cleared resulted in short levy of duty of Rs.4.15 lakhs during the period from 4 April 1989 to 30 September 1991.

On the irregularity being pointed out in audit (November 1991), the department did not accept the objection and contended (June 1992) that when bought out items are supplied with manufactured articles, the value of such bought out items is not includible, even if these are essential for the operation of manufactured goods. The department also cited certain CEGAT judgments in support of the view.

Contention of the department is not acceptable in view of the Ministry's letter dated 5 July 1989 issued on the basis of the Supreme Court judgement in the case of M/s. Narne Tulaman Manufacturers Private Limited {1988 (38) ELT 566 (SC)} wherein it has been advised that assessable value of the product would include the value of bought out items as well.

Ministry of Finance have stated (December 1992) that the matter is under examination.

3.30 Undervaluation of output goods to the extent of duty element on input goods

Where excisable goods are wholly consumed within the factory of production, the assessable value under section 4(1)(b) of the Central Excises and Salt Act, 1944, read with rule 6(b) of the Central Excise (Valuation) Rules, 1975, is to be determined on the basis of the value of comparable goods or cost of production if the value of comparable goods is not ascertainable. The Attorney General of India opined on 3 October 1985 that raw material/component parts continued to retain their duty paid character even after duty paid thereon is taken as credit in the proforma account. It, therefore, follows that the element of duty paid on input goods is to be included in the cost of the output goods.

As per a notification issued on 2 April 1986, specified goods manufactured in a factory (inputs) and used within the factory of production in or in relation to the manufacture of specified final products are exempt from payment of duty provided the said final products are not exempt from duty or are not charged to nil rate of duty. Thus if

the final product does not suffer duty, the inputs will have to be assessed to duty.

Nine assessees in five collectorates engaged in manufacture of different excisable goods took Modvat credit of duty paid on certain declared inputs and utilised the same towards payment of duty on finished goods. All the finished goods were used captively. While determining the assessable value of the finished products, on cost accounting basis the element of duty paid on raw materials was not taken into consideration. Non inclusion of the element of excise duty paid on inputs in the cost data, led to undervaluation of assessable value of goods. Consequently duty of Rs.114.52 lakhs was levied short on the clearances made during the different periods between March 1988 and October 1991.

The matter was reported to the department between December 1990 and February 1992 and to Ministry of Finance between May and September 1992.

Ministry of Finance did not finally admit the objection and have referred to a recent opinion of the Attorney General of India (19 April 1991), wherein it has been held that the element of excise duty paid on inputs may not be included while determining the assessable value of goods consumed captively so that the consumer is not burdened in the matter of finished goods coming in the market.

But the Supreme Court in the case of M/s. Kirloskar Brothers Ltd., V/s. Union of India {1992 (59) ELT 3 SC} while discussing the validity of section 4(4)(d)(ii) have held that abatement for excise duty is allowable only for the duty payable on the goods to be assessed and not for the duty already paid on raw materials/components. This supports the views of Audit.

3.31 Excisable goods not fully valued

As per Section 4 of the Central Excises and Salt Act 1985, where the goods are assessable to duty ad valorem, the normal price at which such goods are ordinarily sold by the assessee to a

buyer in the course of wholesale trade for delivery at the time and place of removal would be the assessable value provided that price is the sole consideration for sale. Where the price is not the sole consideration for sale as per provisions of Rule 5 of the Central Excise (valuation) Rules, 1975 the assessable value of goods shall be based on aggregate of such price and amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.

i) A public sector undertaking manufacturing steel structures falling under sub-heading 7308.90 of the schedule to the Central Excise Tariff Act, 1985 out of steel materials supplied free of cost by the buyer paid duty on fabrication cost only (i.e. excluding the cost of free supplies) although the cost of such steel materials supplied free of cost by the buyer ought to have been included in the value of the goods. This resulted in short levy of duty to the extent of Rs.60.05 lakhs during the years 1988 to 1990.

The irregularity was reported to department in March 1991 and to Ministry of Finance in March 1992. Ministry of Finance have accepted the objection (December 1992).

ii) An assessee manufactured/fabricated "wrecker equipments" and installed them on the chassis supplied free of cost by the customers. The complete products i.e., wrecker equipments installed on chassis were then cleared on payment of duty on the basis of value of wrecker equipments alone under heading 87.05 of the schedule to the Central Excise Tariff Act, 1985. Heading 87.05 covers special purpose motor vehicles. As per note 4 of chapter 87, the activity of body building or mounting of structures or equipments on chassis amounts to manufacture for the purpose of motor vehicles covered by heading 87.01 to 87.05. Therefore, installation or mounting of wrecker equipments on chassis also amounted to manufacture and the value of chassis was includible in the assessable value of the completed product i.e., wrecker equipments fitted/fixed with chassis (special purpose motor vehicles). The final product not being fully

valued, there was short payment of duty of Rs.53.29 lakhs during the period from May 1987 to February 1990.

The irregularity was reported to the department in December 1990 and to Ministry of Finance in September 1992.

Ministry of Finance have admitted the objection (December 1992).

3.32 Undervaluation of goods assembled at site

Section 2(f) of the Central Excises and Salt Act, 1944, defines `manufacture' to include any process incidental or ancillary to the completion of a manufactured product. The Supreme Court, in the case of M/s. Narne Tulaman Manufacturers Private limited {1988 (38) ELT 566} had held that assembling of duty paid components would amount to manufacture if it brings into existence a new product known to the market and the mere fact that the manufacturer bought out certain parts and manufactured certain parts and paid duty on the manufactured parts would not change the position because parts and end products are separately dutiable.

(a) An assessee manufactured ash handling system falling under heading 84.04 of the schedule to the Central Excise Tariff Act, 1985, under contract on turn-key basis. The parts and components required for manufacture of the system were partly manufactured in the assessee's factory and partly bought out from the market. The assessee paid duty only on the parts manufactured in his factory. Bought out components or parts were directly taken to site and the "system" was assembled at site using both manufactured and bought out items and no duty was paid on the system manufactured at site. As `ash handling system' is classifiable under heading 84.04 duty was leviable at 15 per cent ad valorem. This resulted in non levy of duty of Rs.45 lakhs in the case of one of the contracts undertaken by the assessee during 1987-88.

On this being pointed out in audit (January 1989), the department did not accept the objection

and stated (May 1992) that the ash handling system consisted of bought out items and own manufactured items. The assembly of all these items at site did not result in emergence of a new product to attract duty as per the Board's circular dated 18 April 1990.

The contention of the department is not acceptable since heading 84.04 specifically covers ash handling system. Further, the plant comes into existence only after assembly of all parts, including bought out components at site and therefore, the contention of the department that the system is an immovable property which does not attract duty is not acceptable. Issue of a notification on 20 March 1990 specifically exempting structures falling under heading 73.08 fabricated at site of construction work also supports the views of Audit.

(b) An assessee engaged in manufacture of excisable goods falling under chapter 84 of the schedule to the Central Excise Tariff Act, 1985, also undertook fabrication, erection and commissioning of industrial furnaces at customers' premises on contract basis. Fabrication and assembly were done at site using bought out raw materials and components without obtaining licence for manufacture of these furnaces. Industrial and laboratory furnaces and ovens are classifiable under sub heading 8417.00 and attract duty at 15 per cent ad valorem. During the period from August 1986 to July 1987, the assessee manufactured and erected 6 industrial furnaces at a cost of Rs.187.04 lakhs and duty amounting to Rs.28.05 lakhs was payable on the goods so manufactured by the assessee.

On the irregularity being pointed out in audit (December 1988), the department did not accept the objection and stated (January 1990) that such liability would arise only if the industrial furnaces or any other similar plant or machinery was completely fabricated in a factory and disassembled only for the convenience of transportation. Also in cases, where a plant or machinery was first assembled at site and then moved for embedding to the ground, the duty liability may arise. The department further

stated that mere mention of item in the central excise tariff does not make it liable to duty unless the goods come into existence at some stage independently as a movable product.

The contention of the department is not acceptable since the heading 84.17 specifically covers industrial furnaces and hence the entire furnaces assembled/erected at site attract duty. Further, the industrial furnaces came into existence only after assembly of all parts/ components at site and, therefore, the department's contention that the industrial furnace is an immovable property which does not attract duty is not acceptable. Moreover, issue of a notification on 20 March 1990, specifically exempting structures falling under heading 73.08 fabricated at site of construction work also supports the views of Audit.

(c) Another assessee manufactured loading or unloading machinery like conveyors on turnkey basis under contracts entered into with the customers. The parts and components required for the manufacture of the complete machinery were partly manufactured by the assessee in his factory and partly bought out from the market. The process of manufacture and emergence of the identified and contracted final excisable goods namely conveyors, was complete only on assembly, erection and commissioning of the said goods at buyers' site and the final assessment of duty was required to be done on the completion of contract. Though the assessee had charged full value of the contract including value of bought out items in the invoices, the value attributable to the goods manufactured and transported from his factory to buyers' site was only included in the assessable value and duty was collected on such clearance. Non inclusion of the value of the bought out items assembled at site in conjunction with the goods manufactured and transported from his factory in the assessable value resulted in short levy of duty to the extent of Rs.9.05 lakhs in respect of two contracts alone during the year 1988-89. Further, the charges recovered by the assessee on account of erection and commissioning of the system were also not included in the total value of the contracts referred to above.

On the irregularity being pointed out in audit (January 1989), the department did not accept the objection and stated (July 1989) that the assembly of these parts at site did not result in emergence of a new product, capable of being brought to the market for being bought and sold prior to its attachment to the earth, to attract duty and the system being immovable property did not attract any duty as clarified by the Board in their letter dated 21 April 1989.

The contention of the department is not acceptable since heading 84.28 specifically covers conveyors and hence the entire system assembled/erected at site attracts duty. Further the system comes into existence only after assembly of all parts, including bought out parts at site and therefore, the contention of the department that the system is an immovable property which does not attract duty is not acceptable. Issue of a notification on 20 March 1990 specifically exempting structures falling under heading 73.08 fabricated at site of construction work also supports the views of Audit.

Ministry of Finance did not admit the aforesaid objections (September and Novmeber 1992) on the ground that the concerned Collectors had no jurisdiction over the site at which the fabrication, erection and commissioning activity was undertaken.

The reply of Ministry is not acceptable as the jurisdictional limitation of collectorates was for administrative convenience and the audit objections are raised at the point where the irregularities are detected. The matter could have been sorted out by taking up the issue with the collectorates concerned.

3.33 Set off of duty/tax

As per section 4(4)(d)(ii) of the Central Excises and Salt Act, 1944, the value in relation to any excisable goods does not include the amount of duty of excise, sales tax and other taxes, if any payable on such goods. Therefore, where the price is the cum duty price, the sales tax to be

deducted from the said price shall be the net tax payable and not the gross amount. Thus in a case where set off in respect of sales tax paid is allowed the gross amount of sales tax can not be deducted from the price while arriving at the assessable value and duty is payable on such sales tax set off received by the assessee.

Thirteen assessees in three collectorates engaged in manufacture of excisable goods falling under different chapters of Central Excise Tariff Act, 1985, received sales tax set off during the years 1988-89 to 1990-91. The deduction from the value, allowed in respect of gross sales tax paid by the assessee resulted in undervaluation and consequent short levy to the extent of Rs.77.98 lakhs during the period 1988-89 to 1990-91.

The irregularities were brought to the notice of the department between July 1991 to December 1991 and to Ministry of Finance between May to August 1992.

Ministry of Finance have stated (September and November 1992) that the matter is under examination.

3.34 Sales through related persons/sales depots.

i) Sale through related persons

As per section 4(I)(a)(iii) of the Central Excises and Salt Act, 1944, the assessable value of goods, sale of which is arranged through a related person, is to be determined on the basis of wholesale price charged by such related person from his customers.

Section 4(4)(c) of the Act, ibid, lays down that related person means a person who is so associated with the assessee that they have interest directly or indirectly in the business of each other and includes a holding company, a subsidiary company, a relative and a distributor of the assessee. Further a company and its subsidiary are deemed to be related persons even in the absence of concept of mutuality of interest as defined in section 4 of the Company Act, 1956, if holding company, inter alia, controls the

composition of the Board of Directors of the subsidiary company.

An assessee - a state government undertaking engaged in manufacture of straight joint closures was clearing the goods to its sister concern, a subsidiary company which was a related person. The unit price of Rs.23,000 at which such goods were ordinarily sold in the course of wholesale trade by the related person was already known to the manufacturer even at the time of clearance of goods from the factory as the same had been indicated in column 6 of the price lists (in part IV) effective from 1 November 1990 and 25 February 1991. Despite that, such goods on their clearance from the factory were charged to duty at the lower unit price of Rs.15,000 till 20 February 1991 and at further lower unit price of Rs.9,000 thereafter, as indicated in column (15) of the said price lists. As the sale of the said goods at the factory gate was to related person, the duty was payable at the unit price of Rs.23,000 being charged by such related person from his customers. The undervaluation resulted in short payment of duty amounting to Rs.25.86 lakhs on clearance of such goods during the period November 1990 to June 1991.

On this being pointed out in audit October 1991), the assessee debited the differential duty amounting to Rs.25.86 lakhs in the personal ledger account on 13 November 1991 and 26 December 1991.

The matter was reported to Ministry of Finance in August 1992; reply has not been received (December 1992).

ii) Goods sold through sales depots

As per the clarification issued by the Board in their letter dated 25 October 1990 and the decision of the High Court, Bombay in the case of M/s. Godrej and Boyce Manufacturing Company Limited Vs. Collector of Central Excise, the regional sales depots could not be treated as different class of buyers for charging different prices as there was no sale as such but only a transfer of goods and in such cases factory gate prices could be applied for working out the duty

liability provided it was a genuine price. It was further held that the wholesale dealers in India could not be considered as belonging to different classes of buyers simply because they were located in different towns/cities.

An assessee engaged in manufacture of different varieties of soaps falling under sub heading 3401.10 of the schedule to the Central Excise Tariff Act, 1985, also manufactured soaps on behalf of another manufacturer on job work basis out of the raw materials supplied by the latter. The goods were cleared to different depots of the latter and therefrom they were distributed to various wholesale dealers. However, different prices were adopted for clearances made to wholesale dealers in different regions/cities. This was not in order in view of the clarification issued by the Board in October 1990, and the decision of the Bombay High Court. This resulted in short levy of duty of Rs.7.09 lakhs (approximately) during the period from August 1989 to June 1991.

On this being pointed out in audit (January 1992), the department stated (January 1992) that the assessment had been done provisionally and hence the issue would be decided at the time of final approval of price lists.

This reply of the department is not acceptable for the following reasons :-

i) in this case assessment was provisional only in respect of deduction claimed by the assessee for certain post-manufacturing expenses and, therefore, this issue was lying outside the purview of provisional approval of price lists; and

ii) it has also been judicially held that in such cases, provisional assessment will be confined only to the disputed point and not applicable to undisputed areas.

The matter was reported to Ministry of Finance in August 1992; reply has not been received (December 1992).

3.35 Other irregularities

i) Assessable value not revised

Where excisable goods are wholly consumed within the factory of production or in any other factory of the same manufacturer, the assessable value is to be determined under section 4(1)(b) of the Central Excises and Salt Act, 1944, read with Central Excise (Valuation) Rules, 1975, on the basis of value of comparable goods or cost of production including a reasonable margin of profit, if value of comparable goods is not ascertainable. The Central Board of Excise and Customs also issued instructions in December 1980 that the data for determining the value on cost basis should be based on cost data relating to the period of manufacture and if such data are not available at the time of assessment, duty should be levied provisionally and finalised when data for the relevant period becomes available. The cost value should hold good only for one year and that too only if there be no major fluctuation in the price of raw material or margin of profit.

(a) An assessee engaged in manufacture of S.O.dyes falling under sub heading 3204.29 manufactured copper pthalocyanine blue (CPC) falling under heading 32.04 and cleared them to his own factory at another place on payment of duty. The assessable value adopted for the purpose of assessment remained unchanged at Rs.73 per Kg since 1988. On the basis of cost data available for the years 1988-89 to 1990-91, the assessable value should have been revised between Rs.152 and Rs.185 per kilogram. Non revision of assessable value on the basis of cost data, thus, resulted in undervaluation of goods and subsequent short levy of duty of Rs.12.23 lakhs for the period from April 1989 to December 1991.

The undervaluation was reported to the department in February 1992 and to Ministry of Finance in August 1992.

Ministry of Finance have stated (December 1992) that show cause notice for the period from January to June 1992 has been issued and for the

earlier period from April 1989 to December 1991 is under process.

(b) An assessee manufactured steel structures falling under sub heading 7308.90 of the schedule to the Central Excise Tariff Act, 1985, out of steel materials supplied free of cost by a buyer as per a contract made between them on 9 March 1987 and cleared the same on payment of appropriate duty on the basis of value determined on cost data applicable on the date of contract although there had been price hike of steel materials in two spells during the period of manufacture of finished products. The increase in price of raw materials (19.28 per cent) having not been taken into account for determination of assessable value of finished goods, there was short levy of duty amounting to Rs.7.85 lakhs, during the period from July 1987 to December 1988.

On the omission being pointed out in audit (December 1990), the department did not admit the audit objection on the ground that there had been no price escalation clause for free supply materials in the contract itself as a result of which the scope of charging central excise duty on the said escalated price was illogical. The department added that a draft show cause-cum demand notice was being issued as a protective measure.

The fact, however, remains that as per Board's instruction ibid in the case of determination of assessable value on the basis of cost data any change in the cost of elements for costing relating to the period of manufacture should be taken into account irrespective of its mention in the contract.

Ministry of Finance have stated (December 1992) that the matter is under examination.

(c) A public sector undertaking manufacturing building materials like blocks, shelf slabs (heading 68.07) for captive use cleared the goods on payment of duty under part 6(b) of price list filed in June 1989, adopting the cost of raw materials (cement and steel) at the rates prescribed in the project schedule for 1985-86 and

without adding element of profit. Though the department took action to add element of profit, the raw materials cost was not revised based on the subsequent project schedules (1987-88). Due to incorrect adopting of value, there was short levy of duty of Rs.1.28 lakhs for the years 1987-88 to 1989-90.

On this being pointed out in audit (April 1990), the department stated (August 1990/September 1990) that the demand already raised was being revised taking care of the points raised by Audit. Verification during subsequent audit (January 1992) revealed that show cause notice dated 20 June 1990 was modified in November 1990 demanding duty of Rs.20,71,706 covering the period from March 1986 to June 1989.

Ministry of Finance have stated (August 1992) that demand for Rs.16.80 lakhs out of show cause notice for Rs.20.93 lakhs had been confirmed and a penalty of Rs.25,000 imposed.

ii) Erroneous computation of value

Boilers falling under chapter 84 are leviable to duty at 15 per cent ad valorem.

A public sector undertaking manufacturing boilers, boiler components, valves, etc. (chapter 84), entered into contracts for manufacture and supply involving large quantity of materials valued at several crores of rupees. The despatch of the manufactured goods was done in batches spread over several years. Duty was assessed on an approximate rate per kilogram based on the value of the contract and the anticipated gross weight of the final product. On completion of the supplies the final unit rate was arrived at with reference to the actual quantity supplied at site, which included spares, replacements for damaged and defective components and surplus materials not required for actual use. The final unit rate thus worked out was less than the unit rate based on the weight of the goods actually used in manufacture of the contracted excisable goods excluding spares. Incorrect procedure adopted for working out the final unit rate had resulted in short levy of duty of Rs.20.65 lakhs in respect of

a few illustrative completed contracts alone. The actual amount of duty levied short on all the completed contracts remains to be worked out.

On this being pointed out in audit (December 1991), the department stated (March 1992), that the assessments were made as per the instructions dated 23 March 1985 of Dy. Collector (Audit).

The procedure adopted was incorrect. The correct procedure would be to eliminate the weight of spares and rejects to arrive at the unit rate, as the contract price was only for the final product and spares and rejects should pay duty separately.

Ministry of Finance have stated (November 1992) that the matter is under examination.

iii) Goods sold at different prices to same class of buyers

According to Section 4(1)(a)(i) of the Central Excises and Salt Act, 1944, different prices may be adopted for different classes of buyers, in accordance with the normal practice of the wholesale trade in such goods. "Wholesale trade", in terms of section 4(4)(d) ibid, means sales to dealers, industrial consumers, government, etc. According to Central Excise Tribunal {1990 (49) ELT 554}, wholesale dealers in different areas do not become different classes of buyers, merely because one of the wholesalers has entered into a contract with the manufacturer, for the purchase of goods. Hence, price adopted for any category of goods should be uniform for all dealers. The Board had also expressed similar views in their letter dated 25 January 1990.

An assessee manufacturing oil seals (sub heading 4016.91) cleared the goods to a wholesale dealer at a contracted price lower than the price at which similar goods were supplied to another dealer. Adoption of different prices for the same goods, in respect of similar category of dealers was not in order. The difference in prices for the various items so sold ranged between 50 per cent and 97 per cent. Taking his percentage price difference as 81 per cent, the short levy of duty

amounted to Rs.5.03 lakhs on the clearances made in 1990-91.

The irregularity was pointed out to the department in July 1991 and to Ministry of Finance in May 1992.

Ministry of Finance have admitted the objection (July 1992).

IRREGULAR EXEMPTION TO SMALL SCALE MANUFACTURERS

Various duty reliefs, exemption and special facilities are provided to the small scale manufacturers of specified excisable goods for encouraging production in small scale sector. These concessions are subject to fulfillment of certain conditions specified in the notifications issued from time to time. Some of the cases, where these concessions have been availed of irregularly are given in the succeeding paragraphs.

3.36 Clearance of goods by S.S.I. units without valid registration

i) Clearance of goods not included in certificate of registration

As per notification issued on 1 March 1986, concessional rate of duty is applicable to a factory which is an undertaking registered with the Director of Industries of any state or the Development Commissioner (Small Scale Industries) as a small scale industry under the provisions of Industries (Development and Regulation) Act, 1951, as amended from time to time. As per the provisions of the said Act, the certificate is issued for the products specified therein, the location and the constitution of the factory at the time of registration and any change in or alteration of these factors in the registration certificate would render the unit ineligible for the small scale benefit unless the changes are duly incorporated in the certificate by the registering authority.

Nine small scale manufacturers in five collectorates cleared various specified goods

which were not included in their respective SSI registration certificates. As the certificates were valid only for the products indicated therein, availment of concession in terms of the notification dated 1 March 1986 on non specified products was irregular and resulted in short levy of duty of Rs.52.76 lakhs during the different periods between July 1986 and April 1991.

The irregular availment of concessions was pointed out in audit to the department between January 1991 and March 1992 and to Ministry of Finance between May and September 1992.

Ministry of Finance have stated (November 1992) in two cases that the matter is under examination. In the remaining cases, while not accepting the objections, they have contended (August and November 1992) that the units were registered as SSI units and the notification dated 1 March 1986 does not prescribe a precondition that the product should be endorsed on the registration certificate.

Ministry's reply is not acceptable in audit because as per the instructions printed on the registration certificate and the clarificatory orders issued by Industries department on 23 January 1990, a certificate issued for one particular type of manufacturing activity is valid only for the manufacturing activity mentioned in the SSI registration certificate. Since the concessional rate of duty applicable under notification ibid is applicable only to a registered factory, it follows that the conditions attached to the registration certificate are required to be fulfilled before availing such concession.

ii) Clearance of specified goods beyond prescribed limit of registration

As per a clarification issued by Ministry of Finance on 3 April 1987, provisional Small Scale Industries (SSI) registration certification was allowed for the purpose of availment of small scale exemption benefit under a notification dated 1 March 1986. It, therefore, follows that if an assessee does not possess even a provisional

registration certificate till the date of receipt of permanent registration, the benefit under the notification dated 1 March 1986 would not be admissible.

(a) An assessee manufacturing plywood falling under chapter 44 of the schedule to the Central Excise Tariff Act, 1985, cleared his product against a provisional registration certificate issued on 6 November 1986. The certificate was valid for one year only but the assessee did not get it renewed and continued to avail of the benefit of the notification dated 1 March 1986 even after the expiry of one year. This provisional registration, however, was converted into permanent one by the issuing authority only with effect from 4 September 1990. The assessee's manufacturing activity was not covered by any registration during the period from 6 November 1987 to 3 September 1990. The assessee however, continued to avail the concession. This resulted in short levy of duty of Rs.30.30 lakhs during the period from April 1988 to August 1990. Short levy of duty for the period 6 November 1987 to 31 March 1988 and from 1 September 1990 to 3 September 1990 remained to be ascertained.

On the irregularity being pointed out in audit (September 1991), the department did not offer any comments but simply forwarded a copy of the letter issued by the registering authority on 13 December 1991 stating therein that permanent registration could not be issued by them in time due to delay in obtaining forest licence.

The reasons of delay put forth by the registering authority have no bearing with the instant audit objection inasmuch as the fact of non-renewal of provisional certification has been admitted for which the exemption under the notification dated 1 March 1986 was not admissible during the material period.

Ministry of Finance have admitted (December 1992) that there was no valid registration during 1987 to 1990, but contended that there was no loss of revenue as the registering authority have clarified (November 1991) that the registration was intended from 6 November 1987. The fact,

however, remains that exemption availed of without the registration certificate was irregular.

(b) An assessee in the small scale sector was engaged in the manufacture of patent or proprietary medicaments (chapter 30). The assessee was also manufacturing the aforesaid goods in the brand name of another person (brand name owner) and was clearing such goods to him at a concessional rate of duty under the notification dated 1 March 1986 on the strength of a provisional SSI registration certificate valid for the period from 13 June 1986 to 12 June 1988 and from 25 March 1989 to 24 March 1990 possessed by the brand name owner. As the brand name owner did not possess a valid SSI registration certificate during the period from 13 June 1988 to 24 March 1989 and from 25 March 1990 onwards the clearance of the branded goods during the said period at the concessional rate of duty was irregular and resulted in short levy of duty.

On the short levy being pointed out in audit (August 1990), the department, initially accepted the objection (November 1990) but later justified (March 1991), the clearance of branded goods at the concessional rate of duty on the ground that the brand name owner was not a central excise licensee and did not also have any infrastructure necessary for manufacture of the said goods.

The contention of the department is not sustainable because as per a clarification issued by the Central Board of Excise and Customs on 29 October 1987, a trader or any person, who does not have a factory, was not eligible for the SSI exemption. In the instant case, as the brand name owner did not have a factory for manufacture of the subject goods, he was to be considered only as a trader and as such not eligible for the benefits of the small scale exemption under the notification dated 1 March 1986.

Subsequent verification of the assessee's records during March 1992 disclosed that the assessee was clearing the branded goods at normal rate of duty from 1 April 1991. Action taken for recovery of differential duty aggregating to Rs.6.25 lakhs on the said branded goods cleared

during the period 1 April 1988 to 16 November 1990 has not been intimated (March 1992).

Ministry of Finance have stated (November 1992) that the matter is under examination.

iii) Clearance of goods against wrong certificate of registration

As per provisions of the Industries (Development and Regulation) Act, 1951, a small scale industry is one where the investment in plant and machinery does not exceed Rs.35 lakhs. Therefore, if the investment on plant and machinery exceeds Rs.35 lakhs, the unit ceases to be a small scale industry and thereby the assessee will not be eligible to avail the exemption under the aforesaid notification.

(a) Four assessees in four collectorates availed small scale concessions on the strength of registration certificates issued by the competent authority. It was, however, observed in audit that the value of plant and machinery as per the balance sheets of the assessees exceeded Rs.35 lakhs. The units were, therefore, not eligible for SSI benefits. Incorrect availment of the concession resulted in short levy of duty of Rs.26.45 lakhs during different periods between April 1986 and December 1990.

On the irregularities being pointed out in audit (between March 1988 and March 1991), the department in one case confirmed the demand of Rs.3,52,426 but did not admit the objections in other cases on the plea that notification dated 1 March 1986 did not require the central excise officers to look into the investment on plant and machinery.

Ministry of Finance did not admit the objections and stated (November and Decmeber 1992) that the concession was allowed as the assessees were duly registered with the proper authority.

The contention of Minsitry of Finance is not acceptable in audit. As per the provisions of the Industries (Development & Regulation) Act, 1951, the monetary limit of Rs.35 lakhs on plant and

machinery is mandatory to be eligible for benefits as a small scale unit. Therefore, the assessee ceased to continue as a SSI unit as soon as the total investment on plant and machinery exceeded the limit of Rs.35 lakhs. Non existence of proper mechanism to watch and monitor the continued validity of SSI certificate thus resulted in irregular availment of the concession.

(b) During audit of a unit manufacturing industrial gases falling under sub headings 2804.11 and 2901.10, it was observed that the unit was allowed to avail the concessional duty applicable to a small scale industry as per classification list approved by the department eventhough the unit did not possess the required registration certificate. The aggregate capital investment on plant and machinery in respect of two different manufacturing units owned by the assessee as on 31 March 1990 was Rs.1,20,45,533 and hence the assessee was not entitled for registration as SSI unit. The availment of small scale concession by the assessee during the period April 1990 to March 1991 resulted in short levy of duty of Rs.5.69 lakhs.

On this being pointed out in audit (May and June 1990), the department stated (February 1992) that the classification list of the assessee's factory at one unit was approved granting concessional rate of duty under the notification dated 1 March 1986, considering the fact that the assessee's factory at other place availed similar exemption under the notification dated 1 March 1986. The department further stated that a show cause notice demanding differential duty of Rs.1,14,678 for the period from December 1990 to March 1991 was confirmed in August 1991.

Ministry of Finance have stated (September 1992) that the duty for the period from April 1990 to November 1990 could not be demanded due to limitation under section 11A. Ministry's reply is not tenable since the irregularity was pointed out by Audit in May/June 1990 and the loss of revenue for the above period amounting to Rs.4.54 lakhs could have been avoided had the department taken timely action to issue show cause notice.

iv) Clearance of goods without registration certificate

As per para 4 of the notification issued on 1 March 1986, concessional rate of duty is applicable to a factory which is an undertaking registered with the Director of Industries of any state or the Development Commissioner (Small Scale Industries) as a small scale industry under the provisions of Industries (Development and Regulation) Act, 1951. However, such registration is not required in cases where the value of clearance from a factory during the preceding financial year or in the current financial year did not exceed or is not likely to exceed Rs.7.5 lakhs or where a manufacturer had been availing of small scale exemption under any of the notifications specified therein.

An assessee engaged in manufacture of lighting fittings and parts thereof with brand name `crompton greaves' falling under sub heading 94.05 cleared them on payment of duty at the concessional rate in terms of a notification issued on 1 March 1986. It was seen during audit that upto the year 1985-86 the assessee was governed under the Shops & Establishment Act and availed exemption under a notification issued in June 1977.

During 1986-87 the assessee filed a classification list claiming exemption under the notification issued on 1 March 1986 which was approved by the department eventhough the assessee did not possess any SSI registration certificate from the Director of Industries. The assessee obtained a provisional SSI certificate only in July 1988. Moreover, the clearances during the years 1986-87 and 1987-88 had also exceeded Rs.7.5 lakhs. The assessee during the previous year, was also not availing exemption under any of the other notifications mentioned in the notification issued on 1 March 1986. As such the assessee was not entitled to small scale exemption under the said notification. The incorrect grant of exemption resulted in short levy of duty of Rs.11.85 lakhs during the period from May 1986 to September 1987.

On the irregularity being pointed out in audit (April 1991), the department accepted the objection (April 1992).

Ministry of Finance, however, did not admit the objection and stated (October 1992) that the unit was entitled to avail exemption under a notification dated 17 March 1985 and, therefore, was entitled to the concession.

The reply is not acceptable in audit as, during the year 1985-86, the assessee was actually operating under the Shop & Establishment Act and availing exemption under a notification dated 18 June 1977 which was not included in proviso (b) to para 4 of the notification dated 1 March 1986.

3.37 Legal avoidance of duty

i) Legal avoidance of duty on manufacture of same branded goods

As per para 7 of the notification dated 1 March 1986 inserted by a notification issued on 22 September 1987 (applicable from 1 October 1987), the small scale exemption would not apply to the specified goods where the manufacturer affixes such goods with a brand name of another manufacturer who is not eligible for grant of exemption under the said notification.

A manufacturer of radio of a popular brand name owned by him, was availing the small scale exemption benefit under the aforementioned notification dated 1 March 1986. Three other manufacturers under the same collectorate also manufactured radios and two-in-one of the same brand name and were allowed to avail individually the small scale exemption on the ground that the brand name owner is a small scale unit eligible for grant of concession although the value of branded goods taken together for four factories exceeded Rs.2 crores in a certain year. This resulted in avoidance of duty amounting to Rs.28.14 lakhs for the years 1990-91 and 1991-92. This happened due to absence of provision in the notification for computing the aggregate value of clearances on behalf of a manufacturer from one or more factories though a similar provision was made

in a notification issued on 5 May 1983 granting small scale concession for cosmetics and toilet preparations.

On this being pointed out in audit (April 1992), the department stated (May 1992) that in view of no provision being made in the notification the exemption has been correctly allowed to all the manufacturers and that the notification dated 5 May 1983 was applicable only to cosmetics and toilet preparations.

The fact, however, remains that in the absence of adequate safeguard, SSI exemption could be availed of by unlimited number of manufacturers producing identical branded goods by just keeping the clearance value below Rs.2 crores by the brand name owner from his own factory defeating the very purpose for which small scale exemption was contemplated.

The matter was reported to Ministry of Finance in August 1992; reply has not been received (December 1992).

ii) Legal avoidance of duty due to fragmentation of units

Under a notification dated 1 March 1986, as amended, full or partial exemption on value of clearances of specified goods is allowed to a small scale unit upto an aggregate value of Rs.75 lakhs provided that the value of clearances of all excisable goods for home consumption had not exceeded Rs.200 lakhs in the preceding financial year. For the purpose of arriving at the value of clearances, the clearances made for home consumption by a manufacturer from one or more factories are to be clubbed together.

(a) An assessee manufacturing electronic goods (chapter 85) was allowed to avail the small scale exemption under the aforesaid notification. This unit is a partnership firm having two partners. Another nearby unit with a slight difference in name is functioning as a private limited company. One of the partners of the assessee unit is a Director of the second unit and the other partner of the assessee unit is a closely related person

of another Director of the second unit. The second unit manufacturing electronic goods (chapter 85 and 90) was also allowed to avail separately the small scale exemption benefit although all of them have proprietary interest in both the units. Thus separate legal entity had been claimed to avail of the excise duty concessions applicable to small scale units resulting in legal avoidance of duty for Rs.15.75 lakhs for the years 1990-91 and 1991-92.

On this being pointed out in audit (April 1992), the department did not accept the audit objection and stated (April 1992) that the factories are two separate units in the eyes of law and their clearance value could not be clubbed together in view of different High Court and CEGAT judgements.

Contention of the department is not acceptable as :-

i) the Supreme Court in their judgement in the case of Macdowel and Company Limited Vs. Commercial Tax Officer {1985 (5) ECR 259} held that corporate entity can be disregarded if it is used for tax evasion or to circumvent tax obligation;

ii) this is a case of intentional splitting up of units and in a similar case reported in para 3.40(ii) of the Audit Report 1990-91, Ministry of Finance had stated that the Audit's view was under consideration.

Ministry of Finance have stated (November 1992) that the matter is under examination.

(b) An assessee manufacturing goods falling under chapters 38 and 69 was allowed to avail the small scale exemption under the aforesaid notification during the year 1991-92 as the clearance value of goods manufactured in his factory was below Rs.2 crores during 1990-91. This unit is a partnership concern having four partners who are related to each other. Another nearby unit under a different name is functioning as a proprietary concern whose sole proprietor is one of the four partners of the first unit and manufacturing goods falling under

chapters 72 and 73 (not specified goods under the notification dated 1 March 1986). Total clearance value of the excisable goods manufactured by the two units exceeded Rs.2 crores during 1990-91. But, while allowing the benefit of small scale exemption to the first unit, the value of clearance of the second unit was not taken into account although the two units are interconnected firms and are to be treated as same manufacturer. Benefit of exemption allowed to the first unit thus resulted in avoidance of duty of Rs.8.95 lakhs during the year 1991-92.

On this being pointed out in audit (February 1992), the department did not accept the audit objection and contended (April 1992) that the two units are separate legal entities having separate central excise licences and the mere fact that proprietor of one unit and the partners of other unit are closely related would not by itself be sufficient to establish that the two units were one in reality. This view is supported by a number of CEGAT's decisions.

Contention of the department is not acceptable as :-

i) the Supreme Court in the case of Macdowel and Company Limited Vs. Commercial Tax Officer {1985 (5) ECR 259} decided that corporate entity can be disregarded if it is used for tax evasion or to circumvent tax obligation;

ii) treatment of two interconnected units as separate entities, if accepted, would result in avoidance of payment of duty by any manufacturer by setting up unit in different names, so that no single manufacturer will, on paper, own more than one factory and each can enjoy the exemption available to small units. Such recourse to legal avoidance of duty has been adversely commented upon by the Public Accounts Committee in para 54 of the Forty-Ninth Report (Eighth Lok Sabha) wherein the committee have desired that special attention should be paid by the enforcing agencies to ensure that benefits intended for small scale units are not abused or misused.

Ministry of Finance have stated (December 1992) that the matter is under examination.

3.38 Incorrect computation of the SSI exemption limit

i) Availment of SSI concession beyond the prescribed limit

As per notification dated 1 March 1986, the concessional rate of duty is applicable on the value of the clearances aggregating to Rs.75 lakhs, in case the assessee avails Modvat credit on the inputs. The above concession is applicable provided the aggregate value of clearances of all excisable goods for home consumption did not exceed Rs.200 lakhs in the preceding financial year. For the purpose of computing the aggregate value of clearances of Rs.200 lakhs of all excisable goods for home consumption in the preceding financial year, the clearances of goods affixed with brand name of another person who is not eligible for small scale exemption shall not be taken into account. However, there is no such provision in the notification for the purpose of computing of value clearances upto Rs.75 lakhs at concessional rates.

(a) An assessee in the small scale sector engaged in manufacture of patent or proprietary medicaments (heading 30.03) was getting some of his goods manufactured through job workers, also in the small scale sector, by supplying raw materials. The assessee as also the job workers were allowed the small scale concession under the said notification dated 1 March 1986 separately. Since, the assessee got the goods manufactured through the job workers, the clearances effected by the job workers on behalf of the assessee ought to have been clubbed with those made by the assessee from his factory and the benefit of exemption on goods of a value of Rs.75 lakhs allowed with reference to such combined clearances only. In the absence of the restrictive clause in the notification, the assessee misused the exemption notification, resulting in unintended availment of small scale concession involving duty effect of Rs.19.50 lakhs on goods cleared through

the job workers during the years 1989-90 to 1991-92 (upto January 1992).

On this being pointed out in audit (March 1990), the department did not accept the objection and relying on the Board's clarification dated 23 July 1990 issued in the light of the Supreme Court's decision in the case of Collector of Central Excise Vs. Kerala State Electricity Board {1990 (47) ELT-A-161), contended (April 1991) that the job workers, being independent legal entities could not be considered as dummy units of the assessee and hence were the real manufacturers of the subject goods.

The contention of the department if accepted, would result in avoidance of payment of duty by the principal manufacturers by getting their goods manufactured through job workers. Such 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 it was desired that special attention should be paid by the enforcing agencies to ensure that benefits intended for small scale units are not abused or misused. Further, the aforesaid clarification dated 23 July 1990 has not been issued in consultation with the Ministry of Law and, therefore, requires reconsideration.

Ministry of Finance while relying on the Board's circular dated 23 July 1990 have stated (December 1992) that the job workers were not hired labour or dummy units of the assessee and as such the benefit of notification dated 1 March 1986 has rightly been allowed to the assessee.

Ministry's comments are however silent on the misuse of exemption by the principal manufacturers getting their branded goods (P or P medicines) manufactured from job worker but taking shelter of the Board's clarification dated 23 July 1990 which has not been issued in consultation with the Ministry of Law.

(b) An assessee having two units, and manufacturing excisable goods falling under chapters 72, 73 and 86 did not include the value of clearances of iron and steel articles (chapters

73/72) cleared at specific rates of duty for determining the eligibility under the notification. As the total value of clearances of all excisable goods exceeded Rs.200 lakhs during 1989-90 and 1990-91, the assessee was not eligible for the duty concession during 1990-91 and 1991-92. The irregular availment of exemption resulted in short levy of duty of Rs.12.71 lakhs during the period from April 1990 to July 1991.

The irregularity was pointed out in audit to the department in September 1991/February 1992 and to Ministry of Finance in June 1992.

Ministry of Finance have admitted the objection (August 1992).

(c) An assessee entitled to the benefits of small scale exemption under the notification issued on 1 March 1986, was engaged in manufacture of detergent cakes (sub heading 3401.20) chargeable to duty at 25 per cent ad valorem. In addition to his own brand of detergent cakes the assessee started manufacturing, from February 1989 detergent cakes affixed with the brand name of another person who was not eligible for small scale exemption. Accordingly, the assessee availed concessional rate on clearances of his own brand of detergent cakes falling within the first 75 lakhs of rupees but paid duty, abinitio, at full rates on detergent cakes affixed with the brand name of the other person. For the purpose of computation of the aggregate value of the clearances of first 75 lakhs of rupees, the value of clearance of cakes affixed with brand name of the other person was taken into account prior to 1 September 1989. The assessee accordingly started paying duty at full rates in March 1989 during the year 1988-89 and in July 1989 during the year 1989-90 on own brand of cakes as well, on completion of the aggregate value of clearances of Rs.75 lakhs of both the brands taken together. But, consequent upon the amendment incorporated with effect from 1 September 1989 in paragraph 3 of the exemption notification dated 1 March 1986, the value of clearances of the other's brand of detergent cakes was excluded while computing the aggregate value of first clearances of Rs.75 lakhs also, while the amendment was incorporated for the

specific purpose of computation of the aggregate value of clearances of Rs.200 lakhs of all excisable goods during the preceding financial year. As a result, the assessee who had earlier started paying duty at full rates on his own brand of cakes in July 1989, again started paying duty at concessional rates after 1 September 1989. The department while assessing RT-12 return of September 1989 accepted the above interpretation of the assessee and authorised him to take credit of the differential duty of Rs.38,947 paid in excess, from 1 September 1989. Irregular availment of exemption as above, resulted in short levy of duty of Rs.8.72 lakhs on clearances during the period from September 1989 to March 1990 and from July 1990 to December 1990 due to payment of duty at concessional rate of 15 per cent ad valorem instead of 25 per cent ad valorem.

On the issue being pointed out in audit (January 1991), the department did not admit the audit objection and stated (January 1992) that both the activities of manufacture (branded goods of other manufacturers, not eligible for SSI exemption and manufacture of own goods) are independent of each other and, therefore, the assessee was at liberty to avail the legitimate benefits of the two different schemes.

The reply of the department is not tenable as there is no such provision similar to the one under para 3 of the SSI exemption notification for computing the aggregate value of clearances upto Rs.75 lakhs at concessional rates.

Ministry of Finance have stated (December 1992) that the matter is under examination.

(d) An assessee manufacturing goods falling under chapter 90 and availing the concession under the above mentioned notification, paid duty at the concessional rates on the clearances exceeding Rs.75 lakhs during 1990-91. The payment of duty at concessional rates after crossing the limit of Rs.75 lakhs was not in order. The short levy of duty amounted to Rs.2.69 lakhs.

On this being pointed out in audit (May 1991), the department reported (July 1991) issue of a show cause notice for the amount.

Ministry of Finance admitted the objection and stated (July 1992) that the demand for Rs.2,69,109 had been confirmed (October 1991). The assessee deposited Rs.90,000 (April 1992) as precondition for grant of stay filed with the Collector (Appeals).

ii) Erroneous exemption of value of first clearance

According to para 1 (a) of the notification dated 1 March 1986, the first clearances of the specified goods valued upto Rs.30 lakhs are allowed full exemption/concessional rate of duty. All the clearances effected by a manufacturers from one or more factories have to be taken into account in reckoning the upper limit of Rs.30 lakhs. In the absence of a provision similar to the one under para 3 ibid, the limit of Rs.30 lakhs should be applied even though some goods might have been cleared for other reasons.

Two assessees in a collectorate manufacturing goods falling under heading 84.79 and 17.04 respectively; and availing the concession under the above mentioned notification, also cleared specified goods on payment of duty at the effective rate but omitted to include the value of such clearances for computing the limit of Rs.30 lakhs. Since these clearances formed part of the `first clearance' from the first of the financial year, the omission to include the same resulted in short levy of duty of Rs.5.29 lakhs during 1989-90 and 1990-91.

The irregularities were pointed out to the department in January 1990/April 1991 and to Ministry of Finance in April 1992.

Ministry of Finance have admitted the objection (July 1992).

iii) Adoption of wrong value for levy of duty

As per a notification issued on 1 March 1986, specified goods not exceeding the value of Rs.60 lakhs (Rs.55 lakhs from 1990-91) cleared for home consumption in a financial year immediately following duty free clearance of specified goods falling under one heading (one chapter since 1990-91) and not exceeding the value of Rs.15 lakhs (Rs.20 lakhs since 1990-91) are exempt from so much of the duty of excise leviable thereon as is equivalent to an amount calculated at 10 per cent ad valorem. The explanation I to the said notification provides that the value of clearances for the purpose of the notification is to be determined in accordance with the provisions of section 4 of the Central Excises and Salt Act, 1944, or according to the tariff values wherever fixed.

An assessee engaged in manufacture of crown corks (sub heading 8309.10) chargeable to duty at 5 paise per crown cork availed exemption from payment of duty to the extent of 10 per cent ad valorem, on clearances not exceeding 60 lakhs of rupees of crown corks immediately following the clearances of first 15 lakhs of rupees (20 lakhs since 1990-91) at nil rate of duty. During audit (June 1991) it was observed that for the purpose of availment of 10 per cent exemption, the value adopted was the gross value inclusive of excise duty instead of the value as defined in section 4 of the Act which does not include excise duty. Adoption of higher value resulted in availment of extra exemption and consequential short levy of duty of Rs.4.16 lakhs.

Ministry of Finance while admitting the objection have stated (September 1992) that show cause notice demanding duty for six months amounting to Rs.18,932 has been issued and the question of invoking extended period under proviso to section 11A is under examination.

3.39 Goods manufactured on job work basis on behalf of other manufacturers not entitled to SSI concession

As per section 2(f) of the Central Excises and Salt Act, 1944, the term `manufacturer' shall include not only a person who employes hired labour in production and manufacture of excisable goods but also any person who engages in their production or manufacture on his account. The Supreme Court in its judgements in the cases of M/s. Shree Agencies {1977 ELT J 168 SC} and M/s. Bajrang Gopilal Gajabi {1986 (25) ELT 609 (SC)} held that in a case where the buyer supplied the raw materials to the seller for getting his goods manufactured, the buyer would be considered as a manufacturer under section 2(f) of the Act ibid. The Central Board of Excise and Customs in consultation with Ministry of Law clarified (20 September 1988) that if the inputs are supplied by the principal manufacturer (supplier of raw materials) for manufacture of any goods on job work basis, the goods so produced would not be entitled for small scale exemption unless the principal manufacturer himself is entitled to the concession admissible to a small scale manufacturer.

i) A small scale manufacturer undertook manufacture of LDPE Agri film (rigid) falling under sub heading 3920.32 from raw materials and specifications supplied by a principal manufacturer on job work basis and cleared the product after availing the small scale exemption under the notification dated 1 March 1986. As the principal manufacturer was not entitled to the small scale industries concession, the availment of exemption in duty was irregular and resulted in short levy of duty of Rs.22.71 lakhs during 1988-89 to 1990-91.

On the irregularity being pointed out in audit (June 1991), the department stated (December 1991) that as per approved classification list effective from 1 March 1988, no concession was allowed to the assessee under the notification dated 1 March 1986 and subsequent classification lists submitted by the assessee claiming the

exemption have not yet been finally approved by the department.

The fact, however, remains that the assessee went in appeal to the Collector (Appeals) against the approval of classification list effective from 1 March 1988 and the Collector (Appeals) in his order dated 22 June 1989 held that as far as eligibility of exemption under notification dated 1 March 1986 in respect of polyethylene film (rigid) is concerned it would be eligible provided that the total value of dutiable goods did not exceed Rs.1.5 crores. The appeal order was not reviewed by the department. The orders of Collector (Appeals) would, therefore, be enforceable at the time of final assessment.

Ministry of Finance have stated (November 1992) that the matter is under examiantion.

ii) An assessee engaged in manufacture of automobile generators, alternators, voltage regulators etc., (chapter 85) supplied cold rolled steel sheets to another manufacturer who was entitled for SSI concession and got electrical laminations manufactured on job work basis. The job worker cleared the goods so manufactured (electrical laminations) to the principal manufacturer at a concessional rate applicable to SSI under the notification dated 1 March 1986. As the principal manufacturer himself was not entitled to the small scale industries concessions, the payment of duty at a concessional rate was irregular. This resulted in short levy of duty of Rs.8.52 lakhs on clearances of the goods by job worker during June 1989 to September 1991 and further helped the principal manufacturer to avail higher notional credit of Rs.4.30 lakhs under rule 57B of the Central Excise Rules, 1944.

The irregularity was pointed out to the department in January 1992 and to Ministry of Finance in September 1992.

Ministry of Finance did not admit the objection and have stated (November 1992) that the small scale unit manufacturing the laminations is an independent manufacturer, not a dummy or a hired labour, and the transaction between him and

the supplier of raw material (cold rolled steel sheets) is on principal to principal basis; the duty has been correctly paid by the SSI unit on goods manufactred by him; and there is no irregular availment of higher notional credit.

Ministry's reply is not acceptable as raw matrial was not supplied by the principal manufacturer to the job worker on payment basis. The raw material remained the property of the principal manufacturer, as such the transaction could not be considered as on principal to principal basis.

iii) Four small scale manufacturers were manufacturing goods falling under headings 85.03 and 85.43 on job work basis from the raw materials supplied by the principal manufacturer not being a small scale manufacturer. The goods so manufactured, were returned to the principal manufacturer on payment of duty at a concessional rate applicable to SSI units. Since the principal manufacturer was not a small scale manufacturer, the duty involved in misutilisation of the concession by way of availment of notional higher credit under rule 57B of the Central Excise Rules, 1944, by him, amounted to Rs.7.12 lakhs against the goods received from the assessee during the period April 1990 to March 1991.

On this being pointed out in audit (April 1991), the department justified (January 1992) the correctness of SSI exemption on the ground that in view of the Board's circular of 23 July 1990, the relationship between the raw material supplier and the manufacturers was one of principal to principal basis. The contention of the department is not correct as the assessees are simply job workers carrying out manufacturing process on the raw material supplied by the principal manufacturer who in turn were availing notional higher credit on such goods.

The irregular availment of concession was reported to Ministry of Finance in May 1992; reply has not been received (December 1992).

3.40 Manufacture of branded goods of non SSI beneficiary

As per para 7 of a notification issued on 1 March 1986, as amended, the benefit of SSI exemption is not applicable to the specified goods where a manufacturer affixes such goods with a brand name or trade name (registered or not) of another person who is not eligible for the grant of exemption under the said notification. However, such exemption can be availed of in respect of those specified goods, which are component parts of any machinery or equipment or appliances and cleared from a factory for use as original equipment in manufacture of said machinery or equipment or appliances and the procedure set out in chapter X of the Central Excise Rules, 1944, is followed.

An assessee engaged in manufacture of switchgear parts, electrical lighting or signalling equipments, parts of accessories of two wheelers falling under sub headings 8538.00, 8512.00 and 8714.00 respectively availed of concessional rate of duty on the clearances made upto Rs.75 lakhs (after crossing the full exemption limit) in terms of the notification dated 1 March 1986.

It was noticed in audit that the assessee was affixing brand names of other big manufacturers who were not eligible for small scale exemption on the above goods and was also not following the procedure set out in chapter X of the Central Excise Rules, 1944, in respect of such clearances and as such the assessee was not entitled for the SSI concession under the said notification. During the financial years 1989-90 and 1990-91, the assessee had cleared goods valued at Rs.46.90 lakhs and Rs.86.51 lakhs availing exemption and concessional rate of duty in terms of the said notification. This resulted in irregular availment of exemption and short levy of Rs.9.23 lakhs during the aforesaid period.

On this being pointed out in audit (August 1991), the department stated (March 1992) that the fact that the assessee was clearing branded goods was not known to them at the time of approval of

the classification list in respect of such goods. Eventhough the unit was under lock out and sealed by the Industrial Court, a preventive search was made and that the samples engraved with the monogram of the big manufacturers were seized. The department further stated that after investigation, necessary show cause notice would be issued.

Ministry of Finance have confirmed the facts and stated (November 1992) that the show cause-cum demand notice for Rs.15.88 lakhs has been issued by invoking provisions udner section 11A.

MODVAT (MODIFIED FORM OF VALUE ADDED TAX) SCHEME

3.41 Irregular availment of credit of duty paid on goods other than inputs

As per a notification issued on 1 March 1986 under rule 57A of the Central Excise Rules, 1944, credit of duty paid on inputs used in manufacture of final products is allowed to manufacturer of such final products after he has filed a declaration for the same as per rule 57G of the said rules. However, as per the explanation below rule 57A, inputs do not include machines, machinery, plant, equipments, apparatus, tools or appliances used for producing or processing of any goods.

i) Graphite electrodes

As per CEGAT decision dated 29 August 1985 in the case of Collector of Central Excise, Madras Vs. Muthu Chemical Industries {1986 (26) ELT 581 (Tribunal)} electrode is merely a device for delivery of current into the material for reaction. It, therefore, follows that it cannot be treated as raw material for availing of credit of duty paid on inputs used in manufacture of final products.

Eighteen assessees in ten collectorates engaged in manufacture of different excisable goods, viz., iron and steel products, aluminium oxide, calcium carbide, textile machinery, paper and caustic sodalye etc., brought into the factory duty paid graphite electrodes for use in running

the electric arc furnace and took credit of duty paid thereon. Graphite electrodes, being in the nature of appliances/equipments used in the electric arc furnace as held by the CEGAT, are not eligible for Modvat credit under rule 57A of the rules ibid. This resulted in irregular availment of Modvat credit aggregating to Rs.322.09 lakhs during the different periods from April 1987 to December 1991.

The irregularity was pointed out to the department between August 1990 and January 1992 and to Ministry of Finance between March and August 1992.

Ministry of Finance did not accept the objection in two cases and stated (November 1992) that the graphite electrodes were used as consumables and, therefore, the credit was rightly admissible.

Ministry's reply is not acceptable because :

i) machinery, equipments, appliances, tools etc., included in the notification issued under rule 57A are eligible for Modvat credit provided such machinery, equipments etc., are used as component parts (inputs) in manufacture of other machinery, equipments etc., and not when they are used as machinery/appliances in manufacture of other goods. In the instant case, graphite electordes were used as appliances/equipments in running the electric furnace for manufacture of iron or steel products, as such very first condition of rule 57A that such goods should have been used as "inputs" is not satisfied;

ii) in the case of Collector of Central Excise Vs. M/s. Muthu Chemical Industries {1986 (26) 581 (Tribunal)} the CEGAT has held that electrode is merely a device for delivery of current into the material for reaction and hence could not be treated as inputs;

iii) in the case of mercury acting as electrodes in manufacture of caustic soda, it has been

clarified by Ministry that Modvat credit is not admissible (March 1989); and

iv) Ministry's reply does not contain any technical advice of DGTD in support.

ii) Carbon paste

(a) An assessee manufacturing ferro alloys falling under heading 72.02 of the schedule to the Central Excise Tariff Act, 1985 declared carbon paste as input and was allowed to take Modvat credit of the duty paid on such carbon paste and availed the same towards payment of duty on the final product. The carbon paste was used as an electrode for producing an electric arc in the furnace. Hence the Modvat credit availed on this item was irregular. This resulted in irregular availment of Modvat credit of Rs.15.15 lakhs during the period from February 1987 to December 1988.

On this being pointed out in audit (February 1989), the department cited (June 1991) the Board's clarification dated 21 October 1986 wherein it was held that Modvat credit on carbon electrodes is admissible as some percentage of carbon goes into the final product, ferro alloys and hence this qualifies for Modvat benefit.

The reply of the department is not acceptable as it is not in accordance with the decision of the CEGAT in the case of Muthu Chemical Industries referred to in para (i) supra.

The irregularity was reported to Ministry in March 1992; reply has not been received (December 1992).

(b) An assessee manufacturing ferro silicon (heading 72.02), charge chrome (heading 72.02), charge chrome slag (sub heading 2610.00) and ferro silicon slag (sub heading 2621.00) took credit of duty on carbon electrode paste (sub heading 3801.00) which were actually used for furnace relining, ladle relining, repairs and maintenance of the furnace. Hence these were not inputs for the purpose of rule 57A of the Central Excise Rules, 1944. Availment of Modvat credit in respect of the carbon paste was irregular. Total

credits taken during June 1989 to January 1990 amounted to Rs.3.19 lakhs.

On this being pointed out in audit (June 1990), the department accepted the objection and reported (May 1991) that the show cause notice invoking the extended period of five years was under process and would be issued shortly.

Ministry of Finance have admitted the objection (July 1992).

iii) Fibre glass filter mesh

An assessee engaged in manufacture, inter alia of pistons (heading 84.09) was allowed to take credit of duty paid on `fibre glass filter mesh' declared by the assessee as an input for the aforesaid final product. As per the technical write up furnished by the assessee to the department, the said mesh was meant for use as a filter in the piston die casting machine to prevent slag and other foreign materials present in molten metal from entering the piston blanks (die) and also to regulate even flow of molten metal into the die. Thus, the mesh which was used for filtering impurities was in the nature of an appliance and did not qualify for being categorised as an input and the Modvat credit allowed thereon was, therefore, irregular. The irregular credit so availed during the period from November 1987 to February 1989 amounted to Rs.5.12 lakhs.

On the irregularity being pointed out in audit (March 1989), the department issued nine show cause notices (between May 1989 and November 1991) for disallowance of Modvat credits aggregating to Rs.21,79,958 taken during the period from December 1987 to November 1991. Three show cause notices withdrawing the credits aggregating to Rs.5,64,479 covering the period January 1989 to August 1989 and January 1990 to May 1990 were confirmed. The orders in original were also confirmed by the Appellate Collector in January 1991. The assessee has, however, gone in appeal (April 1991) to CEGAT against the decision of the appellate authority.

Result of adjudication in the remaining cases has not been intimated (March 1991).

Ministry of Finance have admitted the objection (September 1992).

iv) Cleaning agents and lubricants

An assessee engaged in manufacture of nylon and polyester filament yarn falling under heading 54.02 availed Modvat credit of duty paid on inputs under rule 57A which inter alia, included Terapan, Delion F 4720 and wax and flakes falling under sub headings 3402.90, 3403.19 and 3404.90 respectively. These inputs were used as cleaning agents and lubricants which improved the mobility of the nylon filament yarn to avoid static generation during further down stream activities and also improved the flow characteristics of dried nylon polymer chips in the extruder while making nylon yarn. Since these products did not go into the final products they could not be treated as inputs and, as such, did not qualify for availment of Modvat credit. This resulted in irregular availment of Modvat credit of Rs.2.66 lakhs for the period from August 1991 to September 1991.

On this being pointed out in audit (December 1991), the department stated (July 1992) that two show cause notices aggregating to Rs.21,12,018 covering the period from 22 August 1991 to 30 June 1992 have been issued (January/July 1992) to the assessee which were pending adjudication.

Ministry of Finance have admitted the objection (December 1992).

3.42 Modvat credits not expunged

As per rule 57A of the Central Excise Rules, 1944, credit of duty paid on specified inputs is allowed if such inputs are used in or in relation to manufacture of specified final products and the same may be utilised towards payment of duty of excise leviable on the final product. The Board in a letter dated 1 July 1986 clarified that surplus credit, if any, will have to lapse.

i) Two assessees in two different collectorates manufacturing aluminium corrugated sheets/circles out of aluminium ingot availed of Modvat credit on ingot and utilised such credit towards payment of duty on final products viz., sheets/circles. As duty paid on the final products was always less than the credit of duty taken on aluminium ingot (input) surplus Modvat credit had always been accumulated in the Modvat accounts. This surplus Modvat credit ought to have lapsed as per the clarification issued by the Board on 1 July 1986. But instead of expunging, the assessees utilised the same towards payment of duty on other final products in manufacture of which no such inputs were used. This resulted in irregular availment of Modvat credit of Rs.165.92 lakhs during the period from November 1988 to April 1991.

On the irregularity being pointed out in audit (August 1990 and June 1991), the department admitted the audit objection in one case and stated that a show cause-cum demand notice for Rs.2.84 lakhs had been issued to the assessee in November 1991.

Ministry of Finance in one case have stated (December 1992) that the matter is under examination. In the second case it has been argued that credit remaining after payment of duty on corrugated sheetes/circles was utilised in payment of duty on other declared final products.

Ministry's reply is not acceptable as the surplus credit was utilised towards payment of duty on other final products in which such inputs were not intended to be used.

ii) A public sector undertaking manufacturing different products falling under various chapters paid a substantial amount of duty leviable on steel structures contracted for supply to a specific buyer by debiting the Modvat account (RG23A part II) although the credit available for utilisation on that account was insignificant. In fact this was met out of surplus/accumulated credit in respect of other products. This resulted in irregular utilisation of Modvat credit of Rs.21.47 lakhs during the period from May 1989 to December 1990.

On the mistake being pointed out in audit (March 1991), the department did not admit the objection and stated (July 1991) that there is no one to one co-relation between inputs and final products under Modvat scheme and also added that the assessee had been permitted to maintain a combined Modvat account for all the items which had certain common inputs.

The department's reply is not acceptable since (i) the rule does not permit utilisation of excess credit under one product for payment of duty on other products even when combined Modvat account is maintained; and (ii) in a similar situation, the Board clarified on 5 October 1989 that excess credit arising out of inputs used in manufacture of wires thicker than 2 mm cannot be utilised for payment of duty on wires thinner than 2 mm. This confirms the Audit view.

Ministry of Finance did not admit the objection and stated (December 1992) that the excise duty was paid inter alia, from the credit availed of in respect of inputs which are covered by the declaration under rule 57G in respect of final products.

Ministry's reply is not acceptable in view of the position stated above, reply to which has not been given.

3.43 Irregular availment of Modvat credit on inputs used in exempted output goods

Rule 57A of the Central Excise Rules, 1944, provides the facility of availing credit of duty paid in respect of specified inputs, used in manufacture of specified final product. Rule 57C of the rules, ibid, further lays down that such credit of duty is not admissible, if the final product is exempt from payment of duty or is charged to `nil' rate of duty.

i) The Board clarified on 15 February 1988 that if an assessee opted to pay duty inspite of the goods being fully exempted, Modvat credit can not be denied on such duty paid inputs. The aforesaid clarification was withdrawn by the Board on 4 January 1991 in consultation with Ministry of Law

and it was decided that an assessee has got no option to pay duty on his own volition in case the goods are fully exempt from payment of duty.

Six assessees in three collectorates manufacturing various exisable goods were allowed to pay duty on the finished product after availing credit of duty paid on the inputs although these goods were exempt from whole of the duty. This resulted in irregular utilisation of credit on exempted goods amounting to Rs 62.78 lakhs during the different periods between September 1987 and June 1991.

The irregularities were pointed out to the department between February 1990 and October 1991 and to Ministry of Finance between March and July 1992.

Ministry of Finance, while admitting the objection for the period after 4 January 1991, contended (July, August and November 1992) that the said circular dated 4 January 1991 was to have prospective effect only and the earlier instructions were not to be unsettled by invoking provisions of section 11A.

The contention of Ministry regarding non recovery of credits pertaining to past period is not tenable since even rule 57I provided for recovery of inadmissible credits within six months. As such, had the demands been raised immediately on receipt of the Board's clarification dated 4 January 1991, credit taken between July to December 1990 could have been recovered.

ii) A manufacturer of agricultural tractors and I.C. engines, manufactured 6420 tractors of engine capacity not exceeding 1800 cc during the period from April 1988 to February 1989 which were exempt from payment of duty. However, it was seen in audit that stock of inputs like tyres and tubes etc., held in RG-16, received under a notification dated 10 February 1986 for use in such tractors was not sufficient. In order to complete the process of manufacture of exempted tractors, 4471 front wheel tyres, 4670 rear wheel tyres, 4584 front wheel tubes and 4937 rear wheel tubes were

used from the stocks held in RG23A part I during the above mentioned period. However, the credit of Rs.30.59 lakhs availed on these inputs, was not reversed.

On the mistake being pointed out in audit (September 1989), the department replied (October 1990) that the assessee had used the said inputs to complete the production and the replenishment of tyres and tubes so used was done at the end of financial year 1989-90. This was only a procedural and technical mistake which could be overlooked.

The reply of the department is not acceptable. Modvat credit is not admissible if final product is exempt from duty, and since the inputs were used in the production of agricultural tractors of engine capacity not exceeding 1800 cc which are exempt from duty, the credit of duty availed on tyres and tubes should have been expunged.

The matter was reported to Ministry of Finance in September 1992; reply has not been received (December 1992).

iii) An assessee engaged in manufacture of goods falling under chapters 32,38,39,74 and 85 of the schedule to the Central Excise Tariff Act, 1985, had been paying duty on the intermediate product viz., varnish (chapter 32) and availed of Modvat credit under rule 57A of duty paid on varnish which was used in manufacture of enamelled winding wires. Major part of the enamelled winding wires manufactured by the assessee was cleared without payment of duty claiming exemption under a notification issued in February 1986 as amended. The quantity of varnish used in the exempted enamelled wire was calculated as 8.5 kgs. of varnish per 100 kgs. of enamelled wire. During the period from April 1989 to March 1991 though the assessee cleared 96 per cent of the total enamelled wires manufactured by him without payment of duty, the Modvat credit reversed on account of varnish used in these exempted products was not proportionate. This resulted in irregular availment of Modvat credit amounting to Rs.13.58

lakhs during the period from April 1989 to March 1991.

On this being pointed out in audit (April 1991) the department did not accept the objection and stated (December 1991) that the assessee was reversing the Modvat credit regularly on the basis of formula adopted by them.

The reply of the department is not acceptable as the amount of credit reversed by the assessee was not proportionate to the clearances of enamelled winding wires cleared at nil rate of duty.

Subsequent verification, however, revealed that the department issued show cause-cum demand notice to the assessee in January 1992 for an amount of Rs.16.46 lakhs for the period 1989-90 and 1990-91.

Ministry of Finance have admitted the objection (November 1992).

3.44 Irregular availment of credit on inputs not declared

i) Inputs not included in the declaration

As per rule 57G of the Central Excise Rules, 1944, every manufacturer intending to avail credit of the duty paid on inputs under rule 57A, shall file a declaration with the proper officer of the central excise department indicating the description of the final products manufactured in his factory and the inputs intended to be used in each of the said final products and obtain a dated acknowledgement of the said declaration. The Central Board of Excise and Customs in their letter dated 9 February 1988, clarified that declaration of description and sub headings of both the inputs and final products is essential for availment of credit and that this requirement cannot be dispensed with. The Tribunal in the case of M/s. Aluminium Industries Limited, Madras {1990 (47) ELT 28} held that declaration of broad description of inputs would not suffice for the availment of the credit, since the proforma for filing the declaration provided specific columns

for the descriptions and sub headings of the inputs and the final products.

(a) An assessee engaged in manufacture of iron and steel products under chapter 72 availed Modvat credit of duty paid on inputs like ferro molybdenum (sub heading 7202.20), aluminium wires and wire rods (sub headings 7612.00 and 7604.10) and steel shredded scrap (sub heading 7204.90) which were not mentioned as inputs in the declaration submitted to the proper officer by the assessee on 17 March 1986. No other declaration was submitted till November 1991.

The aforesaid Modvat declaration was not specific in relation to the inputs for the reasons that the input, ferro molybdenum was not specified. Also steel shredded scrap was not included in declaration. In respect of aluminium, the declaration was only indicating aluminium and articles thereof under sub heading 7601.00, whereas credit availed on inputs like aluminium wires and wire rods were covered under different heading 76.12 and sub heading 7604.10. Mere mention of the chapter sub heading and availment of Modvat credit on all the articles of a specific chapter was in contravention of the provision of rule 57A. The irregular credits availed by the assessee amounted to Rs.24.17 lakhs during the period from December 1990 to October 1991.

The irregularity was pointed out to the department in January 1992; and to Ministry of Finance in July 1992.

Ministry of finance have stated (December 1992) that the matter is under examination.

(b) A Central public sector undertaking engaged in manufacture of electronic based goods took Modvat credit on several inputs during the period October 1988 to August 1989, on the strength of declarations filed by him on 23 April 1988 and 26 May 1988 under Rule 57G. A test check revealed that the said inputs were not actually included in the aforesaid declarations. Hence, availment of Modvat credit on such inputs was irregular and was required to be expunged or recovered.

On the irregularity being pointed out in audit (October 1989), the department reported (August 1991) that credits aggregating Rs.10.24 lakhs had been expunged (October 1989 - July 1991)

Ministry of Finance have confirmed the facts (September 1992).

(c) An assessee engaged in manufacture of iron and steel products under chapter 72 submitted Modvat declaration before the Assistant Collector on 17 March 1986 specifying iron and steel inputs indicating sub headings. The assessee availed Modvat credit of duty from August 1991 to October 1991 on inputs like side trimmings and primary mill butts/cropends which were not specified in the declaration submitted to the Assistant Collector. As such the availment of Modvat credit amounting to Rs.6.39 lakhs for the period from August 1991 to October 1991 was irregular.

The irregular availment of Modvat credit was pointed out to the department in January 1992 and to Ministry of Finance in July 1992.

Ministry of Finance have stated (December 1992) that the matter is under examination.

ii) Credit availed before filing declaration

A public sector undertaking engaged in manufacture of machinery items falling under chapter 84, filed declarations under rule 57G in respect of 24 items during the period from September to December 1989. The declarations so filed were acknowledged by the department from October to December 1989. During test check of records it was seen that the assessee had availed the credit of Rs.17.95 lakhs in respect of inputs received prior to filing of the declarations and also without obtaining permission of the Assistant Collector as required under rule 57H.

On this being pointed out in audit (September 1990), the department stated (August 1991) that a show cause notice was issued in October 1990.

Ministry of Finance have stated (November 1992) that demands for Rs.8,88,012 have been

confirmed and the amount has been debited in RG23A part II in September 1992.

3.45 Irregular utilisation of Modvat credit on inputs not used in manufacture of outputs

As per rule 57A of the Central Excise Rules, 1944, credit of duty paid on inputs is allowed if such inputs are used in or in relation to manufacture of specified final products and the same may be utilised towards payment of duty of excise leviable on such final products. Rule 57F, however, provides that if the inputs in respect of which credit was taken, are not actually used in or in relation to manufacture of such specified final products, the credit taken on the inputs should be reversed.

i) As per Supreme Court's decision in the case of M/s. Khandelwal Metal and Engineering Works {1985 (2) ELT 222}, `wastes' are the by-products of manufacturing process. Substandard goods may have to be disposed of as rejects or scraps but still they are the products of manufacturing process (not by products). Wastes/scraps as referred to in rule 57D do not obviously refer to sub standard goods cleared as wastes or scraps.

Two units of a battery manufacturer took credit of duty paid on inputs like A.C. black, manganese-dioxide, carbon electrodes steel caps etc., intended to be used in manufacture of dry cell batteries. Some of the dry cell batteries failed to pass voltage test. They were spoiled by hand cutting or hammering and were cleared as `cell scraps' without payment of duty. The credit taken on inputs contained in such `cell scraps' was also not reversed. The department allowed the same in a letter dated 10 October 1988 although sub standard batteries cleared as `cell scraps' did not conform to the specification of wastes/scraps/refuse etc., within the meaning to rule 57D in terms of the Supreme Court's decision. The inputs contained in such `cell scraps' could not also be considered to have been used in manufacture of specified final products. The credit taken on inputs contained in spoiled batteries ought to have been reversed. This having not been done, there was incorrect

availment of credit facility to the extent of Rs.33.11 lakhs during the period from January 1988 to March 1991 and April 1987 to July 1991.

On the irregularity being pointed out in audit (September 1991), the department did not admit the objection and stated (September 1991) in one case that it was a long term practice of many collectorates to allow duty free clearances of cell scraps and extend benefit of rule 57D in the matter of credit taken on inputs. It however, added that for abundant precaution, a demand was being raised shortly. In respect of the other unit, no reply has been received (May 1992).

The department's reply in the first case is not acceptable since provisions of rule 57D was inapplicable in the instant case due to reasons stated above.

Ministry of Finance have stated (December 1992) that the matter is under examination.

ii) A public sector undertaking entered into a contract with the Indian Railways to fabricate steel structure (7308.90) out of steel supplied by the Railways. The assessee took credit of duty in respect of such steel materials received from the Railways. It was noticed in audit that although the despatch of the finished goods to the Railways had not started at all, the assessee utilised the credit taken on this account for payment of duty leviable on other products. This resulted in irregular utilisation of Modvat credit to the extent of Rs.15.94 lakhs during March to September 1990.

On the irregularity being pointed out in audit (March 1991), the department contended (July 1991) that there was no one to one co-relation between the inputs and the final products.

The department's contention is not correct since (i) Rules do not allow such utilisation; and (ii) the Board clarified on 5 October 1989 that surplus credit on inputs used in manufacture of wire thicker than 2 mm cannot be utilised even for payment of duty on wires finer than 2 mm.

Ratio of this decision is equally applicable in the instant case.

Ministry of Finance have stated (November 1992) that the matter is under examiantion.

iii) An assessee manufacturing aluminium and articles thereof (chapter 76) declared, inter alia, caustic soda (chapter 28) as one of the inputs intended to be used in or in relation to manufacture of final product. Caustic soda brought into the factory was used for three purposes viz. for manufacture of alumina, for demineralisation of water being used in generation of steam and for cleaning steel dies. Such quantity of caustic soda being used for demineralisation of water and for cleaning steel dies, obviously, was not used as input in or in relation to manufacture of aluminium and articles thereof as final product, the credit of duty on that much of quantity of caustic soda was not admissible.

On this being pointed out in audit (August 1987), the department initiated (June 1988) action for disallowing the irregular Modvat credits on such inadmissible quantity of caustic soda. A show cause-cum demand notice for Rs.6.56 lakhs covering the period from August 1987 to July 1989 was issued by the department on 3 January 1990. The demand was confirmed on 16 July 1990 and the amount was recovered from the assessee on 8 October 1990.

Ministry of Finance have stated (August 1992) that another demand for the period from March 1986 to July 1987 amounting to Rs.5,30,068 has also been confirmed (September 1991).

3.46 Irregular availment of credit of customs duty

As per rule 57A of the Central Excise Rules, 1944, read with a notification issued on 1 March 1986 as amended, credit of specified duty paid on inputs and available for utilisation towards payment of duty on specified final products, covers only duty of excise, special excise duty and additional (countervailing) duty equal to central excise duty levied under section 3 of the

Central Excises and Salt Act, 1944, Finance Acts and Section 3 of Customs Tariff Act, 1975 respectively.

i) A manufacturer availed credit of customs duty of Rs.16.45 lakhs in addition to additional duty leviable under section 3 of the Customs Tariff Act, 1975 through his RG23A account on 10 September 1991. As customs duty is not covered as specified duty for availment of credit under rule 57A ibid, the credit of Rs.16.45 lakhs so availed by manufacturer was irregular.

Ministry of Finance have admitted the objection and stated (November 1992) that credit of Rs.16,44,625 wrongly taken has been recovered from the assessee by debit in PLA on 9 January 1992.

ii) An assessee engaged in manufacture of steel ingots classifiable under heading 72.06 of the schedule to the Central Excise Tariff Act, 1985, took Modvat credit on `waste and scrap of steel' falling under heading 72.04, which was received by him from a hundred per cent export oriented undertaking under rule 57A of the Central Excise Rules, 1944, and used the same in manufacture of his final product. The assessee availed Modvat credit of the entire import duty paid (basic, auxiliary and countervailing duty) under section 3 of the Customs Tariff Act, 1975, instead of restricting it to the extent of additional duty leviable on like goods under section 3 of the Customs Tariff Act, 1975 (equivalent to the duties of excise). This resulted in irregular availment of excess Modvat credit of Rs.11.20 lakhs during the period from December 1991 to February 1992.

Ministry of Finance have admitted the objection (November 1992).

3.47 Clearance of inputs as such at lower price

As per rule 57F(1)(ii) of the Central Excise Rules, 1944, the inputs in respect of which a credit of duty has been allowed under rule 57A, ibid, may be removed, subject to prior permission of the Collector, for home consumption on payment of appropriate duty of excise, as if such inputs

have been manufactured in the said factory. Further, as per Bombay I collectorate Trade Notice dated 22 September 1989 {ELT 1 November 1989-P/T-17}, when an assessee intends to sell, as it is, any inputs received under Modvat scheme, at a price higher than the original price of the input, filing of price list will be mandatory.

An assessee engaged in manufacture of torches (heading 85.13) availed Modvat facility, inter alia, on miniature bulbs (heading 85.39) obtained from another manufacturer with the marking of the brand name of the assessee thereon for use in the final product. It was noticed in audit that the assessee also cleared miniature bulbs obtained as input under Modvat scheme, as it is, for sale at a higher price through their sale depots located throughout the country. For this purpose the assessee did not file any price list and cleared the bulbs on payment of duty equal to the Modvat credit taken thereon instead of paying duty on higher price fetched on it treating them as if these goods were manufactured in the factory. This resulted in substantial short levy of duty. The department was asked to work out the short levy on this account.

On the irregularity being pointed out in audit (March 1990), the department admitted the mistake and informed (May 1992) that a demand for Rs.40.79 lakhs for the period from March 1987 to September 1991 was in the process of issue by the Additional Collector.

The matter was reported to Ministry of Finance in July 1992; reply has not been received (December 1992).

3.48 Fraudulent availment of credits

As per rule 57G of the Central Excise Rules, 1944, every manufacturer intending to take credit of the duty paid on inputs under rule 57A shall file a declaration to the proper officer of the department indicating the description of the final product manufactured in his factory and the inputs intended to be used in each of the final products and obtain a dated acknowledgement of the said declaration. Further, sub rule (2) of rule 57G

provides that no credit shall be taken unless the inputs are received in the factory under the cover of gate pass, AR-I, bill of entry or any other document as may be prescribed by the Central Board of Excise and Customs in this behalf evidencing payment of duty on such inputs.

Rule 173-Q further provides that if a manufacturer takes credit of duty in respect of inputs for being used in manufacture of final products wrongly then all such goods shall be liable to be confiscated and manufacturer shall be liable to a penalty not exceeding three times the value of excisable goods in respect of which any contravention has been committed, or rupees five thousand whichever is greater.

A test check of records of a manufacturer of motor cars (sub heading 8703.00) disclosed that the assessee was allowed to take credits of duty paid on inputs by virtue of declarations filed from time to time under rule 57G and while taking such credits, he took credits which were much more than the duty paid on the inputs mentioned in the relevant gate passes. Further, such excess credit taken were also allowed to be utilised for payment of duty on the clearance of his final product. Some of the cases noticed in audit are detailed below :-

(i)/a) Inward gate pass (GP-I) dated 31 October 1991 showed that a duty of Rs.8,800 {(Rs.8,000 (BED) and Rs.800 (SED)} was paid by the assessee on the value of goods of Rs.39,998 and the same was taken as credit in RG 23A part II account on 26 December 1991. The assessee fraudulently took the credit of Rs.8,80,000 {(Rs.8,00,000 (BED) and Rs.80,000 (SED)} again on 19 March 1992 against the aforesaid gate pass as supporting document by making alteration on the gate pass. The amount so credited in RG 23A part II account was utilised to the extent of Rs.8,21,056 towards duty due on the output goods cleared upto 30 March 1992. Neither the amount of credit so utilised (Rs.8,21,056) has been recovered (June 1992) nor the remaining amount got reversed in RG 23A part II.

b) As per another gate pass dated 18 February 1991, the assessee discharged duty of Rs.43,116 in

respect of inputs received at an assessable value of Rs.4,10,625. But the assessee fraudulently took a credit of Rs.43,11,600 {(Rs.41,06,300 (BED) and Rs.2,05,300 (SED)} on 29 March 1991 out of which utilised a credit of Rs.42,02,076 (Rs.9,20,002 on 29 March 1991 and Rs.32,82,074 on 30 March 1991) as against a credit of Rs.77,287 on 29 March 1991 and Rs.2,670 on 30 March 1991 available in RG 23A part II account for payment of duty due on the final product. This resulted in fraudulent utilisation of credits of Rs.41,22,119 (Rs.8,42,715 on 29 March 1991 and Rs.32,79,404 on 30 March 1991). The excess utilisation of credits were, however, made good through Personal Ledger Account only on 9 May 1991. Thus, assessee utilised the government money fraudulently during the period from 29 March 1991 to 9 May 1991.

(ii) As per yet another gate pass dated 30 March 1992, the assessee discharged duty of Rs.22,690 {(Rs.19,730 (BED) and Rs.2,960 (SED)} but fraudulently took the duty credit of Rs.22,69,000 {Rs.19,73,000 (BED) and Rs.2,96,000 (SED)} and utilised the same towards payment of duty due on the final product cleared on 30 March 1992. The excess credit so availed was, however, paid back to government through his Personal Ledger Account on 9 May 1992 i.e., during the course of audit. Thus, the assessee fraudulently utilised the government money during the period 30 March 1992 to 9 May 1992.

(iii) The closing balance in RG 23A part II for the month of September 1991 worked out to Rs.1,29,817 (BED) and Rs.11,296 (SED) after accounting for the credits upto serial No.464 dated 30 September 1991, whereas manufacturer took the closing balance as Rs.3,92,786 (BED) and Rs.37,593 (SED), resulting in excess accountal of credit of Rs.2,62,969 (BED) and Rs.26,297 (SED). The excess credits were utilised towards payment of duty on the final products during September 1991 to November 1991. Such excess accountal of credit was however, expunged only in December 1991. Thus, the assessee utilised the government money fraudulently during the aforesaid period.

In view of the position as explained above, it is evident that:-

a) the assessee had resorted to take excess credits fraudulently which were irregularly utilised towards payment of duty on final product;

b) the fraudulent claims of manufacturer could have been detected by the department as soon as monthly returns (RT 12) were submitted alongwith supporting documents to the range officer; and

c) the original inward gate passes in support of which credits were taken should have been defaced by the range officer after correlating the entry with the extract of RG 23A part II account as laid down in rule 57G(4) ibid. Such defacement was, however, not resorted to by the department, which facilitated fraudulent availment of Modvat credit and its utilisation by the assessee.

The total credits of Rs.76.84 lakhs fradulently taken was also utilised towards payment of duty on the final products, out of which a sum of Rs.8.80 lakhs was yet to be recovered from the assessee. In addition, no penal action as required under rule 173Q was initiated against the assessee.

The irregularities leading to fraudulent claims were pointed out to the department in June 1992 and to Ministry of Finance in September 1992.

Ministry of Finance have stated (November 1992) that the amount of Rs.8.80 lakhs has been recovered through PLA (June and August 1992). Besides two offence cases have also been registered against the party.

3.49 Other irregularities

i) Irregular availment of Modvat credit on packaging materials

Rule 57A of the Central Excise Rules, 1944, provides for allowing credit of duty paid on specified inputs used in or in relation to manufacture of specified final product and for utilising the credit so allowed towards payment of

duty on such final products. As per clause (b) of explanation below the aforesaid rule, inputs include packaging materials, if such packaging materials were brought in a ready to use condition. This position was confirmed by the Central Board of Excise and Customs on 3 March 1988. The Board had further clarified in September 1988 and February 1990 that Modvat credit on the inputs used in manufacture of packaging materials can be used for payment of duty on such packaging materials whether consumed captively or otherwise and that the duty paid on such packaging materials can then be taken for payment of duty on final products.

Two assessees in two collectorates engaged in manufacture of `vegetable products' (heading 15.04) and chocolate (sub heading 1803.00) availed Modvat credit of duty paid on plastic flexible films in rolls and BOPP and poly laminate films falling under chapter 39 and used them in manufacture of polythene bags under rule 57A of the Central Excise Rules, 1944, which were ultimately used for packing their final products. These polythene bags are covered under sub heading 3923.19 and duty chargeable thereon was 15 per cent basic excise duty plus special excise duty in terms of a notification issued in March 1988. However, the assessees did not follow any of the central excise procedures in respect of manufacture of polythene bags viz., filing of classification list, price list, filing of declaration under rule 57G indicating the packing materials as inputs. It was seen during audit that the assessees had utilised the entire credit of duty availed on the aforesaid inputs towards payment of duty on the respective final products. This was contrary to the Board's aforesaid clarifications. This resulted in irregular availment of Modvat credit of Rs.26.35 lakhs during the period from April 1989 to November 1991.

The irregular availment of credits were reported to the department in January and March 1992 and to Ministry of Finance in August 1992.

Ministry of Finance did not admit the objection in one case and stated (December 1992)

that bags/pouches do not come into existence in a separate distinct marketable condition and, therefore, there is nothing irregular in availing of Modvat credit on the inputs plastic flexible film in rolls and utilising it for payment of duty on packed vegetable products.

Ministry's reply is not acceptable on the following grounds:-

a) as per section 2(d) of the Central Excises and Salt Act, 1944, "excisable goods" means goods specified in the schedule to the Central Excise Tariff Act, 1985 as being subjected to a duty of excise. Polythene bags manufactured for packaging of final products are covered under sub heading 3923.19 as a distinct specified item, and, hence excisable;

b) as per explanation to Rules 9 & 49 excisable goods are liable to duty whether manufactured in a continuous process or otherwise;

c) the packaging materials (Polythene bags/pouches specified excisable goods in the tariff schedule) were neither brought in ready to use condition nor duty was paid thereon before they were consumed captively, as already clarified by the Board.

ii) Availment of credit on goods not covered under Modvat

As per rule 57A of the Central Excise Rules, 1944, Modvat credit is available in respect of duty paid on inputs used in manufacture of final products that are specified by government under a notification. Under rule 57D such credit on inputs is available even when during the course of manufacture of excisable final product, exempted intermediate product arises, provided that such intermediate product is specified as an input or a final product under a notification issued under rule 57A. Goods falling under chapter 54 of the schedule to the Central Excise Tariff Act, 1985, are not specified either as input or final product in the notification issued under rule 57A ibid.

An assessee manufacturing paper sacks/bags reinforced with high density poly ethylene/poly propylene woven fabrics and paper bonded with low density poly ethylene (sub heading 3923.90) availed of modvat credit of duty paid on high density poly ethylene granules (sub heading 3901.20) and utilised it towards payment of duty on the aforesaid final product. The high density poly ethylene granules were first used in manufacture of an intermediate excisable product high density poly ethylene tapes classified under sub heading 5406.90 of the tariff schedule on which duty was discharged through Personal Ledger Account, before being further utilised in manufacture of final product, viz., reinforced paper sacks/bags. As high density poly ethylene tapes falling under chapter 54 are not covered by notification under rule 57A, availment of modvat credit on high density poly ethylene granules for payment of duty on final product was not correct.

On the irregularity being pointed out in audit (July 1989), the department stated (March 1991) that a show cause-cum demand notice for Rs.2,40,167 for the period February 1989 to June 1989 was issued and another show cause-cum demand notice for Rs.16,29,277 for the period March 1987 to January 1989 was under consideration with Additional Collector. It was also reported (May 1991) that the demand for Rs.2,40,167 subsequently confirmed was under appeal.

Ministry of Finance while admitting the objection have stated (October 1992) that the first orders confirming demand of Rs.2,40,167 have been remanded for de novo adjudication. The second demand notice has been issued and is pending adjudication with Collector.

iii) Irregular availment of deemed credit

(a) Second proviso to rule 57G(2) enables the central government to direct that with effect from a specified date, all stocks of the inputs under rule 57A in the country be deemed to be duty paid and credit of duty in respect of the said inputs may be allowed at such rate and subject to such conditions as directed by government without production of document evidencing the payment of

duty. However, the above provisions are not applicable to such stocks lying in a factory, customs areas, or a warehouse which are clearly recognisable as non duty paid.

By an order dated 12 July 1990, the Central Government directed that with effect from 16 July 1990, aluminium unwrought be deemed to have been duty paid and credit of Rs.9700 per tonne (Rs.8850 per tonne upto 15 July 1990) may be allowed.

An assessee engaged in manufacture of aluminium electrical wires and cables falling under sub headings 7614.10 and 7614.90 had taken deemed credit of Rs.11,33,850 on 132 tonne of unwrought aluminium in short lengths which emerged during manufacture from 1982 to January 1986, with the approval of the department during the period from August 1990 to December 1990. Allowing deemed credit on the stock of short length wires of unwrought aluminium and aluminium scrap that emerged during manufacture was not in order as this quantity was lying in the factory and was clearly recognisable as non duty paid and the orders dated 12 July 1990 did not apply to such quantity.

The irregularity was brought to the notice of the department in November 1991 and to Ministry of Finance in June 1992.

Ministry of Finance have stated (November 1992) that the matter is under examination.

(b) As per a notification issued on 1 August 1984 (as amended), `aluminium waste and scrap' (heading 76.02) has been exempted from the whole of the duty of excise leviable thereon. CEGAT in their decision in the case of M/s. Rapsri Engineering Industries (P) Ltd. V/s Collector of Central Excise {1989(43)-ELT-577-(Tribunal)} had also justified denial of deemed credit, inter alia, on aluminium scrap since the said notification had granted unconditional exemption of duty to it.

An assessee was manufacturing `aluminum strips' (heading 76.06) on job basis from the `aluminium scrap' (heading 76.02) as input supplied by the consignee. The assessee availed

deemed credit on such scrap and utilised the same towards payment of duty on the final product, despatched to the consignee. As the aluminium scrap was fully exempt from duty, no deemed credit was admissible thereon. Such credit irregularly availed by the assessee between August 1989 and June 1990, amounted to Rs.8.45 lakhs against which Rs.8.44 lakhs had been utilised also towards payment of duty on the final product.

Ministry of Finance while admitting the objection, have stated (December 1992) that since the aluminium waste and scrap has been supplied by the government mint under exemption, the benefit of deemed credit was not admissible.

iv) Availment of credits not restricted

As per a notification dated 1 March 1986 issued under rule 57A and amended from time to time the grant of credit of duty paid on paper and paper board falling under chapter 48 other than headings 48.03, 48.06, 48.09, 48.10, sub headings 4802.91, 4811.40, and 4811.30 has been restricted to Rs.800 per tonne or the actual amount of duty paid, whichever is less.

An assessee manufacturing soaps, cosmetics etc., falling under headings 34.01 and 33.05 respectively, used printed wrappers and printed paper board cartons falling under sub headings 4823.19 and 4819.12 respectively for packing and was allowed to avail credit in excess of the limit prescribed above. Non restriction of Modvat credit to Rs.800 per tonne in respect of the printed wrappers and printed paper cartons resulted in excess allowance of Modvat credit of Rs.6.14 lakhs for the period from October 1990 to December 1990.

On this being pointed out in audit (May 1991), the department did not accept the objection and stated (July 1991) that the restriction under the aforesaid notification dated 1 March 1986 as amended was applicable only to paper and paper board and not to the articles of paper and paper board.

The department's reply is not acceptable as the notification dated 1 March 1986 as amended restricted the Modvat credit to Rs.800 per tonne on all paper and paper board falling under chapter 48 other than those falling under heading 48.03, 48.06, 48.09, 48.10 or sub heading 4811.30, 4802.91, 4805.20 or 4811.40. The said notification does not specifically exclude the wrappers and cartons (falling under sub headings 4823.19 and 4819.12) from the restriction clause and, therefore, credit should have been restricted to Rs.800 per tonne.

Ministry of Finance have admitted the objection in the case of printed wrapper paper and intimated that a show cause-cum demand notice for the period October 1991 to 21 February 1992 has been issued. As regards paper board it has been stated that the notification does not restrict the credit on articles of paper and paper board.

The contention of Ministry is not acceptable on the following grounds:-

a) the notification restricted the credit on all paper and paper board falling under chapter 48 other than heading 48.03, 48.06, 48.09, 48.10 or sub heading 4811.30, 4802.91, 4805.20 or 4811.40 only. Since the notification does not exclude cartons and other packing containers of paper and paper board falling under heading 48.19 from the restriction clause, the Modvat credit was to be restricted;

b) article of paper such as twisted wrap paper i.e., printed waxed paper in reels for packing confectionary, classifiable under sub heading 4811.40 has specificailly been excluded from the purview of the above notification but packaging materials of paper/ paper board falling under 48.19 have not been excluded.

v) Credit availed against duty exemption certificate

As per the first proviso to rule 57G(2) of the Central Excise Rules, 1944, no Modvat credit

shall be taken unless the inputs are received in the factory under the cover of a duty paying document evidencing payment of duty on such inputs.

An assessee manufacturing electrolytic capacitors falling under heading 85.32 availed Modvat credit of Rs.4,85,614 on 27 October 1990 in respect of inputs imported without payment of duty against duty exemption entitlement certificate issued to the assessee.

On the irregularity being pointed out in audit (January 1992), the department recovered the entire amount (January 1992).

Ministry of Finance have admitted the objection (July 1992).

vi) Misuse of notional higher credit

As per a notification dated 1 March 1986, as amended, specified goods manufactured by small scale units upto Rs.75 lakhs can be cleared at concessional rates of duty upto a value of Rs.75 lakhs for home consumption in a financial year by a manufacturer provided he avails of the credit of duty paid on inputs used in manufacture of specified goods under rule 57A of the Central Excise Rules, 1944. The Central Board of Excise and Customs also clarified on 16 November 1989 that concessional rates of duty are not applicable if credit under rule 57A is not taken/admissible on inputs used in manufacture of final products.

Two small scale manufacturers of goods falling under headings 84.21 and 87.08 did not avail of the facility of Modvat credit, but paid duty at the concessional rate (normal rate reduced by 10 per cent ad valorem). Since the conditions prescribed in the notification was not fulfilled, clearance of goods under the concessional rate of duty was irregular which resulted in facilitating the buyers to avail of the notional higher credit of duty amounting to Rs.2.26 lakhs during the period from January 1987 to December 1989.

On the inadmissibility of the benefit of higher notional credit being pointed out in audit

(June 1990), the department contended (March 1991) that though manufacturers had filed Modvat declarations under rule 57G, yet they could not avail the credits of duty for the reason that inputs were not accompanied by duty paid documents. It was further contended that it was not necessary for the assessee to actually avail of such credits so as to become eligible for payment of duty at concessional rate.

The department's reply is not tenable as it is contrary to the express provision of the notification and clarification of the Board.

Ministry of Finance while admitting the objection in principle have argued (November 1992) that since duty was paid till December 1989, instead of availing the exemption due, the availment of notional higher credit of duty would be in order.

Ministry's reply is not acceptable in view of the fact that the Board vide their circular dated 16 November 1989 accepting the contention of audit in similar case, have already clarified that concessional rate of duty under notification dated 1 March 1986 was not applicable if credit under rule 57A was not actually availed of. Action should have been taken for recovery of higher notional credit.

IRREGULAR GRANT OF MONEY CREDIT AND IRREGULAR UTILISATION OF SUCH CREDIT

3.50 Irregular grant of money credit under rule 57K

i) Fixed vegetable oil

As per the notifications issued on 1 March 1987 and 11 October 1989 under the provisions of rule 57K of the Central Excise Rules, 1944, credit may be allowed for payment of duty on vegetable products falling under sub heading 1504.00 at Rs.3250 per tonne of solvent extracted mustard oil and solvent extracted rapeseed oil used in manufacture of such vegetable product, subject to specified conditions. According to condition (iv) of the aforesaid notification, where credit has

been taken in respect of any solvent extracted variety of the oils specified in the table below the notification, the manufacturer shall, within five months from the date of taking credit or such extended period as the Assistant Collector may allow, produce a certificate from an officer not below the rank of Deputy Director in the Directorate of Vanaspati, Vegetable Oils and Fats in the Ministry of Food and Civil Supplies to the effect that the said oil has been manufactured by the solvent extraction method.

(a) Two manufacturers of vegetable products (sub heading 1504.00) in a collectorate were availing themselves of credit on use of fixed vegetable oils including solvent extracted mustard oil and solvent extracted rapeseed oil in manufacture of vegetable products. One manufacturer had availed credit of Rs.15,70,182 in August 1990 on use of 483.133 tonne of solvent extracted mustard oil and the other had availed credit of Rs.4,41,773 and Rs.3,28,364 respectively on use of 135.930 tonne of solvent extracted mustard oil during October 1989 to June 1990 and 101.035 tonne of solvent extracted rapeseed oil in October 1990. The requisite certificates from the prescribed authority were however, not produced within the prescribed time limit of five months, nor was the period extended by the Assistant Collector. Consequently the availment of the said credit was irregular.

On the matter being pointed out in audit (February 1991 and April 1991) the department accepted the audit objection and intimated (February 1992) that the amounts of Rs.15.70 lakhs and Rs.7.70 lakhs had since been recovered by reversing the credits (March 1991 to December 1991 and June 1990 to December 1991 respectively).

Ministry of Finance have accepted the objection (July 1992).

(b) An assessee engaged in manufacture of vanaspati availed of credit amounting to Rs.15,75,675 in respect of 484.823 tonne of solvent extracted mustard oil used in manufacture of vegetable products during the period from 1 April to 30 November 1990. However, as per the

requisite certificate received (April 1991) from the Ministry of Civil Supplies, only 64.721 tonne of such oil was used. The credit of Rs.13.65 lakhs in respect of 420.102 tonne of said oil was thus not admissible.

The irregular availment of credit was pointed out to the department in May 1991 and to Ministry of Finance in April 1992.

Ministry of Finance stated (August 1992) that the assessee had since debited Rs.14,00,919 in June 1991.

ii) Rice bran oil

As per rule 57K of the Central Excise Rules, 1944, credit of money is allowed in respect of certain raw materials used in manufacture of certain excisable goods. As per rule 57L such money credit is not allowed, if the final products are exempt from the whole of the duty of excise leviable thereon or are chargeable to nil rate of duty. As per rule 57M(2) 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 exempted from the whole of the duty of excise leviable thereon or chargeable to nil rate of duty provided that such intermediate products are used within the factory of production in manufacture of final products on which duty of excise is leviable whether in whole or in part. Under a notification issued in March 1989, as amended, the product "Fatty acid" falling under sub heading 1505.00 is exempt from payment of central excise duty.

An assessee, engaged in manufacture of vegetable products and soaps, also manufactured fatty acid and used it captively for manufacture of soap. A part of such fatty acid was also cleared to another unit (for whom it was manufactured on job work basis) and to his own unit situated elsewhere without payment of duty claiming exemption under notification issued in March 1989, as amended. It was seen during audit that for manufacture of such fatty acid the

assessee received raw rice bran oil and took money credit on the same under rule 57K of the Central Excise Rules, 1944. As the intermediate product fatty acid was exempt from payment of central excise duty and was not used within the factory of production for further manufacture of specified final product as required under proviso to rule 57M(2), availment of money credit on the input raw rice bran oil, to the extent of such inputs contained in such intermediate product (cleared from the factory without payment of duty) was irregular. This resulted in irregular money credit of Rs.32.32 lakhs availed by the assessee during the period October 1990 to November 1991.

The irregularity was reported to the department in January 1992 and to Ministry of Finance in September 1992. Reply has not been received (December 1992).

iii) As per a notification dated 12 August 1987 issued under rule 57K of the Central Excise Rules, 1944, credit of money is allowed at the rates specified in the notification on certain vegetable oils used as inputs in manufacture of soap falling under sub heading 3401.10 of the schedule to the Central Excise Tariff Act, 1985, subject to fulfillment of prescribed conditions. Under rule 57-O every manufacturer intending to take credit should file a declaration indicating the final products and inputs and take credit after obtaining dated acknowledgement thereof.

An assessee manufacturing soap (sub heading 3401.10) was granted permission to avail of money credit on inputs in terms of the notification dated 12 August 1987 with effect from 13 June 1988. money credit on inputs was however taken by the assessee even before the grant of permission. Such irregular credit taken during the period from January 1988 to 12 June 1988 aggregated to Rs.13,15,126. Besides the assessee did not reverse credits aggregating to Rs.2,99,335 which were disallowed during assessment of RT.12 returns for the months of September 1987 to December 1987 and February 1988.

The irregular availment of credit was pointed out to the department in October 1988 and to Ministry of Financce in June 1992.

Ministry of Finance have admitted the objection and added (August 1992) that the case is under adjudication with the Collector as per directive of the Gujarat High Court.

NON LEVY OF CESS

3.51 Natural gas

According to para (1) of section 15 of chapter III of the Oil Industry (Development) Act, 1974, cess is required to be collected on every item (one of the items being natural gas) specified in column (2) of the schedule to the Act as a duty of excise at such rate not exceeding the rate setforth in the corresponding entry in column (3) of the schedule as the central government may, by notification in the official gazette, specify. According to para (4) of section 15 of chapter III of the Act, the provisions of the Central Excises and Salt Act, 1944, and the rules made thereunder including those relating to refund and exemption from duties, shall apply in relation to the levy and collection of duties of excise, leviable under this section and for this propose, the provisions of the Act shall have effect as if that Act provided for the levy of duties of excise on all items specified in the schedule. The rate of cess on natural gas was enhanced from Rs.50 per thousand cubic metres to Rs.300 per thousand cubic metres with effect from 12 May 1987 in terms of the provisions of the Finance Act, 1987.

A public sector undertaking producing inter alia, natural gas started removing natural gas to various customers since 1959. The assessee did not pay cess on natural gas as required under the provisions of the Act. This resulted in non payment of cess amounting to Rs.98.53 crores on clearances of natural gas during the period from 1987-88 to October 1991 alone.

On the irregularity being pointed out in audit (March 1991), the department issued (July 1991) a show cause cum demand notice to the

assessee for the period from 1 January 1991 to 30 June 1991, for payment of cess amounting to Rs.10.55 crores. No demand or any show cause notice was issued by the department for the periods prior to January 1991, though stated to have been processed by the concerned Asstt. Collector (March 1992). Further report regarding confirmation of demand and action taken for the short levy of cess for the period prior to January 1991 has not been received.

Ministry of Finance did not admit the objection and have stated (November 1992) that provisions of Section 15 of the Oil Industry (Development) Act, 1974 contemplate issue of a notification specifying the rate at which cess is payable on natural gas. As the Government have not issued any such notification, no cess is required to be collected on natural gas.

The contention of Ministry is not tenable. The intention of the legislature was to levy and collect cess as is also evident from subsequent upward revision of rate through the Finance Act, 1987. Omission to issue the requisite notification, therefore, resulted in non-recovery of substantial amount of revenue.

3.52 Jute manufactures - Yarn

As per section 3(1) of the Jute Manufactures Cess Act, 1983 (effective from 1 May 1984) cess is leviable on every article of Jute manufactures specified in the schedule to the aforementioned Act.

Rule 3 of Jute Manufactures Cess Rules, 1984 (notified on 15 September 1984) further lays down that consumption within the country would attract cess. The words "consumption" within the country cover captive consumption also. Thus jute yarns and fabrics captively consumed for further manufacture of jute products are liable to levy of cess.

Twentyeight jute mills in three collectorates consumed jute yarns within the factory for manufacture of jute products but did not pay cess on removal of such yarn internally. Cess

amounting to Rs.9.16 crores on the captive consumption of jute yarn during the period from March 1986 to December 1990 was also not demanded by the department. This resulted in loss of revenue for Rs.9.16 crores during the aforementioned period.

On the irregularities being pointed out in audit (April 1990 to February 1991) the department accepted the objection in one case. In the remaining cases, however, the department did not accept the audit objections and contended (September 1990 to June 1991) that cess on jute yarns consumed within the factory for manufacture of jute products was not leviable as per Board's circular dated 6 July 1989 read with its corrigendum dated 22 August 1989.

The contention of the department is not acceptable on the following grounds :-

(a) in the absence of any notification under Jute Manufactures Cess Act/Rules, ibid, exempting jute yarns for its captive consumption, cess was leviable on the same;

(b) the Supreme Court in the case of M/s. Baranagore Jute Factory Company Vs. Inspector of Central Excise {1992 (57) ELT 3(SC)} has held (3 December 1991) that cess is leviable even when such yarn is captively consumed.

Ministry of Finance have stated (November 1991) that the Ministry of Textiles had informed (June 1991) that they were taking steps to amend the Jute Manufactures Cess Act/Schedule retrospectively.

No such amendment has, however, been made (December 1992).

IRREGULAR GRANT OF REFUND

3.53 Loss of revenue due to erroneous refund

Section 11B of the Central Excises and Salt Act, 1944, allows a period of six months from the relevant date to claim refund of duties paid in excess. As per rule 173G of the Central Excise

Rules, 1944, an assessee can take credit in his account current the amount of duty paid in excess of that assessed by the proper officer as per assessment order on RT12 return of the relevant month filed under sub rule (3) of rule 173G. For any earlier period, the assessee can claim refund of duty paid in excess by filing a refund claim with the jurisdictional Assistant Collector of Central Excise within six months from relevant date under section 11B, ibid. The Central Board of Excise and Customs in consultation with the Ministry of Law, clarified on 21 March 1981 that refunds on RT12s assessments have to be finalised within the time limit as laid down in section 11B and there is no exception in favour of rule 173I.

An assessee manufacturing `building hard wares' (chapter 83) was paying the duty on the goods on the basis of value inclusive of freight charges involved after delivery of goods. After submission of relevant RT12 returns, he furnished statements to the Range Superintendent showing the duty paid in excess due to inclusion of abatable freight element in the value. The department finalised the assessments on RT12 returns after six months and allowed the assessee to take credit of the amounts paid in excess in his account current as per relevant assessment order/orders although they were already barred by limitation of time as per section 11B. The irregular refund of duty worked out to Rs.2.40 lakhs during the period from November 1986 to June 1989.

On this being pointed out in audit (June 1991), the department did not admit the objection and stated (October 1991, January 1992 and February 1992) that this was not a case of refund but a case of adjustment arisen out of an adjudication order dated 25 July 1987 and section 11B was inapplicable to the case decided under rule 173I. The department also cited CEGAT's decision in the case of M/s. Balaji Fastner {1990 (46) ELT 543 (T)} in support of such view.

The department's reply is not acceptable for the following reasons:-

i) as per CEGAT's decision in the case of M/s. Ideal Printers Private Limited dated 14

February 1990 {1990 (49) ELT 559 (T)} rule 173I operates as a simple mechanism for rectifying apparent erroneous excess payment or short payment arising on account of arithmetical errors based on assessment made and even in such cases they are to be made, within the statutory time limit under section 11A or under section 11B, as the case may be;

ii) the assessee continued to pay duty on value inclusive of abatable freight charges even after the adjudication made in July 1987 and hence, this was a clear case of refund of duty paid in excess; and

iii) CEGAT's decision in the case of M/s. Balaji Fastner was given in a different context where adjustment was required due to implementation of initial order of Assistant Collector regarding classification and grant of exemption; CEGAT's latest order/decision dated 14 February 1990 was relevant to the present issue.

Ministry of Finance did not admit the objection and stated (September 1992) that the payment is covered by the provisions of rule 173I and CEGAT's order in the case of Balaji Fastners.

The contention of the Ministry is not acceptable. Although rule 173I provides for recovery of short levy and also for giving credit of excess payment, the rule is subject to statutory provisions of section 11A & B as the case may be.

PROCEDURAL IRREGULARITIES WITH REVENUE IMPLICATIONS

3.54 Incorrect application of stay order

As per notifications issued on 1 March 1989 and 16 May 1990, duty leviable on cement (sub-heading 2502.20) manufactured in mini cement plants was Rs.115 and Rs.90 per tonne respectively. In a press note issued on 11 January 1979, the Ministry of Industries had declared that the mini cement plants would be allowed a rebate in the payment of excise duty

upto 50 per cent for a period of five years from the date of going into commercial production.

An assessee running mini cement plant started its commercial production from the last week of January 1985. Based on the said press note, the assessee filed writ petition in the High Court of Madhya Pradesh on the issue regarding the legality of levy of duty on cement produced in a mini cement plant at full rate and obtained a stay order on 28 November 1987 refraining Government from collection of central excise duty on cement manufactured and cleared from his factory at a rate in excess of 50 per cent of such duty leviable on such cement. For the remaining 50 per cent duty, the manufacturer was required to furnish a bank guarantee. Duty charged by the manufacturer from buyers was, however, at full rate.

In their circular dated 16 May 1989, the Board, while conveying the dismissal of special leave petition filed by M/s Durga Cement Company in the Supreme Court against Patna High Court order dated 23 February 1988 in which similar case was decided by the Supreme Court in favour of the department, directed all Collectors to obtain expeditiously a decision in favour of the department in similar cases pending in various High Courts. The assessee was, however, allowed to continue the benefit of stay order even after a period of five years which had expired in January 1990. Incorrect application of stay order, thus, resulted in non levy of duty amounting to Rs. 13.13 lakhs on clearances of cement during the period from February to September 1990.

On the irregularity being pointed out in audit (November 1990), the department stated (April 1991) that the entire amount of Rs. 13.13 lakhs had since been recovered from the manufacturer against the bank guarantee encashed on 19 December 1990.

Ministry of Finance initially desired (August 1992) not to furnish any further comments. Subsequently, it was added (November 1992) that the stay was vacated by the High Court after conclusion of arguments.

OTHER IRREGULARITIES OF INTEREST

3.55 Omission to demand duty resulting in loss of revenue

As per the Board's letter dated 29 December 1989, dry battery cells do not qualify for Modvat facility as they are used for operational purpose and not used in or in relation to the manufacture of watches.

An assessee, manufacturing watches, (heading 91.02) availed credit on button cells (heading 85.06) during the period from May 1989 to December 1989 amounting to Rs.10,92,152. The department issued a letter on 22 January 1991 denying the credit but omitted to take follow up action for demanding the duty. The omission resulted in irregular availment of Modvat credit, irrecoverable due to limitation of time.

On this being pointed out in audit (June 1991), the department admitted the objection but stated (March 1992), that the issue was also pointed out by internal audit in May 1990. The department further stated that the Board's instructions were received by the field formations only in February 1990 and revenue could have been saved only from September 1989 onwards. Action is being contemplated for the lapse of non-issue of show cause notice in time.

The fact, however, remains that failure to reverse the credit in time after the issue of the Board's clarifications in December 1989 and even after being pointed out by Internal Audit has resulted in non-recovery of credit wrongly availed amounting to Rs.5.21 lakhs from September 1989 to December 1989.

Ministry of Finance have desired (November 1992) not to offer any further comments.

3.56 Irregular utilisation of arrears of duty paid through personal ledger account

The additional duties of excise (goods of special importance) was being paid at fifty per cent in cash and fifty per cent through bank

guarantee as per practice followed by the processors pending a decision by Delhi High Court wherever such duties were payable. Delhi High Court passed orders in July 1991 dismissing the appeals made by processors that additional duties were not payable and ordered that amount for which bank guarantees were given should be paid to the government immediately.

An assessee was engaged in manufacture and processing of cotton fabrics, man made fabrics and yarn falling under chapters 52,54,55,56 and 59 of his own goods and of merchant manufacturers. As per usual practice, the additional duties of excise (goods of special importance) was paid by the assessee fifty per cent in cash and fifty per cent through bank guarantee. However, later, as per the orders of Delhi High Court in July 1991, the assessee was required to pay Rs.79.06 lakhs for the period from September 1990 to 12 July 1991. It was seen in audit that the bank guarantee which was for Rs.75 lakhs was encashed on 5 August 1991. But the assessee instead of payment of the balance amount of Rs.4.06 lakhs (the amount not covered by the bank guarantee) through personal ledger account, paid it to bank under two challans and later took credit of the said amount in personal ledger account on 24 July 1991 and utilised the same amount towards payments of duty on the excisable products cleared by him. This resulted in excess availment of credit of Rs.4.06 lakhs.

On this being pointed out in audit (May 1992) the department stated (July 1992) that the assessee had since debited the amount of Rs.4.06 lakhs in personal ledger account.

Ministry of Finance have stated (December 1992) that the amount of Rs.4.06 lakhs and interest due thereon as excess credit has since been realised from the party.

ANNEXURE ... 3.1

Number of outstanding objections and amount involved

(in crores of rupees)

Sl. No.	Collectorate	Raised upto 1989-90 including the year 1989-90		Raised in the year 1990-91		Total	
		Number	Amount	Number	Amount	Number	Amount
1.	Hyderabad	1784	10.94	606	---	2390	10.94
2.	Guntur	320	1.78	62	---	382	1.78
3.	Visakhapatnam	85	0.02	38	---	123	0.02
4.	Patna	84	15.17	34	3.50	118	18.67
5.	Shillong	36	2.11	25	20.24	61	22.35
6.	Bombay I	182	3.00	109	1.38	291	4.38
7.	Bombay II	309	6.93	142	7.22	451	14.15
8.	Bombay III	645	28.37	245	13.47	890	41.84
9.	Poona	180	9.10	119	3.39	299	12.49
10.	Aurangabad	118	1.09	89	1.39	207	2.48
11.	Goa	15	0.34	12	0.09	27	0.43
12.	Calcutta I	238	16.85	137	10.47	375	27.32
13.	Calcutta II	685	88.43	232	30.11	917	118.54
14.	Bolpur	181	70.52	76	27.20	257	97.72
15.	Chandigarh						
	AG Punjab	104	2.16	63	2.19	167	4.35
	U.T. Chandigarh	14	0.39	1	---	15	0.39
	H.P. Shimla	93	4.10	102	2.67	195	6.77
	J & K	18	0.55	---	---	18	0.55
16.	Ahmedabad	175	3.03	37	0.48	212	3.51
17.	Baroda	223	19.87	70	3.23	293	23.10
18.	Rajkot	15	1.82	15	0.43	30	2.25
19.	Delhi U.T.	231	4.85	48	1.39	279	6.24
	A.G.Haryana	259	11.05	158	11.30	417	22.35
20.	Bangalore	248	18.29	215	88.20	463	106.49
21.	Belgaum	100	15.34	30	2.52	130	17.86
22.	Cochin	7	0.12	34	1.46	41	1.58
23.	Indore	309	12.78	234	4.35	543	17.13
24.	Raipur	215	3.46	171	3.43	386	6.89
25.	Nagpur	42	1.51	41	0.20	83	1.71
26.	Bhubaneswar	19	20.21	71	5.12	90	25.33
27.	Jaipur	52	0.87	51	9.86	103	10.73
28.	Coimbatore	43	4.61	82	4.60	125	9.21
29.	Madras	189	5.07	364	6.02	553	11.09
30.	Madurai	25	2.09	55	1.08	80	3.17
31.	Trichy	30	1.65	69	1.06	99	2.71
32.	Allahabad	244	7.89	70	1.27	314	9.16
33.	Kanpur	273	5.63	31	0.26	304	5.89
34.	Meerut	676	20.01	279	8.35	955	28.36
	TOTAL	8466	422.00	4217	277.93	12683	699.93

CHAPTER 4

RECEIPTS OF THE UNION TERRITORIES WITHOUT LEGISLATURES

4.01 Tax and non-tax receipts of Union Territories without legislatures

The trend of tax and non-tax revenue receipts of the Union Territories which do not have a legislature, is indicated below :-

(Rupees in crores)

	Delhi	Chand-igarh	Dadra and Nagar Haveli	Anda-man & Nico-bar Islands	Mini-coy & Laksh dweep	Dam-an & Diu	Total re-cei-pts
A. Tax Revenue							
Sales Tax							
1989-90	597.96	43.07	0.70	Nil	Nil	16.13	657.86
1990-91	689.71	51.33	Nil	Nil	Nil	21.93	762.97
1991-92	777.83	60.65	1.24	Nil	Nil	23.85	863.57
State Excise							
1989-90	145.07	23.86	0.11	1.51	Nil	2.61	173.16
1990-91	162.21	28.34	Nil	Nil	Nil	2.66	193.21
1991-92	215.44	34.71	0.14	0.98	Nil	2.90	254.17
Taxes on Goods and Passengers							
1989-90	34.85	0.96	Nil	Nil	Nil	0.05	35.86
1990-91	37.20	0.93	Nil	Nil	Nil	0.06	38.19
1991-92	39.04	1.13	Nil	Nil	Nil	0.12	40.29
Stamp duty and Registration Fee							
1989-90	34.85	7.70	0.04	0.13	0.04	0.36	43.12
1990-91	32.14	5.82	Nil	Nil	Nil	0.43	38.39
1991-92	47.88	6.04	0.06	0.14	0.07	0.55	54.74
Taxes on Motor Vehicles							
1989-90	31.59	3.02	0.36	0.04	Nil	0.89	35.90
1990-91	53.16	2.44	Nil	Nil	Nil	1.10	56.70
1991-92	37.64	2.39	0.46	0.08	Nil	1.27	41.84
Land Revenue							
1989-90	0.03	Nil	0.06	Nil	0.01	0.20	0.30
1990-91	0.02	Nil	Nil	Nil	Nil	0.17	0.19
1991-92	0.15	Nil	0.02	0.06	0.01	0.11	0.35
Other Taxes and Duties on Commodities and services							
1989-90	15.41	0.69	Nil	0.02	Nil	0.02	16.14
1990-91	16.55	0.69	Nil	Nil	Nil	0.03	17.27
1991-92	19.03	0.91	Nil	0.03	Nil	0.02	19.99

(Rupees in crores)

	Delhi	Chandigarh	Dadra and Nagar Haveli	Andaman & Nicobar Islands	Minicoy & Lakshdweep	Daman & Diu	Total receipts
Total A. Tax Revenue							
1989-90(A)	865.20	82.03	1.27	2.06	0.05	20.38	970.99
1990-91	990.99	89.55	Nil	Nil	Nil	26.38	1106.92
1991-92	1143.47	109.37	1.92	1.78	0.08	28.99	1285.71
Total B. Non-tax Revenue							
1989-90	33.04	53.24	14.51	23.08	2.31	4.82	131.00
1990-91	33.67	61.32	Nil	Nil	Nil	7.70	102.69
1991-92	37.70	74.73	23.73	33.62	3.15	9.08	182.01
Total - Tax and Non-tax revenue							
1989-90	898.24	135.27	15.78	25.14	2.36	25.20	1101.99
1990-91	1024.66	150.87	Nil	Nil	Nil	34.08	1209.61
1991-92	1181.17	184.09	25.66	35.40	3.24	38.06	1467.72

(A) - Total A.Tax Revenue comprises all other major heads not specified above.

Results of test check of the records of the revenue department of the Union Territory of Delhi conducted during the year 1991-92 are included in the Report of the Comptroller and Auditor General of India; No.4 of 1993 for the year ended 31 March 1992 - Union government (Delhi Administration). Some of the important cases noticed as a result of test check of the records of the revenue departments of the other Union Territories without legislatures are mentioned in the succeeding paragraphs.

UNION TERRITORY OF CHANDIGARH

MOTOR VEHICLES TAX

4.02 Non levy of token tax

Under the Punjab Motor Vehicles Taxation Act, 1924, and the rules framed thereunder, as applicable to Union Territory of Chandigarh, tax is leviable on every motor vehicle at such rates as may be prescribed by Chandigarh Administration from time to time and is recoverable in equal quarterly instalments. Any broken period in a quarter is considered as a full quarter for the purpose of levy of tax. The rate for Union Territory Chandigarh has been prescribed as Rs.4,200 per annum per vehicle vide notification dated 24 February 1989. Further, under the Act ibid, no vehicle, unless exempted by a specific order, can move on road without payment of tax at the prescribed rate. Besides, penalty which may extend to twice the amount of the tax is also leviable in cases of failure to pay tax within one month from the expiry of the period fixed for such payment.

In Chandigarh, a transport undertaking did not pay token tax in respect of 244 vehicles during the year 1990-91 though these vehicles continued to ply during the year. Neither was the token tax paid by the transport undertaking nor was it demanded by the Registering Authority. This resulted in non levy of taken tax amounting to Rs.10.15 lakhs. Besides, penalty for non payment of tax was also leviable.

The omission was pointed out to the department in August 1991 and to Chandigarh Administration in November 1991; their replies have not been received (January 1992). The matter was also reported to the Ministry of Home Affairs in March 1992. Similar omission was also pointed out in the Audit Report for 1990-91, but no action has been taken so far by the Administration in this respect.

4.03 Non levy of additional fee

Under the Motor Vehicle Act, 1988 and rules framed thereunder, a permit for plying a motor vehicle granted by the State/Regional Transport Authority of any one state shall not be valid in any otgher state unless the permit has been countersigned by the State Transport Authority of the other state. In the case of Union Territory of Chandigarh such permits are countersigned by the State Transport Authority, Chandigarh Administration by charging an additional fee of Rs.460 (Rs.100 for the first year and at the rate of Rs.90 for each subsequent year) for five years in terms of sub-section (i) of section 81 of the Act ibid read with rule 67 of the Chandigarh Motor Vehicles Rules, 1990.

During 1990-91, 55 permits were countersigned by the Secretary, State Transport Authority, Union Territory of Chandigarh for plying vehicles of other states in the Union Territory of Chandigarh. However, additional fee of Rs.25,300 leviable for the period 1 April 1990 to 31 Mach 1995 was not levied and collected.

The omission was pointed out to the department of Chandigarh Administration in August 1991; their reply has not been received (April 1992).

4.04 Short recovery of composite fee

Under the provisions of the Motor Vehicle Act, 1988 and instructions issued by the Government of India under the National Permit Scheme introduced in 1975, as applicable to Chandigarh Administration, the States and Union Territories are authorised to grant permits to the owners of public carriers for carriage of goods throughout the territory of India. The main purpose of the scheme is to facilitate speedy and economic inter-state transportation of goods throughout the country for the benefit of the public at large. Under the scheme, a vehicle registered in a State can ply in other States on payment, in advance, in the home State, of a composite fee of Rs.1,000 per annum for zonal permit and Rs.1,500 per annum for national permit.

GLOSSARY

UNION EXCISE DUTIES :

Additional Duty of Customs : Duty levied under section 3 of the Customs Tariff Act, 1975 equal to excise duty leviable for the time being on a like article manufactured in India.

Adjudication : The process of passing any order or decision by any competent authority (adjudicating authority) under the Central Excises and Salt Act, 1944; such authority does not include the Central Board of Excise and Customs, the Collector of Central Excise (Appeal) or the Appellate Tribunal.

Ad valorem : Duty dependent on value of goods as arrived at by application of section 4 of the Central Excises and Salt Act, 1944.

Additional duties of Excise (Goods of Special Importance) Act, 1957 : Provides for the levy and collection of additional duties of excise on certain goods and for the distribution of a part of the net proceeds thereof among the States in pursuance of the principles of distribution formulated and the recommendations made by the Finance Commission in its report dated 30 April 1984.

Aggregate Value : This is the sum total of values of individual units of goods cleared in order to arrive at a whole.

Appellate Order : Order of the Appellate Collector which should be a speaking order, stating the points of determination, the decision thereon and the reasons for the decision.

Assessee : Any person who is liable for payment of duty assessed and includes any producer or manufacturer of excisable goods or licensee of a private warehouse in which excisable goods are stored.

Appeal : Where the assessee disputes the assessment order, he may go in appeal against such order.

Board : The Central Board of Excise and Customs constituted under the Central Board of Revenue Act, 1963 (54 of 1963); empowered to issue order

and instructions in the interest of uniformity of classification or levy of duties on goods and the officers and other persons employed in the execution of this Act shall observe such orders or instructions.

Brand Name : `Brand Name' or `trade name' means a brand name or trade name, whether registered or not, that is to say a name or a mark, such as symbol, monogram label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

Band Reconciliation : Reconciliation of receipts as booked by Pay and Accounts Officer with those reported by Departmental officers.

Bought out items : Excisable goods which are bought from the market or from another manufacturer.

Central Excise Laws (Amendment and Validation) Act, 1982 (58 of 1982) : This Act provides for the amendment of laws relating to Central Excise and to validate duties of excise collected under such laws.

Cess : Cesses are leviable as excise duties on certain products at the rates specified. The levy and collection of such cess in some cases happened to be entrusted to the Central Excise Department.

CEGAT : means the Customs, Excise and Gold (Control) Appellate Tribunal constituted under Section 129 of the Customs Act, 1962.

Chapter Heading, Sub heading and Notes : The Central Excise Tariff Schedule introduced by the Central Excise Tariff Act, 1985 contains 96 chapters grouped into 20 sections. Each of these sections relate to a broader class of goods. Each Chapter has been further divided into various headings depending upon different types of goods belonging to the same class of products. These headings have further been divided into sub headings. The Section/Chapter Notes give detailed explanation as to the scope and ambit of the

respective Section/Chapter. These notes have been given statutory backing and have been incorporated at the top of each Section/Chapter.

Chemical Examiner : An authority incharge of the chemical laboratories set up by the department for chemical analysis of goods in order that their correct classification is determined.

C.K.D. condition : Completely Knocked Down condition where component parts of excisable goods are cleared from he factory for assembling at site, the goods are said to be cleared in Completely Knocked Down condition. As a result of assembly of the parts elsewhere, a new excisable goods is deemed to have emerged.

Collector : In the field administration, the Collector of Central Excise is the Chief Administrator and Judicial Officer.

Collector (Appeals) : The Collector (Appeals) hears and decides appeals arising from a decision below the level of collectors in his jurisdiction.

Commodities : General term for excisable goods.

Concessional Rate : Duty leviable in terms of any concession under an exemption notification issued by the Government.

Consumed Captively : Refers to excisable goods produced in a factory and used within the factory in the manufacture of other excisable goods.

Classification List : This list is filed by the assessee with the proper officer with the full description of all excisable goods manufactured by him alongwith the classification of such goods in the tariff schedule and the rate of duty leviable on each such goods.

Clearances : Excisable goods that are cleared by the manufacturer for captive consumption/home consumption/export.

The Central Excises and Salt Act, 1944 : This was enacted as Act No.1 of 1944 to consolidate and amend the law relating to Central duties of excise on goods manufactured or produced in India.

GLOSSARY

<u>The Central Excise Rules, 1944</u> : Rules framed in exercise of powers under the Central Excises and Salt Act, 1944 to provide for the assessment and collection of duties imposed by that Act.

<u>Chapter X Procedure</u> : A procedure prescribed to be followed by a manufacturer who desires to avail remission of duty on goods used for special industrial purposes.

<u>Department</u> : The department of Central Excise.

<u>Drug (Price Control) Order 1987</u> : These orders are made under the powers conferred by section 3 of the Essential Commodities Act, 1955 (10 of 1955), defining the terms `bulk drug', `formulation' etc. It fixes the sale price of indigenously manufactured bulk drugs as well as the method of calculation of retail price of formulations.

<u>Drugs and Cosmetics Act, 1940 (23 of 1940)</u> : This Act has been enacted to regulate the import, manufacture, distribution and sale of drugs and cosmetics.

<u>Deemed credit</u> : The second proviso to Rule 57G(2) of the Central Excise Rules, 1944, empowers the Central Government to allow Modvat credit on the inputs without production of documents evidencing payment of duty. The input items so declared will be <u>deemed</u> to be duty paid and credit of duty will be allowed at such rate and subject to such conditions as may be provided in the order.

<u>Duty</u> : Amount leviable under the provision of Section 3 of the Central Excises and Salt Act, 1944.

<u>Discount</u> : Trade discount, not being refundable on any account whatsoever, allowed in accordance with the moral practice of the wholesale trade at the time of removal in respect of such goods sold or contracted for sale, is not includible in the value of the goods leviable to duty.

<u>Exemption</u> : Under section 5A of the Central Excises and Salt Act, 1944, the Central Government may, in public interest, by notification in the official gazette, exempt excisable goods from the

whole or any part of the duty of excise leviable thereon either absolutely or subject to fulfillment of conditions.

Explanatory Notes : Explanatory Notes to the Harmonised Commodity Description and Coding System indicate the scope and content of certain sub-headings of the Harmonised system.

Effective Rate of duty : Rate of duty as per tariff read with any exemption notification issued thereon.

Excisable goods : Goods specified in the Schedule to the Central Excise Tariff Act, 1985 as being subject to a duty of excise.

Export : Clearance of goods produced or manufactured in India to a place outside India.

Financial Year : The year beginning from the month of April of a calender year to the end of the month of March in the next calendar year.

Final Product : The excisable goods manufactured and actually cleared by the assessee from the factory.

Factory : Any premises, including the precincts thereof, wherein or in any part of which excisable goods are manufactured.

H.S.N. (Harmonised System of Nomenclature) : The new Excise Tariff as introduced by the Central Excise Tariff Act, 1985 is based on a system of classification derived from international convention of Harmonised Commodity Description and Coding System with such contractions and modifications as are necessary to fall within the scope of levy of Central Excise Duty.

Inputs : Excisable goods used within the factory in or in relation to the manufacture of final products.

Intermediate products : This item refers to such excisable goods, having distinct name, character and use and which are capable of being removed from the factory, and emerge in the process of manufacture of final products.

GLOSSARY

Indian Standard Institution : Now "Bureau of Indian Standards". The Bureau specifies the standards for goods to be sold under its mark.

Industries (Development and Regulation) Act, 1957 : This is an Act to provide for the development and regulation of certain industries.

Interpretative Rules : These rules are designed to aid classification of excisable goods under the various chapter headings and sub headings of the schedule to the Central Excise Tariff Act, 1985.

Job work : Means processing of raw materials or semi finished goods supplied to the job worker by the principal manufacturer so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for such process.

Licence : Every manufacturer, trader or person is required to take out a licence and shall not conduct his business in regard to such goods otherwise than by the authority, and subject to the terms and conditions of a licence granted by a duly authorised officer of the department.

Levy : Duties of excise levied under section 3 of the Central Excises and Salt Act, 1944. Absence of levy is referred to as non levy and levy which falls short of what is legally leviable is referred to as short levy.

Modvat : (Modified form of value added tax) Scheme introduced from 1 March 1986 wherein the duty paid on inputs which are used in or in relation to the manufacture of final products, is allowed to be utilised towards payment of duty on the final products.

Misclassification : The excisable goods are to be classified under the proper chapter heading and sub headings of the Central Excise Tariff Schedule. Any wrong classification of goods amounts to misclassification and results in the application of incorrect rate of duty.

Manufacture : This includes any process :- (i) incidental or ancillary to the completion of manufactured product and (ii) which is specified in relation to any goods in the Section or Chapter

notes of the schedule to the Central excise Tariff Act, 1985 as amounting to manufacture.

Marketability : The capability of the excisable goods being sold, ordinarily, in the wholesale trade to a buyer at arms length.

Proforma credit : A special procedure for utilising the duty paid on raw material or component part in payment of duty on finished excisable goods under rule 56A of the Central Excise Rules. The credit of duty paid on the raw material or component parts is maintained in a proforma account for utilising such credit towards payment of duty on final product.

Price List : Every assessee who produces, manufactures or warehouses excisable goods chargeable with duty at a rate dependent on the value of goods is required to file price list with the proper officer.

Principal Manufacturer : Generally, a manufacturer who gets the goods manufactured on his account by supply of raw materials and/or specifications is referred to as principal manufacturer. Sometimes referred to as primary manufacturer also.

Personal Ledger Account (PLA) : This is an account current maintained by every assessee with the department for keeping an account of deposits made by him and the payments of duty on goods cleared.

Patent or proprietary medicaments : Any drug or medicinal preparation, in whatever form, for use in the internal or external treatment of, or for the prevention of ailments in human beings or animals, which bears either on itself or on its container or both, a name which is not specified in a monograph, in a pharma copoea, formulary or other publications, or which is a brand name or a trade mark.

Packaging : Where the excisable goods are delivered at the time of removal in a packed condition; cost of such packing is includible in the value of the goods except where the packing is of a durable nature and is returnable by the buyer to the assessee.

GLOSSARY

<u>Related Person</u> : A person who is so associated with the assessee that they have interest, directly or indirectly in the business of each other and includes a holding company, a subsidiary company, a relative and a distributor of the assessee and any sub distributor of such distributor.

<u>R.G.23</u> : An account required to be maintained by a manufacturer working under the special procedure prescribed under rule 56A of the Central Excise Rules, 1944. Part I of Form RG 23 is the stock account of material or component parts for the manufacture of finished excisable goods and part II is the Entry Book of perform credit and its utilisation towards payment of duty on final product.

<u>R.G.23A</u> : Is an account form (similar to RG 23) required to be maintained by a manufacture under the Modvat scheme/Money credit scheme. part I of this account is the stock account of inputs used in or in relation to the manufacture of final products and Part II is Entry Book of duty credit and its utilisation towards payment of duty on finished products.

<u>R.T. 12</u> : A monthly return of excisable goods manufactured/received (without payment of duty), cleared and duty paid thereon; submitted by the assessee working under Self Removal Procedure for finalisation of assessment by the department.

<u>Show cause cum demand notice</u> : In cases of non payment of short payment of duty, by the assessee, the proper officer of the department is required to demand the duty, differential duty and afford an opportunity to the assessee to show cause why the demand should not be enforced. This is done in the interest of natural justice and due process of law.

<u>Small Scale Industry</u> : A factory which is an undertaking registered with the Director of Industries in any State or the Development Commissioner (Small Scale Industries) as a Small Scale Industry under the provisions of Industries (Development and Regulation) Act, 1951 (65 of 1951).

GLOSSARY

Specific rate of duty : Rate of duty based on weight, number, length, area, volume or other unit measure with reference to which duty is leviable; but not with reference to value.

Time bar : Demand not raised within the time limit prescribed under Central Excise Act.

Tariff Item : Items mentioned in the First Schedule to the Central Excises and Salt Act, 1944 prior to introduction of Central Excise Tariff Act, 1985.

Turn Key Project : Goods in completely knocked down condition brought and assembled at site resulting in the emergence of new excisable goods.

Underassessment : Quantum of duty short paid.

Warehouse : means any place or premises appointed or licensed under the Central Excise Rules for storage of goods.

Wholesale Price : Price at which the excisable goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale. This is the normal price and is the value for determination of duty on ad valorem basis.

E R R A T A

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36	1.02(5)(G)(ii)	13 from bottom	pursuasive	persuasive
92		3 from top	1990-92	1991-92
96	(i)	14 from top	Products has been	Product has been
98	(a)	7 from top	Re.1 crore	Rs.1 crore
128	1.03(iii)	11 from top	(Development Regulation)	(Development and Regulation)
152	2.06	2 & 6 from top	Bhubneshwar	Bhubaneswar
154	2.11	7 from top	Bhubneshwar	Bhubaneswar
181	2.26	18 from top	importers	imports
292	3.15(iv)	15 from top	Re.1 lakh	Rs.1 lakh
299	3.18(ii)	11 from top	30 may 1986	30 May 1986
344	3.28(iv)(a)	2 from bottom	section 4(ii)	section 4(4)(d)(ii)
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