REPORT

OF THE

COMPTROLLER

AND

AUDITOR GENERAL

OF INDIA

FOR THE YEAR

1976-77

UNION GOVERNMENT (CIVIL)

REVENUE RECEIPTS

VOLUME I

INDIRECT TAXES

ERRATA

Sl. No.	Page	Para	Line	*For*	*Read*
1.	1	Footnote	3rd from bottom	49.3	49.30
2.	37	26	2nd from bottom	toms	customs
3.	41	31	5th from top	Actuls	Actuals
4.	73	66	5th from top	1976	1975
5.	84	80	14th from bottom	fabric	fabrics
6.	122	101	12th from bottom	collectorate	Ministry of Finance
7.	132	104	18th from bottom	Remmissions	Remissions

/19C&AG/77

Report

of the

Comptroller

and

Auditor General

of India

For the year

1976-77

Union Government (Civil)

Revenue Receipts

Volume I

Indirect Taxes

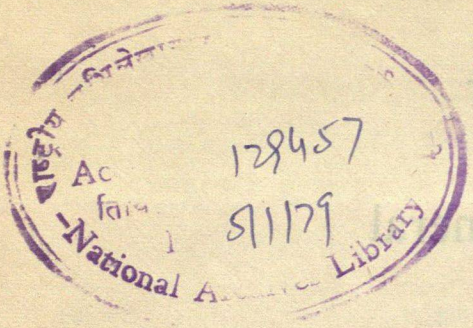
128457
Library

TABLE OF CONTENTS

PREFATORY REMARKS

As in the last year, the Audit Report on Revenue Receipts (Civil) of the Union Government for the year 1976-77 is presented in two volumes—one relating to indirect taxes and the other relating to direct taxes.

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

Chapter I—mentions the actuals of Customs revenue and points of interest which came to the notice of Audit in the audit of these receipts;

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

Chapter III—sets out the results of audit of receipts relating to Sales Tax and Stamp Duty and Registration Fee of the Union Territory of Delhi.

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

VOLUME I

CHAPTER I

CUSTOMS RECEIPTS

1. The total net receipts after deducting refunds* and drawback† under each minor head below the Major Head 037—Customs during the years 1975-76 and 1976-77 are given below :—

	1975-76	1976-77**	Increase (+)/ decrease (—)	Percentage of increase (+)/ decrease (—)
			(In crores of rupees)	
Customs Imports	1304.14	1393.31	+89.17	+6.83
Customs Exports	69.73	110.95	+41.22	+59.11
Cess on Exports	5.59	5.32	—0.27	—4.83
Other Receipts	39.94	44.12	+4.18	+10.47
Net Revenue	1419.40	1553.70	+134.30	+9.46

It will be observed that, during the year 1976-77, receipts under minor heads 'Imports', 'Exports' and 'Other Receipts' have shown an increase as compared to those in the year 1975-76.

The Budget of 1976-77 introduced increase in customs duties on those items which either gave an added impetus to domestic industry or where large premia prevailed in the Indian market, partly because of scarcity and partly because of a large differential between the prices of imported and indigenously produced

---

	1975-76	1976-77**
	(In crores of rupees)	
*Refunds	45.65	49.3
†Drawback	33.28	33.61

**Figures for 1976-77 are provisional.

goods. The additional revenue was expected to be Rs. 48.50 crores. The Budget also provided for reduction/withdrawal of customs duties on certain items* involving a reduction of revenue of Rs. 14.90 crores.

The auxiliary duties of Customs hitherto levied were being continued and the effective rates remained unchanged.

The actual receipts during the year 1976-77 have exceeded the budget estimates by Rs. 45 crores.

2. Test audit of records of various Custom Houses/Collectorates revealed under-assessments, overpayments and losses of revenue amounting in all to Rs. 213.26 lakhs. Over-assessments and short payments amounting to Rs. 36.48 lakhs were also noticed during audit.

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

(a) Non-levy/short levy of additional duty.

(b) Non-levy/short levy of auxiliary duty.

(c) Non-levy/short levy due to misclassification of goods.

(d) Incorrect application of exemption notification.

(e) Short levy due to adoption of incorrect assessable value.

(f) Incorrect application of rates of exchange.

(g) Irregular payment of drawback.

---

*(i) machinery and equipment imported for setting up fertiliser plants and newsprint plants.

(ii) imported rock phosphate for manufacture of phosphatic and complex fertilisers.

(iii) computers and computer sub-systems.

(iv) polyester films for manufacture of magnetic tapes.

(v) metallised plastic films for the manufacture of electronic capacitors.

(vi) sports goods imported for national and international competitions.

(h) Irregular refund.

(i) Over-assessment.

(j) Non-levy of export duty.

The irregularities referred to at (a), (c), (e), (h) and (i) came up for consideration by the Public Accounts Committee in 1973—*vide* Chapter IV of their Eighty-ninth Report (Fifth Lok Sabha). In paragraphs 4.2 to 4.28 *ibid,* the Public Accounts Committee went into details in respect of "some of the mistakes which keep recurring repeatedly in spite of the recommendations of the Committee to avoid them and assurances of the Government to implement the recommendations".

4. *Non-levy/short levy of additional duty*

Imported goods attract levy of additional duty at a rate equal to the excise duty for the time being leviable on like goods if produced or manufactured in India.

In paragraph 1.63 of their Forty-third Report (Fifth Lok Sabha), the Public Accounts Committee, who had occasion to examine similar paragraphs, had stated that cases of levy of additional duty should be subjected to careful scrutiny by the Internal Audit Department. A few cases noticed in audit are detailed below:—

(i) By a notification issued in September 1973, parts of refrigerating and airconditioning machinery falling under item 29A of the Central Excise Tariff were assessable at a concessional rate of 40 per cent *ad valorem* if used for specified purposes. The rate was enhanced to 50 per cent *ad valorem* by another notification issued in October 1973.

In a major Custom House, a consignment of component parts of refrigerating machinery imported in March 1975 was charged to additional duty at 40 per cent *ad valorem* in terms of the earlier notification of September 1973 resulting in short

levy of Rs. 92,087. The irregularity was pointed out in audit in October 1975. While admitting the short levy, the Custom House stated that the amount was realised in August 1976.

The Ministry of Finance have confirmed the facts.

The need for the assessing officers having the tariff corrected up-to-date was emphasised by the Public Accounts Committee in paragraph 5 of their Sixth Report (Third Lok Sabha), and paragraph 1.92 of their Eightieth Report (Fifth Lok Sabha). They observed : "Paragraph 5. The Committee feel that in a department responsible for assessment and collection of revenue, the various schedules and codes prescribing rates of assessments etc. should be maintained up-to-date and any laxity in this regard should be viewed with concern. They would urge that during internal inspections of the offices dealing with the assessment of revenue, taxes, duty etc., these points should *inter alia* be looked into and any slackness in this regard should be suitably taken up".

"Paragraph 1.92. As the tariff forms the basis of levy on duty/cess, the Committee can not too strongly stress that adequate care should be taken to see that it is brought up-to-date as and when changes take place".

(ii) In a major Custom House, three consignments of conveyor belting covered by the same import licence were imported by a public sector undertaking. Two of these consignments, imported in April 1974, were subjected to additional duty under item 16A(4) of the Central Excise Tariff without any chemical test but solely on the basis of the importer's declaration that 'rubber content is more

than 25 *per cent* by weight". The third consignment imported in June 1974 though similarly declared was subjected to chemical examination and was found in September 1974 to be 'PVC impregnated art silk fabrics (containing no rubber at all)' meriting classification under item 22(iii) of the Central Excise Tariff. Assessment in this case was made provisionally without levy of additional duty and has not yet been finalised (January 1978).

As all the three consignments were covered by the same licence, the classification determined on the basis of the chemical test of the third consignment should have been made applicable to the earlier two consignments. Short levy of additional duty on these two consignments amounted to Rs. 13.40 lakhs. Demands were raised; particulars of recoveries are awaited (January 1978).

The practice of assessing the goods without chemical test is still being continued in the Custom House.

The Ministry of Finance stated in reply (January 1978) that the question regarding correct classification of P.V.C. conveyor belting under the Central Excise Tariff was under examination by the Board.

(iii) 'Non-draining and draining cable impregnating compound', imported through a major Custom House was charged to customs duty under the residuary item 87 of the Indian Customs Tariff without levy of any additional duty of customs. Audit pointed out (November 1974) that the product being composed predominantly of petroleum jelly and wax (constituting 86 *per cent* to 94 *per cent* of the product), was liable to additional duty under item 11A of the Central Excise Tariff.

Omission to levy the additional duty in 10 cases noticed in audit resulted in underassessment of duty of Rs. 10,98,721.

The Ministry of Finance stated in reply (December 1977) that the question whether the article would attract any additional duty at all or whether it would fall under item 11A or 11B of the Central Excise Tariff was not free from doubt and that it was proposed to examine the matter.

(iv) In a major Custom House, "Aniline Oil" imported in September 1973 and charged to customs duty under item 28 of the Indian Customs Tariff was not subjected to any additional duty. Audit pointed out (March 1974) that, as the material is used in the industry as an accelerator in the vulcanisation of rubber, it was liable to additional duty under item 65 of the Central Excise Tariff as rubber accelerator. Omission to levy the additional duty in three cases noticed in audit resulted in underassessment of Rs. 2.95 lakhs (approximately). In reply, the Custom House stated that "aniline oil" was never used as an accelerator in the rubber industry. Later, however, it was learnt that, in another major Custom House, additional duty was being levied on importation of aniline oil. The chemical examiner of that Custom House had also stated that "aniline oil is used as rubber accelerator/ antioxidant".

The Ministry of Finance, while admitting the divergence of practice, stated (November 1977) that steps to rectify the position were under consideration.

In this connection it may be recalled that lack of uniformity in the assessment of the same product at different ports was commented upon by the Public

Accounts Committee in paragraphs 2.35, 2.58 and 3.36 of their 212th Report (Fifth Lok Sabha). They observed :

"Paragraph 3.36. It would, therefore, appear that effective co-ordination and liaison between the Custom Houses has been lacking, if not nearly non-existent. The Central Board of Excise and Customs has an important role to play in this regard and the Committee are of the view that the Board should maintain a constant flow of information between various Custom Houses on important issues relating to classification, levy of duty, assessment etc., particularly in the light of the objections raised from time to time by the Central Revenue Audit. The Committee desire that an efficient machinery for the exchange of information, in a concrete, principled manner, on matters affecting revenue, should be devised."

(v) The Finance Act, 1976 introduced the levy of auxiliary duty at 33⅓ *per cent* of the effective basic duty of Central Excise, as a result of which articles made of plastics falling under item 15A(2) of the Central Excise Tariff became liable, on import, to additional duty at 53⅓ *per cent ad valorem* (consisting of basic duty at 40 per cent plus auxiliary duty of Central Excise at 33⅓ *per cent* of the basic duty).

Omission by a major Custom House to include the auxiliary duty element in arriving at the additional duty in three cases of imports *viz.* phenolic plastic sheets, film laminates and cylindrical PVC tubes, resulted in short levy of Rs. 88,713. On these being pointed out in audit (between August and November 1976), the Custom House admitted the omissions and recovered Rs. 70,996 in respect

of two cases (October and December 1976). Particulars of recovery of Rs. 17,717 in another case, demand for which was issued by the Custom House in April 1977, is awaited (January 1978).

The Ministry of Finance have confirmed the facts of two cases. As regards the third involving a short levy of Rs. 26,387, the Ministry have stated (February 1978) that the imported goods being in the form of lay-flat tubing were assessable in terms of Central Excise notification dated 29th May 1971 (as amended) and hence there was no short levy. The reply is *prima facie* unacceptable as the goods were not tested before clearance. The Ministry have added that less charge demand was, however, issued and the short levy was paid by the importers on 28th October, 1976.

(vi) A dye-intermediate (5—Chloro-o-toluidine) is, on import, classifiable under item 28(40C) of the Indian Customs Tariff with basic duty at 60 *per cent ad valorem* plus auxiliary duty at 15 *per cent ad valorem*. It also attracts additional duty at 30 *per cent ad valorem* under item 14-D of the Central Excise Tariff as a synthetic organic derivative used in the dyeing process.

A consignment of the dye-intermediate valued at Rs. 88,974 imported through a major Custom House (March 1975) was assessed to customs duty under item 28 of the Indian Customs Tariff as a chemical (not otherwise specified) at 60 *per cent ad valorem*, together with auxiliary duty at 15 *per cent ad valorem* but without levy of any additional duty. When Audit pointed out (February 1976) that the proper classification of the dye-intermediate would be under item 28(40C) of the Indian Customs Tariff with additional duty under item 14-D of the

Central Excise Tariff, the Custom House revised the assessment and recovered the short levied additional duty of Rs. 46,711 (June 1976).

The Ministry of Finance have confirmed the facts.

(vii) In a major Custom House, 'Blowers' imported in July/August 1971 were not subjected, on import, to additional duty leviable under item 33 of the Central Excise Tariff, resulting in short levy of duty of Rs. 34,305.

On this being pointed out in audit in September 1973 and January 1974, the Custom House stated (June 1977) that the matter was being referred to the Central Board of Excise and Customs.

The Ministry of Finance stated in reply (February 1978) that it had not been possible to offer any comments regarding the facts mentioned as the case file relating to the para was reported to be missing in the Custom House and efforts were being made to reconstruct the file and that comments on the correctness of facts mentioned above would be forwarded as early as possible.

5. *Non-levy/short levy of auxiliary duty*

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

(i) By a notification dated 14th April, 1976, certain articles including extruded shapes of aluminium when imported by Government for the manufacture of "Krupp Man Light Metal Float Bridge" were exempt from the whole of the customs duty leviable thereon. The notification was confined to customs duty only and, in the absence of any similar notification regarding auxiliary duty, the goods were subject to the levy of auxiliary duty at the appropriate rates.

Four consignments of extruded shapes of aluminium for Light Metal Float Bridges imported (October 1976) through a major Custom House were allowed clearance without charging them to auxiliary duty on the authority of the notification dated 14th April 1976. When the omission to levy auxiliary duty was pointed out by Audit (December 1976), the Custom House recovered the duty of Rs. 15,27,868 (May 1977).

The Ministry of Finance have confirmed the facts.

(ii) Even though the standard rate of duty under item 28 of the Indian Customs Tariff is 60 *per cent ad valorem*, a notification issued in March 1972 exempted DDT formulations with 75 *per cent* wet dispersible powder, when imported by Government, from the whole of the customs duty leviable thereon. The exemption was conditional in that the concession was available only to imports made by Government thereby resulting in two different rates of basic customs duty coming into being.

Three consignments of DDT (75 *per cent* wet dispersible powder) imported on behalf of Government through a major Custom House (October/November 1974) were assessed free of basic customs duty, but the Custom House afforded dissimilar treatment in respect of the three consignments as regards the levy of auxiliary duty. While in respect of two consignments, auxiliary duty was correctly reckoned at 15 *per cent ad valorem*, the Custom House levied auxiliary duty only at 5 *per cent ad valorem* in respect of the third consignment resulting in short levy of Rs. 87,366. This was pointed out by Audit in April 1975.

The Ministry of Finance have confirmed the facts.

6. *Non-levy/short levy due to misclassification of goods*

(i) Internal combustion engines (all sorts) which are designed for use as prime movers for transport vehicles attract additional duty at 11 *per cent ad valorem* under item 29(i) of the Central Excise Tariff, while all other engines attract additional duty at 5.5 *per cent ad valorem* under item 29(ii) of the Central Excise Tariff.

In a major Custom House, a 'locomotive diesel engine of over one-fourth horse power' valued at Rs. 7,37,336 and imported in July 1970 was assessed to additional duty at 5.5 *per cent ad valorem* under item 29(ii) of the Central Excise Tariff treating the engine as other than 'transport vehicle type engine'. This assessment was stated to be on the basis of an earlier decision reportedly taken by the Custom House during 1966-67 to assess such engines under item 29(ii) of the Central Excise Tariff overriding the suggestion of the Internal Audit Department to assess them under item 29(i) of the Central Excise Tariff. It was pointed out in audit in April 1971 that the goods were assessable under item 29(i) of the Central Excise Tariff at 11 *per cent ad valorem* as the diesel engine was to be fitted to hydraulic locomotives used for transport. The Custom House admitted the objection in July 1977 and stated that the short levy of Rs. 54,747 would be recovered from the importers by seeking voluntary payment. Details of recovery are awaited (January 1978).

The Ministry of Finance have confirmed the facts.

(ii) Under heading 48.01/21(1) of the Customs Tariff, paper, all sorts, would, on import, attract basic customs duty at 100 *per cent ad valorem* together with auxiliary duty at 20 *per cent ad valorem,* and an additional duty at 30 *per cent ad valorem* under item 17(2) of the Central Excise Tariff. As against this, heading 49.04/06 of the Tariff allows import of charts of all kinds, free of customs duty.

A consignment of chart paper valued at Rs. 32,964 was imported through a major Custom House in September 1976.

The Custom House reckoned the goods as printed charts and allowed them free of basic customs duty and on payment of additional duty alone. This was pointed out by Audit (February 1977) suggesting classification of the goods under heading 48.01/21(1) of the Tariff with basic duty at 100 *per cent ad valorem* together with auxiliary duty at 20 *per cent ad valorem.*

The Custom House admitted the omission (April 1977) and recovered the short levy of Rs. 51,423 (October 1977).

The Ministry of Finance have confirmed the facts.

(iii) According to the provisions of the Customs Tariff Act, 1975, parts and accessories of motor vehicles of common use (except those specified) are to be classified under heading 87.04/06(1) with basic duty at 100 *per cent ad valorem.* However, transmission shafts and certain other parts of motor vehicles falling under heading 84.63, though identifiable as motor parts as such, are specifically excluded from this group by means of the explanatory notes under the relevant section and, therefore, would attract duty at 60 *per cent ad valorem* only. The difference in the rates of basic duty correspondingly affects the incidence of auxiliary duty.

A consignment of 'rocker shafts' imported through a major Custom House (September 1976) was assessed to duty under the heading 84.63 with basic customs duty at 60 per cent *ad valorem* and auxiliary duty at 15 *per cent ad valorem.* Rocker shaft did not constitute a 'transmission shaft' nor did it appear separately under heading 84.63. The goods, therefore, merited classification under heading 87.04/06(1) at 100 *per cent ad valorem* with additional duty at 20 *per cent ad valorem.*

When this was pointed out in audit (January 1977) the Custom House admitted the error and revised the classification. Particulars of recovery of the short levy of Rs. 42,401 are awaited (January 1978).

The Ministry of Finance have confirmed the facts.

(iv) Instruments, apparatus and appliances or their component parts assessable under item 77 of the Indian Customs Tariff attract customs duty at 60 *per cent ad valorem* but articles and component parts thereof imported for use in connection with the exploration for mineral oil or gas are exempt from the levy of customs duty in excess of 40 *per cent ad valorem* in terms of a notification issued in April 1964 (as amended). The goods are further exempt from the whole of the auxiliary duty leviable thereon, effective from the date of another notification issued in May 1975.

A consignment of Geolograph Recorders described as 'parts and accessories for oil well drilling machinery' valued at Rs. 3,03,507 was imported (October 1975) by an autonomous body in the public sector through a major Custom House. The Custom House assessed the consignment to duty under item 77(2) of the Indian Customs Tariff treating the goods as scientific instruments and appliances at the effective rate of duty of 25 *per cent ad valorem* together with auxiliary duty at 5 *per cent ad valorem.* The bill of entry carried a certificate from the importer that the goods were imported for use in connection with exploration for mineral oil or gas, covered by item 25 of the schedule attached to the notification of 1964. This had not been taken into account by the Custom House.

Based on the above certificate, Audit pointed out (March 1976) that the goods merited classification under item 77 of the Indian Customs Tariff read with the notification of 1964 and that the appropriate rate of duty was 40 *per cent ad valorem* (without levy of auxiliary duty). Thereupon, the Custom House reviewed the assessment and recovered the short levy of Rs. 30,350 (February 1977).

The Ministry of Finance have confirmed the facts.

7. *Incorrect application of exemption notification*

(i) By a notification issued in April 1964, as amended, steel sections and unmachined forgings, falling under item 63(28) of

the Indian Customs Tariff, when imported for the manufacture of track parts for crawler tractors are exempt from the payment of customs duty as is in excess of 40 *per cent ad valorem* as against the standard rate of duty of 60 *per cent ad valorem.* By issue of a separate notification, such goods are also exempt from the payment of the whole of the auxiliary duty. The notification of 1964 was later rescinded by another notification issued on 5th June 1976 as a result of which the said articles, on import, became liable to duty at 60 *per cent ad valorem* plus auxiliary duty at 15 *per cent.*

Two consignments described as "length of special rolled steel section for manufacture of grouser shoes for crawler tractors" imported under bond through a major Custom House in February and May 1976 were cleared on 9th June 1976. While assessing the consignments to duty, the Custom House granted the concessional rate of basic customs duty at 40 *per cent ad valorem* as also complete exemption from the levy of auxiliary duty in terms of the superseded notification, resulting in short levy of Rs. 89,911.

On this being pointed out in audit (November 1976), the Custom House admitted the omission and recovered (December 1976) the short levy.

The Ministry of Finance have confirmed the facts.

(ii) By a notification dated 28th November 1972, as amended on 10th January 1973, certain articles including 'Kapok", when imported into India from a particular country in pursuance of a payment arrangement under a trade agreement with that country were exempt from the whole of the duty of customs. By another notification dated 11th May 1973, such articles were also exempted from the levy of auxiliary duty. The term of the payment arrangement referred to above expired on 28th September 1973 and a revised payment arrangement came into force with effect from the said date. Imports of "Kapok" from that country under the revised agreement were, however, not covered by the exemption notifications mentioned above.

In a Central Excise and Customs Collectorate, two consignments of 'Kapok', imported from that country during January and February 1974 under the revised payment arrangement were assessed free of duty under item 87 of the Indian Customs Tariff read with the aforesaid exemption notifications, resulting in non-levy of customs duty of Rs. 62,905. On this being pointed out in audit (November 1975), the Custom House stated (January 1977 and June 1977) that the matter had been referred to the Central Board of Excise and Customs in January 1975 and the Board had advised (November 1976) that "the matter may be closed in respect of these two consignments only and the same should not be treated as a precedent".

While confirming the facts the Ministry of Finance stated in reply (February 1978) that the Collector was being asked to make a request for voluntary payment.

(iii) Parts of 'One-day alarm clocks' falling under item 78 of the Indian Customs Tariff were, on import, liable to basic customs duty at 100 *per cent ad valorem* and auxiliary duty at 20 *per cent ad valorem*. However, by a notification issued in July 1961, the basic customs duty was lowered to 50 *per cent ad valorem*. Subsequently, the concession was rescinded by another notification with effect from 19th June 1976 according to which customs duty at the standard rate of 100 *per cent ad valorem* together with auxiliary duty at 20 *per cent ad valorem* became leviable on such imports.

Four consignments bearing the description "components for one-day alarm clock" having a total value of Rs. 97,103 were imported through a major Custom House in June and July 1976. The bills of entry in respect of the imports were presented by the consignees to the Custom House on 19th June and in July 1976, when the notification granting the concessional rate was not operative. The Custom House, however, assessed the goods at the concessional rate of 50 *per cent ad valorem* plus auxiliary duty leviable at 20 *per cent ad valorem* as was the earlier practice. As the notification providing the concessional rate of duty was not in force on the dates of presentation of the bills of entry,

levy of basic duty at the concessional rate for the consignments covered by the bills of entry was inadmissible, resulting in short levy of Rs. 48,551.

On this being pointed out in audit (July and October 1976), the Custom House admitted the objection and recovered the short levy.

The Ministry of Finance have confirmed the facts.

(iv) Under a notification issued in July 1969, scientific and technical instruments, apparatus and equipment certified as such by the Ministry concerned are exempt from the whole of the customs duty. It was clarified by the Ministry of Education, as early as February 1966, with reference to an earlier notification of February 1962 issued in this behalf that consumable stores are not eligible to such exemption and that goods which do not form recognisable parts of such instruments/equipments/apparatus come under the category of consumable stores.

(a) In a major Custom House, consumable stores imported during the period October 1971 to August 1974 were exempted from the whole of the customs duty resulting in non-levy of duty of Rs. 37,106.

On this being pointed out in audit the Custom House recovered the sum of Rs. 34,968. Particulars of recovery of the balance are awaited (January 1978).

(b) In the same Custom House, imports of articles which did not conform to the guidelines of 1966 were exempted from duty on the strength of the certificates given by the concerned Ministry. A few test cases involving duty of Rs. 10.99 lakhs were pointed out in audit.

In reply, the Ministry of Finance stated (August 1977 and January 1978) that Audit is quite right in saying that the guiding principles circulated by the Ministry of Education in 1966 did not contemplate the extension of the concession to consumable stores. However, they added that the legal position seems to

be that whatever is certified by the concerned Ministry as scientific or technical instruments etc. would, irrespective of whether it falls under item 77(2)/77(4) or not, be eligible for the concession under the notification of July 1969. In view of this they stated that there has in law, been no short collection.

The fact, however, remains that the certificates issued by the concerned Ministries, based on which duty free clearance has been allowed, are themselves open to question.

8. *Delay in the investigation of books of account of importers*

When the importers have special relationship with the suppliers as agents, collaborators, distributors, etc., Section 14(1) (b) of the Customs Act, 1962 provides for determination of assessable value of imported goods in accordance with the Customs Valuation Rules, 1963 by loading the invoice values suitably. The loading factor is determined after examination of the books of account of the importers and the decisions are to be reviewed whenever there is a change in their relationship and in the method of invoicing. In any case, such a review has to be taken up and completed well within a period of five years of the earlier review so that any claim that might arise against the importers could be preferred before the time-bar becomes operative.

Non-compliance with these provisions resulting in incorrect values being adopted and consequential under-assessment was noticed in a major Custom House in the case of an importer having collaboration arrangement with a foreign supplier. The relevant facts in this connection are indicated below :—

(a) The Custom House issued an Investigation Circular in 1964 after an examination of the books of account of the importer. Although this circular itself indicated that the pattern of invoicing of the foreign supplier was likely to undergo a change after sometime, the Custom House did not conduct a review of the books of account until as late as 1971—after an enquiry from Audit in October 1969.

(b) The Investigation Circular, as a result of the review commenced in 1971, was issued in December 1972 *i.e.,* over eight years after the previous circular.

(c) The changed pattern of invoicing came into effect on 20th October 1965 itself, but was not known to the Custom House until the review of the books of account of the importer was taken up in 1971. The reasons for the Custom House not being able to notice the changed pattern of invoicing on its own, right from 1965, are not clear.

(d) A review of the assessment of the bills of entry relating to the invoices made out on or after 20th October 1965 was initiated by the Custom House only in December 1974, when Audit raised a query regarding the revised pattern of invoicing. The reasons for the Custom House, not taking prompt action to review the assessments from 1965 onwards and for not resorting to the precaution of making provisional assessments from 1971 are not clear—though the revised pattern was noticed even in 1971.

The Customs House declined to supply to Audit the files leading to the issue of the Investigation Circular of 1972.

In reply, the Ministry of Finance stated (February 1978) that the total short levy so far noticed as a result of review by the Custom House amounted to Rs. 2,43,832. They have added that the party deposited an amount of Rs. 1,98,908 to be kept in revenue deposit pending the decision of the Court on a writ petition filed by the party against the Investigation Circular of 1972. The Ministry has also endorsed the opinion of the Collector that "such investigation circulars constitute appealable adjudication orders and were self contained speaking orders which were adequate for purposes of the audit".

9. *Incorrect application of exchange rates*

In an outport, the assessable value of imported goods, the bill of entry in respect of which was presented on 21st July 1972, was worked out by applying an exchange rate of U.S. $ 13.62 = Rs. 100 which was in force upto 26th June 1972 instead of the daily bank rate of U.S. $ 12.92 = Rs. 100.

On this being pointed out in audit (June 1975), the Custom House requested the importers for voluntary payment of Rs. 43,499. Particulars of recovery are awaited (January 1978).

The Ministry of Finance have confirmed the facts.

10. *Irregular payment of drawback*

(i) In a major Custom House, drawback at the rate of Rs. 181 per metric tonne was allowed under Sub-Serial 3831 of the Drawback Schedule on two consignments of aluminium ingot exported on 19th April 1976 and 3rd May 1976 by two firms. It was pointed out in audit (15th January and 15th April 1977) that, since Sub-Serial 3831 came into effect only from 6th May 1976, the payment of drawback of Rs. 2,73,482 was incorrect.

The exporters became entitled to these payments only on 21st January 1977 and 21st June 1977 respectively, when brand rates of drawback, covering these shipments were announced. The payments of drawback in October and November 1976, therefore resulted in the exporters getting the amounts, long before they were due.

The Ministry of Finance admitted (January 1978) that strictly speaking the claims in question were not covered either under 'all industry rates' or 'brand rates' at the time of their settlement.

(ii) Three drawback claims on the exports of "Benzanthrone—pure" by a manufacturer in April, May and June 1976 were processed in a major Custom House in October 1976. A brand rate of drawback at Rs. 3.29 per kilogram was announced on 28th January 1976 for this item. However, on the basis of a declaration by the exporter that brand rate was not fixed, the Custom House processed the drawback claims on an *ad hoc* basis at the rate of 7.5 *per cent* of the F.O.B. value and released the payments on 4th October 1976. Excess payment of drawback of Rs. 33,223 was pointed out by Audit in these cases and the Custom House requested to review all such claims.

The Custom House admitted the objection and recovered Rs. 33,223 in April 1977. Excess payment of Rs. 21,384 was also noticed by the Custom House in two other similar claims. Particulars of recovery in these two cases are awaited (January 1978).

The Ministry of Finance have admitted the objection.

11. *Irregular refunds*

(i) Synthetic resin is classifiable under item 82(3) of the Indian Customs Tariff with additional duty at 40 *per cent ad valorem* under item 15 A(1) of the Central Excise Tariff. According to item 15 A(1), synthetic resin in any form whether solid, liquid or pasty or as powder, granules, flakes, chips etc. is liable to excise duty. However, under a notification issued in March 1973, polyester polymer chips are exempt from payment of Central Excise duty.

A consignment of Synthetic resin (polyester polymer) imported in April 1975 was assessed by a major Custom House under item 82(3) of the Indian Customs Tariff with additional duty at 40 *per cent ad valorem* under item 15(A)(1) of the Central Excise Tariff. However, in September 1976, the entire amount of additional duty collected totalling Rs. 6,29,867 was refunded on the ground that the goods imported were similar to chips and hence attracted the provisions of the notification referred to above.

According to the test report of the Chemist attached to the Custom House, the goods were in the form of small square cut pieces and not in the form of chips. It was pointed out in audit that the refund was, therefore, irregular.

The Ministry of Finance stated in reply (December 1977) that, since there was some doubt about the scope of the expression "chips" appearing in the notification referred to, it was proposed to examine the matter further.

(ii) According to a practice in vogue Government departments/undertakings enjoy a special rebate of 5 per cent on the freight payable in respect of the imports made. This rebate of

5 *per cent* is given on a deferred basis *i.e.* after the import is completed. As this rebate is not uniformly allowed to all importers, it has to be ignored for the purpose of ascertaining the value under Section 14 of the Customs Act, 1962.

It was, however, seen in audit that, in respect of certain imports made by a Government undertaking in an outport, the assessments originally made were revised taking into account the rebate in freight referred to above and consequential refunds allowed.

When this was pointed out in audit, the Custom House replied that erroneous refunds amounting to Rs. 53,185 in 14 cases were recovered in February 1977.

The Ministry of Finance have confirmed the facts.

12. *Over-assessments*

(i) Under Section 2(25) of the Customs Act, 1962, goods which have once been cleared for home consumption, are not to be treated as "imported goods". Consequently, they do not attract levy of duty under Section 12(1) *ibid.*

A department of Government had been disposing of every year since 1972, in public auction, batteries brought to India as equipments/fitments of submarines, on their becoming unserviceable after use. According to them, the batteries were only to be treated as scrap at the time of auction as they could not be used as batteries. However, on the advice of the Custom House, they were paying customs duty and additional duty on the amount realised in the auction at the rate applicable to batteries, passing on the duty incidence to the successful bidders. The total duty collected during the years 1972 to 1974 was Rs. 15,85,281. This is irregular as there is no statutory provision for charging customs duty on sales of such scrap within the country.

The Ministry of Finance stated in reply (January 1978) that since the batteries in question were imported as fitments to submarines which are ocean going vessels the duty appears to have

been correctly levied when they were sold as scrap for home consumption. The reply is *prima facie* unacceptable for no taxes/ duties can be collected without express provision in a statute.

(ii) Lubricating oil classifiable under item 27(8) of the Indian Customs Tariff when imported into India attracts customs duty at 40 *per cent ad valorem* together with additional duty at 20 *per cent ad valorem* plus Rs. 352.20 per metric tonne under item 11A of the Central Excise Tariff read with notification dated 1st March 1968. However, the oil is exempt from the levy of auxiliary duty by virtue of notification dated 1st March 1975.

While assessing a bulk consignment of lubricating oil imported (June 1975) by a Defence establishment, a major Custom House levied—

(a) additional duty at 30 *per cent ad valorem* instead of at the correct rate of 20 per cent resulting in an excess levy of Rs. 2,48,000, and

(b) auxiliary duty at 5 *per cent ad valorem*, though none was leviable at all, resulting in an excess levy of Rs. 80,000.

On this being pointed out in audit (December 1976), the Custom House revised the assessment and refunded the total excess levy of Rs. 3,28,000.

The Ministry of Finance have confirmed the facts.

13. *Non-levy of export duty*

(i) 'Chrome concentrates' are subject to export duty of Rs. 15 per metric tonne under item 34 of the Indian Customs Tariff. The Ministry of Finance clarified in April 1970 that the term 'Chrome concentrate' would apply only to a material which had been obtained by beneficiation of naturally occurring ores and would not apply to materials which were exported in the form in which they were mined.

In a Custom House, consignments described as 'Chrome Ores' were exported free of duty on the basis of declarations from the exporter that the goods were not subjected to any form of beneficiation and were exported in the form in which they were mined. Following an observation by the Internal Audit Department (May 1974) that the article should be assessed to export duty under item 34 of the Indian Customs Tariff, demands were raised for the period May 1973 to March 1975 amounting to Rs. 35,16,300 but the same were not confirmed under Section 28(2) of the Customs Act, 1962. No demand was raised for the period prior to May 1973 and consignments subsequent to March 1975 were allowed to be exported free of duty.

It was suggested in audit (April 1976) that, as the ores contained high percentage of chromium and were subjected to some manual processes before exportation, they should attract duty as chrome concentrates. The Custom House started levying duty on the exports from June 1976 and confirmed in July 1976, the demands for Rs. 53,63,834 for the period May 1973 to May 1976.

The Ministry of Finance stated in reply (December 1977) that the question whether chrome ores/concentrates are liable to export duty was not free from doubt and that it was proposed to examine the matter further.

(ii) The rate of export duty applicable to consignments exported out of India is the rate in force on the date of presentation of the relevant shipping bill. If, however, the shipping bill is presented in advance of the date of entry outwards of the vessel by which the goods are exported, the shipping bill is deemed to have been presented on the date of such entry outwards.

A notification issued in 1958 exempted groundnuts falling under item 13 of the Export Tariff schedule from the levy of the export duty payable thereon. Subsequently this concession was rescinded by another notification issued on 12th February 1976. The notification being effective from the date of its issue, groundnut kernels exported from 12th February 1976 onwards became liable to export duty at Rs. 800 per metric tonne in addition to

the cess payable under the Produce Cess Act, 1966 at 0.5 *per cent ad valorem.*

Shipping bills for ten consignments of groundnut kernels exported through a minor port were presented to the proper officer on 10th February 1976, but the 'entry outwards' of the vessel carrying the cargo was granted only on 12th February 1976, the date on which the revised rates of export duty for groundnuts became effective. While assessing the goods to duty, the department levied the cess due at 0.5 *per cent ad valorem,* but did not recover any export duty.

On this being pointed out by Audit (March 1977), the Custom House admitted the non-collection of duty aggregating to Rs. 4,80,000 and requested the exporters for voluntary payment.

While confirming the facts, the Ministry of Finance stated in reply (January 1978) that the entire amount has since been paid by the concerned exporters.

OTHER TOPICS OF INTEREST

14. *Delay in recovery of duty on the sale of imported cars by the State Trading Corporation.*

Motor vehicles imported free of customs duty by privileged persons/organisations and sold within three years from the date of import are subject to levy of customs duty. Where such vehicles are acquired and sold by the State Trading Corporation of India, the Corporation is liable to pay the customs duty leviable thereon. The Customs authorities are required to intimate the exact amount of duty payable on receipt of information of the sale.

(a) In respect of such sales at one of their branch offices, a sum of Rs. 21.19 lakhs representing the customs duty payable as on 31st March 1975 in respect of the sales from 1970-71 onwards was lying with the Corporation for want of confirmation regarding the exact duty payable.

No consolidated record or register to watch the prompt realisation of such dues is maintained by the Custom House.

The Ministry of Finance stated in reply (February 1978) that according to the data submitted by the State Trading Corporation for the period upto 31st March 1974 an amount of Rs. 8.16 lakhs was pending realisation as on 31st March 1975 and that this has been realised. The Ministry further stated that action was being taken to recover duty in respect of another six cases for the years 1974-75 to 1976-77 recently reported by the State Trading Corporation.

(b) In another major Custom House, the duty recoverable on the sale of 32 cars amounting to Rs. 8,63,776 remained unrealised from 1971-72 onwards. The Custom House did not maintain any register of demands for watching the realisation of the duty on such sales till the necessity thereof was pointed out by Audit in December 1975. Subsequently, in January 1976, the Custom House issued demands amounting to Rs. 8.63 lakhs on the State Trading Corporation in respect of 27 cases.

The Ministry of Finance have stated that the amount has since been realised.

(c) In a third major Custom House, it was ascertained by Audit in July 1977 that a sum of Rs. 10.05 lakhs collected towards customs duty on the sale of cars during the period 1965-66 to 1976-77 was lying with the State Trading Corporation. The action taken by the Custom House to realise the duty payable is not known as no document in this respect was produced to Audit. No registers were maintained in this Custom House also.

Action to realise the dues was not taken till pointed out by Audit.

The Ministry of Finance stated in reply (February 1978) that for the period 1965-66 to 1976-77, the amount of duty yet to be realised in respect of the cars sold by the State

Trading Corporation was Rs. 1.32 lakhs in 31 cases and that efforts were being made to expedite realisation of this amount.

15. *Non-levy of duty on salvaged articles*

All salvaged articles brought into and disposed of in India are liable to duty under section 21 read with section 12 of the Customs Act, 1962 unless they are otherwise eligible for duty free clearance. An oil-carrying foreign tanker which ran aground near one of the islands forming part of the Union Territory of Lakshadweep was abandoned in September 1974 as refloating of the vessel proved impossible. The salvaging operations conducted during October-November 1974 at the instance of the authorities of the Union Territory resulted in recovery of 13319.597 tonnes of oil and some other articles like lifeboat, diesel generating set, typewriters, refrigerators, washing machines, television sets, dunlop mattresses, etc. These articles were sold in the Union Territory for Rs. 83,436 without realising customs duty thereon amounting to Rs. 55,000 (approximately). The oil stored in the storage tanks of the Indian Oil Corporation at Cochin under the orders of the Administrator of the Union Territory was released in April 1976 by an order passed under the Merchant Shipping Act, 1958 and delivered to the owners.

The Ministry of Finance stated in reply (February 1978) that the duty on the salvaged articles so disposed of had been assessed by the Collector-cum-Development Commissioner of the Union Territory, who is also the Assistant Collector of Customs by virtue of notification issued in July 1976, at Rs. 45,551 which had been deposited by the Administrator in the treasury on 18th August, 1977. The Ministry further stated that the correctness of this assessment was being verified by the Collector of Customs and Central Excise, Cochin.

16. *Irregularity in the assessment of industrial diamonds*

According to two Tariff Rulings issued in 1922 and 1939, industrial diamonds used for power driven drilling machines were classifiable under item 72(3) of the Indian Customs Tariff at

40 *per cent ad valorem.* A major Custom House applied these rulings to all industrial diamonds irrespective of whether they were used for power driven drilling machines or not. In 1971, the Internal Audit Department objected to this assessment and suggested revised classification under item 71(a) or 87 of the Indian Customs Tariff at 60 *per cent ad valorem.* Notices demanding duty aggregating to Rs. 38,82,501 were accordingly issued by the Custom House.

By notifications issued on 11th August, 1973, industrial diamonds, on import, were exempt from payment of duty in excess of 40 *per cent ad valorem* [applicable under item 72(3)] and also from the levy of auxiliary duty. By a Tariff Advice dated 1st February, 1974, industrial diamonds were classified under item 87 of the Indian Customs Tariff.

In September 1975, purporting to act under the notification dated 11th August, 1973 and the Tariff Advice dated 1st February, 1974, the Custom House withdrew the notices of demands already issued.

The Ministry of Finance stated that, since the major use of industrial diamond boart was in power driven machinery, the earlier classification by the Custom House under item 72(3) was correct. It was also stated that the earlier assessments by the Custom House were based on Board's Tariff Rulings.

The fact, however, remains that the Tariff Advices have no legal force and further the Rulings issued in 1922 and 1939 were specific inasmuch as only such of the industrial diamonds that were used for power driven drilling machines merited classification under item 72(3) and that extension of this concessional assessment to industrial diamonds used for other purposes was, *prima facie,* irregular.

17. *Fraudulent imports through Foreign Post*

(i) A fraud in a Foreign Post Office by which large quantities of dutiable and restricted goods of considerable value

were being smuggled into the country came to the notice of a major Custom House. The *modus operandi* was to bring in illegally, by post, expensive goods such as fountain pens, electronic watches, chemicals and drugs, calculating machines and precious stones from Dubai, Hongkong and Singapore declaring them as spare parts of machinery and surgical instruments.

The procedure followed in dealing with such goods by the customs authorities is to issue notices to the consignees to furnish the necessary details while retaining the parcels in the strong room of the post office.

Facts of one case involving 26 parcels are :—

(a) that the file containing the office copies of the call memos was alleged to have been stolen from the Postal Appraising Section;

(b) that the detained goods were surreptitiously removed from the post office with the alleged connivance of postal employees, and

(c) that the records of the Custom House showed all the 26 parcels as detained while the strong room records of the Foreign Post Office indicated all the 26 parcels as cleared.

Custom House records also revealed a similar case of attempted fraud involving 38 parcels, the market value of which was estimated at Rs. 10 lakhs.

These frauds took place in February/March 1974 but have not been reported to Audit as required under the General Financial Rules. The quantum of loss of revenue could not also be determined in the absence of full details.

The Ministry of Finance stated in reply (February 1978) that the 26 parcels referred to above were cleared fraudulently but added that, the matter being under investigation, it would be pre-mature for them to give any purposeful comments.

(ii) In another major Custom House, a post parcel containing twenty electronic mini-calculators valued at Rs. 10,000 was detained by the assessing officer in the Postal Appraising Department on 13th March, 1974. But this parcel was released free of duty on 15th March, 1974. The goods could not be recovered nor the duty realised. Further developments in the case have not been made known.

The Ministry of Finance have confirmed the facts.

18. *Delay in final assessment of Iron Ore shipment*

Iron ore, on export, is subject to duty under item 28 or 29 of the Export Tariff, the rate of duty varying according to the grading of the ore exported, which depends on the iron content in the exported lot. Even though ores of different grades are brought to the Port by the exporters, they are blended together in the hatches of the vessels to arrive at the grade contracted for. The Custom House levies duty on the exported lots provisionally under section 18 of the Customs Act, 1962 on the basis of the iron content as declared by the exporter, pending receipt of analysis report from the Customs laboratory, though independent test reports of Government approved agencies are also obtained from the exporters.

As the blending of the different grades of the iron ore takes place in the holds of the ship, it is necessary to take samples of the iron ore round the clock so as to arrive at the correct grading of the iron ore for assessment to duty. In the absence of a Custom House laboratory at Mormagao Port, the samples drawn are sent to the Bombay Customs laboratory entailing delay in final assessment. A review by Audit (June 1976) revealed that 4,846 shipping bills pertaining to the period 1970-71 to 1975-76 were pending final assessment for want of analysis reports from the Customs laboratory.

The review also disclosed that, in 42 cases of exports made during February 1971 to April 1974, the final assessment was ultimately done on the basis of the test reports furnished by Government approved laboratories. Delay in final assessment

in these cases varied from 18 months to about 4 years after export. Notices of demands for realising short levy amounting to Rs. 3.3 lakhs were issued in respect of the 42 cases during November 1973 to July 1974 while the duty was actually realised during September 1975 to March 1976. 37 shipping bills with a duty effect of Rs. 2.85 lakhs out of the 42 cases scrutinised by Audit pertained to one single exporter.

The Ministry of Finance have confirmed the facts.

19. *Goods kept in customs warehouses beyond the statutory period*

Under the Customs Act, 1962, dutiable goods may be stored in any warehouse for three years by executing an appropriate bond. When such goods are not removed from the warehouse after the expiry of this period, full amount of duty, rent and charges claimable on account of such goods together with interest on the amounts due as well as penalties may be demanded from the owner of the goods unless the period of warehousing under the bond is extended by the appropriate authority.

A test check in November 1976 of the warehousing registers maintained by three Custom Houses revealed that goods in respect of 687 consignments valued at Rs. 5,65,05,897 were kept in the Customs warehouses beyond the statutory period.

The Ministry of Finance stated in reply (January 1978) that, in order to determine whether the goods have remained in the warehouse beyond three years, detailed scrutiny of all the relevant bond files would be necessary which would take some more time.

20. *Non-revision of rate of interest on Customs duty due on warehoused goods*

Imported goods entered for warehousing are normally allowed to be stored in public and private warehouses for a period of three years which can be extended by competent authorities in deserving cases. The Customs Act, 1962 provides for levy of interest at 6 *per cent* per annum or such other rate to be fixed

by the Central Board of Excise and Customs on the customs duty payable on the warehoused goods beyond the permitted period of storage till the payment of duty thereon.

The rate of 6 *per cent* per annum provided in the Act was originally fixed by Government in 1942 under the Sea Customs Act, 1878. Even though the Board was vested with powers to enhance the rate of interest from time to time under the Customs Act, 1962, the rate of interest has remained stationary over a period of 15 years. On the other hand, the rates of interest chargeable on delayed payments of taxes under the Income-tax Act, 1961 have been revised upward from 6 *per cent* to 9 *per cent* per annum with effect from 1st October, 1967 and to 12 *per cent* per annum from 1st April, 1972. Calculated on this basis, the revenue forgone as on 31st December 1976, due to non-revision of the rate of interest amounted to Rs. 9.26 lakhs in three major Custom Houses.

The Ministry of Finance have stated in reply (January 1978) that the provision under Section 59(1)(b) of the Customs Act in respect of interest is only an enabling provision and that the analogy of the interest rate on income-tax due does not seem to be apt.

The reasons for not invoking the enabling provision have, however, not been explained by the Ministry. The fact remains that the enabling provision has only remained on the statute book without being invoked any time even in the interest of Government revenue.

21. *Delay in production of the required certificate within the stipulated time*

Charitable gifts of certain specified articles, received free from philanthropic individuals or organisations abroad and imported into India for distribution among the poorer sections of the society without ethnic or communal distinctions are allowed exemption from customs duty, provided the importer furnishes a certificate in this behalf from the State Government concerned. The importing agency has, further, to prove to the satisfaction of the department within six months from the date

of importation or such extended period that the goods were actually distributed as intended.

According to the practice followed in a major Custom House, the importing agencies execute guarantees at the time of imports undertaking to produce the necessary certificates within the stipulated period regarding distribution of the articles. Failure to abide by the guarantee renders the importers liable to pay the customs duty leviable thereon. The receipt of the certificates within the stipulated period and the consequent cancellation of the guarantees are to be watched through a register maintained for such conditional exemptions.

A review by Audit (August 1976) revealed that the registers of conditional exemptions, including those relating to charitable goods, maintained in the Custom House were not being scrutinised every month resulting in failure to assess periodically the number of cases where the certificates were not received within the stipulated time. The certificates received in certain cases were also not found to have been noted in the register even after three years. In respect of 43 items covering import of gifts made from the year 1971 to 1973, there was no indication in the register whether the certificates had been received. Further in respect of a number of cases where the guarantees had lapsed, the Custom House had not taken timely action to raise the demands due.

As on 4th January 1978 there were 21 cases of imports made during the years from 1971 to 1975 valued at Rs. 12,08,285 pending regularisation in the Custom House.

The Ministry of Finance stated in reply (January 1978) that 34 cases out of 43 cases reported as pending have been disposed of and notices have been issued to the importers in the remaining 9 cases involving a duty of Rs. 1,23,848.

22. *Non-realisation of penalties*

Penalties are imposed by the Customs department for infringement of various provisions of the Customs Act, 1962 and the Import Trade Control Policy.

The Ministry of Finance intimated (February 1978) that the amount of unrealised penalties in respect of two custom houses and two collectorates was Rs. 1,88,10,882. This included the amount of unrealised penalties imposed as far back as in the year 1956. While the Ministry have given the reasons for pendency in the case of one Custom House, similar information has not been given in the case of others.

The figure of unrealised penalties indicated above does not include the amount of unrealised penalties in respect of one Custom House and two Collectorates, information in respect of which is awaited (January 1978).

Two instances where such penalties were not recovered by recourse to the provisions of the Act are given below :—

In one case, a car seized by a Collectorate was released in April 1971 on payment of the redemption fine of Rs. 5,000 without collecting the personal penalty of Rs. 10,000 imposed on the owner of the car. In another case, seized currency of Rs. 18,002 was released in October 1972 without realising the personal penalty of Rs. 2,000. It was stated by the Collectorate that the releases of the car and the currency were strictly in accordance with the orders of the adjudicating authority and that, in the latter case, the currency was released by the Collectorate whereas the fine was to be recovered by the division office. Penalties in both cases are yet to be recovered (January 1978).

The matter was reported to the Ministry of Finance in June and October 1977; reply is awaited (January 1978).

23. *Exemption Orders issued under the Customs Act,* 1962

Section 25(2) of the Customs Act 1962 empowers the Central Government to exempt, in the public interest and under circumstances of an exceptional nature to be specified,

from the payment of customs duty, any goods on which duty is leviable. The number of exemptions acted upon and the duty involved during the past four years is indicated below:—

	1973-74	1974-75	1975-76	1976-77
1. Number of exemptions acted upon	354	266	*	*
2. Total duty involved (in crores of rupees) . .	6.56	10.21	*	*
3. Number of cases having a duty effect above Rs. 10,000	157	111	*	*
4. Duty involved in the cases at (3) above (in crores of rupees)	6.51	10.16	*	*

No guidelines to determine public interest have been laid down. The circumstances of an exceptional nature are also not found specified in the orders.

In paragraph 2.136 of their Forty-fourth Report, (1965-66) (Third Lok Sabha), the Public Accounts Committee observed :—

> "The Committee are not satisfied with the explanation offered in justification of the exemption granted from the payment of customs duty to a private party manufacturing aluminium. While the exemption that was given does seem to satisfy the criterion of serving the public interest (conservation of foreign exchange), it does not appear to satisfy the other condition *viz.*, the circumstances of exceptional nature".

During the course of audit, in respect of a few cases, where

(a) the public interest and circumstances of an exceptional nature were not obvious,

*Figures awaited from the Ministry of Finance (January 1978).

(b) the orders initially granting partial exemption from duty were later revised granting complete exemption from duty,

(c) exemptions related to the import of cars,

(d) exemptions related to Government undertakings, and

(e) certain conditions had to be fulfilled,

the relevant papers and documents leading to the issue of the exemption orders were called for. The Ministry of Finance stated in reply in respect of 31 cases that such papers/documents could not be made available as the concerned files were policy files. In respect of 2 cases the Ministry expressed their inability to supply the files on grounds of non-availability and in one case no reasons were given. In respect of 28 cases, the files called for were not forthcoming nor has any reply been received.

In the circumstances, it has not been possible for Audit to conduct any purposeful scrutiny of these orders or to be of help to the Public Accounts Committee/Parliament in having a proper appreciation of the exercise of powers vested in the executive.

The facts of one such case were :—

The founder of an Ashram applied on 1st July 1976 for *ad hoc* exemption from payment of customs duty on the import of an aircraft with accessories, said to have been "donated" to the Ashram by an aircraft corporation in a foreign country. The value of the aircraft with accessories indicated by him in his letter was Rs. 4.50 lakhs. By an *ad hoc* exemption order dated 29th July 1976 under Section 25(2) of the Customs Act, 1962, the exemption requested for was granted subject to certain conditions.

In response to a request from Audit (October 1976) for the files leading to the issue of the order, the Ministry of Finance stated (February 1977) that 'it will not be possible for this department to send the file.....as it is a policy file'. In the circumstances, it could not be verified in Audit whether the Ministry satisfied itself (i) that the transaction was a genuine gift of an aircraft donated to the importer, (ii) that the valuation of the aircraft with accessories was correct, (iii) that the Ashram fulfilled the guidelines adopted by the Board in giving *ad hoc* exemptions and (iv) that public interest was involved in giving such exemption.

Audit, therefore, sought from the Ministry (April and May 1977) the following information :

(i) the reasons for the grant of exemption and the public interest involved,

(ii) the *modus operandi* for and the authority which ensures the fulfilment of the conditions and

(iii) basis of valuation of the aircraft and the accessories.

Reply is still awaited (January 1978).

24. *Remissions and abandonment of Customs Revenue**

(i) The total amount of Customs Revenue remitted, written off or abandoned during the year 1976-77 is Rs. 18.04 lakhs.

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

Year	Amount* (In lakhs of rupees)
1973-74	3.41
1974-75	10.87
1975-76	3.12

*Figures furnished by the Ministry of Finance.

(ii) In a major Custom House it was noticed that registers were not being maintained in respect of remissions of revenue as required under the provisions of a departmental manual, till this was pointed out in audit (August 1976).

Formal orders of remission were also not issued. As a consequence, duty of Rs. 17.28 lakhs forgone in respect of goods which were destroyed in a fire in September 1975 did not figure as a remission of revenue.

The Ministry of Finance stated in reply (February 1978) that the utility and purpose of the registers referred to needs review and that this was being done.

25. *Arrears of customs duty**

The total amount of customs duty remaining unrealised for the period upto 31st March 1977 was Rs. 663.64 lakhs on 31st October 1977 as against Rs. 366 lakhs for the corresponding period in the previous year. Out of this, an amount of Rs. 218.34 lakhs has been outstanding for more than one year.

26. *Time-barred demands*

Time barred demands where voluntary payments have been asked for by the department upto 31st March 1977 but pending realisation as on 31st October 1977 amounted to Rs. 168.34 lakhs in respect of 9 Custom Houses/Collectorates.@

*Figures furnished by the Ministry of Finance.

@Does not include figures for Collectorate of Central Excise and Customs, West Bengal which are awaited from the Ministry of Finance.

CHAPTER II

UNION EXCISE DUTIES

27. The receipts under Union Excise duties during the year 1976-77 were Rs. 4,221.35* crores. The receipts for the last five years along with the corresponding number of commodities on which excise duty was leviable under the Central Excises and Salt Act, 1944 are given below:—

Year	Receipts under Union excise duties	Number of commodities subject to excise levy
	(In crores of rupees)	
1972-73	2,324.25	120
1973-74	2,602.13	124
1974-75	3,230.51	128
1975-76	3,844.78	130
1976-77	4,221.35*	132

28. The break-up of the receipts for the year 1976-77 with the corresponding figures for 1975-76 is given below :—

038-Union Excise Duties :	Actuals 1975-76 Rs.	1976-77 Rs.
A. Shareable duties :		
Basic excise duties	31,88,33,29,891	35,54,52,62,252
Auxiliary duties of excise	..	2,36,11,52,046
Special excise duties	844	8,26,666
Additional excise duties on Mineral Products	1,33,14,88,041	1,48,21,47,699
Total (A)	33,21,48,18,776	39,38,93,88,663

*The figure is provisional.

	Rs.	Rs.
B. Duties assigned to States :		
Additional excise duties in lieu of Sales Tax . .	2,27,46,61,368	2,55,20,17,166
Total (B) . . .	2,27,46,61,368	2,55,20,17,166
C. Non-Shareable duties :		
Regulatory excise duties .	9,03,36,201	(—)2,57,870
Auxiliary duties of excise .	2,49,16,04,298	13,70,87,834
Special excise duties .	1,99,188	10,42,027
Other duties . . .	4,83,569	48,36,681
Total (C) . . .	2,58,26,23,256	14,27,08,672
D. Cess on commodities . .	82,62,17,524	92,23,99,160
E. Other receipts . . .	(—)45,05,56,113	(—)79,30,39,138
Total —Major Head	38,44,77,64,811	42,21,34,74,523*

29. *Salient features of the budget for* 1976-77

The major changes in excise duties brought about by the Finance Act, 1976 effective from 16th March 1976 aimed at raising revenue, rationalisation of the existing tariff structure and providing relief selectively to the industry or consumers. The measures proposed for raising revenue included :

(i) a scheme of rationalisation in respect of cotton fabrics by conversion of specific rates of duty to *ad valorem* rates with changes in the definition of different categories of fabrics,

(ii) stepping up of duty on patent or proprietary medicines,

(iii) conversion of specific duties on paper to *ad valorem* rates and

(iv) imposition of duty on branded cigars and cheroots.

As in the last year, auxiliary duty of excise was continued to be levied upto 30th June 1977.

*The figure is provisional.

The net effect, after allowing relief of the order of Rs. 50 crores on a number of common consumer items, was an additional burden of duties amounting to Rs. 9.9 crores.

30. The following twenty two commodities fetched revenue in excess of Rs. 50 crores each during the year 1976-77. Collectively these duties account for more than 80 *per cent* of the net receipts.*

	In crores of rupees
1. Motor spirit	425.64
2. Cigarettes	371.84
3. Refined diesel oil and vaporising oil	326.11
4. Rayon yarn	268.39
5. Iron or steel products	253.64
6. Sugar including khandsari	241.20
7. Kerosene	170.38
8. Cotton fabrics	169.62
9. Cement	142.42
10. Tyres and tubes	127.61
11. Aluminium	114.78
12. Unmanufactured tobacco	104.16
13. Fertilisers	97.23
14. Cotton twist yarn and thread	94.90
15. Paper and paper board	86.29
16. Motor vehicles	74.73
17. Plastics	66.18
18. Tea	62.06
19. All petroleum products not otherwise specified	55.88
20. Yarn all sorts, not elsewhere specified	53.71
21. Patent or proprietary medicines	53.62
22. Artificial silk fabrics	51.86
Total	3412.34

*Figures (provisional) intimated by the Ministry of Finance in December 1977.

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

The budget estimates, actual realisation and variations for the year 1976-77 together with the corresponding figures for the last three years are given below :—

Year	Budget Estimates	Actuls	Variations	Percentage
		(In cores of rupees)		
1973-74 . . .	2741.05	2602.13	(—)138.92	(—)5.07
1974-75 . . .	3184.34	3230.51	(+)46.17	(+)1.45
1975-76 . . .	3823.62	3844.78	(+)21.16	(+)0.55
1976-77 . . .	4093.30	4221.35*	(+)128.05	(+)3.10

32. *Cost of collection*

The expenditure incurred in collecting revenue on account of Union Excise duties during the year 1976-77 along with the corresponding figures for the preceding three years are furnished below:—

Year	Collection	Expenditure on collection
	(In crores of rupees)	
1973-74	2602.13	18.21
1974-75	3230.51	23.52
1975-76	3844.78	30.63
1976-77	4221.35*	30.41

33. *Self removal procedure*

Self removal procedure was extended to manufacturers of cigars and cheroots, starch, mineral fibres and yarn and manufactures therefrom and computers (including central processing units and peripheral devices, all sorts).

34. *Committee to review the existing tax structure*

A high powered Committee on indirect taxes was appointed by Government on 20th July 1976 in order to streamline the tax

*The figure is provisional.

structure. The principal terms of reference of the Committee included the following:—

(i) to review the existing structure of indirect taxes—Central, State and local—in all its aspects;

(ii) to examine the role of indirect taxation in promoting economic use of scarce resources;

(iii) to examine the structure and levels of excise duties; the impact of these duties on prices and costs and the cumulative effect of such duties; their incidence on various expenditure groups; scope for widening the tax base and increasing the elasticity of the system;

(iv) to examine the feasibility of adopting some form of 'value added tax' in the field of indirect taxation where appropriate and, if found feasible, to suggest the appropriate stage to which it should be extended;

(v) to examine whether and how far it would be advisable to assist any particular industry or sectors of an industry by grant of concessions within the normal canons of taxation and balance of administrative convenience.

35. *Scheme of excise duty relief to encourage higher production*

By a notification issued on 16th June 1976, Government introduced a scheme for giving relief to encourage higher production. The scheme which envisaged partial (25 per cent) exemption from duty on goods cleared in excess of the clearances during the 'base' period was made applicable to 43 specified commodities from 1st July 1976 and would remain in force till 31st March 1979. The scheme also laid down a detailed procedure for determination of 'base' period and 'base' clearances.

36. *Test audit results*

Test audit of the records maintained in the offices of all the central excise collectorates and basic excise records of licensees revealed under-assessments and losses of revenue to the extent of Rs. 24.93 crores.

The irregularities noticed in test audit fall under the following broad categories:—

(a) Evasion/avoidance of duty.

(b) Short levy/non-levy of duty owing to misclassification of commodities.

(c) Incorrect grant of exemption.

(d) Incorrect application of exemption orders.

(e) Exemption under executive instructions without legal backing.

(f) Enhancement of price not taken into account in determining assessable value.

(g) Incorrect availment of concessional rates of duty resulting in under-assessment/non-levy.

(h) Loss in transit/storage.

(i) Irregular refunds.

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

Evasion/avoidance of duty

37. *Raw naphtha*

By issue of exemption notifications, the rate of duty on raw naphtha was fixed at 5 per cent *ad valorem* from 23rd December 1961 and at Rs. 4.15 per kilolitre from 7th May 1971,

subject to the condition that it was proved to the satisfaction of the Collector that the raw naphtha was intended for use in the manufacture of fertilisers and the procedure laid down in Chapter X of the Central Excise Rules, 1944 was followed. Rule 196 enjoins that, if any excisable goods obtained for industrial use under the said procedure are not accounted for as having been used for that purpose, the manufacturer, who obtained the goods shall, on demand by the proper officer, immediately pay the differential duty.

A fertiliser factory had been obtaining raw naphtha from an oil refinery since 1969-70 on payment of duty at the concessional rates for the manufacture of fertilisers. In the process of manufacture of fertilisers, the factory first manufactures ammonia from the raw naphtha so obtained. Ammonia is also manufactured by it from the coke gasification process as well as from coke oven gas as a by-product. The liquid ammonia manufactured from these three sources is, however, stored in a common tank, from where it is cleared for the manufacture of fertilisers as also for sale or for other purposes. It was pointed out in audit that the quantity of raw naphtha used in the production of ammonia, which was sold and/or used for purposes other than for manufacture of fertilisers, was not entitled to the concessional rate of duty. Audit also pointed out short payment of duty to the extent of Rs. 94.11 lakhs on the raw naphtha estimated to have been used for manufacture of 9,450 kilolitres of ammonia sold for purposes other than for manufacture of fertilisers during the period June 1973 to January 1974. The collectorate raised (15th July 1975) demand for differential duty of Rs. 3.40 crores on 17,045.878 kilolitres of raw naphtha used in the manufacture of ammonia which was sold or used for purposes other than for the manufacture of fertilisers during the period April 1969 to November 1974. The factory filed a representation with the jurisdictional Assistant Collector on 13th August 1975 stating that the quantity of ammonia produced from coal and coke oven gas was much more than that produced from raw naphtha and

that whatever ammonia had been sold or used otherwise than for manufacture of fertilisers was out of the ammonia produced from sources other than raw naphtha.

As the fertiliser factory had no separate tank for storing the ammonia produced from raw naphtha, there was no evidence to show that the ammonia produced from raw naphtha was entirely used for manufacture of fertilisers.

In the absence of separate accounts of production and clearance of ammonia from different sources, the quantity of ammonia sold or used otherwise than for manufacture of fertilisers can be allocated to raw naphtha and other sources in the same proportion in which the total production of ammonia was contributed by these sources in the respective years. The Central Board of Excise and Customs, in their letter dated 29th June 1973, also laid down the same principle for being adopted in determining the duty liability of the manufacturer in such cases. Accordingly, out of the total quantity of 1,03,175.352 metric tonnes of ammonia sold and/or used for purposes other than for manufacture of fertilisers during 1969-70 to 1975-76, a quantity of 18,147.882 metric tonnes was the proportionate contribution from raw naphtha. The proportionate quantity of raw naphtha consumed in the production of 18,147.882 metric tonnes of ammonia was 25.563 kilolitres and the differential duty thereon worked out to Rs. 5.36 crores.

While accepting the facts as substantially correct, the Ministry of Finance have stated that two demands amounting to Rs. 3,65,36,746 on a total quantity of 24,495 kilolitres of raw naphtha for the periods 1st April 1969 to 30th November 1974 and 1st December 1974 to 15th August 1976 have been raised (January 1978).

38. *Processed woollen fabrics and woollen yarn*

(a) By a notification issued in April 1962 as amended, processed woollen fabrics falling under tariff item 21, if woven

in a factory other than a composite mill and processed by an independent processor are dutiable at rates lower than those applicable to other processed fabrics. The term 'independent processor' means a manufacturer who is engaged exclusively in the processing of woollen fabrics with the aid of power and who has no proprietary interest in any factory engaged in the spinning of yarn or weaving of cloth.

During the course of examination of cases of concessional rates of duty enjoyed by private limited concerns, it was noticed that, in two collectorates, six manufacturing units processing woollen fabrics were assessed at lower concessional rates of duty applicable to fabrics processed by independent processors even though each one of these units had proprietary interest in other factories engaged in the spinning of yarn and weaving of woollen fabrics as well. In these cases, the shareholders of each of the units were the members of the same family and also the Directors of the corresponding factories.

Owing to the separate legal existence of these six units and the corresponding factories, the duty was levied at the lower concessional rates on processed woollen fabrics.

This was not appropriate because separate constitution of the respective units in such cases would tantamount to avoidance of duty which would otherwise be leviable at higher rates as for composite mills. This resulted in an escapement of duty of Rs. 30.42 lakhs during the period 1972-73 to 1973-74 in respect of the six units mentioned above.

The paragraph was sent to the Ministry of Finance in October 1977; reply is awaited (January 1978).

(b) A unit in a collectorate started manufacturing woollen yarn and woollen fabrics in September 1972. The unit opened a godown outside the factory and four sale offices at different stations to promote sales. A test-check of records of the unit (February 1976) revealed that the following *modus operandi*

was adopted by the unit for clearance of fabrics to avoid duty :—

(i) The unit transferred the manufactured goods to the godown/sale offices by declaring the rates lower than those at which these goods were actually sold.

(ii) The manufactured goods were accounted for in lesser quantities in the stock register of production than actually cleared.

This irregular procedure resulted in evasion of duty of Rs. 3.33 lakhs—Rs. 1.53 lakhs (under-statement of rates) and Rs. 1.80 lakhs (non-accountal of manufactured goods) during the period November 1972 to February 1976.

On this being pointed out by Audit (March 1976), the Assistant Collector intimated (August 1976) that two show cause notices for the recovery of differential duty of Rs. 1.53 lakhs were issued in June 1976 and an offence case for Rs. 1.80 lakhs relating to evasion of duty had been registered against the assessee.

The paragraph was sent to the Ministry of Finance in June 1977; reply is awaited (January 1978).

(c) Woollen yarn containing not less than sixty per cent of wool and not more than five per cent of virgin wool, commonly known as shoddy, is assessable to duty at a concessional rate. The Central Board of Excise and Customs clarified in August 1969 that admixture of soft wool wastes in shoddy wool should not be more than 15 *per cent* to qualify as shoddy woollen yarn.

A unit manufacturing woollen yarn cleared it at the concessional rate of duty classifying it as shoddy woollen yarn. The collectorate noticed (May 1974) that the yarn manufactured and cleared during the period May 1973 to February 1974 as shoddy yarn could not be classified as such since it did not conform to the composition of shoddy yarn and recovered a differential duty of Rs. 83,565 during the period May 1974 to

April 1975. It was noticed in audit (January 1976) that 2,71,748 kilograms of woollen yarn manufactured and cleared during August 1969 to April 1973 as shoddy woollen yarn also did not conform to the composition of shoddy yarn, which resulted in an under-assessment of Rs. 1,39,543. The collectorate intimated that a show cause notice for the recovery of the above amount had been issued (December 1976).

The paragraph was sent to the Ministry of Finance in August 1977; reply is awaited (January 1978).

39. *Generating sets*

A licensee manufacturing electric generating sets cleared them without payment of duty though they were liable to duty at one per cent under tariff item 68. When this was pointed out in audit (April 1976), the department accepted the omission and recovered (November 1976) Rs. 7,00,000 being the duty involved on the clearances of generating sets during the period 1st March 1975 to 30th September 1976.

The Ministry of Finance have confirmed the facts (October 1977).

40. *Parts of refrigerating and air conditioning machinery, all sorts*

Parts of refrigerating and air conditioning appliances and machinery, all sorts, are assessable *ad valorem* under tariff item 29A.

(a) Some manufacturers of certain parts of refrigerating machinery like cooling coils, condensers and cooling units got their assessable value approved without furnishing any details of cost of production. It was observed in audit that the assessable value so approved was less than even the cost of pipe used in the manufacture of the parts. The assessees were using 'C' class pipe but were basing their assessable value on 'A' class pipe, which was much cheaper. The classification lists as well as the purchase invoices of raw material indicated the use of

'C' class pipe by the assessee. Moreover, the refrigerant has to pass through the refrigeration plants at a very high pressure which 'C' class pipe can only withstand. On the basis of cost of 'C' class pipes used in these parts, Audit pointed out a short assessment of Rs. 5,12,185 in respect of three assessees and requested the collectorate to review the cases of all other assessees. As a result, the collectorate issued demands amounting to Rs. 10,21,440 against eleven assessees (including Rs. 5,12,185 in respect of 3 assessees pointed out by Audit), out of which demands of Rs. 6,85,641 were confirmed (June 1977).

The paragraph was sent to the Ministry of Finance in August 1977; reply is awaited (January 1978).

(b) A unit engaged in the manufacture of parts of refrigeration and air conditioning appliances cleared certain accessories by payment of duty at one *per cent ad valorem* under tariff item 68 to the buyers of parts of air conditioning equipments concurrently with the main parts. The nature of accessories being 'parts of cooling coils', 'ammonia shell and tube condensors', though separately invoiced, indicated that they were essential integral parts and components of the main parts and were, therefore, assessable to duty under tariff item 29A(3). Some of the accessories were supplied to their associate unit situated in another collectorate. It was pointed out in audit (August 1976) that, as these accessories were essential for the efficient functioning of the air conditioning parts and as they had been supplied along with the main parts, their value should have been included in the value of the main parts and assessed correctly under tariff item 29A(3). This resulted in avoidance of duty of Rs. 1,52,657 for clearances made during the period June 1975 to November 1975. The collectorate's attention was also drawn to the instructions of the Central Board of Excise and Customs of March 1976 regarding the dutiability of these accessories.

The paragraph was sent to the Ministry of Finance in September 1977; reply is awaited (January 1978).

(c) Several parts of refrigerating and air conditioning appliances and machinery are exempt under a notification dated 24th April 1962.

The assessable values of compressors manufactured by a unit showed a continuing decline even though the prices of main raw materials had increased considerably.

It was noticed in audit that the unit increased the value of the accessories of each compressor by about Rs. 1,000 and decreased the value of compressors cleared by it to the same extent. This resulted in under-valuation of the compressors leading to avoidance of duty as the accessories were cleared free of duty under the notification dated 24th April 1962. On this being pointed out, the Assistant Collector stated (August 1976) that a show cause notice had been issued to the manufacturer for recovery of duty of Rs. 1,98,150 for the period April 1973 to December 1975.

The paragraph was sent to the Ministry of Finance in June 1977; reply is awaited (January 1978).

41. *Motor vehicles*

(a) Tariff defines 'motor vehicles' as all mechanically propelled vehicles adopted for use upon roads and includes 'chassis'. An automobile factory removed certain types of chassis on payment of duty at 12½ *per cent ad valorem* and sent them to a local body builder. After the body was built, the vehicles were brought back to their duty paid stock yard, from where they were eventually despatched to different buyers. The price of the chassis and that of the body were charged from the buyers through separate bills. No duty was, however, paid on the value of the body. As the ownership of such vehicles continued with the automobile factory till they were sold by them in complete form, the said automobile factory was the 'manufacturer' as defined in section 2(f) of the Central Excises and Salt Act 1944 even in respect of the body of the vehicles. Besides, since the value of the complete vehicle was realised by the automobile factory from the buyers in their ordinary course

of business, such value was to be treated as the normal price under section 4 for the purpose of assessment to duty.

The value of the 'body' realised by the factory for 103 vehicles cleared during February 1976 to March 1976 amounted to Rs. 14,89,246 and the duty avoided thereon was Rs. 1,86,156. On this being pointed out in audit, show cause notices were served on the assessee (September 1976).

The paragraph was sent to the Ministry of Finance in July 1977; reply is awaited (January 1978).

(b) Tractors are liable to duty under tariff item 34. In a collectorate, a unit engaged in the manufacture of tractors got the prices of a particular brand of tractors approved from time to time, with rear tyres of the size of 13.6×28.4 ply as standard fitment. During the course of audit, it was observed that, while clearing the aforesaid type of tractors during the period September 1974 to March 1976, the unit had replaced 5669 tyres of the standard size by tyres of superior quality, *viz.*, 13.6×28.6 ply. The difference in cost ranged between Rs. 295 per tyre from September 1974 to 20th March 1975 and Rs. 318 per tyre from 21st March 1975 onwards (except in certain cases where the differential cost charged was Rs. 100). The total differential cost on account of replacement of superior tyres amounted to Rs. 17,80,967 and was recovered by issuing separate debit advices through another plant. However, the duty was paid on the basis of approved assessable value with 4 ply tyres.

The duty thus short paid worked out to Rs. 1,78,097. The matter was brought to the notice of the collectorate in March 1977. It was intimated in April 1977 that a show cause notice for the recovery of this amount had since been issued to the party.

Besides, a sum of Rs. 1,61,226 was also short paid on 5,070 superior tyres similarly replaced during the period April 1976 to April 1977. This was reported to the collectorate (June 1977).

The paragraph was sent to the Ministry of Finance in August 1977; reply is awaited (January 1978).

42. *Motor vehicle parts*

Motor vehicle parts and accessories are assessable under tariff item 34A. Under a notification issued in July 1971 as amended, motor parts such as pistons, nozzles and nozzle holders are exempt if used in the manufacture of assembled components of motor vehicles and such assembled components are utilised as original equipment by the manufacturer of motor vehicles falling under tariff item 34 subject to the condition that the manufacturer of assembled parts follows the procedure set out in Chapter X of the Central Excise Rules 1944. Under rule 196A *ibid,* the manufacturer may, however, clear such parts surplus to his needs on payment of duty to be assessed on the basis of the rate and valuation in force on the date of clearance.

A manufacturer of motor vehicles obtained such parts duty free for use as original equipment parts. The licensee also cleared some surplus piston assemblies and nozzle holders fitted with nozzles during July 1975 to March 1976 for sale to outside parties on payment of duty based on the value of the parts as in force on 1st January 1974 instead of the value prevailing on the date of clearance. This resulted in an under-assessment of duty to the extent of Rs. 54,815.

On this being pointed out in audit, the Collector raised two demands on 16th August 1976 and 5th October 1976 for a total amount of Rs. 54,815.

The paragraph was sent to the Ministry of Finance in July 1977; reply is awaited (January 1978).

43. *Production of fabrics on powerlooms by master weavers*

The Supreme Court decided (December 1971) in a case that a master weaver, who supplied yarn to powerloom units and got cloth manufactured on his account by paying weaving charges to the latter, was a manufacturer under section 2(f) of the Central Excises and Salt Act 1944 and was liable to pay duty on the cloth so manufactured. After more than four years

the Central Board of Excise and Customs issued instructions in February 1976 that such master weavers, if not licensed for all the looms operating on their behalf, were not only liable to pay duty on the production made through such looms (at the normal effective rates) but also became ineligible for availing the concessional compounded levy of duty.

It was noticed by Audit that, in a collectorate, the master weavers were licensed only from 1st September 1976 and started payment of duty from that date, although they were liable to pay duty for their production at least from January 1972, that is, after the verdict of the Supreme Court in December 1971. The duty payable by these master weavers on the production made during March 1976 to August 1976 at the rate of compounded levy alone was Rs. 93,010. At this rate, the amount of duty which was evaded during the period January 1972 to August 1976 was about Rs. 8,68,100.

The paragraph was sent to the Ministry of Finance in September 1977; reply is awaited (January 1978).

44. *Cotton fabrics*

Cotton fabrics falling under tariff item 19 I(2) were assessable at specific rates (upto 15th March 1976) on square metre basis under a notification dated 1st March 1969 as amended. According to a special procedure prescribed in the Central Excise Rules 1944, such fabrics, if manufactured on powerlooms, are permitted to discharge duty liability on payment of a compounded levy at rates fixed through notifications issued from time to time. By separate notifications, such fabrics produced on powerlooms have also been exempted from payment of additional excise duty and handloom cess.

In two collectorates, five composite mills were supplying sized cotton yarn on beams to various small powerloom units for conversion into cotton fabrics which were repurchased, processed and marketed under the brand name of the mills concerned.

The manufacturers were thus able to evade payment of basic duty, additional duty and handloom cess, otherwise payable, had the fabrics been produced in their own mills. The loss of revenue is estimated at Rs. 3,80,579 for the period January 1974 to March 1976.

The collectorate reported (July and August 1976) that show cause notices were issued in respect of three mills and that proceedings were being initiated in respect of the fourth mill.

The paragraph was sent to the Ministry of Finance in October 1977; reply is awaited (January 1978).

45. *Steel furniture*

A leading footwear company manufactured, with the aid of power, steel furniture in their engineering unit for use inside the factory as well as in their retail shops spread all over the country. The steel furniture was designed for specific uses such as racks intended for exhibiting footwear. Though steel furniture was brought under excise levy with effect from 1st March 1968, it was noticed in audit (December 1976) that the assessee neither obtained a Central Excise licence for manufacture of such steel furniture nor paid any duty thereon since 1st March 1968. The collectorate also did not take any action to charge duty on the product. Non-levy of duty on one variety of such furniture 'steel rack' during the period 1st March 1968 to 30th November 1976 worked out to an estimated amount of Rs. 6.45 lakhs. The total duty liability in respect of all other varieties of steel furniture could not be ascertained for want of particulars.

The paragraph was sent to the Ministry of Finance in October 1977; reply is awaited (January 1978).

46. *Packing and wrapping paper*

A factory manufacturing both packing and wrapping paper and other varieties of paper including board did not maintain separate production and clearance account in respect of packing

and wrapping paper, which was used internally for the purpose of wrapping other varieties of paper cleared. The factory paid duty on the basis of nominal weight of the paper or board cleared and claimed that the nominal weight of the paper/board declared was inclusive of the weight of the wrapper and as such they deducted from the nominal weight of the paper/board packed in reams or bundles the weight of the wrapper used for the purpose of determining the duty liability on the paper/board packed.

It was, however, noticed in audit that the nominal weight, *i.e.* grammage per square metre, of paper/board declared by the factory was actually not inclusive of the weight of the wrapper. The Central Board of Excise and Customs clarified in their letter dated 8th January 1973 that the weight of the wrapping paper should be excluded for the purpose of calculating grammage per square metre of paper.

Thus, there was an escapement of duty on the quantity of paper/board packed equivalent to the weight of the wrapper used in packing the paper/board in reams/bundles for clearance. During the period 1st April 1975 to 15th March 1976, the factory used 4,41,798 kilograms of packing and wrapping paper as wrapper for different varieties of paper and board cleared in ream packing and bundle packing respectively. The duty involved on this quantity is Rs. 4,25,898.

The paragraph was sent to the Ministry of Finance in July 1977; reply is awaited (January 1978).

47. *Yarn*

In order to keep a check on the production of excisable goods under the Self Removal Procedure, every assessee is required to maintain a daily account of prescribed principal raw material used for manufacturing excisable goods and to submit to the collectorate a quarterly return showing the raw material used, goods manufactured and material wasted or destroyed.

During audit of excise records of a unit manufacturing cotton yarn, it was noticed from the quarterly returns that the quantity of yarn manufactured and waste arising during the period June 1972 to June 1975 exceeded the total quantity of cotton used by 1,74,154 kilograms. Out of this quantity, the assessee, however, contended that 77,575 kilograms of waste was again used for the manufacture of yarn thereby reducing the excess waste to 96,579 kilograms. As the yarn produced and waste taken together cannot exceed the quantity of cotton used, it was held in audit that excess wastage represented unaccounted for cotton, the yarn produced out of which was cleared unauthorisedly without payment of duty. The matter was referred to the collectorate for investigation in May 1976. The Assistant Collector (January 1977) accepted the objection and confirmed the demand of Rs. 1,60,409 on 8,02,045 kilograms of cotton yarn proportionate to 1,74,154 kilograms of excess waste rejecting the party's stand regarding reuse of waste. Besides, a personal penalty of Rs. 250 was also imposed on the assessee.

The Ministry of finance have confirmed the facts.

48. *Black sheet contents of tinned sheet cuttings*

A factory manufactured black sheets and thereafter tinned sheets from duty paid tin bars purchased from outside. Prior to January 1968, it paid duty under tariff item 26AA on black sheets used for tinning at the time of clearance of finished tinned sheets on the basis of weight of the latter product. Consequently, the factory evaded duty on the black sheet contents of the tinned sheet cuttings below 5 cm. in width, which were cleared without payment of duty as remelting scrap.

Subsequently, with the issue of notification dated 15th July 1967, the collectorate raised in January 1968 a demand for duty of Rs. 13,330 on such tinned sheet cuttings cleared from 15th July 1967 to 31st December 1967.

It was pointed out by Audit (April 1969) that duty on black sheets was leviable from the very beginning, at the time of their

removal for tinning, on the basis of the actual weight of the black sheets. Audit also pointed out a total under-assessment of Rs. 40,847 during the period 1st February 1966 to 14th July 1967 and asked the department to determine the under-assessment made prior to February 1966.

In December 1969, the collectorate raised a total demand of Rs. 1,48,295 on account of duty on the black sheet contents of tinned sheet cuttings of width below 5 cm. cleared duty-free during the period 24th April 1962 to 14th July 1967. The assessee paid the demand in six instalments between December 1970 and May 1971 and filed an appeal to the Collector of Central Excise. When the appeal was rejected by the Collector in May 1971, the assessee made a revision application to Government which was also rejected in February 1974 on the ground that notification dated 15th July 1967 was only an amendment of notification dated 28th February 1965 and that duty on black sheets had all along been leviable separately at the point of their clearance for tinning.

The paragraph was sent to the Ministry of Finance in August 1977; reply is awaited (January 1978).

49. *Unassembled metal containers*

A factory manufacturing "metal containers" falling under tariff item 46 cleared a substantial number of such containers in unassembled condition without payment of duty which worked out to Rs. 1,24,619 during November 1973 to September 1974. On this being pointed out in audit, the collectorate confirmed the demand for the entire amount. Report of recovery is awaited.

The paragraph was sent to the Ministry of Finance in August 1977; reply is awaited (January 1978).

50. *Non-receipt of proof of export*

Excisable goods are allowed to be exported without payment of duty subject to proof of export being furnished within a maximum period of two years. During test check of running bond

accounts of exporters in a collectorate, it was found that, even after the expiry of the maximum period of two years, the necessary proof of export had not been furnished in respect of 212 consignments of excisable goods cleared during November 1965 to August 1972 for export under bond without payment of duty. According to rule 14-A of the Central Excise Rules 1944, an exporter failing to furnish proof of export within the prescribed period to the satisfaction of the Collector shall upon a written demand forthwith pay the duty leviable on goods and shall also be liable to pay penalty subject to a maximum of rupees two thousand. In these cases no action was taken to raise demands of duty amounting to Rs. 13 lakhs in respect of the goods. On this being pointed out in audit (September 1974), the collectorate could link up proof of export in all cases except 61 consignments in respect of two exporters. Consequently, the Assistant Collector issued two show cause notices to the parties in December 1974 and March 1975 demanding duty of Rs. 2,32,361. No penalty was, however, imposed.

The paragraph was sent to the Ministry of Finance in July 1977; reply is awaited (January 1978).

51. *Teleprinter tapes or teleprinter rolls*

Teleprinter tapes or teleprinter rolls are assessable to duty under tariff item 17(2).

Five licensees manufacturing teleprinter tapes/rolls from duty paid base paper cleared them without payment of duty prior to 7th February 1973 and started paying duty from that date. During the years 1970-71, 1971-72 and 1972-73, 21,20,429.171 kilograms of teleprinter tapes/rolls were cleared without payment of duty resulting in loss of revenue of Rs. 16,79,108. The Collectors of Central Excise accepted the objection (April 1977 and May 1977).

The paragraph was sent to the Ministry of Finance in September 1977; reply is awaited (January 1978).

52. *Fertilisers*

A fertiliser factory cleared 1,00,978.50 metric tonnes (gross) of urea in 50 kilogram bags (gross) during the period 1st March 1969 to 31st December 1969. The net contents of urea in these bags were 99,625.40 metric tonnes and the factory paid duty on the net weight only although the price charged from customers was for the gross weight. Thus duty on 1,353.10 metric tonnes representing differential weight was not realised.

On this being pointed out in audit (August 1970), the collectorate raised a demand for Rs. 98,372 in February 1971 which has since been realised.

The paragraph was sent to the Ministry of Finance in June 1977; reply is awaited (January 1978).

Short levy/non-levy of duty owing to misclassification of commodities

53. *Grey portland cement*

The assessable value of grey cement including portland cement of specific surface not less than 3500 square cm. per gram, being of a superior variety, was higher than that of the ordinary grey portland cement and hence this variety was subject to duty at a higher rate. Further, the packing materials used for the supply of this variety of cement were also subject to duty.

In three collectorates, six licensees manufacturing cement clubbed the superior and ordinary varieties of grey portland cement and paid duty on all clearances at the lower rate applicable to ordinary cement. This resulted in short payment of duty of Rs. 54.54 lakhs on the clearance of 4.49 lakhs metric tonnes of superior variety of cement during the period October 1975 to May 1977.

The Collector of Central Excise accepted (March 1977) the short levy of duty of Rs. 46.19 lakhs in the case of one factory. Reply in the other cases is awaited (June 1977).

The Ministry of Finance have confirmed the facts in one case. The paragraph relating to other cases was sent to the Ministry in September 1977; reply is awaited (January 1978).

54. *Cotton fabrics*

Cotton fabrics falling under tariff item 19 I(2) are further classified as 'superfine', 'fine', 'medium A', 'medium B' and 'coarse' fabrics on the basis of the 'average count' of yarn in the fabrics in accordance with the rules and the formulae for determintion of such average count contained in the explanation below the tariff item. If the average count of yarn is not capable of being determined in respect of any fabrics by application of these rules/formulae such fabrics are to be classified as 'cotton fabrics not otherwise specified' under a residuary sub-classification under the same sub-item.

Some varieties of cotton fabrics manufactured by certain textile mills in a collectorate had been classified as 'superfine', 'fine' and 'medium A' although the average count of yarn in such sorts was not capable of being ascertained directly by application of the statutory formulae. These fabrics should, therefore, have been classified as 'cotton fabrics not otherwise specified' carrying higher rates of duty. This was brought to the notice of the collectorate in October 1973 and December 1973. Government after consulting the Chief Chemist and the Ministry of Law accepted this view in January 1977.

The collectorate has issued (April 1977) show cause notices to two mills for recovery of differential duty amounting to Rs. 3,26,995 and Rs. 88,950 for the periods January 1974 to April 1976 and January 1974 to October 1975 respectively. The information regarding under-assessment in respect of other mills is awaited.

The paragraph was sent to the Ministry of Finance in July 1977; reply is awaited (January 1978).

55. *Varnish cloth*

Varnish cloth (also known as Empire cloth) is produced by coating cotton fabrics with varnish or drying oil or varnish containing bitumen and as such should be classified as processed cotton fabrics not otherwise specified under tariff item 19 I(2)(f). Such cloth produced by a factory in one collectorate was, however, treated as non-excisable on the ground that its cotton content was less than 20 *per cent*. This was not correct as the requirement of 20 *per cent* cotton content was relevant only in the case of rubberised fabrics and not in the case of varnished cloth.

The classification of this cloth as non-excisable was objected to in audit in February 1975. The collectorate accepted the objection and issued a demand-cum-show cause notice in June 1976 for Rs. 82,042 representing duty payable for the period June 1970 to March 1976.

The paragraph was sent to the Ministry of Finance in July 1977; reply is awaited (January 1978).

56. *Brattice cloth*

Textile fabrics impregnated or coated with preparations of cellulosic derivatives or of other artificial plastic materials not elsewhere specified are liable to duty *ad valorem* under tariff item 22B.

A factory brought duty paid jute fabrics falling under tariff item 22A and manufactured a variety of cloth known as 'brattice cloth' by impregnating and coating jute fabrics with artificial plastic materials and certain fire-resistant chemicals. The jute content in the finished product was 40 *per cent* by weight. The department initially classified the product under tariff item 22B and realised duty to the extent of Rs. 1,02,359 during the period 4th April 1972 to 24th August 1973. Subsequently, the collectorate re-classified the product under tariff item 22A

as fire-resistant jute product and treated it as exempt from further duty by virtue of notification issued on 18th September 1975. The collectorate also refunded Rs. 1,02,359 representing duty realised in respect of brattice cloth.

It was pointed by Audit (November 1974) that the description of tariff item 22A had changed with effect from 17th March 1972 which covers all sorts of jute manufactures containing 50 *per cent* or more of jute by weight and, therefore, those containing less than 50 *per cent* of jute by weight would not be assessable under this item. Consequently, the exemption notification dated 18th September 1965 was not applicable in this case and the product was classifiable under tariff item 22B. The incorrect classification resulted in irregular refund of duty to the extent of Rs. 1,02,359 during the period 4th April 1972 to 24th August 1973 and non-levy of Rs. 58,006 during the period 25th August 1973 to 3rd January 1975.

The Ministry of Finance have replied (February 1977) that, 'although the jute content is only 40 *per cent* of the total weight of the product, the product is nothing but jute fabrics which is 100 *per cent* jute material treated with fire-resistant material'. It has also been stated by the Ministry that it was decided to amend the exemption notification to place the matter beyond all doubts.

The fact, however, remains that the product in this case automatically stands excluded from the purview of tariff item 22A, which covers all sorts of jute manufactures except those containing less than 50 *per cent* by weight of jute. Hence the stand of the Ministry is not sustainable.

57. *Artificial or synthetic resins and plastic materials*

A factory manufactured various types of silicones and cleared them without payment of duty. When it was pointed out in audit (February 1977) that silicone was liable to duty under

tariff item 15A(1)(i) as 'polycondensation product', the collectorate stated (March 1977) that, according to an order issued by the Central Board of Excise and Customs on 16th June 1965, silicone would not fall under tariff item 15A. The reply is, however, not acceptable. In the tariff conference held at Bombay in May 1975, it was held that the product silicone was a 'polycondensation product' and fell under tariff item 15A. Further, in the Brussels Tariff Nomenclature, silicone appears as a polycondensation product under the Heading 39.01.

The non-levy amounted to Rs. 15,77,575 during the period April 1976 to January 1977. Figures for pre-April 1976 period could not be ascertained.

The paragraph was sent to the Ministry of Finance in September 1977; reply is awaited (January 1978).

58. *Tyres*

By a notification issued on 1st August 1974, tyres (including tubes and flaps) for motor vehicles falling under tariff item 16(1) are liable to duty at 55 per cent *ad valorem*.

In the case of a company, the classification list was approved by the Assistant Collector for earthmover tyres of sizes above 1800 under tariff item 16(1) at 55 *per cent*. On appeals filed by the assessee company, the Appellate Collector (January 1976) set aside the orders of the Assistant Collector and classified the above tyres under tariff item 16(3) on which the rate of duty applicable was 25 *per cent ad valorem*. On 8th April 1976, Government issued a notice to the unit to show cause why the orders of the Appellate Collector should not be set aside and earthmover tyres classified under tariff item 16(1). Thereupon the company submitted (May 1976) a revised classification list for these tyres under tariff item 16(1).

During the course of audit, it was observed that the unit had cleared earthmover tyres of sizes above 1800 by payment of duty at the rate of 25 *per cent ad valorem* under tariff item 16(3) during the period 29th January 1976 to 11th April 1976 which

resulted in short payment of duty to the extent of Rs. 5,38,019. On this being pointed out in audit (February 1977), it was intimated by the collectorate (April 1977) that the unit had since deposited the amount.

The paragraph was sent to the Ministry of Finance in September 1977 ; reply is awaited (January 1978).

Incorrect grant of exemption

59. (a) Cement, all varieties, is assessable to duty under tariff item 23. Under the Central Excises and Salt Act 1944, duty is payable by virtue of section 3 of the Act read with rules 9 and 49 of the Central Excise Rules 1944 at the time of clearance of goods though the levy accrues at the time of production itself.

In the case of one of the largest units engaged in the manufacture of cement in India, Government, by issuing a notification dated 25th June 1976, allowed for a period of 12 months from 25th June 1976, the factory to remove cement without payment of duty leviable thereon. The duty payable on cement so removed was permitted to be paid in five deferred annual instalments commencing from 25th June 1978 and a simple interest at the rate of 6 *per cent* per annum was to be paid. For the purpose of securing the payment, the Company was to execute one or more bonds in such forms as would be specified by the Collector of Central Excise. This notification was purported to be under sub-rule 3 of rule 49 under which the Government had reserved itself the power of permitting part payment or postponement of full payment of duty subject to such conditions and limitations and subject to executing a bond with such surety as the Collector may approve. This particular provision was to be resorted to only in exceptional circumstances. As the notification issued in this particular case did not indicate the nature of exceptional circumstances nor did it provide for surety as laid down in the sub-rule, full postponement for a complete period of two years was not, in the view of Audit, within the scope of rule 49. The file leading to the issue of the notification was called for in

August 1976. The files have, however, not been made available to Audit and, pending receipt of the file, the following questions were addressed to the Ministry of Finance :

(1) The circumstances of exceptional nature as visualised in sub-rule (3) of rule 49 for granting full exemption are not clear.

(2) The rule provides for removal of excisable goods from the factory without payment of or only on part payment of duty leviable thereon. It is not clear in this case as to why even part payment of duty was not enforced.

(3) The concession envisaged under the rule is subject to such conditions and limitations as may from time to time be specified by the Government. It is not clear whether any conditions and limitations referred to in this rule have been specified by the Government.

(4) The notification dated 25th June 1976 levies simple interest at the rate of 6 *per cent* per annum. The basis for this rate of interest is not clear, specially when the bank rate is 10 *per cent* and the normal lending rate of banks is around 16-18 *per cent*.

(5) It is not clear whether any surety bond as required under sub-rule (3) of rule 49 or any bank guarantee has been obtained from the factory. No safeguards appear to have been taken to protect the Government revenues from a possible non-enforceability of the bond.

The Ministry of Finance stated in November 1977 that the relevant file was sent to the Central Bureau of Investigation and that necessary information would be given when the file was received back. In January 1978, the Ministry of Finance sent their reply to the points raised in audit without forwarding the files explaining that "it was considered necessary to mount a salvage operation which would enable the company's production to be restarted and for the company to come back on a sound

footing and pay off the liabilities which it had accumulated". For this purpose, it was stated that "a high-level Government decision was accordingly taken that Government should give the necessary assistance to the Company to enable it to restart production, reach a condition of viable operation and ultimately pay off its liabilities" and one of the steps decided upon was deferment of duty.

As regards charging the low rate of interest for deferment at 6 *per cent*, Ministry of Finance have stated that the rate was fixed "keeping in mind the rate of interest which the Central Government would have to pay on its long term borrowings".

The Ministry's reply is a virtual admission of the Government choosing a particular company for preferential treatment of going to its assistance by mounting a salvage operation. This is beyond the purview of the Central Excise Act and the Rules and resort to rule 49(3) for this purpose requires justification. Secondly, the duty of central excise accrues on production and is payable on clearance. To treat the revenues of the State at par with long term borrowings of Government for the purpose of determining the low rate of interest is inapt. Further, there is no provision in the main Central Excise Act for postponement of payment of duty even on payment of interest. Where the Central fiscal legislation gives the power to Government to postpone tax/duty, it stipulates payment of interest which under the Income Tax Act is 12 *per cent*. By allowing this Company to retain Government monies with it for a period exceeding two years on payment of a nominal interest of 6 *per cent*, the Company has been enabled to earn a gain between the rate of interest which it would have had to pay if it had borrowed from the market and the 6 *per cent* nominal interest levied by the Government. Further, there has also been a transgression of the clear wording of rule 49(3) even assuming, without conceding, that its provision applies, because no surety has been shown to have been taken.

(b) The pool prices of fertilisers including calcium ammonium nitrate (CAN) were revised from 1st June 1974. According to this revision, the maximum retail price of 'CAN'

was fixed at Rs. 1,095 per metric tonne against the delivery price of Rs. 800 per metric tonne and the differential amount of Rs. 295 per metric tonne was required to be credited to the Fertiliser Pool Equalisation Fund. Later by a notification dated 20th June 1974, Government exempted the differential amount of Rs. 295 per metric tonne of CAN creditable to the above Fund from the levy of duty subject to certain conditions.

In a collectorate, a factory manufacturing fertilisers cleared 4,632 metric tonnes of calcium ammonium nitrate during the period 1st June 1974 to 19th June 1974 and availed the exemption from payment of duty on the value of Rs. 13.66 lakhs representing differential amount credited to Fertiliser Pool Equalisation Fund. As the notification granting exemption was applicable from 20th June 1974, the irregular exemption availed of during the period 1st June to 19th June 1974 resulted in short levy of Rs. 2,04,966.

While accepting the facts, the Ministry of Finance stated that the differential duty amounting to Rs. 2,04,966 had been realised in July 1976.

(c) Nitrocellulose lacquer falling under tariff item 14-III is used for coating moisture proof cellophane. By a notification issued in June 1973, the quantity of nitrocellulose lacquer issued for coating cellophane but not actually consumed in the process of such coating was exempt from duty subject to the condition that the solvent recovered after coating was returned to the process of manufacture of nitrocellulose lacquer. In actual assessment, a collectorate gave effect to this exemption notification by charging duty on the quantity of nitrocellulose lacquer arrived at after deducting the quantity of solvent recoverd after coating from the quantity of nitrocellulose lacquer initially used for the purpose. Thus, though the notification did not provide for it, the solvent, an item not subject to duty, was virtually treated as identical with nitrocellulose lacquer and exemption was allowed on the quantity thereof. This resulted in an unauthorised concession to the extent of Rs. 8.72 lakhs to a unit during the period June 1973 to September 1975.

The case was reported by Audit in December 1975. The anomaly was, however, later removed by issue of a fresh notification on 16th October 1976 in supersession of the earlier notification dated 7th June 1973, wherein the quantity of nitrocellulose lacquer eligible for exemption was clearly specified.

The paragraph was sent to the Ministry of Finance in August 1977 ; reply is awaited (January 1978).

Incorrect application of exemption orders

60. *Sugar*

Sugar other than 'khandsari or palmyra' is assessable under tariff item 1(i). The effective rate of duty from 1st March 1970 on 'free sale sugar' was 37½ *per cent* of the tariff values fixed by Government and the rate of duty in respect of 'levy sugar' was 25 *per cent* of the levy price determined by Government.

In a collectorate during 1971, duty was paid by a factory at the lower rate of 25 *per cent* applicable to levy sugar on a consignment of sugar allotted by the Central Government to a State Government. The said consignment was not lifted by the State Government but the latter authorised the factory to sell the sugar quota to dealers of its own choice at a price not exceeding the levy price. It was noticed in audit that the factory charged a price higher than the price fixed for levy sugar from the dealers during the period 31st March 1971 to 2nd April 1971. The duty at 37½ *per cent* was correctly leviable instead of the concessional rate of 25 *per cent* in accordance with the instructions issued by Central Board of Excise & Customs on 2nd April 1971. This resulted in short levy of duty of Rs. 31,208. On this being pointed out, the collectorate replied that the matter was under examination.

In another collectorate, a consignment of unlifted levy sugar was sold by a Sahkara Sakkare Karkhane, as recommended by the State Government, in the open market during the period 1st October 1970 to 31st January 1971. The assessable values adopted for the purposes of assessment of duty were the actual

sale price and not the levy price, whereas duty was collected at the concessional rate. Since the sugar was sold in the open market, it did not fall under the category of levy sugar. It was, therefore, pointed out that the duty was correctly leviable at the higher rate in force at that time. This resulted in a loss of revenue of Rs. 11,53,424. A show cause notice was issued by Assistant Collector concerned demanding the differential duty, but further proceedings were stayed under the orders of the Central Government on a representation made by the assessee.

The paragraph was sent to the Ministry of Finance in June 1977 ; reply is awaited (January 1978).

61. *Footwear*

Parts of footwear are assessable to duty under tariff item 36(2). On 26th May 1967 Government, however, issued a notification exempting certain parts of footwear, which include soles made of wood or leather and soles specially made and clearly recognisable as being designed for sponge rubber chappals, from payment of duty.

A footwear company manufactured microsoles from micro-sheets and cleared them along with other components of a particular brand of shoes without payment of duty. When it was pointed out by Audit (June 1976) that microsoles were not covered by the above exemption notification, the collectorate raised a demand of Rs. 46,986 towards duty on 1,69,320 pairs of microsoles cleared by the factory during the period 14th May 1975 to 26th June 1976 which was paid by the factory (August 1976).

While admitting the facts, the Ministry of Finance have stated (October 1977) that the assessee was also severely warned by the Assistant Collector for the offence committed.

62. *Soap*

By two notifications dated 17th March 1972, Government reduced the duty on soap falling under tariff item 15 by specific

amounts per metric tonne, the reduction being conditional on the use of certain minimum percentage of specified oils or indigenous rice bran oil in the total oils used in the manufacture of soap and the amount of reduction being increased with each additional percentage point use of specified oils or rice bran oil. The extent of reduction in duty thus depended on each additional percentage point increase over and above the prescribed minimum percentage and, therefore, no reduction was permissible if the extra input of oil at any level over the minimum fell short of one full percentage point.

It was, however, noticed that reduction in duty was allowed even on fractional percentage point increase in use of oil in five soap factories under four collectorates resulting in under-assessment to the extent of Rs. 6.54 lakhs during the period September 1972 to December 1976.

While admitting the facts in one case, the Ministry of Finance have stated (January 1977) that a show cause notice for differential duty of Rs. 35,380 was issued on 26th March 1976. Reply in other cases which were reported to the Ministry in September 1977 and October 1977 is awaited (January 1978).

63. *Raw naphtha*

Raw naphtha falling under tariff item 6 was assessable at the concessional rate of Rs. 4.15 per kilolitre if it was removed for industrial use in the manufacture of fertilisers in accordance with the prescribed procedure. In October 1973, Government clarified that raw naphtha retained in the pipeline, through which supply of raw naphtha was made for use in the manufacture of fertilisers, should be charged to duty at the full rate applicable to motor spirit.

An oil installation supplied raw naphtha to a fertiliser factory through pipeline on payment of duty at the concessional rate. The quantity of 99.584 kilolitres of raw naphtha which always remained in the pipeline was, however, assessed to duty at the concessional rate of Rs. 4.15 per kilolitre instead of at the full rate.

The short levy was pointed out in audit (April 1974). On verification in June 1975, it was found that the collectorate had raised a demand (May 1975) for differential duty of Rs. 2,08,713 on 99.584 kilolitres of raw naphtha.

The paragraph was sent to the Ministry of Finance in July 1977 ; reply is awaited (January 1978).

64. *Toluene*

Under a notification issued in March 1973 as amended, motor spirit known as 'toluene' intended for use as solvent or diluent or thinner for the manufacture of paints, varnishes, lacquers and allied materials or for use in painting is assessable to duty at a concessional rate.

A factory obtained 'toluene' at the concessional rate under the aforesaid notification and used the same for manufacture of 'thinner' which was sold in the open market as such. As the 'toluene' was not used for the purposes specified in the notification, the concessional rate was not applicable. On this being pointed out in audit (August 1976), the collectorate issued a show cause notice (December 1976) demanding differential duty of Rs. 73,802 for the period June 1975 to June 1976.

The paragraph was sent to the Ministry of Finance in August 1977; reply is awaited (January 1978).

65. *Plastic granules*

Plastic materials produced out of scrap of plastics were exempt from duty by virtue of a notification issued in May 1970. This exemption was withdrawn by another notification in May 1971 when the description of the tariff item 15A was substantially modified. Though separate exemption notifications dated 29th May 1971 were issued covering articles made of plastics falling under the new sub-items 2 and 4 under tariff item 15A, a similar exemption was extended to plastic materials falling under sub-item 15A(1) only on 12th February 1973. Plastic materials made of scrap were, therefore, assessable to duty till 11th February 1973.

One unit in a collectorate engaged in the manufacture of PVC/Polythene granules from PVC/Polythene scrap and chemicals was clearing them for sale or utilising them in further manufacture of PVC articles without payment of duty. The granules manufactured were not brought under excise levy. When it was pointed out in audit that clearances during the period 29th May 1971 to 11th February 1973 were not covered by any exemption notification, a reference was invited to Government letter dated 8th January 1974 wherein the collectorate was instructed to withdraw the demands raised in respect of clearance of plastic materials such as granules made during 29th May 1971 to 11th February 1973. As any notification takes effect from the date of its issue unless otherwise specified, the omission to raise the demand of duty on the granules for the period prior to 12th February 1973, the date of exemption notification, was not in order.

The total duty involved during the period 29th May 1971 to 11th February 1973 works out to Rs. 7,31,339 approximately.

The paragraph was sent to the Ministry of Finance in August 1977 ; reply is awaited (January 1978).

66. *Artificial or synthetic resin*

"Phenolic resins" conforming to the definition given in the notification dated 1st June 1971 are assessable at a concessional rate of duty.

An artificial or synthetic resin called "Capolyte C.P." manufactured by a factory was classified as "phenolic resin" and assessed to duty at the concessional rate without ensuring that the product fell under the definition laid down in the aforesaid notification. On this being pointed out in audit (April 1974), the collectorate sent a sample of the product to the Central Revenues Control Laboratory for analysis (November 1974). According to the report of the laboratory, the product did not conform to the definition of "phenolic resin" given in the notification of 1st June 1971. As such, the resin manufactured by

the factory was not entitled to the concessional rate of duty and was assessable at the tariff rate. Accordingly, the Assistant Collector raised demand (April 1976 and August 1976) for differential duty amounting to Rs. 8,49,457 for the period June 1971 to September 1976 which was also confirmed by the Appellate Collector in his order issued on 9th December 1976.

The paragraph was sent to the Ministry of Finance in June 1977 ; reply is awaited (January 1978).

67. *Cushion compound*

By a notification dated 14th October 1972, Government exempted cushion compound falling under tariff item 16A from payment of duty, if it is used within the same factory for further manufacture of rubber products. Government clarified in a letter dated 12th May 1975 that, in cases where demands had already been raised for the duty due in respect of the period prior to October 1972, they might be enforced and realised and that, in cases where demands were not raised, no further action need be taken.

(a) In one collectorate, a factory manufacturing cushion compound and using the same for further manufacture of 'camel back' did not pay the duty due in respect of the said cushion compound from 1st October 1963 to 13th October 1972. The collectorate issued notice to the assessee on 1st September 1973 demanding duty of Rs. 5,95,118 on cushion compound cleared by the factory prior to 14th October 1972. The licensee denied his liability (September 1973). The matter was not, however, pursued by the collectorate till the omission was pointed out in audit (January 1975).

It was also pointed out in audit that, as the duty on the final product 'camel back' was based on its value, the assessable value of the final product should take into account the duty element on the intermediate product, *viz.*, cushion compound also and the duty due on this account amounting to Rs. 1,12,551 for the period 1st April 1968 to 13th October 1972 was recoverable in addition to the amount of Rs. 5,95,118 leviable on the cushion compound.

The collectorate stated (February 1976) that, as no demand as such was raised in this case, no further action was taken in terms of the Government clarification of May 1975. After the issue of the show cause notice on 1st September 1973, the collectorate did not pursue the case and raise the demand for duty in time.

(b) In another collectorate, notices were issued (18th April 1973) on two factories asking the licensees to show cause why duty amounting to Rs. 48,204 should not be demanded for the cushion compound manufactured during the period 1st April 1968 to 13th October 1972 and consumed within their factories for further manufacture of 'camel back'. The total duty involved including the duty arising out of the enhanced value of the finished product due to incidence of duty on cushion compound works out to Rs. 60,861. In these cases also, the collectorate did not pursue the show cause notices.

The short levy of duty was Rs. 7,68,530.

The Ministry of Finance have stated (January 1978) that, in order to maintain a uniform policy in the matter of assessment of cushion compound utilised for captive consumption in the factory before 14th October 1972, the issue was further examined and instructions to raise demands and realise duty on such clearances, were issued on 9th February 1977. The Ministry have added that action has been taken to issue show-cause notices and finalise the adjudication proceedings.

Particulars of recovery are awaited (January 1978).

68. *Piping and tubing*

By a notification issued in August 1967 as amended, Government exempted piping and tubing designed for use as bicycle or motor pump connection, having inner and outer diameters not exceeding 5 mm. and 12 mm. respectively from duty. The piping and tubing of higher dimensions, however, attracted duty under tariff item 16A(3).

During check of the assessment records of a factory manufacturing 'piping and tubing of unhardened vulcanized rubber'

in a collectorate, it was noticed from the stock register and gate passes that, during the period April 1973 to July 1974 (records for earlier period not shown), the licensee manufactured piping and tubing having inner diameter not exceeding 5 mm. and outer diameter not exceeding 12.5 mm. and cleared 67,029 dozens of such 'connections' without payment of duty. As the outer diameter of such piping did not conform to the specification mentioned in the aforesaid notification, the exemption from payment of duty to the extent of Rs. 1,11,921 availed of by the unit was not admissible.

The omission having been pointed out by Audit (August 1975) the Assistant Collector intimated (March 1976) that three demand notices for Rs. 1,56,133, Rs. 1,37,654 and Rs. 2,456 for the period August 1970 to August 1975 had been issued in August 1975 and January 1976. These demands were confirmed in August 1977, September 1977 and July 1976 respectively. Particulars of recovery are awaited.

The paragraph was sent to the Ministry of Finance in August 1977 ; reply is awaited (January 1978).

69. *Mill boards*

Under a notification issued in March 1964 as amended, Government prescribed concessional rates of duty in respect of mill boards falling under tariff item 17 provided such boards were manufactured out of mixed waste paper with or without screening and mechanical pulp but without any colouring matter being added thereto.

A licensee manufactured mill boards out of waste paper, paddy straw and wet bamboo pulp and availed of the benefit of the aforesaid concession even though he used paddy straw and wet bamboo pulp and did not use mechanical pulp. This resulted in under-assessment of Rs. 3,33,896 during the period 1st January 1974 to 31st December 1974.

On this being pointed out in audit (February 1975), the collectorate stated (March 1976) that the matter was under examination.

The paragraph was sent to the Ministry of Finance in June 1977 ; reply is awaited (January 1978).

70. *Converted types of paper*

By virtue of a notification issued in March 1974 as amended, converted types of paper obtained by one side of paper being subjected to printing of colour is exempt from duty if manufactured from duty paid paper. A licensee manufacturing P.V.C. coated decorative wall paper classified it as "converted type paper" and claimed exemption under this notification which was approved by the collectorate in June 1975.

The wall paper was manufactured by subjecting the 'maplitho paper' to process of P.V.C. coating and colouring in one process with P.V.C. solution mixed with the desired pigment or colour. The P.V.C. coated paper prior to conversion by printing is not exempt and would attract duty under tariff item 17(4). The non-levy of duty on this account worked out to Rs. 3,42,427 for the period July 1975 to March 1976.

The paragraph was sent to the Ministry of Finance in August 1977 ; reply is awaited (January 1978).

71. *Aluminium wire*

Electric wires and cables whether insulted or not are dutiable under tariff item 33B. The Central Board of Excise and Customs clarified in May 1963 that bare aluminium wires finer than 10 SWG could not be used as aluminium conductors unless insulated and should be deemed to fall outside the scope of tariff item 33B. Aluminium wires of less than 10 SWG would thus fall within the scope of sub-item (ii) of tariff item 33B.

A factory in a collectorate was manufacturing aluminium strips from wires drawn out of properzi rods produced from duty paid aluminium ingots. The strips when cleared outside the factory were also subjected to duty under the appropriate tariff item. Bare aluminium wires of different gauges not exceeding 10 SWG, the captive consumption of which would, in the absence

of specific exemption, attract duty were cleared without payment of duty for manufacture of strips within the factory premises, while similar wires sold as winding wires to outsiders were subjected to duty under tariff item 33B.

The inadmissibility of duty-free clearance of wires for internal use was first pointed out by Audit in November 1971 and again in November 1972. Non-levy of duty noticed during audit of another similar unit was pointed out in November 1973. The collectorate justified the non-levy contending that bare aluminium wires were neither marked nor used as electric wires but consumed within the factory itself. It was also stated that the levy of duty on wires sold by the factory to outsiders was a mistake.

Government issued two notifications on 27th March 1976 exempting bare aluminium wires used in the same factory from duty leviable under tariff item 33B and also strips from so much of duty as was in excess of the duty levied on wires used for their manufacture. Thus the total loss due to non-levy of duty on wires used internally in two factories upto 26th March 1976 worked out to Rs. 1,58,945.

The paragraph was sent to the Ministry of Finance in October 1977; reply is awaited (January 1978).

72. *Tyres*

(a) Tyres falling under tariff item 16 and drawn for test within the factory of production are fully exempt under a notification dated 3rd June 1972 provided that not more than one tyre of any one sort is drawn for test at any one time.

A leading manufacturer of tyres periodically drew samples of tyres for testing purposes but did not pay duty on the tyres drawn in excess of the prescribed limit resulting in non-levy of duty to the extent of Rs. 77,273 for the period January 1974 to December 1975. On this being pointed out in audit (March 1976), the collectorate stated (February 1977) that a show-cause-*cum*-demand notice for Rs. 98,818 for clearance of 251

tyres during the period January 1974 to December 1975 was issued.

The paragraph was sent to the Ministry of Finance in July 1977; reply is awaited (January 1978).

(b) By a notification issued in January 1974 as amended, tyres intended to be used as original equipment by the manufacturers of motor vehicles are eligible for a concessional rate of duty. Such tyres also qualify for a lower assessable value compared to the value in respect of tyres for replacement.

A manufacturer of earth moving vehicles obtained the tyres priced on the basis of the lower assessable value as well as at the reduced rate of duty. These concessions, it was noticed in audit, were not admissible in the case of a particular type of vehicles manufactured by the licensee as they were not treated as motor vehicles for the purpose of levy of duty under the relevant tariff item 34.

The short levy of duty in respect of tyres fitted to 67 such earth moving vehicles during 1974-75 and 1975-76 worked out to Rs. 76,758.

On this being pointed out in audit, it was reported by the collectorate (April 1977) that action to collect the details with a view to raising a demand had been initiated.

The paragraph was sent to the Ministry of Finance in August 1977; reply is awaited (January 1978).

73. *Cotton yarn*

The rate at which duty is payable on waste cotton yarn depends upon its count. The higher the count, the higher is the rate of duty. In cases where the cotton yarn left on bobbins is of different counts and details of different counts are not kept, the entire mass of yarn, cleared in mixed condition, will suffer duty as clarified by the Central Board of Excise and Customs in 1968, at the rate applicable to the highest count of yarn present in the mass.

In the case of five mills in one collectorate, it was noticed, although the waste yarn of various counts was cleared in a mixed condition and no separate account was kept in respect of each count, duty was not paid at the rate applicable to the highest count of yarn. This resulted in the non-levy of duty of Rs. 1,55,670.

The objection was accepted in the case of one mill by the collectorate. Final reply in the case of the other four mills is awaited.

The paragraph was sent to the Ministry of Finance in September 1977; reply is awaited (January 1978).

74. *Chinaware and porcelainware*

By a general notification issued in September 1971, Government exempted all excisable goods produced during the course of imparting technical training of an academic or vocational nature in technical, educational and research institutes. This exemption is subject to the following conditions :—

(a) a certificate or evidence to show that the goods are produced in the aforesaid manner should be furnished,

(b) such records as may be prescribed by the Collector are maintained, and

(c) the premises where these goods are produced are open for inspection by the Collector concerned.

A unit engaged in the manufacture of art pottery falling under tariff item 23B was enjoying the exemption under this notification since 1971. A certificate was being obtained from this unit annually by the collectorate to the effect that the production from this unit was not marketable on commercial basis.

It was noticed in audit (September 1976) that the exemption enjoyed by the unit was not in accordance with the provisions of the exemption notification because :

(a) the unit was not exclusively a training unit or a research centre ; annually a few selected hands were given training in a particular section of the factory only, *i.e.*, in moulding, casting, glazing, spraying. The articles so produced were then handled by skilled workers who, after giving finishing touches, passed them on to Art Section where they were designed, decorated and made marketable. No training was imparted to trainees in this section of the unit,

(b) the certificate furnished by the unit for the purpose of obtaining exemption, *viz.*, that the articles produced are not for being marketed on commercial basis, was not also correct in that that art-pottery items produced there were regularly marketed at prices fixed by the management on a weighted average basis taking into account all overheads and the unit was working to a financial result ascertained through accounts maintained on commercial principles, and

(c) the manufactured items were not those brought into being at the time of imparting training.

The duty involved on the clearances from July 1973 to March 1975 (all centres) and August 1976 (one centre) worked out to Rs. 1,60,600.

The collectorate was requested to review the position with a view to ensuring that the exemption enjoyed by the unit was in order. The collectorate, agreeing with Audit, issued a show cause notice to the unit (January 1977). Report on the final outcome of the show cause notice and realisation of the duty involved is awaited (May 1977).

The paragraph was sent to the Ministry of Finance in August 1977 ; reply is awaited (January 1978).

Exemption under executive instructions without legal backing

75. *Woollen blankets*

Under section 3 of Khadi and Other Handloom Industries Development (Additional Excise Duty on Cloth) Act 1953, an

additional duty of excise at the rate of 1.9 paise per square metre is leviable on all cloth manufactured in any factory. In exercise of the power conferred by clause (e) of sub-section 2 of section 5 of the said Act, Government, however, by a notification dated 14th February 1974 exempted with retrospective effect from 14th February 1972 woollen fabrics produced on handlooms and processed with the aid of power from payment of whole of this duty.

A factory manufacturing woollen blankets from woollen fabrics produced on handlooms and processed with the aid of power did not pay duty leviable under the aforesaid Act even prior to 14th February 1972. On the omission being pointed out in audit (September 1975), the collectorate stated that duty was not levied according to the instructions of the Board issued in May 1962. Since the executive instructions cannot override the statutory provisions, non-levy of duty resulted in forgoing revenue to the extent of Rs. 88,019 during May 1962 to January 1972.

While confirming the facts, the Ministry of Finance have stated (January 1978) that steps were being taken to recover the short levy.

Enhancement of price not taken into account in determining assessable value

76. *Electric storage batteries*

A manufacturer in a collectorate supplied electric storage batteries to the Director General, Supplies and Disposals on payment of duty under tariff item 31(2) on the basis of contract prices. It was noticed in audit that, although the contract prices were enhanced from time to time and supplementary bills were preferred by the manufacturer, duty on the enhanced prices was not paid in respect of the clearances during the period 13th February 1974 to 21st March 1974 and 1st April 1974 to 22nd August 1974. This resulted in under-assessment of Rs. 53,474.

In reply, the Ministry of Finance have stated (December 1977) that—

(a) the Assistant Collector concerned is taking necessary steps to realise the differential duty for the period January 1974 to 20th March 1974 and that the Collector was asked to take suitable action against the assessee for his failure to intimate the department about the realisation of differential value at a later stage ; and

(b) for the period 21st March 1974 to 30th September 1975, provisional assessments had been permitted and, on receipt of final prices from the Director General, Supplies and Disposals, the assessee paid (7th March 1977) an amont of Rs. 40,810 towards differential duty.

77. *Coffee*

Chicory blended coffee is assessable under tariff item 68. In a collectorate, a factory producing chicory blended coffee in powder and tablet forms paid duty from 1st March 1975 to 21st May 1975. The licensee stopped paying duty from 22nd May 1975 based on a clarification issued by the collectorate that the product was not dutiable under tariff item 68. The collectorate revised their stand with effect from 1st March 1976 and informed the licensee that the chicory blended coffee powder/tablets manufactured by him were assessable under tariff item 68. A demand was also raised for the duty due for the period 22nd May 1975 to 29th February 1976. The assessee has been paying duty since 1st March 1976.

It was noticed by Audit (February 1977) that the demand raised by the collectorate did not take into account an upward revision of the selling prices of the products adopted for sale by the licensee with effect from 5th October 1975 and the previous lower rates were adopted for assessment upto 18th July 1976, when the licensee himself adopted the increased rates.

Due to the adoption of the lower rates, there was a short levy of Rs. 33,344. On this being pointed out in audit, the collectorate recovered the amount in May 1977.

The paragraph was sent to the Ministry of Finance in November 1977; reply is awaited (January 1978).

78. *Mining machinery*

A mining machinery manufacturing factory paying duty on its products under tariff item 68 enhanced the sale prices of two of its products (i) scrapper chain conveyor and (ii) belt conveyor with effect from 29th May 1975. The assessee, however, did not pay duty on these products on the basis of the enhanced price. This resulted in under-assessment of duty of Rs. 70,290.

The paragraph was sent to the Ministry of Finance in July 1977; reply is awaited (January 1978).

Incorrect availment of concessional rate of duty resulting in under-assessment/non-levy

79. *Vegetable product*

Under a notification dated 1st April 1972 as amended, vegetable product falling under tariff item 13 was eligible for a certain concession in duty provided the percentage by weight of indigenous cotton seed oil in vegetable product was in excess of the minimum percentage as laid down by Government from time to time. The concession in duty was given as an incentive for use of indigenous cotton seed oil and depended on the quantum of cotton seed oil used in excess of the prescribed minimum. The percentage of cotton seed oil in vegetable product was to be computed with reference to the total quantity of vegetable product, whether containing cotton seed oil or not, cleared during a period.

Four factories in a collectorate manufacturing vegetable product, computed the percentage of cotton seed oil after taking

into account only such varieties of the vegetable product, cleared during a period, which contained cotton seed oil and excluding those varieties which did not contain any cotton seed oil. As a result, the percentage of cotton seed oil contained in such vegetable product cleared during a period worked out higher than that computed on the basis of the total weight of vegetable product cleared during the same period. Consequently, the four licensees derived excess duty concession to the tune of Rs. 4,93,544 during the period 1st April 1972 to 28th February 1975.

On this being pointed out by Audit (June 1974), the collectorate intimated (February 1977) that excess duty concession amounting to Rs. 4,15,381 for the period April 1972 to August 1974 had been recovered from the four licensees. Realisation of the balance amount in respect of two out of the four factories is awaited.

The paragraph was sent to the Ministry of Finance in November 1977; reply is awaited (January 1978).

80. *Embroidered fabrics*

Embroidered fabrics, where the embroidery is done on non-duty paid base fabric received under bond, attract duty under tariff item 19 II for embroidery and under tariff item 19 I on base fabrics. Fents and rags of base fabrics enjoy certain concessional rates of duty and exemption under notifications issued under rule 8(1) of the Central Excise Rules 1944. However, extending these concessional rates of duty for the clearance of fents and rags arising after the process of embroidery is completed is incorrect as the base fabrics in these cases were good fabrics when they were received for embroidery.

Incorrect extension of the concessional rate of duty in the clearance of fents and rags arising after embroidery resulted in under-assessment of Rs. 5,06,903 during the period April 1969 to February 1976. Out of this, an amount of Rs. 38,367 pertaining to the period June 1974 to September 1975 in respect

of one assessee is reported to have been recovered. No demands have been raised in respect of three other assessees.

The paragraph was sent to the Ministry of Finance in September 1977; reply is awaited (January 1978).

Losses in transit/storage

81. *Motor spirit*

According to rule 9A(2) of the Central Excise Rules 1944, in the case of commodities which are removed under bond without payment of duty to be rewarehoused but are not rewarehoused, the duty is payable at the rate in force on the date of payment.

An oil installation despatched certain consignments of motor spirit in May/June 1973 for rewarehousing at other installations. However, the entire quantity relating to one consignment and part of quantities of other consignments so despatched were not rewarehoused but were decanted by the local dealers. It was noticed in audit (January 1976) that duty on the quantity not rewarehoused was paid in April 1974. Meanwhile, duty on motor spirit was enhanced from 3rd November 1973. However, the department treated the quantities of motor spirit not rewarehoused as losses during transit and thus charged the lower rate of pre-revised duty under rule 9A(4)(ii) of the Central Excise Rules. Since the motor spirit not rewarehoused was in fact distributed to the local dealers, the question of transit losses in this case did not arise and the higher duty at the revised rate was leviable in terms of rule 9A(2) *ibid.* This resulted in short payment of duty amounting to Rs. 4,25,755. The matter was reported to the collectorate (January 1976).

The paragraph was sent to the Ministry of Finance in June 1977; reply is awaited (January 1978).

82. *Mineral fuels, lubricants and related materials*

(a) Certain oil companies have been allowed in-bond movements of different petroleum products from the refineries to

their bonded storage tanks subject to the condition that no allowance for storage losses would be admissible and appropriate duties will have to be paid on such losses at these bonded tanks.

It was noticed that, in computing the storage losses of individual bonded tanks, the quantities found surplus in other such tanks were incorrectly set off against these shortages. As the conditions under which bonded storage was allowed did not provide for set off of gains in one tank against the losses in other tanks, the practice was irregular. This was brought to the notice of the collectorate in December 1973, but the irregular practice continued upto September 1974. The aggregate short assessment during the period April 1971 to September 1974 on this account was Rs. 83,206.

While confirming the facts, the Ministry of Finance have stated (September 1977) that demands were raised.

(b) Mineral oils pay duty under the tank discharge system by which the quantity of mineral oils chargeable to duty is determined through dip readings of the bonded storage tanks before and after removal of oil. According to para 64A(c) of the Manual on Mineral Products in the case of motor spirits stored at oil installations, it is permissible to condone storage losses upto the limit specified therein but there is no provision to condone handling and other losses.

An oil installation paid duty on hexane cleared by it on the basis of individual clearances effected and loaded in tank trucks, tank wagons and lorries. The quantity so cleared ascertained on weighment basis was invariably less than the quantity cleared from the storage tanks as ascertained through dip readings. The difference so ascertained during a month was adjudicated as storage loss. A part of the loss to the extent permissible under para 64A(c) of the Manual on Mineral Products was condoned and no duty was recovered on such losses.

The losses condoned were, however, not in the nature of storage losses alone but included handling losses as well and it was, therefore, incorrect to condone the losses as storage losses.

The differential duty recoverable on the differences for the period March 1973 to May 1976 worked out to Rs. 4,06,793, out of which an amount of Rs. 3,33,161 has been paid by the party under protest (June 1976). Particulars of recovery of the balance are awaited.

The paragraph was sent to the Ministry of Finance in October 1977; reply is awaited (January 1978).

(c) Raw naphtha intended for use in the manufacture of petrochemicals is eligible to a concessional rate of duty subject to the fulfilment of certain conditions. The quantity of raw naphtha eligible for such a concessional rate of duty is arrived at by deducting the quantity of raw naphtha returned to the refinery from the quantity of raw naphtha supplied to the unit.

A unit manufacturing petrochemicals received raw naphtha at the concessional rate of duty from a refinery under Chapter X procedure. After the manufacture of petrochemicals, certain quantities of raw naphtha were returned to the refinery. The quantities recorded as received back by the refinery were less than the quantities despatched by the petrochemicals unit. Audit pointed out that, in the absence of any provision in the Central Excise Rules to condone such deficiencies, duty is payable at the full tariff rate and not at the concessional rate. The non-levy of duty worked out to Rs. 2,42,547 for the period June 1973 to April 1976. The collectorate stated (September 1976) that a show cause notice for recovery of Rs. 37,486 for the period June 1973 to August 1974 had been issued. Details of recovery and of demands from September 1974 onwards are awaited.

The paragraph was sent to the Ministry of Finance in June 1977; reply is awaited (January 1978).

Irregular refund

83. *Light solvent naphtha*

Under a notification dated 24th April 1962, light solvent naphtha consisting of mixture, mainly of benzene and toluene, intended for certain specified use, was assessable to duty at a concessional rate of 5 per cent *ad valorem,* which was subsequently revised to Rs. 34 per kilolitre under a notification of 7th May 1971.

A fertiliser factory manufactured light solvent naphtha and cleared it on payment of duty at concessional rates under the aforesaid notifications. A sample of the product was, however, drawn on 14th May 1971 and tested by the Chemical Examiner, Custom House, Calcutta. According to his report, the light solvent naphtha manufactured by the factory was composed mainly of toluene and was free from benzene. As it did not contain benzene, the product did not qualify for the concessional rates of duty admissible under the above notifications till the issue of amending notification dated 25th March 1972, whereby all types of solvent naphtha were brought under the scope of the concessional rate of duty prescribed in notification of 24th April 1962 as amended. Accordingly, on a demand being raised the factory paid under protest a sum of Rs. 3,23,084 being the differential duty between the full effective rate and the concessional rate on light solvent naphtha cleared during the period 24th April 1962 to 24th March 1972 and filed an appeal to the Appellate Collector. On 29th August 1974, the Appellate Collector decided the case in favour of the Appellant on the ground that, with the issue of the amending notification dated 25th March 1972, all types of solvent naphtha were assessable under notification dated 24th April 1962 at the concessional rate. The entire amount of differential duty of Rs. 3,23,084 was accordingly refunded to the factory on 19th July 1976.

Amending notifications issued by the Government, unless otherwise expressly specified therein, are effective from the dates

of their issue. The Law Ministry's advice in this regard was circulated in Board's letter dated 24th September 1964. Hence the amendment contained in the notification dated the 25th March 1972 was effective from the date of issue only and the refund of Rs. 3,23,084 was not admissible.

The paragraph was sent to the Ministry of Finance in June 1977; reply is awaited (January 1978).

84. *Tool tips*

In August 1973, Government clarified that die pellets made of sintered carbide, if used as 'inserts in wire drawing dies', would be in the nature of tool tips and would attract duty under tariff item 62.

An assessee manufacturing die pellets of sintered carbide and paying duty under the tariff item 62 upto 27th April 1974, was allowed by a collectorate to re-classify the product as non-excisable on the grounds that these were not for cutting purposes and that the pellets were not in a finished stage before they were used for wire drawing and extrusion dies. It was pointed out in audit that these pellets were not tools by themselves and were used after encasing, brazing or clamping and should, therefore, be correctly classified under tariff item 62 especially in view of the clarification of the Government. This resulted in an irregular refund of duty of Rs. 94,206 during the period March 1973 to April 1974 and escapement of revenue of Rs. 3,86,138 for the period May 1974 to January 1977. Show cause notices in respect of both the amounts have been issued to the assessee.

While confirming the facts, the Ministry of Finance have stated (February 1977) that steps have already been taken to revise the practice for the future and to raise duty demands on the past clearances.

85. *Aluminium wire rods*

In pursuance of Aluminium Control Order 1970, Government fixed the sale price of aluminium ingots at Rs. 5,484 per

metric tonne under notification dated 11th March 1975. On the concept of "levy aluminium" being introduced from 15th July 1975, the sale price of aluminium wire rods was fixed at Rs. 7,062 per metric tonne leaving the sale price of non-levy aluminium to be fixed under section 4 of the Central Excises and Salt Act 1944.

A unit in a collectorate was allowed a refund of Rs. 60,445 on the clearances of 154.513 metric tonnes of aluminium wire rods during the period 17th July 1975 to 17th September 1975 on the plea that, for determining their assessable value under section 4 of the Act, the value of aluminium ingots used in their manufacture was to be taken at Rs. 5,484 per metric tonne plus rolling charges at Rs. 600 per metric tonne instead of at Rs. 7,062 per metric tonne prescribed for 'levy aluminium' under a notification of 15th July 1975. The notification dated 11th March 1975 having been rescinded by the notification of 15th July 1975, Audit pointed out that—

(a) the basis adopted to arrive at the assessable value *viz.*, the sale price of an ingot at Rs. 5,484 per metric tonne was itself incorrect as this rate ceased to be effective from 15th July 1975 ; and

(b) even the figure of Rs. 7,062 per metric tonne applied only to 'levy aluminium' and not to non-levy aluminium which is the case under reference.

The collectorate accepted both the points and raised (January 1977) additional demand for Rs. 1,46,231 on the basis of price of ingot being Rs. 7,850 per metric tonne instead of Rs. 5,484 per metric tonne wrongly adopted at the time of allowing the refund.

The Ministry of Finance have confirmed the facts.

86. *Electric motors*

According to the clarification given by the Central Board of Excise and Customs in November 1973, stators and rotors

manufactured for use either in generators or in electric motors attract duty under tariff item 30(4). Subsequently, by another order issued on 19th July 1974, the Board held that stators and rotors used in alternators were not chargeable to duty as parts of the electric motors. Again, in their letter dated 13th February 1975, it was stated by the Board that stators and rotors used in D.C. generators should not be charged to duty under tariff item 30(4). The initial decision of November 1973 was based on expert technical opinion that rotors and stators, whether manufactured for use in generators or electric motors, being interchangeable, were correctly classifiable as parts of electric motors. The subsequent clarifications in 1974 and 1975 amount to grant of exemptions by issue of executive instructions which are not legally valid unless they are backed by notifications issued under rule 8(1) of the Central Excise Rules 1944.

In two collectorates, duty which was initially collected on stators and rotors used in the manufacture of D.C. generators and alternators was refunded to the manufacturers on the basis of the clarifications issued by the Board during 1974 and 1975. The duty so refunded amounts to Rs. 25.79 lakhs in respect of two manufacturers. These refunds are irregular in the absence of a legally valid notification under rule 8(1).

The paragraphs were sent to the Ministry of Finance in June 1977 and August 1977; replies are awaited (January 1978).

87. *Incorrect payment of rebate on excess production—Sugar*

(a) In paragraph 43 of Report of the Comptroller & Auditor General of India for the year 1975-76 (Revenue Receipts Volume I), certain cases where rebate in excise duty was erroneously allowed to sugar factories in respect of their production for the season 1973-74, although the said factories were not in production during the relevant base period, were reported. The Department of Revenue and Banking then intimated that action was initiated to raise the demand.

Cases of 21 more sugar factories have subsequently been noticed wherein rebate granted erroneously amounted to Rs. 1.13 crores. In a circular letter dated 24th February 1977 to all Collectors of Central Excise, Department of Revenue and Banking referred to the representations received from the Indian Sugar Mills Association and directed the Collectors not to enforce the recoveries of the amount pending a final decision.

Paragraphs covering the 21 sugar factories referred to above were forwarded to the Ministry of Finance in July 1977; reply is awaited (January 1978).

(b) Sugar produced in excess of 5,000 quintals during the period 1st October 1973 to 30th September 1974 by a factory which commenced production for the first time on or after 1st October 1973 was entitled to a rebate of duty of Rs. 30 per quintal under a notification dated 4th October 1973 as amended.

In the case of a sugar factory, the ownership structure was changed in 1972 and the unit was given a new licence treating it as having commenced production for the first time after 1st October 1973. A rebate of Rs. 61,14,930 was accordingly allowed in July 1976 for the sugar season 1973-74, which was not admissible for the following reasons :—

(i) For the eligibility of the rebate, the factory should have commenced production for the first time on or after 1st October 1973, whereas this factory had been producing sugar in the earlier seasons.

(ii) The factory did not figure in the list of new factories circulated by the Board on 10th October 1973.

(iii) The concession was applicable to a factory which commenced production for the first time on or after 1st October 1973 and mere change in the ownership structure does not convert the factory into a new one for the purpose of applying the notification.

On this being pointed out in audit, the Assistant Collector stated (July 1977) that a show cause notice was issued in this case.

The paragraph was sent to the Ministry of Finance in July 1977; reply is awaited (January 1978).

88. *Non-realisation of duty on warehoused tobacco*

Under rule 145 of Central Excise Rules 1944, tobacco may remain warehoused for a period of three years. On the expiry of this period, the licensee has to clear the goods after payment of duty. If the licensee so desires, the Collector may permit continued warehousing of the tobacco for a further period of two years, after satisfying himself of the genuineness of the reasons adduced by the licensee and after satisfying that the condition of tobacco remaining warehoused is good and would stand storage during the extended period. Paragraph 148C of Tobacco Excise Manual provides that, after the expiry of three years or such extended period of warehousing, the Range Officer must serve on the licensee a demand for duty due including any additional duty of excise on the warehoused tobacco. If the demand is not honoured within ten days, a notice of detention should be issued to the licensee asking him to detain the tobacco in the warehouse for auction by the department with a view to realising the duty due thereon out of proceeds from the auction.

In the course of audit of a tobacco range (February 1977), it was noticed that a warehouse keeper did not honour fourteen demands aggregating Rs. 19,812 in respect of duty due on the warehoused tobacco, which had outlived the period of warehousing. The demand issued in September 1975 was pending realisation till February 1977. No action was taken to auction the tobacco under the provisions of the excise rules. The collectorate intimated (June 1977) that, since the tobacco was in a very deteriorated condition, auction was not conducted. It was not correct for the collectorate to have continued allowing of the tobacco under warehousing as the

tobacco was deteriorating. Final report on the action taken to realise the dues is awaited (August 1977).

In another range, it was noticed (December 1976) that permission for continued warehousing was granted between May 1971 and June 1975 in respect of 1,69,853 kilograms of tobacco in twelve lots with two warehouse keepers. After the expiry of the period of warehousing, the entire quantity was in such a deteriorated condition that it had to be cleared for destruction for agricultural purposes, indicating that the grant of permission for extension of warehousing was given without regard to the above codal provisions according to which the condition of the tobacco should have been examined to ensure that it would stand storage. The duty involved is Rs. 3,40,229.

The paragraph was sent to the Ministry of Finance in October 1977; reply is awaited (January 1978).

89. *Movement in bond : non-realisation of duty*

Under Central Excise Rules 1944, if goods are removed from one warehouse to another under bond without payment of duty for rewarehousing, the certificate of rewarehousing is required to be furnished by the consignor within ninety days or the extended period, if any, of the removal of the goods, failing which the consignor shall pay on demand the duty leviable.

An oil installation despatched in tank wagons 1309.367 kilolitres of light diesel oils and 38.990 kilolitres of motor spirit during the period May 1974 to October 1975 under bond without payment of duty for rewarehousing elsewhere. The required rewarehousing certificates were not received from the oil installation within the prescribed period of 90 days. The period was neither extended nor was any duty demanded by the collectorate on these consignments after the expiry of 90 days.

On this being pointed out in audit (November 1974 and March 1976), the Assistant Collector stated (March 1977) that duty amounting to Rs. 5,39,296 has been realised.

The paragraph was sent to the Ministry of Finance in July 1977; reply is awaited (January 1978).

90. *Non-levy of additional excise duty*

By a notification issued in December 1966 as amended, Government specified the rates of additional duties of excise leviable under the Mineral Products (Additional Duties of Excise and Customs) Act 1958 on all varieties of refined diesel oils except jute batching oil. During April 1974 to March 1976, two licensees supplied 1,16,759.042 kilolitres of refined diesel oils (at 15° C) to jute mills without payment of any additional excise duty on the ground that 'jute batching oil' was not liable to additional excise duty. It was, however, noticed that the refined diesel oil supplied was actually not jute batching oil, since its viscosity, density and flashing point were different from those prescribed in the I.S. Specifications for jute batching oil. The refined diesel oil supplied to jute mills in the instant case, therefore, attracted additional excise duty which worked out to Rs. 67,07,807.

When this was pointed out in audit (April 1976), the Assistant Collector stated (February 1977) that, since the jute mills were eligible for obtaining refined diesel oil at the concessional rate, the question of realisation of additional excise duty in respect of such oil did not arise. The reply of the collectorate was, however, not acceptable as the exemption in the case of refined diesel oil supplied to jute mills was admissible only in respect of basic excise duty and the oil, not being jute batching oil, was liable to additional excise duty.

The paragraph was sent to the Ministry of Finance in July 1977; reply is awaited (January 1978).

91. *Non-levy of duty*

(a) Mixed yarn

Mixed yarn was brought under excise net by introduction of a new tariff item 18E yarn, all sorts, not elsewhere specified, from 17th March 1972.

A company manufacturing 'Sequa' glace polymade cotton core spun thread containing 83 *per cent* nylon yarn and 17 *per cent* cotton rove was clearing the product without payment of duty on the mixed yarn content in the thread. The inspection party of the collectorate mentioned (October 1974) about this commodity in their report and observed that it would not attract duty under item 18E as it was made out of cotton rove and duty paid nylon yarn.

A study of the manufacturing process of the thread disclosed (March 1975) that nylon yarn was fed into the roller and cotton rove was passed through three other rollers of a spinning machine and both were spun and a mixed yarn of count 35s (NF 29.6) came out at the spindle in the machine. The mixed yarn was put into another machine and converted into sequa thread of 2, 3 and 4 plies. Audit pointed out that, though the final product thread was not dutiable, the mixed yarn cleared for the production of the thread was dutiable. The loss of revenue due to non-levy of duty on 5,925 kilograms of mixed yarn cleared during the period 17th March 1972 to 15th April 1975 amounted to Rs. 47,616. The company which had merged with two others in the same field in January 1975 stopped the manufacture of the sequa thread after Audit pointed out the non-levy and started obtaining the thread under NIL gate passes from their other units in a nearby collectorate. The collectorate accepted the audit view and issued the demand which is pending realisation.

The paragraph was sent to the Ministry of Finance in October 1977; reply is awaited (January 1978).

(b) Waxed board

By a notification issued in May 1974, waxed board falling under tariff item 17 is assessable at 80 paise per kilogram subject to the condition that the appropriate duty of excise has already been paid on the base board.

A unit manufacturing electric dry battery cells manufactured during the period May 1974 to February 1976 an estimated quantity of 2,05,060 kilograms of waxed board, which was utilised within the factory for making top and bottom washers for the electric dry battery cells. No duty was collected on the waxed board as, according to the Collector of Central Excise, the waxed board at no stage came into existence as a commodity.

The passing of the base board through hard molten paraffin wax constitutes 'manufacture' and, since the waxed board produced thereby is capable of being bought and sold in the market, it should be deemed to be 'goods' attracting duty under section 3 of the Central Excises and Salt Act 1944.

The duty not levied on the waxed board manufactured during the period May 1974 to February 1976 works out to about Rs. 1,96,070. The particulars of the production of waxed board and the duty due thereon during the subsequent period are awaited.

The paragraph was sent to the Ministry of Finance in July 1977; reply is awaited (January 1978).

Loss of revenue

92. *Patent or proprietary medicines*

Under a notification dated 8th October 1966 as amended Government granted concession in duty leviable on patent or proprietary medicines falling under tariff item 14E by allowing discount at the rates of 10 *per cent* on wholesale prices or 25 *per cent* on retail prices as specified in the respective wholesale and retail price lists required to be furnished under the Drugs (Price Control) Order 1970 as amended. It was open to a licensee to opt for either of the two discounts and pay duty accordingly. But, under the Drugs (Price Control) Order 1970 as amended, a minimum difference of 14 *per cent* of the retail prices, in respect of ethical drugs, was required to be maintained

between the retail price and wholesale price. Keeping in view the statutory requirement of the minimum margin of 14 *per cent*, it was found in actual calculation that a licensee opting for discount at 25 *per cent* on retail price paid less duty than one opting for discount at 10 *per cent* on wholesale price. Owing to the disparity in the two rates of discount, Government had to forgo revenue to the extent of Rs. 1,42,895 on this account in respect of three manufacturers of medicines between April 1975 to February 1976.

The paragraph was sent to the Ministry of Finance in September 1977; reply is awaited (January 1978).

93. *Matches*

'Matches' classifiable under tariff item 38 are assessable to duty at the specific rate of 65 paise for every 1,000 matches. Under a notification issued in July 1967, concessional rates of Rs. 4.60 and Rs. 4.30 respectively per gross of 50 matches each were prescribed for matches manufactured with or without the aid of power, as the case may be. This notification contained a proviso to the effect that small scale manufacturers in the non-mechanised sector whose clearance for home consumption during a financial year was not expected to exceed 75 million matches would be entitled to a further concessional rate of duty of Rs. 3.75 per gross upto 75 million matches and the quantity of matches, if any, cleared in excess upto 100 million matches would be charged at Rs. 4.30 per gross and, if the clearance exceeded 100 million matches, the entire quantity cleared during the financial year would be charged to duty at Rs. 4.30 per gross. In order to avert the tendency on the part of the larger units to abuse the concession which was envisaged for the small scale units, a further amending notification was issued on 4th September 1967 limiting the above concession *inter alia* to those units—

(a) whose production during the financial year 1966-67 did not exceed 100 million matches or

(b) whose total clearance of matches during the financial year 1967-68 as per the declaration made by the manufacturer before 4th September 1967 was not estimated to exceed 75 million matches.

The validity of the amending notification of 4th September 1967 restricting the concession only to those small scale manufacturers who had filed a declaration before 4th September 1967 was questioned by some match units of the Madras collectorate on the ground of discrimination. The petitions were allowed by the Madras High Court in December 1968 stating that there was no difference between the two classes of manufacturers (*i.e.* those who filed declarations before and after the prescribed date) from the point of revenue as they were all engaged in production of matches and as none of them was expected to produce in the financial year more than 75 million matches on an estimate. The Government had filed an appeal against the above decision in the Supreme Court in 1971.

Following the 1968 decision of the Madras High Court, one of the match manufacturers in Kerala filed a writ petition in Kerala High Court in 1970 on similar grounds. The collectorate, however, failed to inform the court of the appeal in the Supreme Court against the decision of the Madras High Court on the same issue, though they were aware of the fact in 1971 itself. Delivering the judgement in this case on 23rd January 1973, the Hon'ble Judge referred to the 1968 decision of the Madras High Court and also stated "it is said that the Central Government has not filed an appeal from the above decision". The writ petition was allowed following the decision of the Madras High Court as there was no reason why persons similarly situated in Kerala should not get the same benefit as their counterparts in the other state. The local central excise collectorate extended the benefit of the High Court decision to all the eligible units on the apprehension that restricting the decision to the party in the case would amount to contempt of court.

The Supreme Court heard the appeal against the 1968 decision of the Madras High Court and set it aside in November

1974. Government thereupon issued directions in November 1974 for follow up action and for recovery of differential duty in all cases of assessment at a lower rate consequent on High Court decisions. Subsequently, on considering the representations from the affected units, Government issued orders in June 1975 remitting two-thirds of the arrears of duty outstanding against the assessees provided the balance one-third was paid before 31st October 1975. This date was extended to 31st December 1975 and again to 30th September 1976.

The remission allowed to the match units in Kerala alone on the basis of the November 1974 orders amounts approximately to Rs. 2.04 lakhs. The exact amount of loss of revenue due to the remission is awaited from the collectorate. The remission was primarily due to the failure of the collectorate to inform the Kerala High Court about the appeal on the same issue in Supreme Court.

The paragraph was sent to the Ministry of Finance in October 1977; reply is awaited (January 1978).

94. *Tariff Item* 68

A new tariff item 68 to cover 'all other goods not elsewhere specified' was introduced with effect from 1st March 1975, the rate of duty applicable being 1 *per cent* upto 16th June 1977 and 2 *per cent* thereafter.

Certain irregularities noticed during test audit of assessments under tariff item 68 are indicated below :—

(a) According to a notification dated 1st March 1975, goods produced in any factory wherein not more than 49 workers were working with the aid of power or not more than 99 workers were working without aid of power were exempted from duty. It was noticed in audit that six units in three collectorates availed of the exemption incorrectly as indicated below;—

(i) the number of workers employed exceeded 49 in the case of three units,

(ii) workers/employees working in Estimating, Planning and Drawing Sections and sweepers were excluded in computing the number of workers in two units, and

(iii) office staff, peons and watchmen were omitted in the said computation in one unit.

The exemption irregularly availed of resulted in under-assessment of duty to the extent of Rs. 88,519 and irregular refunds of Rs. 45,277. Of these amounts, a sum of Rs. 23,079 has been recovered from two units.

The Ministry of Finance have admitted the facts in the case of two units. The paragraph covering the rest was sent to the Ministry in October 1977; reply is awaited (January 1978).

(b) By virtue of a notification dated 1st March 1975, goods falling under tariff item 68 were exempted from duty if they are used in the factory of production as intermediate goods or component parts of goods falling under the said tariff item. By another notification dated 6th March 1975, this exemption was extended to goods used as intermediate goods or as components in the factory of production for the manufacture of any goods. Again by a notification dated 30th April 1975, this exemption was further extended to all goods falling under this item and manufactured in a factory and intended for use in the factory of production or in any other factory of the same manufacturer.

The following irregularities in availing the aforesaid exemptions were noticed in test audit :—

(i) Exemption was availed of between 1st March 1975 and 5th March 1975 in respect of certain goods falling under tariff item 68 which were

used in the manufacture of commodities not covered by tariff item 68. This exemption became available only from 6th March 1975.

(ii) Exemption was availed of between 1st March 1975 and 29th April 1975 in respect of commodities which were neither intermediate goods nor component parts. Exemption in respect of such goods became available only from 30th April 1975.

(iii) Exemption was availed of between 1st March 1975 and 29th April 1975 in respect of goods produced in a factory but utilised in another factory of the same manufacturer. This exemption became available only from 30th April 1975.

These irregularities were noticed in 38 units in nine collectorates resulting in escapement of duty of Rs. 5,17,173. Of this amount, an amount of Rs. 2,19,858 has been recovered; demands have been raised to the extent of Rs. 69,641.

The paragraphs in respect of the above cases were sent to the Ministry of Finance during the period July 1977 to November 1977; replies are awaited (January 1978).

(c) Under a notification dated 30th April 1975, excise duty on goods falling under tariff item 68 was to be calculated on the basis of the invoice price charged by the manufacturer for the sale of such goods subject to certain conditions.

It was noticed in audit that, in six cases in three collectorates, invoice values were incorrectly arrived at—the reasons being omission to take into account supplemental invoices, adoption of lower invoice value where the assessee charged different

prices to different customers depending on the quantity of orders, adoption of the price charged by the manufacturer to the loan licensee instead of the price charged by the loan licensee/sole distributor to the dealer, items used within the factory of production being valued at a figure lower than the invoice values of the same commodity when sold.

The total amount of under-assessment covered by the above cases worked out to Rs. 1,33,175. Of this amount, demands have been raised to the extent of Rs. 65,216.

The paragraphs covering these points were sent to the Ministry of Finance during the period August 1977 to November 1977; replies are awaited (January 1978).

(d) The Law Ministry opined (September 1975) that a plant for production of iron ore pellets could not be regarded as any premises, adjacent or belonging to a mine falling within the term mine in the Mines Act 1952 in as much as, the same could not be said to belong to a mine in which any process, ancillary to the getting, dressing or preparation for sale of minerals was being carried out. It was, therefore, pointed out in audit in the case of a gold mining company that the plant for extraction of refined gold from the ore could not be deemed to fall within the term mine as defined in the Act and duty was leviable on refined gold under item 68.

The collectorate has taken action to issue a licence to the company and a demand for Rs. 7,09,959 for the period 1st March 1975 to 31st December 1975 has also been raised.

The paragraph was sent to the Ministry of Finance in July 1977; reply is awaited (January 1978).

(e) It was also seen in test audit that commodities falling under tariff item 68 were omitted to be assessed to duty in 48 units in five collectorates. The escapement of duty in the instances noticed by Audit worked out to Rs. 2,93,624.

Of this amount, a sum of Rs. 11,970 has been recovered. Demands have been raised to the extent of Rs. 7,544.

The Ministry of Finance have admitted the facts in one case. The paragraphs covering the remaining cases were sent to the Ministry during the period July 1977 to November 1977; replies are awaited (January 1978).

95. *Incorrect application of section* 4

In the case of commodities chargeable to excise duty on *ad valorem* basis, their correct valuation is vital for the purpose of assessment. With increasing coverage of commodities under *ad valorem* assessment year after year, section 4 of the Central Excises and Salt Act 1944 and the rules framed/instructions issued thereunder require to be implemented correctly.

Some cases noticed in test audit in which section 4 and the rules/instructions thereunder have not been correctly applied are indicated below :—

(i) The 'wholesale cash price' has not been correctly determined in the case of eight assessees in five collectorates resulting in under-assessment to the extent of Rs. 26.97 lakhs. Incorrect determination was caused by non-inclusion in the assessable values of transportation charges uniformly realised by the assessees from the customers, application of contract prices instead of wholesale cash price, adoption of varying assessable values for commodities of identical specifications sold around the same time,

adoption of tariff values instead of section 4(a) value, delay in approval of price lists and adoption of lower assessable values pending such approval and declaration of wholesale cash price at a figure lower than the prices actually charged by the assessees.

Of the total amount of under-assessment indicated above, show cause notices were issued to the extent of Rs. 22.74 lakhs. In three of the above cases, the Ministry of Finance have admitted the objection. The paragraphs covering the other cases were sent to the Ministry in August 1976, July—October 1977; replies are awaited (January 1978).

(ii) According to section 4(b) and the instructions issued thereunder, in cases where the goods manufactured are meant for internal consumption and not for sale, the assessable value of such goods is to be determined on the basis of cost of production including reasonable margin of profit.

It was found in test audit that these provisions were either not followed or were applied incorrectly in 23 cases resulting in under-assessment of Rs. 89.80 lakhs in ten collectorates. The types of irregularities noticed in this category relate to adoption of incorrect rate of element of profit and non-revision of the assessable values in spite of increases in the cost of inputs.

Of the amount indicated above, demand notices have been issued by the department to the extent of Rs. 4.77 lakhs; amount realised so far is Rs. 1,42,533.

The Ministry of Finance have admitted the facts in four cases. The paragraphs covering the remaining cases were forwarded to the Ministry

during the period June 1976 to November 1977; replies are awaited (January 1978).

(iii) In arriving at the assessable values, abatement towards discount uniformly allowed to all independent buyers is permissible.

It was seen that, in four collectorates, ten units were allowed discounts which were not admissible. This resulted in under-assessment amounting to Rs. 8.79 lakhs. Of this, demand notices have been issued by the department for a sum of Rs. 83,068; amount recovered in one case is Rs. 61,395.

The Ministry of Finance have admitted the facts in one case. The paragraphs covering the remaining cases were forwarded to the Ministry in June and October 1977; replies are awaited (January 1978).

(iv) Packing charges in the case of grey portland cement were to be included in the assessable value until 9th January 1976 when by a notification such charges were exempted.

In the case of two factories manufacturing grey portland cement, packing charges were not included in the assessable value during the period 1st October 1975 to 8th January 1976 resulting in under-assessment of Rs. 34,99,849. On this being pointed out by Audit (April 1976 and June 1976), the collectorate issued notices demanding duty (September 1976). Particulars of realisation are awaited.

The Ministry of Finance have admitted the facts.

(v) Excise duty, sales tax and other taxes, if any, paid or payable at the earlier stage of manufacture should be included in the assessable value of the end-product.

In eight factories in a collectorate, the duty paid on electric motor portion of the monoblock pump sets was not included in the assessable value of the pumps resulting in under-assessments to the extent of Rs. 70,181 during the period April 1972 to January 1977. On this being pointed out in audit, the collectorate issued show cause notices demanding duty of Rs. 49,461 in respect of five units.

The paragraph was sent to the Ministry of Finance in October 1977; reply is awaited (January 1978).

(vi) In the case of a licensee manufacturing caustic soda and sodium hydrosulphite, the assessable values did not include handling and/or incidental charges although these charges were being collected uniformly at fixed rates by the licensee.

On this being pointed out in audit, demands for Rs. 61,503 were raised.

The Ministry of Finance have confirmed the facts.

(vii) According to section 2(f) of the Central Excises and Salt Act 1944 read with an opinion of the Ministry of Law in May 1970 and further clarified by Government in October 1975, a loan licensee who gets excisable goods manufactured on his account by another manufacturer, whether by giving designs and specifications of the goods or otherwise, will himself be treated as a manufacturer. In all such cases, the principle is that the price charged

by the loan licensee would be treated as assessable value.

It was noticed in audit that nine assessees in three collectorates paid duty on the basis of prices charged by such manufacturers (who manufactured the goods on behalf of the loan licensee), which were lower than those charged by the loan licensees from dealers. This resulted in under-assessment of duty of Rs. 23.09 lakhs, out of which a sum of Rs. 32,198 is reported to have been realised.

The paragraphs covering these cases were sent to the Ministry of Finance during the period June 1977 to October 1977; replies are awaited (January 1978).

96. *Irregular utilisation of proforma credit*

Rule 56A of the Central Excise Rules 1944 lays down a special procedure for availing credit of duty already paid on raw materials or component parts used in the manufacture of specified excisable goods. Such credit is allowed to be utilised towards duty payable on the finished excisable goods and can be availed of only after permission is granted by the Collector. No credit is, however, allowed in respect of any material or component part used in the manufacture of finished excisable goods which are exempted from the whole of duty leviable thereon or are not excisable.

(a) In five collectorates, six licensees utilised proforma credit available under rule 56A for payment of duty on finished goods though the raw materials to which the credit pertained had not been used in such finished products. The total amount so utilised irregularly worked out to Rs. 4,35,413 out of which a sum of Rs. 1,77,127 was recovered in three cases.

The remaining three cases were reported to the Ministry of Finance in August 1976 and October 1977; reply is awaited (January 1978).

(b) In a collectorate, two units incorrectly availed of the proforma credit of Rs. 83,403 towards payment of duty on finished goods although these goods were chargeable to duty under certain item(s) of the Tariff different from those under which raw material was leviable to duty. On this being pointed out in audit, the collectorate recovered Rs. 54,023 in one case and ordered the write back of excess credit of Rs. 29,380 in the other case.

The paragraphs were sent to the Ministry of Finance in August and October 1977 ; replies are awaited (January 1978).

(c) A factory manufacturing aluminium rods obtained duty paid aluminium ingots from outside and availed of proforma credit towards adjustment of duty payable on finished rods. The aluminium rods so cleared were subsequently utilised in the adjacent cable factory for further manufacture of aluminium conductors. During the manufacturing process of the aluminium conductors, some scrap arose which was brought back to the aluminium plant for melting and further manufacture. Though no duty was paid on the aluminium scrap as such, the assessee credited the proforma account with duty on the ground of re-use of the scrap, the duty being calculated on value and rate of duty applicable on aluminium rods from which the scrap arose. The credit thus afforded in proforma account worked out to Rs. 92,208 during the period July 1971 to June 1972, which contravened the provisions of rule 56A and was, therefore, inadmissible.

The collectorate raised demands in respect of the proforma credit so far allowed. Further report is awaited.

The paragraph was sent to the Ministry of Finance in August 1976 ; reply is awaited (January 1978).

(d) A fertiliser factory was permitted by a collectorate in April 1975 to take into stock, in the proforma account, a quantity of 860 metric tonnes of rock phosphate found in excess at the time of physical verification of stock in December 1974. The permission was subject to the condition that no adjustment should be made in the proforma account towards duty already paid. It was,

however, noticed in audit (November 1975) that the excess quantity of 860 metric tonnes was less than one per cent of the total imports and was within the tolerance limit of one and half per cent fixed by the Board. The quantity of 860 metric tonnes of rock phosphate was, therefore, to be construed as imported rock phosphate on which additional duty had been fully utilised already. Out of 860 metric tonnes of rock phosphate, only a quantity of 491.582 metric tonnes was utilised in the manufacture of super phosphate and cleared on payment of duty. It was pointed out that the additional duty of Rs. 35,773 was recoverable from the manufacturer on this quantity. The collectorate accepted the objection and raised the demands in March 1976. Details of realisation are awaited.

The paragraph was sent to the Ministry of Finance in September 1976 ; reply is awaited (January 1978).

(e) A manufacturer of fertilisers imported rock phosphate and availed of proforma credit equivalent to the total duty including the amount of additional duty paid on the import and shown in the invoices, whereas the quantity utilised was lower by 8,349 metric tonnes representing shortage of raw material. Since this quantity of rock phosphate was not utilised in manufacture of fertilisers, the assumption of proforma credit equivalent to the additional duty on such quantity allowed and utilised was irregular.

The collectorate stated (April 1972) that a demand for Rs. 1,75,232 was raised in August 1971.

The Ministry of Finance have stated (September 1977) that, on appeal by the assessee, the demand has been reduced to Rs. 74,529.

(f) A principal manufacturer of patent and proprietary medicines in one collectorate applied to the Collector on 1st April 1963 for permission to bring duty paid "Micoren Pearls" falling under tariff item 14E for use in the manufacture of his finished products and to avail of the proforma credit procedure. Permission was granted on 15th April 1963. However, the principal manufacturer used this raw material in the manufacture

of finished products on behalf of a loan licensee and utilised the proforma credit for discharging duty liability of such finished products, although the loan licensee had not obtained any permission from the Collector for availing of the rule 56A procedure. This resulted in unauthorised availing of proforma credit of Rs. 61,494 for the period July 1969 to August 1975 by the loan licensee.

The paragraph was sent to the Ministry of Finance in June 1977; reply is awaited (January 1978).

(g) Under rule 56A any waste arising out of the process of manufacture from raw material on which proforma credit has been allowed should be cleared on payment of duty. However, a unit manufacturing aluminium strips from duty paid aluminium rods cleared aluminium scrap generated in the manufacture of strips from November 1975 to October 1976 without payment of duty. On this being pointed out in audit (November 1976), a demand for Rs. 34,817 was raised by the Assistant Collector (July 1977).

The paragraph was sent to the Ministry of Finance in October 1977; reply is awaited (January 1978).

(h) An assessee importing muriate of potash for use as raw material in the manufacture of fertiliser was permitted on 21st July 1976 to avail of the proforma credit in respect of additional duty paid on the imported muriate of potash from 5th July 1976. The assessee was, however, erroneously allowed a credit of Rs. 13,80,000 in respect of muriate of potash brought to the factory prior to 5th July 1976. When this was pointed out in audit, the assessee was instructed to debit the amount of Rs. 7,92,406 being the irregular amount of proforma credit for the period prior to 18th March 1976, *i.e.* the date of application. Further reply is awaited from the collectorate.

The paragraph was sent to the Ministry of Finance in September 1977; reply is awaited (January 1978).

(i) Another factory manufacturing polyvinyl chloride coated paper was granted permission to avail of the proforma credit on 15th April 1974. The manufacturer, however, availed of proforma credit of duty of Rs. 19,335 on paper received in the factory during an earlier period November 1973 to January 1974. On this being pointed out in audit, the collectorate recovered Rs. 19,335 (January 1977).

The paragraph was sent to the Ministry of Finance in August 1976; reply is awaited (January 1978).

97. *Fortuitous benefits to manufacturers*

Collection of duty by the trade from customers in excess of the amount of duty actually paid has been found to be quite an ordinary feature in the pattern of the system of excise levy. This issue had been commented upon in a number of Audit Reports, the latest being in paragraph 96 (Audit Report 1975-76). In paragraph 1.209 of their Forty-fourth Report, the Public Accounts Committee (1971-72) (Fifth Lok Sabha) recommended that the question of accrual of fortuitous benefit to the trade by way of excess collection of excise duty should be examined in the light of the relevant Supreme Court judgement with a view to ensuring that a suitable enabling provision is made in the existing tax structure. Although the Central Excises and Salt Act 1944, in so far as it related to the valuation provisions, was amended in October 1975, no provision was incorporated in the Act to ensure that undue benefit did not accrue to the trade through the instrumentality of the Act.

A list of cases of fortuitous benefits derived by the trade, noticed in the course of audit of eleven units in three collectorates is a pointer to the immediate need to make a suitable provision in the Central Excise Law imposing a legal bar over such excess collections. The nature and the circumstances under which the excess collections accrued to the trade are as under :—

(a) Two manufacturers of cosmetics and toilet products passed on the duty levied on their products to the customers. Subsequently, when some of these products were held as non-excisable they claimed refund of duty paid on their products

between May 1970 and July 1974 by one manufacturer and between January 1972 and April 1972 by the other aggregating to Rs. 2,46,642. The department viewed that there is no provision under the Central Excise Law that refunds in such cases should be allowed only when the benefit is passed on to the consumers and allowed the refunds in September 1975/October 1972.

(b) Two units manufacturing electric motors paid duty at concessional rates applicable to small-scale units prescribed in a notification issued in April 1960. The manufacturers, however, collected duty from the consumers at full rates which resulted in a fortuitous benefit to the manufacturers. The excess amount thus collected by them between April 1973 and November 1975 was Rs. 2,13,013. The department stated that the lower rate of duty had been collected from the licensees in accordance with the notification and that no action could be taken if the licensee collected more from the purchasers.

(c) A manufacturer of vegetable products and soap had, during the period June 1973 to February 1974 cleared his products from the factory to his warehouse, situated in the same place, after payment of duty based on the prices ruling at the time of clearance. The prices at which the products were actually sold subsequently and duty collected from the buyers, were much higher than the prices on which duty was paid and this led to an excess collection of duty amounting to Rs. 3,227 which was appropriated by the licensee. This practice is continued to be adopted by the licensee. The excess collection pointed out by Audit is only illustrative.

(d) A manufacturer of staple fibre yarn and cotton yarn had cleared during the period December 1973 to July 1974 both varieties of yarn to their own godown from where they were sold to consumers. The invoices evidencing the sale showed that the duty collected from the customers was higher than that paid at the time of clearance from the mills, as there were certain increases in the rate of levy in the meantime according to the budget and supplementary budget of 1974. The amount thus collected in excess and retained by the licensee was Rs. 4,648.

(e) A manufacturer of staple fibre yarn claimed a refund of Rs. 4,151 representing the difference in duty between Rs. 9,172 collected from him at the higher rates contemplated in the budget of 1967 and that payable by him amounting to Rs. 5,021 according to the application for clearance filed by him on the pre-budget day for clearance of the yarn at the then prevailing lower rates on the budget day. As the pre-budget day was declared a holiday under the Negotiable Instruments Act, the application for clearance was not acted upon by the department and the licensee was allowed clearance only on the day following the budget day paying duty at higher rates according to the budget of 1967. Government, to whom the licensee appealed, held that the application for clearance filed by the licensee on the pre-budget day could not be ignored. Based on this, the licensee claimed a refund of Rs. 4,151 which was paid by the department in November 1974. The claim for refund was admitted by the department based on the Government order on revision application without satisfying that the amount refunded was passed on to the consumers from whom the licensee had collected duty at higher rates.

(f) A manufacturer of fertiliser declared three prices for the fertilisers cleared (i) in bulk (ii) packed in old gunnies and (iii) packed in new gunnies but the Assistant Collector approved the highest price as applicable to new gunny packing as assessable value for clearances in all forms. According to the Fertiliser Control Order as it stood prior to 22nd January 1970, fertiliser could be sold either in new gunnies or old gunnies having two different assessable values. From 22nd January 1970, three different assessable values could be adopted based on the condition in which the fertiliser was cleared *viz.* (i) in bulk (ii) packed in new gunnies and (iii) packed in old gunnies.

As the manufacturer initially paid duty applicable to fertiliser cleared in new gunnies for other modes of clearances also he claimed refund of Rs. 36,286 representing the difference of duty collected between those packed in new gunnies and once used gunnies and those sold in bulk and in buyers' gunnies for the period 1st March 1969 to 9th September 1972. This resulted

in an unintended benefit to the manufacturer as there was no evidence to show that the benefit was passed on to the consumers.

(g) A unit manufacturing paper paid a sum of Rs. 18,30,047 towards excise duty during the period 1st July 1972 to 30th June 1973, but collected Rs. 20,69,298 as duty from its customers during the same period. The excess collection of Rs. 2,39,251 was due to (i) invoicing for the gross weight (including the weight of wrapper cover) in the weight of paper and collecting duty on the gross weight and (ii) non-passing of the concession in excise duty availed under a notification issued in October 1965 to the consumers.

(h) A unit manufacturing, *inter alia,* caustic soda collected duty on the value of caustic soda inclusive of handling charges, but duty was paid on the value exclusive of handling charges on the plea that it represented a post manufacturing expense. This resulted in an unintended benefit of Rs. 1,22,809 to the licensee during the period November 1971 to March 1975.

The paragraph was sent to the Ministry of Finance in October 1977; reply is awaited (January 1978).

(i) A manufacturer paid the processing duty on leather cloth containing less than 40 per cent by weight of cotton prior to the instructions issued by the Board in February 1963 and again in October 1963. The claim of the manufacturer for refund of duty so paid was rejected by the adjudicating and appellate authorities on the ground that they were barred by time. The revision applications filed by the factory with Government were also rejected but no reasons were specified in the rejection orders. The High Court vacated these orders on the ground that they were 'non-speaking'. The matter was again taken up by Government at the revision stage and under an order passed on 12th April 1972, Government admitted the refund claim. This decision was based on the fact that the department had committed itself through the trade notice issued by the Collector that the fabrics in question were not excisable. The total amount of Rs. 3,35,559 refunded to the manufacturer represented a fortuitous benefit.

While admitting the facts, the Ministry of Finance stated (April 1975) that there was no provision to withhold the refund on the ground that it would give a fortuitous benefit to the party.

(j) The rebate scheme on vegetable product falling under tariff item 13 covered by notifications issued from time to time was an incentive for use of more and more indigenous cotton seed oil over the minimum level of usage as prescribed under Vegetable Oil Products Control Order. It was thus necessary that changes in the level of minimum use of cotton seed oils introduced under the Rebate Scheme synchronised with the corresponding minimum fixed under the said Vegetable Oil Products Control Order. It was, however, noticed that while the minimum content of cotton seed oil was raised from 15 *per cent* to 30 *per cent* with effect from 17th January 1975 under the Vegetable Oil Products Control Order 1975, the corresponding change in the Rebate Scheme was made only under a notification dated 1st March 1975 allowing a rebate on use of indigenous cotton seed oil in excess of 30 *per cent* and above in the manufacture of vegetable oil products.

The delay in the issue of notification had helped the manufacturers of vegetable oil products to claim higher rebate for the period 17th January 1975 to 28th February 1975 even on the quantities of indigenous cotton seed oil which were less than the minimum quantity of 30 *per cent* required to be used in the manufacture of vegetable oil products in terms of Vegetable Oil Products Control Order.

Non-synchronisation of the notification with the change in the Vegetable Oil Products Control Order 1975 resulted in an unintended extra rebate to the tune of Rs. 8,09,845 to the manufacturers of vegetable oil products during the period 17th January 1975 to 28th February 1975 in nine collectorates.

(k) Under a notification issued in March 1970, "mixed fertilisers" manufactured from two or more duty paid fertilisers are exempt from payment of duty. The benefit of this exemption was availed of by a manufacturer in respect of certain varieties of fertilisers from March 1970 onwards with the approval of

the department. In May 1972, however, the department held that these varieties of fertilisers are complex fertilisers and not mixed fertilisers and as such the benefit of the notification would not be admissible to them. This view was upheld by the Appellate Collector (July 1974) on an appeal filed by the assessee and later (September 1975) by Government whom the assessee approached on revision application. The assessee started paying duty from the 1st March 1975 but the duty payable from 1st March 1970 to 28th February 1975 amounting to Rs. 15.08 crores is yet to be recovered. It is understood that the prices at which these fertilisers were sold by the assessee during this period included an element of excise duty also.

Prior to March 1970 when the assessee was paying duty on these fertilisers, he was enjoying *pro forma* credit facilities under Rule 56A of the Central Excise Rules in respect of duty paid on raw materials used in their production. When the classification list effective from March 1970 was approved by the department extending the benefit of "nil" rate of duty for these fertilisers, the credit balance in the *pro forma* account under rule 56A should have lapsed. The assessee, however, utilised the credit for clearance of other duty paying varieties of fertilisers which was irregular. Such irregular utilisation of inadmissible *pro forma* credit amounted to Rs. 1,99,823 and even this amount has not been recovered so far. The department stated (August 1975) that all the assessments were provisional and this aspect would be taken up at the time of finalisation. In fact the assessments prior to June 1972 were not provisional. Further, postponement of recovery of the dues resulted in financial benefits to the assessee by way of interest charges.

The paragraph was sent to the Ministry of Finance in September 1976 ; reply is awaited (January 1978).

98. *Lack of control and supervision*

A manufacturer of electric lighting bulbs and flourescent lighting tubes removed a part of the manufactured product as damaged goods for destruction without payment of duty. This

destruction was in addition to the destruction of normal wastage in the process of manufacturing and testing. According to the Central Excise Rules, the owner is required to inform the proper officer in writing, the quantity of refused or damaged goods and the date on which he proposed to destroy them. According to the instructions issued on 7th May 1971 by the Central Board of Excise and Customs, supervision of destruction by Central Excise staff is obligatory.

The destruction in this case was carried out daily without any supervision by the Central Excise staff. The number of the bulbs and tubes so destroyed during the year 1972-73 varied between 3.44 *per cent* to 33 *per cent* of the production (net production after normal wastage in the process of manufacturing) for different qualities.

The matter was brought to the notice of the collectorate in July 1974. The Assistant Collector intimated (January 1976) that as the quantum of work involved in counting such a large number of bulbs and tubes was considerable, a central excise officer could ill afford to spend this time in supervising the destruction.

The amount of duty involved in respect of the quantity shown as destroyed during the year 1972-73 alone worked out to Rs. 2,35,082.

The Valuation Cell of the collectorate also pointed out a similar lapse involving a loss of Rs. 2,54,787 in respect of the year 1975-76.

The paragraph was sent to the Ministry of Finance in June 1977 ; reply is awaited (January 1978).

99. *Adoption of incorrect procedure*

Under the Self Removal Procedure, a licensee manufacturing goods falling under tariff items 6 to 11A can clear the products under gate passes or like documents approved by the collectorate indicating therein the quantity cleared under each such document.

However, the duty liability should be determined on the quantities arrived at by dip readings of storage tanks and shown in the daily out-turn reports.

A unit in a collectorate manufacturing mixed xylene and ortho-xylene did not follow the prescribed procedure but paid duty on quantities mentioned in the gate passes. The differences between the quantities shown in the daily out-turn reports based on the storage tank discharges and the total of clearances to buyers in tank lorries under various gate passes in a day were incorrectly shown as storage or handling losses in the monthly R.T. 12 returns submitted to the departmental authorities. Although the collectorate was already aware of the incorrect procedure and had not agreed (May 1974) to a proposal made by the assessee to permit him to follow the incorrect procedure, no action had been taken to insist upon following the correct procedure till the issue was raised by Audit. The collectorate had also not taken action to raise demands regularly for each month for the differential quantities in the monthly returns submitted by the assessee, only four demands for a total of Rs. 17,072 being raised in December 1974 and April 1975. On Audit raising the point, show cause notices for a sum of Rs. 90,869 were issued in January and February 1976. The incorrect procedure was stopped in February 1976.

The paragraph was sent to the Ministry of Finance in August 1977 ; reply is awaited (January 1978).

100. *Compounded levy*

By a notification dated 1st March 1975, Government enhanced the rate of compounded levy on cotton fabrics produced on powerlooms. In a subsequent notification issued on 30th April 1975, the rate of compounded levy was, however, reduced. According to first proviso to sub-rule (i) of rule 96 J of the Central Excise Rules 1944 and Central Board of Excise and Customs instructions dated 24th January 1972, in case of alteration in rate of compounded levy, the compounded rates of duty should be recalculated from the date of alteration on pro-rata basis by adopting a single day as unit of time.

In two ranges, it was noticed that compounded levy on cotton fabrics produced on powerlooms for the period 1st March 1975 to 29th February 1976 was charged at reduced rate applicable from 30th April 1975. Non-adoption of higher rate during the period 1st March 1975 to 29th April 1975 resulted in short levy of Rs. 64,969 (approximately). On this being pointed out in audit (July 1976), the Assistant Collector initiated action to raise demands for differential duty (November 1976) ; further report is awaited.

The paragraph was sent to the Ministry of Finance in June 1977 ; reply is awaited (January 1978).

101. *Iron in any crude form* [*Tariff item* 25]
Steel ingots [*Tariff item* 26]
Iron or steel products (*Tariff item* 26*AA*).

(a) The total excise duty realised on iron, steel ingots and iron or steel products during the year 1976-77 aggregates to Rs. 271.41* crores. This represents 6.56 *per cent* of the total excise revenue for the year.

(b) Steel ingots were first brought under Central Excise levy with effect from 1st April 1934, pig iron from 1st March 1960 and iron or steel products from 24th April 1962. The basis of assessment, which was originally *ad valorem,* has, in two stages, been converted to specific rates.

(c) There are now eight major steel plants in the country—seven in the public sector and one in the private sector. Their aggregate production for the year 1976-77 had been of the order of 7.71 million tonnes of pig iron, 8.66 million tonnes of steel ingots/7.05 million tonnes of iron or steel products.

In addition to the manufacture of the principal products, *viz.*, pig iron, steel ingots and iron or steel materials, the major steel plants also produce a variety of other excisable goods either as by-products or otherwise falling under different tariff items—for example, benzene and benzene products falling under tariff item 6, coal tar falling under tariff item 11 and ammonium sulphate falling under tariff item 14 HH.

*Statistical bulletin (Central Excise) March 1977.

(d) The total excise duty paid by these eight steel plants on all their products during the year 1976-77 was Rs. 246.73 crores.

(e) A review of the Central Excise assessments of these plants for three years, *viz.*, 1973-74, 1974-75 and 1975-76 has shown certain features, which are set out in the succeeding paragraphs.

(i) Under the provisions of the Central Excise Rules 1944, the stock of excisable goods remaining in a factory is required to be weighed, measured, accounted for or otherwise ascertained atleast once in a year in the presence of a proper Central Excise Officer and, if any deficiencies are noticed, the owner is liable to pay the full amount of duty chargeable on such goods and a penalty unless the deficiency is accounted for to the satisfaction of the "proper officer" who according to Board's orders dated 12th April 1971, is the Collector. The Central Excise procedure also visualises that surpluses, if any noticed as a result of stock taking, should be brought on to the Central Excise records, *viz.*, R.G.I. In other words, surplus noticed in respect of one product cannot be set off against the shortage noticed in respect of another product, though both the products fall under the same tariff item.

It has been found that, in respect of seven of these steel plants, the total shortages noticed at the time of annual stock taking during the three years aggregated to 1,08,827 metric tonnes of pig iron, 15,017 metric tonnes of steel ingots and 67,134 metric tonnes of iron or steel products. Departmental adjudication of these shortages, as provided for in the Rules with a view to determining how much of the shortages were justified and how much would attract duty and penalty, has not taken place with the result that unjustifiable shortages continue to escape duty (and penalty) over several years and the Central Excise records of the assessees (R.G.I.) are at variance with the assessees' own production records. It was also noticed that, contrary to the Central Excise procedure, surpluses noticed in respect of some products under tariff item 26AA have been set off against

shortages noticed in respect of some other products under the same tariff item.

The duty effect of these shortages for the three years alone works out to Rs. 321.27 lakhs in respect of six of these plants. It is also noticed that adjudication of these shortages has not taken place right from inception in any of these plants, excepting one. In this one case, adjudication was done for some periods prior to 1971, shortages determined, duty/penalty levied by the Collector but the cases are stated to be under consideration of the Board ; subsequent to 1971, for a period of three years, all the shortages reported have been condoned in full. In respect of another plant, during the period it was in the private sector, a special procedure was in vogue whereby 'clearances' were being adopted as 'production' thereby correspondingly bypassing the need for reconciliation between actual production and stock. Stock taking was done for the first time after the company was taken over by Government in 1974, shortages noticed in 1974 were condoned in full ; in 1975, stock taking was not done in respect of steel products and the shortages noticed in 1976 are pending adjudication.

It has been found that in the case of one plant, a deficiency of 1,863 metric tonnes of calcium ammonium nitrate (tariff item 14 HH) was found during the years 1973-74 and 1975-76 and duty thereon amounting to Rs. 1,42,064 remained unrealised.

The collectorate stated (January 1977) that the difference found in the stock taking was under the process of adjudication.

(ii) According to the provisions in the Central Excise Act and the Rules made thereunder, an account of production, clearances and stock of all excisable products should be maintained by the assessees—whether these excisable products are brought from outside, produced by the assessees or arise internally in the course of manufacture.

Scrap is an important input material in all the steel plants and almost all the requirements of scrap are met out of the internal arisings. Scrap is leviable to excise duty, similar to steel ingots, under tariff item 26.

It is, however, found that no detailed account of the arisings of the scrap, internal consumption, clearances outside and the balance at the end of the year was kept in the form prescribed in the Central Excise Rules (excepting in one plant). It was noticed that detailed Central Excise records were kept only in respect of scrap purchased from outside and scrap cleared for sale. In the absence of the overall account of scrap as mentioned above, no reconciliation of stock balances of scrap could be attempted.

It is also seen that the Board prescribed in October 1966 a detailed special procedure for accounting of scrap arising in one steel plant. This procedure was to be followed for a period of six months in the first instance at the end of which its working was required to be reviewed. No system has been evolved so far for the accounting of scrap in other steel plants.

In the absence of any Central Excise record showing production and consumption of scrap at various stages and the figures, therefore, not being susceptible of correlation, a comparison of the data published in 'Annual Statistics' with the subsidiary accounts maintained by one plant showed that a quantity of 18,996 metric tonnes of scrap was recorded in the former in excess of the consumption recorded in the latter record during the two years 1974-75 and 1975-76. The duty involved on this excess quantity, the utilisation of which could not be accounted for, worked out to Rs. 37.99 lakhs. In respect of another plant, year-wise analysis of scrap produced *vis-a-vis* scrap consumed and sold showed a substantial quantity of scrap (1,60,739 metric tonnes) unaccounted for during the five years 1972—77, which involved a duty liability of Rs. 3.21 crores.

In respect of another plant, where a Central Excise account of scrap was maintained, it was found that a quantity of 21,200 metric tonnes of scrap was short accounted for in Central Excise records during the three years 1973—76, which remains to be reconciled.

(iii) Effective from 1st March 1975 a new item was introduced in the Tariff as tariff item 68—goods not elsewhere

specified. By a notification issued on 1st March 1975, all intermediate goods or component parts of any goods used in the manufacture of finished excisable goods falling under tariff item 68 were exempted from payment of duty. By a notification issued on 30th April 1975, this exemption was extended to other items manufactured and consumed in the factory of the assessee in the production of excisable goods. In other words, goods produced in a factory which could not be classified as intermediate goods or component parts were leviable to duty under tariff item 68, although they were consumed internally, during the period 1st March 1975 to 29th April 1975.

A review of the assessments of the goods falling under tariff item 68 in these eight steel plants has brought out the following features :—

(a) several items were found omitted in the classification list filed by a plant and approved by the proper officer of the central excise department,

(b) even though the classification list was filed by the assessees and approved by the Central Excise Officer, it was noticed that there was delay in raising demands and recovering the duty in some cases.

Even as on date (October 1977), an amount of Rs. 164.14 lakhs is due to be recovered from seven plants on this account.

(f) Some other irregularities noticed during the course of audit are given below :—

(i) By a notification dated 29th October 1966, Government exempted the cuttings of plates, sheets and sleeper bars falling under item 26AA used as splash plates in the manufacture of steel ingots from duty. By a subsequent notification dated 13th May 1972, full exemption from duty was replaced by partial exemption to the extent of duty leviable on steel ingots.

Sleeper bars were used by two plants as splash plates in the manufacture of steel ingots during the period 13th May 1972 to 31st October 1972 without payment of duty, although full exemption from duty was no longer admissible and duty of Rs. 75,893 was leviable thereon.

The Ministry of Finance have stated (July 1977) that, while one assessee had paid the amount of Rs. 17,550, the other assessee has gone in appeal against the demand of Rs. 58,343.

(ii) A factory was manufacturing cast steel billets falling under tariff item 26 AA from old iron and steel scrap with the aid of electric furnace. The billets were rolled and cleared in the form of bars. The scrap generated in the manufacture of bars out of billets to the extent of 618.706 metric tonnes during the period 1st March 1973 to 30th June 1975 was also utilised in the manufacture of billets without payment of appropriate duty.

When the irregularity was pointed out in audit (November 1974 and October 1975), the collectorate replied (January 1977) that clarification had been sought from the Central Board of Excise and Customs whether the internal scrap generated while converting billets into bars and remelted within the factory could be treated as circulating scrap not chargeable to duty and the clarification was awaited. Meanwhile the collectorate raised a demand for Rs. 2,04,173 (November 1975 and October 1976) in respect of 618.706 metric tonnes of scrap treating it as billets short accounted.

When the collectorate did not assess the internal scrap to duty, the assessee should not have been allowed to avail the concession granted in the notification dated 1st March 1973, according to which the duty on iron and steel products falling under tariff item 26 AA is to be reduced by Rs. 50 per metric tonne, if these are manufactured with the aid of electric furnace from old iron or steel melting scrap in combination with fresh unused duty paid steel melting scrap. On this being pointed out, the collectorate raised a demand (October 1976) for Rs. 1,80,163 on 2,059 metric tonnes of bars.

The paragraph was sent to the Ministry of Finance in June 1977 ; reply is awaited (January 1978).

(iii) (a) Rule 53 of the Central Excise Rules 1944 requires that every manufacturer of excisable commodities should maintain a daily stock account (R.G. I.) recording the production, clearance and balance of the excisable goods. Besides this account, statistical records bringing out the figures of production, clearance and balance of various commodities intended essentially for the purpose of its own control over production are also maintained by a steel plant.

A comparison of the statistical records with daily stock account revealed that, during the years 1972-73 and 1973-74, 16,404 metric tonnes of steel castings, hot rolled products and ammonium sulphate were short accounted for in R.G.I. involving a duty liability of Rs. 56.12 lakhs.

Besides, the actual production of slabs (17,21,605 metric tonnes) during 1972-73 and 1973-74 as shown in the statistical reports was omitted to be entered in the daily stock account (R.G. I.) except to the extent of clearance of sale of slabs (3,340 metric tonnes). This rendered the most important Central Excise record (R.G. I.) inaccurate.

The paragraph was sent to the Ministry of Finance in September 1976; reply is awaited (January 1978).

(b) An assessee took a licence on 30th October 1971 for the manufacture of iron or steel products but did not comply with procedural requirements of the Rules in regard to maintenance of the raw material account and daily stock account of manufactured products till the end of December 1971. In the course of audit, it was noticed that the assessee purchased 439.319 metric tonnes of steel ingots, utilised 365.928 metric tonnes thereof in the manufacture of iron or steel products and evaded a duty of Rs. 19,441 on such products till 31st December 1971.

He opened the raw material account with an opening balance of 73.385 metric tonnes of steel ingots and daily stock account of manufactured products from 1st January 1972. Even thereafter, he did not account for 331.606 metric tonnes of steel ingots in his raw material account and consequently the production of mild steel rounds was not entered in the daily stock account and was cleared without issuing any gate passes. The non-accountal of raw material and the finished product in the records resulted in an evasion of duty of Rs. 28,074.

On this being pointed out, the collectorate confirmed and raised demands for Rs. 47,515; recovery is awaited.

The paragraph was sent to the Ministry of Finance in August 1977; reply is awaited (January 1978).

(c) The Central Excise Rules require manufacturers of excisable goods to maintain daily account of important raw materials (Form IV). In case of failure to maintain the account properly with intent to evade payment of duty, the provisions of rule 173 Q are attracted.

It was pointed out by Audit (November 1972) that a manufacturer of iron and steel products accounted for 340.555 metric tonnes of raw material in the raw material account in Form IV against a receipt of 459.540 metric tonnes during the period 8th April 1972 to 21st April 1972 as revealed from the paid bills of transportation. Thus he suppressed receipt of raw material of 118.985 metric tonnes and consequently the production attributable to such raw material.

The enquiry initiated by the Collector on the basis of the report from audit, however, revealed that the assessee had actually suppressed raw material weighing 102.270 metric tonnes. A case of offence of rules and attempted evasion of duty was started against the licensee which resulted in creating a demand of duty of Rs. 8,975 and levy of penalty of Rs. 20,000 (total Rs. 28,975) on the licensee.

The paragraph was sent to the Ministry of Finance in September 1977; reply is awaited (January 1978).

(iv) Under a notification issued in May 1967, iron or steel products, if made from another article falling under the same item on which the appropriate amount of duty of excise or the additional duty has been paid, are exempt from so much of the duty as is equivalent to the duty paid on that article. Steel wires and the steel rods falling under tariff item 26AA have the same rate of duty and, therefore, no duty becomes payable on the wires produced out of duty paid rods. However, on the enhancement of duty, differential duty becomes payable on the steel wires produced out of steel rods on which duty at the pre-revised rate has been paid.

The basic excise duty on the steel rods and steel wires was enhanced from Rs. 125 to Rs. 162.50 per metric tonne from 17th March 1972. Differential duty at the rate of Rs. 56.25 per metric tonne (including the regulatory duty at 50 per cent of the basic excise duty) thus became payable from that date on steel wires produced out of duty paid steel rods which had discharged duty liability only at the pre-revised rate.

A cable manufacturer in a collectorate produced steel wires out of the steel rods which had paid duty at the pre-revised rate of Rs. 125 per metric tonne and cleared them without payment of differential duty leviable thereon. The extent of non-levy during the period 17th March 1972 to 31st October 1972 was Rs. 82,979 approximately. The licence of the factory for manufacture of steel wires had also not been renewed after 1969.

While accepting the objection, the collectorate replied (May 1973) that an offence case was registered against the manufacturer who was licensed from 1st March 1973 and all clearances from that date were allowed only after payment of duty. The demand for differential duty from 17th March 1972 to 28th February 1973 would be issued as soon as the offence registered

against the manufacturer was adjudicated. The manufacturer, however, stopped paying duty from January 1975 pending disposal of the case.

Another factory in the same collectorate was also manufacturing steel wires without licence after 1969 and the extent of non-levy of duty in this case from 17th March 1972 to 31st October 1974 was Rs. 66,879 approximately. When the irregularity was pointed out first in March 1973 and then in December 1974, it was stated (October 1975) by the collectorate that the issue had been referred to the Board for clarification.

While admitting the facts as substantially correct, the Ministry of Finance stated (February 1977) that the conversion of rods into wires falling under the same sub-item (ia) would not amount to manufacture and, therefore, did not attract duty.

The reply is not acceptable as, according to section 2(f) of the Central Excises and Salt Act, manufacture includes any process incidental or ancillary to the completion of a manufactured product. In the instant case, a new and different article has emerged out of the rods having a distinct name, character and use.

(v) By virtue of a notification dated 1st March 1974, flats exceeding five millimetres but not exceeding ten millimetres in thickness are assessable to basic excise duty at Rs. 175 per metric tonne plus 100 *per cent* of the basic duty as auxiliary duty.

A unit in a collectorate manufacturing flats having thickness of not less than 3/16" and not exceeding 1½" and width less than 5" changed the description of the product as flat bars and assessed it to duty under tariff item 26AA(ia) at Rs. 165 per metric tonne of basic excise duty plus auxiliary duty applicable, contrary to the earlier classification and assessment under tariff item 26AA(iii) without the approval of the collectorate. This resulted in short assessment of Rs. 74,318 (Rs. 37,159 basic excise duty plus Rs. 37,159 auxiliary duty) on the clearance of 3,715.900 metric tonnes of the product during the period 1st August 1974

to 16th August 1975. The collectorate issued show cause notice for the recovery (April 1976). Information regarding the realisation of the amount is awaited.

The paragraph was sent to the Ministry of Finance in August 1976; reply is awaited (January 1978).

(vi) Semi-finished steel billets falling under tariff item 26AA(i) are excisable at Rs. 65 per metric tonne. In addition, auxiliary duty is leviable at 100 *per cent* of basic duty. According to notifications dated 1st March 1973 and 1st March 1974, rounds, bars and tapers (dutiable under sub-item (ia) of tariff item 26AA) and flats with thickness exceeding ten millimetres (dutiable under sub-item (iii) of tariff item 26AA) made out of duty paid billets are excisable at 'nil' rate.

A quantity of 5,080.792 metric tonnes of billets manufactured by a unit were cleared during the period April 1974 to March 1976 for home consumption without payment of duty for manufacture of 4,645.516 metric tonnes of bars, rounds and tapers and flats with thickness exceeding ten millimetres. Duty (at Rs. 65 per metric tonne plus auxiliary duty at 100 *per cent* of basic duty) was, however, paid on the clearance of these bars, rounds and tapers and flats, while the classification list approved by the collectorate stipulated payment of duty at 'nil' rate on these goods made out of duty-paid billets in accordance with the notifications dated 1st March 1973 and 1st March 1974. Payment of duty on the end products instead of at the billet stage resulted in non-payment of duty amounting to Rs. 55,832 on the clearances for home consumption of 435.276 metric tonnes of billets. The non-payment of duty was reported to the collectorate in July 1976. Particulars of demands raised and collection thereof are awaited.

The paragraph was sent to the Ministry of Finance in November 1977; reply is awaited (January 1978).

(vii) A plant manufacturing blooms, billets, bars and rods falling under tariff item 26AA from duty paid steel ingots falling under item 26 paid duty on the products after availing of the

proforma credit procedure under rule 56A. The credit of duty paid on ingots was utilised towards payment of duty on the finished iron or steel products. Owing to increase in effective rates of duty from 1st March 1973, the finished steel products attracted ingot duty at Rs. 100 per metric tonne plus 75 *per cent* thereof as auxiliary duty and product duty at Rs. 65 per metric tonne plus 75 *per cent* thereof as auxiliary duty. The plant, however, discharged the duty liability on the finished products by paying ingot duty at the old rate of Rs. 97.50 per metric tonne plus 50 *per cent* thereof as auxiliary duty and the product duty at the current rate of Rs. 65 per metric tonne plus 75 *per cent* thereof as auxiliary duty. The plant thus paid duty at the rate aggregating to Rs. 260 per metric tonne on finishing products instead of at the correct aggregate rate of Rs. 288.75 per metric tonne.

On this being pointed out by Audit, the under-assessment of Rs. 43,491 from 23rd March 1973 to 31st August 1973 was realised.

The Ministry of Finance have confirmed the facts (October 1976).

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

The total amount of revenue forgone by Government owing to non-issue of demands before the expiry of the prescribed time limit in respect of assessments during 1976-77 was Rs. 41,04,771 as detailed below:—

	Number of cases	Loss of revenue
		Rs.
(a) demands not issued due to operation of time bar	1	141
(b) demands withdrawn due to operation of time bar	23	41,04,630

*Figures (provisional) intimated by the Ministry of Finance in January 1978.

103. *Arrears of Union Excise duties**

The total amount of demands outstanding without recovery on 31st March 1977 in respect of Union Excise duties as reported by the Ministry of Finance was Rs. 6,966.55 lakhs as per details below:—

Commodity	Amount (In lakhs of rupees)
Unmanufactured tobacco	367.36
Motor spirit including raw naphtha	621.96
Refined diesel oil	20.96
Paper	62.09
Rayon yarn	115.67
Cotton fabrics	211.68
Iron or steel products	170.90
Tin plates	18.88
Refrigerating and air conditioning machinery	112.93
All other items	5,264.12
Total	6,966.55

104. *Remissions and abandonment of claims to revenue†*

The total amount remitted, abandoned or written off during 1976-77 was stated by the Ministry of Finance to be Rs. 40,20,756. The reasons for remissions and writes off were stated to be as follows :—

I. Remmissions of revenue due to loss by :

	Number of cases	Amount Rs.
(a) Fire	56	4,49,008
(b) Flood	1	572
(c) Theft	4	755
(d) Other reasons	23	30,82,353

II. Abandoned or written off on account of:

(a) Assessees having died leaving behind no assets	226	28,231
(b) Assessees being untraceable	273	15,942
(c) Assessees having left India	1	420
(d) Assessees being alive but incapable of payment of duty	897	4,38,897
(e) Other reasons	13	4,578

*Figures (provisional) intimated by the Ministry of Finance in January 1978.

†Figures (provisional) intimated by the Ministry of Finance in January 1978.

105. *Frauds and evasions**

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

1.	Number of offences under the Central Excise Law prosecuted in courts	96
2.	Number of cases resulting in convictions	25
		Rs.
3.	Value of goods seized including value of transportation	6,29,02,111
4.	Value of goods confiscated	1,96,15,603
5.	Value of penalties imposed	3,80,68,619
6.	Amount of duty assessed to be paid in respect of goods confiscated	67,71,132
7.	Amount of fine adjudged in lieu of confiscation	23,04,804
8.	Amount settled in composition	89,015
9.	Value of goods destroyed after confiscation	19,883
10.	Value of goods sold after confiscation	1,40,690

*Figures furnished by the Ministry of Finance and stated to be provisional (January 1978).

CHAPTER III

OTHER REVENUE RECEIPTS

MINISTRY OF HOME AFFAIRS

RECEIPTS OF THE UNION TERRITORY OF DELHI

SECTION 'A'

GENERAL

106. *Variations between the Budget estimates and actuals*

The figures of Budget estimates and actuals for the three years 1974-75 to 1976-77 in respect of some of the principal sources of revenue receipts are given below to show the variation and its magnitude in each case :

Principal source of revenue	Year	Budget estimates	Actuals	Variation (+) increase (—) decrease	Percentage of variation
		(In crores of rupees)			
Sales Tax . .	1974-75	44.07	52.43	(+)8.36	18.96
	1975-76	65.00	73.00	(+)8.00	12.31
	1976-77	89.85	87.55	(—)2.30	2.56
State Excise . .	1974-75	10.93	11.24	(+)0.31	2.83
	1975-76	12.58	13.52	(+)0.94	7.47
	1976-77	17.22	18.49	(+)1.27	7.37
Taxes on Vehicles .	1974-75	3.57	3.55	(—)0.02	0.56
	1975-76	3.98	3.87	(—)0.11	2.76
	1976-77	4.42	4.02	(—)0.40	9.05
Stamps and Registration Fees .	1974-75	3.67	3.77	(+)0.10	2.72
	1975-76	3.86	3.52	(—)0.34	8.81
	1976-77	3.59	4.04	(+)0.45	12.53
Entertainment Tax .	1974-75	4.20	4.12	(—)0.08	1.90
	1975-76	4.24	4.86	(+)0.62	14.62
	1976-77	4.61	4.46	(—)0.15	3.25

(Figures are as furnished by the departments)

107. *Arrears in assessments (Sales Tax)*

On 31st March 1977, the number of cases pending assessment both under the Local and Central Sales Tax Acts was 2,14,781 as against 1,48,616 cases at the end of 1974-75 and 1,78,568 cases at the end of 1975-76. The position regarding pendency of assessment for the 3 years ending March 1977 is indicated below :—

Year	As on 31-3-1975			As on 31-3-1976			As on 31-3-1977		
	Local	Central	Total	Local	Central	Total	Local	Central	Total
1971-72 . . .	13,551	11,137	24,688	..	..	..	..	..	..
1972-73 . . .	26,777	22,453	49,230	17,732	15,627	33,359	..	..	..
1973-74 . . .	39,533	35,165	74,698	31,552	27,675	59,227	23,135	20,389	43,524
1974-75 . . .	..	..	..	46,248	39,734	85,982	39,111	34,759	73,870
1975-76 . . .	..	..	..	..	..	..	51,961	45,426	97,387
Total . . .	79,861	68,755	1,48,616	95,532	83,036	1,78,568	1,14,207	1,00,574	2,14.781

The number of assessments completed out of arrear and current cases during the three years ending March 1977 is given below :—

Year	Total number of assessments for disposal			Total number of assessments completed			Percentage of disposal	Total number of assessments pending at the end of the year
	Arrear	Current	Total	Arrear	Current	Total		
1974-75								
Local	64,909	45,994	1,10,903	26,816	4,226	31,042	27.99	79,861
Central	56,055	38,343	94,398	22,147	3,496	25,643	27.16	68,755
								1,48,616
1975-76								
Local	79,861	48,454	1,28,315	30,522	2,261	32,783	25.54	95,532
Central	68,755	41,002	1,09,757	25,067	1,654	26,721	24.34	83,036
								1,78,568
1976-77								
Local	95,532	57,574	1,53,106	37,318	1,581	38,899	25.40	1,14,207
Central	83,036	48,434	1,31,470	29,935	961	30,896	23.50	1,00,574
								2,14,781

(Figures are as furnished by the department)

108. *Frauds and evasions (Sales Tax) during 1st April 1976 to 31st March 1977*

	Non-registration of dealers	Concealment/evasion by registered dealers	Total
(a) Number of cases pending on 31st March 1976	3,770	23	3,793
(b) Number of cases detected during 1976-77	1,932	15	1,947
Total	5,702	38	5,740
(c) Number of cases in which assessments were completed			
(i) Out of cases detected prior to 1st April 1976	1,472	13	1,485
(ii) Out of cases detected during 1st April 1976 to 31st March 1977	490	Nil	490
Total	1,962	13	1,975
(d) Amount of concealed turnover detected and tax demand raised in cases mentioned at (c) above			
Concealed turnover (Rs. in lakhs)	612.04	18.00	630.04
Tax demand raised (Rs. in lakhs)	15.59	0.98	16.57
(e) Number of cases pending on 31st March 1977	3,740	25	3,765
(f) Number of cases in which			
(i) Penalties were imposed in lieu of prosecution	113	Nil	113
(ii) Prosecutions were launched for non-registration	Nil	Nil	Nil
(iii) Offences were compounded	5	Nil	5

(Figures are as furnished by the department)

109. *Searches and seizures (Sales Tax) during 1st April 1976 to 31st March 1977*

(a) Number of cases pending on 31st March 1976	1,140
(b) Number of cases detected during 1976-77	564
Total	1,704
(c) Number of cases in which assessments were completed—	
(i) Out of cases detected prior to 1st April 1976	233
(ii) Out of cases detected during 1976-77	12
Total	245
(d) Number of cases pending on 31st March 1977	1,459
(e) Number of cases in which prosecutions were launched or offences were compounded	Nil
(i) Amount of concealed turnover detected in cases mentioned at (c) above	Rs. 16,58.57 lakhs
(ii) Demand raised for tax in cases mentioned at (c) above	Rs. 74.61 lakhs

110. *Appeals pending on 31st March 1977*

The extent of pending appeals/review applications and revision petitions as on 31st March 1977 under Sales Tax is shown below:—

(a) Number of appeals/revision petitions/review applications pending on 31st March 1976	4,366
(b) Number of appeals/revision petitions/review applications instituted during the year 1976-77	6,357
Total	10,723

The number of cases in which tax demands were reduced or which were remanded for fresh assessment during the year 1976-77 is indicated below:—

Number of cases in which demands were reduced	1,585
Number of cases remanded	1,869
Number of cases rejected	3,249
Number of cases disposed of	6,703
Number of appeals/revision petitions/review applications pending on 31st March 1977	4,020

(Figures are as furnished by the department)

The yearwise break-up of the pending appeals/revision petitions/review applications was not readily available with the department (January 1978).

111. *Recovery certificates pending with the Sales Tax Department as on 31st March 1977*

The position of recovery certificates pending as on 31st March 1977 with the Sales Tax Department is indicated below:—

	Number of cases	Amount (In lakhs of rupees)
(i) Number of cases pending as on 1st April 1976 .	1,510	121.57
(ii) Number of cases received during the period 1st April 1976 to 31st March 1977 . . .	11,002	492.77
(iii) Number of cases returned after recovery of tax during 1976-77	7,056	158.60
(iv) Number of cases returned without effecting recovery of tax for various reasons . . .	3,677	377.71
(v) Total number of cases pending on 31st March 1977	1,779	78.03

Out of 1,779 cases pending recovery on 31st March 1977, in 147 cases, the amount involved was Rs. 10,000 or more in each case. The yearwise break-up of such cases is given below:—

Year	Number of cases
1972-73	4
1973-74	18
1974-75	21
1975-76	32
1976-77	72
Total	147

(Figures are as furnished by the department)

SECTION 'B'

SALES TAX

112. *Incorrect determination of sales in the course of export*

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

A sale of goods shall be deemed to take place in the course of export of goods out of the territory of India only if the sale either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontier of India. Thus, a transaction of sale which is preliminary to export of the commodity sold may be regarded as a sale for export. By virtue of an amendment to the Central Sales Tax Act, 1956, effective from 1st April 1976, the last sale or purchase of any goods preceding the sale or purchase occasioning the export of these goods out of the territory of India, shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

In the course of audit it was noticed (August 1976) that in the assessment of two dealers, sales of footwear amounting to Rs. 50,24,812 in the aggregate during 1969-70 to 1972-73 to the State Trading Corporation of India were exempted from tax on the ground that these sales were in the course of export out of the territory of India. But these sales were not in the course of export of the goods out of the territory of India as (i) the sales were not the immediate cause of export and (ii) there were two independent sales—the first between the dealers and the State Trading Corporation of India and the second between the State Trading Corporation and the foreign buyers, and prior to the amendment of the Act only sales to

the foreign buyers were exempted. The sales made by the dealers not being in the course of export were not eligible for exemption. This incorrect exemption resulted in under-assessment of tax of Rs. 2,52,092.

On this being pointed out in audit (August 1976), the department revised the assessment orders of the dealers *suo motu* in March 1977 and May 1977 and raised additional demand of Rs. 2,52,092 in the aggregate. Particulars of collection are awaited (January 1978).

The Ministry accepted the under-assessment (July 1977).

113. *Under-assessment of Central sales tax due to incorrect exemption*

Under the Central Sales Tax Act, 1956, where a sale in the course of inter-State trade and commerce occasions the movement of goods from one State to another and is effected by a transfer of document of title to such goods during their movement from one State to another, any subsequent sale to a registered dealer is not subjected to sales tax provided the dealer effecting such sales furnishes the prescribed certificates duly filled in and signed by the registered dealers from whom the goods were purchased. This concession was not admissible to Government departments prior to the amendment effected on 1st April 1973.

(i) In the course of audit it was noticed (December 1976) that exemption from sales tax was granted on subsequent sales worth Rs. 8,93,454 made by a dealer in the year 1971-72 to various Government departments which were not registered dealers. This resulted in under-assessment of tax Rs. 26,803.

On this being pointed out in audit (December 1976), the department *suo motu* revised the assessment (January 1977) and collected additional tax of Rs. 26,803 (March 1977).

The Ministry, while accepting the objection, confirmed (April 1977) the collection of the additional tax.

(ii) In the course of audit of a Sales Tax Circle, it was noticed (July 1976) that exemption from sales tax was granted on subsequent sales of cotton yarn worth Rs. 25,70,900 made to registered dealers by transfer of documents of the title to the goods during the course of their movement from one State to another in 1967-68 to 1971-72 even though the requisite certificates had not been furnished. These sales, therefore, did not qualify for exemption and resulted in under-assessment of tax to the extent of Rs. 25,709.

On this being pointed out in audit (July 1976), the department *suo motu* revised the assessment orders in August 1977 and created additional tax demand of Rs. 25,709.

The matter was reported to the Ministry in March 1977. The Ministry, while confirming the raising of additional demand of Rs. 25,709, stated (April 1977) that the necessary recovery certificate had also been issued.

114. *Incorrect application of rate of tax*

By a notification issued in August 1957 under the Central Sales Tax Act, 1956, the sales made by a dealer having his place of business in the Union Territory of Delhi in the course of inter-State trade or commerce are subjected to tax at the rate of one per cent provided these sales are made to registered dealers in other States and the goods are re-exported in the same form and identity in which these were imported in the Union Territory of Delhi.

In the course of audit it was noticed (May 1976) that inter-State sales of Rs. 7,32,398 made during 1971-72 by a dealer to various State Governments which were not registered dealers were assessed to tax at the concessional rate of 1 *per cent* instead of 3 *per cent*. This resulted in under-assessment of tax of Rs. 14,648.

On this being pointed out in audit (May 1976), the department revised the assessment order and created additional demand of Rs. 14,648 in January 1977. The dealer had deposited Rs. 8,300. Particulars of recovery of the balance are awaited (January 1978).

The Ministry, while accepting the objection, confirmed (February 1977) the creation of the additional demand of Rs. 14,648.

115. *Incorrect determination of taxable turnover*

In the course of audit it was noticed (July 1977) that the assessing authority incorrectly computed the taxable turnover of a dealer for the year 1972-73 as Rs. 18,768 instead of Rs. 1,87,680 under the Local Sales Tax Law. Thus, sales of Rs. 1,68,912 escaped assessment resulting in under-assessment of tax of Rs. 17,229 (including surcharge of Rs. 338). On this being pointed out in audit (July 1977), the department rectified the assessment and created additional tax demand of Rs. 17,229 (July 1977). The demand was collected in full in August 1977.

The matter was reported to the Ministry in July 1977. The Ministry accepted the under-assessment (September 1977).

116. *Turnover escaping assessment*

In the registration certificate of a dealer in electrical goods, two new items namely P.V.C. compounds and resin were added with effect from 10th March 1971. The assessments of the dealer for the year 1971-72 and 1972-73 were made *ex parte* in December 1974 and the gross turnover was determined at Rs. 90,000 in the aggregate. On cross verification it was, however, noticed in audit (October 1975) that the dealer had made purchases of P.V.C. compounds and resin during these two years to the extent of Rs. 2,29,370 for resale. But this fact was not considered by the assessing officer while computing the turnover of the dealer. Consequently, sale of these articles escaped assessment.

On this being pointed out in audit (October 1975), the department *suo motu* revised the assessment orders and created additional tax demand of Rs. 13,189 in November 1976.

The matter was reported to the Ministry in May 1977. The Ministry, while accepting the facts of the case, stated (June 1977) that demand notice for the additional demand of Rs. 13,189 could not be served as the registration certificate of the dealer was cancelled with effect from 14th June 1973 on account of closure of business and the necessary recovery certificate was under issue. Further developments are awaited (January 1978).

117. *Concealment of taxable turnover*

In the course of audit of one Sales Tax Ward it was noticed (September 1976) that sales made by a registered dealer to another registered dealer amounting to Rs. 2,11,252 during 1971-72 were exempted as sales to registered dealer for resale under the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi.

On cross verification it was, however, noticed in audit (September 1976) that the purchasing dealer did not account for the goods so purchased which resulted in concealment of sales worth Rs. 2,11,252 and under-assessment of tax of Rs. 10,774 (sales tax Rs. 10,563 and surcharge of Rs. 211).

On this being pointed out in audit (September 1976), the assessing authority re-assessed the purchasing dealer and created additional tax demand of Rs. 10,774 (January 1977). Particulars of collection are awaited (January 1978).

The matter was reported to the Ministry in August 1977. The Ministry, while accepting the facts of the case, stated (November 1977) that the dealer had deposited Rs. 7,000 and for the balance, the recovery certificate had since been issued.

118. *Acceptance of invalid declarations and incorrect exemption*

Under the Bengal Finance (Sales Tax) Act, 1941, as applicable to the Union Territory of Delhi (upto 20th October 1975), the sale made by a registered dealer was exempt from sales tax provided a declaration in the prescribed form was obtained by the selling dealer from the purchasing dealer and was produced to the assessing authority in support of his claim for exemption. Sales to the Ministry of Defence or its attached and subordinate offices were also exempt from tax under the Act.

(i) In the course of audit it was, however, noticed (April 1977) that a registered dealer was allowed exemption from payment of tax on account of sale to another registered dealer amounting to Rs. 1,16,258 during 1972-73 though the purchasing dealer was not registered with the Sales Tax Department at the time of purchase. This resulted in under-assessment of tax to the extent of Rs. 11,627.

On this being pointed out in audit (April 1977), the department revised the assessment and created additional demand of Rs. 11,627 (May 1977).

The matter was reported to the Ministry in July 1977. The Ministry, while accepting the objection, stated (September 1977) that as the amount had not been deposited by the dealer, recovery certificate had been issued.

(ii) In the course of audit it was noticed (September 1976) that in another case a registered dealer was exempted from tax in the year 1971-72 in respect of sale of goods of Rs. 2,55,556 to another dealer on the basis of his declarations in the prescribed form even though the purchasing dealer was not registered at the time of purchase. Similarly, sale of goods of Rs. 63,027 in 1971-72 by the same dealer to the Military Secretary to the President of India was exempted from tax owing to incorrect treatment of the sale as one to the Ministry of Defence.

On this being pointed out in audit (September 1976), the department rectified the assessment order and created additional tax demand of Rs. 31,858 (May 1977). The amount had been recovered by adjustment against the refund due to the dealer.

The matter was reported to the Ministry in July 1977. The Ministry accepted the under-assessment (September 1977).

119. *Acceptance of affidavit without verification*

An assessing authority finalised the assessment of a dealer for the year 1972-73 on the basis of an affidavit filed by the dealer to the effect that it had neither purchased tin containers or tin sheets tax-free on the strength of its registration certificate nor transferred these goods to its tin factory at Ghaziabad.

On cross verification, it was noticed in audit (January 1977) that the dealer had purchased tin sheets worth Rs. 2,64,009 during 1972-73 without payment of tax and had transferred these to Ghaziabad. The acceptance of the affidavit filed by the dealer without further verification resulted in under-assessment of tax of Rs. 13,464.

On this being pointed out in audit (January 1977), the department revised the assessment order and created additional demand of Rs. 13,464 (July 1977). Report regarding recovery is awaited (January 1978).

The matter was reported to the Ministry in November 1977. The Ministry, while accepting the objection, stated (December 1977) that recovery certificate was issued in November 1977 to collect the amount as arrears of land revenue.

120. *Non-levy of purchase tax*

Under the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi, a registered dealer could purchase goods free of tax, if such goods were meant for resale

by him or for use by him as raw material in the manufacture in the Union Territory of Delhi of goods for sale. In case the goods thus purchased were used for purposes other than those for which these were purchased, tax was payable on the purchase price of the goods.

(i) In the course of audit it was noticed (February 1976), that raw materials worth Rs. 13,67,647 purchased by a dealer during 1970-71 free of tax were transferred to its factory at Gurgaon. For breach of recitals of the declaration, the dealer was liable to pay tax on the purchase price of the goods, *viz.*, Rs. 13,67,547. But the department exempted (November 1974) these goods from taxation. This resulted in under-assessment of tax of Rs. 68,377.

On this being pointed out in audit (February 1976), the department revised the assessment order *suo motu* (April 1977) and created additional tax demand of Rs. 68,377. The department, however, stated (August 1977) that since the demand related to the year 1970-71 steps were being taken to waive the recovery of the amount.

The matter was reported to the Ministry in October 1977. The Ministry confirmed the under-assessment (December 1977).

(ii) Another dealer was granted exemption from payment of tax for the year 1972-73 in respect of transfer of mustard oil amounting to Rs. 25.75 lakhs outside Delhi for sale on consignment basis. As the mustard oil was purchased tax-free on the strength of the local registration certificate, the exemption allowed by the department was not in order and resulted in under-assessment of tax of Rs. 1,31,320.

On this being pointed out in audit (May 1977), the department revised the assessment *suo motu* and raised additional demand of Rs. 1,31,320 (September 1977). Particulars of recovery are awaited (January 1978).

The matter was reported to the Ministry in November 1977. The under-assessment was accepted by the Ministry (December 1977).

(iii) In yet another case, it was noticed (January 1977) that a dealer transferred goods of Rs. 60,493 and Rs. 4,16,635, which were purchased tax-free on the strength of his registration certificate, outside Delhi during the year 1971-72 and 1972-73, respectively. The value of the goods so transferred was erroneously deducted from his gross turnover by the department thereby resulting in under-assessment of tax of Rs. 24,332.

On this being pointed out in audit (January 1977), the department revised the assessment orders *suo motu* and created additional demand of Rs. 24,332 including surcharge in June 1977. Particulars of recovery are awaited (January 1978).

The under-assessment was accepted by the Ministry (November 1977).

121. *Turnover escaping purchase tax*

As already stated in paragraph 120 above, in case of tax-free purchase of goods, if such goods were used for a purpose other than those for which these were purchased, the purchase price of the goods was to be included in the taxable turnover of the dealer and he became liable to pay tax on it.

In the course of audit it was noticed (May 1975) that raw materials worth Rs. 1,77,78,185 purchased by a dealer free of tax during 1971-72 on the strength of local registration certificate were transferred to its head office at Mansurpur (U.P.). Consequently, tax should have been levied on this value of the transferred material. But no such tax was levied. This resulted in under-assessment of tax of Rs. 8,88,909.

On this being pointed out in audit (May 1975), the department *suo motu* revised the assessment order and raised

additional demand of Rs. 8,88,909. Report regarding recovery is awaited (January 1978).

The matter was reported to the Ministry in November 1977. The Ministry, while accepting the objection, stated (December 1977) that recovery certificate had been issued to collect the amount as arrears of land revenue.

122. *Sales under contracts of supply and fixing of the electrical goods treated as works contracts*

While assessing a dealer under the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi, the assessing authority exempted certain receipts realised by him in consideration of his contracts of supply and fixing of the electrical goods in buildings during the year 1969-70 on the ground that the contracts were indivisible. The contracts were, however, composite contracts for supply of goods (*i.e.*, electrical goods and fittings) and for work and labour (*i.e.*, fixing the electrical goods in buildings) and the major part of the consideration received by the dealer represented the cost of the goods supplied by him. The contracts in question were primarily for supply of materials at a price agreed to between the parties and the work or service rendered was incidental to the execution of the contracts of supply. Thus, the exemption was not in order and resulted in under-assessment of tax.

When this was pointed out in audit (November 1974), the department *suo motu* revised the assessment orders for the years 1968-69 and 1969-70 and created (June 1977) additional demand of Rs. 3,75,384. Particulars of recovery are awaited (January 1978).

The Ministry accepted the objection (September 1977).

123. *Non-levy of penalty*

Under the Bengal Finance (Sales Tax) Act, 1941, as applicable to the Union Territory of Delhi (upto 20th October

1975), a registered dealer was authorised to purchase such goods as were specified in his registration certificate free of tax on production of the prescribed declarations.

In the course of audit it was noticed (August 1975) that a dealer who was authorised to purchase motor parts only was also dealing in tractor parts which he purchased tax-free during 1966-67 to 1972-73. As this item was not covered by the dealer's registration certificate, he was not authorised to purchase tractor parts free of tax. But the assessing authority omitted to invoke the penal provisions against the dealer.

On this being pointed out in audit (August 1975), the department levied penalty of Rs. 13,000 in November 1976.

The matter was reported to the Ministry in May 1977. The Ministry stated (June 1977) that recovery certificate had been issued for Rs. 13,000.

SECTION 'C'

STAMP DUTIES AND REGISTRATION FEES

124. *Short levy of stamp duty due to incorrect classification*

A person executed a trust deed on 13th June 1973 on a stamp paper of Rs. 30 transferring 6,000 equity shares in a limited company, to the trustees for the benefit of the members of the family of his deceased elder brother. The market value of those shares as on the date of execution of the deed was Rs. 5,10,000. As the creation of the trust in this case was for the benefit of the family members and not for any charitable purposes, the document was subject to levy of stamp duty of Rs. 5,100 at 1 *per cent* of the aforesaid market value as settlement deed under item 58 of schedule I-A to the Indian Stamp Act, 1899, and not under item 64 *ibid.* The document was thus understamped by Rs. 5,070.

On this being pointed out in audit (June 1976), the department stated that at the request of the executant the case was

compounded by the Chief Controlling Revenue Authority in January 1977 and the compounding fee of Rs. 5,500 was deposited by the executant in February 1977.

The Ministry accepted the objection (October 1977).

125. *Short levy of Stamp duty on 'Power of Attorney'*

Under the Indian Stamp Act, 1899 (as applicable to the Union Territory of Delhi), a 'Power of Attorney' when given for consideration and authorising the attorney to sell any immovable property is liable to stamp duty at the rate of 3 *per cent* of the amount of consideration received by the executant. A general 'Power of Attorney' when given without consideration is chargeable with a fixed stamp duty of Rs. 10 only.

In the course of audit it was noticed that in 48 cases the executants executed instruments of 'Power of Attorney' authorising the attorneys to sell immovable property, on non-judicial stamp paper of Rs. 10 each. The executants also received some amounts of money from the persons in whose favour instruments of general 'Power of Attorney' were executed. The consideration of the money thus received by them as per their acknowledgements was presented for registration simultaneously with the 'Power of Attorney'. The executants, however, did not mention this fact of receipt of consideration in the instrument of 'Power of Attorney'. The total amount of stamp duty thus evaded in 48 cases in the four Sub-Registrars' offices in Delhi pertaining to the years 1972-73 to 1974-75 worked out to Rs. 24,780.

On this being pointed out in audit, the department stated (November 1977) that the offences in 33 cases had been compounded subject to the payment of composition fee of Rs. 13,195 against which Rs. 9,200 had since been recovered in 23 cases and that the proceedings in the remaining 15 cases were in progress. Further developments are awaited (January 1978).

The matter was reported to the Ministry in September 1977. The Ministry accepted the short levy (November 1977).

(V. GAURI SHANKER)
Director of Receipt Audit.

New Delhi,
The 14th March, 1978.

Countersigned

(A. BAKSI)
Comptroller and Auditor General of India.

New Delhi,
The 14th March, 1978.

PAG. 68. I. 76-77
1,800

Price : Inland Rs. 12.00
Foreign £ 1.40 or $ 4.32

PRINTED BY THE MANAGER, GOVT. OF INDIA PRESS, RING ROAD, NEW DELHI-110064 AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI-110054, 1978

आह्वानांक 336.54
(Call No.) Au2SR

अवाप्ति सं०
(Accn. No.)
129457

लेखक
Author. India ... Government .....

शीर्षक
Title Report of the Comptroller and auditor general of India. Vol I ...

निकासी तिथि Issued on	लेने वाले के हस्ताक्षर Borrower's Signature	वापसी तिथि Returned on