REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

FOR THE YEAR 1984-85

UNION GOVERNMENT (CIVIL)

REVENUE RECEIPTS

VOLUME I

INDIRECT TAXES

ERRATA

Page	Para Number		Line Number	For	Read
(iv)	2.57		19 from top	incentives	incentive
(iv)	2.1 annexures		5 from bottom	outstanding objections	outstanding audit objections
7	1.15 (iv)		9 from top	by	in
9	1.19		28 from top	was	is
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10	1.20		8 from top	repoprt	report
10	1.22		11 from top	on	of
11	1.23 (i)		First line	duat	duty
12	1.24 (ii)		7 from top	The	This
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16	1.27 (vi)		4 from top	nder	under
17	1.30 (i)		25 from top	spepcific	specific
17	1.30 (i)		11 from bottom	concession	concessional
19	1.31 (ii)		11 from top	leviabale	leviable
21	1.35		27 from top	resulted	resulted in
25	1.42		first line	analysis	analyses
25	1.43 (i)		Between 8 and 9 from bottom	"pro Sub-serial number is alloted to each lass or"	produced or manufactured in India. The class or
26	1.43 (ii)		19 from bottom	The Ministry of Finance stated that (November 1985)	The Ministry of Finance stated (November 1985)
28	1.46 (v)		11 from bottom	repected	rejected
36	1.57		18 from bottom	73.05/05	73.03/05
37	1.58		17 from bottom	pendnig	pending
44	Annexure 1.2		Against 1(c)	Molluses	Molluscs
48	Annexure 1.5		B-Bombay	791.22	791.92
50	Annexure 1.7		(a) Delhi	0.169	0.16
54	2.01 (vi)	1	19 from top in Column 5 of the table	.62	6.62
54	2.04 (i)	2	18 from bottom in column 1 of the table	•	1.
56	2.08 (ii)	2	11 and 12 from bottom	Institued	Instituted
58	2.10	1	17 from top in column 2 of the table	manufactures	manufacturers
58	2.11	1	3 from bottom	duty of	duty on
60	2.12 (vi)	2	20 from top	1985,	1985)
61	2.12 (vii)	1	4 from top	in	In
63	2.13 (iv)	2	8 from top	unrought	Unwrought
64	2.14 (i)	1	20 from top	specified	specialised
65	2.14 (i)(e)	1	8 from top	dutu	duty
66	2.14 (iv)(a)	1	24 from top	Rs. 49 lakhs	Rs. 41.49 lakhs
66	2.14 (iv)(a)	1	25 from top	Unity.	Unit.
67	2.15 (ii)(a)	2	5 from bottom	18.1(ii)	18.I(ii)
71	2.16 (ii)(b)	1	2 from bottom	bonzene	benzene
72	2.17	2	12 from bottom	cansideration	consideration
72	2.17	2	11 from bottom	Excise	Excises
73	2.17 (i)	1	13 from top	de ermining	determining
73	2.17 (i)(c)	2	7 from top	on ward	outward
73	2.17 (i)(c)	2	11-12 from top	Ocober	October
73	2.17 (i)(d)	2	21 from bottom	Addition	Adjudication
73	2.17 (ii)	2	8 from bottom	Charges	Charged
74	2.17 (iv)	2	15 from top	manufactinring	manufacturing
83	2.24 (ii)	2	27 from top	agents	agent's
84	2.25	1	18 from top	A	As
86	2.26 (iv)	2	20 from bottom	cause-cun	cause-cum
87	2.28	1	7 (Heading) from bottom	fully vacued	fully valued
89	Heading	—	—	MISCLASSIFICATION	SHORT LEVY DUE TO MISCLASSIFICATION
90	2.30 (ii)	2	12 from top	invite dthe	invited the
91	2.31 (i)	1	5 from top	texturing	texturising
92	2.33 (i)	2	6 from bottom	waster	waste
96	2.37 (ii)	2	22 from bottom	(ii) Part	(ii) Parts

Page	Para No.	Column No	Line No.	For	Read
96	2.37 (ii)(a)	2	9 from bottom	item 29A	item 29A(3),
97	2.37 (iii)	1	7 from bottom	screws, or	screws, of
97	2.37 (iii)	2	1 from top	posses	possess
98	2.37 (iii)(c)	1	21 from top	omit the following "Failure to classify the goods correctly under tariff	
99	2.38 (i)	1	24 from top	duirng	during
101	2.38 (vi)	1	16 from bottom	tari ffiteen	tariff item
101	2.39 (i)	2	19 from bottom	crore units	crores units
102	2.39 (ii)	1	5 from top	furnance	furnace
105	2.40 (iv)	1	19 from bottom	Accordinglly	Accordingly
106	2.41 (ii)	1	3 from bottom	as	was
107	2.42 (i)	2	25 from top	13 May 1980 'flats'	1 April 1977 cli-
108	2.42 (ii)	1	8 from top	anexed	annexed
108	2.42 (ii)	1	19 from top	dextrose (in injection iv) and diloxanide	Metromidazole, were allowed to be cleared
108	2.43 (b)	2	7 from bottom	alowed	allowed
110	2.44 (ii)	2	19 from top	traiff	tariff
115	2.48 (ii)	1	10 from top	lieence	licencee
115	2.48 (ii)	1	11 from top	Case	Cases
115	Heading	1	21 from bottom	IRRREGULAR	IRREGULAR
115	2.49	1	10 from bottom	manufacure	manufacture
116	2.51 (i)	2	17 from bottom	premitted	permitted
117	2.51 (ii)	1	17 from top	November	(November)
117	2.52	1	14-15 from bottom	manufacturned	manufactured
118	2.54	1	21 from bottom	ben	been
119	2.57	2	13 from bottom	ones	once
119	2.57	2	7 from bottom	effecive	effective
120	2.57	1	5 from top	Salt Act,	Salt Act, 1944
124	2.62 (iv)	1	8 from top	notifieation	notification
125	2.64	1	Add after 18th line from top as below :— possible legal remedy to a situation arising out of the		
127	Annexure 2.1		5 from bottom in last column of the table.	1.25	1.26
129	Chapter-III		7 from top	Legislature	a Legislature

REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

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CHAPTER I — CUSTOMS RECEIPTS

PREFATORY REMARKS

The Audit Report on Revenue Receipts (Civil) of the Union Government for the year 1984-85 is presented in two volumes, one relating to Indirect Taxes and the other relating to Direct Taxes.

In this volume the results of audit of Indirect Taxes are set out. The report is arranged in the following order.

Chapter 1—refers to trends in customs revenue receipts, short levies of Customs duties and other points of interest noticed in audit.

Chapter 2—likewise refers to revenue trends in respect of Union Excise duties and results of audit thereof.

Chapter 3—refers to volume of receipts of Union Territories without Legislatures and results of test check of the records of the Revenue departments of the Union Territory of Delhi are included in Part II of the Audit Report (Civil) of the Union Government.

VOLUME I

CHAPTER I

CUSTOMS RECEIPTS

1.01 The net receipts from Customs duty during the year 1984-85, after deducting refunds and drawback paid, alongside the budget estimates and figures for the preceding year 1983-84 are given below :

Customs Receipts from	Receipts 1983-84	Receipts 1984-85	Budget Estimates for 1984-85	Revised Estimates for 1984-85
		(In crores of rupees)		
Imports*	5656.64	7103.13	7145.01	7157.58
Exports	67.94	69.66	79.68	82.21
Cess on Exports	11.90	14.32	13.87	14.48
Others goods	58.55	90.31	62.93	71.61
	5795.03	7277.42	7301.49	7325.88
Deduct refunds	97.45	118.27	72.38	75.88
Deduct drawback**	114.14	118.63	126.00	150.00
Net Receipts	5583.44	7040.52	7103.11	7100.00

*This amount includes additional duty (countervailing duty) under section 3(1) of Customs Tariff Act 1975 and auxiliary duty leviable under section 36 of Finance Act 1984.

**This amount does not include drawback allocated towards excise duty.

The figures are provisional pending certification.

The decline in gross revenue collection as compared to budget estimate is mainly due to lesser realisation from mineral substances; yarn of man-made fibres; man-made fibres and filament tow; copper; Railway locomotives; motor vehicles and parts; optical, photographic, cinematographic, measuring, medical and surgical instruments and baggage. However, the short fall has partly been counterbalanced by larger realisation of import duties than anticipated from fixed vegetable oils; metallic ores and concentrates; other mineral fuels; chemicals other than pharmaceuticals chemicals; artificial resins and plastic materials; machinery etc.

The short fall in receipts from exports vis-a-vis budget estimates and revised estimates was mainly due to less exports of coffee.

1.02 **Portwise collections**

(i) Import duty collected during the year 1984-85 and the two preceding years are given below portwise as per the available information furnished by the Ministry of Finance.

Port of Entry	Bills of entry (in hundreds)			Value of imports (in crores of Rs.)			Import duty (in crores of Rs.)		
	1982-83	1983-84	1984-85	1982-83	1983-84	1984-85	1982-83	1983-84	1984-85
1. Bombay	2940	2610	2486	N.A.	N.A.	6074	2610	2786	2941
2. Calcutta	819	N.A.	533	N.A.	N.A.	1467	767	778	1013
3. Madras	842	659	598	N.A.	N.A.	1593	875	1006	977
4. Cochin	74	N.A.	92	N.A.	N.A.	282	57	62	119
5. Goa	21	18	18	N.A.	N.A.	110	16	15	28
6. Kandla	19	21	16	N.A.	N.A.	232	110	91	202
7. Visakhapatnam	29	43	36	N.A.	N.A.	547	N.A.	N.A.	233
8. Delhi (Air)	606	N.A.	1112	N.A.	N.A.	137	143	207	268
9. Other ports	406	1224	446	N.A.	N.A.	6043	351	485	1290
	5756	4575	5337	N.A.	N.A.	16485	4929 (a)	5430 (b)	7071 (c)

N.A.—Not available.

(a) differs from the accounts figure of Rs. 5204.42 crores.

(b) differs from the accounts figure of Rs. 5656.64 crores.

(c) differs from the accounts figure of Rs. 7103.13 crores.

(ii) The value of exports and export duty collected during the year 1984-85 and the two preceding years are given portwise as per available information furnished by the Ministry of Finance.

Port of export	Number of shipping bills (in hundreds)			Value of exports (In crores of rupees)			Export duty collected (In crores of rupees)			Amount of drawback paid (In crores of rupees)		
	1982-83	1983-84	1984-85	1982-83	1983-84	1984-85	1982-83	1983-84	1984-85	1982-83	1983-84	1984-85
1 2	3	4	5	6	7	8	9	10	11	12	13	14
1. Bombay	3608	3689	3896	N.A.	N.A.	4417	3.31	4.37	3.58	N.A.	N.A.	80.85
2. Calcutta	570	N.A.	614	N.A.	N.A.	1273	5.09	6.04	5.54	N.A.	N.A.	10.05
3. Madras	591	530	503	N.A.	N.A.	965	28.90*	34.45*	10.36	N.A.	N.A.	20.55
4. Cochin	309	N.A.	102	N.A.	N.A.	860	9.47	15.57	18.61	N.A.	N.A.	3.99
5. Goa	16	17	17	N.A.	N.A.	218	4.79	4.96	5.10	N.A.	N.A.	Nil
6. Kandla	27	23	39	N.A.	N.A.	161	N.A.	N.A.	0.05	N.A.	N.A.	1.32
7. Visakhapatnam	43	48	81	N.A.	N.A.	172	included in Sl. No. 3	N.A.	3.64	N.A.	N.A.	0.18
8. Delhi	1544	N.A.	2195	N.A.	N.A.	723	Nil	Nil	Nil	N.A.	N.A.	28.64
9. Other Ports	694	2540	1425	N.A.	N.A.	2570	4.72	3.62	22.77	N.A.	N.A.	8.40
	7402	6847	8872	N.A.	N.A.	11359	56.28 (a)	69.01 (b)	69.65 (c)	N.A.	N.A.	153.98

*Includes figures of export through Visakhapatnam and Bangalore.

(a) differs from accounts figure of Rs. 57.63.

(b) differs from accounts figure of Rs. 67.94.

(c) differs from accounts figure of Rs. 69.66.

(d) N.A.—Not available.

1.03 **Imports and Exports and receipts from duties thereon**

Value of goods imported and exported during the last three years (wherever available) and collections from duties on imports and exports, classified under statistical headings are given in Annexures 1.1 to 1.4 to this chapter.

The collection from duty on imported passenger baggage has gone up from Rs. 281 crores in 1982-83 to Rs. 311 crores in 1984-85.

1.04 **Cost of collection**

The expenditure incurred in collection of customs duties during the year 1984-85 alongside figures for the preceding year are given below :—

Cost of collection on	1983-84	1984-85
	(In crores of rupees)	
Revenue cum Import, Export and trade control functions	8.57	11.04
Preventive and other functions	43.05	53.85
TOTAL	51.62	64.89
Cost of collection as percentage of gross receipts	0.89	0.89

1.05 Searches, Seizures and confiscations

The number of searches conducted and seizures effected by the Customs Officers in recent years as per information made available by the Ministry of Finance, are given portwise in Annexure 1.5 to this chapter.

The number of cases of confiscation of goods imported or attempted to be improperly exported as per information made available by the Ministry of Finance are given in Annexure 1.6.

1.06 Ad hoc exemptions

Under Section 25(2) of the Customs Act 1962, the Central Government may, if it is satisfied that it is necessary in the public interest so to do, by special order in each case, exempt, under circumstances of an exceptional nature to be stated in the order, any goods from the payment of customs duty, where such duty is leviable. The number of such exemptions issued and availed of during the year 1984-85 and the preceding three years are given below :—

	1981-82	1982-83	1983-84	1984-85
(i) Number of exemptions issued and availed of	63	115	71	69
(ii) Total duty involved (in crores of rupees)	438.055	539.09**	243.78	314.71
(iii) Number of cases each having a duty effect above Rs. 10,000	59	114	66	60
(iv) Duty involved in the cases at (iii) above (in crores of rupees)	438.054	539.09**	243.77	314.70

**Changes in Rs. thousands not reflected herein.

1.07 Verification of end use where exemption from duty was conditional

As per provisions of Section 25 of the Customs Act 1962 where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, in the official gazette exempt generally, either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of the duty of customs leviable thereon. When Government imposes an end use condition, a bond is obtained from the importer which is enforced for recovery of duty, in case the condition of end use is not fulfilled.

Information on value of goods exempted from duty subject to end use condition, the amount of duty involved, value of end use bond held by Customs authorities, and the number of cases where fulfilment of end use condition was verified during the last four years, as furnished by the Ministry of Finance, are given in Annexure 1.7.

The value of goods exempted from duty (subject to end use conditions) decreased from Rs. 777 crores in 1981-82 to Rs. 473 crores in 1984-85. The amount of import duty forgone every year on goods exempted from duty (subject to end use verification) went down from Rs. 680 crores in 1981-82 to Rs. 502 crores in 1984-85.

1.08 Arrears of Customs duty

The amount of customs duty assessed upto 31 March 1985 which was still to be realised on 31 October 1985 was Rs. 9.78 crores. Of this Rs. 8.24 crores was outstanding for more than a year. The corresponding amount as on 31 October 1984 was Rs. 9.79 crores. The arrears included Rs. 0.88 crore in Bombay, Rs. 1.30 crores in Calcutta, Rs. 0.74 crore in Madras, Rs. 0.90 crore in Guntur, Rs. 3.47 crores in Nagpur and Rs. 0.72 crore in Bangalore Collectorates.

1.09 Time barred demands

On the demands raised by the department upto 31 March 1985 which were pending realisation as on 31 October 1985 recovery of demands amounting to Rs. 8.89 crores raised in nine Custom Houses and Collectorates was barred by limitation.

1.10 Write off of duty

Customs duties written off, penalties abandoned and ex-gratia payments made during the year 1984-85 and the preceding three years are given below :—

Year	Amount
	(in lakhs of rupees)
1984-85	11.65
1983-84	364.96
1982-83	6.80
1981-82	33.69

1.11 Pendency of Audit Objections

The number of objections raised in audit upto 31 March 1984 and the number pending settlement as

on 30 September 1984 in the various Custom Houses and combined collectorates of Customs and Central Excises are given below :

Name of Custom House or Collectorate	Number of outstanding objections and amount of revenue involved (Amount in Rupees lakhs)									
	raised upto 1980-81		raised in 1981-82		raised in 1982-83		raised in 1983-84		Total	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
1 2	3	4	5	6	7	8	9	10	11	12
1. Collector of Customs, Ahmedabad	13	1.40	1	0.02	12	9.80	2	0.43	28	11.65
2. Collector of Customs, Bangalore	..	..	..	..	3	0.26	21	0.33	24	0.59
3. Collector of Customs, Bombay	17	53.91	13	70.74	14	28.77	31	67.14	75	220.56
4. Collector of Customs, Calcutta	37	449.90	30	40.34	34	41.78	49	22.74	150	554.76
5. Collectorate of Customs and Excise, Chandigarh	1	0.09	..	..	1	0.71	..	..	2	0.80
6. Collector of Customs, Cochin	..	..	..	..	..	..	3	0.11	3	0.11
7. Collector of Customs, Delhi	12	3.26	11	1.43	20	3.89	53	8.83	96	17.41
8. Collectorate of Customs and Excise, Guntur	2	..	2	0.02	2	..	..	..	6	0.02
9. Collectorate of Central Excise, Gwalior	..	..	..	..	..	..	..	..	..	..
10. Collectorate of Customs and Excise, Hyderabad	..	..	..	..	5	..	..	..	5	..
11. Collector of Customs, Madras	57	12.53	107	16.54	120	55.59	417	109.59	701	194.25
12. Collectorate of Customs and Excise, Madras	..	..	5	0.03	2	..	2	..	9	0.03
13. Collectorate of Customs and Excise, Madurai	4	1.21	7	0.13	3	..	..	..	14	1.34
14. Collector of Customs, Tiruchirappalli	..	..	..	..	10	0.43	7	4.57	17	5.00
15. Additional Collector of Customs, Visakhapatnam	..	..	3	0.99	13	232.15	41	9.37	57	242.51
16. Collector of Central Excise, Meerut	1	0.50	1	0.35	..	..	1	..	3	0.85
17. Collector of Customs (Preventive), Patna	6	0.11	..	..	..	..	7	1.08	13	1.19
18. Collector of Central Excise, Jaipur	11	..	3	..	11	0.10	13	12.65	38	12.75
TOTAL	161	522.91	183	130.59	250	373.48	647	236.84	1241	1263.82

The outstanding objections fall under the following categories

	(Amount in Rupees lakhs)
1. Non levy of duties	37.09
2. Undervaluation	23.75
3. Misclassification	366.88
4. Exemptions	503.77
5. Refunds	22.05
6. Baggage	0.71
7. Export duty	4.15
8. Drawback	16.82
9. Over assessments	4.40
10. Other Irregularities of Interest	283.93
11. Internal Audit	0.27
	1263.82

1.12 **Results of audit**

Test check of records in Custom Houses|Collectorates conducted in audit during 1984-85 revealed short levy of duties, irregular payments of refund, excess|irregular payments of drawback and losses of revenue amounting to Rs. 13.94 crores. The department has accepted short levies and irregular refunds and drawback amounting to Rs. 407.65 lakhs, out of which an amount of Rs. 146.61 lakhs has been recovered (January 1986). Over assessments and short payments by department detected in audit and pointed out to department also amounted to Rs. 15.27 lakhs.

Some of the important irregularities, noticed in audit, are given in the following paragraphs categorised as follows :

(a) Non levy of import duties
(b) Short levy due to undervaluation
(c) Short levy due to misclassification
(d) Incorrect grant of exemptions
(e) Irregularities in Refunds
(f) Export duties
(g) Cess
(h) Irregularities in Drawback
(i) Overtime fees
(j) Other Irregularities of Interest

NON LEVY OF IMPORT DUTIES

1.13 **Non levy of Customs duty**

As per a notification dated 9 February 1981, capital goods, raw materials and component parts imported for purposes of manufacture of articles for export by hundred per cent export oriented units are exempted from the whole of the customs duty leviable thereon. By another notification dated 19 March 1984, spare parts for machinery imported for such hundred per cent export oriented units, are also exempted from payment of customs duty.

On a consignment of spare parts for cigarette manufacturing machinery imported by a hundred per cent export oriented cigarette manufacturer, clearance was allowed without payment of customs duty prior to 19 March 1984, when the exemption notification applicable to such spare parts did not exist.

On the mistake being pointed out in audit (August 1984), the department recovered Rs. 1,02,458 from the manufacturer in November 1984.

The Ministry of Finance confirmed the facts

1.14 **Non levy of Additional duty**

(i) Under section 3(1) of Customs Tariff Act 1975, additional duty (contervailing duty) equal to the duty leviable on like goods produced or manufactured in India is leviable on all imported goods.

On 1,04,095 tonnes of sulphur imported from oil producing countries like Iraq, Kuwait, Canada etc. from 1978-79 to 1981-82 customs duty was levied under heading 25.01|32(11). However, no additional duty was levied on the plea that sulphur would fall under item 68 of Central Excise Tariff and would be fully exempted under notification 48|79 Cus dated 1 March 1979.

Item 68 of Central Excise Tariff is a residuary item which can be invoked only when classification under any other item in that Tariff is ruled out. Even though sulphur is derived from mining, it is also obtained from refining sour crude oil. Sulphur derived from crude oil would be classifiable under item 11A of Central Excise Tariff which is specific for all products derived from refining crude petroleum. As the imports were from the oil producing countries the subject 'sulphur' was apparently derived from refining crude oil and ought to have been classified under item 11A of Central Excise Tariff and subjected to additional duty at 20 per cent *ad valorem* plus Rs. 190 per tonne plus 5 per cent special excise duty. Audit pointed out a non-levy of Rs. 5.19 crores on the total quantity of sulphur imported.

On the non-levy being pointed out in audit in September 1982, the Custom House stated (April 1985) that imported sulphur is properly classifiable under item 68 in terms of Board's circular dated 29 September 1984, since it is not obtained directly from the refining of crude petroleum but as a result of the chemical treatment of "Hydrogen Sulphide" which is produced during the course of refining. The reply of the department is not acceptable since Ministry of Law had opined (December 1983 and April 1984) that sulphur derived from the refining of crude petroleum oil is also covered under item 11A of Central Excise Tariff because the expression used in item 11A of Central Excise Tariff viz. "All products derived from refining of crude petroleum etc.," covered not only products directly and immediately derived out of refining of crude petroleum but also all those by products which may arise out of refining of crude petroleum and cleared as final products from the refinery.

Non collection of additional (countervailing) duty on sulphur under item 11A of Central Excise Tariff

would amount to forgoing of revenue in the light of the opinion of the Ministry of Law. The fact that the Government was inclined to accept the above view of Law Ministry is evident from the exemption notification No. 106|83-Cus dated 16 April 1983 mentioning sulphur as "falling under item 11A(4) of Central Excise Tariff ...."

The case was reported to the Ministry of Finance in September 1985; their reply is awaited (January 1986).

(ii) Patent and proprietary medicines not containing alcohol, opium, Indian hemp or other narcotic drugs or other narcotics, other than those medicines which are exclusively Ayurvedic, Unani, Sidha or Homeopathic, is classifiable under item 14E of the Central Excise Tariff provided its name is not specified in a monograph in a pharmacopoeia, formulary or other publications notified in this behalf by Government. International and eight other pharmacopoeia were notified in notification No. 47|63 dated 1-3-1963 for this purpose, but the Danish pharmacopoeia did not find a place therein.

Two consignments of Analgin DAB-7, imported through a major Custom House in October 1982 and September 1983, were classified for purposes of additional duty under item 68 of the Central Excise Tariff in terms of the aforesaid notification and exempted from payment of additional duty (countervailing duty) in terms of notification No. 234/82 dated 1 November 1982 treating them as not a patent and proprietary medicine, classifiable under item 14E. The Indian pharmacopoeia mentioned the name of 'Analgin'. Hence the medicine 'Analgin of Indian pharmacopoeia' only will fall outside the purview of item 14E. It was, therefore, evident that Analgin of the Danish pharmacopoeia i.e. Analgin DAB-7 has to be treated as a patent and proprietary medicine falling within the purview of item 14E of the Central Excise Tariff particularly in view of the fact that Danish pharmacopoeia has not been notified as one of the recognised pharmacopoeia for purposes of classification under item 14E of Central Excise Tariff. The incorrect classification resulted in non-levy of additional duty of Rs. 80,896.

On this incorrect classification being pointed out in audit (August 1983/August 1984) the Custom House did not agree with Audit's view and pointed out that the analgin DAB-7 of the Danish pharmacopoeia conformed to the 'Analgin' of the Indian Pharmacopoeia standard as per technical opinion. The fact, however, remains that the product was declared and imported as Analgin DAB-7 conforming to the Danish pharmacopoeia standard and not as 'Analgin' as has been mentioned in the Indian pharmacopoeia. Therefore it was classifiable under 14E of the Central Excise Tariff.

The case was reported to the Ministry of Finance (August 1985). Their reply is awaited (January 1986).

SHORT LEVY DUE TO UNDERVALUATION

1.15 Short levy due to application of incorrect rate of exchange

As per proviso to Section 14(a) of Customs Act 1962, the rate of exchange applicable to any imported goods is the rate in force on the date on which a bill of entry in respect of such goods is presented.

(i) On a consignment of imported roller bearing, the bill of entry was presented on 27 February 1984. The correct rate of exchange applicable was Austrian shillings 179.5 = Rs. 100 as against the incorrect rate of exchange of Austrian shillings 197.5 = Rs. 100 applied by the Custom House resulting in duty being levied short by Rs. 4,11,138.

On the mistake pointed out in audit (November 1984) the Custom House accepted the objection and recovered the amount of Rs. 4,11,138.

The Ministry of Finance confirmed the facts.

(ii) On a consignment of imported ferro nickel, the bill of entry was presented on 3 January 1984. The correct rate of exchange applicable was U.S dollars 9.450 = Rs. 100 as against the incorrect rate of U.S. dollars 9.710 = Rs. 100 applied by the Custom House resulting in short collection of duty of Rs. 2,23,227. On the mistake being pointed out in audit in October 1984, the Custom House admitted the same (February 1985).

The Ministry of Finance, while confirming the facts, stated (September 1985) that as the demand was raised by the department after the period of six months, the importer declined to make payment. The demand, being time barred, resulted in loss of revenue to Government.

(iii) On a consignment of 'P & H shovels' imported on 22 October 1982, the Custom House applied the incorrect rate of U.S. dollars 10.365 = Rs. 100 instead of the correct rate of U.S. dollars 10.260 = Rs. 100. This resulted in duty being short levied by Rs. 1,82,216.

On the mistake being pointed out in audit in June 1984, the Custom House accepted the mistake and recovered (July 1984) the amount short levied.

The Ministry of Finance confirmed the facts.

(iv) Two consignments of dutiable goods valuing Rs. 13,55,256 were imported in September 1984 through a major Custom House. The bills of entry were presented on 19 September 1983. The assessable value of the goods was worked out by applying the incorrect rate of exchange of D.M. 25.48 for Rs. 100 instead of the correct rate of exchange of D.M. 24.83 for Rs. 100 prevalent on that date.

On the mistake being pointed out by audit (December 1984), the Custom House raised a demand for Rs. 29,094. The Ministry of Finance, while confirming the facts, stated that the short levied amount had since been recovered.

1.16 **Short levy due to incorrect communication of rate of exchange**

Under Section 14 of the Customs Act 1962, the rate of exchange for converting the value of imports expressed in foreign currency into Indian currency is the rate determined by Government or ascertained in such a manner as Government may direct. For this purpose Government notify every quarter or whenever necessary, the rate of exchange in respect of all major currencies.

Government notified the rate of exchange for conversion of Pound Sterling into Indian Rupee with effect from 1 October 1983 as £ 6.5090 = Rs. 100 through a notification dated 1 October 1983. A major Custom House issued a public notice based on an advance telegram from the Central Board of Excise and Customs on the same day, giving, among other things, the rate of exchange of Pound Sterling as applicable from 1 October 1983 as £ 6.55090 = Rs. 100. This resulted in application of incorrect rate of exchange in several cases and consequential short realisation of duty occurred in all such cases. The mistake continued even after receipt of the relevant notification in the Custom House.

The adoption of incorrect rate of exchange was pointed out (March 1984) in audit in eleven cases and the Custom House was also requested to review all the bills of entry and shipping bills presented during the period from 1 October 1983 to 31 December 1983 for detecting all cases of incorrect application of the rate of exchange.

The Custom House accepted the objections in three cases involving short levy of duty amounting to Rs. 27,399 and recovered a sum of Rs. 5,624 involved in two cases. Report on the recovery in the third case and total short collection found out as a result of review of all bills of entry and shipping bills from 1 October 1983 to 31 December 1983 is awaited (August 1985).

The Ministry of Finance confirmed the facts.

1.17 **Loss of revenue due to undervaluation of goods**

(i) In a private customs bonded warehouse of a factory manufacturing aircraft it was noticed (January 1984) that imported goods were being taken deliveries from cargo office of a customs airport and warehoused without presentation of any bill of entry avowedly under sub-section (5) of Section 46 of the Customs Act 1962. But this sub-section permits only substitution of a bill of entry for home consumption by a bill of entry for warehousing only and vice versa. The Act provides for presentation of a statutory document called bill of entry either for warehousing or for home consumption. This requirement is not dispensable.

The value for imported goods was, however, determined with reference to the rate of exchange prevailing on the date of presentation of the bill of entry for ex bond clearance instead of on the date of presentation of into bond bill of entry. This resulted in undervaluation of goods arising from lowering of the value of imported goods consequent on the upward revision in the exchange rate of Indian currency vis-a-vis foreign currency between the date of presentation of into bond bill of entry and the date of ex-bond clearance for home consumption. The incorrect practice resulted in duty being short levied by Rs. 21,564 during the period February 1983 to November 1983. The actual loss of revenue could not be worked out because the department has not been correctly following the legal provisions as stated above.

On the incorrect practice being pointed out (March 1984) in audit, the Collectorate stated (July 1984) that the departmental officers had been directed to determine the value correctly and work out whether any loss of revenue had occurred due to fluctuation in exchange rates. Report on recovery is awaited (July 1985).

The Ministry of Finance confirmed the facts.

(ii) Erection and commissioning charges, included in the foreign suppliers' invoices and forming part of the commercial transactions of sale of goods imported into India, would normally form part of the assessable value of the imported goods determinable under Section 14 of the Customs Act 1962.

Erection and commissioning charges ($ 5000) charged by the suppliers in their invoice, covering a "printing press and spares" (CIF $ 3.30 lakhs) imported by a private company were not included for the purpose of assessment to customs duty on the score that they were post-importation charges. It was pointed out in audit (December 1983) that these

charges would form part of assessable value for purpose of assessment of customs duty on the following grounds :—

(i) these charges form part of the cost of the machine to be erected;

(ii) a separate charge has been made in the invoice and the same is repatriated to the suppliers with the permission of the RBI as a part of the contracted value.

The Custom House had not accepted the objection on the ground that the charges in question were in the nature of post-importation charges and hence their inclusion in the assessable value would not arise.

The contention of the Custom House is not acceptable for the following reasons :—

(i) The need for remittance of an *ad hoc* predetermined amount involving foreign exchange would not arise, if these expenses were post-importation charges. These charges could have been made in Indian currency at the time of erection of machinery in India in which case alone such charges could be treated as post-importation charges.

(ii) In the Departmental Collectors Conference held in March 1982 it was decided that the cost of dies, moulds, etc., would form part of the imported goods manufactured out of such moulds etc., though the moulds and dies were not imported along with the goods. Similarly the charges in question would form part of the assessable value.

Audit had come across another case where separate charges included in an invoice under the caption "allowances on work and travel of staff" were not included in the assessable value, leading to an under-assessment of Rs. 33,107. Though it was pointed out in audit (June 1984) that such charges would form part of the assessable value, Custom House has not accepted the audit view.

Under-assessment in the two cases mentioned above worked out to Rs. 53,744.

The Ministry of Finance stated (December 1985) that determination of assessable value under Section 14 of the Customs Act 1962 essentially involved the determination of the price at which such goods were sold or offered for sale for delivery at the time and place of importation and in other words, all costs incurred on the goods till its delivery at the place of importation were included for assessment. According to the Ministry, this excluded charges such as cost of bringing the goods from the port of delivery to the site and subsequent expenses involved in erection and commissioning. The Ministry added that merely because the supplier of the goods undertook the erection work and the payment for erection works made in foreign exchange did not *ipso facto* make it an element for inclusion in assessable value. The Ministry therefore contended tha element of erection and commissioning charges would fall outside the scope of section 14 of the Customs Act 1962 and the analogy of cost of moulds and dies cited above was not apt.

The Ministry's reply is not acceptable as the invoice in this case indicated the cost of erection and commissioning charges as part of the value of goods and the same had been allowed to be repatriated to the supplier.

Further the contract provided for inclusion of an estimated ad hoc charges on account of erection and commissioning and the supplier included the charges in the invoice at the time of importation, so the charges have to be regarded as part of the value of the goods tendered for assessment and cannot be ignored for purposes of valuation under Section 14 of the Customs Act 1962. The Ministry's reply is silent on second part of objection regarding allowances on work and travel of staff.

1.18 Short levy due to non inclusion of actual air freight and insurance in the assessable value

As per provisions of Section 14 of the Customs Act 1962 and the Customs Valuation Rules 1963, the sale price of goods for delivery at the time and place of importation must include freight, insurance and other incidental charges normally incurred in overseas trade practice by trade in general. Executive instructions were issued in 1964 to the effect that the value of articles imported by air should be calculated on the basis of the freight and other charges ordinarily paid when the articles are imported by sea. But executive instructions cannot override the requirement in the Act and the rules to the effect that freight incurred normally must be included in the assessable value.

While deciding the revision applications, Government in their orders passed on 4 June 1981 and 12 February 1982 held that Section 14 of the Customs Act 1962 did not warrant or authorise any substitution of the actual freight incurred in the ordinary course of trade by a notional freight (such as sea freight) and that the actual air freight charges should be included in the assessable value in case of imports by air.

(i) On ten consignments of goods imported by air, c.i.f. value was determined by adding 20.125 per cent

of f.o.b. value instead of the actual freight and cost of insurance incurred in these cases. The mistake resulted in duty being realised short by Rs. 12.23 lakhs in ten cases.

The mistake was pointed out (June 1984) in audit.

The Ministry of Finance stated (November 1985) that instructions had been in force since 1964 that freight charges incurred in the ordinary course of trade are to be considered for arriving at the assessable value in case of goods imported by air. This is necessary to ensure uniformity of valuation. In case, however, the normal mode of transportation is by air, the air freight is being considered for arriving at the assessable value. It is true that Government had, in two revision applications decided in 1981 and 1982, held that the actual freight should be charged. However, the Appellate Tribunal has recently upheld the department's practice.

The reply is significantly silent on the practice being contrary to the law under Customs Act and the need for amending either of them to agree with the other.

(ii) In respect of consignments arriving by air at two major airports, the practice was to ignore the actuals towards air freight and insurance and to adopt a notional sea freight (where available) or to limit the elements on freight and insurance to 20 per cent of the f.o.b. value of the consignments. It was pointed out in audit in 16 cases (April 1984 to May 1985) that inclusion of 20 per cent of f.o.b. value towards freight and insurance instead of actual air freight and insurance charges incurred was not in consonance with the legal provisions mentioned above. The department, however, replied that the practice was based upon Board's orders issued in August 1964 and that it required no change. The non-inclusion of actual air freight and insurance in the value resulted in a loss of revenue of Rs. 5.09 lakhs in 16 cases.

The Ministry of Finance stated (January 1986) that Section 14 of the Customs Act 1962 referred to value as the price at which the goods are *ordinarily* sold for delivery at the time and place of importation and the ordinary course of import of the goods under consideration into India is by sea. The Ministry added that, in the case of goods arriving at the same place of importation by sea and air, it would be only logical to charge freight equal to that ordinarily paid and if sea freight was not available, 20 per cent of f.o.b. price was added on account of freight. The Ministry, therefore, contended that it would not be correct to say that the existing practice of adding sea freight in case of goods imported by air did not have a legal basis and that this practice did not require any modification.

The Ministry's reply is not acceptable because the law does not authorise or warrant the substitution of actual freight incurred by any notional freight and, therefore, it is not correct to say that the existing practice based on executive instructions has a legal basis.

1.19 Excess remission of duty on shortage due to adoption of incorrect value

Section 23 of the Customs Act 1962 permits remission of customs duty on any shortage noticed at any time before clearance for home consumption of imported goods.

On a consignment of spares imported and cleared from bonded warehouse, remission of duty was allowed on the shortage of 4 imported roller bearings. While computing the amount of remission, the value of the bearings was adopted on the basis of the invoiced total prices ($ 8921.28) of the imported goods instead of the unit price ($ 351.36) of the bearings. This resulted in the calculation of remission on excess C.I.F. value of $ 8569.92 equivalent to Rs. 95,630 and led to consequential excess remission of duty of Rs. 1.64 lakhs.

On the excess remission being pointed out (April 1984) in audit the department accepted the objection (June 1985). Report on recovery was awaited (June 1985). The mistake also escaped the notice of Internal Audit Department.

The Ministry of Finance, while confirming the facts, stated that a request for voluntary payment of Rs. 1,64,496 being the excess remission of duty, had been made to the importer.

1.20 Short levy due to non-inclusion of 'discount in kind' in the assessable value

As per the executive instructions issued by the Central Board of Excise and Customs full duty should be charged on any extra quantity allowed as trade discount in kind, while assessing goods under Section 14(1) of the Customs Act 1962.

It was noticed from the invoices attached to two ex-bond bills of entry filed by a Public Sector Undertaking in October and November 1982 for the clearance of colour T.V. kits from a warehouse that spare parts to the extent of 92 colour T.V. kits were supplied free of charge. As the value of the kits supplied free of charge was not included in the assessable value, the Custom House was asked (April 1983) by Audit to recover the differential duty of Rs. 87,084 on the value of the kits supplied free of

charge. The Custom House admitted the objection (January 1985).

In respect of another clearance made in October 1982 spare parts to the extent of 1.5 pper cent spares included free of charge were not assessed to duty. Audit pointed out (March 1983) a short collection of duty of Rs. 30,250.

The repoprt of recovery of Rs. 87.084 in the former case and the reply in the latter case were awaited from the Custom House (July 1985).

The Ministry of Finance confirmed the facts regarding non-levy of duty on 92 colour Television kits. They added (December 1985) that regarding the supply of spare parts to the extent of 1.5 per cent of the C.I.F. price of the consignment the importers had contended that spare parts were supplied towards warranty replacement and the invoice price for T.V. kits included cost of spares. The Ministry of Finance further stated that this aspect was being examined.

1.21 Short levy due to incorrect calculation of value of packing material

The value of goods for purpose of levy of Customs duty is determined under the provisions of Section 14 of the Customs Act 1962 and the rules framed thereunder. Government, however, exempted duty payable on the value of packages or containers under a notification dated 2 August 1976 subject to certain conditions.

A unit imported wood pulp and warehoused it in a public warehouse. At the time of clearance of goods from the warehouse, the assessable value was worked out after deducting from gross price of imported goods, the value of packing material calculated on the basis of its proportionate weight with reference to the total weight of the consignment. In respect of two consignments it was noticed that the value of packing material had been mentioned by the exporters separately and that it was much lower than the value calculated on proportionate basis. Deduction of this inflated proportionate value of packing instead of the actual value of packing as indicated by the exporter from the assessable value of goods resulted in duty being short levied by Rs. 22,090.

The short levy was pointed out in audit in March 1985. The department stated (November 1985) that necessary action for recovery of the duty short levied had been initiated.

The case was reported to the Ministry of Finance in September 1985; their reply is awaited (January 1986).

1.22 Undervaluation of waste arising in manufacture in bond

Section 65(2) of the Customs Act 1962 provides for recovery of duty on waste or refuse arising during the process of manufacture under bond in a warehouse, when cleared for home consumption as if it had been imported into India in that form.

In a major Custom House, 1200 tonnes on steel scrap, arising out of imported steel items during manufacturing operations under bond in a shipyard, were assessed to duty in September 1984. The assessable value of the scrap was determined, in accordance with the guide lines contained in a standing order issued by the Collector in August 1983. This order laid down that the market value gathered from such publications as Bombay Bulletin for the relevant period, should be adopted as the basis for working backward to arrive at the assessable value. While doing so regard should be had to the condition of scrap at the time of clearance. Accordingly the market value was taken as Rs. 2,900 per tonne being the price of re-rollable scrap as per Bombay Bulletin for September 1984. The assessable value was worked out at Rs. 1,000 per tonne by deducting 10 per cent towards profit margin, 5 per cent towards freight from Bombay to the place of origin of the scrap and the appropriate rates of customs duties from the Bombay price.

The assessment was objected in audit on the ground that the deduction towards freight charges was not justified. Under Section 14 of the Customs Act the assessable value should be the price at which such or like goods are sold at the place of importation. The price published in the Bombay Bulletin could be adopted in this case instead of the local market price (which included assessable value, duty and profit margin), as the latter was not easily ascertainable.

The loss of revenue due to erroneous deduction towards freight amounted to Rs. 69,600 on 1200 tonnes of scrap cleared in 1984-85.

The case was reported to the Ministry of Finance in October 1985; their reply is awaited (January 1986).

SHORT LEVY DUE TO MISCLASSIFICATION

1.23 Machines, Mechanical appliances and other equipment

(i) Air filters, oil or fuel filters for internal combustion piston engines and their parts are subject

to basic customs duat at 100 per cent *ad valorem* under sub-heading (2) of heading 84.18 of Customs Tariff Act 1975, other filters and their parts attract basic customs duty at 40 per cent *ad valorem* under sub-heading (1) of heading 84.18 *ibid*.

On four consignments of goods described as "Micro top inserts" etc., which are parts of air filters and fuel filters for internal combustion engines, imported from December 1983 to February 1984, through a major port basic customs duty was levied at 40 per cent *ad valorem* under heading 84.18(1) of Customs Tariff Act 1975 with auxiliary duty at 20 per cent *ad valorem* plus additional duty at 10 per cent *ad valorem* under item 68 of Central Excise Tariff. Heading 84.18(2) of Customs Tariff Act 1975 is specific for air filters and oil or fuel filters and hence parts of these filters are classifiable under the same heading. The misclassifications resulted in duty being short levied by Rs. 25,731.

On the incorrect classification being pointed out in audit (August 1984 and September 1984), the Custom House admitted the objection (March 1985 and June 1985).

The Ministry of Finance, while confirming the facts, stated (October 1985) that a request for voluntary payment had since been made to the importers.

(ii) On a consignment of 'Diesel Engine components' (Iron casting), valuing Rs. 2,90,922, imported in April 1984 through a major Custom House, countervailing duty was levied under item 25(16) (i) of Central Excise Tariff at Rs. 70 per tonne as castings of iron. The inspection report as also the bill of entry amplified the description of goods as 'Iron Castings' which had acquired the characteristics of finished products. According to the invoice the imported components bore the part numbers assigned by the manufacturer. As the goods had acquired the characteristics of machinery parts, they were correctly classifiable under item 68 of Central Excise Tariff and countervailing duty was leviable at 10 per cent *ad volorem*. The misclassification resulted in duty being levied short by Rs. 69,414.

The incorrect classification was pointed out in audit (January 1985). The Custom House did not accept the objection stating that the classification of a product under Central Excise Tariff does not depend on its classification under Customs Tariff and rules for interpretation of Customs Tariff can not be made applicable while interpreting the Central Excise Tariff. The contention of the Custom House is not correct as the classification for levy of Central Excise duty is also to be decided depending upon the trade parlance and the commercial use to which the goods are put.

The case was reported to the Ministry of Finance in September 1985; their reply is awaited (January 1986).

1.24 **Electronic goods**

(i) Computers (including central processing units and peripheral devices) all sorts, on import, are chargeable, *inter alia*, to additional duty equivalent to excise duty under item 33DD of Central Excise Tariff.

On a consignment of 'Disc Pack' imported by a Government of India Undertaking in March 1980, through a major Custom House, additional duty was levied under item 68 of Central Excise Tariff *ibid*. According to a technical dictionary on computers, the imported goods conformed to the definition of peripheral devices and the goods were therefore correctly assessable to additional duty at 25 per cent *ad valorem* under item 33DD of Central Excise Tariff.

This was pointed out in audit (November 1983/ June 1984). In reply, the Custom House stated that, like a gramophone record, the (magnetic) disc being a data media by itself had no independent function and unless it was loaded into the disc drive unit, it could not be treated as peripheral device of computer covered by item 33DD of Central Excise Tariff.

The department's stand is not acceptable for the following reasons :—

(1) Scope of traiff item 33DD of Central Excise Tariff is not restricted to peripherals having independent functions.

(2) the disc does perform the functions of receiving, storing and transmitting information.

(3) Technical Dictionary on computers indicates magnetic disc as a computer peripheral unit.

Incorrect classification resulted in short levy of additional duty of Rs. 14,726.

The case was reported to the Ministry of Finance in July 1985; their reply is awaited (January 1986).

(ii) On a consignment of computer peripherals imported in October 1984 through a major Custom

House basic customs duty was levied at 100 per cent *ad valorem* under heading 85.18/27 (1) of Customs Tariff Act 1975. Countervailing duty was, however, levied at 10 per cent *ad valorem* under tariff item 68 of Central Excise Tariff instead of at 15 per cent *ad valorem* under item 33DD of Tariff *ibid*. The resulted in duty being collected short by Rs. 95,608.

The mistake was pointed out in audit in April 1985; reply of the department is awaited (June 1985).

The case was reported to the Ministry of Finance in August 1985; their reply is awaited (January 1986).

1.25 **Vehicles, Aircraft, earth moving equipment and their parts**

(i) In terms of the legal notes 2(a) and 2(b) of Section XVII of the Customs Tariff Act 1975, identifiable parts of transport vehicles covered under chapters 86 to 89 are to be classified as parts of machinery or electrical equipment on merits.

A consignment of spare parts *viz.*, Rotary Switches and Air Brake Valve for an Electric Locomotive (110 Volts D.C.) imported in September 1983 through a major port, was classified under heading 86.09 of Customs Tariff Act 1975 as parts of Railway Locomotives and basic customs duty was levied at 40 per cent *ad valorem* with auxiliary duty at 20 per cent *ad valorem*. In terms of the aforesaid legal notes, the goods are classifiable under chapters 84 and 85 and were assessable to customs duty at 60 per cent *ad valorem* with auxiliary duty at 35 per cent *ad valorem*. This resulted in short levy of duty of Rs. 29,401.

On this being pointed out in audit (March 1984) the Custom House accepted the objection. Report on receovery is awaited.

The Ministry of Finance confirmed the facts.

(ii) Three consignments of "wheels for locomotive wagon—semi-finished", valuing Rs. 57,05,635, were imported through a major port in December 1981. They were correctly classified for basic customs duty under heading 86.09 of Customs Tariff Act 1975. However, countervailing duty was levied at Rs. 165 per tonne under item 26AA of Central Excise Tariff.

As the goods were semi-finished, they required machining before use. They, therefore, attracted countervailing duty at 8 per cent *ad valorem* under item 68 of Central Excise Tariff. Incorrect classification of goods under 26AA *ibid* resulted in duty being short levied by Rs. 5,81,826.

On the misclassification being pointed out in audit (June 1982), the Custom House admitted the objection and requested the importer for voluntary payment of Rs. 5,81,826 (March 1985). Report on recovery is awaited.

The Ministry of Finance stated (February 1986) that the matter had been taken up in a special leave petition before the Supreme Court and its verdict was awaited.

(iii) In terms of note 2(e) of Sectional Notes to Section XVII of the Customs Tariff Act 1975, parts of vehicles in the nature of transmission parts of engines and motors would fall under heading 84.63 and other transmission parts would be classifiable as parts of the vehicle to which they relate.

On a consignment of 'axle housing' and 'gear housing' imported as parts of dumper by a Public Sector undertaking in August 1983, through a major Custom House, basic customs duty was levied at 60 per cent *ad valorem* plus auxiliary duty at 35 per cent *ad valorem* under heading 84.63(1) of Customs Tariff Act 1975.

'Axle Housing' and 'Gear Housing' were correctly classifiable under heading 87.04/06(1) of Customs Tariff Act 1975 and were assessable to basic customs duty at 100 per cent plus 35 per cent *ad valorem*, as the same were not parts of an engine and motor in which case alone they would have been classifiable under heading 84.63 of Customs Tariff Act 1975 on the basis of the exception to the aforesaid sectional note. This resulted in duty being short levied by Rs. 54,475.

On the incorrect classification being pointed out in audit (March 1984), the Customs House admitted the objection (April 1985). Report on recovery is awaited.

The Ministry of Finance confirmed the facts.

(iv) In a major Custom House, goods described as "Lens—motor vehicle parts (automobile head light covers)" imported in June and August 1983, were classified for basic customs duty under heading 70.01/16 of Customs Tariff Act 1975 and assessed to duty at 100 per cent *ad valorem* with auxiliary duty at 35 per cent *ad valorem* and additional duty under item 68 of Central Excise Tariff at 10 per cent *ad valorem*.

It was pointed out in audit (December 1983 and February 1984) that as per a tariff advice issued in January 1982 automobile head light covers in two cases were correctly assessable to additional duty under item 23A (4) of Central Excise Tariff at 35 per cent with special excise duty at 5 per cent thereof. The incorrect classification in these two cases resulted in duty being levied short by Rs. 1,64,008.

Though the Customs House admitted the objection (March and May 1984), the results of the review of incorrect assessments made in other cases from January 1982 as suggested by Audit were awaited. The total duty involved in respect of two other cases pointed out in audit and five instances detected by the Internal Audit subsequently, amounted to Rs. 5.38 lakhs. Report on recovery of the total short collection of duty of Rs. 7.02 lakhs is awaited (August 1985).

The Ministry of Finance confirmed the facts and stated (January 1986) that in respect of the other cases cited in the audit paragraph, action had been initiated to recover the amount short levied.

(v) In a private customs bonded warehouse of a unit manufacturing aircraft it was noticed (January 1984) in audit that countervailing duty on ware housed goods *viz.*, aircraft parts and other materials in a number of cases had been levied under item 68 of Central Excise Tariff though these were appropriately classifiable on merits under various items 11A, 15A, 16A, 27, 30, 32, 33B, 33D, 34A, 51A, 52 and 61 of the Central Excise Tariff. The incorrect classification resulted in duty being short-levied by Rs. 33,613 from January 1983 to November 1983 alone.

The mistake was pointed out in audit in March 1984.

The Ministry of Finance, while confirming the facts stated (December 1985) that the short levied amount had since been recovered.

1.26 **Iron and steel prducts**

(i) According to Board's order dated 23 September 1975, an article in forged form or casting in crude form, if it is machined, polished etc. so as to convert it into an identifiable machine part, the machine part so formed will fall under item 68 of Central Excise Tariff. Also in terms of another order dated 27 June 1981 issued by the Board if such products have been subjected only to the process of casting, these would be covered by item 25 or 26AA of Central Excise Tariff. If any other process other than casting has been employed in such products, they would appropriately be covered under item 68 *ibid.*

A consignment of forged, rolled alloy steel rings for gear boxes cleared from warehouse in April 1980, was assessed to additional duty at Rs. 165 per tonne under item 26AA of Central Excise Tariff read with a notification of 18 June 1977. It was pointed out in audit (June 1981) that the subject goods being machine forged articles, would attract additional duty at 8 per cent *ad valorem* under item 68 of Central Excise Tariff.

The Custom House in its reply, stated *inter alia* that although the subject goods had undergone rough machining yet they remained under 'rolled section' within the meaning and scope of item 26AA of Central Excise Tariff because they would have to undergo further machining before actual use. It is, however, pointed out that since the goods had undergone a degree of machining after casting and are identifiable machine parts of gear boxes they would appropriately be assessable to additional duty at 8 per cent *ad volorem* under item 68 of Central Excise Tariff instead of at Rs. 165 per tonne under item 26AA *ibid.*

The total short levy in this case and four other similar cases amounted to Rs.. 37,083.

The case was reported to the Ministry of Finance in September 1985; their reply is awaited (January 1986).

(ii) As per item (xviii) in explanation to item 25 of Central Excise Tariff, 'sheet' means a hot or cold rolled flat product, rolled in rectangular section of thickness below 5 millimetres and supplied in straight lengths, the width of which is at least hundred times the thickness and the edges are either mill, trimmed or sheered or flame cut and includes corrugated steel.

On two consignments of "alloy steel sheet circles" countervailing duty was levied at the concessional rate of Rs. 650 per tonne plus 10 per cent thereof treating it as 'sheets' in terms of an exemption notification dated 1 August 1983 issued under item 25(13) of Central Excise Tariff. The products in question, described as steel sheet circles, were circular in shape and hence could not be treated as rectangular in shape. These were, therefore, not covered by any of the sub-items under item 25 of Central Excise Tariff and were correctly assessable to countervailing duty at 10 per cent *ad valorem* under item 68 *ibid.* The misclassification resulted in duty being levied short by Rs. 42,876.

The incorrect classification was pointed out in audit in April 1985.

The Ministry of Finance confirmed the facts.

1.27 **Other Goods**

(i) On consignments of Dodecyl Benzene imported from April 1982 to April 1983 through a major Custom House and cleared from bonded warehouse from December 1982 to August 1983, customs duty was levied under heading 38.01/19(1) of Customs Tariff Act 1975. The countervailing duty was, however, levied at Rs. 450 per kilolitre without mentioning the tariff item under which the goods would fall.

Dodecyl benzene is a detergent alkylate and an organic chemical used in the manufacture of detergents and is, therefore, correctly classifiable under item 68 of Central Excise Tariff for the purpose of countervailing duty. Non-levy of countervailing duty under item 68 *ibid* resulted in duty being levied short by Rs. 2.45 lakhs.

The mistake was pointed out in audit in April 1984; reply from the Custom House is awaited.

The case was reported to the Ministry of Finance in August 1985; their reply is awaited (January 1986).

(ii) Tungsten Carbide plates, sticks and the like for tool tips are classifiable under heading 82.07 of Customs Tariff Act 1975 and additional duty is leviable under item 62 of Central Excise Tariff.

'Micro grain carbide flats' (tungsten carbide 95 per cent), imported through a major Custom House in November 1981, were assessed to customs duty under heading 81.01/4(1) at 60 per cent plus 20 per cent. However, additional duty was not levied taking it as classifiable under tariff item 68 and invoking a notification issued in March 1979.

Audit pointed out that since heading 82.07 specifically covers tool tips as also plates, sticks and the like for tool tips, the correct classification should be under that heading and additional duty should be levied at 20 per cent *ad valorem* plus 5 per cent special excise duty thereof under item 62 of Central Excise Tariff.

The Custom House recovered the short levied amount of Rs. 80,045 (July 1984).

The Ministry of Finance confirmed the facts.

(iii) Soederberg electrode paste made of calcined anthracite and coaltar pitch is classifiable under heading 38.19 of C.C.C.N. in terms of its explanatory notes. Under the Customs Tariff Act 1975, goods according fall under sub-heading (1) of heading 38.01/19 carrying a rate of basic custom duty of 70 per cent *ad valorem*.

Three consignments of soederberg electode paste, imported by a firm between April 1984 and July 1984 through a major port, were assessed to basic customs duty at 40 per cent *ad valorem* as carbon electrodes under heading 85.18/27(6) of the Custom Tariff Act 1975.

Two more consignments of soederberg electrode paste imported by the same firm in November 1982 and February 1983 through the same port were stored in the importer's private bonded warehouse and were also classified as carbon electrodes under heading 85.18/27(6) at the time of warehousing.

Audit pointed out (December 1984 and March 1985) that the goods were classified incorrectly in the light of the aforesaid explanatory note of C.C.C.N. and that the misclassification resulted in duty being levied short by Rs. 15.50 lakhs in respect of the imports made in April 1984, May 1984 and July 1984. The Custom House was also requested to realise the differential duty in respect of import by 100 per cent export oriented unit cleared before 19 March 1984 (clearances on or after 19 March 1984 were exempted from the whole of duty under a notification issued in 1981 and amended in March 1984).

The Custom House justified the assessment (June 1985) on the following grounds :

(1) The goods, though described as paste, has not been supplied in paste form but in solid cylindrical form ready for use as electrodes.

(2) The goods have been manufactured to specifications/dimensions and are directly charged in the electrode holders of arc furnaces without changing their size and shape and hence are more specifically covered under heading 85.18/27(6).

(3) Heading 38.19 of C.C.C.N. has lost its identity with sub-heading 38.01/19(1) of Customs Tariff Act 1975 and in the absence of a specific mention of the product in chapter 38 *ibid*, classification thereof under that chapter would not be proper.

The contentions of the Custom House are not tenable for the following reasons :

(1) Explanatory note under heading 38.19 of C.C.C.N. takes into account both the facts (namely that the goods are supplied in solid form and that the paste is used as such

to form as endless electrode) while deciding the classification under heading 38.19.

(2) The imported paste is a paste for electrode and not electrode itself. According to the technical books the electrodes paste in rolls is charged into electric arc furnaces. The bottom portion of the electrode paste gets baked at 1000°C and only this baked portion of the electrode paste (with its resistance considerably reduced) functions as an electrode.

(3) The scope of the merged headings of Customs Tariff Act 1975 is the same as that of the individual headings of C.C.C.N. Since the imported item is specifically mentioned in heading 38.19 of C.C.C.N. it is classifiable under heading 38.01/19(1) of Customs Tariff Act 1975.

The Custom House stated that demands had been raised in these cases.

The case was reported to the Ministry of Finance in September 1985; their reply is awaited (January 1986).

(iv) (a) Rubber tyres and tubes for vehicles or equipment designed for use off the road are classifiable under item 16 I(1) of Central Excise Tariff and liable to countervailing duty at 60 per cent *ad valorem* plus 10 per cent thereof.

On a consignment of tyres and tubes for the maintenance of plant and machinery imported in June 1983, countervailing duty was levied at 10 per cent *ad valorem* under item 68 of Central Excise Tariff, instead of at 60 per cent *ad valorem* plus 10 per cent thereof under item 16 I(1) ibid. This resulted in duty being levied short by Rs. 33,648.

This mistake was pointed out in audit (August 1984); reply of the department is awaited (June 1985).

The Ministry of Finance, while confirming the facts, stated that the amount short levied had since been recovered.

(b) On two consignments of "Yokohama brand tyres/tubes meant for vehicles designed for use off the road" imported in September 1984, countervailing duty was levied at 50 per cent *ad valorem* plus 10 per cent thereof under item 16 III of Central Excise Tariff in terms of notification dated 1 October 1983.

It was pointed out in audit (July 1985) that the provisions of the aforesaid notification were effective upto 29 February 1984 only and were not continued thereafter. The rate of countervailing duty that would be applicable was 60 per cent *ad valorem* plus 10 per cent thereof. The misclassification resulted in duty being levied short by Rs. 88,774.

The Ministry of Finance stated (December 1985) that two consignments of tyres and tubes were cleared under Bill of Entry Cash No. 80 of 1-12-84 and C. No. 62 of 30-11-84 after paying countervailing duty at 55 per cent *ad valorem*. The Ministry however contended that the Internal Audit Department of Bombay Custom House had raised an objection in regard to the rate of countervailing duty levied on the goods covered by Bill of Entry C. No. 62/30-11-84 and therefore this Bill of Entry was not passed in Internal Audit Department.

In respect of the other Bill of Entry C. No. 80 of 1-12-84, the Ministry confirmed the facts and stated and that efforts were being made to recover the short levied amount of Rs. 46,042.92.

The fact remains that in respect of the Bill of Entry C. No. 62 dated 20 November 1984 no Internal Audit objection was raised. Even the demand for less charge of Rs. 42,731.32 was raised only on 1 August 1985 on receipt of statutory audit objections.

(v) As per a classification issued in September 1975 the connecting rod forgings being identifiable parts of internal combustion engines, are classifiable under item 68 of Central Excise Tariff. It, therefore, follows that on their import countervailing duty was to be levied under item 68 *ibid*.

On six consignments of connecting rod forgings imported during the period March 1983 to December 1983 by a Public Sector Undertaking, countervailing duty was levied under item 26AA/25 instead of item 68 of Central Excise Tariff. The misclassifications resulted in duty being short levied by Rs. 37,425.

On the mistake being pointed out in audit (January 1985), the department raised a demand for realisation of the duty short levied. Report on recovery is awaited (June 1985).

The Ministry of Finance stated (February 1986) that the issue of assessment of forgings had been taken before the Supreme Court and that the final decision of the court was awaited.

(vi) A consignment of spare parts viz., 'tup with plug' for MPM hammer 16000B (Die forging hammer) was imported in April 1983. The Custom House assessed the goods nder heading 84.45/48 of Customs Tariff Act 1975 and for additional duty under item 68 of Central Excise Tariff by treating it as a spare part of the machine tool.

Audit pointed out (February 1984 and April 1985) that when the machine tool was operated by steam or air, the function of the tup was to give multi-blows/strokes on the metal for forging etc. The imported material would do the function of a tool when fitted into the machine tool and hence merited assessment for additional duty under item 51 A(iii) of Central Excise Tariff *viz.*, "tools designed to be fitted into machine tools" attracting duty at 15 per cent *ad valorem* plus 5 per cent special excise duty thereof The incorrect classification resulted in duty being short levied by 40,709.

On the misclassification being pointed out, the department stated (May 1985) that the imported material being part of machine tool, was treated as a spare part and assessed under the residual entry of the Central Excise Tariff.

The Tribunal has held the view in the case of blanking punches, that these are classifiable under item 51A(iii) as tools for machine tools even if they have no independent function vide its decision in General Machine Shop, Madras Vs. Collector of Central Excise Madras. The tariff item only stipulates that tools should be designed to be fitted into a machine tool and that parts which perform tooling function do not cease to be tools merely because they are used as replacement parts, in addition to their use in original assembly. Since the subject goods are designed for being fitted ultimately into a machine tool and do the functional work of a tool they will be covered under item 51A(iii).

The Ministry of Finance stated that Tup with plug with thick rod and piston were one unit which was an integral part of hammer. The Ministry added that the shape of an article was imparted by the die which was held by the Tup along with the other die placed at the bottom of the die holder. The Ministry argued that unlike the blanking punches which actually cut the blanks, the tup did not impart shape to the article to be forged. The Ministry therefore felt that 'Tup wih plug' was not a tool designed to be fitted on a machine tool.

The reply of the Ministry is not specific with reference to the specific function of tup in the form of tool (forging hammer) because the tup gives blows/strikes with the die on the metal. Hence the imported tup after being fitted into the machine tool via die, can be said to perform tooling function and it does not cease to be part of machine tool.

INCORRECT GRANT OF EXEMPTION

1.28 **Incorrect application of ad hoc exemption order**

Section 25(2) of the Customs Act 1962 empowers Government to issue special orders in each case exempting goods from payment of duty under circumstances ofan exceptional nature to be stated in such order.

By issue of orders in August 1982 and September 1982, under the aforesaid section Government partially exempted imported cars with standard accessories required for disabled persons from the Customs duty leviable under heading 87.02(2) of Customs Tariff Act, 1975, as was in excess of 50 per cent *ad valorem*. The auxiliary and countervailing duties were also completely exempted.

In a major Custom House, consignments of "Toyota Corolla 1300 CC" and "ISUZU Gemini 1827CC" with standard accessories were imported during March and April 1983 respectively. The bills of entry were passed under the said *ad hoc* exemption orders.

Auxiliary duty is imposed by Finance Act every year and is current for one year only. As Finance Act 1982 was quoted in the *ad hoc* exemption orders for the grant of exemption from auxiliary duty, it was pointed out in audit (November 1983 and January 1984) that the aforesaid imports would not be exempted from auxiliary duty under those orders. Loss of revenue on account of non-recovery of auxiliary duty in those two cases worked out to Rs. 26,228.

The Custom House raised a demand in February 1985 for Rs. 26,228. Report on recovery is awaited (July 1985).

The Ministry of Finance confirmed the facts.

1.29 **Chemicals**

As per a notification dated 1 November 1982 as amended on 30 June 1983, all bulk drugs and medicine not elsewhere specified are exempt from excise duty under item 68 of Central Excise Tariff. According to the explanation to the notification, the term "bulk drugs" means any chemical or biological or plant product conforming to pharmacopoeial standard, used for the diagnosis, treatment, mitigation or prevention of disease in human beings or animals and used as such as an ingredient in any formulation.

A consignment of 120 litres of "Reveron Solution", imported in March 1983, through a major

Custom House was warehoused under bond and later on cleared on payment of duty. On two ex-bond clearances of 40 litres each of the goods made in December 1983 countervailing duty under item 68 of Central Excise Tariff was not levied under the said notification of 1 November 1982. The goods, according to the technical opinion, were not mentioned in any pharmacopoeia and did not therefore, satisfy the definition of the term "bulk drugs". Hence countervailing duty at 10 per cent *ad valorem* was leviable in respect of those clearances.

On the short collection of countervailing duty of Rs. 34,126 being pointed out in audit in August 1984 the Custom House admitted the objection and realised a sum of Rs. 17,063 (April 1985) in respect of one of the clearances. Report on recovery of balance amount in the other case is awaited.

The Ministry of Finance confirmed the facts and initiated action for recovery of the short levied amount.

1.30 **Machinery, electrical and other equipment**

(i) Component parts of dumpers imported for the manufacture/assembly of specified class of dumpers were liable to concessional rates of auxiliary duty in terms of spepcific notifications issued from time to time. Dumpers of the specified class were also liable to concessional levy of auxiliary duty under other notifications.

During 1984-85, while the notification granting concessional levy of auxiliary duty on the specified class of dumpers was issued on 1 March 1984, that relating to component parts of such dumpers was issued on 6 June 1984 only. As a result, component parts of such dumpers imported during the period 1 March 1984 to 5 June 1984, were not eligible for assessment at the concessional rate of auxiliary duty.

On component parts of specified class of dumpers imported by a Government undertaking and two units in private sector through a major port, auxiliary duty was levied at the concession rate of 20 per cent *ad valorem* during the period from 1 March 1984 to 5 June 1984. Audit pointed out (November 1984 to May 1985) that auxiliary duty was leviable at 30 per cent *ad valorem* corresponding to the basic customs duty of 40 per cent leviable on the components.

The Custom House justified the concessional levy of auxiliary duty on the ground that the general notification granting exemption from auxiliary duty to dumpers of the specified class would cover component parts of such dumpers also. The reply overlooks the fact that a notification applicable to complete dumpers could not *ipso facto* be applicable to component parts thereof. The reply is also inconsistent with the scheme of levy of auxiliary duty right from the period from 1979-80 to 1983-84 when separate notifications had been issued covering component parts of dumpers and specified cases of complete dumpers.

Duty short levied in respect of 18 cases amounted to Rs. 48.16 lakhs.

The Ministry of Finance confirmed the facts and stated (January 1986) that the collector was being asked to recover the short levied amount of Rs. 48.16 lakhs and also to review similar cases.

(ii) In terms of a Customs notification issued in March 1979, as amended, additional (countervailing) duty leviable on all imported goods is fully exempted if such goods are covered by notifications specified in the schedule thereto and also fall under item 68 of the Central Excise Tariff. One such specified notification was in respect of import of goods for use in oil and gas exploration.

On a consignment of several spare parts for "Oil field Equipment" imported during May 1984 by a Government undertaking through a major Custom House, basic customs duty at 40 per cent *ad valorem* and auxiliary duty at 10 per cent were levied. But additional duty of Customs leviable on such parts falling under various item (*e.g.* 22F, 44, 51A) other than item 68 of Central Excise Tariff was not levied at all. This resulted in duty being levied short by Rs. 52,981.

On the irregularity being pointed out in audit in March 1985, the Custom House accepted the objection (May 1985).

The Ministry of Finance confirmed the facts and stated that a request for voluntary payment had since been made.

(iii) Valves diaphragm *viz.* Hand Shut Off Valves imported in June 1982 through a major Custom House were assessed to customs duty after being classified under heading 84.61(2) of Customs Tariff. For levy of additional duty (countervailing duty), the goods were, however, classified under item 29A(3) of Central Excise Tariff as "Refrigeration and Air Conditioning Machinery parts" and no additional duty was levied on the plea that the imported goods did not fall outside the scope of the notification No. 80/62 dated 24 April 1962 as amended.

It was pointed out (January 1983 and January 1985) in audit that the function of the imported materials was to stop the flow of the refrigerant gas in

the refrigeration circuit by which it actuated control devices which monitored refrigerants in the various components like receiver, evaporators etc. The imported materials operated when the working pressure of gas was 24.5 kg|cm2 and they were specially designed for refrigeration|air conditioning machinery and they operated when there was a change in pressure of the gas. They were, therefore, of the nature of control valves, and fell within the items mentioned at Sr. No. vi of the aforesaid notification stating relay controls (including expansion valve and solenoid valves) and pressure switches in the aforesaid notification 80|62 dated 24 April 1962 as amended.

These were, therefore liable to additional duty at the rate of 125 per cent plus 5 per cent *ad valorem* and did not attract exemption. This resulted in duty being levied short by Rs. 1,25,000. The department stated (April 1985) that the imported materials did not fall under the items mentioned in the aforesaid notification and hence the original assessment was in order.

The Ministry of Finance stated that the imported goods had been described as "Hand shut off valves isolating diaphragm type lines with rubber PIFI corrosive materials" and that the leaflet produced by the importer described it as diaphragm valves for air conditioning and refrigeration machinery. The Ministry added that the function of these valves was to stop or block the flow of refrigerant gas in circuit of refrigeration or air conditioning and that they had been specially designed for refrigeration and air conditioning machinery. The Ministry argued that these valves were not in the nature of starting relay controls and did not fall either within the scope of expansion valves or solenoid valves nor these valves do have controls similar to 'float switch' which functioned both as an indicator and also control switch. The Ministry therefore felt that the original assessment made by the department was in order.

The fact however, remains that these valves *viz*, Isolating Diaphragm type with corrosive resisting material Hand Shut Off valves, are meant to stop or block the pressure of the refrigerant gas thus actuating the control devices in the refrigeration cycle and will be more appropriately classifiable as pressure switch.

1.31 **Electrical goods**

(i) Electrical instruments and apparatus falling under heading 90.28(4) of the Customs Tariff Act 1975 are assessable to duty at the rate applicable to the non-electric counterparts of the headings specified therein. Ministry of Law was of the opinion that the expression "rate applicable" used in heading 90.28(4) referred only to the 'statutory rate' of duty and not to the 'effective rate' of duty.

Goods falling under heading 90.28(4) read with heading 90.16(1) of Custom Tariff Act 1975 imported by private parties|public sector undertakings through a major port from 1980 to 1983 were assessed to duty at the rate of 40 per cent *ad valorem* in terms of a notification issued in August 1976 with appropriate auxiliary duty.

Audit pointed out (December 1981 to March 1983) that the goods in question should have been assessed to duty at the 'statutory rate' of basic customs duty at 60 per cent *ad valorem* with appropriate auxiliary duty in view of the aforesaid opinion of the Ministry of Law.

The Custom House contended (July 1985) that the intention of the Government was to fix the same rate of duty on electrical instruments as was applicable to non-electrical instruments and stated that the issue had been referred back to the Ministry of Law for a final decision. They also stated that their assessment was in order with reference to a decision taken in consultation with the Ministry of Law in the context of interpretation of the term 'duty applicable| leviable' mentioned in a notification issued in September 1980. It is obvious that the rate of duty applied and duty collected was not in accordance with the existing decision of the Ministry of Law.

The rationale of the decision of the wording in the exemption notification relied upon by the department, however, is not apposite, as in the present case the interpretation of the wording relates to the statutory provisions and as opined by the Ministry of Law, the effective rates could not have been envisaged at the time of enactment of the statutory provisions.

Incorrect application of the effective rates of duty resulted in duty being short levied by Rs. 4,46,605.

The case was reported to the Ministry of Finance in the October 1985; their reply is awaited (January 1986).

(ii) Goods described as 'seven pin glass stem' imported by a Public Sector Undertaking between July 1982 and March 1983 through a major Custom House, were amplified as 'component parts of electron gun for the manufacture of T. V. picture tubes'. The goods were classified under heading 70.21 of the Customs Tariff Act 1975 and basic customs duty was levied at 45 per cent *ad valorem* with appropriate auxiliary duty and free of additional duty under a

notification dated 19 June 1980 applicable to 'glass stems for the manufacture of television picture tubes'.

Audit pointed out that the goods were not mere glass stems but glass stems with fittings and they were parts of electron gun, covered by another notification dated 19 June 1980 applicable to 'electron gun and parts thereof for the manufacture of electronic valves and tubes including TV picture tubes'. This specific notification did not prescribe for exemption from additional duty. Consequently additional duty was leviabale under item 68 of the Central Excise Tariff. Incorrect application of the exemption notification to seven cases of imports between February 1983 and February 1984 resulted in duty being collected short by Rs. 89,740.

The Custom House accepted the objection and recovered (May 1984) a sum of Rs. 22,510 in two cases. Demands for Rs. 21,975 were raised in two other cases which were pending realisation, while voluntary payment of Rs. 45,255 has been requested in the remaining three cases.

The Ministry of Finance confirmed the facts.

1.32 **Iron and steel products**

Sheets and plates of iron or steel, hot rolled or cold rolled, are classifiable under the heading 73.13 of Customs Tariff Act 1975. In terms of an exemption notification dated 1 March 1984 as amended all goods other than the following namely (i) tin-free coated steel sheets and (ii) galvanised sheets of iron or steel, in coils or otherwise, are chargeable to basic customs duty at 60 per cent *ad valorem* plus the appropriate auxiliary duty.

A consignment of Galvanised Plain Sheets (Zinc Alume) weighing 98.780 tonne and costing Rs. 4,06,107 which was imported in September 1984, was classified under the heading 73.13. Basic customs duty at 60 per cent plus auxiliary duty at 40 per cent *ad valorem* under the aforesaid notification and countervailing duty at Rs. 650 per tonne plus 10 per cent under item 25 of Central Excise Tariff were levied.

The imported materials were galvanised plain sheets (Zinc Alume) of mild steel and therefore the concessional rates under the said notification dated 1 March 1984 would not be applicable to the galvanised sheets of iron or steel. They would, therefore, be assessable to standard rate of duty at 100 per cent plus 30 per cent and at Rs. 850 per tonne plus 10 per cent under item 25 of Central Excise Tariff. The incorrect grant of exemption resulted in duty being levied short by Rs. 1,43,563.

The mistake was pointed out in audit in March 1985; reply from the department is awaited.

The case was reported to the Ministry of Finance in August 1985; their reply is awaited (January 1986).

1.33 **Medical equipment**

Under a notification issued on 25 January 1979 Medical and Surgical equipment imported by Hospitals which are certified by the Ministry of Health to be providing diagnostic treatment facilities to both in-patients and out-patients without distinction of caste, creed, etc. subject to certain conditions laid down in that notification, are exempt from the whole of the customs duty and additional duty. Auxiliary duty is also exempt under another notification of the same date. Hospitals which were in the process of being established were eligible to aforesaid concessions only from 30 September, 1983.

In respect of clearances of medical equipment by a public limited company for establishing a hospital, the Ministry of Finance clarified on 22 July, 1983 that equipment, imported by hospitals, not yet set up, could not be permitted to be cleared free of duty under the said notification dated 25 January, 1979 even when the required certificates had been issued by the Ministry of Health.

Medical equipment and other goods imported between May 1983 and September 1983 by a Public Limited Company through a major Custom House for the purpose of setting up a hospital were cleared free of duty. Audit pointed out (February and April 1984) that since the hospital was not yet set up, the imported equipment and other goods were not eligible for the exemption from duty in view of the Ministry's clarification of July 1983. The Custom House stated (February 1984 and July 1985) that the Ministry of Finance had confirmed in August 1983 that the free clearances could be extended to the Public Limited Company on the ground that the hospital proposed to be set up was only an extension of a Rural Research Centre run by it since July 1982 and that there was no case for disallowing the certificate issued by the Ministry of Health, subject to verification of evidence to the effect that the expenses of the Rural Research Centre were incurred by the Public Limited Company.

Accordingly demand aggregating to Rs. 2.15 crores issued in respect of clearances upto 29 July, 1983 on the basis of the earlier clarification of the Ministry of Finance of July 1983 were withdrawn by the department. The duty involved in respect of free clea-

rances from 30 July, 1983 to 29 September, 1983 (when the amending notification came into effect) is not known. However, audit pointed out non levy of duty amounting to Rs. 27.60 lakhs in some cases of clearances effected in September 1983. The department did not issue any demand in respect of these cases as it had already decided to withdraw the earlier demands and to allow duty free clearances in terms of the instructions of the Ministry of Finance of August 1983.

The inference that the hospital was an extension of the Rural Research Centre suffered from the following lacunae :

(i) The certificate issued by the Ministry of Health in March 1983 regarding eligibility for exemption from duty was only in respect of the hospital to be commissioned, providing free facilities, etc.

(ii) The goods were not intended for the extension of the activities of the Rural Research Centre but for the setting up of a new sophisticated hospital complex about 20 kilometers away, nor were the goods imported on behalf of/for the Research Centre. As the hospital was not in existence at the time of issue of the certificate by the Ministry of Health, it did not comply with the stipulation in the notification that the hospital should be providing diagnostic treatment etc.

(iii) The Rural Research Centre would not also qualify for import of goods free of duty, for in terms of the notification the Ministry of Health is to certify that the hospital is providing medical, surgical or diagnostic treatment facilities :

(a) free to atleast 40 per cent of all their out-patients,

(b) free to all indoor patients belonging to families with an income of less than Rs. 300 per month (keeping for this purpose at least 10 per cent of all the beds reserved for such patients) and,

(c) at a reasonable charge to other patients on the basis of their income.

Although the Rural Research Centre provided free treatment to all its out-patients, its only other activity since its inception in July 1982 till June 1983 had been the performing of five family planning operations. It is difficult to perceive that this activity would be adequate to meet the requirements at (b) and (c) above.

The total expenditure incurred by the Rural Research Centre from July 1982 to July 1983 amounted to Rs. 2.72 lakhs only whereas the cost of establishing the hospital was in the region of Rs. 9 crores and the revenue forgone due to extension of the exemption notification worked out to more than Rs. 2.42 crores.

The Ministry of Finance stated (January 1986) that Tambaram Rural Research Centre, the expenses of which were met by M/s. Apollo Hospital Enterprises Ltd., had started functioning over a year prior to the import of the subject goods and was an existing Hospital unit fulfilling the criteria for duty exemption as laid down in Notification No. 17-Cus dated 25 January 1979. The Ministry added that since the new activities of Apollo Hospital evolved round the existing unit and the state Government as well as the Ministry of Health and Family Welfare, New Delhi had certified that the goods were essential for use in the Hospital, the conditions mentioned in the Notification No. 17/79-Cus dated 25 January 1979 were held as satisfied and exemption allowed under the said notification.

The fact remains that the certificate issued by the Ministry of Health in March 1983 regarding eligibility to exemption from duty was only in respect of the Hospital to be commissioned and not to the Research Centre which had been functioning since July 1982. It is also significant to note that the conditions governing the exemption under the aforesaid notification were not fulfilled at the time of import of the goods for the Hospital because the Hospital proper was commissioned only in September 1983 while the goods were imported between May 1983 and September 1983, and hence neither the condition regarding prior existence of the Hospital nor the other conditions regarding diagnostic treatment being provided to the patients by the Hospital could have been fulfilled by the importer, as certified by the Ministry of Health.

1.34 **Aviation turbine fuel**

Aviation turbine fuel was specifically included under item 7 of the Central Excise Tariff with effect from 1 March 1982 under Finance Act 1982. The statutory rate of basic excise duty was fixed at Rs. 500 per kilolitre. As per a notification dated 2 April, 1982 the effective rate of excise duty on the subject

goods was fixed at Rs. 338.19 per kilolitre. It, therefore, follows that aviation turbine fuel was assessable to excise duty at Rs. 500 per kilolitre during the period from 1 March, 1982 to 1 April, 1982.

Additional duty at the lower rate of Rs. 338.19 per kilolitre was levied on the clearance of imported aviation turbine fuel effected from bonded warehouse during the period from 1 March 1982 to 1 April 1982. This resulted in short levy of duty of Rs. 89,642.

On this being pointed out in audit (June 1984), the Custom House sought to justify the assessment by taking recourse to a notification dated 17 August 1979 which was applicable to kerosene. Audit, however, was of the view that concessional rate was granted specifically to aviation turbine fuel from 2 April 1982 only and prior to that date the concessional rate was in respect of kerosene only. The specific item for aviation turbine fuel was introduced with effect from 1 March, 1982 and hence a separate exemption notification was necessary for this product from that date. Moreover, kerosene and aviation turbine fuel were two distinct and identifiable products.

The Ministry of Finance confirmed the facts and stated (January 1986) that the Collector of Customs was being advised to pursue recovery action.

1.35 **Outboard Motors**

Marine engines as well as outboard motors are both classifiable under Heading 84.05 of the Customs Tariff Act 1975 which carries a standard rate of 100 per cent *ad valorem* for customs duty.

Under a notification issued on 2 August, 1976 marine engines are eligible for the concessional rate of duty at 40 per cent *ad valorem*. As per another notification issued in August 1979 as amended, outboard motors imported into India by any State Fisheries Corporation for fitment to boats used for fishing operations are assessable to customs duty at 40 per cent *ad valorem*.

The Collectors of Customs in the Conference held in March 1982 opined that outboard motors were different from marine engines and were not assessable to concessional rate of import duty under the later notification, if imported by a private party. In order No. 225 dated 24 June, 1982 Government of India held that outboard motors were the same as marine engines and were, therefore, assessable to concessional rate of duty under the aforesaid notification dated 2 August 1976 when imported by a private party. The Collectors of Customs again met in August 1982. They reviewed the aforesaid Government of India order and again came to the conclusion that outboard motors and marine engines were different. The Central Board of Excise and Customs, however, clarified in its letter dated 31 December, 1982 that it agreed with the decision of the Government on the revision petition which was not in consonance with the decision of the conference of Collectors of Customs.

The Board's clarifications of 31 December, 1982 tantamounts to the acceptance by the Board that Marine engines and outboard motors are same. The fact, however, remains that they are differently known in the trade/commercial parlance as already accepted in the Conference of Collectors of Customs. Moreover, if the marine engines and outboard motors are held to be same, there was no necessity of issuing the notification of August 1979.

On outboard motors imported during the period from March 1983 to December 1984 by private importers through a major Custom House, basic custom duty was levied at 40 per cent *ad valorem* under the provisions of the aforesaid notification of August 1976. These motors were subject to additional duty under item 29(ii) instead of item 68 of Central Excise Tariff and resulted short levy of duty of Rs. 1.18 crores in 21 cases. Demands for differential additional duty under Item 68 of Central Excise Tariff had been raised in some cases.

The Ministry of Finance stated (February 1986) that the classification of outboard motors was discussed in the departmental tariff conference held at Calcutta on 27 and 28 December 1985 and they were appropriately classifiable under heading 84.06 of Customs Tariff Act 1975 and were also eligible to concessional rate of duty under notification issued in August 1976. The Ministry admitted that the existence of notification issued in August 1979 was redundant and considered the necessity of reviewing its continuance. The Ministry added that as regards countervailing duty, the outboard motors would be classifiable as marine engines and would fall under item 29(ii) of Central Excise Tariff. The Ministry, therefore, argued that the assessment of outboard motors made in all these cases was in order.

The fact, however, remains that the aforesaid decision of the Conference shall be effective from the date of rescinding of notification dated 24 August 1979 and not earlier. The said decision could not be applied to

cases of imports during the period during which notifications of 1976 and 1979 continue to co exist, in as-much-as these two notifications recognised marine engines and outboard motors as two different equipments for the purpose of exemption.

IRREGULARITIES IN REFUNDS

1.36 Refund made though barred by limitation

According to the executive instructions issued by Government, the date of receipt of a refund application in the Custom House is construed as the date of making the claim.

(i) A Public Sector Undertaking paid customs duty in respect of some goods on 29 June, 1982 and claimed refund of Rs. 15,668 on 29 December, 1982 which was received in the Custom House on 30 December, 1982. The ground for the refund was that duty was paid originally in the absence of duty exemption certificate.

As the claim was not received in the Custom House within six months specified in Section 27(1) of the Customs Act 1962, it was not admissible. The claim, however, was allowed and refund made on 17 April, 1984.

On the inadmissibility of refund being pointed out (September 1984) in audit, the Custom House accepted the objection and recovered Rs. 15,668 (February 1985).

The Ministry of Finance confirmed the facts.

(ii) Another Public Sector Undertaking paid customs duty on 11 December 1981 and preferred a claim for refund of Rs. 12,858 on 10 August, 1982. The claim was preferred on the ground that the duty was initially paid in the absence of duty exemption certificate. The claim was admitted and refund of Rs. 12,828 allowed on 18 October 1984 even though it was not received in the Custom House within the six months time limit specified in Section 27(1) of Customs Act 1962.

The inadmissibility of refund was pointed out in audit to the department in April 1985 and to the Ministry in August 1985.

The Ministry, while confirming the facts, stated that the irregular refund of Rs. 12,828 had since been recovered (September 1985).

1.37 Excess refund

Based on an appellate decision, a major Custom House refunded a sum of Rs. 26,829 during December 1981 to a Government undertaking. This refund consisted of Rs. 19,792 on account of countervailing duty collected on hose assembly cleared for home consumption and Rs. 7,037 on account of short packed goods. In the absence of the original bill of entry, the refund was made on the basis of a reconstructed bill of entry. In the refund file it was indicated that a sum of Rs. 5.40 lakhs was refunded in February 1978 on account of short landed goods. It was, therefore, enquired in March 1982 in audit whether the refund of Rs. 5.40 lakhs made in February 1978 was taken into account while calculating the refund allowed in December 1981. Thereupon, the Custom House considered the entire issue and accepted the objection that an amount of Rs. 11,278 was refunded in excess to the importer.

The Ministry of Finance while confirming the facts, stated that the amount had since been recovered (August 1985).

1.38 Irregular refund on chemical not used as drug

As per a Central Excise notification dated 1 March 1975, all drugs, pharmaceuticals and drug intermediates not elsewhere specified, which are classifiable under item 68 of Central Excise Tariff are exempt from the levy of Central Excise duty.

In deciding a proposal for review of two orders in appeal relating to levy of countervailing duty on imports of sorbitol U.S.P. and propylene glycol U.S.P. Government took the view (March 1981 and May 1981) that countervailing duty leviable on chemicals of "pharmaceutical grade" was exempt. However, in adjudicating the levy of duty on the chemical 'methyl aceto acetate' Government in its capacity as quasi judicial appellate authority held (September 1981 and September 1982) that duty leviable on such chemicals would be exempt to the extent they are used in the manufacture of drugs because the notification implied an end use condition on all chemicals which are exempted from duty after the adjudicating officer takes a view that such chemicals are to be used in drug industry.

On seven consignments of propylene glycol BP/USP imported (June 1981) through a major Custom House, countervailing duty was levied under item 68 of Central Excise Tariff. The importer filed a refund claim in February 1982 requesting for refund of countervailing duty in terms of the aforesaid notification. Propylene Glycol has various industrial uses such as solvents, humectant and plasticizer etc. and is also used in the manufacture of synthetic resins. Therefore, it is to be treated as a chemical and was not covered by the aforesaid exemption notification

While dealing with the grant of a general exemption of countervailing duty on this commodity by the Custom House in an identical case (Para 1.24 of the Audit Report for 1982-83), the Ministry had stated (November, 1983) that the department would take decision on the question of short levy of countervailing duty after verifying the end use of the goods by the importers in each case. In this case, the importers who were also the actual users had themselves stated that the consignment of propylene glycol imported in June 1981 was required for the manufacture of solvent. The goods, therefore, were not entitled to the aforesaid exemption. This resulted in incorrect grant of refund of Rs. 56,610 (April 1984) contrary to the decision taken by the Ministry in November 1983 in an earlier case.

The irregular payment of refund was pointed out in audit (September 1984); the department's reply is awaited (May 1985).

The paragraph was sent to the Ministry of Finance in September 1985; their reply is awaited (January 1986).

EXPORT DUTY

1.39 Non levy of export duty

With effect from 1 January 1977, 'mica including fabricated mica' was transferred from item 25 to item 8 of the export schedule. Export duties were, therefore, leviable on 'silvered mica capacitor plates' at 10 per cent *ad valorem*. under that item together with cess at 3½ per cent *ad valorem* under item 7 of export cess schedule.

On eleven consignments of "silvered mica plates" exported through a major Custom House export duty and cess were not levied at the aforesaid rates. This resulted in duty and cess being levied short by Rs. 43,039 and Rs. 15,064 respectively in eleven cases.

On the mistake being pointed out in audit (March 1983), the Custom House contended that "silvered mica capacitor plates" are finished products made after depositing silver electrodes on mica plates and, therefore, fall outside the scope of item 8 of the Export Tariff (*i.e.* the subject goods are other than mica or fabricated mica) and do not attract any export duty or cess.

Audit pointed out (March 1983) that the subject goods were nothing but 'fabricated mica' classifiable under item 8 of the export schedule because the term 'fabricated mica all sorts' is wide enough to include silvered mica capacitor plates.

The Ministry of Finance stated (January 1986) that the imported goods were described in the export documents as "electronics components-silver mica capacitor plates" and they conformed to the I.S.I. standards. The Ministry added that these were fully finished identifiable components of electronics industry and the silver electrodes deposited on mica provided the essential character to the plates. The Ministry therefore concluded that the silvered capacitor plates would not fall within the ambit of description of mica including fabricated mica and would therefore, not attract any export duty or cess.

The fact that the goods are 'fabricated mica' has however, not been disputed by the Ministry. The term 'fabricated mica' in the Export Tariff is wide enough to bring within its ambit those composite articles of mica also in which mica constituent is predominant and the essential characteristics of mica have not been lost. In the subject goods, mica is the major constituent and the intention is to levy duty and cess on the export of mica in all forms.

CESS

1.40 Non levy of cess

(i) With effect from 1 June 1977 cess became leviable on all textiles and textile machinery manufactured in India at the rate of 0.05 per cent *ad valorem*. In terms of section 3 of the Customs Tariff Act 1975 countervailing duty at 0.05 per cent *ad valorem* also became leviable on all imported textile machinery with effect from June 1977.

No countervailing duty equal to the aforesaid cess was levied in two Custom Houses on the import of textiles and textile machinery. In 31 cases, non levy of Rs. 30,376 was noticed.

The mistakes were pointed out in audit during February 1984 to June 1985. One Custom House accepted the objection in eleven cases in principle and intimated (October 1984) that Rs. 2,498 had been recovered in two cases. Reply from the other Custom House is awaited (August 1985).

The Ministry of Finance stated (December 1985) that the issue of levy of cess under Textile Committee Act 1963 on imported textiles and textile machinery as additional duty of customs under section 3 of

Customs Tariff Act 1975 was discussed in departmental conference of Collectors of Customs held in October 1985 and that pending decision from the Ministry of Law in regard to the legality of levy of cess as additional duty under the aforesaid provision, it was decided that the Custom Houses which had been levying such additional duties should continue to do so, whereas the other Custom Houses in which the practice of levying such additional duty did not exist, should, raise less charge demand on this account, which, for the time being, need not be confirmed.

(ii) With effect from 1 January 1984 countervailing duty in lieu of duty of excise, in the form of cess, became leviable at 1/8 per cent *ad valorem* on automobiles on import.

On eleven consignments of automobiles imported in February 1985 and March 1985 the aforesaid duty was not levied by a major Custom House resulting in non levy of Rs. 11,987. The non levy of duty was pointed out in audit in February and March 1985.

The Ministry of Finance confirmed the facts.

1.41 **Short levy of Agricultural produce cess due to incorrect application of tariff value**

Under Section 3 of the Agricultural Produce Cess Act 1940, export duty in the nature of cess is leviable on items like fish, spices, fruits, seeds, etc., which is fixed at ½ per cent of tariff value.

Government fixed tariff values of dry ginger, black pepper and turmeric finger at Rs. 1,500, Rs. 1,150 and Rs. 435 per quintal respectively for the period from 1 July 1983 to 30 June 1984. These values were enhanced to Rs. 2,000, Rs. 1,570 and Rs. 800 per quintal respectively with effect from 1 July 1984.

On export of dry ginger, black pepper and turmeric finger during July to September 1984, a major Custom House adopted the tariff values applicable for pre July 1984 period resulting in cess being levied short by Rs. 65,242 in 117 cases.

On the mistake being pointed out in audit the Custom House admitted the objection.

The Ministry of Finance confirmed the facts and stated (December 1985) that the short levied amount of Rs. 65,242 had since been recovered.

IRREGULARITIES IN DRAWBACK

1.42 **Fixation of All Industry rates of drawback**

Drawback of Customs and Central Excise is granted as per the provisions of Section 75 of the Customs Act 1962 and Section 37 of the Central Excise and Salt Act 1944. Customs and Central Excise duties Drawback Rules 1971 have been framed in exercise of the powers conferred by these sections. Drawback, as defined in these rules, in relation to any goods manufactured in India and exported, means, rebate of duty chargeable on any imported materials or excisable materials used in the manufacture of such goods in India.

Under the rules, the rates of drawback (All Industry) are determined by Government having regard to the average quantity of value of each class or description of duty paid materials from which a particular class of goods is ordinarily manufactured in India.

The class or description of exported goods are identified and a sub-serial number is allotted to each class or description in a table appended to the said drawback rules. The amount or rate of drawback determined on the basis of the averages aforesaid is mentioned against each class or description in the table.

The Public Accounts Committee in Para 1.117 of their 216 Report (Seventh Lok Sabha) observed that the Ministry of Finance should aim at arriving average rates based on manufacturing data of atleast 50 per cent of the exporters of any group of products. If a target of 50 per cent is aimed at, the rates are not likely to be distorted too much by taking brand rates into account in averaging calculations, nor distorted by data of dominant exporters influencing the fixation of rates unduly.

An analysis of the drawback rates fixed by the Ministry with effect from 1 June, 1984 was made to see how far the observations of the Public Accounts Committee have been met in regard to calculation and utilisation of data for fixing the All Industry rates and the findings were reported to the Ministry of Finance in October 1984.

A similar study of the All Industry rates fixed with effect from 16 June 1985 has also been made

and the two analysis are as follows :—

	1 June 1984	16 June 1985
1. Number of rates for which all Industry rates were announced.	753	704
2. Number of items for which data on duty element in recent exports was not received but the rates were changed on the basis of changes in the rates of duty of Customs & Central Excise.	218	258
3. Number of items for which data on duty element in recent exports was not received.	639	632
4. Number of items for which data on duty element in recent exports was received :	114	72
(*i*) From one manufacturer	81	25
(*ii*) From two manufacturers	25	46
(*iii*) From more than two manufacturers.	8	1
5. Number of rates fixed on the basis of data received where wieghted average on duty element in exports covered :		
(*a*) Exports of one manufacturer or exporter.	39	23
(*b*) Exports of any two manufacturers or exporters.	3	23
(*c*) More than 50 per cent of exports from India made in recent times.	5	18

The Ministry of Finance stated (January 1986) that while the response in furnishing the required data was not to the desired extent in the past, special attention was given this year, in pursuance of the Public Accounts Committees recommendation by approaching all Export Promotion Councils, Commodity Boards and Association of Export organisations for furnishing adequate data.

1.43 Irregular payment of Drawback on exports covered under :

(i) DEEC Scheme

Under the Drawback rules the rates of drawback (All Industry rates) are determined by Government having regard to the average quantity or value of each class or description of duty paid materials from which a particular class of goods is ordinarily pro- sub-serial number is allotted to each lass or description of exported goods is identified by the Ministry of Finance (and modified over the years) and a sub-serial number is allotted to each class or description in a table appended to the said drawback rules. The amount or rate of drawback determined on the basis of the average aforesaid is mentioned against each class or description in the table.

Under the rules, every exporter can apply for fixation of a brand rate or amount of drawback to cover only his exports if the amount of drawback on All Industry rates is less than three-fourth of the duties paid on the material or component used in the production or manufacture of his goods.

General notes given under drawback Public Notice No. 1 dated 15 October 1971 (as amended) stipulate that drawback is not admissible at all industry rates for exports when one or more of the ingredients in the export product had the benefit of duty exemption under Duty Exemption Entitlement Certificate Scheme and the exporter in that case should apply for fixation of brand rates.

(a) As per a public notice issued in June 1983, the All Industry rates of drawback are not applicable to exports made in discharge of an export obligation fixed under the Duty Exemption Entitlement Scheme.

On thirty seven consignments of ready made garments exported through an air customs port during 1983 in discharge of the export obligations under the above scheme, drawback amounting to Rs. 0.98 lakh was paid to the exporters by applying the All Industry rates.

On the irregular payments being pointed out in audit (March and April 1984), the Custom House accepted the objections and recovered Rs. 0.88 lakh. Report on recovery of the balance amount of Rs. 0.10 lakh in respect of two consignments is awaited (January 1986).

The Ministry of Finance confirmed the facts.

(b) On a consignment of 873.18 quintals of pine-apple jam exported through a major Custom House in October 1983 drawback amounting to Rs. 67,671 was paid (January 1984) at All Industry rate. It was certified on the shipping bill that 611.228 kilograms of pectin imported against an advance licence issued under the D.E.E.C. Scheme was used in the manufacture of the export goods.

Audit, therefore, pointed out (November 1984) that payment of drawback at All Indusrty rates was irregular. The Custom House accepted (April 1985) the objection and recovered the entire amount of Rs. 67,671 (March 1985).

The Ministry of Finance confirmed the facts.

(c) In an air cargo complex, drawback was paid at the All Industry rates on ready made garments

exported from December 1983 to May 1984 in discharge of the obligations under the D.E.E.C. Scheme. The goods were manufactured using materials imported under D.E.E.C. Scheme and hence the export goods were not entitled to the All Industry rates of drawback. Audit pointed out (June 1985) that the brand rates subsequently sanctioned for these exports were lower than the All Industry rates at which the payments were made. This resulted in the excess payment of drawback amounting to Rs. 25,429.07 in 39 cases.

The Ministry of Finance confirmed the facts and stated (January 1986) that the excess amount of Rs. 25,429.07 had already been realised from the exporter.

(ii) **Other exports**

(a) As per brand rate fixed in Government's letter dated 25 March 1981 for a manufacturer and exporter of wagons, the rate of drawback was indicated as Rs. 5,246 per wagon and this was to be made applicable to the exports made between 8 November 1972 and 30 September 1975.

However, on a consignment of ten EAS type wagons exported on 4 November 1972 drawback at the above mentioned rate was paid. The entire payment was irregular as this rate was not applicable to the exports effected. This resulted in irregular payment of Rs. 52,460.

On this being pointed out in audit (June 1984) the Custom House accepted the objection and raised a demand in September 1984. Report on recovery is awaited.

The Ministry of Finance stated that (November 1985) that the goods exported vide shipping bill number. E. F. 402 were actually placed on board the vessel on 8 November 1972 and the exporter had clearly indicated (in this application for brand rate) the particulars of the aforesaid shipping Bill as being the first shipment for which the rate was desired. The Ministry added that even if the shipping bill date was given wrongly, the rate letter clearly covered this consignment.

The reply is not acceptable because section 16(1)(a) of Customs Act 1962 determines the crucial date as date of presentation of shipping bill for purposes of giving effect to the rate of drawback and the relevant date being 3 November 1972 in this case, the question of extending the said rate letter to this export does not arise.

(b) On the export (September 1982) of 300 Pieces of "sheep leather jackets fitted with imported zips, buttons and press buttons" drawback was allowed at the brand rate of Rs. 49 per piece admissible for the export of article namely "sheep leather jacket fitted with imported zips, press buttons and polyester wadding" vide item No. 3 of Ministry's brand rate letter F. No. 601/2101/16/83-DBK (Misc. 207) dated 10 August 1983.

The "sheep leather jackets" exported were not fitted with the imported "polyester waddings" and hence payment of drawback at the aforesaid rate was not applicable. This resulted in irregular payment of drawback amounting to Rs. 14,700.

The Ministry of Finance, while confirming the facts stated that a demand had since been raised (December 1985).

1.44 **Irregularities in fixation of brand rates**

Under rule 7 of the drawback rules 1971, an exporter can apply for fixation of brand rate of drawback to exclusively cover export of his goods, if the amount or rate of drawback fixed on All Industry basis is less than three fourth of the duties paid on the material or components used in the production or manufacture of the goods exported.

While fixing the brand rates under the aforesaid rule, the Ministry of Finance fixed higher rates of drawback than what was due to the exporters in five cases involving over payment of Rs. 24,441.

On the mistakes being pointed out in audit (September, October 1984 and March 1985), the Ministry revised the brand rates and directed the collectors of customs to recover the excess payments from the exporters.

The Ministry of Finance confirmed the facts.

1.45 **Excess payment of drawback due to application of incorrect rate**

The rate of drawback on export of "phosphor bronze four drinier wire cloth" was reduced from Rs. 20 per kilogram to Rs. 8.65 per kilogram from 1 June 1983 under sub-serial 4508 of the drawback schedule.

On a consignment of goods of aforesaid description exported in June 1983 (date of entry outwards being 1 June 1983) drawback was allowed by a major Custom House at the rate of Rs. 20 per kilogram instead of the correct rate of Rs. 8.65 per kilogram. The incorrect rate resulted in an excess payment of drawback of Rs. 34,535.

This was pointed out in Audit in April 1985.

The Ministry of Finance, while confirming the facts, stated that a confirmed demand had been issued to the exporter in August 1985 for recovering the excess payment.

1.46 **Excess Payment of drawback on goods taken under residuary classification**

(i) On export of three consignments of machinery spares and accessories made of cast iron from July 1981 to April 1982, a major Custom House allowed drawback at 3 per cent *ad valorem* on free on board value under sub-serial 4402 treating them as parts of textile machinery instead of at Rs. 75 per tonne under sub-serial 3603 of the drawback rate schedule treating them as articles of iron.

On these irregularities being pointed out in audit in August 1983 and March 1984, the Custom House sought to justify the classification on the ground that the export goods were identifiable parts of machinery and as such it would be unjustified to take them solely as articles of cast iron.

The contention of the Custom House is not acceptable as it is against the principle of drawback rules and content based sub-item of drawback schedule should have precedence over generalised description. The misclassifications have resulted in excess payment of drawback of Rs. 11,155 in three cases.

The Ministry of Finance stated (February 1986) that export products, having the catalogue part numbers, were component parts of textile/tea machinery and therefore classification of the goods as parts of the machinery under sub serial 4402 would be in order. The ministry also added that they conformed specifically to the description in the said sub serial as identifiable parts of textile/tea machinery. The Ministry, however, admitted that there could be variations in the actual duty incidence in individual cases of export goods, particularly because machinery items were made of various metals.

The fact remains that the incidence on input materials considered for products falling under sub serial 4402 is mainly on steel while the goods exported are made of cast iron; which bears lesser duty incidence than steel. Hence the argument that the classification of the export goods in this case will be determined solely with reference to the description given in sub serial No. 4402 without considering the nature of input material used and the duty incidence thereof, is not valid, particularly in the context of the content based rates in the drawback schedule, which have mainly been provided for serving this purpose.

(ii) On a consignment of 'Isogel' which is an extract of 'Ispaghula husk' a product of Indian Origin, exported during October 1982, drawback was paid at 12.5 per cent of f.o.b. value after classifying the exported product as "drugs, drug intermediates and pharmaceutical products not otherwise specified".

Even though in the production of Isogel, imported and indigenous duty paid materials are used, the duty incidence per kilogram of the finished product works out to only Rs. 0.662 per kilogram against an average f.o.b. value of the finished product of Rs. 34.12 per kilogram. The duty incidence therefore amounts to only 1.94 per cent of the f.o.b. value.

The product Isogel was not taken into account while fixing the All Industry rate of 12.5 per cent of f.o.b. value against the aforesaid entry 'not otherwise specified'. The excess payment of drawback to the extent of 10.56 per cent of f.o.b. value was the result of the absence of rules for classification in the drawback schedule and the calculation of averages on a very small percentage of the types to the totality of exported products covered by a description in the schedule. The resulting excess payment of drawback amounted to Rs. 30,417.

The irregularity was pointed out in audit in March 1985. Demand was issued by the department in April 1985. Recovery particulars are awaited (July 1985).

The Ministry stated (January 1986) that 'Isogel' was a drug manufactured under Drug licence and accordingly its classification under sub-serial No. 1202 of the drawback schedule was in order. The Ministry also added that All Industry rate on any product under "not otherwise specified" category being an average of duties paid on input materials on a large number of products, there may be cases where such incidence may be less or more. The Ministry, however, admitted that the duty incidence on input materials used in the manufacture of 'Isogel' was not specifically taken into account while fixing the rate for residuary heading 1202 and when the incidence was found to be less, the item was delinked from sub serial No. 1202 and provided a separate sub-serial No. 1207.

(iii) In respect of three consignments of "Calcium Sennocide", (20 per cent to 40 per cent) an extract of senna leaves in the form of powder, exported by air through a major Custom House between January 1983 and April 1983, drawback was paid at 12.5 per cent of f.o.b. value under sub-serial No. 1202 of drawback schedule as "drugs, drug intermediates, pharmaceutical products not otherwise specified". The goods exported were only an extract of leaves of 'Senna' a produce of Indian Origin, and the incidence of duty on the raw materials going into the product was not taken into account while working out the

average drawback rate against the description "drugs, drug intermediates, pharmaceutical products not otherwise specified". Because a high rate of 12.5 per cent of f.o.b. value was indicated against the general and residuary description 'not otherwise specified' excess drawback was paid on the export of the said goods as per details given below.

The drawback (duty incidence) allowable on the finished product varied from 7.2 to 7.5 per cent of f.o.b. value whereas drawback actually paid was 12.5 per cent of f.o.b. value. The drawback amounting to Rs. 44,685 paid in respect of these three shipping bills at the aforesaid rate of drawback was therefore irregular.

The department has since raised a demand for recovery of Rs. 49,685 (April 1985). Recovery particulars were awaited (July 1985).

The Ministry of Finance stated (January 1986) that Calcium sennocide is a drug manufactured under Drug Licence and accordingly its classification under sub-serial No. 1202 of Drawback Schedule is in order. The Ministry added that the All Industry rate under the residuary item 'not elsewhere specified' being the average of duty paid on input materials, there may be cases where such incidence may be less or more. The Ministry, however, admitted that duty incidence on input materials used in the manufacture of calcium Sennocide was not taken into consideration while fixing the rate for residuary heading No. 1202. The Ministry also intimated that when the incidence was found to be less, a separate S. S. No. 1208 was created in the drawback schedule with effect from 1 June 1983, against which drawback can be paid at the appropriate rate specified in the schedule in respect of containers and other packing materials used, if any.

(iv) Under rule 3(1)(ii) of Drawback Rules 1971, no drawback shall be allowed if the goods are produced or manufactured using imported or indigenous materials in respect of which duties have not been paid. Rifampicin capsules when imported into India are exempt from the whole of Customs duty as also additional duty. On three consignments of Rimpacin capsules exported through a major port in October 1981 and March 1983, drawback was paid at 12.5 per cent of f.o.b. value under sub-serial No. 1202 of the drawback schedule. Rimpacin is the brand name given by the manufacturer to Rifampicin imported and no duty incidence (of Customs or Central Excise) was borne on the raw materials used in the exported product and hence payment of drawback of Rs. 1,59,695 was irregular.

The irregular payment was pointed out in audit (November 1984/March 1985 and April 1985). An amount of Rs. 1,07,890 was recovered in June and July 1985. In respect of the remaining amount, further information was awaited from the department (August 1985).

The Ministry of Finance stated (January 1986) that 'Rifampicin Capsule' was a drug manufactured under Drug licence and accordingly its classification under sub serial No. 1202 of the drawback schedule was in order. The Ministry added that All Industry rate under the residuary heading 'not elsewhere specified' being the average of duties paid on input materials of a large number of products falling under that sub-heading, there may be cases where such incidence of duty in the manufacture of any particular drug may be less or more. The Ministry admitted the fact that duty incidence on input materials of this specific drug was not taken into account while fixing the rate of drawback for the residuary heading 1202. The Ministry however clarified that, when the duty incidence on the product was found to be less on account of the fact that such incidence of duty was related only to the packing materials, a separate sub serial number 1213 was opened with effect from 16 June 1985 under which only drawback at the appropriate rate mentioned in the Schedule in respect of packing material used, if any, would be admissible.

(v) On the export of a consignment of 10,00,000 capsules of the drug cloxacillin in May 1983, drawback was allowed at 12.5 per cent f.o.b. under sub serial number 1202 of the drawback schedule. The bulk drug cloxacillin when imported into India is exempt from the whole of the duty of customs and also additional duty by virtue of specific exemption notifications. As the only imported raw material cloxacillin has not borne any duty incidence, no drawback is payable on the export of the capsules.

On the irregular payment of drawback of Rs. 37,000 being pointed out in Audit (September 1984) the Custom House justified (March 1985) the payment on the ground that the claim had been paid under the All Industry rate and therefore they were not bound to verify the incidence of duty, and hence the claim could not have been repected. The justification advanced by the Custom House in support of the payment is not in consonance with the provisions of the Drawback Rules and the irregular payment of Rs. 37,000 remained to be recovered from the exporter. Moreover, cloxacillin was not considered by the Ministry of Finance, while fixing the All Industry Rate under sub-serial 1202.

The department has been requested to review all other similar cases of payment. A report on the results of the review was awaited (March 1985).

The Ministry of Finance stated (January 1986) that cloxacillin was a drug manufactured under Drug licence and accordingly its classification under sub-serial No. 1202 of the Drawback Schedule was in order. The Ministry contended further that drawback at All Industry rate on any product falling under the category 'not elsewhere specified' was the average of duties paid on input materials and that there may be cases where such incidence may be less or more. The Ministry however admitted that duty incidence on input/packing material used in the manufacture of cloxacillin specifically was not taken into account while fixing the All Industry rate under residuary sub serial No. 1202. The Ministry clarified that a separate sub serial No. 1213 was provided in the Drawback schedule with effect from 16 June 1985.

1.47 **Excess payment of drawback due to misclassification**

Prior to 1 June 1982, parts of power driven pumps were classifiable for grant of drawback under sub-serial 4502 of the drawback schedule. From 1 June 1982, however, the same has been specifically mentioned under sub-serial 4503(i).

A major Custom House granted drawback on parts of power driven pumps exported in July and December 1982 at the rate of 3 per cent on f.o.b. value under sub-serial 4502 instead of under correct sub-serial of 4503(i) at the rate of Rs. 145.00 per tonne.

The excess payment of drawback of Rs. 16,364 was pointed out in audit (July and December 1984). The Custom House justified the payment on the strength of Finance Ministry's letter F. No. 601/4501/82 dated 16 March 1982. In view of the specific inclusion of the subject goods under sub-serial 4503(i) of the drawback schedule from 1 June 1982 the contention of the department was not correct and the excess payment was recoverable.

The Ministry of Finance stated (February 1986) that the goods exported were (i) bowl assemblies and belt attachments for Johnston vertical turbine pumps and (ii) components thereof and they were exported on 28 July 1982 and 15 October 1982. The Ministry admitted that these goods were classifiable under sub-serial No. 4503 (i) of the drawback schedule and the exporter in question had been granted special brand rate on 16 March 1982 for complete pump sets. The Ministry argued that, based on the duty incidence of Rs. 1.26 per kilogram in respect of bowl assembly adopted in the working of special brand rate on complete pumps, the net excess payment would have been Rs. 6611 only in respect of this specific consignment of bowl assemblies exported in October 1982, as the exporter would have been in any case entitled to a payment of Rs. 8,534 on the consignment of 6746 kilograms on the aforesaid duty incidence, had he applied for special brand rate. Similarly, in respect of components of vertical turbine pumps (*i.e.* discharge head assemblies) exported in July 1982, the net payment of drawback by adopting the duty incidence of Rs. 3 per kilogram in the special brand rate case would have amounted to Rs. 1,140 had the exporter applied for special brand rate.

The Ministry's reply is not acceptable as the special brand rate granted in March 1982 was for complete pumps sets and not for components. Since the components exported conformed to the description of the sub-serial No. 4503(i) of the drawback schedule, adoption of the higher duty incidence considered in a special brand rate fixation was not relevant. Further, the All Industry rate, being an average of the duties paid on the inputs going into the manufacture of the products falling under sub serial No. 4503(i), would have taken into account the duty incidence on export goods also. So there was no justification for ignoring the All Industry rate in this case.

1.48 **Irregular payment of drawback in excess of market price of export goods**

Section 76(1)(b) of the Customs Act 1962 stipulates that no drawback is admissible in respect of any goods the market price of which is less than the amount of drawback due thereon.

In respect of one consignment of Agricultural Tea Knives, (Hand tools made of steel not otherwise specified other than Cast) having market value of Rs. 14,000 as declared in the shipping bill, exported in December 1980, a major Custom House allowed drawback of Rs. 17,217 as per the rates prescribed for such items in the drawback schedule. The drawback on the subject goods was clearly in excess of the market value and hence no drawback was allowable.

On the irregularity being pointed out in audit (September 1984), the Custom House stated that demand for Rs. 17,217 was issued to the party on 22 October, 1984, the party had gone in appeal and the case was pending adjudication.

Similarly on another consignment of subject goods valuing Rs. 7,800 exported in December 1980, drawback amounting to Rs. 12,125 was irregularly allowed to the same exporter.

While confirming the facts, the Ministry stated (September 1985) that steps had since been initiated for recovering the amount.

1.49 **Drawback and baggage**

Section 74 of the Customs Act 1962 provides that where goods imported into India are exported, 98 per cent of the duty paid on the goods on their import shall be repaid as drawback if (a) the goods are identified to the satisfaction of the Assistant Collector of Customs as the goods which were imported and (b) the goods are entered for export within two years from the date of payment of duty on the importation thereof. The Ministry of Law have advised that baggage being a category of goods which "cannot be entered for export" in the light of provisions in Section 2(16), 2(37) 50 and 44 of the Act, duty paid on import of baggage cannot be refunded as drawback on export of baggage.

In the Air Customs Collectorate of a major Customs Airport, drawback amounting to Rs. 22,872 was paid on re-export of certain items of baggage. The exported articles included Video Cassettee Recorder and Casio musical instrument, which were imported as passenger baggage and cleared on payment of duty The payment of drawback on re-export of these items was irregular in view of the aforesaid legal position.

The irregular payment was pointed out in audit in February 1983.

The Ministry of Finance confirmed the facts and stated (February 1986) that the legal position had since been corrected to allow drawback on goods brought as baggage and re-exported.

OVERTIME FEES

1.50 **Non-levy of overtime fees**

As per Customs (Fees for rendering services by customs officers) Regulations 1968, firm/person requiring the services of a customs officer for any purpose, has to make a formal request for the same and, on their being granted, the person has to pay the fees as prescribed in the Table appended to the Regulations. Separate rates of fees were prescribed for the period *i.e.* (1) from 6 a.m. to 8 p.m. on working days (2) 8 p.m. to 6 a.m. on working days and (3) Sundays and other holidays irrespective of hours of work. According to this Table, recovery of fees has to be made for service rendered by the customs officer and no free services has been specifically provided therein.

(i) In some minor sea-ports and one airport, overtime fees were recovered for ordinary services rendered by Preventive Officers between 6 a.m. and 10 a.m.. but no recovery was made for service rendered by such officers from 10 a.m. to 6 p.m. In respect of certain sea ports, however, no fees were recovered even for the ordinary services rendered during the entire duration from 6 a.m. to 6 p.m.

On the non recovery of fees for the aforesaid duration being pointed out to the department, it was stated that the recovery of overtime fees prior to the issue of Regulations 1968 was regulated under provisions of the Preventive Service Manual which did not require charging of fees for ordinary services rendered between 6 a.m. and 6 p.m. The Board also clarified in its letter of March 1968 that it was not its intention to change the prevailing practice of charging fees for other than ordinary services at all hours and for ordinary services only outside the working hours. But sub-section 4 of the Regulations superseded all the earlier orders and instructions in force at the commencement of the Regulations. Therefore the question of continuance of the practice followed prior to the introduction of the Regulations of 1968 should not arise. If the practice as followed earlier were to continue, the Board has to make suitable provisions in the aforesaid Regulation itself besides defining the terms "Ordinary Service" "Working Hours" etc. Neither any provisions in the Regulation itself for the aforesaid practice have been made nor have these terms been defined therein in the absence of which non-levy of fees for services rendered by Preventive officers to the merchants/steamer agents who require the services of the preventive officers from 6 a.m. to 6 p.m. would be irregular.

Revenue loss by way of non-levy of fees during the two years 1981-82 and 1982-83 amounts to Rs. 3.71 lakhs in respect of 3 minor ports and one airport A major Custom House intimated that the revenue lost in this account could not be arrived at due to non availability of records.

(ii) Though the aforesaid Regulations do not contemplate any distinction between "ordinary services" and "out of the ordinary services", a major Custom House made such a distinction and did not charge any fees for ordinary services rendered by preventive officers between 6 a.m. and 10 a.m. All work connected with loading and unloading of cargo from and to wharf areas, supervision on board vessels, passing coastal cargo for shipment and for removal to after landing from coastal vessels, was considered as ordinary services. The Custom House did not obtain written requests from individual traders for work considered as "ordinary services" between 6 a.m and 10 a.m. and a record of such work was not maintained. The loss of revenue due to non collection of

overtime fees from the merchants could not, therefore, be worked out. However, the total fees computed with reference to the hours during which the preventive officers attended to the aforesaid type of work (as seen from the overtime posting Register) amounted to Rs. 14,380 during the period August 1984 to October 1984 and on that basis about Rs .50,000 for the whole year.

The above paragraphs were sent to the Ministry of Finance (September 1985 and October 1985); their reply is awaited (January 1986).

1.51 **Short realisation of overtime fees due to adoption of lower rates of cost for services of customs officers in bonded warehouses**

The customs department lends the services of its officers to customs bonded warehouses located inside the factories on cost recovery basis. By an order dated 16 March 1984, Government decided to recover the cost at two and a half times of the emoluments payable to its staff.

In a customs bonded warehouse of a unit, it was noticed that the cost of customs officers|staff deployed thereat was recovered at old rates even after their enhancement in March 1984. On the matter being pointed out in audit (January 1985) the department raised (April 1985) a demand of Rs. 85,377 for the period April 1984 to March 1985.

The Ministry of Finance stated that the amount had since been recovered.

OTHER IRREGULARITIES OF INTEREST

1.52 **Loss of revenue due to delay in forwarding of documents to Internal Audit and Statutory Audit**

According to proviso below section 15 of the Customs Act 1962 the rate of duty for goods in respect of which the bills of entry have been presented under prior entry system is the rate prevailing on the date of entry inwards of the vessel by which the goods are imported.

On three consignments of 'tin mill black plates' imported through a major port, customs duty was levied at the rates in force on the dates of presentation of bills of entry instead of at the rates applicable on the dates of entry inwards of the vessels which were later than the dates of presentation of bills of entry. This resulted in duty being levied short by Rs. 1,67,99,260.

The duty short levied could not be recovered because the demand notices had become time barred under section 28 of the Customs Act 1962. A perusal of the case file revealed the following system failures.

(a) The bills of entry were presented between 14 December 1983 and 29 December 1983 whereas the dates of entry inwards of the vessels carrying the imported goods were between 5 January 1984 and 24 January 1984. The assessments were completed during the period between 20 December 1983 and 30 December 1983 at the rates of duty prevalent on the dates of presentation of bills of entry (i.e. after allowing the exemption under notification dated 13 November 1981 as amended which was valid upto 31 December 1983 only). However, no follow up action was taken by the Appraising Department to review the assessments made on these bills of entry presented under Prior Entry system on the basis of rates of duty applicable with reference to the dates of entry inwards of the vessels as required under para 37 of Central Manual of Appraising Department (Volume I).

(b) The concerned bills of entry were received in the Internal Audit Department on 11 July 1984 and 12 July 1984 (i.e. more than six months after the date of payment of duty) after the notice of demand of duty had become time barred under section 28 of the Customs Act 1962.

(c) The existing instructions of Government provide that original bills of entry after payment of duty should be forwarded to Statutory Audit within 120 days from the date of payment of duty. In this case, the original bills of entry were not sent to Statutory Audit at all. The duplicate bills of entry on the basis of which audit objections were raised were received in audit about 12 months after the dates of payment of duty.

(d) While Internal Audit raised the objection in July 1984, the request for voluntary payment by the importer was made as late as in December 1984 only after the short levy was pointed out by Statutory Audit on the basis of audit of duplicate bills of entry. The importer, however, expressed his inability in February 1985 to make the payment.

In this context, the Public Accounts Committee had, in para 1.19 of its 212 Report (1975-76), emphasised the need for reducing the time lag between assessment and internal audit by gearing up the system in order to ensure that scrutiny by Internal Audit is completed within the prescribed period, as otherwise internal audit would itself be futile. Even though Government had issued instructions in December 1979 for

improving the efficiency and adequacy of Internal Audit and for timely transmission of customs documents to Audit for conducting the checks within the prescribed time limit in the light of the aforesaid recommendations of the Public Accounts Committee, the system failed due to lack of proper monitoring of implementation of Government instructions in this regard. This resulted in avoidable loss of revenue of Rs. 1.68 crores.

The Ministry of Finance confirmed the facts.

1.53 Loss of revenue due to delay in raising objections by Internal Audit

According to the instructions issued by Government in February 1975 and March 1978 for reducing the time lag between assessment and raising of less charge demand, a period of 21 days is prescribed for sending outport customs documents (bills of entry) to the Internal Audit department of jurisdictional Custom House and another period of 4 weeks for completion of scrutiny by them. Thereafter, the documents are to be sent to Statutory Audit. Documents on which Statutory Audit raises objections are sent back to the Internal Audit Department so that they could examine them and transmit them to the Custom House for necessary action. The Custom House has to ensure issue of less charge demand to the importer within the statutory time limit of 6 months from the date of payment of duty prescribed in section 28 of the Customs Act 1962 in order to avoid time bar. However, requests for voluntary payments can be made after the expiry of six months and recovery in such cases cannot be legally enforced. Two bills of entry pertaining to July 1979 were sent by a Custom House to the Internal Audit Department after two months. On receipt of these documents in October 1979, objections were raised by the Internal Audit Department only on 1 March 1980 (i.e. after the expiry of the statutory period of 6 months provided under the Customs Act 1962 for raising less charge demands). In respect of the first case, a request for voluntary payment of Rs. 76,189 was made to the importer on 23 April 1980 by the Custom House based on the objection of Internal Audit received on 31 March 1980. In respect of the second case similar request for voluntary payment was made for Rs. 82,029 on 7 July 1980 only though the objection was received in the Custom House on 3 April 1980. Both the demands were not honoured by the importers (April 1985).

The department stated (April 1985) that in the first case the importer, a textile mill, did not honour the demand on the ground that it was time barred. In the other case it was stated that the importer, a Public Sector Undertaking, had not given reply to the show cause notice inspite of repeated reminders. The department admitted that the delay in raising demand was mainly due to delay on the part of the Internal Audit Department. It also added that suitable instructions were being issued to all concerned for strict adherence to the Ministry's instructions.

In this connection, it may be stated that the Public Accounts Committee had already made several recommendations in the past in regard to the effectiveness and efficient functioning of Internal Audit Department. In paragraphs 3.21 to 3.25 of its latest 44 Report, the Public Accounts Committee (1980-81) (Seventh Lok Sabha) expressed the need for strengthening the Internal Audit Department for using it as a modern management tool. In compliance with the recommendations of the Public Accounts Committee Government issued elaborate instructions on 31 December 1981 providing for the receipt of documents both in Internal and Statutory Audit within the time limit laid down under Section 28 of the Customs Act 1962 for issuing a demand notice. The system appears to have failed in so far as documents relating to outports received in the Internal Audit Department of the jurisdictional Custom Houses are concerned.

The Ministry of Finance confirmed the facts.

1.54 Loss of revenue due to delay in raising of demand within the statutory time limit

As per a notification dated 22 June 1985 as amended motor cars, motor cycles etc., are allowed to be imported by Members of an Automobile Club or Association belonging to the Federation of Alliance Internationale De Tourisme under an international pass (triptyque) or customs permit (carnet de passage en douane) issued by such associations and the vehicles are exempt from payment of customs duty provided the pass or permit is guaranteed by the Federation of Indian Automobile Associations. Such vehicles have to be re-exported out of India within six months from the date of import. Article 26 of 'Customs Convention on the Temporary Importation of private road vehicles' stipulates that the department has no right

to require payment of duty from the guranteeing Association when the non-discharge of temporary importation papers have not been notified to the association within one year of the date of expiry of validity of the pass or permit.

A vehicle was allowed to be imported through a land customs station in September 1978 on a carnet which was valid upto 23 November 1978. On the expiry of the period, neither an extension for retention of the vehicle in India was obtained nor was the vehicle re-exported. Notice demanding customs duty from the Automobile Association was issued by the department on 23 November 1979. However, the demand was received on 20 February 1980, i.e. after about 3 months of its despatch from the customs station. The Association, however, declined to pay duty on the ground that the demand was barred by limitation of time.

On the omission being pointed out (September 1983) in audit the department stated (March 1985) that the demand raised against the guaranteeing Association being time barred had been vacated and action to fix responsibility was under process. Failure of the department in raising of demand within the stipulated period resulted in loss of revenue of Rs. 70,601.

The Ministry of Finance confirmed the facts and stated (January 1986) that the duty amount of Rs. 70,601 could not be recovered from the Federation of Indian Automobile Association which furnished guarantee, because the Custom House failed to raise a demand within one year of date of expiry of the validity of the documents relating to temporary duty free admission of vehicle.

1.55 Delay in recovery of Import Trade Control fine from Port Trust

The goods imported into India and not cleared for home consumption or otherwise within two months from the date of unloading are sold in auction by the Port Trust with the permission of customs authorities, after giving the notices to the importers. On such goods, I.T.C. fine is levied at 50 per cent of the value for industrial raw material and machinery and at 100 per cent for all other goods.

As per procedure laid down by a major Custom House in August 1977 amounts payable by Custom House to Port Trust on account of rent for godowns used for storage of confiscated goods and pre and post confiscation charges are to be adjusted against the amount of I.T.C. fine realised as a result of auction sale of confiscated goods.

Port Trust is recovering pre and post confiscation charges and warehouse rent regularly every month from customs by adjustment from allocated I.T.C. fine payable to Customs but there was inordinate delay in allocating the fine payable to customs department itself after the realisation of the sale proceeds. At the end of 31 March 1984, the balance of I.T.C. fine allocated upto the year 1979-80 payable by Port Trust to Custom House amounted to Rs. 57,44,838. Allocation of I.T.C. fine from the sale proceeds of goods sold in auction for the years 1980-81 to 1983-84 is yet to be finalised. On the basis of the trend for earlier years, the amount of I.T.C. fine recoverable from Port Trust as on 31 March 1984 would exceed Rs. 2 crores. Thus on account of inordinate delay in allocating I.T.C. fine and also due to non-payment of balance of fine by Port Trust to Customs, huge amount due to customs department is pending with Port Trust.

The department stated that the matter had been taken up by the Collector of Customs with the Chairman of Port Trust (March 1985).

The Ministry of Finance, while confirming the facts, stated (November 1985) that a suitable procedure is being evolved in consultation with Bombay Port Trust so that the amount of I.T.C. fine demanded for the auctioned goods during a particular year be passed on to the customs department by the port trust on yearly basis.

1.56 Irregularities in bonds and bank guarantees executed by Importers

As per departmental instructions of 1960 issued by the Central Board of Revenue as amended from time to time by the Central Board of Excise and Customs bonds are to be executed by the importers in support of their obligations to fulfil end use conditions subject to which exemption from duty had been allowed to them. The bonds executed by the importers are required to be reviewed well before their expiry. Consequent upon such review, the bonds are either cancelled or duty is levied and collected.

2. The position of bonds/guarantees executed in a major Custom House (Bombay) during the years 1980 to 1982 was as under :

(Rupees in Lakhs)

Year	Number	Bond against I.T.C. Bond Value / Bank Guarantee	Number	Bond against Test Report	Number	Bond against production of Enduse Certificate Bond Value / Bank Guarantee	Number	Bonds accepted against the orders of the court in cases/Miscellaneous. Bond Value / Bank Guarantee
1980	16	16.69	..	..	523	1138.72	334	531.92
		14.33				896.82		531.92
1981	58	176.26	30	3425.06	627	1211.26	1356	4716.02
		161.51		6.35		917.24		3100.01
							4	1.76
								1.76
1982	227	688.93	..	0.85	654	1944.68	1238	6236.58
		297.62		0.85		1357.43		3774.08

3. A test check of these bonds and the related Custom House records revealed the following irregularities.

(a) The period of validity had expired in respect of 13 bonds (valued at Rs. 15 lakhs) executed during the years 1980, 1981 and 1982 but no demand had been raised even though conditions governing the import had not been fulfilled. The revenue involved is Rs. 15,38,824.

(b)(i) In other cases of 68 bonds (valued at Rs. 1.80 crores) executed during the same period, demands were raised after the expiry of the period of validity of the bonds. The revenue forgone is Rs. 1.80 crores.

(ii) In 4 cases involving bonds and guarantees (values of Rs. 1.73 lakhs each) demands were raised only in June 1983 after the bank guarantees had already expired in December 1981. The revenue forgone is Rs. 1.73 lakhs.

(c) In respect of an importer who imported two consignments of aluminium ingots, the demands for Rs. 3.04 lakhs (bank guarantee Rs. 1.01 lakhs) in one case and Rs. 1.00 lakh (bank guarantee Rs. 1.02 lakhs) in the other case were required to be enforced on the dismissal of a petition filed by the importer on assessment of aluminium ingots/wire rods by a High Court in March 1983. However, demands were not issued even though they were dated April 1983 which rendered the invoking of guarantee time barred. Bond value was Rs. 4.04 lakhs (guarantee value Rs. 2.03 lakhs) of which one bond was not covered by guarantee for the full amount of duty amounting to Rs. 3.01 lakhs. This resulted in non collection of duty of Rs. 4.04 lakhs by way of bonds.

(d) In two cases of imports of P.V.C. resins, one bond valuing Rs. 9.88 lakhs (bank guarantee Rs. 4.94 lakhs) and the other bond valuing Rs. 10.79 lakhs (bank guarantee Rs. 5.40 lakhs), the Custom House issued the demands on 23 April 1983 and 14 June 1983 respectively demanding the payment of difference of duty, even though the bank guarantees had expired on 6 February 1982 and 13 April 1982 respectively. No action was taken to renew the guarantee in these cases. This resulted in non collection of duty of Rs. 20.67 lakhs.

(e) (i) In respect of import of caustic soda by 63 importers, bank guarantees at 50 per cent of the duty were accepted pending finalisation of assessment. These guarantees were not renewed each year till finalisation of the cases nor was duty realised. Inaction on the part of the department resulted in blocking up of revenue to the extent of Rs. 1.19 crores.

(ii) In another case the demand at 50 per cent of duty difference was raised against the importer and bank on 27 April 1983; but the guarantee given by the bank had expired on 31 January 1982 and the revenue involved amounted to Rs. 81,414.

4. (a) In respect of 46 cases of imports of stainless steel circles, tubes, wires rods and angles, bright steel bars and galvanised sheets and colour T.V. sets, the bonds executed by importers were secured by bank guarantees for value of Rs. 6.3 crores but the banks refused to honour the guarantees on the ground that

they had already expired. The amount was thus lost to the Government.

(b) The bank guarantee furnished by an importer of caustic soda was not honoured by the bank on the ground that the guarantee was not presented within the period of its validity. The revenue thus not realised (at 82.5 per cent as duty difference in the said case) and forgone amounted to Rs. 1.45 crores.

5. Several consignments of stainless steel circles were imported by an importer firm. The importer sought judicial remedy by filing two petitions for clearance of these goods on execution of bonds by guarantees by assessing the goods initially at 35 per cent (plus 10 per cent auxiliary duty) instead of at 220 per cent *ad valorem* leviable otherwise on stainless steel sheets.

The bonds and bank guarantees amounting to Rs. 3.72 crores (at 50 per cent of the value of the bond) and Rs. 1.34 crores (at 25 or 50 per cent of value of bond in some cases) respectively were furnished by the importer. On the dismissal of the aforesaid two petitions of the firm (September 1982) the demands were issued in respect of four bonds; but the bank rejected the claims on the ground that the petitions had not been disposed of within the validity period guaranteed by the bank.

The department, in reply, stated (December 1983) that the said firm was not in existence and the petitioner had no financial status. The reasons for the acceptance of the bonds in these cases without assessing the financial stability of the firm were enquired in audit (March 1984); the reply of the department is awaited (September 1985).

6. From an importer of brass scrap (Rs. 15.79 lakhs), German silver scrap (Rs. 2 lakhs) and zinc (value not available), bonds were taken for Rs. 16.00 lakhs) backed with scheduled bank guarantee for Rs. 10.44 lakhs. The guarantee produced by the importer was found to be a forged one, as the concerned scheduled bank had denied of having executed any such guarantee. The importer was also not traceable. The revenue forgone amounted to Rs. 16.00 lakhs.

7. As per records demands were shown to have been raised in 49 cases, but were not issued actually. The fact of demands stated to have been sent by registered post could not be substantiated by postal receipts. The amount of duty involved in these cases aggregated to Rs. 61.00 lakhs (bank guarantee Rs. 42 lakhs).

8. In respect of 13 bonds demands were raised for Rs. 3.90 lakhs instead of Rs. 26.00 lakhs. No recovery for the balance amount was made (September 1983). The guarantees in these cases had already expired in November 1981 and December 1983.

On import of aluminium ingots by a firm a demand was raised for Rs. 80,000 (being the value of bond) instead of Rs. 1.60 lakhs on account of duty payable.

9. In respect of a bond executed for Rs. 68,000 by a firm for import of caustic soda, the concerned files were stated to be missing, recovery had not been made and guarantees were shown as having expired in 1981.

10. In 154 cases demands for Rs. 2.46 crores had not been realised from the importers and action was still under way to recover the amounts.

To sum up, the following types of irregularities leading to the loss of revenue and non recovery of duty, were noticed in the course of review of bonds and guarantees :

(a) The department did not produce to audit any record to show that the financial status/ bonafides of the importers was verified by the Custom House at the time of acceptance of the bond from them.

(b) In one case the firm became extinct and the importer had no financial status with the efflux of time.

(c) In another case, the guarantee of the bank produced by the importer was forged and the department did not verify genuineness of the document.

(d) Yet in another case, the file containing the guarantee papers was stated to be not traceable.

(e) In yet another case, the bank which guaranteed the amount refused to honour the demand issued by the Custom House on the ground of expiry of validity period, because of delay in action taken by the Customs Officers.

The above lacunae noticed during the test check of Custom House records call for a thorough and systematic review of the system of acceptance and enforcement of bonds/guarantees executed by the importers/banks in order to safeguard Government revenue. The facts brought out above point out the need for proper monitoring arrangements.

The matter was reported to the Ministry of Finance in October 1985; their reply is awaited (January 1986).

In another air customs collectorate (Delhi) the bonds executed by importers for various purposes

were checked in audit and the following irregularities came to notice.

(i) In 849 cases bonds valuing Rs. 18.53 crores executed from 1 January 1977 to 30 June 1983 were still lying uncancelled with the customs authorities. It is therefore evident that verifications of end use or levy of differential duty, etc. in the event of the non observance of the terms of the bond had not been done in these cases even though the validity period of the bonds had expired long back.

(ii) *Provisional assessment of duty*

Section 18 of the Customs Act 1962 permits the Customs Officer to assess provisionally custom duty pending his further satisfaction about the rate chargeable on the goods imported in the execution of such surety as the officer may deem fit for the payment of the difference, if any, between the duty finally assessed and duty provisionally assessed. In 165 cases provisional duty bonds valuing Rs. 4.19 crores executed from 1 January 1978 to 30 June 1983 were lying uncancelled even though the validity period of these bonds had expired long ago. No action has been taken to finalise these provisional assessments and also to cancel the bonds executed in this regard.

(iii) *Transit bonds*

The Custom Officers are authorised to permit removal of goods from one warehouse to another without payment of duty subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which transfer is permitted. Transit bonds involving Rs. 7.36 crores executed in 45 cases from 1 January 1979 to 30 June 1983 were lying uncancelled. In the absence of cancellation/discharge of such bonds it cannot be certified that the goods actually arrived in new warehouse and were cleared only after payment of the custom duty.

(iv) *Re-export bonds*

Under exemption notifications issued under the Customs Act 1962 imports of certain goods into the country are allowed for special purpose and for a specific period without payment of customs duty subject to the condition that the goods will be re exported within the specified period. In 101 cases re-export bonds valuing Rs. 6.60 crores executed between 1 January 1979 to 30 June 1983 were lying uncancelled. Obviously, the condition for re-export of the goods in these cases has not been fulfilled. Neither the demand for payment of duty, in respect of those cases where the re-export in terms of the bond has not been made within the specified period, has been issued nor has action been taken to regularise the cases in respect of which re-exports have taken place beyond the periods specified in the exemption notifications.

(v) *Miscellaneous bonds*

Miscellaneous bonds covering 212 cases and valuing Rs. 4.25 crores were executed for other purposes such as I. T. C. etc. by various importers from 1 January 1978 to 30 June 1983. These were lying uncancelled, even though the validity period of these bonds had expired since long.

(vi) The position of the pending bonds pertaining to the period 1977 to 1983 (as on 30 June 1983) has been computed as 1372 cases of the value of Rs. 40.94 crores.

The above particulars were sent to the Custom House in May 1985; its reply is awaited (August 1985).

The case was reported to the Ministry of Finance in August 1985; their reply is awaited (January 1986).

1.57 Loss of revenue due to delay in enforcing the bond

As per the Customs Act 1962, the importer of any dutiable goods, which have been entered for warehousing and assessed to duty, shall execute a bond binding himself for a sum equal to twice the amount of the duty assessed on such goods. Where such goods have not been cleared within the period of bond for home consumption or exportation or are not duly accounted for to the satisfaction of the proper officer he may, under section 72 of the Act, demand and the owner of such goods shall forthwith pay full amount of duty chargeable on such goods together with penalties, rent, interest and other charges payable in respect of such goods. From 25 August 1983, import of steel melting scrap was exempt from the payment of whole of the customs duty.

"Stainless steel melting scrap" falling under customs tariff heading 73.05/05 was imported against a bond executed on 6 February 1982. The period of bond was extended by the Collector upto 5 August 1983; but a part consignment weighing 141.230 tonne remained uncleared even after the expiry of the extended period of bond and thus became liable to duty amounting to Rs. 5.6 lakhs. The Superintendent, Customs Range demanded duty only on 25 August 1983 when the goods became exempt from duty. The goods were actually cleared free of duty in September 1983. When the case was submitted by the department for the grant of expost-facto extension of the bond (April 1984), the Collector imposed (July 1984) a personal penalty of Rs. 500 for the violation of provisions of section 72 of the Act. Failure to demand payment of appropriate duty immediately on the expiry of bond resulted in loss of revenue of Rs. 5.6 lakhs.

On the omission being pointed out in audit (August 1984) the department confirmed the facts (February 1985) and stated that there was no lapse on the part of the departmental officers as the goods were exempt from payment of duty at the time of their clearance. Since the liability for payment of appropriate duty arose on the expiry of the extended period of the bond, failure of the department to demand duty immediately resulted in loss of revenue of Rs. 5.6 lakhs.

The Ministry of Finance stated (January 1986) that clause (b) of sub section (1) of section 15 provides that in case of goods cleared from a warehouse under Section 68, the rate of duty applicable will be the one prevailing on the date on which the goods are actually removed from the warehouse. They, however, added that the question, whether the provisions of Section 15(1)(b) would be applicable or not, where warehousing period had expired and demand under Section 72 of Customs Act, 1962 had been issued, was being examined in consultation with Ministry of Law.

1.58 Delay in disposal of confiscated goods

Goods imported by passengers detained for payment of duty or confiscated by customs department are disposed of by sale to prescribed agencies in accordance with Government instructions issued from time to time.

According to the instructions issued by Government in May 1978 regarding disposal of such goods, typewriters/binoculars are to be sold to Government departments only as per their requirements. In a disposal warehouse under the jurisdiction of major Custom House, it was noticed (November 1984) that typewriters/binoculars had been pendnig disposal for many years as there was no response from Government departments for their purchase and the pendency of these goods yearwise is indicated below :

Year from which pending	Typewriters (Numbers)	Binoculars (Numbers)
1976	4	..
1977	10	..
1978	6	1
1979	2	5
1980	29	42
1981	14	24
1982	18	27
1983	32	11
1984	13	13
TOTAL	128	123

The fact that these items have remained unsold would justify a review of the Government orders restricting their sales to Government departments only. As these valuable articles have been lying unutilised in packed conditions, the possibility of their losing utility value due to efflux of time can not be ruled out The revenue that has remained to be realised amounts to about Rs. 2.50 lakhs. Audit brought the delay in disposal of these articles to the notice of the department in July 1985.

The Ministry of Finance, while confirming the facts, stated that all the Collectorates were being asked to dispose of the binoculars, typewriters, etc., if not required for departmental appropriation or for use of other Government departments, as per the Ministry instructions F. No. 711|20|83-LC (AS) dated 10 August 1983.

1.59 Delay in confirmation of demands

As per a notification issued in March 1981, as amended, scientific and technical instruments and apparatus including spare parts, components, etc. imported by Research Institutions are exempted from the basic customs duty and additional duty subject to the fulfilment of the conditions and production of certificates prescribed thereunder. Auxiliary duty was also exempted from time to time by issue of separate notifications. One of the conditions prescribed in the notification of March 1981 was that the institution to be covered thereunder was not engaged in commercial activity.

The scope of the expression "Research Institution" used in the notification and its applicability to research and development units attached to public commercial undertakings was discussed in the Tariff Conference of Collectors of Customs held in December 1982 and decision was taken that the notification may be reworded to extend the benefit to such units also. The matter was again discussed in the Collectors' Conference held in June 1984 and it was decided that, in view of the wording used in the notification, the benefit of concessional duty cannot be extended to such research and development units and that pending cases had to be dealt with accordingly. Pending amendment to the notification, a major Custom House allowed the benefit thereunder to research and development units of public undertakings working on commercial lines but simultaneously issued less charge demands in 704 cases during November 1982 to April 1985.

Even though the decision to deal with such pending cases strictly as per the wording of the notification was taken as early as in June 1984, action is yet

to be initiated by the Custom House to review and enforce the demands raised in the pending cases.

The action of the Custom House in not recovering duty in time in accordance with the wording of the notification and the delay in enforcing the demands have resulted in postponement of recovery of revenue aggregating to Rs. 8.24 crores. The information about the aggregate amount of pending demands is awaited from the department (July 1985).

The Ministry of Finance stated (January 1986) that it took time to decide the demands as their number was quite high. The Ministry also added that action to finalise the demand notices expeditiously was being taken by the collector.

1.60 **Uncleared goods lying for long periods for want of disposal**

Section 48 of the Customs Act 1962 requires that if goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped within two months, they may be sold by the person having custody thereof. Disposal of perishable, hazardous goods and arms and ammunition may be made even before the expiry of two months. Similar provision is also contained in Section 61 of the Major Port Trust Act.

The uncleared goods (bills of entry) Regulations 1972 stipulates preparation and presentation of bills of entry by the custodian of goods to be sold in auction under Section 48 of the Customs Act. Commenting on delay in clearance of confiscated goods and loss of such goods from the port trust sheds, the Public Accounts Committee in their 24 Report (Fourth Lok Sabha) had observed as under :

"1.71 The Committee note that it has also been agreed (i) that customs authority should take steps to remove confiscated good to special warehouses as soon as possible and in any case within a week of confiscation, especially in the case of goods confiscated absolutely and (ii) that steps should be taken to speed up adjudication proceedings to ensure that, as far as possible confiscation, if indicated, is ordered within 4 months from the landing of the goods".

"1.72 The Committee consider that as space in port areas is limited, Government should keep the matter under constant review and evolve a business-like method for disposal of imported goods which are left either unclaimed by the parties or confiscated by the Customs".

The issue again came up for adverse comments of the Public Accounts Committee in their 15 Report (Sixth Lok Sabha) in paras 2.53 and 2.54 and it was then observed by the Committee that confiscated goods kept in the warehouses for years either outlive their utility or become obsolete and do not fetch the expected price besides entailing additional costs on their warehousing, etc.

Review of documents at the Custom House of a major port showed that 108 cases imported upto 31 March 1984 remained uncleared on 31 December 1984. Delay of over two months was noticed in clearing the goods as shown below :—

Year	Goods not cleared within 2 months		Goods for which bills of entry were filed 2 months after import	
	No.s of cases	Duty involved (Rupees in lakhs)	No. of cases	Duty involved (Rupees in lakhs)
1981-82	342	3150.70	97	86.02
1982-83	347	381.20	139	229.30
1983-84	908	461.01	241	115.35

56 cases valuing about Rs. 5 lakhs for which sale list of goods to be sold by auction had been filed were awaiting disposal (August 1985).

The Ministry of Finance confirmed the facts.

1.61 **Delayed revision of rates of landing charges**

Landing charges are added to the assessable value determined under Section 14 of the Customs Act 1962 for the purpose of levy of customs duty.

According to the Board's instructions issued in July 1972, landing charges are required to be reviewed at least once in three years and even at shorter intervals, if substantial changes in the rates prescribed by the port trust authorities or other factor such as devaluation warrant the same.

In a Customs Collectorate, the rate of landing charges of 0.75 per cent of the c.i.f. value was fixed in the year 1977. The port trust authorities levied a surcharge at the rate of 15 per cent on port wharfage charges on import of general cargo from 17 November 1977 and on petroleum oil and lubricants from 12 January 1978. The next review of the landing charges was taken up by the department in early 1978. But this review was not completed until 1981 due to non receipt of the required details from the port trust authorities. Consequently the new rate of landing charges at the rate of one per cent of the c.i.f. value could be fixed only from 1 November 1981. Thus there was delay of over three years in the completion of review of landing charges and giving effect to the enhanced rate, which consequently resulted in loss of revenue.

Considering the fact that a period of six months has been fixed as reasonable time for review and issue of orders in terms of Board's instructions of July 1972 landing charges should have been revised by 1 August 1978 in this case. Non revision of landing charge within the time schedule prescribed by the Board resulted in short levy of Rs. 2,16,969 in case of 43 imports of Phosphoric Acid, Calcinated Petroleum Coke, Raw Petroleum Coke, Electrode Pitch (Mineral Pitch) and other goods during the period August 1978 to October 1981. Reply from the department is awaited.

The Ministry of Finance confirmed the facts and stated that the revised rates were received from port trust only in January 1981.

1.62 **Mistakes in computation**

A consignment of olympus fibrescope was imported by a Government Organisation in October 1983. The department incorrectly calculated the duty at Rs. 1,82,467 instead of Rs. 2,42,467 resulting in auxiliary duty being levied short by Rs. 60,000.

On the mistake being pointed out in audit (May 1984) the department admitted the short levy (December 1984).

The Ministry of Finance stated that the amount short levied had since been recovered.

1.63 **Incorrect rate of duty vis-a-vis date of clearance from warehouse**

(i) According to section 15 of the Customs Act 1962, customs duty is leviable on imported goods entered for home consumption at the rate in force on the date of presentation of the concerned bill of entry to the Custom House. But in the case of imported goods stored under bond in a warehouse and subsequently cleared from the warehouse, the duty is leviable at the rate in force on the date of actual removal of such goods from the warehouse.

A notification dated 2 August 1976 which prescribed the concessional rate of basic customs duty at 40 per cent *ad valorem* on import of "styrene butadiene rubber oil extended type grade 1712", was withdrawn from 18 August 1983. These goods became chargeable to the standard rate of duty of 60 per cent *ad valorem* from that date.

On a consignment of aforesaid goods cleared from a bonded warehouse on 20 August 1983, basic customs duty was levied at 40 per cent *ad valorem* instead of 60 per cent *ad valorem*. This resulted in duty being realised short by Rs. 1,45,990.

On the mistake being pointed out in audit (April and May 1984), the collectorate admitted the objection and realised the amount of Rs. 1,45,990.

The case was reported to the Ministry of Finance in July 1985; their reply is awaited (January 1986).

(ii) On a consignment of component parts of tractors/dumpers cleared from a private bonded warehouse after 8 December 1982, auxiliary duty was levied at 10 per cent *ad valorem* instead of the correct rate of 15 per cent *ad valorem*. This resulted in duty being levied short by Rs. 88,085 in 4 cases.

The mistake was pointed out in audit (May 1984, June 1984, November 1984 and February 1985).

The Ministry of Finance confirmed the facts.

(iii) As per a notification dated 29 December 1983, imported viscose filament yarn below 600 deniers was assessable to basic customs duty at the rate of 25 per cent *ad valorem*.

On a consignment of "viscose rayon yarn standard quality-DTEX 100/40" imported through a major Custom House and cleared from bonded warehouse in January 1984, basic customs duty was incorrectly levied at the 'nil' rate instead of 25 per cent *ad valorem*. This resulted in duty being levied short by Rs. 58,300.

On the mistake being pointed out in audit in October 1984, the department recovered the amount short levied in April 1985.

The Ministry of Finance confirmed the facts.

1.64 **Incorrect rate of duty vis-a-vis date of entry inwards of vessel**

According to Section 15 (1) of the Customs Act 1962 the rate of duty in respect of imported goods shall be the rate in force on the date on which a bill of entry in respect of such goods is presented and according to the proviso under this section, if a bill of entry is presented before the date of entry inwards of the vessel by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards.

Natural rubber was imported through a major Custom House by a Government of India Undertaking through 18 bills of entry all dated 2 July 1984. These were classified under heading 40.01/04 and assessed to basic customs duty at 25 per cent *ad valorem* with no auxiliary or additional duty in terms of an ad hoc exemption order dated 5 April 1984. This ad hoc exemption order was initially valid upto 10 May 1984 but subsequently extended upto 30 June 1984.

The goods were imported by a vessel which was given entry inwards on 3 July 1984. Though the relevant bills of entry were presented on 30 June 1984 under the prior entry system, they were deemed to have been presented only on 3 July 1984 as per the aforesaid provision of the Act. As the ad hoc exemption order was not in operation on 3 July 1984, duty was leviable at the effective rates of basic customs duty at 40 per cent *ad valorem* plus auxiliary duty at 30 per cent *ad valorem* and additional duty at 10 per cent *ad valorem.*

The incorrect levy at the exempted rates of duty in respect of these 18 bills of entry resulted in duty being levied short by Rs. 1.17 crores.

The objection was raised in audit in April 1985. The Ministry of Finance, while confirming the facts, stated (December 1985) that the short levied amount had since been recovered.

1.65 **Duty levied at incorrect rates**

(i) Tubes and pipe fittings of iron and steel were classifiable under heading 73.20 and chargeable to custom duty @ 60 per cent *ad valorem.* With effect from 15 April 1982 articles of stainless steel including tubes and pipe fittings were, specifically, brought under a new sub-heading (2) introduced under said heading 73.20 with enhanced rate of duty at 300 per cent *ad valorem.*

Fittings and accessories of stainless steel valuing Rs. 1,03,443 imported during May 1982 by a unit, were rewarehoused in a public bonded warehouse. At the time of clearance from the warehouse on 9 March 1983 they were incorrectly charged to customs duty @ 60 per cent *ad valorem* instead of 300 per cent *ad valorem.* This resulted in duty being realised short by Rs. 2,73,089.

On the mistake being pointed out in audit (March 1984), the department intimated (January 1985) that the demand issued (September 1984) was withdrawn as it was time barred under Section 28 of the Customs Act 1962.

The Ministry of Finance stated (January 1986) that the matter was under consideration.

(ii) Non electrical instruments and apparatus for measuring, checking or automatically controlling the flow, depth, pressure, temperature or other variable of liquid or gases are chargeable to duty under heading 90.24 of Customs Tariff Act 1975 Parts and accessories suitable for use with the above type of instruments are classifiable under heading 90.29(i) and chargeable to customs duty at 40 per cent and auxiliary duty at 25 per cent *ad valorem* in terms of notification dated 1 March 1983.

On components of the aforesaid instruments valuing Rs. 2,01,197 cleared from a public bonded warehouse during August 1983, auxiliary duty was levied at 5 per cent *ad valorem* under another notfiication dated 1 March 1983, which was applicable to electrical instruments chargeable to duty under heading 90.28 instead of 25 per cent as specified above. This resulted in auxiliary and additional duties being realised short by Rs. 44,633.

The levy at incorrect rate was pointed out in audit (May 1985).

The Ministry of Finance confirmed the facts and stated that short-levied amount had since been realised.

(iii) Additional duty leviable on galvanised plain sheet in coils under item 25 of Central Excise Tariff was enhanced from Rs. 650 to Rs. 850 per tonne with effect from 1 August 1983.

On a consignment of goods of the above description imported in November 1983, additional duty was levied at the rate of Rs. 650 per tonne prevalent prior to 1 August 1983.

On this being pointed out in audit (August 1984), the Custom House admitted the objection (February 1985)

A request for voluntary payment of Rs. 37,705 on account of short levy of duty was made by the Custom House as the demand had become barred by limitation.

The Ministry of Finance confirmed the facts.

1.66 **Short levy of auxiliary duty**

As per a notification issued on 1 March 1984 auxiliary duty was leviable on the imported goods at the rate of 40 per cent *ad valorem* or 30 per cent *ad valorem* depending on the rates of basic customs duty leviable on such goods.

Further according to the explanation given below that notification, when goods are liable to two or more different rates of basic customs duty by reason of the countr yof origin of the goods, the auxiliary duty was leviable on the basis of the highest rate of the basic customs duty leviable on such goods.

On a consignment of tissue paper imported through a major Custom House from Yugoslavia, basic customs duty was levied at the rate of 50 per cent of the standard rate of 100 per cent *ad valorem* in accordance with a notification issued on 2 August

1976. As these goods were assessable at different rates of basic customs duty i.e. 100 per cent *ad valorem* and 50 per cent *ad valorem* depending upon the country of origin of import, the correct rate of auxiliary duty leviable on the goods was 40 per cent *ad valorem* with reference to the highest rate of basic customs duty at 100 per cent *ad valorem* in accordance with the aforesaid explanation. However, auxiliary duty in this case was levied at the rate of 30 per cent *ad valorem*. This resulted in short-levy of auxiliary duty of about Rs. 25,108 which was recovered on 28 August 1985.

The Ministry of Finance confirmed the facts.

1.67 **Duty assessed but not collected**

Several items of spare parts and accessories for the manufacture of dry cell batteries, imported by a Private Limited Company were cleared under cover of a bill of entry filed in July 1983. Though assessment particulars had been indicated in respect of all the items, the duty in respect of one of the items in the bill of entry amounting to Rs. 46,825 was not collected.

On the omission being pointed out in audit (April 1984), the Custom House admitted the objection and recovered the amount (August 1984).

The Ministry of Finance confirmed the facts.

1.68 **Non levy/short levy of interest**

As per section 61(2) of the Customs Act 1962, where any goods remain warehoused beyond the period of one year/three months, interest at such rate not exceeding 18 per cent per annum, as fixed by the Board, is required to be paid on the amount of duty on the warehoused goods for the period from the expiry of the period of one year/three months till the date of clearance of the goods from the warehouse. The Board has fixed the rate of interest at 12 per cent per annum from 13 May 1983 by a notification issued on 13 May 1983. The rate of interest prior to 13 May 1983 was 6 per cent per annum.

(i) A Public Sector Undertaking did not pay interest of Rs. 1,13,721 on the imported goods, which remained warehoused beyond the period of one year in accordance with the above provisions of the Act on the day of the clearance of the goods.

On the omission being pointed out (June 1984) in audit, the importer paid interest amounting to Rs. 78,408 in June 1984 and Rs. 35,313 in August 1984. The department replied (February 1985) that the fact of non recovery of interest was in their knowledge and was being pursued. The fact, however, remains that the interest was not recovered at the time of clearance of warehoused goods and was not paid by the importer till it was pointed out in audit.

The Ministry of Finance, while confirming the facts, stated (December 1985) that the amount of interest had since been recovered.

(ii) Two clearances of component parts of loaders stored under a bond dated 16 May 1983, were allowed from a private bonded warehouse on 22 October 1983 and 9 November 1983. Interest at the rate of 12 per cent per annum was not collected on these clearances though the free period of 3 months had expired on 15 August 1983. When the non-collection of interest amounting to Rs. 39,080 was pointed out (April and May 1984) in audit, the Custom House admitted the objection (August 1984).

Recovery particulars in these two cases and results of review of similar other clearances effected from the same bond are awaited (July 1985).

The Ministry of Finance confirmed the facts.

(iii) In a bonded warehouse the interest was collected from a Government of India Undertaking till the dates of payment of duty instead of till the dates of clearances of goods from the warehouse. Audit pointed out (November 1984 to April 1985) that interest should have been collected in respect of 9 clearances for the periods covering from the dates of payment of duty to the dates of actual clearances of goods from the warehouse and the Custom House was also requested to review all similar cases of short levy of interest. While admitting (May 1985) the objections in respect of six clearances pointed out in audit, the Custom House recovered differential interest amounting to Rs. 31,860.

Report on the recovery of balance amount of Rs. 11,010 in respect of the remaining 3 clearances is awaited.

The case was reported to the Ministry of Finance (August 1985); their reply is awaited (January 1986).

1.69 **Non realisation of transhipment fees**

Rule 7 of the Imported goods (Transhipment by air) Regulations 1963 stipulates collection of fee of one rupee per package subject to a minimum of ten rupees and a maximum of three hundred rupees in respect of each application for transhipment of goods at all the customs airports.

In an air cargo complex, it was noticed that the transhipment fees realisable from the Airlines were not being regularly worked out and recovered by the Customs Department as and when the transhipment took place or at periodical intervals.

On this being pointed out in audit, the department replied (February 1983) that in most of the earlier cases, transhipment dues had been paid and that the exact amount due from the carriers for the period from 1974 onwards was being worked out and demanded. No further action has been taken on this except for a demand made in July 1982 for a sum of Rs. 12,033 as transhipment fees for 1981, which the Airlines have not paid so far. The total amount to be realised for the period 1974 to 1980 for which no demand has been issued is, in the absence of proper records and details, estimated at Rs. 70,000 on an *ad hoc* basis at Rs. 10,000 per year.

The Ministry of Finance confirmed the facts in February 1986. However, the exact amount of transhipment fees to be realised is still to be ascertained.

CUSTOMS

ANNEXURE 1.1

VALUE OF IMPORTS—COMMODITY WISE

The value of imports made during the years 1982-83, 1983-84 and 1984-85 according to major sectional headings in the Indian Trade classification (Revised) are given below (where imports value more than Rs. 50 lakhs). The information was received from the Ministry of Finance and where information was not available, the figures compiled by the Director General of Commercial Intelligence and Statistics and given out by the Ministry of Commerce have been indicated. The figures within brackets are in respect of some of the goods included in the respective sectional headings.

Value of imports (In crores of Rupees)

		1982-83	1983-84*	1984-85*
1	2	3	4	5
1.	Food and live animals chiefly for food including	N.A.	N.A.	N.A.
	(a) Cereals and Cereal preparations	(373)	(612)	(414)
	(b) Milk and Cream	(93)	(15)	(96)
	(c) Cashew Nuts	(1)	(14)	(27)
	(d) Fruits and nuts excluding cashew nut	(28)	(39)	(39)
2.	Crude materials inedible, except fuel	N.A.	N.A.	N.A.
	(a) Crude rubber (including synthetic and reclaimed)	(64)	(81)	(67)
	(b) Raw Cotton	(—)	(1)	(—)
	(c) Synthetic and regenerated fibre	(144)	(102)	(46)
	(d) Raw wool	(56)	(43)	(50)
	(e) Crude Fertilizer	(65)	(81)	(107)
	(f) Sulphur and unroasted iron Pyrites	(98)	(63)	(109)
	(g) Metalliferous ores and metal scrap	(194)	(145)	(112)
	(h) Other crude minerals	(38)	(62)	(55)
3.	Mineral Fuels, lubricants and related materials	5758	4830	5161
4.	Animals and vegetable oils, fats and waxes	N.A.	N.A.	N.A.
5.	Chemicals and related products not elsewhere specified	N.A.	N.A.	N.A.
	(a) Organic chemicals	(260)	(397)	(358)
	(b) Inorganic chemicals	(162)	(213)	(370)
	(c) Dyeing and tanning substances	(28)	(43)	(46)
	(d) Medicinal & pharmaceutical products	(89)	(132)	(127)
	(e) Fertilizer, manufactured	(205)	(112)	(672)
	(f) Artificial resins, plastic materials etc.	(138)	(189)	(164)
6.	Manufactured goods chiefly by materials	N.A.	N.A.	N.A.
	(a) Pulp, Paper, Paper Board & manufactures thereof	(197)	(255)	(306)
	(b) Textile yarn, fabrics and made up articles	(127)	(125)	(81)
	(c) Pearls, Precious Stones & semi-precious stones	(729)	(1082)	(1028)
	(d) Iron and Steel	(1172)	(963)	(733)
	(e) Non-ferrous metals	(345)	(369)	(344)
	(f) Manufactures of metal	(144)	(148)	(126)
7.	Machinery and transport equipment	2573	2834	2580
	(a) Machinery other than Electrical	(1438)	(1974)	(1847)
	(b) Electrical Machinery	(495)	(404)	(450)
	(c) Transport equipment	(640)	(456)	(283)
8.	Professional, scientific controlling instruments etc.	155	281	234
9.	Miscellaneous manufactured articles and commodities and transactions not classified elsewhere	N.A.	N.A.	N.A.
Total (Including other items)		14307	15763	16485

NOTE : Figures have been rounded off.
*Figures are provisional.

ANNEXURE 1.2

VALUE OF EXPORTS—COMMODITY WISE

The value of exports made during the years 1982-83, 1983-84 and 1984-85 according to the major sectional headings in the Indian Trade Classification (Revised) are given below. The information has been received from the Ministry of Finance. Where information was not available the figures compiled by the Director General, Commercial Intelligence and Statistics and given out by the Ministry of Commerce have been indicated. The figures within brackets are in respect of some of the goods included in the respective sectional headings.

Value of Exports (In crores of Rupees)

1	2	1982-83 3	1983-84* 4	1984-85* 5
1.	Food and live animals chiefly for food	N.A.	N.A.	N.A.
	(a) Live animals chiefly for food	(11)	(6)	(4)
	(b) Meat and Meat preparations	(80)	(68)	(75)
	(c) Fish crustaceous Molluses & Preparations thereof	(364)	(327)	(336)
	(d) Cereal preparations for flour or starch of fruits or vegetables	(11)	(7)	(8)
	(e) Cashew kernels	(135)	(157)	(174)
	(f) Other fruits and vegetables	(121)	(155)	(159)
	(g) Sugar and Sugar preparations (including mollasses)	(67)	(140)	(22)
	(h) Coffee and coffee substitutes	(187)	(183)	(198)
	(i) Tea and mate	(370)	(501)	(707)
	(j) Spices	(95)	(109)	(172)
2.	Beverages and tobacco	N.A.	N.A.	N.A.
	(a) Tobacco unmanufactured and tobacco refuse	(214)	(150)	(147)
3.	Crude materials inedible except fuels	N.A.	N.A.	N.A.
	(a) Mica (including splittings and mica waste)	(22)	(27)	(19)
	(b) Raw cotton	(109)	(149)	(57)
	(c) Jute Raw	(9)	(0.15)	(—)
	(d) Crude vegetable materials	(120)	(97)	(136)
	(e) Oil seeds and oleoginous fruits	(46)	(35)	(31)
	(f) Oil cakes	(149)	(146)	(131)
	(g) Hides and skins except for raw skins	(—)	(—)	(—)
	(h) Footwear	(33)	(23)	(31)
	(i) Leather and leather manufactures (except footwear)	(360)	(350)	(422)
	(j) Iron ore	(380)	(385)	(447)
	(k) Ores, minerals other than iron ore and Mica	(91)	(37)	(45)
4.	Mineral fuels, lubricants & related materials	177	362	214
5.	Vegetable non-essential oils, fats and waxes	25	28	25
6.	Chemicals and related products	348	295	365
7.	Manufactured goods classified according to materials	N.A.	N.A.	N.A.
	(a) Cotton fabrics	(271)	(277)	(412)
	(b) Fabrics made of man-made fibres	(22)	(27)	(26)
	(c) Woollen fabrics	(7)	(1)	(3)
	(d) Made-up articles wholly or chiefly of cotton	(108)	(76)	(91)
	(e) Ready made garments	(605)	(607)	(837)
	(f) Coir manufactures	(26)	(23)	(22)
	(g) Jute manufactures (including twist & Yarn) ..	(205)	(165)	(334)
	(h) Metal manufactures excluding iron and steel	(194)	(194)	(181)
	(i) Iron and Steel	(50)	(46)	(62)
8.	Machinery and transport equipment	579	494	537
9.	Miscellaneous manufactured articles including handicrafts	N.A.	N.A.	N.A.
	(a) Pearls, precious stones & semi precious stones	(950)	(1214)	(1063)
	(b) Works of Art	(126)	(117)	(134)
	(c) Carpets handmade	(179)	(194)	(227)
	(d) Jewellery	(65)	(75)	(66)
10.	Commodities and transactions not elsewhere specified	N.A.	N.A.	N.A.
	TOTAL : (including other items and articles under reference)	8787	9865	11359@

@The figures excludes the export of Bombay High crude oil amounting to Rs. 1063.37 crores for 1982-83, Rs. 1231.09 crores for 1983-84 and Rs. 1563.19 crores for 1984-85.

*Figures are provisional

Figures have been rounded off.

CUSTOMS

ANNEXURE 1.3

IMPORT DUTY COLLECTION CLASSIFIED ACCORDING TO BUDGET AND TARIFF HEADS

The import duty collected for the years 1982-83 and 1983-84 is given below classified according to budget heads and the corresponding figures under tariff heads or sections are shown within brackets.

The import duty collected for the year 1984-85 under the budget head and tariff heads is also given.

Sl. No.	Description of goods	1982-83	1983-84	1984-85
		(Crores of rupees)		
1	2	3	4	5
1.	Fruits dried and fresh (Chapter 8 of tariff covering edible fruits & nuts)	49	51	45
	(Section II of tariff covering vegetable products)	(40)	(50)	
		(61)	(83)	—
2.	Vegetable non-essential oils, fluid or solid, crudes, refined or purified	27	41	72
	(heading 15.07 to tariff covering vegetable oils)	(27)	(41)	—
	(Section III of the tariff covering animal and vegetable fats)	(44)	(72)	—
3.	Kerosene	79	80	116
	[heading 27.10 (3) of tariff covering Kerosene]	(75)	(79)	—
4.	High Speed Diesel Oil and vaporising oil	99	70	98
	[heading 27.10(5) of tariff covering high speed diesel oil]	(102)	(69)	—
5.	Motor spirit	6	2	4
	[heading 27.10(2) of tariff covering Motor spirit]	(6)	(2)	—
6.	Lubricating oils	31	17	47
	[heading 27.10(8) of tariff covering lubricating oil]	(31)	(17)	—
7.	Other petroleum products	N.A.	N.A.	207
8.	Chemicals other than Pharmaceuticals	368	477	709
	(heading 28 of tariff covering Inorganic chemicals)	(342)	(124)	—
9.	Pharmaceutical chemicals and products	60	64	81
	(heading 29 and 30 of the tariff covering organic chemicals and pharmaceutical products)	(N.A.	(419)	—
10.	Dyes, colours, paints and varnishes	32	48	53
	(heading 32 of the tariff covering Tanning and Dyeing Extracts etc.)	(32)	(54)	—
11.	Artificial resins, plastic materials, articles thereof	226	231	306
	(heading 39 of tariff covering Artificial resins and plastic materials etc.)	(227)	(233)	—
12.	Rubber and Articles thereof	74	79	104
	(heading 40 of tariff covering Rubber, synthetic rubber etc.)	(74)	(78)	—
13.	Pulp, Paper, Paper board & articles thereof	76	78	103
	(heading 47 & 48 covering Paper making material, Paper, Paper-Board & Articles thereof)	(63)	(78)	—
14.	Yarn of man-made fibres	246	141	111
	(heading 50 of tariff covering Silk and waste silk)	(245)	(15)	—
15.	Man made fibres and filament tow	145	105	68
	(heading 56 of tariff covering man-made fibres)	(140)	(104)	—
16.	Iron and Steel & Articles thereof	574	544	784
	(heading 73 of tariff covering Iron and Steel)	(572)	(540)	—
17.	Copper & Articles thereof	169	205	194
	(heading 74 of tariff covering Copper and its articles)	(169)	(205)	—
18.	Nickel & articles thereof	36	34	47
	(heading 75 of tariff covering Nickel and its articles)	(21)	(13)	—
19.	Aluminium & Articles thereof	N.A.	N.A.	31
	(heading 76 of tariff covering Aluminium and its articles	(19)	(13)	—
20.	Lead & Articles thereof	26	22	24
	(heading 78 of tariff covering lead and its articles)	(26)	(19)	—
21.	Zinc & its articles	83	67	96
	(heading 79 of tariff covering Zinc and its articles)	(83)	(70)	—
22.	Tin	15	22	30
	(heading 80 of tariff covering tin and its articles)	(14)	(22)	—
23.	Tools, implements etc.	41	42	48
	(heading 82 of tariff covering Tools, Implements, Cutlery, Spoons & Forks)	(39)	(35)	—

1	2	3	4	5
24.	Machinery, mechanical appliances & electrical equipment	1497	1729	2062
	(Section XVI of tariff chapter 84 & 85 covering Boilers, machinery and Mechanical appliances Electrical machinery equipment)	(1157)	(1701)	—
25.	Railway Locomotives & Materials	47	N.A.	27
	(heading 86 of tariff covering Railway and Tram way Locomotives, rolling stock, Railway Track Fixtures, Traffic signalling equipment)	(47)	(30)	—
26.	Motor Vehicles & Parts thereof	104	109	141
	(heading 87 of tariff covering Tractors, Motor Vehicles, Motor Lorries & Vans, Works Trucks Tanks and other armoured vehicles)	(104)	(109)	—
27.	Optical, photographic, Cinematographic, measuring, medical and Surgical instruments	107	109	133
	(heading 90 of tariff covering Optical Surgical etc. instruments)	(106)	(108)	—
28.	All other articles	651	927	668
	(Passenger baggage)	(281)	(271)	(311)
29.	Other budget heads	204	265	1018
	(other tariff heads)	(317)	(1106)	—
	TOTAL BUDBET HEADS	5119	5617	7071
	TOTAL OF TARIFF HEADS	(4467)	(5528)	—

CUSTOMS

ANNEXURE 1.4

EXPORT DUTY AND CESS

The collections of export duty and cess are given below classified under budget heads.

(In crores of rupees)

	Commodities	Export Duty			Export Cess		
		1982-83	1983-84	1984-85	1982-83	1983-84	1984-85
1.	Coffee	23	36..	37	1	1	0.68
2.	De-oiled ground nut meal	3	*	Nil	N.A.	N.A.	Nil
3.	Tobacco (un-manufactured)	8	6	6.12	1	1	1.10
4.	Marine Products	Not levied	Nil	Nil	3	2	2.74
5.	Cardamom	Not levied	Nil	0.01	Negligible	N.A.	1.37
6.	Mica	5	6	5.41	1	1	1.04
7.	Hides, Skins and leathers	4	4	5.87	a	a	Nil
8.	Lumpy iron ore	7	7	7.80	1	1	Nil
9.	Iron ore fines (including blue dust)	4	4	4.07	N.A.	N.A.	1.50
10.	Chrome concentrate	1	*	0.93	Nil	N.A.	Nil
11.	Other articles	*	1	0.09	*	*	0.31
12.	Other agricultural Produce under A.P. Cess Act, 1940	Not levied	Nil	Nil	4	4	4.16
13.	Under other budget heads	4	5	2.35	2	2	1.46
		59	69	69.65	13	12	14.36

*Less than Rs. 50 lakhs.
(a) Included in Sl. No. 13.
N.A.—Not available.

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CUSTOMS

ANNEXURE 1.5

SEARCHES AND SEIZURES

Searches and Seizures		1981-82		1982-83		1983-84		1984-85	
		Coastal	Town	Coastal	Town	Coastal	Town	Coastal	Town
A. Total No. of searches and seizures.	Bombay	114	..	390	1282	311	1361	Nil	2407
	Delhi	Nil	N.A.	..	660	..	726	Nil	951
	Madras	19	N.A.	2398	..	1627	N.A.	1142	Nil
	Calcutta	10	Nil	536	810	789	647	Nil	2524
	Ahmedabad	176	346	71	693	83	838	551	Nil
	Cochin	1	137	..	2584	..	2031	680	253
	TOTAL	320	483	3395	6029	2810	5603	2373	6135
B. Value of goods seized (Rs. lakhs)	Bombay	791.22	..	185	700	625	876	Nil	3242.50
	Delhi	Nil	N.A.	..	165	..	187.69	Nil	564.62
	Madras	0.65	N.A.	232	..	372	N.A.	546.48	Nil
	Calcutta	3.26	N.A.	267	479	238.65	532.34	Nil	364.44
	Cochin	Nil	9.54	..	103	N.A.	241.87	96.99	148
	Ahmedabad	676.11	73.73	281	177	746.35	527.93	2155	Nil
	TOTAL	1471.94	83.27	965	1624	1982	2365.83	2798.47	4319.56
C. Number of seizure cases adjudicated upon and resulting in levy of duty and penalty or imprisonment.	Bombay	132	..	275	1514	233	1550	Nil	772
	Delhi	Nil	Nil	..	427	N.A.	247	Nil	215
	Madras	Nil	Nil	1015	..	950	N.A.	443	Nil
	Calcutta	Nil	Nil	441	1022	1030	287	Nil	1
	Ahmedabad	93	190	127	420	66	363	557	Nil
	Cochin	Nil	80	..	731	N.A.	613	613	278
	TOTAL	225	270	1858	4114	2279	3060	1613	1266

NOTE :

(i) Figures for Bombay for the year 1981-82 cover town also.
(ii) Figures for Cochin for the years 1982-83 and 1983-84 cover coastal also.
(iii) N.A.—Not available.

CUSTOMS

ANNEXURE 1.6

CONFISCATION

		1981-82	1982-83	1983-84	1984-85
A. Number of Motor Vehicles confiscated C.I.F. value in brackets (in Rs. lakhs)	Bombay	4 (4.46)	10 (1.42)	20 (5.65)	30 (1.43)
	Delhi	Nil	1	2 (1.7)	Nil
	Madras	Nil	26 (8.15)	27 (7.68)	11 (4.27)
	Calcutta	9 (9)	11 (9.80)	5 (2.70)	3 (0.85)
	Ahmedabad	2 (0.57)	15 (5.99)	13 (9.81)	Nil
	Cochin	23 (8.49)	39 (Nil)	16 (N.A.)	49 (3.75)
	TOTAL	38 (22.52)	102 (25.36)	83 (27.54)	93 (10.30)
B. Trade goods confiscated (in Rs. lakhs)	Bombay	677.34	N.A.	N.A.	1291.26
	Delhi	52.70	N.A.	N.A.	Nil
	Madras	989.82	N.A.	N.A.	0.24
	Calcutta	67.13	N.A.	N.A.	18.59
	Ahmedabad	71.52	N.A.	N.A.	Nil
	Cochin	70.78	N.A.	N.A.	Nil
	TOTAL	1929.29	N.A.	N.A.	1,310.09
C. Pending confiscation proceedings, Appeals, Revisions as on 31-3-85 in respect of confiscated : (a) Motor Vehicles (value in brackets in Rs. lakhs)	Bombay	— (1.79)	15 (3.76)	3 (2)	Nil
	Delhi	Nil	4 (4.00)	2 (2.2)	Nil
	Madras	Nil	2 (0.41)	8 (3.16)	5 (1.5)
	Calcutta	12 (10.89)	23 (N.A.)	N.A.	Nil
	Ahmedabad	Nil	.. (6.77)	N.A. (7.5)	Nil
	Cochin	2 (1.20)	81* (Nil)	81 N.A.	Nil
	TOTAL	14 (13.88)	125 (14.94)	94 (14.86)	5 (1.5)
(b) Trade goods (value in Rs. lakhs)	Bombay	66.60	N.A.	N.A.	Nil
	Delhi	0.05	N.A.	N.A.	Nil
	Madras	N.A.	N.A.	N.A.	29.05
	Calcutta	106.59	N.A.	N.A.	Nil
	Ahmedabad	Nil	N.A.	N.A.	Nil
	Cochin	52.18	N.A.	N.A.	Nil
	TOTAL	225.42	N.A.	N.A.	29.05

*includes 1983-84 also.

CUSTOMS

ANNEXURE 1.7

EXEMPTION FROM DUTY SUBJECT TO END USE VERIFICATION

(In crores of rupees)

		1981-82	1982-83	1983-84	1984-85
(a) Value of goods imported on which duty exempted.	Bombay	119.72	254	1428	209.50
	Delhi	17.81	1306	1465	0.169
	Madras	254.06	67.37	78.15	159.27
	Calcutta	124.29	38.68	35.60	43.16
	Ahmedabad	255.68	183.44	196.02	0.96
	Cochin	5.34	40.73	40.85	60.40
	TOTAL	776.90	1890.22	3243.62	473.45
(b) Amount of duty forgone	Bombay	190.86	1153	2042	286.52
	Delhi	14.24	1169	959	0.38
	Madras	233.01	36.66	41.22	174.66
	Calcutta	22.35	25.97	27.52	39.65
	Ahmedabad	220.01	183.44	196.02	0.48
	Cochin	N.A.	Nil	Nil	Nil
	TOTAL	680.47	2568.07	3265.76	501.69
(c) Value for which bond taken by Custom House	Bombay	179.86	1401	2178	278.04
	Delhi	13.29	1169	959	18.48
	Madras	233.01	35.76	53.32	206.20
	Calcutta	22.35	26.52	28.10	42.37
	Ahmedabad	224.30	156.00	187.94	0.48
	Cochin	6.39	40.73	40.85	60.40
	TOTAL	679.20	2829.01	3447.21	605.97
(d) Value of bonds in respect of which end use condition verified during the year	Bombay	1328	889	1649	N.A.
	Delhi	193	763	560	N.A.
	Madras	438	N.A.	1806	797
	Calcutta	674	N.A.	882	784
	Ahmedabad	N.A.	N.A.	58	33
	Cochin	3	N.A.	126	35
	TOTAL	2636	1652	5081	1649
(e) Value of bonds brought forward from previous year for verification of end use condition	Bombay	90.59	1435	2274	211.96
	Delhi	11.01	93	14	1.12
	Madras	176.73	110.93	91.40	60.25
	Calcutta	36.86	48.06	54.46	48.65
	Ahmedabad	13.76	25.57	39.90	0.11
	Cochin	5.94	21.69	20.77	10.20
	TOTAL	334.89	1734.25	2494.53	332.29
(f) Value of end-use bonds carried forward to next year for verification of end use condition	Bombay	78.22	1440	2040	254.87
	Delhi	0.79	14	8	1.25
	Madras	334.28	98.30	66.41	169.63
	Calcutta	58.28	54.42	54.85	58.29
	Ahmedabad	23.27	39.90	109.39	0.26
	Cochin	7.15	3.42	10.20	35.45
	TOTAL	501.99	1650.04	2288.85	519.75

		1981-82	1982-83	1983-84	1984-85
(g) Number of end use bonds pending cancellation	Bombay	570	4127	5704	5292
	Delhi	713	233	257	894
	Madras	..	1962	2518	4122
	Calcutta	..	774	702	685
	Ahmedabad	..	32	101	73
	Cochin	..	27	87	262
	TOTAL	1283	7155	9369	11328
(i) Of above number pending for adjudication or appeal	Bombay	..	..	..	Nil
	Delhi	..	Nil	Nil	Nil
	Madras	..	Nil	Nil	Nil
	Calcutta	..	1	..	26
	Ahmedabad	..	Nil	Nil	Nil
	Cochin	..	3	Nil	Nil
	TOTAL	..	4	Nil	26
(ii) Of above number pending decision in High Court	Bombay	..	6	..	6
	Delhi	..	Nil	Nil	Nil
	Madras	..	69	61	9
	Calcutta	..	2	4	6
	Ahmedabad	..	Nil	Nil	Nil
	Cochin	..	Nil	Nil	Nil
	TOTAL	..	77	65	21

CHAPTER 2

UNION EXCISE DUTIES

2.01 **Trend of receipts**

During the year 1984-85 the total receipts from Union Excise duties amounted to Rs. 11,067.92 crores*. The receipts during the year 1984-85 from levy of basic excise duty and from other duties levied as excise duties are given below alongside the corresponding figures for the preceding year :—

	Receipts from Union Excise duties	
	1983-84 Rs.	1984-85 Rs.
A—Shareable duties :—		
Basic excise duties	78,17,21,86,948	85,91,75,49,797
Auxiliary duties of excise	1,40,712	2,25,242
Special excise duties	3,35,60,26,790	3,57,04,89,367
Additional excise duties on mineral products	7,39,23,548	6,25,660
Total (A)	81,60,22,77,998	89,48,88,90,066
B—Duties assigned to States :		
Additional excise duties in lieu of sales tax	7,03,02,54,098	8,45,62,91,410
Excise duties on generation of power	1,76,27,16,948	1,24,60,11,459
Total (B)	8,79,29,71,046	9,70,23,02,869
C—Non-shareable duties :		
Regulatory excise duties		(—)653
Special excise duties	1,95,28,575	13,05,89,566
Additional excise duties on textiles and textile articles	1,33,55,81,284	1,30,62,84,984
Other duties	24,31,250	55,32,500
Total (C)	1,35,75,41,109	1,44,24,06,397
D—Cess on commodities	10,35,06,13,867	9,82,86,99,584
E—Other receipts	11,40,47,718	21,69,10,268
Total	102,21,74,51,738	1,10,67,92,09,184

*Provisional figures furnished by the Ministry of Finance.

(ii) The trend of receipts in the last five years and the number of tariff items and sub-items (each with a separate rate against it under which the commodities were classified for purposes of levy of duty) are given below :—

Year	Receipts from union excise duties (in Rs. crores)	Number of tariff items	Number of tariff sub-items	Number of factories paying excise duties
1980-81	6,500.02	139	313	63,395
1981-82	7,420.74	140	322	52,859
1982-83	8,058.50	140	334	58,223
1983-84	10,221.74*	136	333	59,427
1984-85	11,067.92*	137	370	61,501

(iii) The number of commodities each of which yielded excise duties in excess of Rs. 100 crores during the year 1984-85, the number of commodities which yielded receipts between Rs. 10 crores and Rs. 100 crores, and the number which yielded less than Rs. 10 crores per year, alongside corresponding figures for the preceding four years are given below (figures in bracket give percentage to total receipts) :—

Year	Number of commodites each yielding receipts		
	Above Rs. 100 crores	Between Rs. 10 crores and 100 crores	Below Rs. 10 crores
1980-81	21(75)	49(21)	67(4)
1981-82	21(76)	52(21)	68(3)
1982-83	20(76)	55(21)	66(3)
1983-84	21(80)	52(18)	63(2)
1984-85	21(80)	96(19)	25(1)

*Provisional figures furnished by the Ministry of Finance.

(iv) The commodities which have yielded duty amounting more than Rs. 100 crores per year in recent years are given below :—

Sl. No.	Commodities each yielding more than Rs. 100 crores per year	Receipts from each commodity in 1982-83	1983-84	1984-85	Number of factories as in March 1985
1	2	3	4	5	6
		(In crores of rupees)			
1.	Cigarettes	647.13	906.05	1010.25	35
2.	All other goods not elsewhere specified	593.95	785.13	845.53	6802
3.	Man-made fibres & yarn	556.63	873.07	1041.30	634
4.	Motor spirit	559.17	618.39	678.42	94
5.	Tyres and tubes	403.25	400.82	410.06	92
6.	Refined diesel oil and vaporising oil	380.34	423.14	425.11	103
7.	Iron and steel products	386.93	366.12	376.76	1333
8.	Cement	336.26	559.76	650.29	179
9.	Motor vehicles	305.92	322.27	385.22	310
10.	Sugar (including khandsari)	346.49	401.37	415.78	393
11.	Petroleum products not otherwise specified	188.23	196.04	222.31	31
12.	Paper and paper board	176.25	220.58	196.79	717
13.	Kerosene	168.29	176.42	164.15	78
14.	Cotton fabrics	149.99	169.37	135.06	3942
15.	Man-made fabrics	149.06	230.41	231.78	830
16.	Electricity	146.49	179.69	123.77	34
17.	Plastics	140.33	158.95	180.02	545
18.	Biris	120.89	132.71	131.74	11,367
19.	Patent or proprietary medicines	118.96	135.51	167.25	1055
20.	Aluminium	111.76	115.36	145.64	335
21.	Cotton yarn, all sorts	94.27	125.70	122.09	1099

(v) The commodities which yielded less than Rs 1 crore per year are given below :—

Sl. No.	Commodities each yielding less than Rs. 1 crore per year	Receipts from each commodity in 1982-83	1983-84	1984-85	Number of factories as in March 1985
1	2	3	4	5	6
		(In crores of rupees)			
1.	Permanent magnets	1.54	1.70	0.79	4
2.	Cinematograph projectors	0.62	0.60	0.61	11
3.	Typewriter ribbons	0.48	0.83	0.54	16
4.	Playing cards	0.46	0.32	0.32	18
5.	Linoleum	0.42	0.71	0.93	1
6.	Flax fabrics and ramie	0.39	0.39	0.42	6
7.	Menthol	0.39	0.46	0.72	8
8.	Parts of wireless receiving sets	0.25	0.20	0.31	14
9.	Mechanical lighter	0.31	0.31	0.29	40
10.	Zip and slide fasteners	0.18	0.21	0.58	17
11.	Coated textiles	0.18	0.16	0.12	19
12.	Hookah tobacco	0.15	0.06	0.17	155
13.	Electric machines for games of skill etc.	0.11	0.23	0.05	7
14.	Television cameras	0.05	0.07	0.99	6
15.	Cigars and cheroots	0.01	0.03	0.01	317
16.	Travel goods	Nil	Nil	0.21	18
17.	Woollen & acrylic spun yarn	1.72	0.82	0.78	132
18.	Flax yarn and ramie yarn	0.02	0.02	0.03	4
19.	Pan masala	Nil	Nil	0.07	23
20.	Musical systems	0.99	0.34	0.24	51
21.	Marble	Nil	Nil	0.01	13

(vi) Cess is levied and collected by the department of Central Excise on tea, coffee, tobacco, beedi, onion, copra, oil and oil seeds, salt, rubber, jute, cotton, cotton fabrics, rayon and artificial silk fabrics, woollen fabrics, man-made fabrics, paper, iron ore, coal and coke, limestone and dolomite and crude oil under various Acts of Parliament in order to provide for development of respective Industries and to meet organizational expenditure on welfare of workers in the respective industries. The yield from levy of cess in the last five years and the names of commodities each of which yielded revenue of more than rupees one crore are given below :—

Commodity	Receipts from Cess				
	1980-81	1981-82	1982-83	1983-84	1984-85*
	(In crores of Rupees)				
1. Crude oil	58.74	111.19	209.89	838.80	843.53
2. Coal & coke	21.86	31.01	34.17	55.97	NA
3. Rubber	6.27	5.52	6.62	6.82	NA
4. Handloom cess on cotton fabrics	6.02	5.45	4.66	5.19	4.62
5. Tea	4.56	4.48	4.55	4.86	4.52
6. Handloom cess on rayon artificial silk fabrics	2.00	1.28	0.90	1.20	3.49
7. Handloom cess on man-made fabrics	Nil	1.14	1.41	1.93	—
8. Salt	1.22	1.35	1.30	1.36	NA
9. Oil and oil seeds	1.10	1.04	1.25	1.45	3.67
10. Paper	0.01	1.22	0.92	1.28	2.79
11. Other commodities	4.69	5.43	59.87	116.20	112.29
Total receipts from cess	106.47	169.11	325.54	1035.06	974.91

*Provisional figures furnished by the Ministry of Finance.

2.02 Variations between the budget estimates and actual receipts

The budget estimates *vis-a-vis* actual receipts during the year 1984-85 alongside the corresponding figures for the preceding three years are given below :

Year	Budget estimates	Actual receipts
	(In crores of Rupees)	
1981-82	7116.90	7420.74
1982-83	8521.46*	8058.50*
1983-84	10,125.33	10,221.74*
1984-85	11,171.88	11067.92*

*Provisional figures furnished by the Ministry of Finance.

2.03 Cost of collection

The expenditure incurred during the year 1984-85 in collecting Union Excise duties are given below alongside the corresponding figures for the preceding three years.

Year	Receipts from excise duties	Expenditure on collection	Cost of collection as percentage of receipts
		(In crore of rupees)	
1981-82	7420.74	44.03	0.59
1982-83**	8058.50	51.83	0.62
1983-84*	10221.74	62.79	0.61
1984-85*	11067.92	72.55	0.65

**Figures for 1982-83 revised by the Ministry of Finance.
*Provisional figures furnished by the Ministry of Finance.

2.04 Exemptions, rebates and refunds

(i) *Exemptions*

In the Central Excise Tariff, the number of subitems (each with rate against it) under which the excisable commodities are required to be classified was 333 during the year 1983-84 and 370 during the year 1984-85. The number of exemption notifications issued during the year 1983-84 and 1984-85 numbered 160 and 128 respectively. Because exemption notifications are issued under the various tariff items, the number of rates of basic excise duty in force during the years 1983-84 and 1984-85 were 1105 and 758 respectively. The largest number of exemption notifications were in force in respect of the following tariff items :—

Sl. No.	Tariff item No.	Description	Number of exemption notifications in force during	
			1983-84	1984-85
.	68	All other goods not elsewhere specified	39	44
2.	18	Man-made fibres, filament yarn and cellulosic spun yarn	34	41
3.	15A	Plastics	41	30
4.	19	Cotton fabrics	26	28
5.	26A	Copper	20	28
6.	17	Paper	26	25
7.	14	Paints and varnishes	29	24
8.	14E	Patent or proprietary medicines	20	16
9.	27	Aluminium	17	15
10.	6	Motor spirit	22	13

The amount of revenue foregone every year by grant of exemptions through issue of notification by the Ministry of Finance is not being compiled by the Ministry of Finance.

(ii) *Rebate*

Under the Central Excise Rules the amount* of rebates on excise duty paid on goods exported as also excise duty not levied on goods exported, in recent years, is given below :—

	1982-83	1983-84	1984-85
		(In Rs crores)	
(a) Rebate under Rule 12	25.35	42.67	33.18
(b) Rebate under Rule 12A	4.44	2.08	4.70
(c) Duty not levied under Rule 13	39.65	60.99	115.06
TOTAL	69.44	105.74	152.94

(iii) *Refunds*

The amount* of duty refunded by the department in recent years because of excess collection is given below :—

	1982-83	1983-84	1984-85
Number of cases	6174	6701	8015
Amount of refunds (In Rs. crores)	46.87	33.02	75.78

*The Revised figures furnished by the Ministry of Finance cover only 28 collectorates out of 32 Collectorates.

2.05 **Outstanding demands**

The number* of demands for excise duty outstand ing for collection and the amount of duty involved are given below :—

	Relating to					
	1982-83		1983-84		1984-85	
	Number of cases	Amount (in Rs. crores)	Number of cases	Amount (in Rs. crores)	Number of cases	Amount (in Rs. crores)
(a) Pending with Adjudicating Officers	4327	204.70	2449	234.04	4400	305.35
(b) Pending before Appellate Collectors	1327	24.26	436	9.33	505	9.83
(c) Pending before Board	139	12.24	41	0.45	11	0.01
(d) Pending before Government	786	10.42	102	1.25	63	0.43
(e) Pending before Tribunals	736	23.00	212	10.20	316	7.38
(f) Pending before High Courts	1899	122.35	381	21.39	357	56.62
(g) Pending before Supreme Court	6378	60.83	641	38.53	213	47.07
(h) Pending for coercive recovery	14253	64.45	2555	23.96	2750	19.64
TOTAL	29845	522.25	6817	339.15	8615	446.33

*Figures furnished by the Ministry of Finance cover 28 Collectorates out of 32 Collectorates.

2.06 **Provisional assessments**

The assessments* to excise duties which have been done provisionally, for various reasons, and the amount of estimated revenue involved are indicated below :—

	Relating to					
	1982-83		1983-84		1984-85	
	Number of cases	Duty involved (in Rs. crores)	Number of cases	Duty involved (in Rs. crores)	Number of cases	Duty involved (in Rs. crores)
(a) Pending decision by Courts of Law	4352	418.86	1238	283.80	1511	462.74
(b) Pending decision by Government of India or Central Board of Excise & Customs	225	5.03	55	5.21	36	1.13
(c) Pending adjudication by the department	319	6.32	152	6.48	149	5.56
(d) Pending finalisation of classification lists	211	81.58	190	8.27	386	10.93
(e) Pending finalisation of price lists	2437	186.85	1788	169.87	2101	69.91
(f) Other reasons	133	19.22	138	5.52	797	210.47
TOTAL	7677	717.86	3561	479.15	4980	760.74

*Figures received from the Ministry of Finance cover 28 Collectorates out of 32 Collectorates.

2.07 **Failure to demand duty before limitation and revenue remitted or abandoned**

(i) *Revenue not demanded before limitation*

The total amount* of demands for duty barred by limitation and not realisable owing to demands not having been raised in time during the last three years was Rs. 6.17 crores as detailed below :

(Amount in Rs. crores)

1982-83	3.01
1983-84	1.42
1984-85	1.74

(ii) *Revenue remitted or abandoned*

The amount* of revenue remitted, abandoned or written off during the last three years are given below :—

	1982-83		1983-84		1984-85	
	Number of cases	Amount (in Rs. lakhs)	Number of cases	Amount (in Rs. lakhs)	Number of cases	Amount (in Rs. lakhs)
1	2	3	4	5	6	7
Remitted due to						
(a) Fire	37	3.00	56	3.60	39	6.62
(b) Flood	3	0.11	6	0.14	97	0.70
(c) Theft	..	..	..	..	..	..
(d) Other reasons	267	26.57	332	13.03	343	12.67
TOTAL	307	29.68	394	16.77	479	19.99
Abandoned or written off due to :						
(a) Assessee died leaving behind no assets	62	0.11	81	0.11	243	0.88
(b) Assessee untraceable	46	1.64	113	0.13	2089	4.32
(c) Assessee left India	..	..	1	0.08	10	0.07
(d) Assessee incapable of payment of duty	2378	2.67	228	0.74	2539	7.22
(e) Other reasons	99	7.33	180	1.51	1055	5.62
TOTAL	2585	11.75	603	2.57	5936	18.11

*The figures furnished by the Ministry of Finance cover only 28 Collectorates out of 32 Collectorates.

2.08 **Writs and Appeals**

(i) *Writ petitions pending in Courts*

Number* of writ petitions involving excise duties which were pending in Courts as on 31 March 1985 are given below :—

	In Supreme Court	In High Courts
Pending for over 5 years	352	815
Pending for 3 to 5 years	560	1159
Pending for 1 to 3 years	488	1271
Pending for not more than 1 year	184	399
TOTAL	1584	3644

(ii) *Appeals pending with others*

The number of appeals and petitions pending with Collectors/Tribunals/Board/Government as on 31 March 1985 are given below :—

	With Collector	With Tribunal	With Board	With Govt.
(a) Number of Appeals Institu ed during 1984-85	620	1306	93	25
(b) Pending as on 31-3-85 [Out of (a) above]	463	1090	92	33
(c) Number of appeals/ Petitions Instituted in earlier years and pending on 31-3-1984	1288	1344	65	117
(d) Pending as on 31-3-85 [Out of (c) above]	829	1114	43	82

*The information is in respect of 27 Collectorates out of 32 Collectorates.

(iii) *Details of appeals/references disposed of*

The number of appeals and references filed before Collectors (Appeals), the Tribunals and the High Courts and Supreme Court are given below :—

	Relating to the years		
	1982-83	1983-84	1984-85
1	2	3	4
1. (a) Number of appeals filed before Collectors (Appeal)	1329	1210	1404
(b) Number of appeals disposed of during 1984-85 out of (a) above	720	554	832
2. (a) Number of appeals filed before the Tribunal by the assessees	137	327	1012
(b) Number of appeals decided during 1984-85 in favour of the assessees	19	9	84
3. (a) Number of appeals filed before the Tribunals by the department	76	200	723
(b) Number of appeals decided in favour of the department during 1984-85	1	4	42
4. (a) Number of appeals filed in the High Courts by the assessees	132	80	103
(b) Number of appeals disposed of in favour of the assessees during 1984-85	34	5	17
5. (a) Number of appeals filed by the department before the High Courts	3	8	24
(b) Number of appeals decided in favour of the department during 1984-85 (including appeals filed by assessees)	12	14	24
6. (a) Number of appeals filed in the Supreme Court by the assessees	61	21	33
(b) Number of appeals decided in favour of the assessees	3	1	4
7. (a) Number of appeals filed in Supreme Court by the department	43	20	48
(b) Number decided in favour of the department	4	1	5

2.09 **Seizures, confiscation and prosecution**

The number* of cases of seizures, confiscation and prosecution relating to the excise duties are given below :—

	1982-83		1983-84		1984-85	
	Number	Amount	Number	Amount	Number	Amount
				*(Amount in Rs. crores)		
(i) Seizure cases	1939	10.04	1964	19.15	2009	15.47
(ii) Goods seized	1877	8.63	1990	16.35	1833	12.73
(iii) Goods confiscated :						
(a) in seizure cases	1255	1.85	1317	2.98	1612	6.74
(b) in non-seizure cases	246	0.74	297	3.63	391	5.38
(iv) Number of offences prosecuted :						
(a) arising from seizure	94	0.08	288	0.34	214	1.57
(b) arising otherwise	50	0.03	25	0.003	45	0.41
(v) Duty assessed in respect of goods seized or confiscated	1302	1.73	1408	2.45	1482	5.83
(vi) Fines levied :						
(a) on seizure and in confiscation cases	1112	0.17	1121	0.20	1025	0.34
(b) in other cases	77	0.03	83	0.02	80	0.02
(vii) Penalties levied	1893	0.42	2060	0.40	2218	1.03
(viii) Goods destroyed after confiscation	21	0.01	9	0.002	18	0.003
(ix) Goods sold after confiscation	16	0.01	53	0.003	32	0.12
(x) Prosecutions resulting in conviction	29	0.05	20	0.02	14	0.01

*Figures received from the Ministry of Finance cover 27 Collectorates out of 32 Collectorates.

2.10 **Outstanding audit objections**

The number of objections raised in audit upto 31 March 1984 in 31 Collectorates, and which were pending settlement as on 30 September 1984 was 5,639. The duty involved in the objections amounted to Rs. 455.94 crores. Details are given in Annexure 2.1 to this chapter.

The outstanding objections broadly fell under the following categories.

Nature of objection	Amount (in Rs. crores)
1. Non levy of duty	75.31
2. Short levy of duty due to undervaluation	229.98
3. Short levy of duty due to misclassification	59.43
4. Short levy of duty due to incorrect grant of exemption	23.15
5. Exemption to small scale manufactures	0.10
6. Irregular grant of credit for duty paid on inputs and irregular utilisation of such credit	13.85
7. Demands for duty not raised	2.31
8. Irregular rebates and refunds	3.62
9. Cess	0.99
10. Others	47.19
11. Internal Audit	0.01
TOTAL	455.94

The paragraph was sent to the Ministry of Finance in September 1985; their reply is awaited (January 1986).

2.11 **Results of audit**

Test check of records in audit in the various Central Excise Collectorates including check of excise records of licensees manufacturing excisable commodities revealed under-assessment of duty and losses of revenue amounting of Rs. 38.34 crores. As a result of the audit objections, consequential additional demands raised by the department amounted to Rs. 1.66 crores.

The irregualrities noticed broadly fall under the following categories :—

(a) Non levy of duty
(b) Short levy due to under-valuation
(c) Short levy due to misclassification
(d) Incorrect grant of exemption
(e) Exemption to small scale manufacturers
(f) Irregular grant of credit for duty paid on raw materials and components (inputs) and irregular utilisation of such credit towards payment of duty of finished goods (outputs)
(g) Demands for duty not raised
(h) Irregular rebates and refunds
(i) Cess
(j) Procedural delays and irregularities with revenue implications
(k) Other irregularities of interest

Some of the important cases are mentioned in the following paragraphs.

NON-LEVY OF DUTY

2.12 **Duty not levied on production suppressed or not accounted for**

(i) **Petroleum products**

As per Rule 53 of the Central Excise Rules, 1944, every manufacturer is required to maintain account of stock in the prescribed form and enter in such account daily (a) description of goods, (b) opening balance, (c) quantity manufactured, (d) quantity deposited in the store room, (e) quantity removed after payament of duty, (f) quantity delivered from the factory without payment of duty for export or other purposes, and (g) the rate of duty and the amount of duty.

An assessee obtained raw naphtha (falling under tariff item 6) and furnace oil (falling under tariff item 10) at concessional rates of duty for (of Rs. 4.36 per kilolitre for raw naphtha against the normal rate of Rs. 2253.88 per kilolitre and Rs. 61.05 per kilolitre for furnace oil against the normal rate of duty of Rs. 121.05 otherwise leviable) use in the manufacture of fertilisers in terms of notifications issued in December 1961 and June 1976 (as amended) subject to observance of Chapter X procedure. Though the quantity received by the fertiliser unit was less than the quantity despatched from the oil installation in several months during the period from March 1980 to March 1984, no action was taken by the department to adjudicate the loss in transit and to demand duty, wherever the loss was abnormal and not found to be due to normal causes.

On the irregularity being pointed out in audit (February/March 1981), the department contended (September 1981/October 1981/March 1982/December 1983/September 1984/October 1984/March 1985) that the difference between the quantity sent by the oil installation and the quantity actually received by the fertilizer manufacturer was due to temperature difference and different gauging times. The department also contended that though the quantity received by the consignee was less during 1982-83 and 1983-84 there was actually excess receipt during 1980-81 and 1981-82 and also cited decision of CEGAT, Bombay of March 1984 [(1985) (19 ELT 248)].

The contention of the department is not, however, correct and acceptable since the accounting of all petroleum products is always done after ascertaining the volume of oils at 15° C both at the issuing point and at the receiving end and hence temperature variation cannot have any consequence.

The CEGAT decision cited by the department only held that consignee was not liable to duty for excess receipt by the consignee but conceded that the consignor was liable to pay duty on shortages noticed on receipt by the consignee.

The department, however, reported (October 1984) that the assessee accounted for the entire quantity shown as issued from the oil installation as receipts from April 1984 and not showing any shortage from that month. Even this procedure is not correct since it may cover up actual pipeline losses due to leakage, pilferage and theft.

The total quantity of raw naphtha short-accounted for by the assessee during the period from March 1980 to March 1984 without setting off the gains or excess receipt noticed in certain other months during the same period was 7608.946 kilolitres and the differential duty due thereon works out to Rs. 1.71 crores. The net quantity short accounted for (after deducting the excess noticed in certain months) was 5153.635 kilolitres, the differential duty due thereon being Rs. 1.16 crores. The position in respect of furnace oil remains to be ascertained.

The Ministry of Finance stated (December 1985) that the concerned Collector had been asked to decide the question of short accountal at an early date.

(ii) **Mineral oils**

Mineral oils (classifiable under the tariff item 6, 7 and 8) are received and stored by the bulk supply depots for subsequent clearance. The total quantity received/withdrawn at 15°C is shown in R.G.I. register and duty is levied on the basis of datewise outturn for the receipts and withdrawals.

Receipts and withdrawals of mineral oils were not worked out correctly by a bulk supply depot, thereby resulting in their short receipt and consequential short accountal in R.G.I. register during the period from May 1983 to November 1983. The mistakes resulted in short realisation of duty of Rs. 2,44,330.

On the irregularity being pointed out in audit (June 1984) the department issued (July 1984) a show cause notice for Rs. 2,44,330 against which a demand for Rs. 2,40,113 was confirmed in December 1984 and the amount was recovered in August 1984 and March 1985.

The Ministry of Finance confirmed the facts (September 1985).

(iii) **Clinker**

As per a notification issued on 30 April 1975 goods falling under tariff item 68 are exempt from duty if they are intended for use in the factory in which they are manufactured or in any other factory of the same manufacturer, where such use was in a factory of a manufacturer different from his factory where goods had been manufactured, the exemption was allowable subject to observance of the procedure set out in Chapter X of the Central Excise Rules 1944. Rule 196 enjoins that if any excisable goods obtained for industrial use under the said procedure are not accounted for as having been used for that purpose, the manufacturer, who obtained the goods shall, on demand by the proper officer, immediately pay the duty leviable on such goods.

For manufacturing cement, a unit of a State Cement Corporation obtained its supply of clinker (falling under tariff item 68) from its sister concern under Chapter X procedure. The receipt of consignments of clinker was not recorded by actual weighment but on the carrying capacity of the wagons plus 2 tonne per wagon. The sister concern in its transfer documents, however, had advised despatch of the full carrying capacity of the wagons plus 4 tonnes of clinker which were certified as received by the authorised representative of the receiving unit. This resulted in short accountal of 6252 tonnes of clinker during the period from April 1983 to August 1983, the amount of duty leviable thereon works out to Rs. 1,57,550.

The Ministry of Finance stated (October 1985) that a show cause notice demanding duty amounting to Rs. 4.47 lakhs had since been issued. Further progress is awaited (January 1986).

(iv) **Biris**

As per para 121A of the Manual of Departmental Instructions on Tobacco, a manufacturer of biris has to be asked to declare the weight of tobacco used per thousand biris of various types and sizes that are produced.

Three biri manufacturers who had declared their formula for the weight of tobacco used per thousand biris, used 13,64,502.750 kilograms of tobacco in the manufacture of biris. As per their declarations 5,47,27,05,034 biris should have been produced from so much quantity of tobacco. But they entered in their production accounts 5,36,34,83,270 biris only. On 10,92,21,764 biris not accounted for in

their production accounts duty amounting to Rs. 3,95,009 was leviable. The department had not done any investigation.

The Ministry of Finance stated (November 1985) that short accountal in two units was quite negligible (ranging between 0.7 to 2.97 per cent). As regards the third unit there was in fact excess accountal. It further stated that the formula is just a guideline and since the biris are hand made, these cannot be applied rigidly for computing the output vis-a-vis the actuals. Further loss in the weight of the tobacco due to dryage has also to be taken into consideration. The Ministry's reply is neither specific nor supported by documentary evidence.

(v) **Electric fans**

A manufacturer was engaged in the manufacture of electric fans (tariff item 33). A comparative study between the production displayed in the annual balance sheet for the calender year 1983 and the production as recorded in the excise records for the same period revealed that there was short accountal of 4,755 fans. The licensee failed to explain the shortages. As such the possibility of escapement of duty amounting to Rs 2.44 lakhs during the period January 1983 to December 1983 could not be ruled out.

On the discrepancy being pointed out in audit (December 1984) the department stated (April 1985) that a show cause-cum demand notice had since been issued.

The Ministry of Finance stated (December 1985) that the concerned Collector had been asked to finalise the case expeditiously.

(vi) **Copper**

Under Rule 55 of the Central Excise Rules, 1944, every manufacturer of excisable goods is required to furnish a quarterly return showing therein inter alia the quantity of principal raw material received/used and the quantity of excisable goods manufactured therefrom. This return is meant for keeping watch, by the Department, on proper accountal of raw material and quantity of finished excisable goods manufactured therefrom.

A primary manufacturer of copper (falling under tariff item 26A) submitted such returns to the department showing therein quantity of copper concentrate produced locally from copper ore/copper concentrate received from sister concerns and the quantity of copper manufactured therefrom. According to these returns, the recovery of copper from concentrate ranged from 13 to 31 per cent.

The return for the period ending March 1983 indicated that only 25,818.648 tonne out of 27,755.358 tonne of copper/concentrate received, was accounted for as used and 1,936.710 tonne was deducted from balance, which was found short on actual verification. The correctness of the facts was neither examined by the department nor the demand of duty was issued for 387 tonne which would have been produced from the copper concentrate found short if there was no satisfactory reason for the said shortage.

On the omission being pointed out in audit (September 1983), the department issued a show cause-cum-demand notice in September 1983 and confirmed the same during February 1985, holding that the party had not paid excise duty of Rs. 12,78,229 on 387.342 tonne of copper manufactured from 1936.70 tonne of copper concentrate and cleared without payment of duty.

The Ministry of Finance stated (November 1985) that the point raised involved a question of fact and the operation of adjudication order had been stayed by the Collector (Appeals) subject to depositing of Rs. 5 lakhs and furnishing of bank guarantee for the balance amount. The Ministry added that the assessee had paid Rs. 5 lakhs.

(vii) **Shortages during annual stock taking**

Under Rule 223A, of the Central Excise Rules, 1944 at least once in every year, the stock of excisable goods remaining in the factory or approved premises is required to be weighed, measured, counted or otherwise ascertained in the presence of the proper Central Excise Officer, and if deficiencies are noticed, after making due allowance for waste by natural causes as may be in accordance with the instructions issued by the Central Board of Excise and Customs, the manufacturer shall be liable to pay the full amount of duty chargeable on such goods as are found to be deficient and also a penalty which may extend to two thousand rupees.

The Central Board of Excise and Customs prescribed in their instructions dated 12 April 1971 that Central Excise Officers should associate themselves with the stock taking verification undertaken by the steel plants and the steel plants should furnish to the department the results of the stock taking, in order that the Collectors may give due consideration in adjudicating the shortages. The Central Board of Excise and Customs in their further instructions dated 26 October 1979 prescribed, so as to serve as guidelines, the limits upto which losses can be condoned, namely 1 per cent in the case of steel ingots/scrap,

iron and steel products, 2 per cent in the case of pig iron and 2.5 per cent in the case of iron in any crude form.

In an integrated (ore-based) steel plant in the public sector it was found that shortages were noticed by the department year after year during annual stock taking but no action was taken to adjudicate the losses and demand duty on the shortages not condoned. When this was pointed out in audit, vide Para 101 (e) (i) of Audit Report for 1976-77 the department, by an order issued in October 1983 condoned the entire shortages of all products noticed during the period of 11 years from 1965-66 to 1975-76.

In the same steel plant shortages continued to be noticed by the department year after year during annual stock taking. The shortage in respect of two products in the two years viz., 1981-82 and 1982-83 amounted to 10,543 tonnes in the case of steel ingots| scraps and 2,751 tonnes in the case of iron and steel products aggregating to 13,294 tonnes bearing a duty of Rs. 48,894. Departmental adjudication of these shortages as provided in the Rules with a view to determine how much of the shortages were justified and how much would attract duty and penalty was not being done yearly with the result that the unjustifiable shortages continued to escape duty (and penalty) for several years.

When this omission was pointed out in audit (September 1984), the department issued in February 1985 a show cause-cum demand notice for Rs. 1,05,79,746 on the shortages of all products namely pig iron (2,265 tonnes), steel ingots (20,045 tonnes), and iron and steel products (9,089 tonnes) aggregating in all to 31,399 tonnes occuring during the 7 year period from 1976-77 to 1982-83, in which period the shortages ranged from 1.43 per cent to 6.39 per cent.

The adjudicating authority in his findings held (May 1985) that upto 1.25 per cent of the shortges of the steel ingots|scraps and iron and steel products and the entire shortages in the case of pig iron and crude iron which were within the limits of 2 per cent and 2.5 per cent respectively was condonable and duty was payable on the balance quantity of shortages. Accordingly the department confirmed demand of duty of Rs. 35,30,012 on the shortages in respect of steel ingots/scrap and Rs. 6,80,803 on the shortages in respect of iron and steel products amounting in all to Rs. 42,10,815 in May-June 1985. Report on realisation of the demand is awaited (July 1985).

The Ministry of Finance stated (November 1985), that the concerned Collector had been asked to recover the amount expeditiously and also to adjudicate shortages noticed during annual stock taking on year to year basis.

2.13 Irregular clearances allowed without levying duty

(i) Parts of water coolers

As per a notification issued on 28 February 1982 water coolers (falling under tariff item 29A) were exempted from payment of whole of central excise duty.

Another notification issued on 28 September 1973, as amended, exempted parts of refrigerating appliances manufactured in a factory and captively used in such appliances from payment of central excise duty if such appliances were cleared on payment of duty either fully or in part. It, therefore, follows that the parts of water coolers such as cooling coils, condensers cabinets etc., manufactured and captively consumed in the manufacture of water coolers which were exempted from the whole of duty have to pay duty.

A manufacturer of "water coolers", did not include the cabinets manufactured by him in the classification list and did not pay any central excise duty on their clearances. Duty payable on 2097 cabinets cleared in assembled or dismentled condition at an estimated average cost of Rs. 500 each would work out to Rs. 6.58 lakhs (approximately).

The Ministry of Finance stated (November 1985) that a show cause notice had been issued to the unit.

(ii) Cigarettes

As per Rules 9 and 49 of the Central Excise Rules, 1944, no excisable goods shall be removed from any place where they are produced, cured or manufactured or from any premises appurtenant thereto, until excise duty leviable thereon has been paid.

It has been held by the Delhi High Court in the case of J. K. Cotton Spinning and Weaving Mills and others Versus Union of India (1983 ELT 239) that so long as goods are identifiable and capable of physical removal they would attract duty, whether in fact they are physically removed or not.

A manufacturer of cigarettes removed, loose cigarettes to laboratory for test purposes within the factory premises wihout payment of duty. In the absence of any exemption notification, exempting such removal from payment of duty, the removals for test purposes resulted in loss of revenue of Rs. 2,04,594 due on

3,40,990 loose cigarettes tested during the period from April 1983 to March 1984.

On the omission to assess the cigarettes being pointed out in audit (September 1984) the department did not accept the objection and stated (April 1985) that testing was part and parcel of manufacturing process wihout which they were not marketable, and that they were not liable to duty as per para 114 of the Basic Excise Manual and no exemption notification was required.

But the loose cigarettes cleared for test purposes were excisable goods, as they were identifiable as 'cigarettes' mentioned in tariff Entry 4 II (2) and were capable of physical removal and accounted for in excise records. In the circumstances duty has to be levied on their removal for test purposes because such removals for test purposes are not covered by a valid exemption notification issued under sub-rule(1) of Rule 8 of Central Excise Rules, as in the case of exemptions given to samples of various goods issued under a notification dated 21 November 1970.

The Ministry of Finance confirmed the facts (November 1985).

(iii) **T.I. 68 goods**

(a) A State Electricity Board used reinforced cement concrete (R.C.C.) poles and pre stressed cement concrete (P.C.C.) poles for laying transmission lines for distribution of electricity. The poles were got manufactured through contractors under supervision by officers of the Board either in the pole casting yards of the Board or in the Yards set up by the contractors in terms of the contract. Cement and M.S. Rod|Torsteel| H.T. wire required for the purpose were supplied by the Board free of cost. Compaction of concrete by mechanical means was a condition of the contract.

The concrete poles thus manufactured were assessable to duty under tariff item 68. However, no duty was levied on them. The non levy of duty from 1981-82 onwards amounted to Rs. 48 lakhs (approximately).

The omission was pointed out to the department in October 1983.

The Minisrty of Finance stated (December 1985) that some of the units manufactured poles with the aid of power and some without aid of power. Further some units were not factories as per the definition given in the Factories Act, 1948. However, three show cause notices for Rs. 4.76 lakhs approximately had been issued.

(b) A public sector undertaking manufactured "pump spares", "cranes", "ship/vessels" etc. (all classifiable under tariff item 68) and cleared most of the said products without paying duty. In a very few cases when duty was paid, it was paid short. This resulted in duty not being realised by Rs. 1.74 crores during the financial years 1975-76 to 1981-82.

On the mistake being pointed out in audit (January 1983), the department intimated (October 1984) that it had issued (July 1983) a show cause notice demanding duty of Rs. 1.24 crores for the financial years 1978-79 to 1981-82. Duty of Rs. 26.73 lakhs for the period prior to 1978-79 was barred by limitation. An amount of Rs. 1.08 lakhs was paid by the manufacturer of his own. The Collector, however, confirmed (May 1984) the demand and imposed a penalty of Rs. 1 lakh.

The Ministry of Finance stated (November 1985) that department was already in the knowledge of the issue in respect of pump spares and ship building and a show cause notice had already been issued in June 1981. However, the fact remains that it had also been confirmed by the department in para 3 of show cause notice dated 4 July 1983 that the earlier show cause issued on 2 June 1981 and 10 January 1983 did not include the amount of evaded duty due to non availability of requird particulars and non-maintenance of records by the assessee company.

The assessee deposited Rs. 61,35,791 and his appeal was pending before Tribunal.

(iv) **Nickel anode**

Section 2 (f) of Central Excises and Salt Act, 1944, defines 'manufacture' to include any process incidental or ancillary to the completion of a manufactured product.

The Supreme Court held (October 1962) that 'manufacture' implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation resulting into emergence of a new and different article having a distinctive name, character and use. It, therefore, follows that whenever any process results into such emergence the process does amount to 'manufacture' within Section 2(f) ibid.

A manufacturer of 'nickel anode' used imported 'electro-squares', pellets etc., in admixture with 'carbon', 'silicon' etc. and manufactured the goods by casting process. No duty was paid on 'nickel anodes' on the plea that the processes undertaken did not amount to 'manufacture' within Section 2(f) ibid.

The department also held (December 1979) the same view. Later on the department issued (October 1981) a show cause notice to the Licensee asking him to explain to the Collector why its (department) order dated December 1979 should not be set aside, and 'nickel anodes' treated as 'manufacture' within Section 2(f) ibid. The Collector in his order (original) adjudicated (January 1982) that the order issued on 22 December 1979 could not be reviewed as the review proceedings were time barred under Section 35A ibid. The Collector, however, held that the process conducted by the factory did not amount to manufacture within Section 2(f) ibid.

In April, 1983 it was contended in audit that in the light of the Supreme Court judgement the processes conducted by the factory is 'manufacture' within Section 2(f) of the Act, ibid, and 'nickel anodes', having a different name, use and character from the raw materials were liable to duty under tariff item 68, as 'all other goods not elsewhere specified'. The anodes were also covered under CCCN Heading 75.05 while unwrought nickel including cathode is covered under Heading 75.01(B). Duty amounting to Rs. 23.20 lakhs during 1980-81 to February 1983 was not levied. Subsequent enquiry (July 1985) also revealed that revenue of Rs. 18.26 lakhs during subsequent period from 1 March 1983 to 31 March 1985 was foregone.

On the irregularity being pointed out in audit (April 1983) the department intimated (August 1984) that the Collector, in his quasi-judicial capacity, adjudicated (January 1982) that the process of conversion of electro-squares, pellets, etc. into 'nickel anodes' did not amount to manufacture within Section 2(f) ibid. It also stated that the classification under CCCN cannot apply to Central Excise cases.

Reply of the department is not correct because the Supreme Court judgement (October 1962) does not allow of such a view of the department to the detriment of revenue; and classification under CCCN is applied frequently to Central Excise cases. It is, also not understood how the Collector without reviewing the case (being time barred) held that the process conducted by the Licensee was not 'manufacture' within Section 2(f) ibid.

The Ministry of Finance stated (February 1986) that nickel squares and cathodes could be used either in negative or positive poles in electroplating. The Ministry also added that as regards drawing of wire, electrods of nickel copper and nickel iron (manufactured in assessee's another unit) were used only in electric lamps and could not be used for electroplating. Therefore, the process of making anodes from electric cathodes did not amount to manufacture within the meaning of Section 2(f) of the Central Excises and Salt Act, 1944, as the basic character of the product remained the same at the input and output stage.

The fact, however, remains that these raw materials were not the same thing as anode because under CCCN heading 75.01(B) unrought nickel including cathodes excluded the electroplating anode which was covered by heading 75.05 and rate of Custom duty for 75.01 and 75.05 was 40 per cent and 60 per cent respectively. If the cathodes were nothing but anodes as the same could be used either in negative or positive poles in electroplating then the Customs duty would have been chargeable @ 60 per cent on cathodes also. But the CCCN headings clearly made a difference between the cathode and anode by putting two products under different headings. Hence the process of conversion by melting/adding chemical and casting would constitute "manufacture" as the raw material and finished product were different.

(v) **Miscellaneous goods**

As per a notification issued on 5 November 1977 a manufacturer who got his goods manufactured on his account from any other person was exempt from central excise licence subject to fulfilment of conditions specified therein. One such condition was that the person engaged in the manufacture of goods agrees to discharge all liabilities in respect of such manufacture. Therefore duty liability on goods so manufactured vested on the manufacturer (who got goods manufactured on his account) if the conditions precedent to the notification ibid were not satisfied.

A manufacturer supplied raw materials and specifications to another person and got "ductings" (tariff item 68) manufactured on his own account. Duty was not discharged on the products by the person who actually produced them; also no demand was raised by the department against the manufacturer who got the products manufactured on his account. The irregularity resulted in duty not being realised by Rs. 1.88 lakhs on clearances of "ductings" during 1980 and 1981. Subsequent enquiry (June 1985) revealed that duty of Rs. 9.21 lakhs was not levied during 1982, 1983 and 1984.

On the irregularity being pointed out in audit (March 1982), the department intimated (May 1985) that it had raised (September 1983) a demand for Rs. 1.88 lakhs as a measure of precaution. No demand for the period after 1981 was raised.

The Ministry of Finance stated (January 1986) that as a matter of precaution the demands for Rs. 1.88

lakhs for the year 1980 and 1981 had been issued and demands for the subsequent period were likely to be issued shortly.

2.14 **Excisable goods cleared as non-excisable or without obtaining any licence by the manufacturers**

(i) **Motor vehicles**

On motor vehicles, whether with a body or without body which are classifiable under tariff item 34, duty is leviable at rates fixed by reference to engine capacity. But where engine capacity does not exceed 2500 cubic centimetres, rates of duty vary for vehicles with body and without body. The tariff defines motor vehicles to mean all mechanically propelled vehicles other than tractors designed for use upon roads. An explanation in the tariff clarifies that motor vehicles shall include a chassis.

Another explanation clarified that where a motor vehicle is mounted, fitted or fixed with any weight lifting or other specified material handling equipment then such equipment shall not be taken into account

The practice in trade is that the chassis of vehicles are cleared by manufacturer on payment of duty and bus or lorry bodies, including tipper lorry bodies, are built thereon by body builders. The Finance Ministry clarified in February 1974 that once duty was paid on the chassis, there would be no need to recover duty again when the bodies were built by independent body builders and that duty had to be assessed in the form in which the vehicle was cleared from the factory manufacturing chassis. After the introduction of the tariff item 68 on 1 March 1975, duty became leviable on all other goods not elsewhere specified and the Finance Ministry clarified in June 1975 that as the product, namely built vehicle, ultimately cleared was only a motor vehicle falling under tariff item 34 under which duty had already been levied on the chassis, duty would not be leviable under tariff item 68.

As per the law laid down by the Supreme Court in the case of Union of India Vs. Delhi Cloth and General Mills Ltd. (AIR 1963 SC 791) the goods produced as a result of construction of a body on a chassis, is different from the chassis since it has a distinct name, character and use. It is also known differently in the market. The construction of a body on a chassis is manufacture and on the goods so manufactured duty is leviable again under tariff item 34 so long as the levy of such duty has not been exempted by issue of a notification. It is, however, open to the manufacturer to claim set off of duty paid on the chassis from the duty payable on the built motor vehicles as per provisions of Rule-56A of the Central Excise Rules.

(a) An assessee manufacturing motor vehicles chassis (falling under tariff item 34) had cleared 11 chassis during 1981 and 1982. He got the bus bodies built thereon through job workers. 2 buses were sent for exhibition in a trade fair and remaining 9 buses were utilised in the factory for use as staff buses. No duty was levied on the motor vehicles after the bodies were built thereon. The duty omitted to be levied on 11 Motor Vehicles (buses) was estimated at Rs. 1,45,987.

(b) Another assessee engaged in manufacture of motor vehicles sold complete vehicles (chassis with body built thereon) in certain cases. In such cases, chassis were cleared from factory premises on payment of duty, body was built in separate premises of the body builder and then the complete vehicles were delivered to the buyers. The assessee realised additional amounts from buyers for body built on chassis through debit notes issued in continuation of sales invoices already issued in respect of chassis. Such amounts were, however, not taken into account for assessment of duty, although the same were liable to duty as per the Supreme Court judgement cited above. Duty avoided on this account worked out to Rs. 4,25,388 during the period from October 1983 to March 1984.

(c) A third factory manufactured bodies on chassis received from outside parties but no duty was paid on such motor vehicles (with built bodies on chassis). The duty not levied on the clearances of 114 such motor vehicles with built bodies during the period from November 1982 to July 1984 worked out to Rs. 22.80 lakhs (Approx.).

(d) A Public Sector Undertaking engaged in the manufacture of aircrafts undertook the work of bus body building in their Overhaul Division on the chassis supplied by State Public Transport Undertaking etc. The value of invoices raised by the assessee for body building during the three years 1981-82 to 1983-84 amounted to Rs. 15,50,292. No duty under tariff item 34 was collected by the department.

On the non levy of duty being pointed out in audit (December 1984), the department did not agree with the objection and stated (April 1985) that according to the clarification issued by the Ministry of Finance in March 1974, and the Board in June 1975, no duty was leviable on bus body, if it was built on duty paid motor vehicles chassis.

The failure on the part of the department to apply the ratio of the judgement of the Supreme Court resulted in non levy of duty amounting to Rs. 2,44,171.

(e) A body builder in a Collectorate received a duty paid lorry chassis with tipping gear machanism and cleared it during 1982 after building a tipper body over it valued at Rs. 1,60,884. No duty under tariff item 34 was collected by the department on the plea that the body built over the chassis is a part of the material handling equipment and hence not includible in the assessable value even if the body built lorry were to be re-assessed to duty. But the body, in fact, was not a part of the material handling equipment. The failure on the part of the department to apply the ratio of the judgement of the Supreme Court has resulted in non levy of duty amounting to Rs. 40,221.

The Ministry of Finance stated (November 1985) that motor vehicle chassis once cleared on payment of duty would not attract further duty under tariff item 68 since both categories of vehicles, with and without body, are covered by tariff item 34. The Ministry's instructions of February 1983 are applicable exclusively to those goods initially cleared under the special concessional procedure prescribed for goods for export but diverted subsequently for home consumption. The duty liability on motor vehicles manufactured and cleared for home consumption would continue to be the same as before.

The reply of the Ministry of Finance is not correct and advice of the Ministry of Law has to be taken so that revenue is foregone legally by suitably amending the Tariff.

(ii) **Cement**

As per Rule 96 ZV of the Central Excise Rules, 1944, cement which has been damaged, after its delivery on payment of duty may be returned to the same or any other cement factory to be re-processed, or for further manufacture, and where duty has been paid on such cement, its equivalent to the recoverable weight of the re-processed cement based on the chemical analysis of the damaged cement, may be delivered without payment of duty subject to certain conditions.

A manufacturer of cement received back into his factory 726.010 tonnes of duty paid cement which was stated to be defective during the period from September 1984 to November 1984. Samples of the cement were taken and sent for chemical analysis to determine the percentage of recoverability of cement. The manufacturer subjected the cement brought back to process amounting to manufacture and cleared 569.900 tonnes of processed cement without payment of duty, even before the receipt of chemical examiner's report.

The omission to ascertain retrievable quantity of cement, as contemplated in Rule 96 ZV, was pointed out in audit, highlighting the fact that such part of the cement which cannot be retrieved did not qualify for duty free replenishment. The quantity of 726.010 tonnes involved in the transaction had a duty effect of Rs. 1,48,832.

On the mistake being pointed out in audit (March 1985) the department replied (April 1985) that show cause notice was issued to the licensee for removal of 726 tonnes of cement without payment of duty prior to the receipt of chemical examiner's report.

The Ministry of Finance stated (December 1985) that the concerned Collector had been asked to finalise the matter expeditiously.

(iii) **Electric motors**

An assessee manufactured electric motors (falling under tariff item 30) without obtaining a central excise licence and used them captively as component parts of tyre curing presses (for providing motive power for operating the presses) manufactured and sold by him. The manufacture of electric motors without a central excise licence and their clearance without payment of excise duty and without observing other central excise formalities was pointed out to the department in May|July 1984. The department contended (September 1984|May 1985) that they were already seized of the matter as evident by the fact that the Range Officer had addressed the assessee on 24 April 1984 to take out a licence for the manufacture of electric motors and that it was followed up by the issue of a show cause notice on 14 June 1984 demanding duty on 83 electric motors cleared till that date.

The manufacture and clearance of electric motors without a Central Excise licence was an offence involving contravention of section 6 of the Central Excises and Salt Act, 1944 and rules 9, 43, 173-B, 173-C and 173-F of Central Excise Rules, 1944. However, no offence case was booked against the assessee till the date of audit (May 1984) and show cause notice was also issued only in June 1984 after the irregularity was pointed out in audit. The notice was reported to have been issued to the assessee.

The duty involved on 83 motors is estimated at more than Rs. 4 lakhs.

The Ministry of Finance admitted the delay (November 1985).

(iv) **T.I. 68 goods**

Under the Central Excises and Salt Act, 1944, no person shall except under the authority and in accordance with the terms and conditions of a valid licence obtainable on payment of a prescribed fee, engage in the production or manufacture of any goods specified in the First Schedule, failing which he shall be liable for penal action.

(a) A unit continued manufacturing goods attracting excise duty under tariff item 68 after its introduction with effect from 1 March 1975, without obtaining a proper Excise licence or observing other formalities under the law. The department also failed to detect the manufacture and clearance of these goods. This resulted in non realisation of duty amounting to Rs. 32,23,626 on the goods valuing Rs. 471.49 lakhs cleared from 1 March 1975 to 31 March 1983.

The Ministry of Finance stated (October 1985) that the amount of Rs. 49 lakhs had since been realised from the unity.

(b) From a factory, crank shafts valuing Rs. 46,20,000 were removed during the period from February 1980 to April 1980. But duty amounting to Rs. 3,69,600 leviable thereon was not realised from the manufacturer.

On the non levy of duty being pointed out in audit (October 1980), the department stated (December 1984) that duty amounting to Rs. 9,67,120 in respect of clearances during the period from 21 February 1980 to 31 December 1980 had since been realised in January 1982.

The Ministry of Finance confirmed the fact (September 1985).

(c) A manufacturer engaged in the fabrication of steel structures for different industries cleared them on payment of duty under tariff item 68. However, the assessee cleared certain fabricated items without payment of duty as per a circular letter issued by the Ministry of Commerce, in September 1983 treating these supplies as "deemed export". But the said circular did not mention anything regarding non payment of central excise duty. No notification was issued granting exemption of duty on such deemed exports. This has resulted in non levy of duty of Rs. 1,18, 795 on clearances made during the period from January 1984 to May 1984.

On the matter being brought to the notice of the department (November 1984), they stated (February 1985) that a show cause-cum-demand notice for Rs. 1,35,265 covering the period from January 1984 to November 1984 had been issued to the Party in December 1984. Further developments were awaited (August 1985).

The Ministry of Finance stated (November 1985) that department had already noticed the non levy before the visit of Audit Party. However, the fact remains that show cause notice was issued only after Audit had pointed out the mistake.

(d) An assessee manufacturing calcined magnesite and dead burnt magnesite falling under tariff item 68 from raw (mined) magnesite obtained magnesite-chips and dust as by products during the process of grinding the raw magnesite lumps through the process of crushing and sieving and cleared them without payment of duty by treating them as nonexcisable.

Since the magnesite chips and dust which find use in the mosaic tile industry have definite commercial identity and end-use different from the raw mined magnesite lumps, they were correctly classifiable under tariff item 68. This view also finds support from a tariff advice issued by the Board in July 1984. This has resulted in non levy of duty of Rs. 53,200 on clearances of the product during the period from April 1980 to November 1984.

On the mistake being pointed out in audit (February 1985), the department contended (April/May 1985) that conversion of lumps into chips and powder would not amount to manufacture and that they were not chemically or commercially different from raw magnesite lumps. The Ministry of Finance reiterated (December 1985) the department's view. The contention of the department is, however, not acceptable as the chips and dust have definite characteristics and end-use different from lumps.

2.15 **Non-levy of duty on products captively consumed**

(i) **Internal combustion engines**

Where goods are wholly consumed within the factory of production, the assessable value is to be determined under section 4(1) (b) of Central Excises and Salt Act, 1944 read with rule 6(b) of the Central Excise (Valuation) Rules, 1975 on the basis of comparable

goods or the cost of production including reasonable margin of profit, if the value of comparable goods is not ascertainable. According to the instructions of the Central Board of Excise and Customs, the value determined on cost basis should hold good only for one accounting year and even then only if there be no major fluctuations in cost of raw material or profit margin. The Board also issued instructions in December 1980 that the value determined on cost basis should be based on costing data relating to the period of manufacture and if such data is not available at the time of assessment, duty should be levied provisionally and finalised when the data for the relevant period becomes available.

On internal combustion engines (tariff item 29) manufactured in a factory belonging to Central Government under Ministry of Railways for use within the factory in the manufacture of locomotives, duty was not levied since 1965-66 on the grounds that matter was under consideration of Government. After decision that duty was leviable on the goods manufactured by the factory, statutory Central Excise records were maintained and duty was levied on clearances made from April 1982. On account of 1646 internal combustion engines cleared for captive use during 1965-66 to 1981-82, duty liability amounting to Rs. 16,28,66,671 was worked out by the department, against which an amount of Rs. 8,69,19,000 was recovered in July 1983 and the balance was pending recovery. For working out the above demand, price lists for 1979-80 to 1980-81 in respect of three types of engines (16, 12 and 6 cylinders) were approved on cost basis in March 1982.

It was noticed (January 1984) in audit that in the cost data, margin of profit and certain other elements viz., cost of fuel and electricity, depreciation to plant and machinery were not included; prices of 16 and 6 cylinder engines effective from 1 April 1979 were revised on higher side during 1980-81 and 1981-82 (the average rise in prices during these years being 30 per cent and 44 per cent respectively) but no revision was made in the price of 12 cylinder engine since April 1979; the revised prices of 16 and 6 cylinder engines for 1981-82 were made effective from July and August 1981 respectively instead of from April 1981 and the values of the two were approved after rounding, ignoring the fractions of Rs. 280 and Rs. 200 respectively from the actual cost; and also no revision in the values of engines was made after 1981-82 on the basis of cost data for the relevant periods. Assessments on R.T. 12 returns upto November 1983 had been finalised on the basis of old price assessable values.

On the undervaluations and consequent short-levy of duty due to above reasons being pointed out in audit (January 1984), the department while stating that R.T. 12 returns have been assessed in terms of an undertaking of the assessee in the price lists to pay differential duty if it becomes levible has intimated (June 1984) that the assessee has been directed to submit revised price lists for the years 1980-81 to 1983-84 and that show cause notices demanding differential duty of Rs. 3,06,598 for the period 1981-82 to 1983-84 has been issued (June 1984). The department has also issued further show cause notices (November 1984) demanding differential duty of Rs. 2,14,82,539 for the period 1965-66 to September 1984 and Rs. 17,81,640 for the period 1980-81 to December 1983. Demands for Rs. 3,06,598 have been confirmed (December 1984).

The Ministry of Finance have stated (September 1985) that demands for Rs. 2.24 crores have since been confirmed and steps were being taken to realise the amount and finalise the other demands.

(ii) **Cellulose xanthate**

(a) As per Section 4(1) (b) of the Central Excises and Salt Act, 1944, read with the Central Excise (Valuation) Rules, 1975, the assessable value of excisable goods wholly consumed within the factory of production is to be determined on the basis of value of comparable goods. Where the value of comparable goods cannot be ascertained the assessable value is to be determined on the basis of cost of production including a reasonable margin of profit.

By the explanation added to Rule 9 by an amendment dated 20 February 1982 to the Central Excise Rules and given restrospective effect, excisable goods produced in a factory and consumed or utilised for the manufacture of any other commodity whether in a continuous process or otherwise, in such factory, is liable to duty.

By the changes made by the Finance Act, 1982, in the tariff description of item 15A: Plastics, regenerated cellulose was brought under that tariff item from 28 February, 1982.

A manufacturer of viscose staple fibres classifiable under tariff item 18.1(ii) and Man Made Fibres (of cellulosic origin) was bringing in wood pulp and manufacturing cellulose xanthate therefrom which is regenerated cellulose classifiable under tariff item 15A and the cellulose xanthate so manufactured was

wholly consumed captively in a continuous process in the manufacture of viscose staple fibres. While duty was collected by the department on clearance of viscose staple fibres, no duty was collected on the cellulose xanthate captively consumed. Non collection of duty on cellulose xanthate captively consumed during the period from April 1982 to December 1983 resulted in loss of revenue amounting Rs. 1.74 crores.

On the mistake being pointed out in audit (June 1984), the department had stated (October 1984) that a show cause-cum-demand notice was issued in July 1984 as a precautionary measure. Subsequently, while not admitting the objection it stated (February 1985) that viscose yarn cannot be manufactured from cellulose xanthate straightaway. Manufacture of viscose fibres is an unavoidable stage before manufacture of viscose yarn and further cellulose xanthate did not emerge as goods and was not marketable in that condition. Since an excisable goods emerged in identifiable form as admitted by the department itself and as it is an item clearly specified in tariff item 15A, action should have been taken to quantify the production and consumption of cellulose xanthate on a rational basis, in order to raise an accurate demand.

The Ministry of Finance stated (November 1985) that cellulose xanthate had been exempted from payment of duty if used in the manufacture of viscose fibre *vide* notification dated 30 October 1985. They added that for recovery in respect of past period they proposed to invoke action under Section 11C of the Central Excises and Salt Act, 1944.

(b) Under a notification issued on 13 November 1982 (which was superseded by another notification issued on 1 March 1984) Cellulose Xanthate falling under Tariff Item 15A(1) is exempt from duty, if used in the factory of production for manufacture of cellophane or viscose filament yarn.

A manufacturer of rayon yarn (viscose filament yarn) and polynosic staple fibre used wood pulp in the manufacture. He was allowed the benefit of exemption on cellulose xanthate obtained as an intermediate product in the process of manufacture of staple fibre. As such cellulose xanthate used in the manufacture of polynosic staple fibre was not entitled to exemption from duty under the aforesaid notification. On a broad analysis by Audit the revenue foregone on this account from April 1984 to April 1985 alone is estimated to be about Rs. 19 lakhs.

On the mistake being pointed out in audit (July 1985), the department while accepting the objection informed (August 1985) that the matter had already been taken up with the Central Board of Excise and Customs in January 1984 for considering suitable amendment to the notification. The department, however, contended that since the cellulose xanthate occurring at the intermediate stage was not a stable product, it was not possible to quantify production for the purpose of duty.

The Ministry of Finance stated (November 1985) that cellulose xanthate had been exempted from 30 October 1985, if used in the manufacture of viscose fibre *vide* notification dated 30 October 1985. They have added that for recovery in respect of past periods they proposed to invoke action under Section 11C of the Central Excises and Salt Act, 1944.

(iii) **Aluminium sheets**

Three manufacturers in two collectorates produced aluminium circles from duty paid aluminium ingots and scrap/waste by melting and converting the same first into billets, which were then rolled into sheets and then cut into circles of required sizes.

As circles produced out of duty-paid ingots and/or waste/scrap of the metal are exempt from duty under a notification issued on 1 March 1975, the manufacturer cleared the circles manufactured by him without payment of duty. However, in the absence of a notification exempting aluminium sheets produced at the intermediate stage, full duty was leviable on the aluminum sheets but this was not done. The duty omitted to be levied on aluminium sheets is estimated at Rs. 28.32 lakhs during the last five years viz. 1979-80 to 1984-85 (upto July 1984).

On the irregularities being pointed out in audit (April/June/July/August/November 1984), the department contended (July/September 1984) that as clarified by the Board in October 1981, the exemption for circles would automatically cover sheets obtained at the intermediate stage also since circles could not be produced without first manufacturing sheets.

The contention of the department is not, however, acceptable in view of the specific provisions of Rules 9 (clause (iii) under third proviso) and 49 ibid requiring levy of duty on excisable goods obtained at the intermediate stage also.

The Ministry of Finance stated (November 1985) that duty leviable was proposed to be waived by invoking section 11C of the Central Excises and Salt Act, 1944.

(iv) **Synthetic resin solution**

As per a notification issued on 28 February 1982 polymerisation products are covered under tariff item 15A(I) and duty is leviable on it at forty per cent *ad valorem*.

A manufacturer used 'polyester resin', 'styrene monomer' MEK peroxide, benzoil peroxide etc. in the manufacture of 'synthetic resin solution' which he consumed captively in the manufacture of 'glass reinforced polyester product'. According to standard chemical dictionary 'styrene monomer' readily undergoes polymerisation when it is heated or exposed to light or peroxide catalysts. The synthetic resin solution so produced is excisable under the aforementioned tariff item. No central excise formalities were observed nor the product chemically tested. The manufacturer was, however, allowed to clear his products as non excisable resulting in duty amounting to Rs. 12.45 lakhs (approx.) not being levied on goods cleared for captive consumption during the period from November 1981 to October 1982.

On the mistake being pointed out in audit (January 1983), the department since got the product chemically tested and admitted (May 1985) the objection. It also stated (May 1985) that it had taken steps to bring the factory under excise control and to raise demands.

The Ministry of Finance stated (December 1985) that show cause notice demanding duty of Rs. 15.05 lakhs had been issued to the unit.

(v) **Ferro silicon**

Under a notification issued on 13 September 1984, ferro alloys (other than ferro-molybdenum) are exempted from payment of duty provided, the said ferro alloys are used in the manufacture of iron and steel falling under tariff item 25, which are not exempted from the whole of duty of excise leviable thereon.

A manufacturer of ferro alloys, captively consumed, a part of the ferro silicon produced for the manufacture of low carbon ferro chrome which was cleared without payment of duty, under the aforesaid notification. Since no duty was paid on low carbon ferro chrome, duty amounting to Rs. 3,98,180 on ferro silicon consumed in the manufacture of low carbon ferro chrome cleared during the period from September 1984 to November 1984 was leviable.

On the mistake being pointed out in audit (January 1985) the department stated that a show cause notice had been issued in February 1985 and adjudication proceedings were in progress.

The Ministry of Finance stated (October 1985) that the demand for Rs. 6,79,952 had been confirmed on 5 July 1985.

(vi) **Cotton yarn**

Section 3 of the Central Excises and Salt Act, 1944, requires levy of excise duty on all excisable goods manufactured in India. Section 2(f) (iv) defines manufacture in relation to cotton yarn (tariff item 18A) to include 'wrapping', 'winding', 'reeling' etc. or the conversion of any form of the said goods into another.

As per a notification issued in November 1982, 'cotton yarn' (single or multiple fold) classifiable under tariff item 18A, when cleared in straight reel hanks, was exempted from duty.

(a) A textile mill manufactured 'cotton yarn' (cheese form) and used them captively for conversion into 'doubled yarn'. As per the above mentioned notification he was allowed exemption on clearances of 'doubled yarn' in straight reel hanks. No duty was paid on cotton yarn (cheese) used captively for doubling. As per Rule 9 of Central Excise Rules, 1944, and explanation thereunder, removal of cotton yarn (cheese) without payment of duty before it was subjected to doubling was irregular. Failure to levy duty on yarn (cheese) resulted in duty of Rs. 6.98 lakhs not being realised during 1 January 1983 to 31 May 1984.

On the omission being pointed out in audit (December 1984), the department contended (March 1985) that according to a proviso (inserted on 9 July 1983) to Rule 9, duty cannot be levied on the same goods (same tariff item and sub item) twice in the same factory of manufacture.

The Ministry of Finance while not admitting the objection stated (December 1985) that the duty would be payable on the particular form of cotton yarn in which such yarn was removed from the factory. The Ministry added that if a factory was producing doubled yarn or multi fold yarn, duty would be payable at doubled or multi-fold yarn stage only. The fact, however, remains that duty was not paid on yarn at any stage because the final product (*i.e.* straight reel hanks) was wholly exempt from duty. The Ministry's reply is also contrary to provisions of Rules 9 and 49 which do not permit removal of excisable goods free of duty even for captive consumption when the final product is wholly exempt from duty.

(b) Another manufacturer of yarn removed cotton yarn in the form of cones (wound on wooden cones) produced in the factory, without payment of duty for further use within the factory for the manufacture of yarn in double fold plain reel hanks which were cleared by him availing himself of the duty exemption provided for plain reel hanks by notification dated 13 November 1982. Cotton yarn in cones irrespective of the material by which the cone (core) is made of, on its removal for captive consumption attracted duty in terms of explanation (2) below tariff item 18A, Section 2(f)(iv) of the Act and the explanation introduced to Rules 9 and 49 of the Central Excise Rules, 1944, by a notification dated 20 February 1982. The non-levy of duty on such removals during the period from August 1983 to August 1984—amounted to Rs. 4,30,801.

On the non-levy being pointed out in audit (November 1984) the department stated (March 1985) that production of yarn on wooden cones was only an intermediate process for further conversion into plain reel hanks and these cones being uneven in weight were not in a marketable condition and were not excisable. The view of the department is not acceptable as yarn on cones finds a mention in the tariff description as an excisable commodity and arises in the course of manufacture and it is subject to levy of duty whether the yarn is wound on wooden cones or paper cones.

The department also stated that a show cause-cum-demand notice would be issued, but the adjudication of the case would be kept pending till the settlement of the audit objection.

The Ministry of Finance while not admitting the objection stated (December 1985) that the duty would be payable on the particular form of cotton yarn in which such yarn was removed from the factory. The Ministry further added that if a factory is producing doubled yarn or multi-fold yarn, duty would be payable at doubled or multi-fold yarn stage only. The fact, however, remains that duty was not paid on yarn at any stage because the final product (*i.e.*, doubled fold plain reel hanks yarn) was wholly exempt from duty. The Ministry's reply is also contrary to provisions of Rules 9 and 49 which do not permit removal of excisable goods free of duty even for captive consumption when the final product is wholly exempt from duty.

(c) A third textile unit, manufactured cellulosic, non-cellulosic and cotton spun yarns classifiable under tariff item 18, 18E and 18A. The single ply yarn after winding it on cones was cleared partly for sale on payment of duty and partly for doubling the yarn without payment of duty. Duty in the latter case was paid at the time of removal of doubled yarn; 96,895 kilograms of doubled yarn manufactured out of single ply yarn was in stock on 28 February 1984. The effective rates of duty on yarns of all sorts were reduced from 1 March 1984. The stock of doubled yarn was cleared on or after 1 March 1984, on payment of duty at the reduced rates although according to aforesaid Rules duty at the higher rates prevailing prior to 1 March 1984 was payable on single ply yarn removed for doubling. This resulted in short realisation of duty amounting to Rs. 2,67,542.

On the irregularity being pointed out in audit (July 1984), the department intimated (January 1985) that the demand had been raised. Later on in March 1985, it was also intimated that they did not accept the objection contending that the process of doubling of yarn did not amount to manufacture unless the resultant doubled yarn had a distinct name, character or use as held by Customs Excise Gold (Control), Appellate Tribunal. This contention is not correct as the doubled yarn has a distinct character, use and name, known in the market.

The Ministry of Finance while not admitting the objection stated (December 1985) that the duty would be payable on the particular form of cotton yarn in which such yarn was removed from the factory. The Ministry further added that if a factory was producing doubled yarn or multi-fold yarn, duty would be payable at doubled or multi-fold yarn stage only. The reply of the Ministry is contrary to the provisions of Rules 9 and 49 of the Central Excise Rules which do not permit removal of excisable goods free of duty for captive consumption even in a continuous process of production if the finished excisable goods is not specified under Rule 56A. Since cellulosic and non-cellulosic spun yarn falling respectively under tariff item 18 and 18E are not specified under Rule 56A, duty at yarn stage is attracted.

2.16 Duty not levied on storage losses, transit losses and wastes

(i) Molasses—storage losses

Rule 47 of the Central Excise Rules, 1944 requires that non-duty paid excisable goods should be stored in a suitable place, room, tank etc. so that the goods were not lost during storage. Central Board of Excise and Customs in a letter issued on 22 October 1982 clarified that in view of

genuine difficulties, the sugar factories in exceptional circumstances may be allowed to store 'molasses' in kutcha pits/tanks, after execution of a bond to the effect that in case of loss or damage whether for natural causes or otherwise, they would pay duty on such losses and they would not claim remission of duty under Rule 49 of the Central Excise Rules, 1944.

In a sugar factory 'molasses' (falling under tariff item 15CC) was being stored in 'kutcha pits'. During the year 1979-80 to 1981-82 a loss of 5033.785 tonnes of molasses due to percolation and evaporation was reported to the State Excise department for condonation. The matter was neither reported to Central Excise department nor did the department initiate any action for prevention of losses and to levy duty on such losses. This resulted in duty amounting to Rs. 1,54,809 not being levied on losses during the years 1979-80 to 1981-82.

On the mistake being pointed out in audit (August 1983), the department stated (November 1984) that a demand of Rs. 1,54,809 had been raised and confirmed in April 1984. However, Collector (Appeals) had stayed the recovery in January 1985.

The Ministry of Finance stated (November 1985) that the case was pending disposal with the Collector of Central Excise (Appeals).

(ii) **Petroleum products—transit losses**

(a) As per Rules 173N and 156B, the consignor shall, on demand, pay duty leviable on goods received short as certified by the receiving depots.

A unit was engaged in the receipt of bonded petroleum products and their issue to bulk storage depots. No duty was paid on shortages of 1433.886 kilolitres of petroleum products pointed out by depot incharge of the receiving stations (on A.R. 3A accompanying the despatches) during 1983-84. Duty not paid worked out to Rs. 9,24,077.

On the non-payment of duty being pointed out in audit (May 1984), the department intimated (June 1985) that demands of Rs. 18,03,515 had been raised which were pending adjudication. Further developments were awaited (July 1985).

The Ministery of Finance confirmed the facts (November 1985).

(b) As per para 64B of the Manual of Departmental Instructions on Excisable Manufactured Products, Motor Spirit and Kerosene losses in transit of bonzene (tariff item 6) obtained by licensees under Chapter X procedure for industrial use could be condoned upto a maximum of 3.2 per cent in cases where it is transported by rail in tank wagons for a distance exceeding a thousand miles involving transhipments from one railway gauge to another. In other cases actual loss upto a maximum of 1 per cent could only be condoned.

A manufacturer of synthetic rubber (tariff item 16AA) obtained benzene at concessional rates under a notification dated 10 May 1975, and brought it under Chapter X procedure for industrial use from stations at a distance not exceeding a thousand miles which did not involve transhipment from one railway gauge to another. Although losses in transit of benzene in some cases exceeded the permissible limit of 1 per cent but differential duty thereon to the extent of Rs. 44,933 for the period from March 1977 to December 1977 was neither demanded by the department nor paid by the unit.

On the omission being pointed out in audit (February 1978) the department issued 9 show cause-cum-demand notices in September 1983, December 1983 and January 1984 demanding duty amounting to Rs. 1,02,658 on losses suffered in transit of benzene in excess of the permissible limit of 1 per cent during the period from March 1977 to November 1979 and January 1982 to November 1983. The demands were confirmed in February 1984.

On an appeal by the assessee, the Collector (Appeals) permitted condonation of losses upto 3 per cent and remanded the case for *de-novo* proceedings. Against orders of the Collector (Appeals) the department filed appeal before the Appellate Tribunal.

The Ministry of Finance stated (November 1985) that the appeal was pending decision with the Appellate Tribunal.

(iii) **Yarn-Wastes**

(a) Section 3 of the Central Excises and Salt Act, 1944, requires levy of duty on all excisable goods (except salt) as soon as these are manufactured but under the Rules its payment is deferred till the clearance of such goods.

The various judicial pronouncements have held that the manufacture of yarn (cellulosic spun yarn, cotton yarn, woollen and acrylic spun yarn and non-cellulosic spun yarn classifiable under items 18, 18A, 18B and 18E) is complete at the spindle point when it emerges from the ring frame. Therefore, liability to pay central excise duty is to be determined accordingly at that stage. No wastage in respect of yarn lost from the spindle stage to the final stage, is admissible as it is not covered by any exemption notification.

In 9 non-composite mills, yarn was manufactured which was cleared after doubling, reeling or twisting. The manufacturers paid the duty on the yarn cleared excluding the yarn lost between spindle stage and the final stage of clearance. The duty not realised on yarn manufactured but not cleared amounted to Rs. 13.67 lakhs.

On the irregularity being pointed out in audit (between April 1981 to March 1985), the department issued show cause-cum demand notices (between December 1981 and May 1984), to 3 mills. While demand in one case was vacated *vide* adjudication orders dated 2 February 1983, the remaining two cases were yet to be adjudicated. The Collector who was asked to consider revision proceedings in March 1983 in the case where the demand had been vacated, stated (February 1985) that the matter had been re-examined and the order passed by the Assistant Collector, required no review. Action taken in the remaining six cases is also awaited.

The Ministry of Finance while not admitting the objection stated (December 1985) that the duty would be payable on the particular form of cotton yarn in which such yarn was removed from the factory. The Ministry further added that if a factory was producing doubled yarn or multi-fold yarn, duty would be payable at doubled or multi-fold yarn stage only. The reply of the Ministry is contrary to the provisions of Rules 9 and 49 of the Central Excise Rules which do not permit removal of excisable goods free of duty for captive consumption even in a continuous process of production if the finished excisable goods is not specified under Rule 56A. Since cellulosic spun yarn and non-cellulosic spun yarn falling respectively under tariff item 18 and 18E are not specified under Rule 56A, duty at yarn stage is attracted

(b) Under Rule 9 of the Central Excise Rules, 1944, no excisable goods can be removed from any place where they are produced, cured or manufactured whether for consumption, export or manufacture of any other commodity in or outside such place, until the excise duty leviable thereon has been paid. However under Rule 49A, *ibid*, composite mills manufacturing cotton yarn and cellulosic spun yarn used in the manufacture of cotton fabrics in the same mill can on request, be allowed to pay duty leviable on such yarn alongwith the duty on cotton fabrics. This provision has the effect of only postponing the payment of duty on yarn and not providing any remission or abatement of duty. Thus duty is leviable on the total quantity of yarn issued for manufacture of cloth including the quantity of yarn converted into hard waste in the process of weaving.

Two composite mills manufacturing yarn (tariff item 18A) and cotton fabrics (tariff item 19) during the year 1978-79 to 1982-83 paid duty only on the yarn consumed in the cloth manufactured and cleared from the mills. The duty on the yarn which got converted into hard waste in the weaving section escaped duty. This resulted in short levy of duty amounting to Rs. 8,28,807 during the period from 1 July 1978 to 30 June 1980 and from 1 April 1981 to 31 March 1983.

On the mistakes being pointed out in audit (May 1981 and June 1983) the department in one case raised a demand of Rs. 4,90,142 (May 1981). In the other case it was stated that the grounds for the demand of Rs. 3,38,665 were the same as in the former case. The demand cases of both the mills were reported (January 1985) to be under active consideration. Confirmation and realisation of the demands are still awaited (July 1985).

The Ministry of Finance stated (January 1986) that waste cotton yarn was exempted under a notification issued on 24 July 1972. The Ministry added that after issue of amending notification on 3 February 1982, exemption to waste yarn arising during the process of weaving would not be admissible.

The Ministry's reply cannot be admitted. Under the amended Rules 9 and 49 of the Central Excise Rules, 1944, given retrospective effect from 1944, duty on yarn was payable on the total quantity of yarn removed from spinning to weaving section. On the contrary the assessee has been paying duty on yarn actually consumed in the fabrics cleared by exercising option to pay duty on clearance of fabrics under Rule 49A, *ibid*.

SHORT LEVY DUE TO UNDERVALUATION

2.17 **Price not the sole consideration for sale**

As per Section 4 of the Central Excise and Salt Act, 1944, where the goods are assessable to duty *ad valorem*, the normal price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, would be the assessable value provided the price is the sole consideration for sale. Where the price is not the sole consideration, the assessable value of such goods, as per provisions of Rule 5 of the Central Excise (Valuation) Rules, 1975, shall be based on the aggregate of such price and amount of

money value of any additional consideration flowing directly or indirectly from the buyer to the assessee. The Supreme Court in their judgement dated 7 October 1983 in the case of M/s. Bombay Tyres International also held that the charges for other services after delivery to the buyers, namely after sale service, promote the marketability of the article and, thus, enter into its value in the trade.

(i) **After sale charges**

(a) A manufacturer of tractors was allowed to exclude the after sale service charges amounting to Rs. 59.16 lakhs recovered from the customers while determining the assessable value of 21,790 tractors sold during the years 1982-83 and 1983-84. Exclusion of the after sale service charges from the assessable value resulted in duty being realised short by Rs. 6,21,155.

On the mistake being pointed out in audit (December 1983 and February 1985), the department issued a show cause-cum-demand notice for recovery of duty (Rs. 2,80,960) relating to the year 1982-83. Report on recovery as also action taken to realise the shortfall relating to the year 1983-84 (Rs. 3,40,195) was awaited (June 1985).

The Ministry of Finance stated (January 1986) that the point whether the commission of Rs. 2000 allowed by the assessee to dealers would be subject to the deduction from the assessable value as trade discount is a matter of fact to be determined by the jurisdictional officer after applying the ratio of the judgement of the Supreme Court in the case of Bombay Tyres International. They also added that the admissibility of the commission for deduction from the assessable value and the quantum of demand should be re-determined by local Audit in consultation with local Collector who was being suitably instructed.

(b) A manufacturer of computers, collected besides the approved saleable price of the finished products, additional amounts from the buyers on account of technical services, *viz.*, installation and commissioning charges through separate debit notes, but did not include them in the value of article sold for determining the duty element. This resulted in short payment of duty of Rs. 4,16,000 on the amounts of Rs. 25,19,163 collected from May 1983 to October 1984.

On the omission being pointed out in audit (January 1985), the department intimated (February 1985) that show cause-cum-demand notice issued to the licensee was pending adjudication.

The Ministry of Finance stated (November 1985) that the concerned Collector had been asked to finalise the matter expeditiously.

(c) A licensee manufacturing acids classified under tariff item 14G, was allowed to deduct besides Central Excise duty and freight, certain other elements like ou ward handling charges, from the all inclusive price charged to the buyer, for arriving at the assessable value, which resulted in short levy of duty of Rs. 2,13,167 during April 1983 to June 1984.

On the mistake being pointed out in audit (October 1984), the department accepted the objection (June 1985) and raised a demand for Rs. 2,13,167 for the period from April 1983 to June 1984.

The Ministry of Finance confirmed the facts (November 1985).

(d) Two manufacturers of steel drums cleared their products on contract basis. However, cost of loading charges which was realised from buyers incurred before delivery at the factory gate was not included in the assessable value. This resulted in duty being realised short by Rs. 43,538 on clearances made during February 1982 to March 1983.

On the mistake being pointed out in audit (June 1983), the department stated (June 1985) that the question of inclusion of delivery charges in the assessable value having been finally decided by the Supreme Court on 9 May 1983, show cause-cum-demand notices for the amount mentioned in the audit objection had been issued to both the assessees. Addition of demand was awaited (August 1985).

The Ministry of Finance stated (January 1986) that the percentage of loading charges included in the transport charges is negligible which cannot be segregated. The Ministry's reply is, however, self-contradictory inasmuch as unless the loading charges are segregated, it cannot be determined whether they are negligible or not. Further the exclusion of loading charges from the assessable value as contended by the Ministry is not warranted under the Law.

(ii) **Charity**

An assessee engaged in the manufacture of cotton fabrics charges and collected Rs. 2 per bale towards charity in all his invoices for sale of such cotton fabrics. Though this amount was included in the total value of the fabrics cleared in each gate pass for purposes of assessment, these charges were not taken into account for determining the rate of duty applicable to the fabrics. In some border line cases, if the charity charged per square metre of the fabrics

was taken into account, the fabrics fell in a higher slab attracting a higher rate of duty. On the under-assessment of duty being pointed out in audit (April/July 1984), the department intimated (January 1985) the issue of show-cause notices for a differential duty of Rs. 4,40,676 for the period 1982-83 to 1984-85 (upto July 1984).

This point also came up for discussion in 25th South Zone Tariff Conference held on 22 August 1985. It was viewed that as per Supreme Court judgement, in the Bombay Tyres International case, the assessable value had to be worked out backwards from the invoice value by allowing permissible discounts, and charity is not one of the permissible elements of discount. The conference, therefore, concluded that charity collected as a percentage of value, and shown in the invoice, would have to form part of the assessable value.

The Ministry of Finance admitted the objection (November 1985).

(iii) **Escalation charges**

A manufacturer entered into contract with various firms for the supply of conveyor and transmission belts falling under tariff item 16A(4). In terms of the contract the rates were to vary whenever there was a rise in price of the raw material. On the supplies made during the period from 10 April 1980 to 15 April 1984 supplementary invoices, claiming differential amount were raised but duty amounting to Rs. 1,11,817 on escalation charges was not paid by the assessee.

On the omission being pointed out in audit (July 1984), the department stated (August 1984) that duty was paid when the invoices on account of escalated value were accepted by the buyers.

The Ministry of Finance stated (November 1985) that an amount of Rs. 34,533 out of the total amount of Rs. 1,11,817 had already been debited in the personal ledger account of the assessee. Report of recovery for the balance amount was awaited.

(iv) **Element of duty and expenses**

The entire production of T.V. Sets of a unit was sold from its 'sales and service centre', both in retail as well as in wholesale. The unit incurred expenses on freight etc. at Rs. 10 per set (approximately). Further, two dealers were appointed for wholesale, who were allowed commission at the rate of Rs. 50/75 and Rs. 110/120 per set for sale on instalment basis, or cash down basis respectively. Excise duty on T.V. Sets was paid at the time of transferring the same to its sale and service centre, on the value calculated after deducting retail sale expenses at the rate of Rs. 130/140 per set from retail sale price, instead of the actual expenses incurred on freight, etc. and discount paid to dealers in case of wholesale, as per provisions of Rule 6(a) of the Valuation Rules.

Deduction of excess amount from sale price in arriving at the assessable value resulted in undervaluation of television sets and short recovery of duty amounting to Rs. 27,232 during the year 1978-79.

On the mistake being pointed out in audit (January 1980), the department intimated (September 1980) that a demand notice was issued in September 1980 for Rs. 3,57,616 for the duty not paid on the entire amount of post manufactinring expenses from 1976-77 to July 1980. The demand was confirmed in January 1984. Report on recovery of duty was awaited (July 1985).

The Ministry of Finance stated (December 1985) that the concerned Collector had been asked to get the case finalised expeditiously.

2.18 **Sale through related persons**

As per provision of Section 4(1)(a)(iii) of the Central Excises and Salt Act, 1944, read with the Rules made thereunder, the assessable value of goods, sale of which is arranged through a related person, is required to be determined on the basis of the price charged by such related person from his buyers.

(i) **Milk powder, preserved food etc.**

Four units in four collectorates engaged in the manufacture of skimmed milk powder, tractors, PVC resins and preserved food transferred their products to their depots/branch offices at different places in India. Price approved for sale at the factory gate was taken as value for the purpose of assessment of duty instead of the price at which the goods were sold through their depots/branch offices to the dealers. This resulted in short levy of duty by Rs. 1,19,24,845 (Rs. 99,73,845, 10.89 lakhs, 7.06 lakhs and 1.56 lakhs respectively).

The above mistakes were pointed out in audit in June 1980, March 1981, July 1981, October 1983 and February 1985. In the first case, the department raised (September 1983) a demand for Rs. 99,73,845 against which the unit obtained stay order from a High Court. In the second case, the department issued (June 1984) a show-cause notice for Rs. 3.52 lakhs

out of the total short levy of Rs. 10.89 lakhs. Action taken to recover the balance amount of Rs. 7.37 lakhs was awaited (June 1985). While confirming the demand of Rs. 1,05,873 out of the total short levy of Rs. 7.06 lakhs in the third case, the department intimated that the demands for the balance amount were barred by limitation. In the fourth case, the department stated (May 1985) that the decision of the Appellate authority in a similar case had been reviewed and was pending decision with the Tribunal.

The Ministry of Finance stated (December 1985 and January 1986) that the first and fourth cases were pending decision with a Court and the Tribunal respectively.

In the second case the Ministry of Finance stated (January 1986) that where the price of excisable goods for delivery at the place of removal was not known, the value would be determined with reference to price for delivery at a place other than the place of removal after deducting the cost of transportation. The Ministry added that the question whether the normal price of the excisable goods was not known at the factory gate was a matter of fact to be determined in each case separately by the proper officer.

The Ministry of Finance also stated that the demands confirmed in the third case were set aside by the Appellate Collector who held that once the normal price in terms of section 4(I) (a) was available at the factory gate the same would form the basis for determination of assessable value. No further appeal before the Tribunal was considered fit.

The fact however, remains that the Appellate Collector's orders go counter to judgement dated 9 May 1983 of the Supreme Court in the case of M/s. Bombay Tyres International.

(ii) **Television sets**

A manufacturer of broadcast television receiver sets was selling, from June 1982, all the sets manufactured by him to a sole selling agent with whom he had entered into an agreement. As per this agreement, the T.V. sets were embossed with the brand name of the selling agent and were sold entirely to him at prices mutually agreed upon. Further the assessee was prohibited from manufacturing T.V. sets for any other buyer. While the assessee sold the T.V. sets to the selling agent at prices ranging from Rs. 1,694.40 to Rs. 1,764.60 per set, the selling agent sold them to his dealers at much higher prices which were not less than Rs. 2,500 per set.

In view of the aforesaid agreement, the selling agent is deemed to be a related person or a sole selling agent and the goods were therefore assessable to duty at the prices at which the selling agent was marketing the goods, but the department had levied duty on the prices charged by the manufacturer to the selling agent, which stood undervalued by Rs. 770 per set, on an average.

When the undervaluation resulting in short levy of duty on goods cleared upto July 1982 was pointed out by Audit (October 1982), the department stated (May 1983) that they were aware of the undervaluation and after due investigation of the case they had issued a show cause-cum demand notice in November 1982.

During the subsequent audit conducted in December 1984, it was noticed that the case had not been adjudicated even after a lapse of two years and the T.V. sets were continued to be undervalued. The short levy of duty on this account on the clearances during the period from June 1982 to September 1984 amounted to Rs. 12,86,698 and this was pointed out to the department in February 1985.

The Department stated (April 1985) that an investigation was being conducted for finalising the case.

The Ministry of Finance stated (November 1985) that the concerned Collector of Central Excise had been asked to finalise the case expeditiously.

(iii) **Typewriters and adding machines**

An assessee manufacturing typewriters and adding machines (falling under tariff item 33D) was selling them partly through his distributors & partly through his branch offices situated at eight centres throughout India. They were assessed to duty on the basis of the assessable value derived from the cum-duty prices at which the distributors/branches sold them to unrelated dealers by deducting therefrom discount, excise duty and sales-tax. Since the goods sent to the branch offices (for sale therefrom) on stock transfer did not suffer any sale-tax, assessment of such goods also on the basis of the assessable value derived from the branch selling price by deducting therefrom *inter alia* sales-tax was not correct and resulted in under-valuation and consequent short collection of duty.

On the omission being pointed out in audit (March/June 1981), the department reported (December 1984) the issue of show-cause notice on 20 February, 1984 demanding differential duty of Rs. 7,93,178 due for the period from July 1977 to December 1984 but

contended (June 1985) that the irregularity had already been noticed by their Internal Audit Party in September 1980. The fact, however, remains that no action was taken in the case on being pointed out by the Internal Audit Party. A show-cause notice was issued only on 20 February 1984 *i.e.* after a lapse of three years of the mistake being pointed out in statutory audit. The belated issue of show-cause notice is likely to endanger revenue on account of time bar as the assessments and price lists had already been approved by the department.

The Ministry of Finance stated (December 1985) that the question whether the distributors of the unit were related persons was pending in appeal before the Appellate Tribunal.

(iv) **Cement paints**

An assessee engaged in the manufacture of cement paints (falling under tariff item 14(2)(i)) was selling them through his sole distributor. The assessable value declared in the price list filed under part IV was arrived at after deduction of sales-tax at 10 per cent together with surcharge of 5 per cent (chargeable in respect of sales within the State) from the all inclusive price charged by the sole distributor, which was also approved by the department. However, since the assessee was charging Central Sales Tax only at 4 per cent in respect of inter state sales, assessable value in respect of such sales should have been determined after deducting 4 per cent Central Sales Tax only from the all-inclusive price. The excess abatement towards sales tax resulted in underassessment in respect of clearances for inter state sales.

On the omission being pointed out in audit (May/June 1984), the department accepted (June 1984) the mistake and intimated (February/May 1985) the issue of show-cause notice in May 1982/September 1984 demanding differential duty of Rs. 1.12 lakhs.

The Ministry of Finance confirmed the facts (November 1985).

2.19 **Valuation of goods consumed captively**

Where excisable goods are partly sold to outsiders and partly consumed captively within the factory of manufacture, the normal price determined under Section 4(1)(a) is taken to be the assessable value both in respect of goods sold as well as in respect of goods captively consumed.

Where excisable goods, are wholly consumed within the factory of production, the assessable value under Section 4(1)(b) read with the Central Excise (Valuation) Rules, 1975 is to be determined on the basis of value of comparable goods or cost of production including a reasonable margin of profit if the value of comparable goods is not ascertainable. The Board also issued instructions in December 1980 that the data for determining the value on cost basis should be based on the cost data relating to the period of manufacture and if such data is not available at the time of assessment, duty should be levied provisionally and finalised when data for the relevant period becomes available.

(i) **Watch parts**

A Public Sector undertaking was manufacturing parts and components of wrist watches and was sending out such parts and components to several wrist watch assembly units for assembly (manufacture) and return of wrist watches to assessee's sale organisation, for eventual sale therefrom. As the clearance of the parts and components to the said independent assembly units was not on sale, the duty was paid on the values determined on the basis of the cost of production (inclusive of profit) by treating such clearances as deemed captive consumption. From February 1982 a few parts namely hands and dials and from July 1982 all other parts and components were cleared from the assessee's factory to his sales organisation for eventual sale therefrom to wrist watch dealers and duty was paid on the declared sale prices, which were considerably higher than the value determined on the basis of cost of production. The duty on the parts and components cleared to the watch assembly units was, however, continued to be paid on the value determined on the basis of cost of production instead of on the price at which they are sold to independent buyers. This resulted in duty being realised short on nearly 240 parts and components cleared to the watch assembly units. In respect of such 40 parts alone the duty realised short worked out to Rs. 48,11,774 during the period from February 1982 to October 1983.

On the mistake being pointed out in audit (December 1983), the department stated (September 1984) that a show-cause-cum demand notice issued in February 1984, was set aside by the adjudicating authority in October 1984. The department further stated (June 1985) that an appeal had been filed in May 1985 against the orders of the adjudicating authority.

The Ministry of Finance stated (December 1985) that the appeal filed before the Collector of Central Excise (Appeals) was pending decision.

(ii) **Screws**

A Public Sector undertaking engaged in the manufacture of screws classifiable under tariff item 52 was captively consuming the entire production in the manufacture of wrist watches and the duty on the screws was paid on values determined on the basis of the cost of production. From December 1981, some quantity of these screws were sold to the wrist watch dealers at prices which were much higher than the cost of production. The duty on the screws captively consumed, however, continued to be paid on the cost of production instead of on the price at which they are sold to independent buyers. This resulted in duty being recovered short by Rs. 15,15,963 on the clearances made during the period from December 1981 to October 1983.

On the mistake being pointed out in audit (December 1983), the department issued a show cause-cum demand notice in December 1983 and confirmed the demand in March 1985.

The short levy during the subsequent period of clearances from November 1983 to November 1984 amounted to Rs. 9,77,343.

The Ministry of Finance stated (November 1985) that a show cause notice had been issued by the field formation before the objection was raised by Audit. This reply is not correct because the audit query was issued to the Range Officer on 17 December 1983 and in reply the Range Officer stated on 24 December, 1983 that a show cause notice had been issued on 20 December 1983.

(iii) **Insulating varnish**

In the manufacture of electric wire and cables, a manufacturer used insulating varnish which was also produced by him. The value of insulating varnish was determined on the basis of cost data which was approved by the department. But the licensee (manufacturer) also purchased such goods and used them for insulation purposes. The value of such comparable goods was higher than the assessable value approved by the department on the basis of the cost data. Failure to determine the assessable value on the basis of comparable goods resulted in duty being realised short by Rs. 14.14 lakhs on clearances made during the period from April 1980 to September 1982.

On the omission being pointed out in audit (February 1983), the department issued show cause-cum demand notice (February 1983) for Rs. 14.14 lakhs which was confirmed in February 1985.

The Ministry of Finance stated (November 1985) that the unit had gone in appeal against the order passed by the jurisdictional Assistant Collector.

(iv) **Stampings and laminations**

Assessable value of electrical stampings and laminations (tariff item 28A) manufactured by an assessee, being wholly consumed captively in the manufacture of electric motors, was determined on the basis of cost of production. It was noticed (April 1984) that assessable value determined in August 1983 on the basis of cost data for 1981-82 was made effective from April 1982 instead of from April 1981. Also, no revised price lists were submitted and approved on the basis of cost data for subsequent years, although there had been substantial increase in cost of raw materials and other elements of cost and assessments upto October 1983 on the basis of prices based on cost data for 1981-82 had already been finalised instead of making provisional assessment. This led to undervaluation and consequent short levy of duty on electrical stampings and laminations during 1981-82 to 1983-84.

On the matter being pointed out in audit (April 1984), the department intimated (February 1985) that the revised assessable values for the year 1983-84 on the basis of cost data for 1983-84 had since been declared by the assessee and differential duty amounting to Rs. 14,25,172 calculated provisionally for the period April 1983 to July 1984 had been realised in September 1984. Bond for Rs. 1 lakh was also reported to had been executed to cover further differential duty, if any, and the assessee was being pursuaded to supply cost data for earlier year. Particulars of demands raised for the years 1981-82 and 1982-83 based on the cost data for relevant periods and details of short levy for 1983-84 as finally worked out were awaited (March 1985).

The Ministry of Finance stated (January 1986) that an amount of Rs. 36,49,271 had since been recovered.

(v) **Sulphuric acid**

A leading manufacturer of "sulphuric acid" of strength below 99 per cent, during the year 1982, captively consumed 92.5 per cent of his production and out of remaining 7.5 per cent, 5 per cent was sold to two parties on a value of Rs. 750 per tonne and 2.5 per cent to another two parties on contract on value of Rs. 985 and Rs. 1002 per tonne. The assessee was allowed to clear the goods for captive consumption on the lower price of Rs. 750 (at which 5 per cent was sold to a party). The creation of a

shadow market on lower price to get the maximum advantage in the form of less payment of duty for captive consumption could not be ruled out. The duty should have, therefore, been calculated on the highest value available. It was not done resulting in short levy of duty amounting to Rs. 20.49 lakhs on clearances during the year 1984 alone.

On the undervaluation being pointed out in audit (April 1983), the department justified (September 1984) the assessment citing CEGAT's decision dated 11 October 1983 in the case of M/s. National Rayon Corporation Limited Vs Collector of Central Excise (Appeals) [1984 (15) ELT-201] wherein it was held that when the normal price is more than one, the valuation of goods captively consumed would be the price at which it was sold to the buyer purchasing a comparatively higher quantity. On subsequent verification (July 1985) it was noticed that though the valuation for captive consumption for the year 1982 and 1983 was in accordance with the CEGAT decision, it was not so for the year 1984 as the volume of sales to consumer on a higher price was four times greater than that made to consumer on a lower price. As a result there was underassessment of duty of Rs. 20.49 lakhs for the year 1984 as stated above.

The Ministry of Finance stated (January 1986) that the rate of Rs. 750 per tonne of sulphuric acid captively consumed was accepted for determining the assessable value because the largest sales to one of the individual buyers was made at the rate of Rs. 750 per tonne. The Ministry added that the contention of Audit that supplies of sulphuric acid at that rate could have been made to create a shadow market for lower price did not appear to be based on facts.

The Ministry's reply is not correct. The largest sales were made to another individual buyer at the rate of Rs. 770 per tonne and this case has also to be taken into account as per CEGAT's orders dated 11 October 1983. That the view of Audit to the effect that creation of shadow wholesale price could not be ruled out, is based on the fact that sale price of 2.8 per cent of the sulphuric acid was applied to determine the assessable value of 86 per cent of the sulphuric acid produced and consumed captively in 1984.

(vi) **Friction cloth**

A manufacturer of rubberised, un-vulcanised, friction cloth falling under tariff item 19(I)(b) used his products captively in the further manufacture of belting of vulcanised rubber. In determining the value on the basis of costing, the percentage of profit element was taken as 10 per cent, as against the gross profit percentage of 30.58 revealed by the financial accounts for the relevant period.

The adoption of lower element of profit in computing the assessable value, resulted in duty being realised short by Rs. 1,91,465 on the clearances of 1,72,812 metres of friction cloth made during the period from September 1982 to August 1983 alone.

Though the short levy of duty was pointed out in audit in February 1983 and again in December 1983, the department did not furnish any reply.

The Ministry of Finance admitted the objection (November 1985).

(vii) **Prototype equipments**

An assessee engaged in the manufacture of electrical fuse gear, switch gear, relays, control panels etc., was also manufacturing prototype equipments in his Research and Development wing and clearing them to outside laboratories for testing and evaluation. As the prototype equipment was not sold, the assessable value thereof should have been determined on cost accounting principles including element of profit as laid down in Rule 6(b) of Central Excise (Valuation) Rules, 1975. However, duty on such equipments was paid on the value indicated by the Research and Development department, which represented the cost of raw materials used only.

The undervaluation due to omission to include labour charges, overhead charges and profit margin in the assessable value was pointed out in audit (June|July 1983).

The department accepted the objection and intimated (December 1984) that a show cause notice demanding differential duty of Rs. 1,21,737 on prototype equipments cleared from August 1980 to August 1984 had been issued on 5 November 1984. The demand was also later confirmed on 17 June 1985.

The Ministry of Finance stated (December 1985) that the appeal of assessee against the Assistant Collector's order confirming the demand, was pending before the Collector (Appeals).

2.20 **Cost of bought out goods**

According to Central Board of Excise & Custom's instructions issued in September 1977, when goods are cleared in knocked down condition to be assembled at site against particular contracts, it should be valued in the assessembled condition (including bought out items) for the purpose of levy of duty of excise.

(i) A manufacturer of conveyer, haulages etc. (tariff item 68) entered into contracts with different parties for manufacture and supply of the aforesaid goods. He manufactured some parts of the goods in his factory and bought some parts. He cleared the goods in knocked down condition and discharged duty on the invoice price of parts manufactured by him as per a notification issued in April 1975, even though he realised up to March 1983, the full value of the goods including the value of bought out items in the same invoices.

Omission to levy duty on the full invoice value including the value of bought out parts resulted in short levy of Rs. 11.09 lakhs during March 1981 to March 1983.

The mistake was pointed out in audit in January 1983. Subsequent enquiry (August 1985) revealed that the manufacturer prepared separate invoices for 'bought out goods' and cleared them without payment of duty. As a result of undervaluation, duty amounting to Rs. 40.07 lakhs for the period from March 1981 to March 1985 was omitted to be levied.

The Ministry of Finance stated (January 1986) that the manufacturer would be liable for payment of duty on bought-out items if these were used as raw material or component parts for manufacture of other excisable goods in their manufacturing unit which was not the case.

The Ministry's reply is not correct as the assessee cleared the goods in knocked down condition to be assembled at site. The bought-out goods *viz.* motors and starters which were also supplied in knocked down condition were adjusted/accommodated after doing some fabrication job on the main machinery. In fact the electric motors and starters were an essential parts of the complete machine and were also supplied alongwith the other machineries. As such duty was leviable on the full value including the value of bought-out goods.

(ii) A manufacturer of computers, utilised imported/bought out components along with those manufactured by him and supplied complete computer systems including peripherals to the buyers, but paid duty only on the components manufactured by him. The contracts with the buyers were not only for supply of complete computer system including peripherals but also for installation, service and annual maintenance which was separately charged for but not subjected to duty.

Omission to levy duty on the value of imported/bought out components as well as charges for installation service and maintenance, on 16 invoices issued during June 1982 to December 1982 leading to short levy of Rs. 14,33,112 was pointed out in October 1983. The department admitted the objection in June 1985 and stated that demand of Rs. 26,38,057 for the period June 1982 to April 1984 had been confirmed.

The Ministry of Finance confirmed the facts (December 1985).

(iii) A manufacturer of boiler and parts thereof (falling under tariff item 68) entered into contracts for manufacture and supply of boilers. He cleared the boilers in knocked down condition consistng of parts manufactured in his factory and some bought out items. The duty was paid only on items manufactured in his factory though he realised the full value of boilers including the value of bought out items. However, no final assessment on the value of complete boiler assembled at site was done by the Department. This resulted in duty being levied short by Rs. 92,838 covering the period from 1 January 1982 to 18 January 1983.

On the omission being pointed out in audit (January 1984), the department did not accept the audit objection on the plea that after the assembly at site the boiler, being immovable, ceased to be goods within the meaning of Sale of Goods Act, 1930 and therefore, duty was not leviable on these boilers.

The contention of the department was not correct as according to the Law Ministry's opinion circulated on 14 October 1982 setting out the tests to be applied to determine whether the goods are movable or not, the boiler is a movable property as it is a complete machinery for producing goods and can easily be dismantled for installation at another place.

The paragraph was sent to Ministry of Finance in September 1985; their reply is awaited (January 1986).

2.21 Valuation at invoice price

As per a notification dated 30 April 1975, goods (falling under tariff item 68) cleared from the factory of manufacture, on sale, are exempt (at the option of the assessee) from so much of the duty leviable thereon as is in excess of the duty calculated on the price shown in the invoice of the manufacturer, on the sale of such goods. If the price charged by the manufacturer in the invoice for sale of goods is subject to specified condition regarding escalation in the price of raw material, labour etc, the final valuation would be inclusive of supplementary invoice for the escalation charges.

(i) A unit manufacturing control instruments and panel, dutiable under tariff item 68 opted to pay duty as per invoice value under notification dated 30 April 1975. The duty was initially paid on provisional value pending finalisation of contracts for supply of material, erection and commissioning of projects on turnkey basis. The monthly returns submitted by the unit were assessed with the remarks that assessments of duty were subject to production of Chartered Accountant's certificates for total clearances, but no watch over submission of these certificates was kept.

It was noticed in audit (March 1983, September 1983 and January 1985) that during the period from April 1980 to March 1983, as per final invoices, the unit cleared goods valuing Rs. 32,97,78,347 against which duty was paid for goods of Rs. 31,97,46,321 only. No duty was paid on the difference in value amounting to Rs. 1,00,32,026 involving duty amounting to Rs. 8,08,583.

On the underassessment being pointed out in audit (March 1983) the department replied (June 1985) that during the above period the total underassessment was for Rs 9,33,084 against which a sum of Rs. 7,04,699 had been recovered and demand raised for the balance amount of Rs. 2,28,385.

The Ministry of Finance stated (October 1985) that after reconciling the accounts for 1980-81, 1981-82 and 1982-83 a sum of Rs. 9,26,977 had been recovered.

(ii) A manufacturer of goods (classifiable under tariff item 68) opted for payment of duty on invoice price taken to be assessable value. The manufacturer, however, did not pay duty on the value included in supplementary invoices towards escalation in prices issued during the period from March 1981 to December 1981 resulting in duty being realised short by Rs. 3,29,570.

On the mistake being pointed out in audit (November 1982), the department raised demand for Rs. 4,15,466 in September 1983.

While admitting the objection, the Ministry of Finance stated (September 1985) that an amount of Rs. 1,84,857 out of the total amount of Rs. 4,15,466 had been paid by the unit.

(iii) A manufacturer of engineering goods (falling under tariff item 68) delivered the goods at the party's site after installation, assembling and commissioning but did not pay duty in respect of engineering charges invoiced separately towards the services rendered to the parties. The amount of duty short-levied worked out to Rs. 3.82 lakhs on the total invoice price of Rs. 43.70 lakhs towards engineering charges during the period from April 1982 to June 1983.

On this omission being pointed out in audit (August 1983), the department accepted the objection and stated (May 1985) that the amount of Rs. 3.82 lakhs had been included in the demand of Rs. 13.55 lakhs raised against the party.

The Ministry of Finance stated (November 1985) that the concerned Collector was being asked to finalise the case expeditiously.

(iv) A Public Sector company opted for payment of duty on the basis of invoice price under the aforesaid notification. On some clearances duty was, however, paid by the assessee on values which were lower than invoice prices charged from customers. This resulted in duty being levied short by Rs. 1.20 lakhs on clearances made during the period from January 1981 to July 1981.

On the mistake being pointed out in audit (August 1983), the department stated (April 1985) that the assessee had paid the aforesaid amount.

The Ministry of Finance confirmed the facts (October 1985).

(v) A Public Sector undertaking manufacturing goods (falling under tariff item 68) opted to avail the facility of assessment on the basis of invoice price in terms of an exemption notification issued on 30 April 1975. However, in respect of 4 contracts for design, engineering, manufacture and erection of overhead travelling cranes, duty was not paid on design, engineering and knowhow invoiced separately, though duty was leviable on the full value realised. As a result, duty was realised short by Rs. 1,12,259.

On the mistake being pointed out in audit (February|March 1984), the department initially reported (July 1984) that since show cause notice issued in respect of similar short levy pointed out in the previous audit was pending finalisation, demands for subsequent periods would also be taken care of when the issue was finalised.

Similar mistake in assessment in respect of the same assessee previously noticed was commented upon in the Audit Report for the year 1982-83 [*vide* para 2.20(iv)] but the issue has not so far been finalised and similar mistakes continue to occur.

The department, however, further intimated (July 1985) that show cause notice had been issued to the assessee.

The Ministry of Finance stated (November 1985) that the concerned Collector had been asked to finalise the case expeditiously.

(vi) An assessee engaged in the design and fabrication of large storage tanks and spheres of steel for refineries, petro-chemical, fertiliser and other industries opted to pay duty under tariff item 68 on the basis of invoice value in terms of a notification issued in April 1975. He entered into a contract for design, fabrication and erection of two numbers of spheres for storage of liquid petroleum gas for a Public Sector undertaking, which supplied the imported steel plates required therefor. Excise duty on the component parts cleared from the factory of the assessee was paid on a value of Rs. 3061.78 per tonne, which represented only the value of raw materials (steel plates) used in the manufacture. The omission to include the value of steel plates supplied by the customer in determining the value of the goods (cleared between April and September 1981) for purposes of assessment resulted in a short levy of duty of Rs. 1.59 lakhs in respect of this contract alone, based on the value of imported steel plates of Rs. 5,000 per tonne. Secondly, the invoice price was not the sole consideration for the sale as the price charged was influenced by the contract stipulating supply of the raw materials by the buyer, and hence the assessee was not entitled to avail the facility of assessment on the basis of invoice price under the aforesaid notification.

On the omission being pointed out in audit (January|March 1984), the department issued a show cause notice on 27 April 1984 and the demand for duty of Rs. 1,59,759 was also later confirmed in March 1985. However, the department contended (August 1984) that the Range Officer had already issued a letter on 6 January 84 requesting the assessee to pay the differential duty due on this account. The fact, however, remains that relevant assessments had already been finalised in April 1982 and proper action to recover the duty short levied by issue of show cause notice, as stipulated in Section 11A of the Central Excises and Salt Act, 1944, was taken only after the short levy was pointed out in audit.

While confirming the facts, the Ministry of Finance stated (November 1985) that the party had filed a writ petition in a High Court in September 1985 which had granted stay for three months.

(vii) A manufacturer of 'anti-pollution systems' (classifiable under tariff item 68) exercised option under a notification issued on 30 April 1975 for paying duty on the basis of invoice price being taken as assessable value, and entered into contracts for manufacture including design, drawing, lay out, erection and commissioning of such systems. He cleared the goods in knocked down condition over a period of time by paying duty on invoice value of each clearance. However, no duty was paid on the value of design, drawing, layout, erection and commissioning, the cost of which were invoiced separately; duty was, however, leviable on full value realised on all the invoices. No final assessment on the value of completed systems assembled at site was done. This resulted in duty being levied short by Rs. 98,179 on clearances made during the period from October 1975 to December 1980.

On the irregularity being pointed out in audit (February 1983), the department intimated (July 1985) that a show cause-*cum*-demand notice for Rs. 98,179 had been issued.

The Ministry of Finance stated (December 1985) that the concerned Collector had been asked to finalise the case expeditiously.

2.22 Valuation of goods manufactured on behalf of others.

Section 2(f) of the Central Excises and Salt Act, 1944, defines the term "manufacturer" to include not only any person who employs or hires labour in the production or manufacture of excisable goods, but also any person who engages in the production or manufacture of excisable goods on his own account. As per Section 4 of the Act, where duty is chargeable on excisable goods with reference to their value, such value shall be the price at which such goods are ordinarily sold in the course of wholesale trade.

(i) Paper copiers

An assessee was manufacturing plain paper copiers on his own account as also on behalf of a loan licensee. Those manufactured on behalf of the loan licensee were embossed with the brand name of the loan licensee and were sold to the loan licensee at prices which were very much lower than the prices at which the assessee was selling to other buyers similar plain paper copiers manufactured on his own account.

On the goods sold to the loan licensee duty was levied on the lower prices instead of on the prices at which the loan licensee was selling them to his

dealers and buyers. Information about the selling prices of the loan licensee was also not obtained by the department. The department had issued a show cause-cum demand notice as early as in June 1982 directing the assessee to show cause as to why the loan licensee should not be treated as a related person and duty demanded under Section 11A of the Act on the basis of the prices at which the loan licensee sells the goods. The department, however, did not conclude their investigation and adjudicate the case even after a lapse of three years with the result that clearances were allowed irregularly at the lower prices resulting in duty amounting to Rs. 18,39,506 being levied short on the clearances during the period from August 1980 to May 1984.

On the irregularity being pointed out in audit (August 1984), the department stated that the matter would be examined.

The Ministry of Finance stated (November 1985) that the concerned Collector had been asked to finalise the case expeditiously.

(ii) **Transmission towers**

An assessee manufacturing galvanised steel transmission line towers on job basis from used steel supplied by the customer, was allowed to pay duty only on the job charges received from the customer instead of total value of the towers. Non-inclusion of cost of steel amounting to Rs. 40.13 lakhs (approximately) in the assessable value of 1603.235 tonnes transmission towers, cleared during the period from 1977-78 to 1983-84, resulted in duty being levied short by Rs. 2,09,478.

On the mistake being pointed out in audit (January 1985), the department accepted (April 1985) the objection.

The Ministry of Finance confirmed the facts (December 1985).

(iii) **Steel barrels**

A manufacturer of metal containers (falling under tariff item 46) also undertook fabrication of barrels on job work basis on behalf of another assessee (engaged in the production of products derived from petroleum), who supplied the steel sheets, the main raw material. The assessable value of the barrels was computed by adding the cost of steel sheets as certified by the buyer to the fabrication cost charged for the fabrication work. Since the buyer should be deemed to be the real manufacturer of the barrels under Section 2(f) of the Central Excises and Salt Act, 1944, the incidental charges incurred for transporting the steel sheets to the premises of the assessee, the delivery charges at Rs. 3.15 per barrel paid to the assessee for transporting the barrels to the buyer's factory, cost of special grade oil supplied by the buyer free of cost for mopping up the inner sides of the barrels, the value of scrap retained by the manufacturer of the barrels (which influenced the amount charged for fabrication) and the profit which the buyer would have earned had he sold the goods should also have been reckoned in computing the value as laid down in Rule 6(b) of the Central Excise (Valuation) Rules, 1975. The short levy of duty due to non-inclusion of the aforesaid elements in the value resulted in under-assessment of duty which is estimated to be Rs. 1.03 lakhs during one year (August 1983 to July 1984) alone.

On the omission being pointed out in audit, (January/April 1985) the department issued a show cause notice demanding the differential duty.

The Ministry of Finance stated (December 1985) that the demand had been confirmed against which the unit had filed appeal before the Appellate Collector.

2.23 **Mistakes in computing costed value**

The Board issued instructions in December 1980 clarifying that the data for determining the value on cost basis should be based on cost data relating to the period of manufacture, and if such data is not available at the time of assessment, duty should be levied provisionally and finalised when data for the relevant period becomes available.

(i) **Electric stampings and laminations**

A manufacturer of electric stampings and laminations transferred the goods to its ancillary units for further manufacture of rotors and stators of electric fans on his behalf and charged price on the basis of cost data. A scrutiny of purchase invoices by Audit, however, revealed that while getting the price list approved, the value of raw material was shown less in the cost data annexed to the price list. This resulted in duty being levied short by Rs. 11,06,962 during the years 1981-82 and 1982-83. The department was also asked to work out the short levy for the period prior to 16 April 1981 and after March 1983.

On the mistake being pointed out in audit (March 1984 and July 1985), the department issued (May 1984) show cause-cum demand notice for Rs. 6,11,700 and stated (March 1985) that adjudication proceedings were in progress.

The Ministry of Finance stated (November 1985) that the real manufacturing cost was less than the prices declared by the unit and that the value of comparable goods purchased by the unit was reported to be less. However, the reply is silent on whether the value of raw materials taken in cost data represented the actual value as per purchase invoices of the unit.

(ii) **Paper**

An assessee manufacturing wrapping and packing paper did not get the price lists revised after 22 October 1979 although the cost of production had gone up by Rs. 533.20 per tonne in subsequent years due to increase in the cost of raw material, labour and electricity as per the cost data certified by the Cost Accountant of the assessee company. Non-revision of price lists resulted in duty being realised short by Rs. 1,96,351 on 22.05 lakhs kilogram wrapping and packing paper cleared during the year 1981-82.

On the omission being pointed out in audit (July 1983), the department issued show cause-cum demand notice for Rs. 1,97,812 and confirmed it in March 1985.

The Ministry of Finance stated (January 1986) that the party had gone in appeal against the confirmation of demand. The matter was pending in appeal.

2.24 **Commission and rebate**

The Supreme Court on 17 August 1984 held that commission paid to the selling agents is not trade discount within the meaning of explanation to Section 4 of the Central Excises and Salt Act, 1944, and does not therefore, qualify for any deduction as trade discount in computing assessable value.

(i) **Electric wires and cables**

A manufacturer of electric wires and cables (tariff item 33B) having two manufacturing units in two States entered into contracts in June 1980 and October 1980 for supply of 1250 Km. and 250 Km. ACSR conductors to two customers. The supplies were made partly from one unit and partly from the other. The two contracts *inter alia* provided for rebate in price by 3 per cent and 10 per cent respectively in consideration of interests from advance payments made by the buyers.

It was noticed (October 1981) that the assessable values were approved after reducing the prices by the amount of rebate in consideration of advance payments, which, being not a trade discount was not a permissible deduction under Section 4 *ibid*. The reduction in prices thus led to undervaluation and consequent short levy of duty amounting to Rs. 80,073 on ACSR conductors supplied under the two contracts, out of which Rs. 12,428 related to supplies made from the unit audited and Rs. 67,645 to the supplies from the other unit.

On the mistake being pointed out in audit the Assistant Collector issued (March 1983) show cause notice demanding differential duty amounting to Rs. 80,073 although the demand for Rs. 67,645 was beyond jurisdiction and it was intimated by the manufacturer (April 1983) that assessments on the basis of approved prices had already been finalised there. It has been intimated (January 1985) that the demand for Rs. 12,428 has been dropped being time barred. The report of action taken by the jurisdictional officers to recover the amount of Rs. 67,645 was awaited (March 1985).

The Ministry of Finance stated (December 1985) that the jurisdictional Collector had taken the steps to issue the demand.

(ii) **Plastics**

A Manufacturer of synthetic resins (falling under tariff item 15A), was allowed to deduct the selling agents commission and "credit charges and bank interest" at the rate of 4 per cent (charged only on sales on credit) from wholesale price, for arriving at the assessable value.

Underassessment of duty of Rs. 61,973 due to exclusion of selling agent's commisison and Rs. 99,088 due to deduction of credit charges and bank interest at the rate of 4 per cent for the period from July 1982 to June 1983, was pointed out to the department in November 1983.

The department accepted the objection (November 1984) in so far as it related to selling agent's commission, but held that deduction of credit charges and bank interest at the rate of 4 per cent (charged on credit sales but not on cash sales) was in order in view of the instructions of the Ministry issued in August 1975 in which the extra charge or interest charged by the seller for the time lag in payment has been held to be not part of "price". The assessee has, however, been charging credit charges and bank interest uniformly at the rate of 4 per cent value of goods including excise, packing charges and selling agent's commission without any reference to the period of credit allowed, or actual expenditure on interest and hence the extra charges is not identifiable as being relatable solely to the time lag in payment.

On the mistake being pointed out in audit (November 1983), the department stated (November 1984) that show cause-cum demand notices for Rs. 8,41,442 had been issued between May 1984 and July 1984 covering the period September 1981 to May 1984, for short payment of duty on account of selling agent's commission, credit charges and bank interest as well as packing charges.

The Ministry of Finance stated (December 1985) that the extra charge or the interest for the time lag in payment, was not the consideration for the sale of goods and would not form part of the price. The Ministry added that the demand for Rs. 6,55,663 had been realised from the party and show cause notice for the amount of Rs. 1,85,712 was pending adjudication.

2.25 **Value of packing**

A per Section 4(4)(d)(i) of the Central Excises and Salt Act, 1944, value in relation to any excise-able goods, where such goods are delivered at the time of removal in a packed condition, includes the cost of packing except where the packing is of durable nature and is returnable by the buyer to the assessee.

A manufacturer of artificial or synthetic resins packed his goods in barrels and 35 kg carbuoys. The cost of the barrel at Rs. 306 and that of the carbuoy at Rs. 53.50 was recovered from the buyers through separate invoices wherein the container was described as durable and returnable by the buyers. The cost of these containers was excluded from the assessable value of the resins.

The manufacturer had cleared the goods in 7,271 such containers during the period July 1982 to November 1984. It was, however, observed that not even one per cent of the containers were returned during the period indicating that in actual practice the containers were not in fact returned. There was also no indication that the assessee made any efforts to get back the containers. The actual trade practice between the assessee and his customers indicated that the unwritten agreement of not returning the containers in practice overrided the written description in the sales invoice. The non-inclusion of the cost of packing in the assessable value treating them as durable and returnable was, therefore, not in order and this resulted in duty being levied short by Rs. 1,32,095 on the clearances during the period from July 1982 to November 1984.

On the mistake being pointed out in audit (February 1985 and April 1985), the department admitted the objection and stated (May 1985) that a show cause-cum demand notice for Rs. 1,65,017 relatable to the period May 1982 to December 1984 had been issued.

The Ministry of Finance stated that the demand had been confirmed (November 1985).

2.26 **Assessable value not redetermined so as to include excess duty received though not leviable**

Section 4 of the Central Excises & Salt Act, 1944, allows deduction of the duty payable from the price of the manufactured product which is inclusive of duty, for the purpose of arriving at the assessable value of the product. But if the assessee collects more excise duty than the duty paid to Government, or any other sum indirectly, as value for the goods, the assessable value is required to be redetermined after adding such excess to the original assessable value. The Central Board of Excise & Customs also clarified (February 1981) that refund of duty would warrant redetermination of assessable value; the duty refunded becoming part of the price of the goods recovered by the manufacturer thereby altering the assessable value of goods.

(i) **Soap**

(a) Two factories manufacturing soap (tariff item 15) chargeable to duty on *ad valorem* basis were allowed exemption on account of the use of certain specified oils in its manufacture in terms of two notifications both dated 1 March 1975. The *cum*-duty price of such soap remaining the same, the reduction of the amount of duty (*i.e.* duty collected from customers but not payable and not paid to the government) had, in terms of Section 4 as amended, the effect of increasing the assessable value and consequently further duty was realisable. This being not done there was short levy of duty of Rs. 1,44,123 [Rs. 1,06,269 for the period from April 1976 to March 1978 and April 1981 to September 1983 (figures for the period from April 1978 to March 1981 were not available) in case of one factory and Rs. 37,854 for the period from October 1980 to February 1982 in another factory].

The short levy was pointed out in audit in October 1977, August 1978, April 1982 and November 1983. In the first case, the department intimated (November 1983 and February 1985)

that demands for Rs. 3,11,089 for the period from April 1976 to December 1983 were raised out of which demand for Rs. 2,27,313 stood confirmed. The department while not accepting the audit objection in second case contended (July 1985) that *ad valorem* rate leviable on soap could not be reduced by a specific amount in order to neutralise the effect of exemption and also that in a similar case Collector (Appeal) had decided that duty on rebate amount was not to be charged. The department's reply is not acceptable because amended Section 4 allows deduction on account of effective duty only from the assessable value.

On further verification (June 1985) the total revenue lost works out to Rs. 1.01 lakhs in respect of clearances during October 1980 to February 1985.

These cases were reported to the Ministry of Finance in September 1985; their reply is awaited (January 1986).

(b) Another soap manufacturer used specified minor oils as well as rice bran oil in the manufacture of soap and availed exemption granted under two notifications both dated 1 March 1975. The factory, however, worked out the assessable value by deducting the amount of duty calculated on the tariff rate instead of effective rate and paid duty on the basis of such assessable value. This resulted in duty being levied short. Department, however, raised demands from time to time for the short levy aggregating to Rs. 1,71,871 for the period from April 1979 to June 1983.

On adjudication certain demands were confirmed, but on appeal the Collector (Appeal) set aside the adjudication orders. The Collector, however, did not consider the case fit for appeal to the Appellate Tribunal under Section 35B(2) of the Act.

It was pointed out in audit (February 1984) that the view held in the aforesaid order being not in conformity with the provisions of the Act, the right course would have been to file an appeal before the Appellate Tribunal and the Collector's decision not to file appeal was detrimental to revenue.

The department while not admitting the objection stated (November 1984 and February 1985) that the Collector's decision not to file appeal before the Appellate Tribunal was taken after careful consideration of the provisions of Section 4 as amended by the Finance Act, 1982.

Department's reply is silent about the reason of non-applicability of the Section 4 *ibid* as amended by the Finance Act, 1982. In any case the Collector's decision blocked all chances of possible legal remedy to the loss of revenue.

Subsequent verification (July 1985) revealed that total loss of revenue was Rs. 3.18 lakhs for the period from 1 April 1979 to 31 March 1985.

The paragraph was sent to the Ministry of Finance in September 1985; their reply is awaited (January 1986).

(ii) **Cosmetics and toilet preparations**

A manufacturer of 'cosmetics and toilet preparations' (classifiable under tariff item 14F) cleared goods during 1983-84 on payment of duty as per notification dated 1 March 1983 even though the said notification was superseded and duty on first clearances of Rs. 5 lakhs was not payable by him as per notification dated 5 May 1983. The assessee continued to pay duty on clearances of goods during 1984-85 as per the susperseded notification on the plea that during the preceding financial year the total value of clearances did not exceed Rs. 15 lakhs.

As the assessee's claim for the refund of duty paid during 1983-84, was accepted by Government, the assessable value for 1983-84 should have been redetermined. Total redetermined assessable value being in excess of the exemption limit of Rs. 15 lakhs during 1983-84, no exemption under the notification dated 5 May 1983 was available to the assessee on clearances during 1984-85. This resulted in short levy of duty amounting to Rs. 81,451 on clearances made during 1 April 1984 to 27 August 1984.

On the mistake being pointed out in audit (August 1984), the department did not admit the audit objection and stated (May 1985) that as per Section 4(4)(d)(ii) of the Central Excises and Salt Act, 1944, value in relation to any excisable goods does not include the amount of duty of excise etc. payable on such goods and, therefore, the amount of duty collected should not be taken into account in computing the total value of goods cleared during the year 1983-84. The department, however, admitted that the assessee need not have paid any duty on first clearances of Rs. 5 lakhs during 1983-84 and, therefore, the assessee claimed refund of the same.

The department's reply is not correct in view of the Board's clarification issued in February 1981.

The Ministry of Finance stated (January 1986) that the refund of duty paid during 1983-84 was

neither claimed by the unit nor refunded to him, as such the question of re-determining the assessable value did not arise. The Ministry's reply is not tenable, since it has been judicially held that payments made where duty is exempted are mere deposits and not payments of duty. Instead of waiting for the unit to claim the refund, the assessing officer should have, while finalising the assessment order on monthly return (R.T. 12) as required under Rule 173 I of the Central Excise Rules, 1944, ordered for refund of excess deposit made to the unit. By not allowing the refund of Rs. 52,500 the unit has been benefited to the extent of Rs. 81,451.

(iii) **Ion exchange resins**

A manufacturer of 'ion exchange resins' used "copolymer" (raw beads) in the manufacture of resin and paid duty on such resins [under tariff item 15A(i)] under protest for the period from March 1980 to July 1981 and February 1982 to July 1982. Thereafter the resin was reclassified under tariff item 68 on the basis of chemical test report and the clarification issued by the Board. The excess duty paid by the assessee during the said period was refunded and the proforma credit availed of by him was also disallowed. The assessee had already recovered duty from his customers and there was nothing to show that the manufacturer had returned the excess duty to his customers. The excess duty so recovered would form part of the assessable value of excisable goods. Failure to do so, resulted in short levy of duty to the extent of Rs. 60,278 for the year 1981-82 and 1982-83.

On the omission being pointed out in audit (October 1984), the department did not accept the objection and stated (June 1985) that as per the judgement given by the various High Courts, such refunds can be granted even if they are not passed on to the consumers and further there is no such condition under Section 11-B of the Central Excises and Salt Act, 1944. Further, the department stated that the assessee had in fact, refunded the excess excise duty so recovered from the customers and provisions had also been made for refund of such excess excise duty in the Balance Sheet. The department's reply is not relevant to the point at issue. Audit does not object to grant of refund as such, the objection is to non inclusion of the amount refunded in the assessable value in view of the clarification of the Central Board of Excise and Customs issued in February 1981.

The Ministry of Finance stated (January 1986) that the Board in its instructions dated February 1981 had directed that in such cases of availment of fortuitous benefit, the amount of refund should be added to the assessable value, for its redetermination for purposes of charging of duty. However, the Ministry did not deny the facts in the present case.

(iv) **Cylinders and bottles**

As a result of orders in appeal revision two manufacturers in a collectorate (a manufacturer of 'gas cylinders' and another manufacturer of 'tincture bottles') were allowed refunds of duty amounting to Rs. 4,19,573 and Rs. 5,88,233 in May 1984 and September 1984 respectively. The amounts had been realised by the manufacturers from their customers earlier. But on receipt of the refunds the manufacturers did not pass on the amounts to their customers and the amounts were in addition to the price of the goods sold. As such, the duty was required to be redetermined on the enhanced assessable value. Failure to do so resulted in excess refund of duty amounting to Rs. 60,525 to the two manufacturers.

On the omission being pointed out in audit (December 1984), the department raised two demands for Rs. 31,265 against the manufacturer of gas cylinders in January|May 1985. Demand has also been raised against the manufacturer of tincture bottles.

The Ministry of Finance stated (December 1985) that one manufacturer of gas cylinders had paid Rs. 21,778 and in the other case a show cause-*cum*-demand notice for Rs. 28,012 had been issued.

2.27 **Valuation of free samples**

As per an exemption notification issued on 8 October 1966 assessable value of patent or proprietary medicines is to be arrived at after allowing discount of 10 per cent on the wholesale prices or 25 per cent on the retail prices specified in the price lists required to be filed under Drugs Price Control Order, 1979, showing the prices at which medicines are to be sold. This notification was amended with effect from 12 October 1983 to allow a discount of 15 per cent on the retail price of the medicines. The duty, if any, leviable in excess of duty calculated on the discounted price was exempted.

As per a notification issued on 1 April 1977, on free samples of patent or proprietary medicines, duty was exempted on clearances in any month limited to 4 per cent by value of the total duty paid on clearances made during the preceding month of all types of

patent or proprietary medicines. This requires computing value of the duty free samples in order to see that their value did not exceed the said 4 per cent. The value was required to be determined under Section 4 of the Excise Act and the Valuation Rules made thereunder in respect of the goods not sold for any price. On free samples cleared in excess of the limit which were also not sold for a price, assessable value was again required to be determined under the Valuation Rules without allowing any exemption.

Two manufacturers of patent or proprietary medicines were allowed to pay duty on free samples cleared in excess of the prescribed limit On such clearances duty was levied after allowing exemption in terms of the notification issued on 8 October 1966 as amended. No such exemption was however, available in respect of medicines which were not sold and were distinctly marked 'not for sale'. The irregular valuation of physician samples after allowing exemption from assessable value (based on discount applicable to goods sold) resulted in short levy of duty by Rs. 91,875 on clearance of free samples made during August 1982 to June 1984. In addition, the incorrect valuation of samples cleared free of duty during December 1980 to August 1983 in the case of one of the manufacturers resulted in short levy of duty of Rs. 42,357.

The mistakes were pointed out in audit in November 1983 and October 1984. The department did not accept the mistakes and stated in July 1985 that according to the Board's clarification issued in February 1985, the *ad hoc* discounts allowed on goods sold are also to be allowed on clearances of physician's samples.

The Ministry of Finance stated (November 1985) that as per Board's instructions of February 1985, the assessable value of physician samples could be worked out on prorata basis from the prices of regular packs and benefit of notification could be extended. This is not legally correct since exemption notification has no relevance to goods not priced or sold for consideration. The wording of the notification of 8 October 1966 allows exemption only in respect of priced goods for sale. Free samples are not priced goods and are not meant for sale.

2.28 **Excisable goods not fully valued**

(i) **Plywood**

As per a notification dated 29 May 1978 particle boards, veneered with plywood panels or veneered with single ply veneer on one or both sides and falling under tariff item 16B are exempt from so much of the duty of excise as is equivalent to the duty of excise leviable with reference to that part of the value thereof which represents the value of unveneered particle boards.

The assessable value of veneered particle boards approved for assessment was computed by deducting the ex-factory value of unveneered particle boards and ten per cent thereof on account of processing charges for levelling and sanding etc. This was irregular as the notification provided for deduction of the "value of unveneered particle boards" only and not of any processing charges of such unveneered particle boards.

On the short levy being pointed out in audit (June 1981), the department issued show cause-*cum*-demand notices for Rs. 13,12,170 for the period from 29 May 1978 to 31 December 1984 and confirmed the same on 27 March 1985.

The Ministry of Finance stated (November 1985) that the order confirming the demand had been set aside by the Appellate Collector of Central Excise and the department was considering to file an appeal before the Tribunal.

(ii) **Tractors**

A tractor manufacturing company was clearing tractors along with accessories on prices approved for the sale of tractors only at the factory gate. While approving the price lists, the value of the accessories was not taken into account by the department on the plea that these accessories were optional parts of tractors. It was pointed out in audit (September 1981 and again in November 1982) that accessories were integral parts of the tractors and as such their value was includible in the assessable value of tractors. Similar view has also been held by the Supreme Court in the case of 'Bombay Tyres International and others Vs. Union of India' decided on 7 October 1983 wherein it has been held that the expenses incurred upto the date of sale, *i.e.* the date of the delivery on account of several factors which have enriched its value and given to the article its marketability are liable to be included in the value of the article.

Consequently the department issued (between August 1982 and June 1984) five show cause-*cum*-demand notices demanding duty amounting to Rs. 6,51,640 on clearances made during the period October 1980 and May 1984. Demands amounting to Rs. 5,76,979 involved in three cases, had been confirmed (July 1984, December 1984) out of which amount of Rs. 1,55,250 stood recovered. Two show cause-*cum*-demand notices for Rs. 74,661, issued in

August 1982 and November 1982 were still (July 1985) pending adjudication.

The Ministry of Finance stated (December 1985) that the demands for Rs. 5,76,970 had been confirmed by the Assistant Collector and the demands confirmed had been appealed against.

(iii) **Cooling towers**

A manufacturer of 'cooling towers' (tariff item 68) also manufactured 'fan assembly' [tariff item 33(2)] which were fitted into the cooling tower and formed an integral part of it. Duty was paid on fan assembly at the appropriate rate, but on cooling towers duty was paid on the basis of assessable value without including the cost of the fan assembly. This was irregular as the cooling towers were 'cleared' complete with fan assembly as evidenced in the invoices and led to duty being levied short by Rs. 46,441 on clearances of cooling towers during August 1976 to March 1985.

The omission was pointed out in audit in March 1982, August 1982 and in March 1984. The Ministry of Finance stated (January 1986) that show cause notice demanding Rs. 20,920 for the period from 1 August 1976 to 28 February 1982 had been issued and the concerned Collector asked to issue the show cause notice for the remaining period.

2.29 **Valuation of patent or proprietary medicines**

As per an exemption notification issued on 8 October 1966, patent or proprietary medicines classifiable under tariff item 14E are exempt from so much of the duty of excise as is in excess of the duty calculated on the value arrived at after allowing a discount of 25 per cent on the retail price specified in the retail price list filed under Drugs (Price Control) Order, 1979. An explanation in the notification stipulated that the element of excise duty, if any, added to the price shall be deducted before allowing the discount.

The High Court of Delhi in a case (M/s. Modi Rubber Co. Ltd. vs. Union of India and Others) held on 6 August 1982 that the term 'duty of excise' used in the exemption notification implies exemption from duties levied under the Central Excises and Salt Act as well as under the Finance Act. To overcome the effects of the aforesaid judgement an Ordinance amending and validating Central Excise Laws was issued on 24 September 1982. The Ordinance (later replaced by an Act) clarified that any notification issued under Rule 8(1) without invoking the provision of any Act providing for the levy of special additional duty etc. and granting exemption from excise duty shall be construed as providing for exemption only from the basic excise duty. The ordinance also sought to continue the existing scheme.

In granting exemptions as aforesaid to twenty eight manufacturers of medicines the element of excise duty including special excise duty leviable under a Central Act other than the Central Excise Act was deducted from the price before allowing the discount. The deduction of the element of special excise duty from the retail price as the case may be to arrive at the assessable value, was contrary to the Central Excise Laws (Amendment and Validation) Act, 1982 and resulted in a short realisation of duty by Rs. 29.45 lakhs on clearances made during the period January 1981 to December 1984.

The mistakes were pointed out in audit in February 1983, June, November and December 1984. The department while not admitting the objection viewed that special excise duty was also a type of excise duty under Central Excise Act.

The Ministry of Finance stated (November 1985 and January 1986) that the Central Excise Laws (Amendment and Validation) Act, 1982 is applicable only when any notification or order provides any exemption from any duty or fixes any rate of duty. It was further argued that the aforesaid Act is not relevant in this case as there is no exemption from payment of special excise duty under the notification. The reply is not acceptable as the argument of the Ministry of Finance is designed to delete the explanation given in the exemption notification. But so long as that explanation is there, it should be read in the light of the Validation Act and notwithstanding provisions of Section 4 of Central Excise Act for the limited purpose of arriving at the value only, the price exclusive of basic excise duty is to be taken into account.

(ii) Section 4 of the Central Excises and Salt Act, 1944, allows excise duty payable on the excisable goods being excluded from the assessable value for purposes of levy of duty *ad valorem*. According to an explanation below the Section as amended by the Finance Act, 1982 only the effective duty i.e. duty payable on the excisable goods at the rate specified under the Act as reduced by exemptions, if any, notified is to be excluded. The Finance Act, 1984, however, covers Customs Countervailing duty for the purpose of explanation below Section 4 of the Act *ibid* which has effect only from 1 March 1984.

As per Central Excise Laws (Amendment and Valuation) Act, 1982 an exemption notification has

to expressly provide for exemption from countervailing duty and it cannot be deemed that countervailing duty is exempted where exemption is in respect of excise duty.

According to a notification issued on 8 October 1966 as amended, assessable value of patent or proprietary medicines (falling under tariff item 14E) is computed after deducting the element of excise duty included in the price specified in the price list referred to in para 19 of the Drugs (Price Control) Order, 1979.

A manufacturer of patent or proprietary medicines (falling under tariff item 14E) expunged credit of countervailing duty paid on imported raw material used in their manufacture, in terms of a notification issued on 4 September 1965, as amended. However, while computing the assessable value of these medicines in terms of the notification of October 1966, as amended, the gross duty of excise instead of net duty has been deducted, resulting in fixing lower assessable value. The amount of countervailing duty thus deducted was Rs. 15.54 lakhs for the period from April 1982 to February 1984 and short levy on which works out to Rs. 1.87 lakhs.

On the mistake being pointed out in audit (September 1983), the department did not accept (March 1984) the objection and stated (August 1984) that the effective rate of excise duty indicated in Section 4 is only for the purpose of that Section and cannot be cited for the purpose of the notification dated 8 October 1966.

The Department's reply is not correct, as the amendment of Section 4 of the Central Excises and Salt Act, 1944, as incorporated by Section 47(1) of the Finance Act, 1982 speaks of only excise duties payable under the Central Excise Act and other Central Acts. It does not speak of Customs countervailing duty leviable under Section 3 of the Customs Tariff Act, 1975. Thus the credit of duty allowed in respect of raw material or component parts has been restricted to the duties of excise and has not been extended to Customs countervailing duty paid on raw materials and component parts. Such credit in respect of Customs countervailing duty was extended under clause 46 of the Finance Act, 1984 which covered Customs countervailing duty for the purpose of explanation below Section 4 of the Act.

The Ministry of Finance stated (December 1985), that the facts stated in the draft paragraph were correct.

MISCLASSIFICATION

2.30 Petroleum products

(i) S. R. Naphtha

Any mineral oil (excluding crude mineral oil) is classifiable under tariff item 6 provided two conditions are fulfilled. One of the conditions stipulates that mineral oil should be suitable, either by itself or in admixture with any other substance, for use as fuel for internal combustion engine. Where the aforesaid condition is not fulfilled such mineral oil is not classifiable under the aforementioned tariff item, instead it is classifiable under tariff item 11A(4).

A Public Sector Oil Company engaged in manufacturing *inter alia*, "S. R. Naphtha", while highlighting 'Octane No.' as the main characteristics of Internal Combustion Fuel, confirmed that Octane No. of its product (SRN) lying in the range of 50-58 is quite low for use in internal combustion engine as minimum requirement of Octane No. in India for internal combustion as per present stipulation is 87 RON. It also added that though Octane No. can be boosted upto a limit by addition of "Tetraethyl Lead" (TEL), it cannot be boosted in the case of its product upto the limit required for internal combustion due to its very low Octane No. The aforesaid views were upheld by two Research Institutes of Council of Scientific and Industrial Research, New Delhi, who also ruled out the suitability of use of 'SRN' with Octane No. in the range of 50-58 as fuel for internal combustion engine. Thus S. R. Naphtha manufactured by the company is not classifiable under tariff item 6 instead it is classifiable under tariff item 11A(4) attracting duty at 20 per cent *ad valorem* plus Rs. 190 per tonne plus special excise duty at 5 per cent of basic excise duty. On clearance of S. R. Naphtha the assessee was, however, allowed exemption as per notification issued in December 1961 under tariff item 6. As a result of incorrect classification, revenue amounting to Rs. 12.04 crores was foregone during April 1982 to February 1985 without valid legal basis.

The mistake was pointed out in audit in August, 1984.

The Ministry of Finance stated (January 1986) that the Octane number from 50 to 58 RON of S.R. Naphtha is boosted by the unit to 87 RON by employing catalytic reformation process. However, the Ministry's reply goes counter to the facts given by the refinery in its letter dated 7 August 1984 to the effect that the S. R. naphtha produced there was of a very low Octane number, which could not be boosted upto the required limit by the addition of tetra-ethyl lead.

It is further confirmed by the Refinery (16 January 1986) that in the distillation of crude petroleum there are two distinct types of naphtha that emerge; one portion of the naphtha gets reformed and ultimately converted into motor spirit and cleared as such on payment of appropriate amount of duty; the other naphtha is converted into S. R. Naphtha by a caustic wash; this S. R. Naphtha cannot be converted into motor spirit by admixture with any other substance. This S. R. Naphtha is despatched direct to fertiliser plants at concessional rate for the manufacture of fertiliser. The audit objection refers to this S. R. Naphtha. The revenue foregone has been calculated on the basis of the S. R. Naphtha sold at concessional rate of duty.

It has also been ascertained that one of the Collectors of Central Excise had since raised demands amounting to Rs. 33.84 crores in respect of clearance of S. R. Naphtha from one of the Units of the refinery during the period 1 September 1980 to 31 August 1985.

(ii) **Sulphur**

The tariff description of item 11A of the First Schedule of the Central Excises and Salt Act, 1944, covers "All products derived from refining of crude petroleum or shale (whether liquid, semi-solid in form) not otherwise specified, including lubricating oils and greases and waxes".

The scope of tariff item 11A was considered by the Public Accounts Committee in paragraphs 1.10 to 1.14 of its 159th Report. The Committee had desired that decision since long pending on question of classification of sulphur derived from petroleum might be taken expeditiously after obtaining legal opinion and examining the revenue implications involved. The issue was also discussed in a tripartite meeting with the Ministry of Law who held in its Note dated 23 April 1984 that all products derived from refining of crude petroleum would be covered by the tariff item 11A. But contrary to the said advice tendered by the Ministry of Law in the matter, the Central Board of Excise and Customs in their circular letter dated 29 September 1984 advised field formation that sulphur produced in crude based and petro chemical refineries was properly classifiable under tariff item 68 as it was indirectly derived from hydrogen sulphide gas and, therefore, directed that all pending assessments relating to sulphur be finalised in the light of the decision. This view is not acceptable to Audit because Sulphur, though produced from hydrogen sulphide gas is essentially a derivative from refining of crude petroleum.

In a crude based refinery unit of an oil corporation it was noticed in audit (January 1985) that the duty foregone as a result of the Board's instructions issued on 29 September 1984 contrary to legal advice amounted to Rs. 1,57,086 on 367.71 tonne of sulphur indirectly derived from hydrogen sulphide gas and cleared during October 1984 to December 1984, besides a likely refund of Rs. 10,01,884 for the period June 1983 to October 1983.

The irregularity was reported to the department in February 1985.

The Ministry of Finance invite dthe attention to Board's instructions dated 29 September 1984 and stated (January 1986) that the decision to classify sulphur obtained from refining of crude petroleum under tariff item 68 was taken after a detailed examination of the matter. The Ministry's stand is not correct in view of the advice tendered by the Ministry of Law in the matter

2.31 **Yarn**

(i) **Textured yarn**

Man-made filament yarn of non-cellulosic origin like nylon, polyester etc. is chargeable to duty under tariff item 18II(i)(a). If such yarn is textured, higher rate of duty is payable under tariff item 18 II(i)(b). As per a notification issued on 1 March 1978 as amended in November 1982, different rates of duty were applicable to "textured yarn produced out of base yarn" and on "other textured yarn". However, this distinction was removed by a notification dated 1 March 1983. Textured yarn manufactured out of duty paid filament yarn other than textured was made fully exempt from duty from 1 July 1983.

A manufacturer of nylon filament yarn and textured yarn falling under tariff item 18II(i)(a) procured caprolactum and used it as a raw material for the manufacture of polyamide (nylon) textured yarn. Caprolactum was first converted into polyamide chips and these chips were fed into extruder and melted. The molten polymer was sent to spinerettes where it was drawn out as filament or strand. The filament was wrongly viewed as yarn having denierage 140, 340 and 770. The filament was textured after heat setting and imparted false twist.

The assessee paid duty at the rate applicable to polyamide (Nylon) yarn of 140, 340 and 770 denierages on the filament before it was fed into the drawing-*cum*-texturing machine. He cleared the textured filament after paying duty at the rate of Rs. 5 per kilogram till 28 February 1983 and at the nil rate of duty from 1 July 1983. During the period

from 1 March 1983 to 30 June 1983 duty was paid at the rate applicable to final product. As the manufacturing process before and after the take up stage was a continuous one and the later part of the process involved both reduction in denierage and texturing on a composite drawing-cum texturing machine, duty was payable at the higher rate with reference to the denierage of the resultant final product. The misclassification of the filament as yarn of 140, 340 and 770 denierage at take up stage and payment of duty at that stage resulted in short levy of duty of Rs. 74,81,571 for the period from 1 April 1982 to 28 February 1983 and from 1 July 1983 to 30 November 1983.

On the mistake being pointed out in audit (December 1983) the department issued show cause-cum demand notice (December 1983) which is yet to be adjudicated. However, the collector stated (March 1985) that merely because the filament yarn undergoes an elongation in the process of drawing cum-texturing resulting in change of denierage, it cannot be said that the filament yarn manufactured earlier should not be charged to duty when the end product is textured yarn which is different from filament yarn.

The reply of the department is not tenable since the filament fed into the machine is stated to be not marketable as it is not imparted any twist at that stage and cannot be used directly for weaving unless it is further drawn and twisted. The Supreme Court in the case of Commissioner of Sales Tax Vs. Sarin Textile Mills [(1975) 35 STC 634 (SC)] has held that a fibre in order to answer the description of yarn must have two characteristics, firstly it should be a spun strand and secondly, such strand should be primarily meant for use in weaving, knitting or rope making. Viewing filament as yarn was, therefore, not correct.

The paragraph was sent to the Ministry of Finance in September 1985; their reply is awaited (January 1986).

(ii) **Doubled yarn**

After restructuring of tariff description of yarn from 18 June 1977, spun yarn including doubled yarn are classifiable under tariff item 18 to 18E on the basis of predominance of fibre contents.

A unit manufactured doubled yarn of polyester viscose 74:26 blend by grindling one strand of 100 per cent polyester fibre yarn with another strand of polyester viscose 48:52 blend yarn of 40s produced in the same factory. The unit paid duty on the final yarn under tariff item '18E' but did not pay any duty on the constituent single ply yarns removed for doubling. Later on, the department issued demands of differential duty amounting to Rs. 2,79,851 comprising of duty on single ply yarns under tariff item 18E and traiff item 18 III (ii) and on doubled yarn of polyester viscose 74:26 blend under tariff item 68. As polyester fibre of non-cellulosic origin predominated in weight in the final yarn of polyester viscose 74:26 blend, it was correctly classifiable under tariff item 18E.

On the omission being pointed out in audit (May 1980), the department accepted the objection and confirmed (January 1985) the demand of Rs. 23,06,667 for duty short paid on clearances made during the period from April 1978 to December 1980.

The Ministry of Finance stated (December 1985) that a stay was granted to the unit by the Appellate Collector subjcet to furnishing of bank guarantee. As the unit did not fulfil the condition, action had been initiated for recovery of the amount. The Ministry also added that the unit was reported to be closed since August 1985.

(iii) **Cellulosic yarn**

As per a notification dated 28 February 1982, Cellulosic Yarn containing man-made fibres of non-cellulosic origin falling under traiff item 18 III (ii) was dutiable at the rate of Rs. nine per kilogram.

A unit manufacturing 2/40s spun yarn containing acrylic fibre of non-cellulosic origin and viscose fibres in the ratio of 40:60 and 30:70 cleared 21,293.9 kilograms of the yarns on payment of duty at the rate of Rs. 1.30 per kilogram during the period from February 1984 to 5 June 1984 and at the rate of Rs. 1.15 per kilogram from 6 June 1984 to November 1984 under tariff item 18 III(i) as per classification list approved by the department, instead of tariff item 18 III(ii). This resulted in short payment of duty amounting to Rs. 2,06,794.

On the misclassification and short payment of duty being pointed out in audit in March 1985, the department accepted the objection (June 1985) and issued a show cause-cum-demand notice to the assessee.

The Ministry of Finance stated (November 1985) that the demand had been confirmed.

2.32 **Aluminium, iron and steel**

(i) **Corrugated aluminium sheets**

Prior to 1 August 1984 'aluminium sheets' were classifiable under sub-item (b) of tariff item 27. As per ISI specification I.S. 5047, Part I—1969 'aluminium sheet' means a rectangular flat product. The aforementioned tariff item was amended with effect from 1 August 1984, when 'aluminium sheets' became classifiable under sub-item (b) of tariff item 27. According to explanation below the amended tariff item 27 sheet means a flat product of rectangular cross section. With effect from 17 March 1985 the same tariff item was further amended and aluminium sheet was to include corrugated sheet under sub-item (b). Therefore, prior to 17 March 1985 corrugated aluminium sheets, not being elsewhere specified in the tariff, was classifiable as all other goods, not elsewhere specified under tariff item 68. Accordingly, on corrugated aluminium sheets manufactured from plain flat sheets, duty was first leviable on plain flat sheet under tariff item 27 and then on corrugated sheet itself under tariff item 68. The Board also issued (April 1985) a similar clarification to this effect.

A leading aluminium factory manufactured *inter alia,* 'corrugated sheet' and was allowed to classify it under tariff item 27 even before 17 March 1985. As a result, duty amounting to Rs. 51.26 lakhs leviable under tariff item 68 on clearances made from March 1983 to December 1984 was not realised

The mistake was pointed out in audit on 1 March 1985, even prior to the amendment of tariff item 27 on 17 March 1985.

The Ministry of Finance stated (February 1986) that a show cause notice demanding duty amounting to Rs. 23,81,435 relating to the period 1 August 1984 to 16 March 1985 had already been issued. The Ministry added that in the absence of any tariff definition of "sheets", prior to 1 August 1984, there was no legal bar to the classification of corrugated aluminium sheets as "sheets" on the ground that the corrugated sheets were also known as "sheets" in the commercial parlance. However, Ministry's reply is not in conformity with the I.S.I. specifications referred to above.

(ii) **Printed tinned sheets**

Tinned sheets are classifiable under tariff item 25, with effect from 1 August 1983. Printed tinned sheets not being covered by sub-items (13)(ii) or (13)(iii) would be classifiable under sub-item (13)(iv) viz. "others" attracting duty at the rate of Rs. 450 per tonne in terms of a notification issued on 1 August 1983.

A manufacturer of metal containers (falling under tariff item 46), got, imported duty paid tinned sheets, printed from an outside party on job work basis. No duty was paid on such printed tinned sheets. As printed tinned sheets are liable to duty under tariff item 25(13)(iv), as aforesaid, the non levy resulted in escapement of duty amounting to Rs. 6.82 lakhs on clearances made during the period from October 1983 to December 1984.

On the irregularity being pointed out in audit (March 1985), the department stated (May 1985) that lacquered and printed tinned sheets were granted exemption under a notification issued on 15 July 1977 which holds good even after rationalisation of tariff item 25, as these sheets would fall under tariff item 25(13)(iii) and would be exempt, under another notification issued on 1 August 1983.

The Ministry of Finance stated that printed tin sheets would fall under tariff item 25(13)(iii) as after printing, the sheets did not lose their identity as tinned sheets. But printing is an additional operation on duty paid sheets and the printed sheets having a character different and distinct from input goods, get covered by tariff item 25(13)(iv); their classification under tariff item 25(13)(iii) would not be correct as it specifically refers to 'lacquered sheets', 'varnished sheets' only

2.33 **Plastics**

(i) **Polymer waste**

All polymerised products in whatever form including scrap and waste are classifiable under tariff item 15A(i).

An assessee manufacturing polyester fibre from D.M.T. obtained polymer chips falling under tariff item 15(1) in the first stage of manufacture and the polymer chips so obtained were further processed to obtain polyester fibre. Different kinds of wastes like polymer waste and W.R.C. (scrap/polymer waste/ribbons/cuttings), predrawn waste and condux (spinning quench, take up and creel and tow processing machine waste) and post-drawn waste (crimped set tow waste, cutter waster, sliver waste) arise during the process of manufacture of polymer chips and polyester fibre and all such wastes are re-cycled within the factory to produce polyester fibre. All these wastes were classified under tariff item 18 IV and allowed to be cleared free of duty for the manufacture of

fibres within the factory under the notification of April 1980. The polyester fibre so manufactured from the waste was also assessed to duty at the concessional rate of Rs. 27 per kilogram in terms of notification of February 1982 which was applicable to polyester fibre manufactured from waste falling under tariff item 18IV.

Polymer waste and W.R.C. which arise in the manufacture of polymer chips in the first stage of manufacture would more appropriately be classifiable under tariff item 15A(i) since that tariff item covers all polymerised products in whatever form including scrap and waste as per explanation III thereunder. Consequently, the classification of such wastes under tariff item 18IV and duty free clearance for captive consumption and also clearance of polyester fibre under concessional rate of duty was not in order.

The incorrect classification and consequent non levy of duty on such waste and the short levy of duty on polyester fibre produced out of such waste was pointed out to the department in October 1983|January 1984. The total quantity of such wastes manufactured (and captively consumed) during April 1982 to September 1983 was 3,45,803 kilograms and the duty involved thereon remains to be worked out. The consequent underassessment of duty on polyester fibre manufactured therefrom is estimated at Rs. 36.89 lakhs during the period April 1982 to September 1983.

The department justified (April|December 1984) the classification adopted|assessment made quoting reference to 1978 budget instructions issued by the Ministry of Finance to the effect that all types of pre-drawn and post-drawn waste arising during the process of manufacture of man-made fibres would be covered by tariff item 18IV. The department's contention is not, however, acceptable since the executive instructions cannot override the statutory tariff. It was also argued that the process of manufacture of polymer chips was incidental or ancillary to the process of manufacture of man-made fibres within the meaning of Section 2(f) of Central Excises and Salt Act, 1944, and therefore manufacture of chips and consequently any waste arising during such manufacture would merit classification under tariff item 18IV. This argument is not acceptable for the reasons already stated.

The Ministry of Finance did not admit the objection and stated (January 1986) that the explanation to tariff item 18(iv) included all wastes arising in or in relation to the manufacture of man-made fibre and man-made filament yarn. They added that the explanation would also include such wastes which arose at the pre drawn stage of manufacture of polymer chips, which in turn were used in the manufacture of polyester fibre. As already explained above the Ministry's reply is not supported by any provision in the Act or Rule.

(ii) **Phenolic resin**

As per a notification issued in February 1980 phenolic resins blended with other artificial or synthetic resin falling under tariff item 15A(1) are chargeable to duty at the rate of 40 per cent *ad valorem*.

According to a tariff advice issued in May 1980 "polymerised cashew nut shell liquid" is classifiable under tariff item-15A.

A leading manufacturer of paints and varnishes produced several varieties of 'air drying cashew nut shell liquid based varnishes' which he consumed captively in the manufacture of 'insulating varnishes'. On chemical analysis of one variety of the goods the Chemical Examiner reported that the product was a type of phenolic resin. The manufacturer got his product classified under tariff item 14II(1) as 'varnish' and was allowed exemption as per a notification issued in March 1972. From assessee's records it was noticed that a variety of the product composed of ingredients including 'ester gum' which was also an 'artificial or synthetic resin'. The product being a blend of phenolic resin with other artificial or synthetic resin was correctly classified under tariff item 15A(1) and assessable to duty at 40 per cent *ad valorem* under the notification issued in February 1980. Failure to classify the product correctly resulted in revenue not being realised by Rs. 90,652 on the product captively consumed during the period from 28 February 1982 to 13 October 1983.

On the mistake being pointed out in audit (November 1983), the department stated (April 1984) that a show cause notice demanding duty of Rs. 2.37 lakhs on the goods captively consumed during the period from 28 February 1982 to 13 October 1982 had been issued (March 1984) to the assessee. Subsequent enquiries (December 1984 and May 1985), however, revealed that four show cause notices were issued on different dates in 1984 demanding duty amounting to Rs. 41.57 lakhs relating to the period from 18 August 1980 to 22 December 1984.

The Ministry of Finance stated (January 1986) that the matter was examined in consultation with the Chief Chemist in the light of instructions issued on 5 January 1977 wherein it was clarified that polymerised C. N. S. L. fell outside the purview of tariff item 15A. The Ministry added that the Chief Che-

mist opined that all artificial or synthetic resins and plastic materials derived from self polymerisation and/or condensation of natural products were treated alike irrespective of the process of their manufacture and/or the process adopted.

The Ministry's reply is not acceptable. It was clarified in the Budget 1982 instructions that the tariff item 15A had been amended and sub-item (i) of the said tariff item fully aligned in the Heading No. 39.01/06 of Customs Tariff. Based on the re-classification of the product, it was clarified in the Budget notes of 1982 that "polymerised C.N.S.L." was likely to be classified under revised tariff item 15A from 28 February 1982, the product "polymerised C.N.S.L." was clearly classifiable under tariff item 15A.

(iii) **Resin solution**

As per a clarification issued by the Board on 27 November 1971, all resin solutions should be assessed to duty under tariff items 15A(1) on the value of the entire weight of the solution irrespective of the resin content of the solution.

A resin solution manufactured by an assessee containing about 11.9 per cent by the weight of synthetic resin in volatile organic solvents and intended for joining P.V.C. pipes and fittings was correctly classifiable under tariff item 15A(1) in terms of the aforesaid instructions of the Board. However, this product marketed as solvent cement by the assessee was incorrectly classified under tariff item 68 resulting in under assessment of Rs. 2.40 lakhs during the period from April 1983 to October 1984 alone. The total underassessment remains to be ascertained.

When the incorrect classification was pointed out in audit (December 1984/January 1985), the department contended (June 1985) that tariff item 15A(1) did not cover solution of resins and further added that conversion of duty paid resin in powder form into a solution by addition of additives would not amount to manufacture and hence would not attract duty liability again. It was further contended that since the product was known to the Trade and marketed as solvent cement, assessment under tariff item 68 was correct.

The contention of the department is not correct because tariff item 15A(1) covers resin solutions also, as made clear by Explanation III below that tariff item; this product is assessed to duty (though under tariff item 68) only for the reason that the conversion of resin into solvent cement has been accepted as amounting to manufacture. Moreover as per the test report furnished by the Chemical Examiner, the sample of the product which is in the form of clear colourless liquid, was composed of synthetic resin (polyvinyl chloride) and organic solvent, the percentage of synthetic resin being about 11.9 per cent. It should, therefore, be assessed as resin solution only under tariff item 15A(1) irrespective of how it is marketed.

The Ministry of Finance stated (November 1985) that the percentage of synthetic resin in the solution was only 11 per cent and that the product was not a modified resin or resin in the form of acqueous solution. The reply of the Ministry is contrary to the clarification given on 27 November 1971.

(iv) **Laminated sheets**

Based on Explanation II(b) under tariff item 15A, industrial laminated sheets of certain grades having electrical properties were excluded from the said tariff item by Board's tariff advice of 16 November 1981. The said explanation was in force upto 28 February 1982. From 1 March 1982, there was no provision for exclusion of such industrial laminated sheets having electrical properties from tariff Item 15A.

A licensee manufacturing industrial laminated sheets having electrical properties, continued to classify them under tariff item 68, based on the Board's tariff advice of November 1981.

On the mistake being pointed out in audit (June 1984), the department recovered the differential duty amounting to Rs. 1,49,043 covering the period from March 1983 to July 1984.

The Ministry of Finance confirmed the facts (November 1985).

2.34 **Frit glass**

Glass and Glassware including tableware is classifiable under tariff item 23A. The Central Board of Excise and Customs clarified in a tariff advice issued in June 1977 that 'fused silica' was nothing but glass and was classifiable as 'glass and glassware' under tariff item 23A. In another tariff advice issued in February 1982 the Board clarified that 'frit glass' is classifiable as 'glass and glassware'.

A manufacturer of 'enamel frit' was allowed to classify the product under traiff item 68 and clear them accordingly. The Chemical Examiner reported (March 1980) that 'enamel frit' was composed of 'fused silicate' and was a 'frit'. A 'frit' is calcined or partly fused material subsequently melted to glassy state. As per Chemical Examiner's report and aforesaid tariff advice 'enamel frit' was to be classified under tariff item 23A(4). The product though having description of 'enamel frit' was in fact 'frit' which was

classifiable under tariff item 23A(4). The misclassification has resulted in duty amounting to Rs. 8,11,582 being levied short on clearances made during the period from April 1981 to March 1982.

The mistake was pointed out in audit in September 1983.

The Ministry of Finance stated (January 1986) that the matter had been examined by the Board and it was decided vide their circular dated 17 October 1985 that the product "enamel frit" was classifiable under tariff item 68. The fact, however, remains that the product though having description of "enamel frit" was actually "frit" which was classifiable under tariff item 23A(4). The Ministry did not refute this fact supported by Chemical Examiner's report which stated that the product was known as 'glass frit' a type of glass.

2.35 **Chocolate eclairs**

Chocolates in any form are classifiable under tariff item 1A(4) and is leviable to duty at 10 per cent *ad valorem* besides special excise duty at 5 per cent of basic duty.

Chocolate eclairs manufactured by an assessee were, however, classified by the department under tariff item 68 and assessed to duty at 8 per cent *ad valorem* upto 28 February 1983 and at 10 per cent *ad valorem* from 1 March 1983 (without any special excise duty) on the ground that they contained only 3.5 per cent cocoa paste as a flavouring medium in terms of a tariff advice issued by the Board on 13 October 1981. However, a verification of the records of the assessee during audit (December 1981) revealed that the chocolate content in chocolate eclairs was much more than 3.5 per cent. Therefore, the department was requested in February 1982 to re-examine their classification in consultation with the Chemical Examiner. The department justified the classification and assessment of the product under tariff item 68 on the basis of the aforesaid tariff advice but did not get the samples tested by the departmental Chemical Examiner (after December 1980) on the ground that no periodicity had been prescribed for drawal and testing of samples. After persistent demand by Audit for a continuous period of 3 years a sample of the product was drawn in January 1985, which, on test, was found to contain 27 per cent chocolate meriting classification under tariff item 1A(4). The department reported in March 1985 that necessary show cause notice for suppression of facts and for demanding differential duty was being issued. The differential duty due from January 1981 to 16 March 1985 works out to Rs. 8.22 lakhs.

The paragraph was sent to the Ministry of Finance in September 1985; their reply is awaited (January 1986).

2.36 **Switches**

Electric lighting switches fall under tariff item 61 and are liable to duty at 20 per cent *ad valorem*. Central Board of Excise and customs clarified in a tariff advice issued on 8 December 1981 that switches which are used in torches (toggle switches) are classifiable under tariff item 61.

(a) An assessee engaged in the manufacture of toggle switches cleared his goods valuing Rs. 68,83,917 during the period from April 1979 to February 1984 (excluding July 1980, September 1980, January 1981 and February 1981) by classifying them under tariff item 68 instead of tariff item 61. This resulted in short levy of duty of Rs. 6,15,923.

On the misclassification being pointed out in audit (June 1984), the department stated (June 1984) that the issue of classification of toggle switches had since been referred to higher authorities for seeking clarification. It also issued a show cause-cum demand notice in April 1985.

The Ministry of Finance confirmed the facts (January 1986).

(b) Another manufacturer of various kinds of switches such as electric table fan switches, lighting switches of refrigerators etc. cleared the products on payment of duty by classifying them under tariff item 68 instead of under tariff item 61. The misclassification of lighting switches of refrigerators resulted in duty being levied short by Rs. 79,000 on clearances made during the period from July 1982 to March 1984. Further, if those industrial buyers had availed set off of duty paid on these lighting switches of refrigerators as per a notification issued in June 1979, as amended, there would be a further loss of revenue to the extent of Rs. 60,000.

On the mistake being pointed out in audit (October 1984), the department accepted the objection and issued (February 1985) a show cause-cum demand notice for Rs. 69,700 for the period from July 1982 to June 1984, which was also confirmed.

The Ministry of Finance stated (November 1985) that the Appellate Collector had held that the products manufactured by the assessee were not switches falling

under tariff item 61 but integral parts of the refrigerators. They also added that it had been decided to file an appeal against this order.

2.37 **Machinery and parts thereof**

(i) **Electric motors**

Electric motors, all sorts, and parts thereof, are classifiable under tariff item 30.

The grinding machines, compact shaft machines etc. in the manufacture of which electric motors of special design are used are, however, not covered under tariff item 30 and are classifiable under tariff item 68 covering all other items not elsewhere specified.

(a) An assessee *inter-alia* manufactured compact and portable flexible shaft machines (under a brand name) consisting of an electric motor, flexible shaft assembly with a tool holder provided at the end of the flexible shaft to accommodate the appropriate tool for die-grinding, deburring grinding, buffing, polishing, drilling etc. While duty was paid on the electric motor under tariff item 30, flexible shaft assembly was assessed to duty under tariff item 68 separately.

Since what was advertised and marketed was a compact and portable flexible shaft machine, though cleared in unassembled or C.K.D. condition, the entire machine should have been classified under tariff item 68 and assessed to duty on its full value including the *cum*-duty value of electric motor, which supplied the motive power and formed an integral part of the machine. Omission to do so resulted in a short levy of duty of about Rs. 7.92 lakhs on such machines cleared during the period April 1982 to December 1984 alone.

On the incorrect assessment being pointed out in audit (January/February 1985), the department contended (June 1985) that what was manufactured was only electric motor, flexible shaft assembly and tool holder, which were cleared separately and not a flexible shaft machine. The contention of the deartment is not, however, correct and acceptable since the records of the assessee (like annual report, brochures etc.) indicated sale of flexible shaft machines only (and not motor and other component parts) and since all the component of the machines were cleared in a single package. Further, the Appellate Tribunal decision of September 1984 in the case of M/s. Ajit India Private Limited Vs. Collector of Central Excise, Bombay/Madras (1984—ECR 2133) supports the view of Audit.

The Ministry of Finance stated (December 1985) that the Audit's contention was correct to the extent that whenever a motor, flexible shaft assembly with tool holder were delivered in C.K.D. condition or in an assembled condition, the value of the motor also had to be taken into consideration while assessing the goods to duty.

(b) Another manufacturer of electric motors used the electric motors captively in the manufacture of grinding machines. No duty was paid on electric motors but grinding machines were cleared after classifying them and payment of duty under tariff item 30. As the grinding machines are not covered under tariff item 30, duty was leviable at both the levels of manufacture firstly as electric motors and secondly as grinding machines (under tariff item 68). The misclassification has resulted in short levy of duty amounting to Rs. 28,273 on clearances made during the period from January 1982 to December 1983.

On the mistake being pointed out in audit (April 1984), the department intimated (March 1985) that a show cause-cum demand notice for Rs. 28,256 has been issued and the same was under process of adjudication.

The Ministry of Finance stated (November 1985) that the concerned Collector had been asked to finalise the case expeditiously.

(ii) **Part of refrigerating and air-conditioning appliances**

Parts of refrigerating and air-conditioning appliances and machinery are classifiable under tariff item 29A(3). As per a notification issued on 24 April 1962, parts of refrigerating and air-conditioning appliances specified in the notification were dutiable, others were exempt.

(a) A manufacturer engaged in the fabrication of engineering goods cleared "tubing units for blast freezer room and inter cooler" after classifying it under tariff item 68 and availing exemption under a notification dated 1 March 1983. The product being a part of air-conditioning appliances, it was classifiable under tariff item 29A, the department did not initiate in duty being levied short to the extent of Rs. 3,41,250 on clearances made during November 1983.

On the mistake being pointed out in audit (February 1983) the department accepted (July 1984) the mistake and issued a show cause-cum demand notice for Rs. 3,41,250 to the assessee.

The Ministry of Finance confirmed the facts (October 1985).

(b) An assessee manufacturing vacuum machinery also manufactured machinery known as freezer drier. These goods were classified by the department under the residuary tariff item 68.

Though in August 1980, it had been pointed out by Internal Audit that the freezer drier was a refrigerating apppliance and would therefore be classifiable under tariff item 29A, the department did not initiate action for rectification of the misclassification. In December 1983 a demand notice for Rs. 1,44,864 was issued under Section 11A of the Central Excises and Salt Act, 1944 covering the clearances during the period from 7 September 1979 to 11 March 1980, and the demand was confirmed by the adjudicating authority in February 1984. However, this demand was vacated by the appellate authority in March 1984 on the ground that the allegation of suppression of facts was not conclusively proved.

In the meantime in March 1983 four more freezer driers were allowed to be cleared under item 68 on payment of duty at 10 per cent *ad valorem*. It was pointed out by Audit (June 1984) that even according to assessee's own technical-cum-commercial write up on the product, the freezer drier would merit classification under tariff item 29A attracting duty at 80 per cent *ad valorem*.. Failure to initiate action in 1980 for rectification of misclassification not only resulted in the demand of Rs. 1,44,864 being barred by limitation of time but also resulted in further short levy of duty amounting to Rs. 61,938 on the clearances made in March 1983.

On the mistake being pointed out in audit (June 1984) the department stated (July 1984) that the freezer drier was classified under tariff item 68 on the basis of the description given by the assessee in the classification list and on the basis of the practice obtaining in certain other Collectorates. In December 1984, however, the department stated that after consultation with a leading advanced technical education institution, it had initiated proceedings to reclassify the freezer drier under tariff item 29A.

The Ministry of Finance confirmed the facts as substantially correct (February 1986).

(iii) **Bolts, nuts and screws**

Bolts and nuts, threaded or tapped, and screws, or base metal or alloys thereof, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power are dutiable at 15 per cent *ad valorem* under traiff item 52. Government of India in its revision order of October 1982 decided that so long as bolts and nuts were predominantly meant for fastening purposes and did not posses any other functional utility, they were liable to duty under tariff item 52 even if they were specially designed.

(a) An assessee engaged in the manufacture of textile machinery, machine tools, alloy steels and casting etc., was also manufacturing threaded bolts, nuts and studs required as components for the textile machinery. Duty liabliliy on these bolts, nuts and studs under tariff item 52 was discharged by the assessee before they were subjected to the process of tempering, grinding, polishing and blacadising. These goods after undergoing all these processes were classified under tariff item 68 as parts/components of textile machinery and cleared free of duty for captive consumption under a notification dated 30 April 1975.

As these goods retained the characteristics and functions of bolts, nuts and studs even after undergoing the process of tempering, grinding, polishing and blacadising, the finished bolts, nuts and studs (after undergoing all the aforesaid processes) should have been classified under tariff item 52 and assessed to duty at that stage. The incorrect assessment at the earlier stage and their incorrect classification at the finished stage resulted in short levy of duty of Rs. 71,992 during the period from April 1982 to February 1984.

On the mistake being pointed out in audit (February/April 1984), the department issued a show cause notice in May 1984. Further proceedings were dropped by the jurisdictional Assistant Collector through his order of July 1984 on the ground that a new product meriting classification under tariff item 68 emerged after the bolts, nuts and studs were subjected to the aforesaid processes.

The decision of the department is not, however, correct since the goods remained as bolts, nuts and studs even after undergoing the processes mentioned. Further, as clarified by the Board in March 1981 in the case of bolts, nuts and screws used in the manufacture of motor vehicles all bolts, nuts and screws should be assessed to duty only under tariff item 52 irrespective of their end use.

When this was brought to his notice, the Collector agreed with the Audit in respect of 7 items (out of 10) and filed an appeal on 4 February 1985. The underassessment in respect of these 7 items during the period April 1982 to January 1985 is estimated at Rs. 41,329.

The Ministry of Finance stated (October 1985) that the Appellate Collector had set aside the orders of the Assistant Collector of Central Excise and the

Collector concerned was being asked to realise the amount of duty from the party.

(b) A Public Sector Company manufactured 'bolts' and 'nuts' and got them classified under tariff item 68 instead of 52. Failure to classify the goods correctly resulted in an underassessment of Rs. 81,701 on clearances made during the period from August 1980 to June 1983.

On the mistake being pointed out in audit (August 1983), the department admitted (April 1985) the objection and issued a show cause-cum demand notice to the assessee.

While confirming the facts the Ministry of Finance have stated (October 1985) that an amount of Rs. 81,707 had since been recovered from the party.

(c) Another Public Sector Undertaking manufactured *inter alia,* 'handle bar eye bolts' and classified these wrongly under tariff item 68 and availed exemption under a notification issued in February 1982 superseded by notification issued in November 1982 Failure to classfy the goods correctly under tariff Failure to classify the goods correctly under tariff item 52 resulted in duty not being levied by Rs. 71,820 on clearances made during the period from 28 June 1982 to 7 October 1982.

On the mistake being pointed out in audit (December 1983), the department contended (May 1985) that it had detected the point earlier than Audit and had raised timely demand to safeguard revenue. The show cause notice in this case demanding an amount of Rs. 1.19 lakhs on clearances made during 22 June 1982 to 31 March 1984 was, however, issued on 18 May 1984. A show cause notice was stated to have been issued by the department on 27 October 1980 which classified handle bar eye bolts correctly but that show cause notice was issued to another manufacturer company which was taken over by the assessee company. No separate notice on such clearances made by the assessee company was issued till Audit pointed out the mistake and demand was allowed to become time barred. Report on adjudication of demand raised in May 1984 was awaited (June 1985).

The Ministry of Finance stated (November 1985) that the concerned Collector had been asked to finalise the case expeditiously.

(d) A manufacturer of 'studs' classified the products as unspecified motor vehicle parts falling under tariff item 68. They are permanently screwed into one piece of the engine cylinder to which head of engine is then screwed with a nut. The assessee had described these as studs and sold these in market also as studs and, therefore, these studs deserved classification under tariff item 52 only. The misclassification resulted in short levy of duty of Rs. 46,818 on clearances made during the period from January 1982 to December 1982.

On the mistake being pointed out in audit (February 1983), the department stated (July 1984) that although these studs incidentally acted as fasteners, they were available in motor vehicle parts shops only and not in hardware shops. The department's reply goes counter to the view of the Government of India in its Orders referred to above. However, the department also issued a demand for Rs. 22,058 for the period from November 1982 to April 1983.

The Ministry of Finance stated (January 1986) that the engine studs in question were primarily used for holding the engine to preserve it from shocks and damage and its use in fastening the system was only incidental. The Ministry's reply is not acceptable since the studs can be used only for fastening purposes and as such fastening can not be considered as incidental.

(e) An assessee manufactured various types of nuts and bolts viz. propeller shaft front teeth with nut and front teeth with collar nut, main shaft nut, main drive gear nut, etc. and classified them under tariff item 68 and cleared them on payment of duty at 10 per cent *ad valorem.* As these products were screws and nuts and predominantly meant for fastening purpose only, they were correctly classifiable under tariff item 52. The misclassification of such goods has resulted in short levy of duty of Rs. 38,609 on clearances made during the period from April 1983 to March 1984.

On the mistake being pointed out in audit (September 1984), the department stated (March 1985) that these products were being marketed as specific automobile parts having trade name under recognition in commercial parlance and were having functional utility only as motor vehicle parts and fastening was only incidental. However, the department's reply goes counter to the aforesaid Government of India orders.

The Ministry of Finance reiterated (January 1986) the stand taken by the department. The same is however, not acceptable in view of the orders-in-review issued by the Government of India.

2.38 Miscellaneous manufactured articles

(i) Corrugated boards

Central Board of Excise and Customs clarified in August 1980 and December 1981 that the printed

corrugated boards were classifiable under tariff item 68 if printing had relevance to specific consumer. An Appellate Collector in order in appeal dated 18 April 1978 also held that the printed boards if cut/slitted/ creased, became cartons should be charged to duty as cartons though supplied in collapsed condition for reasons of easy transport.

As per a notification issued on 19 June 1980, clearance of goods falling under tariff item 68 upto a value of Rs. 30 lakhs during a finanical year was exempt from the whole of duty provided that the value of clearances during the preceding financial year had not exceeded Rs. 30 lakhs.

A unit cleared corrugated board cartons to a customer classifying these under tariff item 68 upto the value of Rs. 29,18,316 and Rs. 29,63,856 during the years 1980-81 and 1981-82 respectively availing exemption under the aforesaid notification. Thereafter clearances to the same customer were made treating the goods as printed corrugated boards and classifying them under tariff item 17 paper and paper board and availing exemption under another notification dated 24 April 1971. The value of such clearances amounted to Rs. 15,95,235 duirng the year 1980-81 (the details for the year 1981-82 were not maintained).

It was pointed out in audit that the goods cleared as printed corrugated boards were rightly classifiable under tariff item 68 instead of under tariff item 17 as per the aforesaid clarification as the printing and size was specfic conforming to the size of other components supplied in accordance with the specifications received from the party. These were used by the buyer as cartons without doing further manufacturing process. As such so called printed corrugated boards were nothing but printed cartons supplied in collapsed condition alongwith components. Misclassification of the product resulted in irregular grant of exemption of duty of Rs. 3,58,193 during the years 1980-81 and 1981-82.

On the omission being pointed out in audit (December 1982), the department did not accept the objection and stated (June 1985) that the manufacture of corrugated boards of particular sizes and subjecting them to colour printing would not transform the identity of the corrugated boards in such a manner as to take them out of the purview of the tariff item 17. The reply of the department is not acceptable in audit for the reasons explained above.

The Ministry of Finance stated (January 1986) that the unit was manufacturing corrugated boards as well as corrugated board cartons. The Ministry added that printing in blue colour or in various other colours on the corrugated boards in question did not amount to printing a design having relevance to specific consumer of a product contained in cartons so as to render such boards classifiable under tariff item 68.

However, the fact remains that the printing was done in different colours specifically at the request of the same customer for their use in packing of dyed yarn etc. which has also been confirmed by the Ministry. It goes to establish the relevance of printing to the specific.

(ii) **Lead**

According to explanation II below the tariff item 27A, 'wastes and scraps of lead' means wastes and scraps of lead fit only for manufacture of chemicals, but does not include slag, ash and other residues. Scrap lead residue does not therefore fall under tariff item 27A(2) but is classifiable as 'all other goods not elsewhere' specified under tariff item 68 since no other items from 1 to 67 of Central Excise Tariff cover the product.

A manufacturer of paints and varnishes (tariff item 14) also manufactured 'scrap lead residue No. 5', and got it classified as 'wastes and scraps of lead' under tariff item 27A(2). He was allowed to clear it without payment of duty by availing exemption as per a notification issued in March 1981. The exemption allowed was irregular since the product, according to Explanation II, as aforesaid, was classifiable under tariff item 68 but was classified under sub item 2 of item No. 27A. Failure to classify the goods correctly resulted in duty amounting to Rs. 2.42 lakhs not being levied on clearances during October 1981 to May 1983.

On the mistake being pointed out in audit (September 1983), the department intimated (July 1984) that it had issued (November 1983) a show cause notice demanding Rs. 3 lakhs for the said period. Subsequent enquiry (June 1985) revealed that the duty was being paid on the product under tariff item 68 with effect from December 1983 However, no demand in respect of the duty amounting to Rs. 17,066 not realised on clearances during June 1983 to November 1983 has been raised so far.

Adjudication of demand raised in November 1983 is awaited (December 1985).

The Ministry of Finance stated (January 1986) that the mistake was detected by the department in April 1983 before the visit of Audit. The Ministry added that another show cause notice for Rs. 17,066 had also been issued. The fact, however, remains that no action was taken by the department to raise

the demand till the mistake was pointed out by Audit.

(iii) **Trunk time indicator**

Time recording machines are office machines and are classifiable under tariff item 33D if they are used in offices, shops, workshops, etc. for transmission and reception of messages etc.

A licensee manufacturing telephone equipment also manufactured equipment known as "Trunk time indicator" and cleared it on payment of duty at a lower rate under tariff item 68. As the equipments were meant for accurately timing and displaying the duration of trunk calls in Telephone Exchanges and were actually time recording machines used in an office for transmission and reception of messages they are correctly classifiable under tariff item 33D instead of under tariff item 68. The incorrect classification resulted in short payment of duty to the extent of Rs. 2,19,257 on 9152 trunk time indicators cleared during the period from 1977-78 to 1980-81.

On the mistake being pointed out in audit (May 1981), the department agreed that the goods were classifiable under tariff item 33D (March 1985) and intimated that the differential duty was being worked out. Particulars of demand raised were awaited (June 1985).

The Ministry of Finance stated (December 1985) that a demand for Rs. 5.62 lakhs for the period from 1977-78 to 1984-85 had been issued to the unit.

(iv) **Ion exchange resin**

Copolymer beads were classifiable under tariff item 15A(1)(ii) and ion exchange resin produced out of copolymer beads classifiable under tariff item 68 provided the resin was without resinous character.

A manufacturer producing copolymer beads and using them for captive consumption in manufacture of ion exchange resin was made to pay duty on the resin under tariff item 15A(1)(ii) from 18 June 1977 after allowing set off of duty paid on copolymer beads and from 16 June 1978, duty was levied on ion exchange resin only without levying duty on copolymer beads. On appeal by the assessee against classification of the final product under tariff item 15A, the Appellate Collector ordered (July 1979) that it was classifiable under tariff item 68. Government of India, in order-in-review held (May 1982) that "ion exchange" resins without resinous character were classifiable under tariff item 68. The department thereupon granted (March 1983) refund of duty paid on the resin under tariff item 15A during the period from 16 June 1978 to 17 August 1979 which amounted to Rs. 4.94 lakhs; but could not realise duty amounting to Rs. 1.98 lakhs on the beads, as the demand (February 1983) was hit by limitation of time and had therefore to be withdrawn.

On the mistake being pointed out in audit (May 1980 and March 1985), the department stated (May 1985) that the loss of revenue occurred due to misclassification of the final product and that if duty was levied on the intermediary product it could have been taken credit for payment of duty on the final product under Rule 56A.

The reply is not correct; set off under Rule 56A was not available in this case because beads fall under tariff item 15A whereas ion exchange resin falls under tariff item 68.

The Ministry of Finance admitted the objection (February 1986).

(v) **Rolling bearings**

Rolling bearings, that is to say, ball or roller bearings, all sorts are classifiable under tariff item 49. As per a tariff advice issued on 6 February 1981, bearings for textile machinery with extended shaft would fall under tariff item 49. Even in Board's letter dated 9 November 1982, issued as a result of review, it was not considered necessary by the Board to revise the instructions contained in its aforesaid tariff advice dated 6 February 1981.

A manufacturer of motor vehicle parts viz. propeller shafts and parts thereof (tariff item 68) cleared them on payment of duty. One of the parts of propeller shafts, termed as "Universal Joint Kit", was made out of forgings by machining their edges and covering those machined edges with "Needle Rollers and Bearings Cups". What exactly being used is the basic solid forgings which are cross-shaped needles and steel cups. These needles are given the name of "needle rollers" because the steel cup which is fitted on them can roll. Likewise, the steel cups are given their name as bearings cups as these cups also provide movement effect. These types of parts are also known in the trade "Universal Joint Cross". In view of the Board's views referred to above these "Universal Joint Cross" are classifiable under tariff item 49 "Rolling Bearings" and not under tariff item 68. This resulted in short levy of duty of Rs. 89,568 (approximately) for one month alone.

The mistake was pointed out in audit in February 1985.

The paragraph was sent to the Ministry of Finance in August 1985, their reply is awaited (January 1986).

(vi) **Blown grade bitumen and asphalt**

A manufacturer of "cable compounds" of different grades and other products, used bitumen as a raw material by a process of heating/passing air etc. Raw bitumen was converted into different product with different softening/penetrating points. Such products were distinctly known in the market and as such dutiable. The classification list filed by the assessee in 1979 showed these goods, as exempt from duty under tariff item 68 and this was also approved by the department. No classification list was filed thereafter. There is, however, no notification exempting these goods from payment of duty.

The issue of blown grade bitumen/asphalt was discussed in a tripartite meeting with Law Ministry and the Department of Revenue. The representative of Chief Chemist agreed that an elaborate manufacturing process was involved in converting straight grade bitumen/asphalt into blown grade bitumen/asphalt and the latter was entirely different product technically and commercially with distinctly separate characteristics and uses. But on the classification, it was agreed that both the products would fall under tariff item 11(4), since both were known as bitumen/asphalt and the blown grade could not be excluded from tariff item 11(4) on the ground that it was not produced directly from petroleum or shale, but only from straight grade.

On the basis of the discussions mentioned above the products manufactured by the assessee were classifiable under tarff item 11(4) and not under tari ffitem 68. Further, as bitumen/asphalt has not been specified under Rule 56A of the Central Excise Rules, 1944, the question of set off of duty paid on the raw material also did not arise. In view of the Chief Chemist's opinion, the converted products of bitumen, are entirely different products technically and commercially with distinctly separate characteristics and uses, and therefore duty is leviable under tariff item 11(4). The omission to levy duty resulted in duty not being levied to the extent of Rs. 2.63 lakhs on clearances during the period from April 1982 to March 1983.

The mistake was pointed out in audit in April 1985.

The Ministry of Finance did not accept the objection and stated (January 1986) that the Board had clarified on 16 July 1982, that 'blown grade bitumen' would continue to be classified under tariff item 11 and would not be liable to duty again if produced from duty paid bitumen.

The Ministry's reply is, however, silent on the point that the bitumen/asphalt being not notified under Rule 56A of the Central Excise Rules, 1944, the question of set off of duty paid on the raw material also did not arise.

SHORT LEVY DUE TO INCORRECT GRANT OF EXEMPTION

2.39 **Petroleum products and related materials**

(i) **Electricity**

As per a notification issued on 27 April 1978, electricity (falling under tariff item 11E) was exempted from whole of duty if it was supplied at rates fixed by State Electricity Board or State Electricity Department for agricultural purposes and it is certified to the satisfaction of the Assistant Collector by the Board, department or assessee that electricity has been supplied for agricultural purposes.

An Electricity Board claimed and was allowed exemption from payment of duty on 324.24 crores units of electricity supplied for agricultural purposes during the years 1981-82 and 1982-83. A cross checking with the figures in his final accounts relating to these years, however, revealed that only 250.41 crores units of electricity had been supplied for agricultural purposes. The allowance of excess exemption resulted in short realisation of duty amounting to Rs. 1.47 crores on 73.83 crore units.

On the mistake being pointed out in audit (between February 1983 and April 1985), the department raised (April and July 1984) demand for Rs. 1.42 crores and realised the amount in July and September 1984. Report on action taken for the recovery of remaining amount of Rs. 5.40 lakhs was awaited (March 1985).

The Ministry of Finance confirmed the facts (September 1985).

(ii) **Furnace oil**

As per a notification issued on 30 October 1974, furnace oil was exempted from duty, if the same was used as a feed stock in the manufacture of fertilisers under certain conditions. By another notification dated 10 June 1976, the furnace oil used otherwise than as a feed stock in the manufacture of fertilizers attracted duty at the rate of Rs. 61.05 per Kilolitre. Both these notifications were replaced by a consolidated notification issued on 1 March 1984.

An oil installation was permitted to clear furnace oil without payment of duty to a fertiliser factory where coal was used as a feed stock. The furnace oil was used as fuel for generating steam. Since the furnance oil was not used as a feed stock in the manufacture of fertilisers, non-levy of duty amounting to Rs. 12.78 lakhs on clearances during the period from December 1983 to November 1984 was brought to the notice of the department by Audit in August 1984.

In reply the department stated that the Assistant Collector in-charge of the fertiliser unit at destination allowed the exemption under notification dated 30 October 1974. The Assistant Collector at destination held that the furnace oil was used for generation of steam, as feed stock on the basis of the orders in revision by the Board of 22 February 1982 wherein it was held that furnace oil used for generating steam was treated as a feed stock.

But the notification dated 30 October 1974 clearly stipulates that the exemption is applicable to furnace oil which is used as a feed stock in the manufacture of fertilisers. The term feed stock has been defined in I.S.I. 4639-1968, *i.e.*, glossary of petroleum terms as the "primary material introduced into a plant for processing". Since the fertiliser factory is a coal based project, where the coal is used as primary raw material, the notification exempting the furnace oil from the payment of duty is not applicable. Further, the revision orders of the Board dated 22 February 1982 is not applicable in this case, as the orders were given to a fertiliser factory, where furnace oil was used as feed stock for manufacture of fertilisers and a part of the furnace oil was used for generation of steam.

The paragraph was sent to the Ministry of Finance in July 1985; their reply is awaited (January 1986).

(iii) **Wash oil**

Under sub-rule (2) of Rule 140 of the Central Excise Rules, 1944, Government may, in the public interest, declare any premises to be a refinery in relation to goods processed or manufactured in such premises.

As per a notification issued on 21 December 1967, excisable goods falling under tariff items 6 to 11A produced in such refinery and consumed internally for the manufacture of other goods were fully exempted from duty.

A manufacturer mainly engaged in the generation of 'electricity' (tariff item 11E) was also producing 'Wash oil' (classifiable under tariff item 9) which he consumed captively in the manufacture of other goods. The Central Government by an order, issued in March 1971 declared his premises as 'refinery' in relation to excisable goods falling under 'tariff item 6' only. The department allowed exemption from duty on "Wash oil", even though it was classifiable under tariff item 9. The irregularity resulted in duty amounting to Rs. 5.71 lakhs not being realised on clearances of wash oil during the period from March 1975 to May 1985.

The mistake was first pointed out in audit in December 1981. The department, while not admitting the objection, contended (February 1983) that the licensee was declared as a refinery under sub-rule (2) of Rule 140 of the Central Excise Rules, 1944, and was entitled to exemption under the aforementioned notification on products falling under tariff items 6 to 11A.

The Ministry of Finance stated (January 1986) that the matter was examined by the Government who were of the view that once the premises had been declared as refinery in respect of any of the tariff items 6 to 11A, it shall get the benefit in respect of all these items. Audit is, however, of the view that as the premises was declared as refinery in respect of tariff item 6 only, it cannot be treated as refinery in respect of other items. The Ministry may seek the opinion of the Law Ministry.

Incidentally, non-levy of duty of Rs. 4.40 lakhs on clearance of wash oil during March 1975 to March 1981 by the same manufacturer and which is included in the aforesaid amount of Rs. 5.71 lakhs was reported in paragraph 2.34 (iii) of Audit Report 1982-83. In reply the Ministry had stated (December 1983) that the matter was being examined. The final reply of the Ministry is awaited (January 1986).

(iv) **Industrial fuel oil**

As per a notification issued on 16 December 1977, petroleum products produced in refineries and utilised as fuel within the same premises for the production or manufacture of finished petroleum products were exempted from duty. The notification did not cover petroleum products used for generation of electricity. As per a clarification issued by the Central Board of Excise and Customs on 6 July 1983, the exemption contained in notification dated 16 December 1977 would not be available to that quantity of petroleum products which was used in the generation of electricity, which, in turn was not used in the manufacture of petroleum products.

A Public Sector oil company manufactured 'industrial fuel oil' (tariff item 10) and utilised it as fuel for generation of electricity. A part of the electricity generated was used in mechanical workshop, chemical laboratory, administrative building, etc. However, no duty was levied on the industrial fuel oil used in the

generation of such electricity. This resulted in duty amounting to Rs. 68,000 not being levied on clearances made during the period from April 1983 to March 1984.

The mistake was pointed out in audit in July 1984.

The Ministry of Finance did not admit the objection and stated (January 1986) that according to CEGAT decisions dated 17 January 1983 and 14 September 1983, the exemption provided under the notification dated 16 December 1977 for petroleum products used as fuel in mechanical workshop, chemical laboratory, and administrative buildings etc. of a refinery was admissible. The Ministry's reply is not correct. None of the CEGAT decisions is relevant in the present case. The CEGAT decision dated 17 January 1983 referred to exemption available on electricity falling under tariff item 11E whereas its second decision held that on petroleum products falling under tariff item 6 to 11A which were used in the production of steam or electricity for further use in the manufacture of finished petroleum products exemption available was admissible under notification dated 16 December 1977. But in the present case, electricity generated by the assessee company was not used in the manufacture of petroleum products falling under tariff item 6 to 11A.

2.40 **Yarn, fabrics and rubber**

(i) **Partially oriented yarn**

Partially oriented yarn (POY) is a man-made filament yarn. It is partially oriented in the sense that the molecules have not been fully oriented. It has all the characteristics of a synthetic polyester filament yarn. The product is man-made, it is in filament form and base flat. It has all the characteristics of fully oriented yarn except that the orientation of molecules along the length is incomplete. As per the decision of Government circulated on 24 September 1980 the POY is classifiable under tariff item 18 II and assessable to duty (both countervailing and Central excise) at final denierage stage.

The dimensional proximity of POY to the finished polyester yarn is not in dispute. There is a predetermined fixed draw ratio with regard to POY. In other words, POY of a particular denier can be drawn into textured yarn or fully oriented yarn of a particular denier. The POY is invoiced as filament yarn but it cannot be used as yarn, as it is normally required for draw texturisation.

A manufacturer submitted a classification list in March 1982 for manufacture of "POY" of 126|140|154 deniers. While approving the classification list the department allowed provisional assessment of "POY" polyester yarn on its own denierage as final denierage was not ascertainable. However, to ensure realisation of correct amount of duty leviable at the final stage when the POY became a marketable commodity the manufacturer was directed to execute necessary bonds. During the period from April 1982 to September 1982, the manufacturer cleared 273854.984 kilograms of POY on payment of duty at Rs. 61.25 per kilogram provisionally whereas on the final denier stage duty was to be discharged at Rs. 78.75 per kilogram. Since the draw ratio was predetermined, provisional assessments should either not have been resorted to or these should have been finalised within the stipulated time if it was unavoidable.

The Public Accounts Committee (5th Lok Sabha) in para 1.231 of their 44th Report had observed that provisional assessments carry a state of suspense with them and are likely to effect the budgetary forecast. The Committee suggested that provisional assessments should be reduced to the absolute minimum particularly after the introduction of Self-Removal Procedure under which approval of classification lists and prices is a precondition for clearance of goods. The Central Board of Excise and Customs issued instructions in March 1976 to the effect that provisional assessments both on account of classification list and valuation should be finalised within a period of three months and in any case not later than six months. These orders were reiterated in subsequent instructions issued in October 1980.

Resort to provisional assessment was not proper in view of Government's orders dated 24 September 1980 and delay in finalisation of such assessment has resulted in unintended benefit to the manufacturer amounting to Rs. 47.92 lakhs (approximately) during the period from April 1982 to September 1982 alone.

On the delay being pointed out in audit (October 1982), the department stated (December 1984) that action with regard to levy of duty on POY was being taken. Result of action taken and recovery particulars were awaited (August 1985).

The paragraph was sent to the Ministry of Finance in September 1985; their reply is awaited (January 1986).

(ii) **Cotton yarn**

As per a notification issued on 18 June 1977, as amended, duty on 'cotton yarn' [falling under tariff

item 18A(i)] was chargeable at concessional rates on the basis of its weight before sizing. Cotton yarns [falling under tariff item 18A(ii)] not being covered by the aforementioned notification are, therefore, assessable to duty on their weight after sizing.

As per notification of 20 February 1982 issued amending Rules 9 and 49 of the Central Excise Rules, 1944, the collection of duty of excise on excisable goods produced and consumed as such or after subjecting to any process or processes for the manufacture of any other commodities has been legalised.

'Sizing' is a process of manufacture in relation to the manufacture of goods falling under tariff item 18A, as per Section 2(f)(iv) of the Central Excises and Salt Act, 1944, and as such duty on cotton yarn [falling under tariff item 18A(ii)] shall be leviable.

(a) A cotton mill manufacturing *inter alia*, 'cotton yarn' [falling under tariff item 18A(ii)] was allowed to clear the product by paying duty on its pre-sized weight even though modality of levy of such yarn was neither covered under the aforesaid notification nor in any other notification. This resulted in duty being levied short by Rs. 1.68 lakhs on clearances made during the period from September 1980 to September 1981.

On the mistake being pointed out in audit (October 1982), the department, while not admitting the objection contended (July 1983) that the Delhi High Court in the case of M|s. J. K. Spinning and Weaving Mills *Vs.* Union of India had already given a specific judgement that the sizing was relevant to weaving and not to spinning.

In view of the position already explained above the reference to the High Court judgement quoted in the department's reply is not relevant.

Subsequent enquiry (May 1985), however, revealed that fourteen show cause notices had been issued during February 1984 to February 1985, demanding duty of Rs. 6.45 lakhs covering the period from 15 March 1979 to 31 December 1984. All the show cause notices were pending adjudication (June 1985).

The Ministry of Finance stated (January 1986) that demands were raised for levy of excise duty on the sized weight of the yarn. Against such demands, the assessee had filed writ petitions which were pending in the Supreme Court. The Ministry further added that the concerned Collector was being asked to finalise the cases expeditiously if there was no injunction from the Court.

(b) A manufacturer of 'Cellulosic spun yarn' [tariff item 18 III (ii)] was irregularly allowed to clear it on payment of duty on its presized weight, even though the exemption under the said notification was not applicable. This resulted in duty being levied short by Rs. 13,940 on clearances of 7435 kilograms of yarn in July 1982 alone (weight of sizing material taken at 25 per cent of the weight of yarn).

On the irregularity being pointed out in audit (October 1982), the department took the weight of sizing material at 8 per cent, and a show cause-*cum*-demand notice of Rs. 1,334 was issued to the assessee in June 1983. Subsequent enquiry (December 1984) revealed that the department raised (June 1983) demand of Rs. 55,192 on clearances made during the period from February 1983 to May 1983. Also demand for short levy of duty amounting to Rs. 1.25 lakhs for the period from June 1983 to July 1984 was raised by the department in the monthly returns of the assessee. Adjudication of total demands for Rs. 1.81 lakhs is awaited (December 1985).

The Ministry of Finance stated (December 1985) that the assessee had filed in the Supreme Court writ petitions against the demands raised. The Ministry added that the concerned Collector was being asked to finalise the case expeditiously if there was no injunction from the Court.

(iii) **Fabrics**

A manufacturer of fabrics was granted exemption from payment of duty amounting to Rs. 1,08,104 during December 1980 to May 1981 on fabrics even though there was no notification granting exemption.

On the irregular grant of exemption being pointed out (September 1981) in audit, the department recovered (May 1983) the amount by adjustment against the refund claim of the manufacturer. The manufacturer, however, filed (June 1984) an appeal with the Tribunal against the department. Decision in the case was awaited (April 1985).

The Ministry of Finance stated (November 1985) that the Appellate Collector had confirmed the order demanding the duty from the unit except in respect of two show cause notices which were held to be time barred.

(iv) **Synthetic rubber**

A notification of March 1979 as amended in February 1982 allowed set off of duty paid on synthetic rubber, carbon black and rubber processing chemical

(falling under tariff item 16AA, 64 and 65 respectively) and permitted to be brought into a factory for use in the manufacture of tyres (falling under tariff item 16) subject to the procedure in Rule 56A being followed.

An assessee manufacturing tyres (falling under tariff item 16) in a factory (say 'A') was getting masticated rubber in sheet form (classifiable under tariff 16A) from his two other factories one situated in the same Collectorate (say 'B') and another factory situated in a different Collectorate (say 'C') and using it in the manufacture of tyres. As the masticated rubber manufactured in factories 'B' and 'C' was totally exempt from duty (under a notification of April 1968), set off of duty on tariff item 68 inputs used therein as notified in a notification issued in June 1979 was not available to the manufacturer. The transfer of credits from factories 'B' and 'C' to factory 'A' was also not permissible. The claim of the assessee for set off of duty on tariff item 68 inputs used initially in the manufacture of masticated rubber, which was used subsequently in the manufacture of tyres in other factories, was therefore, rejected by the department and the appeal to the Collector (Appeals) also failed. The Central Board of Excise and Customs, however, allowed the appeal of the assessee in May 1981 on the ground that masticated rubber was only an intermediate product. Government took up the case for review and issued a show cause notice to the assessee on 21 December 1981 requiring him to show cause why his claim for set off should not be rejected. The assessee then approached the Delhi High Court and obtained a stay order in April 1982 restraining the department from interfering with the set off procedure availed by the assessee. Accordingly, the assessee was availing credit on account of duty paid on tariff item 68 inputs used in the manufacture of masticated rubber from June 1981 and utilising it towards payment of duty on tyres manufactured in factory 'A'.

Partial exemption to tyres to the extent of duty paid on certain other inputs going into their manufacture and falling under other tariff items like synthetic rubber (tariff item 16AA), carbon black (tariff item 64) and rubber processing chemicals (tariff item 65) was notified on 28 February 1982 and the assessee 'A' was permitted by the jurisdictional Assistant Collector on 10 May 1982 to avail set off under this notification, although the said inputs were used in the manufacture of masticated rubber in factories 'B' and 'C'. Accordingly, the assessee started availing proforma credit in factory 'A' to the extent of duty paid on these inputs used in the manufacture of masticated rubber in factories 'B' and 'C' from May 1982 onwards.

Since Government had already taken a stand (by issuing show cause notice in December 1981) that the manufacturer was not entitled to set off of duty paid on inputs falling under tariff item 68, the grant of permission by the Assistant Collector to the assessee in May 1982 to avail set off of duty paid on other inputs (falling under tariff item 16AA, 64 and 65), especially when the High Court stay order did not cover inputs falling under item other than tariff item 68 was irregular. On the irregularity being pointed out in audit in June 1983 and again reiterated in September 1984, the department accepted the objection and issued three show cause notices in April, September and November 1984 demanding a total amount of Rs. 29.38 lakhs covering the period from May 1982 to October 1984 and the demands were also later confirmed by the jurisdictional Assistant Collector.

Out of the total amount of Rs. 29.38 lakhs, a sum of Rs. 3.30 lakhs had been realised. Particulars of realisation of the balance amount were awaited (June 1985).

The Ministry of Finance stated (November 1985) that Rs. 3.30 lakhs out of the total amount of duty of Rs. 29.39 lakhs had been paid by the unit. They have added that the unit had filed an appeal which was pending decision before the Tribunal.

2.41 **Aluminium, iron and steel**

(i) **Aluminium circles**

As per a notification issued on 1 March 1975, aluminium circles were exempted from duty if they were manufactured from aluminium sheets on which appropriate amount of duty or countervailing duty has already been paid.

(a) A manufacturer of aluminium circles produced them from aluminium sheets which he had first manufactured out of crude aluminium. On aluminium sheets, which were also excisable goods, no duty was realised, still exemption as aforesaid was allowed on the aluminium circles. The irregular grant of exemption or alternatively the non-levy of duty on the sheets resulted in duty amounting to Rs. 14,25,961 not being realised on clearances made during the period from October 1982 to March 1985.

On the mistake being pointed out in audit (January 1984), the department stated (March 1984) that no duty was payable on the aluminium sheets, as it was an intermediate stage for the manufacture of circles.

Rules 9 and 49 of Central Excise Rules, 1944, do not allow excisable goods to be cleared or deemed to be cleared without payment of duty merely describing them as intermediate products. Even as per amendment to the said two Rules with effect from 9 July 1983, sheets cannot be cleared for manufacture into circles without payment of duty, since the circles were wholly exempted from duty.

The case was reported to the Collector in April 1985.

(b) Another licensee manufactured aluminium circles having thickness of and above 0.56 millimetres but not above 2.00 millimetres, after first manufacturing sheets from aluminium scrap procured from the market and duty paid aluminium ingots. No duty was paid on the aluminium sheets which were captively used for manufacture of circles though there was no valid exemption from duty for such sheets. The aluminium circles were allowed to be cleared under exemption from duty under the notification of 1 March 1975.

The irregular grant of exemption or alternatively the non levy of duty on sheets resulted in duty amounting to Rs. 2,44,175 not being realised on clearances made during April 1983 to July 1984.

On the mistake being pointed out in October 1984, the department held that the exemption allowed to aluminium circles was as per Board's Tariff Advice of 29 June 1981. However, the clarification issued by the Board cannot substitute a valid exemption notification.

In reply to above cases the Ministry of Finance stated (November 1985) that the aluminium sheets arising in the course of manufacture of aluminium circles had been exempted from payment of duty under a notification dated 1 August 1984 and for the past period, it was proposed to invoke, action under Section 11C of the Act.

(ii) C. I. Castings

Iron castings produced out of old iron or steel scrap or scrap obtained from duty paid virgin metal was exempt from duty under a notification issued in April 1962. The Board in its clarification issued in March 1984, held that the aforesaid exemption was not available where 'Iron castings' was manufactured from old iron or steel scraps in admixture with duty paid pig iron where the use of duty paid pig iron as done purposely and not out of mere "technological necessity". No other notification under Rule 8(1) of the Central Excise Rules, 1944, covered the exemption of duty on such products. Rule 56A of the Central Excise Rules, ibid, did not allow any set off of duty on goods (tariff item 25) till 31 July 1983.

A factory manufactured *inter alia*, 'C. I. Castings' (tariff item 25) using iron scraps in admixture with duty paid pig iron (62 to 87 per cent) and cleared them without payment of duty. Since iron casting was manufactured from old iron or steel scrap in admixture with duty paid pig iron (used purposely and not for technological necessity), the exemption under the aforesaid notification was not admissible. The incorrect grant of exemption resulted in duty amounting to Rs. 13.15 lakhs not being levied on 'C. I. Castings' cleared during January 1979 to July 1983.

On the mistake being pointed out in audit (December 1984), the department stated (July 1985) that it had issued (May 1985) a show cause-cum demand notice for Rs. 13.15 lakhs for the aforesaid period. It, however, did not admit the objection and maintained that according to Board's clarification issued (February 1982) in consultation with Ministry of Law, benefit of exemption was available to 'iron casting' (tariff item 25), since pig iron was used as a matter of technological necessity in as much as the exemption was admissible in the light of Supreme Court judgement in 1976 (Union of India *Vs.* M/s. Tata Iron and Steel Co. Ltd.).

The aforesaid judgement of the Supreme Court was in a different context. It dealt with exemption notification on a different product (steel ingot) under a different tariff item (erstwhile tariff item 26) and in any case could not be held to apply in the instant case ('iron castings' falling under tariff item 25). In view of the Board's clarification of March 1984 the department's stand which is detrimental to revenue cannot be accepted in audit.

Adjudication report of the demand including other developments, if any, was awaited (August 1985).

The Ministry of Finance stated (January 1986) that the party had filed a writ petition before the High Court and secured an injunction order.

(iii) Iron castings

Exemption from duty granted since 1 March 1964 to iron castings manufactured from old iron or steel scrap was rescinded on 1 August 1983. By another notification issued on the same day iron castings manufactured from scrap of iron only was exempted from duty. By another notification issued on 1 March 1984 iron castings manufactured from scrap of steel

also was exempted from duty. Thus during the period 1 August 1983 to 29 February 1984, no exemption was available to iron castings manufactured from an admixture of scrap of iron and scrap of steel.

(a) A manufacturer of electric motors was also manufacturing in his foundry since 1973 iron castings from an admixture of scrap of iron and scrap of steel. It was noticed in audit (June 1984) that these castings were continued to be cleared by him without payment of duty even during the period 1 August 1983 to 29 February 1984 resulting in nonlevy of duty amounting to Rs. 1,65,208 on castings cleared during the period.

When the mistake was pointed out in Audit (July 1984), the department stated (February 1985) that a show cause-cum demand notice for Rs. 1,65,819 had been issued.

The Ministry of Finance stated (December 1985) that the question of invoking Section 11C of the Central Excises and Salt Act, 1944 in respect of the goods cleared during the period from 1 August 1983 to 29 February 1984 was under examination.

(b) A factory manufactured 'Iron Castings' out of 'Bazar Scrap' which consisted of iron scrap as well as steel scrap and cleared the entire quantity of 'Iron Castings' without payment of duty during the period from August 1983 to February 1984. Duty, during the relevant period, however, was leviable on the quantity of 'Iron Castings', attributable to steel scrap used by the licensee. Short recovery of duty on this account during the period from August 1983 to February 1984 worked out to Rs. 34,473.

On the irregularity being pointed out in audit (February 1985), the department, *inter alia,* mentioned (May 1985) that it was not the intention of Government to deny exemption for a small period of seven months (August 1983 to February 1984). The fact however, remains that the notification, as it stood prior to 1 March 1984, did not allow such exemption.

The Ministry of Finance stated (December 1985) that the question of invoking Section 11C of the Central Excises and Salt Act, 1944 in respect of the goods cleared during the period from 1 August 1983 to 29 February 1984 was under examination.

(iv) **Steel flats**

As per a notification issued on 13 May 1980 'flats' [falling under erstwhile tariff item 26AA (iii)] exceeding 5 millimetres but not exceeding 10 millimetres in thickness were assessable to duty at the rate of Rs. 350 per tonne. Flats, exceeding 10 millimetres in thickness, however, attracted a lower rate of duty of Rs. 330 per tonne.

An integrated steel factory manufactured 'flats' and cleared them on payment of duty at the concessional rate of Rs. 330 per tonne. Operational statistics published by the assessee, however, revealed that they had also manufactured 'flats' not exceeding 10 millimetres in thickness. Failure to assess the goods correctly resulted in duty being levied short by Rs. 1.79 lakhs on clearances of 8970 tonnes of 'flats' not exceeding 10 millimeteres in thickness manufactured and cleared during April 1977 to August 1981.

On the mistake being pointed out in audit (September 1983), the department admitted the audit objection and stated (April 1985) that a show cause-cum demand notice was under process of adjudication.

The Ministry of Finance stated (October 1985) that demand for Rs. 1,90,102 had been confirmed and steps were being taken to realise the amount.

2.42 **Medicines**

(i) **Clinical samples**

As per a notification issued on 13 May 1980 'flats' nical samples of patent or proprietary medicines (tariff item 14E) were exempted from payment of duty if the samples were packed in a form distinctly different from regular trade packings and each smallest packing was marked with the words "physician's sample, not to be sold".

Two manufacturers of patent and proprietary medicines cleared clinical samples which were marked 'physician's sample, not to be sold' but not packed in a form distinctly different from regular trade packing. Incorrect grant of exemption resulted in non levy of duty amounting to Rs. 3.50 lakhs on clearances of samples made during the period from 1 January 1980 to 31 March 1983.

On the mistake being pointed out in audit (May 1983), the department while not admitting the objection stated (August 1984) that as per Board's instructions issued in July 1964 it was not necessary to use different packing materials for clinical samples. The reply does not explain how exemption could be allowed when the condition in the statutory notification that the samples be packed in a form distinctly different from regular trade packing had not been satisfied.

Also such a view of the Board cannot override the condition in the notification.

The Ministry of Finance stated (January 1986) that the question of amending notification dated 1 April 1977 was being examined.

(ii) **Patent medicines**

As per a notification issued on 3 May 1969 (as amended), patent or proprietary medicines falling under tariff item 14E and containing one or more ingredients specified in the schedule anexed thereto are fully exempt from duty, provided such medicines do not contain, any other ingredient not specified in the schedule, unless such ingredients are pharmaceutical necessities (such as diluents, disintegrating agents, moistening agents, lubricant, buffering agents, stabilisers and preservatives) and therapeutically inert.

Two patent or proprietary medicines manufactured by an assessee containing an ingredient specified in the schedule annexed to the aforesaid notification, namely dextrose (in injection *i.v.*) and diloxanide free of duty in terms of the aforesaid notification, even though these medicines contained, besides the specified ingredient, other non-specified ingredients, namely dextrose (in injection *i.v.*) and diloxanide furoate (in tablet). Technical opinion had not been obtained in respect of the two medicines before allowing exemption.

On the omission being pointed out in audit (May/June 1983), the department sought the opinion of the State Drugs Controller who reported that the other two ingredients were not pharmaceutical necessities and were also not therapeutically inert. Though show cause notices were issued for demanding duty on these two medicines, recovery proceedings in respect of the injection vial were later dropped (on the ground that the other ingredient therein was a pharmaceutical necessity and therapeutically inert), but duty of Rs. 67,362 in respect of the tablets cleared was recovered in January and March 1985.

The Ministry of Finance stated (September 1985) that the unit had paid Rs. 67,272 as the amount of duty on dilomat tablets.

2.43 **Sugar**

As per a notification issued on 21 April 1982 (as amended) where sugar produced in a factory during the period from 1 May 1982 to 30 September 1982 is in excess of the average production of sugar in the corresponding periods May to September of 1979, 1980 and 1981 in the preceding three sugar years 1978-79, 1979-80 and 1980-81 the quantity excess produced and cleared from the factory is exempted from duty @ Rs. 40 per quintal in the case of free sale sugar and @ Rs. 24.50 per quintal in the case of levy sugar.

The notification stipulated that for determining the average production of sugar, if in any of the preceding three sugar years there was no production during the period May to September, only the production in the corresponding periods in such of the three preceding sugar years in which the factory had actually produced was to be taken into account. Further, where production during May to September in all the preceding three sugar years was nil, the entire production during May to September 1982 would be entitled to the exemption. In other words to qualify for the exemption under the notification, the factory ought to have worked in all the preceding three sugar years viz. 1978-79, 1979-80 & 1980-81 though it did not produce any sugar during the period May to September in any or all the three sugar years.

(a) A sugar factory was licenced in February 1980 and it went into trial production in March 1980. As the factory was not in existence during the sugar year 1978-79 (October 1978 to September 1979) it was not eligible for the said exemption in respect of the excess sugar produced during the period May to September 1982.

A rebate claim of Rs. 3,12,310 in respect of the excess production of sugar during the said period of May to September 1982 preferred by the manufacturer was initially rejected (March 1983) by the adjudicating authority. On a *de novo* consideration at the instance of the appellate authority (October 1983) the claim was allowed by the adjudicating authority (November 1983).

When it was pointed out in audit (September 1984) that the grant of rebate was irregular, the department stated (March 1985) that it had initiated action for recovery of the rebate erroneously granted.

The Ministry of Finance stated (January 1986) that the concerned Collector was being asked to finalise the case.

(b) A unit was alowed rebate of Rs. 14,58,516 on levy/free sale sugar for the sugar year 1981-82 and Rs. 8,75,110 and Rs. 5,83,406 were credited in the PLA of the assessee in the months of March 1983 and June 1983. It was noticed in audit that the rebate in respect of free sale sugar was not worked out correctly. The rebate was allowed at the rate

of Rs. 40 per quintal without limiting it to the amount of duty of excise and special duty of excise payable on such sugar, as required under the aforesaid notification. The omission resulted in a rebate of Rs. 56,797 being allowed in excess on clearances made during the period from May to July 1982.

On the omission being pointed out in audit (August 1983), the department issued show cause notice (October 1983) for Rs. 3,30,024 which was not processed further pending decision of the appeal stated to have been filed by the department for the recovery of duty refunded in excess to the licensee. Decision of the Collector (Appeals) is awaited (March 1985).

The Ministry of Finance confirmed the facts as correct (November 1985).

2.44 **All other goods not elsewhere specified (T.I. 68)**

(i) As per a notification issued on 30 April, 1975, as amended, goods falling under tariff item 68 manufactured in a 'factory' and intended for use in the same 'factory' of the manufacturer or in any other 'factory' of the same manufacturer are exempt from the whole of the duty of excise leviable thereon, provided that where such use is in a factory of a manufacturer different from the factory where the goods have been manufactured, the exemption shall be allowable subject to the observance of procedure set out in Chapter X of the Central Excise Rules, 1944. According to Section 2(e) of the Central Excises and Salt Act, 1944, the term 'factory' means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on.

(a) The aforesaid exemption notification of 30 April 1975 does not cover complete machinery manufactured in a factory and meant for producing or processing any goods, even if they are intended for use in the same factory in which they are manufactured.

A unit manufactured 50 tonne evaporating pan and used it captively in a sugar factory without paying duty under tariff item 68.

On the omission being pointed out in audit (November 1983/January 1984), the department initially reported (May 1984) issue of a show cause notice for Rs. 1,31,572 but later contended (August 1984) that the said pan being used only for processing of an unmarketable intermediate product (Massecuite) in the manufacture of sugar, cannot be considered a complete machinery capable of producing goods for denying exemption. The contention of the department is not correct since, as per the notification exemption is not available even to machinery intended for processing of goods.

The Ministry of Finance stated (October 1985) that demand for Rs. 1,31,572 had been confirmed.

(b) The Customs, Excise and Gold Control Tribunal has held* that the word 'use' referred to in the aforesaid notification of 30 April 1975 does not mean a use which can be repeated but one which results in the article losing its identity as such article. It further held that this is evident from the second proviso of the notification which excludes from the scope of the notification complete machinery manufactured in a factory and meant for producing or processing any goods even if they are intended for use in the factory in which they are manufactured.

A manufacturer of plastic articles also manufactured dice and moulds of metal for making those articles. The captive use of dice & moulds was incorrectly granted exemption under the aforesaid notification instead of levying duty at 10 per cent *ad valorem*. This has resulted in short levy of duty amounting to Rs. 1.79 lakhs (approximately) on clearances made during the period from July 1983 to June 1984.

On the mistake being pointed out in audit (February 1985), the department, while not accepting the audit objection stated (April 1985) that the expression 'intended for use' could not be construed to mean 'should be consumed'. However the view of the department is not acceptable as the audit objection is based on the judicial interpretation.

The Ministry of Finance stated (November 1985) that in another** case the Tribunal had decided that the storage tanks and steam trap tanks were eligible for exemption under the said notification. The reply of the Ministry is silent on remedial action proposed to be taken for the future to resolve the contradiction which has arisen because of the two contrary decisions by the Tribunal.

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*M/s NOCIL Bombay
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**(M/s. Sunrise Soap & Chemicals Pvt. Ltd., 985(19)ELT 89)

(c) A manufacturer brought "zinc plates" and after some processings thereon, utilised them for printing of tin plates. These processed zinc plates are classifiable under tariff item 68 and the assessee availed exemption from duty on them as per the said notification. Since these zinc plates are repeatedly used for printing purposes, no exemption is admissible. This had resulted in non levy of duty to the extent of Rs. 25,000 on clearances made during the period from April 1984 to December 1984.

On the irregularity being pointed out in audit (January 1985), the department stated (March 1985) that these exposed/defaced sheets of zinc were not complete machinery, as such the exemption under the said notification could not be restricted. This reply of the department is not acceptable in view of the decision passed by the Tribunal.

The Ministry of Finance replied on the same lines as in the reply given to the preceding sub paragraph. The grant of exemption to the assessee was not warranted.

(d) Another assessee engaged in the manufacture of aluminium dice for mass production of wax patterns falling under tariff item 68, claimed exemption from payment of duty under the said notification dated 30 April 1975. As the dice manufactured by the assessee were repeatedly used, and did not result in the article losing its identity, duty amounting to Rs. 47,644 for the period from 1979 to 1981 would be leviable.

While not accepting the audit observations department stated that the notification dated 30 April 1975 did not require that the goods should be used as components or raw materials for production of other goods. This view is not acceptable, in view of the judicial interpretation of the word 'use' referred to above.

The Ministry of Finance stated (February 1986) that the exemption was rightly available as the input material falling under tariff item 68 was not cleared from the factory.

The Ministry's reply is not acceptable as the exemption under the aforesaid notification is not available to the "Machinery". The input (aluminium dice) is covered by dictionary meaning of the term "Machinery".

(ii) As per a notification issued on 18 June 1977 the goods falling under tariff item 68 are exempt from duty, if in or in relation to the manufacture of which no process is ordinarily carried on with the aid of power.

A manufacturer of re-inforced cement concrete hume pipes manufactured 'hume steel specials' technically known as tees, scour tees, bends etc. from steel blanks. The steel blanks were got manufactured with the aid of power through job workers with the materials supplied (9mm steel plates) by the manufacturer, on payment of conversion charges. The blanks so manufactured, were lined and coated with cement concrete manually and the finished products, 'hume steel specials' were permitted to be cleared without payment of duty under the notification dated 18 June 1977.

As power was used in the manufacture of steel blanks, at the intermediate stage in the process of manufacture, the finished products attracted duty under traiff item 68. On the non levy of duty amounting to Rs. 96,161 on clearances of these finished products from June 1983 to March 1985 being pointed out in audit (February 1985), the department admitted the objection.

The Ministry of Finance stated (October 1985) that the jurisdictional Assistant Collector had been asked to raise the demand.

(iii) As per notification issued on 22 June 1982 "bulk drugs" means any chemicals or biological or plant products conforming to pharmacopial standards used for the diagnosis, treatment, mitigation or prevention of diseases in human beings or animals and used as such or as an ingredient in any formulation.

A manufacturer of potassium mercuric iodide (concentrated) solution, (falling under tariff item 68) was allowed exemption under the aforesaid notification and cleared the same without payment of duty to another factory for the manufacture of a medicated soap. As 'potassium mercuric iodide concentrated solution' is not a "bulk drug", the grant of exemption was irregular and resulted in duty amounting to Rs. 1,93,608 not being realised on clearances made during the period from 22 June 1982 to 10 January 1984.

On the irregularity being pointed out in audit (December 1983), the department admitted (September 1984) the objection and issued demand for Rs. 1,49,839 which was confirmed in October 1984. The assessee company had, however, moved the Appellate Collector against the Assistant Collector's

order. The Appellate Collector's orders are awaited.

The Ministry of Finance confirmed the facts (October 1985).

2.45 **Tariff item 68 goods used in the manufacture of any goods**

(i) **Exemption not intended under notification**

As per a notification issued on 4 June 1979, on all excisable goods (on which duty of excise is leviable) in the manufacture of which any goods falling under tariff item 68 are used as inputs, levy of duty was exempt from so much of the duty of excise leviable thereon as is equivalent to the duty already paid on the inputs. The exemption was to be allowed subject to adoption by the manufacturer of a procedure (similar to that in Rule 56A) for allowance and utilisation of credit for duty paid on inputs and after he declared the input goods and output products to the department. The notification was amended on 28 February 1982 to say that the exemption would be available only if the inputs were specified to be raw materials or component parts.

(a) A manufacturer produced 'different goods' (tariff item 68) from 'duty paid goods' (tariff 68) and was allowed exemption as per the abovementioned notification. He did not use any duty paid goods as aforesaid in the manufacture of 'dished ends' (tariff item 68) but the aforesaid exemption was allowed to him. The incorrect grant of exemption resulted in duty being realised short by Rs. 2.39 lakhs on 'dished ends' cleared during the period from January 1983 to 12 April 1984.

On the mistake being pointed out in audit (November 1984), the department intimated (May 1985) that the aforesaid amount was paid by the assessee by adjustment in Account Current.

The Ministry of Finance have confirmed the facts (November 1985).

(b) A Public Sector undertaking availed credit of duty paid on 'goods' (classifiable under tariff item 68) brought into his factory and was allowed the above exemption to the extent of duty paid on them towards payment of duty on "springs and coal tubes" (tariff item 68) even though the said goods were not used as 'inputs' in the manufacture of the output products. Incorrect grant of exemption resulted in duty being realised short by Rs. 1,99,872 on clearances made during the period from April 1981 to July 1982.

On the mistake being pointed out in audit (September 1982), the department admitted (March 1984) the objection and intimated that an amount of Rs. 1.36 lakhs had been debited in Personal Ledger Account in December 1983.

The Ministry of Finance confirmed the facts (October 1985).

(c) An assessee engaged in the manufacture of electrical bulbs and fluorescent tubes (falling under tariff item 32) had a stock of 20,62,174 bulbs of rating less than 60 watts on 28 February 1983. Duty on such bulbs was withdrawn under notification dated 1 March 1983. Inputs falling under tariff item 68 involving a duty of Rs. 75,351 was estimated to have been utilised on 20,62,174 bulbs which were cleared without payment of duty after 1 March 1983. The said amount was utilised by the assessee towards payments of duty on other excisable goods being manufactured.

On the mistake being pointed out in audit (September 1984), the department stated (February 1985) that the demand had been raised.

The Ministry of Finance stated (October 1985) that "the objection is admissible provided the assessee had taken credit of duty paid on the inputs used in the manufacture of the stock of electric bulbs of rating less than 60 watts on 28 February 1983". The Ministry added that the Collector had been asked to verify the facts and finalise the case.

The Collector reported (January 1986) that the amount had been paid by the assessee on 26 December 1985.

(ii) **Relaxation of conditions**

In the notification issued on 4 June 1979 grant of exemption is subject to declaration of input goods and output products to the department. According to a notification issued on 21 January 1981 the Collector can at his discretion relax the provisions regarding filing of declaration.

Two manufacturers were allowed to avail exemption from duty, during the period from August 1979 to February 1985 in respect of input goods received in their factories on or after 4 June 1979, although in one case the manufacturer had filed a declaration only on 1 March 1985 and in the other case it was not filed with the department. The irregular grant of exemption resulted in duty being levied short by Rs. 2,82,112. The Collector had also not exercised his discretion to relax the condition regarding filing of declaration in these cases.

On the short levy being pointed out in audit (March 1983 and May 1984), the department issued (June

1985) show cause-*cum*-demand notice for Rs. 2,07,192 in one case. Reply in the other case involving short levy of Rs. 74,920 was awaited (July 1985).

The Ministry of Finance stated (January 1986) that though the required declaration was not filed separately, the assessee had followed all other formalities and procedures. The Ministry added that the Collector is empowered to relax the provisions regarding giving declaration under the notification. The fact however, remains that the Collector has not condoned the delay in submission of declaration.

(iii) **Input not raw material or components**

The aforesaid notification issued on 4 June 1979 was amended in February 1982 whereby the exemption is available only if the inputs are raw materials or component parts of the output and not if the inputs are used otherwise.

(a) A manufacturer of vegetable products was allowed exemption from duty as aforesaid on nickel catalyst (classifiable under tariff item 68) which was purchased from other manufacturers. As nickel is used in the manufacture of vegetable product as a catalyst and does not take part in the reaction, the exemption allowed was irregular and resulted in duty being levied short by Rs. 59,062 on clearances made during the period 13 May 1982 to 12 June 1983.

On the mistake being pointed out in audit (November 1983), the department raised a demand for Rs. 77,142 for the period March 1982 to October 1983 in January 1984; the same was confirmed in October 1984.

The Ministry of Finance stated (November 1985) that the duty amounting to Rs. 77,142 had been recovered from the unit in June 1985.

(b) An assessee engaged in the manufacture of mopeds [falling under tariff item 34 I(1)] was allowed to avail credit in respect of duty paid under tariff item 68 on phosphoric acid, pyrobond, pyrodine and pyrokline under the aforesaid notification. As these chemicals were only used as de-rusting agents for removal of rust from the metallic components before phosphating and painting and not as raw materials or component parts in the manufacture of mopeds, set off of duty paid on these inputs allowed was not in order.

On the irregular set off of duty of Rs. 37,452 availed during the period April 1983 to June 1984 being pointed out in audit (August/October 1984), the department intimated (March/April 1985) that action was being taken to recover the credit in respect of these inputs and to disallow credits therefor in future.

The Ministry of Finance confirmed the facts (September 1985).

(c) An assessee was manufacturing a product called sulphur dioxide from sulphur and used the same as whitening agent in the manufacture of sugar. As the sulphur dioxide acted as catalyst and was recovered and repeatedly used for whitening of sugar, the exemption availed under the aforesaid notification was not in order. The irregular grant of exemption resulted in duty amounting to Rs. 50,000 (approximately) being levied short on clearances made during 1982-83 and 1983-84.

On the mistake being pointed out in audit (May 1984), the department did not accept the objection (April 1985), stating that it was not compulsory or obligatory that such goods must go in the manufacture as raw material or input and that the notification only expected that such goods must be used in the factory itself. But the plain meaning of the notification contemplates that the raw material must be fully used in the manufacture of sugar and should not be capable of repetitive use. The exemption availed of was, therefore, irregular.

The Ministry of Finance stated (February 1986) that the exemption was rightly available as the input material falling under tariff item 68 was not cleared from the factory.

The Ministry's reply is not acceptable as the input material (sulphur dioxide) acted as catalyst and was recovered and repeatedly used for whitening of sugar. Exemption under the above notification is available only on the final and actual 'use' of the input.

EXEMPTION TO SMALL SCALE MANUFACTURERS

2.46 Irregular grant of exemption on clearance of specified goods

As per a notification issued on 1 March 1983 on specified excisable goods cleared for home consumption by a manufacturer during the financial year 1983-84, levy of duty was wholly exempt on the first clearance upto a value of Rs. 7.5 lakhs and only 75 per cent of duty otherwise leviable was to be levied on the subsequent clearance upto a value of Rs. 17.5 lakhs. This concession was subject to the condition that the exemption would be admissible to a manufacturer if the aggregate value of specified goods cleared for home consumption during the preceding financial year had not exceeded Rs. 25 lakhs. A manufacturer who had made clearances for the first time on or after the 1st day of August in the preceding financial year is required to file a declaration that the

aggregate value of clearances during the financial year is not likely to exceed Rs. 25 lakhs. The value of his clearances during the financial year also should not exceed Rs. 25 lakhs for availing the concession.

(i) A manufacturer of biscuits cleared goods for the first time in December 1982. He started availing himself of the aforesaid concession in the financial year 1983-84 without filing the prescribed declaration. He availed the concession upto 8 December 1983, when the value of clearances reached the limit of Rs. 25 lakhs. Thereafter he continued to make further clearances and the total clearances in that year aggregated Rs. 35.23 lakhs. As the value of clearances exceeded Rs. 25 lakhs, the exemption granted right from 1 April 1983 was irregular and resulted in a short levy of duty amounting to Rs. 1,24,688 on the clearances from 1 April to 8 December 1983.

On the short levy being pointed out in audit (June 1984) the department raised a demand for Rs. 1,24,688 in June 1984 and contended that the short levy was noticed in May 1984. However, even though the clearances had exceeded the limit of Rs. 25 lakhs in December 1983 itself requiring the department to raise a demand for the differential duty for all the clearances made from 1 April 1983, immediately thereafter, no action was taken by the department till June 1984. The Department had also not obtained the requisite declaration from the assessee.

The department stated (February 1985) that a sum of Rs. 16,000 had been realised and the balance demand of Rs. 1.09 lakhs would be recovered in instalments.

The Ministry of Finance confirmed the facts (October 1985).

(ii) A licensee cleared adhesive tapes (tariff item 60) one of the specified goods without payment of duty during the period from April 1983 to 28 January 1984 even though the aggregate value of excisable goods cleared during the preceding financial year had exceeded Rs. 25 lakhs. The licensee was, therefore, not entitled to avail of the exemption. This resulted in duty amounting to Rs. 87,165 being levied short on 'adhesive tapes' of the value of Rs. 5,53,429 cleared during the period from 1 April 1983 to 28 January 1984.

On the mistake being pointed out in audit (March 1984), the department replied (August 1984 and October 1984) that the omission was due to submission of incomplete declaration by the licensee regarding description, quantity and value of goods manufactured and cleared. It was stated further that a show cause-*cum*-demand notice covering duty of Rs. 1,22,544 on the goods cleared during the year 1983-84 was issued to the licensee (August 1984). Further development in regard to adjudication of the case/realisation of duty short levied is awaited.

The Ministry of Finance confirmed the facts (November 1985).

2.47 Loss of revenue due to legal avoidance of duty liability

Under a notification issued on 19 June 1980 (superseded by another notification on 1 March 1983), first clearances of specified excisable goods by a manufacturer upto a value of Rs. 7.5 lakhs in a year were fully exempt from duty and subsequent clearances upto a value of Rs. 7.5 lakhs were liable to pay only 75 per cent of duty subject, *inter alia*, to the condition that the value of the specified goods cleared during the preceding financial year by the manufacturer did not exceed Rs. 15 lakhs and the value of clearances of all excisable goods during the preceding financial year did not exceed Rs. 20 lakhs.

An assessee, a partnership concern having three brothers as partners, manufactured electrical mixies falling under tariff item 33 C under a trade name and availed exemption during the period October 1981 to February 1982 since the value of his clearances was less than Rs. 7.5 lakhs. There was no further production in this unit after February 1982. Another partnership concern having one of the three partners of the aforesaid firm and his father and sister as other partners situated close to the first unit was also manufacturing electrical mixies under the same trade name and was availing exemption under the aforesaid notification simultaneously during 1981-82 and when the value of clearances reached Rs. 13.75 lakhs the factory was closed. A third unit, a Private Limited company with five directors started manufacturing electrical mixies with the same trade name in the same premises, where the second unit functioned. Two partners each of the first two units *viz.*, father and two sons happened to be directors in this company, while two others were unrelated persons. Further, all the three units marketed their products through the same two distributors under the same brand name.

The department booked cases against the second and third units and then held that the second and third units were not entitled to exemption separately, that the clearances of both were to be aggregated for deciding their eligibility to exemption and accordingly imposed penalty and demanded duty. The appeal filed by the assessee was dismissed by the Appellate Tribunal and the appeal filed before the Supreme

Court was also not admitted. The eligibility to exemption of the first unit should also have been re-examined on the same grounds but was not done.

As the first unit was owned by the members of the same family and the goods marketed under the same brand name, this unit also cannot be held to be eligible to avail exemption independently. Further, this is a clear case, where more than one unit owned by members of the same family availed exemption separately by regulating production and clearances from each unit, thus defeating the very purpose of granting exemption to small scale units. The duty due, in respect of clearances effected during 1981-82 and 1982-83, if the exemption was denied to the first unit, amounted to Rs. 2.19 lakhs.

On this being pointed out in audit in July/November 1984, the department justified (December 1984) the assessment on the ground that the three units were separate legal entities and hence were eligible for the exemption individually.

The Ministry of Finance stated (November 1985) that the first unit was a separate entity but the production of the second and third units was aggregated as both of them manufactured the product in the same factory at different times and as such were not entitled to exemption. Particulars of recovery are awaited (January 1986).

2.48 **Irregular grant of exemption on clearances of TI 68 goods in excess of the limit applicable to small scale units**

As per notification issued on 19 June 1980, on clearances of goods (classifiable under tariff item 68) upto a value of rupees thirty lakhs in a financial year, levy of duty was exempted if the goods were cleared for home consumption by or on behalf of a manufacturer from one or more factories provided the value of such goods cleared during the preceding financial year did not exceed rupees thirty lakhs.

(i) A manufacturer of sluice gates, base plates etc. falling under tariff item 68 availed exemption under the aforesaid notification during 1982-83 (upto 29 July 1982) as he had made clearances valuing Rs. 27,24,983 during the previous year 1981-82. Audit, however, found (April-May 1982) from the three invoices that, in addition to manufacturing tariff item 68 goods, the manufacturer had also undertaken the job work of machining of castings. The goods so cleared would therefore fall under tariff item 68 and the exemption limit of Rs. 30 lakhs was to be computed after taking into account the total value (*i.e.*, value of job work including the value of raw material) of the goods cleared after doing the job work. The department did not give any reply to the audit observations. It was, however, noticed subsequently in the audit conducted in July 1983 that the preventive officers of the department had conducted a search of the premises of the manufacturer on 29 July 1982 and had seized incriminating documents indicating that the assessee might have actually cleared excisable goods in excess of Rs. 30 lakhs limit during the year 1981-82. The Assistant Collector (Preventive), thereafter, issued a show cause-*cum*-demand notice for Rs. 1,66,311 on 24 May 1983 which was confirmed on 17 October 1984. Particulars of recovery of Rs. 1,66,311 were awaited (July 1983).

The matter was brought to the notice of the department who admitted the audit objection.

The Ministry of Finance stated (November 1985) that besides imposing a penalty of Rs. 15,000 the demand for Rs. 1,53,227 had been confirmed. The assessee had, however, gone in appeal before CEGAT.

(ii) A manufacturer of goods (falling under tariff item 68) cleared the same free of duty on the basis of the aforesaid notification in 1981-82 on the ground that total value of goods cleared in 1980-81 was below 30 lakhs. The department approved the exemption for the first 30 lakhs during 1981-82 out of which Rs. 5.92 lakhs represented goods of other parties belonging to the corporate sector. The goods manufactured on behalf of other parties were not eligible for exemption because the other parties who had supplied raw materials and given specification needed to be regarded as the manufacturer within the meaning of Sec. 2(f) of the Central Excises and Salt Act, 1944, as decided by the Supreme Court in their judgement delivered on 15 December 1971 in the case of Shree Agency and the value of their clearance for 1980-81 exceeded Rs. 30 lakhs. The goods of their own manufacture also were not eligible for exemption because the total value of goods cleared for 1980-81 if properly evaluated on the basis of the price at which the goods were sold by the loan licensees or on the basis of costing which included the profit element as well as wastage would have exceeded the stipulated limit of Rs. 30 lakhs. The total non levy on both the counts amounted to Rs. 2.40 lakhs during the year 1981-82.

On the mistake being pointed out in audit (April 1983) the department, did not accept the objection and stated (August 1984) that

argument of treating the parties on whose behalf the goods were manufactured as manufacturer was not correct in view of the decision of the Customs Excise and Gold (Control) Appellate Tribunal in the case of Lucas India Service Ltd. But the contention of the department cannot be accepted because the said decision had been contested by the Ministry in the Supreme Court and the Ministry in their letter dated 14 May 1982 issued instructions to treat the loan licence as manufacturer in such case.

The Ministry of Finance did not accept the objection and stated (January 1986) that the issue concerning the status of loan licensee was determined by the Supreme Court in the case of Union of India *vs.* Cibatul Ltd. [1985-(22)ELT 302] and accordingly the assessee company was the actual manufacturer. The Ministry's reply is not correct as the ratio of Supreme Court judgement referred to by the Ministry was not applicable in the present case. Since the loan licensee had supplied the raw material to the assessee company the ratio of Supreme Court's earlier decision in the case of M|s. Shree Agency *vs.* Shri S. K. Bhattacharjee & other referred to in para 1(i) of Ministry's letter of 14 May 1982 was applicable to this case. According to this judgement person who supplied raw material and got the goods manufactured on his account was a manufacturer.

IRRREGULAR GRANT OF CREDIT FOR DUTY PAID ON RAW MATERIALS AND COMPONENTS (INPUTS) AND IRREGULAR UTILISATION OF SUCH CREDIT TOWARDS PAYMENT OF DUTY ON FINISHED GOODS (OUTPUTS)

2.49 Irregular utilisation of credit of duty paid on input goods used in the manufacture of exempted goods

As per Rule 56A of the Central Excise Rules, 1944, credit for the duty on raw materials and components is allowed to be utilised towards payment of duty on finished products in the manufacure of which the raw materials and components are utilised provided the raw material and the finished goods fall under the same tariff item or the utilisation of duty paid raw material and components towards duty payable on a finished product has been specifically permitted by the Central Government by issue of a notification.

As per proviso (i) to Rule 56A(2) no credit shall be allowed in respect of any material or component parts of the finished excisable goods which are exempt from the whole of duty of excise leviable thereon or are chargeable to nil rate of duty.

(i) A manufacturer of electric motors received duty paid electric stampings (falling under tariff item 28A) for the purpose of using the same in the manufacture of electric motors. He was allowed to utilise the credit under Rule 56A in respect of duty paid on the electric stampings. Some of the electric motors, manufactured out of such electric stampings, were cleared by the assessee, to Kandla Free Trade Zone, without payment of duty. As the clearance of electric motors, to Kandla Free Trade Zone, was without payment of duty, the credit of Rs. 3,93,730 (Approx.) taken under Rule 56A was not correct.

On the mistake being pointed out in audit (November 1984), the department stated (May 1985) that in view of the Ministry's clarification of December 1984, the objection appears to be correct and that show cause-*cum*-demand notice for Rs. 3,10,210 in respect of duty not levied during the period from April 1984 to October 1984 had been issued. Further developments were awaited (July 1985).

The Ministry of Finance confirmed the facts (October 1985).

(ii) A manufacturer of aluminium extruded shapes and sections also manufactured pipes and tubes (falling under tariff item 27), which were dutiable at the rate of 16 per cent *ad valorem* under notification dated 1 March 1975, as amended. These pipes were used in sprinkler equipment for irrigation purposes and were exempted from duty by another notification dated 1 March 1983. After issuance of this exemption notification, no proforma credit was admissible in respect of duty paid on aluminium used for the manufacture of the pipes|tubes under Rule 56-A *ibid* as explained above.

The unit cleared 72.76 tonne of aluminium pipes/tubes for use in sprinkler equipments for irrigation purposes at nil rate of duty during the period from September 1983 to January 1984. The unit did not maintain separate raw material account of aluminium used for these pipes. However, after taking into account burning losses, the unit should have consumed 77.41 tonne of aluminium ingots|billets. On this quantity of raw material proforma credit of Rs. 1,18,976 was taken which was wrongly utilised towards payment of duty on clearances of extruded shapes and sections only.

The irregularity was pointed out by audit in September 1984.

The Ministry of Finance stated (September 1985) that the amount of Rs. 1,18,976 had been debited in the factory's R.G. 23 account on 7 August 1984.

(iii) A manufacturer who was allowed the exemption from duty paid on rotors and stators used in the manufacture of fans was allowed to clear them without payment of duty to the factories situated in Free Trade Zones, SEEPZ and KANDLA PORT; by virtue of a notification issued in October 1979. As these fans were cleared without payment of duty, no credit of duty paid on rotors and stators used in these fans would be admissible. This resulted in the irregular availment of credit to the extent of Rs. 50,000 (approximately).

On the mistake being pointed in audit (December 1984), the department admitted (April 1985) the objection. Further report regarding issue of show cause-cum demand notice etc. is awaited.

The Ministry of Finance confirmed the facts (October 1985).

2.50 **Irregular grant or utilisation of proforma credit**

Rule 56A of 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 mauufacture 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 if the credit of duty had been paid on raw materials or component parts.

(i) A manufacturer of steel furniture (falling under tariff item 40) availed of the proforma credit of duty paid on inputs (falling under tariff item 68) used in the manufacture of steel furniture in terms of the notification issued on 4 April 1979. As duty payable on a particular input known as "Boards", which was supplied by a company in Hyderabad was stayed by the Government vide their order dated 8 March 1982, duty on such "Boards" was therefore not paid by the Hyderabad company. The assessee company was, therefore, not eligible to claim proforma credit of duty on such "Boards". This has resulted in duty to the extent of Rs. 4,44,800 being realised short on clearances made during the period from 3 August 1982 to 22 July 1984.

On the irregularity being pointed out in audit (July 1984), the department stated (February 1985) that credit wrongly availed of had been debited in the personal ledger account in November 1984 and further benefit had been withdrawn.

The Ministry of Finance confirmed the facts (October 1985).

(ii) Another manufacturer of 'electric fans' also produced 'electric motors' which were consumed captively in the manufacture of fans. He was allowed to utilise the credit of the duty paid on the latter in discharge of duty liability on the former in terms of a notification dated 1 March 1983. On clearance of each fan (blade sweep not exceeding 107 centimetres) manufactured by using motors of specified specifications, a part of the credit of the duty paid on motor became excess as the duty paid on motors exceeded the duty payable on fan. This resulted in an excess utilisation of credit of Rs. 60,327 during March 1984 to November 1984, in discharge of duty liability on other fans in which motors of the aforesaid specifications were not used. This further resulted in duty being levied short by Rs. 60,327 on clearances made against incorrect utilisation of the excess credit.

The Ministry of Finance stated (December 1985) that duty amounting to Rs. 60,327 had been recovered.

2.51 **Utilisation of credit in other than prescribed manner**

Sub rule 3(vi) of Rule 56A of Central Excise Rules, 1944 provides that credit of duty allowed in respect of any material or component parts may be utilised towards payment of duty on any finished excisable goods for the manufacture of which such material or component parts are permitted to be brought into the factory or where such material or component parts are cleared from the factory as such, on such material or component parts. No part of such credit can be utilised otherwise or refunded in cash or by cheque.

(i) A manufacturer of asbestos cement products was premitted to take credit of duty paid on pressure pipes brought from his other factory for their convenient distribution. The credit of duty so taken was utilised by him towards payment of duty on other asbestos cement products to the extent of Rs. 5,16,865 during the period from 27 February 1984 to 2 April 1984. This was irregular because the pressure pipes for which credit of duty was taken were not used either as raw material or component parts in the manufacture of asbestos cement products. The irregular utilisation of credit had resulted in short levy of duty of Rs. 5,16,865.

On the mistake being pointed out in audit (April 1984), the department issued a show cause-cum demand notice for Rs. 7,16,444 and confirmed the demand in March 1985. The recovery particulars were awaited (July 1985).

The paragraph was sent to the Ministry of Finance in August 1985; their reply is awaited (January 1986).

(ii) An assessee manufacturing 'Carburettors' and other unspecified motor vehicles parts (falling under tariff item 68) was allowed to bring duty paid carburettors for two wheelers and spares (intended for spare parts market) manufactured in the sister factory into his main factory for more convenient distribution, following Rule 56A procedure. But, the credit pertaining thereto was incorrectly utilised for payment of duty on other motor vehicle parts manufactured in the main factory. It has resulted in irregular utilisation of credit totalling Rs. 1,73,500 during the period from September 1983 to July 1984.

On the irregularity being pointed out in audit November 1984/January 1985), the department while accepting the objection intimated (June 1985) about issue of show cause notice in March 1985 but, contended that it was only a technical lapse.

The Ministry of Finance stated (November 1985) that duty of Rs. 3.04 lakhs had been demanded from the unit.

2.52 Credit not lapsed or expunged

Under a notification issued on 1 March 1983 under Rule 8(1) of Central Excise Rules, 1944 specified excisable goods are exempt from duty to the extent of duty paid on specified inputs used in their manufacture, subject to observance of Rule 56A procedure. Consequently, set off or proforma credit under this exemption notification will not be admissible, if the finished product (or output) does not suffer any duty.

An assessee availed proforma credit of duty paid on electrical stampings and laminations (tariff item 28A) and utilised the credit towards payment of duty on electric motors (tariff item 30) manufacturned therefrom. In respect of electric motors (like starter motors, armature and wiper motor) exported under bond, the assessee was not entitled to avail set off or proforma credit of duty paid on electrical stampings and laminations used in their manufacture and the proforma credit already allowed should have been expunged. This was, however, omitted to be done. The credit to be expunged in respect of 7301 starter motors exported during 1984 alone is roughly estimated at Rs. 55,776. The total credit in respect of all types of motors exported under bond so far remains to be ascertained.

On the omission being pointed out in audit (January|March 1985), the department held the view (July 1985) that in the light of a clarification issued by the Ministry of Finance in 1973 and in the absence of any provision in Rule 56A denying proforma credit in respect of inputs used in the manufacture of finished goods exported under bond, the audit observation was not acceptable.

However, the department had actually extended the credit (or set off) in this case in terms of an exemption notification issued under Rule 8(1) and hence, the application of Rule 56A to provide the concession to the assessee, was irregular.

The Ministry of Finance stated (December 1985) that the issue whether the goods manufactured under the provisions of Rule 56A and exported in bond would be treated as exempted from payment of duty or chargeable to nil rate of duty was referred to the Ministry of Law who have advised that the goods exported in bond in such cases could not be treated either as exempted from payment of duty or chargeable to nil rate of duty. As such availment of proforma credit on goods exported under bond could not be said to be irregular. The reply of the Ministry is not relevant to this case because credit of duty paid on inputs in the case was available not by virtue of Rule 56A but was available by virtue of a notification dated 1 March 1983 which was issued under Rule 8(1). This notification exempts output goods from duty to the extent of duty paid on input goods. Since output goods in this case were exported in bond and no duty was leviable thereon, no exemption to the extent of duty paid on inputs was admissible.

2.53 Clearance of waste or scrap without payment of duty after availing credit on inputs

Sub-rule 3(iv) (a) of Rule 56A of the Central Excise Rules, 1944 requires that any waste arising out of the raw materials or component parts in respect of which credit has been allowed towards duty paid on them should be cleared only on payment of duty. Under sub-rule 3(vi) credit cannot be utilised towards payment of such duty except where the waste is identifiable and classifiable to be the same raw material or component parts as such.

A manufacturer was allowed credit for duty paid on 'goods falling under tariff item 68' used in manufacture of viscose filament yarn (tariff item 18). However, he was allowed to utilise part of the credit towards payment of duty on wastes (not identifiable with goods falling under tariff item 68) arising in course of manufacture of viscose filament yarn. The irregular utilisation of the credit resulted in duty being realised short by Rs. 1.12 lakhs on clearances of wastes made during the period from July 1980 to February 1983.

On the mistake being pointed out in audit (September 1983), the department intimated (January 1985) that demand for Rs. 1.12 lakhs was raised in March 1984.

The Ministry of Finance stated (November 1985) that viscose filament yarn and waste yarn both fall under tariff item 18 II(ii). As such the declaration made in respect of rayon yarn would cover waste yarn also. The Ministry's reply is not correct because waste arising in the manufacture of viscose filament yarn is not covered under tariff item 18II(ii).

DEMANDS FOR DUTY

2.54 **Demands pending collection**

As per Rules 9 and 49 of Central Excise Rules, 1944, no excisable goods shall be removed from any place, where they are produced, cured or manufactured or from any premises appurtenant thereto until duty leviable thereon has been paid.

On 31 March 1984 duty amounting to Rs. 323.50 crores in 2833 cases, in twenty one out of thirty two Collectorates, was not collected from the licensees because of stay granted by the courts (Collectorwise details are given in annexure 2.2). Out of this duty amounting to Rs. 171.51 crores in 907 cases was secured by the bank guarantees given by the licensees.

Disputed demands amounting to Rs. 33.78 crores in 1021 cases were not recovered by the department even though no stay had ben granted by any Court/ Tribunal or Appellate Authority.

Duty amounting to Rs. 81.90 crores in 37554 cases was not recovered even though the cases were not before any Court/Tribunal or Appellate Authority.

2.55 **Demands barred by limitation**

As per Section 4 of Central Excises and Salt Act, 1944, when goods are assessable to duty *ad valorem*, the normal price at which excisable goods are ordinarily sold to a buyer in the course of wholesale trade for delivery at the time and place of removal would be the assessable value. Thus raw materials used in the manufacture of goods should be included in the price of manufactured goods for the purpose of determination of assessable value.

As per a notification issued on 30 April 1975, goods (falling under tariff item 68) manufactured in a factory as a 'Job work' (defined in an explanation below the notification *ibid*) are assessable to duty on the amount charged for job work. With effect from 1 April 1981, the aforementioned notification was rescinded, and Rule 56C (prescribing modality of assessment of goods manufactured as job work) was introduced in the Central Excise Rules, 1944 from the same date. Therefore, on goods (tariff item 68) manufactured as job work from 1 April 1981, duty is leviable on assessable value as determined under section 4 ibid, if the procedure prescribed in Rule 56C is not followed.

A manufacturer doing job work on behalf of another manufacturer (who supplied raw materials) continued to pay duty even after 1 April 1981, only on the value of job charges realised by him and excluding the value of raw materials supplied by the latter. He also did not follow the procedure prescribed in Rule 56C. This resulted in short levy of Rs. 73,152 due to under valuation of goods cleared during April 1981 to September 1981.

On the mistake being pointed out in audit (December 1981) the Assistant Collector issued a show cause notice in November 1982 demanding duty of Rs. 1,38,724 on clearances during April 1981 to March 1982. The Collector, however, set aside the demand since it was barred by limitation as per Section 11A ibid. As a result duty of Rs. 1,38,724 was a loss to Government due to inordinate delay in issuing the show cause notice which clearly points out gross negligence on the part of the department.

The Ministry of Finance stated (December 1985) that the facts were not disputed.

2.56. **Delays in demanding duty**

As per a notification issued on 18 June 1977 superseded by another notification of 1 March 1979, goods falling under tariff item 68 and cleared in a financial year by or on behalf of a manufacturer from one or more factories upto a value of Rs. 30 lakhs upto 1978-79 and upto Rs. 15 lakhs in a year thereafter were exempt from duty if the total value of such goods cleared did not exceed Rs. 30 lakhs in the preceding financial year. But, ancillary units in small scale sector manufacturing Boiler components on behalf of a large Public Sector undertaking were denied the aforesaid exemption by the department on the ground that the latter was the real manufacturer of such goods. The ancillary units moved the High Court and obtained orders on 6 January 1981 to the effect that each such unit was to be treated as a manufacturer entitled to the exemption individually. A copy of the judgement of the High Court was received by the department on 26 May 1981, whereupon the department issued show cause-*cum*-demand notices for duty found due from eleven ancillary units even

after allowing the benefit of exemption individually (on clearances in excess of Rs. 15 lakhs/30 lakhs in a year or where no exemption was available, the clearances in the preceding year having exceeded Rs. 30 lakhs) in August and November 1981 (*i.e.* within six months from the date of receipt of copy of the judgement). On appeal by the assessee the Appellate Collector/CEGAT held that the time limit of six months under Section 11A of Central Excises and Salt Act, 1944, should be reckoned from the date of pronouncement of the judgement *viz.* 6 January 1981 (and not the date of receipt of copy thereof) and accordingly set aside the demands on grounds of limitation. As a sequel to the judgement, the department had actually called for details of clearances from 1978-79 onwards from the assessees on 9 February 1981 but evidently show cause notices were not issued in time.

The total loss of revenue due to delay in demanding duty amounted to Rs. 5.34 lakhs in respect of the 11 factories.

The Collector contended (April 1985) that there was actually no loss of revenue since, even if duty had been recovered from the ancillary units, the public sector undertaking would have availed set off of duty so paid.

The Ministry of Finance also agreed (November 1985) with the view of the Collector. This argument is not, however, tenable since the exemption availed by the ancillary units was irregular and the availing of set off of duty paid by such ancillary units is not automatic, but subject to fulfilment of several conditions.

IRREGULAR REBATES AND REFUNDS

2.57 Excess grant of rebate under incentive scheme to encourage higher production

For furthering the objective of industrial growth during the productivity year 1982, Section 37 of the Central Excises & Salt Act, 1944, was amended by Section 48 of the Finance Act, 1982 empowering Government to frame Rules to provide incentives for increased production or manufacture of any goods by way of remission of or any concession with respect to duty payable under the Act. By a notification issued on 27 November 1982 the Central Government introduced Rule 56AA in the Central Excise Rules, 1944 to provide credit of duty paid on excisable goods cleared from a factory for home consumption. Simultaneously, another notification was issued under Rule 56AA providing for excise duty concession for enhanced clearance of 70 specified goods during the period of 12 months commencing from 1 March 1982. The benefit under the scheme was to accrue only in cases where during the incentive period the clearance of goods specified in Table A|Table B of the notification exceeded 110 per cent|120 per cent of the clearance during the base period. The duty concession in the form of credit was to be 1|5th of the total amount of duty paid on excess clearance in respect of goods carrying effective basic rate of excise duty of 20 per cent *ad valorem* or less, and 1/10th of such duty in other cases. The scheme was continued in the year 1983 and liberalised to provide for enhanced credits during the incentive period between 1 March, 1983 to 29 February, 1984.

A Public Sector undertaking manufacturing power driven pumps claimed incentive rebates of Rs. 1,24,793 and Rs. 9,31,763 on excess clearances effected during the incentive periods commencing from 1 March 1982 and 1 March 1983, in May 1983 and May 1984 respectively which were allowed (March/May 1984) by the department. It was noticed (December 1984) in audit that during the concerned incentive periods the factory had availed exemption of the duty paid on inputs (used in the manufacture of P.D. Pumps) under a notification dated 4 June 1979, to the extent of Rs. 1,10,000 and Rs. 10,11,036. These amounts were, however, included in computing the duty of excise paid to Goverment. Non exclusion of the amount of exemption enjoyed by the factory from computing duty paid on excess clearances resulted in grant of excess credits amounting to Rs. 39.600 and Rs. 3,84,194 for respective incentive periods.

On the matter being pointed out in audit in March 1985, the department stated (June 1985) that the duty of excise paid would not be effected in view of Explanation 4 of the notification concerned. But this explanation is relevant only for deciding the rate at which the concession is to be allowed and not for computing the quantum of excise duty actually paid by the assessee for working out the concessions available to them. In computing the duty of excise paid, duty on inputs was included twice-ones as duty paid on inputs and again the same amount included alongwith the duty paid on output-which is not covered by the explanation 4 *ibid.*

The Ministry of Finance while not admitting the objection stated (December 1985) that there could not be two effecive rates of duty for one product and once the effective rate of duty had been found out, the quantum of duty paid by the assessee would be worked out on that basis alone. The Ministry's reply is not acceptable because the words "duties of excise paid" and "effective rate of duty leviable under the Central Excises Act" used in the notification have

been defined differently in explanations (3) and (4) of the notification. As per explanation (3) *ibid* "duties of excise paid" means the sum total of the duties of excise, if any, paid under the Central Excises and Salt Act, Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 and Section 50 of the Finance Act, 1982. As such the quantum of "duties of excise paid" is to be worked out by totalling the actual duties paid by the assessee and not to be worked out notionally as opined by the Ministry. The grant of excess credit was, therefore, not warranted.

2.58 **Excess grant of rebate on incentive to produce more sugar**

Under notification issued on 12 October 1974 as amended, sugar factories are entitled to rebate of excise duty payable on sugar on the quantity of excess production over the average production of five preceding years.

A sugar factory started production of sugar after 1967-68 and the first two years, production was not to be taken into account for average production. There was production in the corresponding period of 1971 (October-November) and 1972 (October-November) but there was no production in 1973. In respect of their claims for 1974 (October-November), the assessee company calculated average production taking into account the production for earlier 5 years, while the department calculated the same on the basis of production for earlier two years. The issue was settled in appeal in December 1982 in favour of the assessee.

While sanctioning the rebate claim of the assessee in July 1983, as decided in appeal, the department had calculated and allowed excess rebate of Rs. 1,38,774 based on earlier 3 years and also an amount of Rs. 1,92,722 based on earlier 5 years.

When the erroneous rebate of Rs. 1,38,774 (in addition to Rs. 1,92,722 admissible) was pointed out in audit in August 1984; the department replied (June 1985) that the amount of Rs. 1,38,774 had since been debited to personal ledger account.

The Ministry of Finance confirmed the facts (November 1985).

2.59 **Excess grant of refund**

Section 4 of the Central Excises and Salt Act, 1944 allows deduction of the duty payable from the price of the manufactured product for arriving at the assessable value of the product. But if the assessee collects more duty than the duty paid to the Government for the goods, the assessable value is required to be redetermined after adding such excess to the original assessable value.

(i) A unit manufacturing aerated water availed exemption from duty under a notification dated 1 March 1978 on the first clearance of the goods valuing Rs. five lakhs during the years from 1978-79 to 1980-81. The duty was paid in full, and the unit claimed refund thereof. An amount of Rs. 4,34,191 was refunded in July and October 1982. Since the duty was realised by the manufacturer from the customers, refunds of the amount without re-determining the assessable value resulted in excess refund of Rs. 1,06,082.

The omission was pointed out to the department in February 1985.

The Ministry of Finance, while accepting the facts as correct, stated (November 1985) that the duty could not be demanded as the refund was made more than two years before the irregularity was pointed out in audit.

(ii) A unit manufacturing "calcite and wollastonite powder" dutiable under tariff item 68 was paying duty on value including post manufacturing charges under protest. In appeal, the post manufacturing charges were held deductible from the value. Consequent upon this decision, as total value of clearances did not exceed Rs. 30 lakhs, the unit preferred the following three refund claims, after claiming exemption under notifications dated 18 June 1977, 1 March 1979 and 19 June 1980, under which duty upto Rs. 30 lakhs was exempted if clearances during preceding year did not exceed Rs. 30 lakhs and the same were allowed by the department :

Year	Rs.
1978-79	1,57,861
1979-80	1,70,350
1980-81	1,78,683.

Due to these refunds for year 1978-79 and 1979-80, the value of clearances after redetermining the same as per provisions referred to above exceeded the limits of Rs. 30 lakhs in these years which made the unit ineligible for exemption during the year 1979-80 and 1980-81.

These irregular refunds amounting to Rs. 3,49,033 for the years 1979-80 and 1980-81 were pointed out in audit in November 1983. The department stated (October 1984) that where an assessee had opted to pay duty as per invoice value, under notification dated 30 April 1975, the provisions of Section 4 ibid

were not applicable for refixing assessable value. There did not appear to be any sound legal basis to hold that the total value of clearances of a unit need to be redetermined, if the unit received refund of any amount recovered by mistake as excise duty. It was further stated that Section 4 could not be relevant in the present case nor it could reasonably be invoked to provide legitimacy to an exercise of redetermination of total value of clearances as the assessee was availing of the invoice value procedure and no fixation of assessable value as per Section 4 *ibid* was required. The said view of the department, however, goes counter to the opinion of the Law Ministry dated 27 February 1980 which was circulated with Board's letter of 21 March 1980 to the effect that in determining the invoice price, principles provided in Section 4 should be followed.

The Ministry of Finance admitted the objection (January 1986).

2.60 **Irregular grant of refund**

As per a notification issued on 19 June 1980, goods falling under tariff item 68 in respect of first clearances for home consumption by or on behalf of a manufacturer from one more factories upto a value not exceeding Rs. 30 lakhs cleared on or after 1st day of April in any financial year were exempt from the whole of the duty leviable thereon subject to the condition that the total value of the said goods cleared, if any, for home consumption by him or on his behalf from one or more factories in the preceding financial year did not exceed Rs. 30 lakhs.

The Supreme Court in its judgement dated 15 December 1971 held that person getting his goods manufactured by supplying raw materials was a manufacturer for the purpose of Section 2(f) of the Central Excises and Salt Act, 1944.

A manufacturer of goods falling under tariff item 68 manufactured the goods on behalf of the primary manufacturer who supplied raw material and the specifications. The primary manufacturer was also having turnover of more than Rs. 30 lakhs. The assessee (secondary manufacturer) initially paid the duty of Rs. 1,15,548 on clearance of the goods during the period from 2 March 1982 to 27 August 1982. Subsequently, the duty was refunded to him allowing the benefit of the above mentioned notification. The refund was not admissible as the real manufacturer is the person who supplied raw materials and specifications as per Supreme Court's judgement and his turnover was more than Rs. 30 lakhs for the preceding financial years.

The mistake was pointed out to the department in September 1984.

The Ministry of Finance stated (January 1986) that the matter regarding status of the manufacturers who manufacture on behalf of other manufacturers supplying them with raw material and specifications was subject matter of a case before the Supreme Court.

2.61 **Refund of time-barred claim**

Any claim for refund of excise duty paid in excess should be preferred before expiry of six months from the date of payment of duty as laid down in Section 11B of the Central Excises and Salt Act, 1944.

An assessee manufacturing sugar preferred a claim for refund of Rs. 1,10,908 in July 1981 towards incentive rebate on excess production of sugar during the months of October and November 1980 (cleared in December 1980) in terms of a notification issued on 29 August 1980, which was sanctioned by the department and credited to his personal ledger account in December 1982. The refund claim preferred in July 1981 after the expiry of six months from the date of payment of duty (*viz.* December 1980) was, therefore, clearly hit by time bar.

On the irregular refund of a time-barred claim being pointed out in audit (May|August 1983), the department contended (January|May 1985) that the sanction of incentive rebate on excess production of sugar based on Government policy announced from time to time governed by different set of instructions, which contemplated credit to personal ledger account even in advance and hence would not amount in any way to refund of duty already paid and would thus fall outside the purview of erstwhile Rule 11 of the Central Excise Rules, 1944 or Section 11B of the Act. The so-called incentive rebate arose only out of a partial exemption notification issued under Rule 8 (1) of Central Excise Rules, 1944 and is in effect, only a case of refund of excise duty paid. Section 11B is also not restrictive in application but covers all claims for refund of excise duty, as clarified by the Board in consultation with the Law Ministry in May 1981. This view is also supported by the decisions of the Appellate Tribunal in the case of Namdung Tea Co. Ltd., Calcutta Vs. Collector of Central Excise, Shillong [1984(15) ELT 4677] and Shree Una Taluka Khedut Sehakari Khand Udyog Mandali Ltd. Vs. Collector of Central Excise, Bombay [1984(15) ELT 183].

Further, according to Board's instructions governing such claims, the claim should have been submitted in November 1980 itself, immediately after the production exceeded the base production without waiting for the actual clearance of the excess production.

The contention of the department is, therefore, not correct.

The Ministry of Finance stated (January 1986) that the concerned Collector had been advised to re-examine the matter in accordance with the Board's instructions of 11 July 1985.

CESS

2.62 Non levy of cess

(i) Handloom cess

Under the Khadi and other Handloom Industries Development (Additional Excise Duty on Cloth) Act, 1953, additional excise duty (called handloom cess) at the rate of 1.9 paise per square metre is leviable on all fabrics on which excise duty is paid. By virtue of a notification issued by the Ministry of Commerce in March 1975, cloth exempt from duty is also exempt from the payment of handloom cess. However, as per a clarification issued by the Ministry of Finance on 21 September 1984 such exemption from payment of handloom cess is not available to processed man-made fabrics.

A manufacturer of man-made fabrics [tariff item 22(3)] cleared the fabrics without payment of handloom cess amounting to Rs. 74,806 during the period from April 1981 to March 1982.

On the mistake being pointed out in audit (May 1983), the department stated (December 1983) that grey man-made fabrics were purchased by the assessee from the open market and no process was carried out by the assessee on the base grey fabrics and hence no cess was payable on them. However, this view of the department is not acceptable because as per the decision given by CEGAT (1984 ECR 875), cess shall be collected on goods even though such goods are exempt from basic excise duty unless there is a specific provision to that effect.

The department stated in May 1985 that the matter had been re-examined and demand amounting to Rs. 5,46,410 had been confirmed.

The Ministry of Finance stated (December 1985) that as the order confirming the duty amounting to Rs. 5.46 lakhs was reversed by the Appellate Collector, an appeal against that order had been filed before the Appellate Tribunal.

(ii) Vegetable oil cess

As per Section 3(i) of the Vegetable Oils Cess Act, 1983, read with a notification dated 8 December 1983, cess has to be levied and collected for the purposes of the National Oil Seeds and Vegetable Oils Development Board Act, 1983, as a duty of excise on vegetable oils produced in any mill in India at Rs. five per quintal of vegetable oil.

Under Section 3(h) of National Oil Seeds and Vegetable Oil Development Board Act, 1983, read with Section 2(2) of the Vegetable Oils Cess Act, 1983, cess is payable not only on the oil extracted from oil seeds, but also on the oil extracted from oil cake by solvent extraction method, as oil cake is an oil bearing material of plant origin containing glycerides.

The Ministry of Agriculture clarified on 20 December 1983 that the cess was also leviable on the closing stock of vegetable oil on 31 December 1983 at the rate applicable from 1 January 1984.

(a) A manufacturer of oil was not paying "cess" on the cotton seed oil extracted by solvent extraction process from January 1984 and stopped paying the cess on the expelled cotton seed oil as well from March 1984. The cess not collected from January 1984 to April 1984 amounted to Rs. 1,21,900.

On the omission being pointed out in audit, the department issued two show cause notices for levying the cess of Rs. 2,28,563 on 45,712.72 quintals of oil extracted from March 1984 to February 1985. Action to process show cause notice for a further quantity of 13,433.92 quintals, involving a cess of Rs. 67,169 was also in hand.

The Ministry of Finance stated (November 1985) that a demand for Rs. 1,38,930 has been confirmed in July 1985 in respect of crude cotton seed oil produced and extracted during the period March 1984 to August 1984.

(b) A manufacturer of rice bran oil did not pay cess on it (rice bran oil) since the date of imposition of cess. Another manufacturer (same collectorate), however, paid cess on "sal oil" (his manufacture) from April 1984 only. Cess not levied on the two vegetable oils mentioned above amounted to Rs. 1.09 lakhs on clearances made during the period from January 1984 to January 1985 for rice bran oil and January 1984 to March 1984 for sal oil.

The omissions were pointed out in audit in March 1985.

The Ministry of Finance stated (November 1985) that two show cause notices demanding cess of Rs. 1,08,689 had been issued and the concerned Collector of Central Excise asked to finalise the cases expeditiously.

(c) Two manufacturers of vegetable oils were allowed to clear 17,978.20 quintals of vegetable oil during the period from January 1984 to January 1985 without levy of cess amounting to Rs. 89,891. The mistakes were pointed out to the department in July 1984 and May 1985.

The Ministry of Finance stated (November 1985) that show cause notices demanding duty amounting to Rs. 2.07 lakhs had been issued to both the units.

(d) A manufacturer did not pay cess amounting to Rs. 25,694 on vegetable oil produced in his solvent extraction plant during the period January 1984 to May 1984. On the omission being pointed out in audit the department intimated (July 1985) that show cause-cum-demand notices for cess amounting to Rs. 1,16,539 had been confirmed in May 1985. The recovery particulars are, however, awaited.

It was further noticed in audit that in respect of two manufacturers show cause-cum-demand notices for cess amounting to Rs 3,10,495 on vegetable oil produced in their solvent extraction plants had been pending adjudication for more than six months and in respect of one manufacturer the department had intimated that a show cause-cum-demand notice for cess amounting to Rs. 57,451 was also issued (May 1985).

The Ministry of Finance stated (November 1985) that the duty amounting to Rs. 1,16,539 and Rs. 57,451 had been recovered from two units; in respect of the third unit demand for Rs. 1,18,601 had been confirmed; and another unit had obtained stay order from the High Court.

(iii) **Jute cess**

Under Jute Manufactures Cess Act, 1983 (effective from 1 April 1984) excise duty in the nature of cess became leviable on certain classes of jute manufactures specified in the Act. One such class is jute yarn and twine (tariff item 18D).

As per Central Excise Laws (Amendment and Validation) Act, 1982, no notification issued under Central Excises and Salt Act, 1944 or Rules thereunder granting any exemption from any duty of excise shall have the effect of providing for exemption from the duty of excise leviable under a Central Act other than Central Excise Act unless such notification expressly refers to the provisions of the said Central Act in the preamble, or, by express words, provide for exemption from the duty of excise leviable under the said Central Act.

By a notification issued (March 1972) under Central Excise Rules, jute twine and yarns consumed within the factory of production for use in the manufacture of jute products are exempt from the duty of excise leviable under Central Excise Act. The said notification, however, does not provide, by express words, the exemption of cess leviable under the Cess Act 1983 (another Central Act). Accordingly, in the light of Amendment and Validation Act, 1982 the above notification shall not have effect in granting exemption to such yarn from cess leviable under Cess Act 1983. Also, there is no other notification exempting such jute yarns from cess. Thus jute yarns when captively consumed in the manufacture of jute manufactures are liable to cess.

In eight composite jute mills manufacturing jute goods, cess amounting to Rs. 36.73 lakhs was not paid on jute yarns consumed within the factory of production in the manufacture of jute fabrics (May 1984 to November 1984).

On the omission being pointed out in audit (September 1984), the department issued (October 1984) show cause notices to all manufacturers demanding cess of Rs. 50.00 lakhs on jute yarns captively consumed during May 1984 to February 1985. Further, while attributing late receipt of the Cess Act for delay in timely action the department intimated (May 1985) that one assessee had filed a writ petition in the High Court.

The Ministry of Finance stated (November 1985 and January 1986) that the matter was under examination in consultation with the Ministry of Law for the period from 1 May 1984 to 14 September, 1984 as the Jute Manufactures Cess Rules were modified on 15 September 1984.

(iv) **Cess on paper and automobiles**

Section 9(1) of the Industries (Development and Regulation) Act, 1951 provides for the levy and collection as a cess on all goods manufactured or produced as may be specified, a duty of excise at such rate as may be specified. As per an explanation in the Section, the expression "value" is the wholesale cash price for which such goods of the like

kind and quality are sold or are capable of being sold for delivery at the place of manufacture and at the time of removal therefrom, without any abatement or deduction whatsoever except trade discount and the amount of duty then payable.

Cess at the rate of 1/8 per cent *ad valorem* became leviable on paper with effect from 1 November 1980 as per a notificatoin issued under the aforesaid Section 9(1) on 27 October 1980.

Cess at the rate of 1/8 per cent *ad valorem* became leviable on automobiles with effect from 1 January 1984 as per notification issued under the aforesaid Section 9(1) on 28 December 1983.

As per the Central Excise Laws (Amendment and Validation) Act, 1982 effective retrospectively, where a notification or order fixing any rate of duty leviable under a Central Law providing for levy and collection of any duty of excise, it shall expressly refer to the provision of the Central Law and it shall not have effect unless it fixed the rate of duty under the said Central Law or expressly refers to the provision of the Central Law in the preamble.

Cess was realised from twenty manufacturers of paper and one manufacturer of automobiles in Public Sector on a value exclusive of excise duty leviable under the Central Excises and Salt Act 1944, excise duties (basic and special) and the sales tax leviable under a State Act. The exclusion of the excise duties (basic and special) and the sales tax was not correct since they were not duties leviable under the Industries (Development and Regulation) Act. Only the cess and trade discount was to be excluded. The mistake resulted in short levy of cess amounting to Rs. 15,66,810 during the different periods from November 1980 to December 1984.

This issue was discussed in a tripartite meeting held on 7 February 1985 with the Ministry of Law in which the view of Audit was upheld.

The Ministry of Finance stated (December 1985) that the issue regarding amendment of Section 9(1) of Industries (Development and Regulation) Act had been referred by the Ministry of Industry to an expert group for defining the 'value' in relation to levy of cess.

PROCEDRUAL DELAYS AND IRREGULARITIES WITH REVENUE IMPLICATIONS

2.63 Delay in moving for vacation of stay

(i) On 'phenol formaldehyde resin' duty is leviable under tariff item 15A. Consequent to retrospective amendment of Rules 9 and 49 of the Central Excise Rules in February 1982, no excisable goods can be cleared without payment of duty even for captive consumption for manufacture of any other commodity.

A manufacturer of 'phenol formaldehyde resin' consumed it internally in the manufacture of coated abrasives (tariff item 51) without payment of duty on the plea that goods were not cleared from the factory. In April 1978, a High Court granted him interim stay from paying duty on resin consumed by him subject to his furnishing bank guarantee. By amendment of Rules 9 and 49 in February 1982 the point of dispute on levy of duty on goods for captive consumption got settled. However, the department did not move the Court (till July 1985) for vacation of the stay order and recovery of duty amounting to Rs. 9.02 lakhs on clearances made during 14 April 1978 to May 1985 (which was secured by bank guarantee amounting to Rs. 20,000 only).

On the failure to effect recovery being pointed out in audit (April 1984), the department stated (June 1985) that action had since been taken for early vacation of the injunction.

The Ministry of Finance stated (December 1985) that the concerned Collector had been asked to pursue the matter so that the stay was vacated by the Court.

2.64 Loss of revenue due to non review of appellate order

Duty is levied on mineral oils under the tank discharge system by which the quantity of oil chargeable to duty is determined through dip readings of the bonded storage tanks before and after removal of oils. This procedure of assessment was confirmed by the Central Board of Excise and Customs in their instructions issued from time to time.

A public sector oil refinery initially paid duty on the clearance of mineral oils arrived at by "tank discharge method" but subsequently claimed refund of duty on the loss representing the difference between the quantity determined under the tank discharge system and the actual quantity loaded in tank wagon/lorry.

All the refund claims were initially rejected by the department on the ground that the "purported loss" was unreal as no settling time was allowed before measurement of oils contained in tank lorry/wagon. The Appellate Collector, however, allowed the refund claims holding the view that there was no loss of mineral oil as the differential quantity was due to spillage

which was again recovered and reprocessed. The Appellate Collector's orders were not reviewed by the Central Government and refund amounting to Rs. 61,658 was passed by the department.

It was pointed out in audit (August 1984) that non-review of the Appellate Collector's orders resulted in loss of revenue of Rs. 61,658 as it had not only brought in a situation where the mineral oils would not pay duty on volume determined by an authorised system followed in all refineries and installations but it was also not in consonance with the opinion of the Law Ministry circulated on 23 June 1976 that no refund on drained out oil even though subsequently recovered and reprocessed was permissible.

The department stated (June 1985) that the Ministry did not think fit to review the Appellate Collector's order as it was correct. The fact, however, remains that decision of the Ministry prevented the Appellate Collector's order which was not in accordance with established procedure and the Law Ministry's opinion.

The Ministry of Finance stated (January 1986) that the Board was examining the matter regarding prescribing a more scientific and precise method for calibrating oil discharge in view of the change in technology.

OTHER IRREGULARITIES OF INTEREST

2.65 Inordinate delay by Public Sector Banks in remitting Union Excise duty collections

On departmentalisation of the accounts of the *Union Government* in 1976, the work of collection of *union excise duties* till then performed by the Government treasuries was entrusted to *Public Sector Banks* from 1 April 1977.

Detailed instructions for the guidance of *Public Sector Banks* in this regard were issued by the *Reserve Bank of India* in 1976 and similar insructions for the guidance of *Assessing/Accounting Officers* were issued by the *Ministry of Finance* in 1977. According to these instructions, the *Central Excise* revenue initially collected from the assessees in the branches of the nominated *Public Sector Banks* termed *Receiving Branches* are remitted to *Link Branches* of the Banks through inter-bank accounting procedure. The collections are consolidated by the *Link Branches* and remitted to the *State Bank of India/ Reserve Bank of India* who act as, *Focal Point Banks*. The *Focal Point Banks* credit such receipts to the *Central Government Account*.

During the concurrent check by Audit of the records of one Collectorate only out of 32 Collectorates, it was noticed that several *Receiving Branches* and *Link Branches* of the nominated *Public Sector Banks* had in a large number of cases inordinately delayed their remittances to the respective *Link Branches* and *Focal Point Banks* though under the instructions issued, the *Receiving Branches* are required to remit to the *Link Branches* the collections in a day, at the beginning of the next working day and the *Link Branches* are required to remit their collections to the *Focal Point Banks* on the same day.

The said delay in remittances by the *Public Sector Banks* was pointed out by Audit in February 1983 and subsequently in August 1984. The department stated in September 1984 that they had also noticed cases of delay in remittances by the *Public Sector Banks* and had reported (March 1983) the matter to the *Ministry of Finance* and the *Board* and that the *Board* in turn had taken up the matter (May 1983) with the *Head Offices* of the *Public Sector Banks* and the *Reserve Bank* to investigate into the causes for the delay and to adopt remedial measure to avoid such delay. The department also stated that the *Board* had requested the *Reserve Bank* to consider as to why the defaulting Banks may not be charged interest for the period for which large amounts of Government money were locked up with the *Public Sector Banks*. However delay in remittances by the *Public Sector Banks* continued to occur and the matter remained unremedied.

It was noticed that during the three years 1982-83, 1983-84 and 1984-85 there was delay in 1077 cases involving a total sum of Rs. 57.41 crores as detailed below :

Sl. No.	Period of delay	No. of Cases	Amount
			(Rs. in crores)
1.	8 to 15 days	865	49.83
2.	16 to 30 days	187	7.14
3.	31 to 193 days	25	0.44
	TOTAL	1077	57.41

The potential loss in terms of interest calculated at 9 per cent per annum on the money so locked up amounted to Rs. 17.02 lakhs.

This was pointed out to the department in February 1985 and July 1985. The department confirmed the facts in August 1985.

The Ministry of Finance stated (November 1985) that the Reserve Bank of India *vide* their letter dated

27 May 1985 had finalised the procedure for recovery of interest and directed all the Public Sector Banks including State Bank of India for issuing instructions to their Branch Offices in this regard. The provision for levying interest on delayed remittances at the rate of 5 per cent is effective from 1 April 1985.

2.66 **Short-recovery of cost of supervision due to non revision of rates**

In case of central excise staff posted on cost recovery basis, average cost is required to be recovered from the assessee in advance. After issue of Government of India (Ministry of Finance) circular dated 16 March 1984, such cost is to be recovered at the rate of 2-1|2 times of the emoluments.

A sugar factory maintaining an outside godown was utilising the services of one Inspector and one Sepoy since July 1975 and paying cost of such staff at the rate of Rs. 1031 per month for Inspector and Rs. 349 per month for Sepoy in spite of the fact that since July 1975 there had been considerable increase in emoluments owing to increase in dearness allowance and additional dearness allowance and grant of interim-relief. Even after issue of Government circular dated 16 March 1984 the rate at which the cost was recoverable from the assessee was not revised resulting in short recovery of cost of supervision amounting to Rs. 33,275 from April 1984 to December 1984.

The Ministry of Finance stated (January 1986) that no additional posts were created for the said purpose and the work was being supervised by the officers from within the strength of the Division itself. The Ministry, however, did not deny the fact that the assessee had been utilising the services of one inspector and one sepoy at his outside godown since 1975. The contention that the posts were not specifically created for a particular unit is only a secondary thing and the unit has nothing to do with such orders. The Ministry's reply is therefore, not tenable.

ANNEXURE—2.1

Number of outstanding audit objections and amount of revenue involved (in crores of Rupees)

(See para 2.10 of this report)

Sl. No.	Collectorate	Raised upto 1980-81 including the year 1980-81		Raised in the year 1981-82		Raised in the year 1982-83		Raised in the year 1983-84		Total	
		No.	Amount	No	Amount	No.	Amount	No.	Amount	No.	Amount
1.	Bombay I	35	4.64	24	3.01	37	8.08	62	3.34	158	19.07
2.	Bombay II	19	1.28	46	7.82	57	6.35	93	7.43	215	22.88
3.	Pune	12	0.35	11	0.47	24	3.40	33	3.48	80	7.70
4.	Thane	2	0.01	11	0.11	22	1.39	70	4.42	105	5.93
5.	Aurangabad	..	..	..	..	2	0.06	14	0.57	16	0.63
6.	Goa	1	0.17	2	0.01	2	0.03	2	0.13	7	0.34
7.	Chandigarh	22	..	37	0.43	21	0.34	58	0.96	138	1.73
8.	Bangalore	7	0.37	1	0.01	..	..	17	0.74	25	1.12
9.	Belgaum	1	0.01	..	..	3	0.03	2	0.02	6	0.06
10.	Nagpur	1	..	5	0.03	9	0.02	30	0.06	45	0.11
11.	Delhi	388	5.28	114	2.20	60	0.87	109	3.86	671	12.21
12.	Jaipur	14	0.03	16	0.04	28	0.49	46	0.38	104	0.94
13.	Madras	5	0.04	17	0.06	28	0.17	149	2.76	199	3.03
14.	Coimbatore	2	..	7	0.01	14	0.13	38	0.34	61	0.48
15.	Trichy	5	..	1	..	17	0.04	25	0.05	48	0.09
16.	Madurai	8	0.11	2	..	19	0.20	17	0.04	46	0.35
17.	Shillong	7	0.61	1	0.06	8	2.11	..	..	16	2.78
18.	Cochin	..	..	1	..	..	..	3	0.01	4	0.01
19.	Bhubaneswar	..	..	..	..	..	..	29	8.71	29	8.71
20.	Calcutta	104	6.78	149	13.87	164	10.56	262	21.98	679	53.19
21.	West Bengal	81	4.67	66	7.79	73	7.87	95	3.58	315	23.91
22.	Indore	125	3.63	78	0.94	116	234.28	154	1.08	473	239.93
23.	Kanpur	98	1.19	57	1.28	24	0.01	55	0.39	234	2.87
24.	Meerut	209	4.41	95	0.17	65	0.26	106	0.39	475	5.23
25.	Allahabad	107	0.38	53	0.09	52	0.18	104	0.87	316	1.52
26.	Patna	26	4.86	14	0.66	28	17.78	47	7.86	115	31.16
27.	Guntur	23	0.12	30	0.06	35	..	21	0.01	109	0.19
28.	Hyderabad	144	0.96	108	0.25	111	0.05	270	..	633	1.25
29.	Baroda	34	2.35	15	2.70	37	0.57	58	1.21	144	6.83
30.	Rajkot	23	0.11	3	..	10	0.03	14	0.01	50	0.15
31.	Ahmedabad	45	0.54	18	0.15	14	0.10	46	0.74	123	1.53
		1548	42.90	982	42.22	1080	295.40	2029	75.42	5639	455.94

ANNEXUER—2.2

Collectoratewise statement of demands pending collection because of stays granted by Courts/Tribunals/Appellate Authorities
(*See Para No. 2.54 of this report*)

(Amount in Rupees crores)

1	2		3		4		5		6		7
Collectorate	Recovery of C.E. duty stayed by the Court/Tribunals/ Appellate Authorities		Out of Column(2) secured by bank guarantees given by the assessee		Disputed demands not collected by the department even though demands were not stayed by the Courts/Tribunals/ Appellate Authorities		Department failed to collect the demands other than disputed demands		Total 2+4+5		Remarks
	No. of Cases	Amount	No. of Cases	Amount	No. of Cases	Amount	No. of Cases	Amount	No. of Cases	Amount	
1. Bombay-I	NA										
2. Bombay-II	NA										
3. Pune	142	15.36	19	2.53	35	2.38	18	0.57	195	18.31	
4. Thane	115	17.89	62	6.66	33	2.19	57	0.19	205	20.27	
5. Aurangabad	256	12.83	78	6.30	118	0.65	582	0.18	956	13.66	
6. Goa	1	0.02	1	0.02	11	0.92	5	0.09	17	1.03	
7. Chandigarh	136	8.60	46	5.63	57	1.00	286	60.35	479	69.95	
8. Bangalore	175	40.93	17	32.91	21	0.38	386	1.00	582	42.31	Revised figures as on 31-7-85
9. Belgaum	71	1.66	19	0.58	5	0.72	822	0.09	898	2.47	-do-
10. Nagpur	NA										
11. Delhi	270	28.77	69	22.46	138	3.55	655	1.71	1063	34.03	includes figures for Delhi & Haryana
12. Jaipur	189	7.37	50	1.89	53	0.24	418	1.13	660	8.74	
13. Madras	115	9.31	26	4.00	92	0.97	1296	2.10	1503	12.38	
14. Coimbatore	64	11.03	18	9.27	16	0.04	955	0.46	1035	11.53	
15. Trichy	76	0.35	6	0.10	17	0.27	599	0.69	692	1.31	
16. Madurai	142	1.12	100	0.67	21	0.16	255	0.32	418	1.60	
17. Shillong	52	4.93	26	0.81	64	2.49	98	1.27	214	8.69	
18. Cochin	NA										
19. Bhubaneswar	137	3.52	57	0.50	80	1.37	760	3.67	977	8.56	
20. Calcutta	NA										
21. West Bengal	NA										
22. Indore	NA										
23. Kanpur	NA										
24. Meerut	NA										
25. Allahabad	NA										
26. Patna	36	6.04	5	0.08	45	11.80	28443	5.06	28524	22.90	
27. Guntur	94	3.35	45	0.37	37	1.41	18	0.07	149	4.83	
28. Hyderabad	58	42.14	45	42.07	10	0.03	1767	0.19	1835	42.36	
29. Baroda	267	34.67	113	18.46	66	0.95	58	0.73	391	36.35	
30. Rajkot	43	3.47	7	0.48	23	0.14	29	0.004	95	3.614	
31. Ahmedabad	393	70.14	98	15.72	79	2.12	48	2.03	520	74.29	
32. Bolepur	NA										
Total	2833	323.50	907	171.50	1021	33.78	37554	81.904	41.408	439.184	

CHAPTER 3
RECEIPTS OF THE ADMINISTRATIONS OF THE UNION TERRITORIES WITHOUT LEGISLATURES

Tax and non-tax receipts of Union Territories without Legislatures

The trend of tax and non-tax revenue receipts of the Administrations in the Union Territories, which do not have Legislature, are indicated below :—

		Delhi	Chandigarh	Dadra and Nagar Haveli	Andamans and Nicobar Islands	Minicoy and Lakshdweep	Total
		1	2	3	4	5	6
				(In crores of rupees)			
A : Tax revenue							
Sales tax	1982-83	211.02	12.01	Nil	Nil	Nil	223.03
	1983-84	230.83	13.71	Neg.	Nil	Nil	244.54
	1984-85	278.09	15.00	0.18	Nil	Neg.	293.27
State excise	1982-83	66.10	7.76	0.06	0.61	Nil	74.53
	1983-84	76.17	8.64	0.07	0.67	Nil	85.55
	1984-85	81.87	10.52	0.07	1.00	Nil	93.47
Taxes on goods and passengers	1982-83	**20.13	0.42	Nil	Nil	Nil	20.55
	1983-84	**21.25	0.51	Nil	Nil	Nil	21.76
	1984-85	**22.75	0.53	Nil	Nil	Nil	23.28
Stamp duty and registration fee	1982-83	10.80	2.48	0.02	0.04	0.01	13.35
	1983-84	11.93	2.74	0.02	0.05	0.01	14.75
	1984-85	13.24	2.82	0.02	0.06	0.01	16.15
Taxes on motor vehicles	1982-83	7.27	0.41	0.08	0.01	Nil	7.77
	1983-84	8. 8	0.25	0.34	0.02	Nil	9.39
	1984-85	10.89	0.36	0.10	0.03	Nil	11.38
Land revenue	1982-83	0.26	Neg.	0.02	0.04	0.06	0.38
	1983-84	0.17	Neg.	0.02	0.05	0.01	0.25
	1984-85	0.19	Neg.	0.03	0.05	0.04	0.31
Other taxes and duties on commodities and services	1982-83	10.98	0.90	Nil	0.03	Nil	11.91
	1983-84	10.09	0.81	Neg.	0.03	Nil	10.93
	1984-85	9.75	0.72	Nil	0.03	Nil	10.50
Total tax revenue	1982-83	326.56	23.98	0.18	0.74	0.07	351.53
	*1983-84	359.22	26.66	0.45	0.82	0.02	387.17
	*1984-85	416.78	31.30@	0.40	1.17	0.05	449.71@
B : Non-tax revenue	1982-83	8.18	5.05	0.54	7.42	0.41	21.60
	*1983-84	11.87	8.57	0.42	7.31	0.56	28.73
	*1984-85	10.64	23.29	1.58	11.13	1.17	47.81
Total revenue	1982-83	334.74	29.03	0.72	8.16	0.48	373.13
	*1983-84	371.09	35.23	0.87	8.13	0.58	415.90
	*1984-85	427.42	54.59	1.98	12.30	1.22	497.52

Neg. : Negligible receipts.

*Details given in table above are indicative and may differ from final accounts figures slightly.

**Levied and collected by the Municipal Corporation of Delhi as agent of Delhi Administration as per provisions of Section 178 of the Delhi Municipal Corporation Act, 1957.

@Includes Rs. 1.35 crores on account of Taxes and Duties on Electricity relating to Chandigarh Union Territory.

The bulk of the non-tax revenue in Andaman and Nicobar Islands is accounted for by Forest receipts. Most of the non-tax revenues in Chandigarh are accounted for under the heads Chandigarh Electric Scheme and Road Transport Services. In Delhi, most of the non-tax revenues are accounted for under the heads Interest Receipts—Other Administrative Services, Police and Education.

Results of test check of the records of the revenue departments of the Union Territory of Delhi, conducted during the year 1984-85 are included in Part II of the Audit Report (Civil) of the Union Government for the year 1984-85.

(P. K. BANDYOPADHYAY)
Director of Receipt Audit-II

New Delhi
The 1986

28 APR 1986

Countersigned

(T. N. CHATURVEDI)
Comptroller & Auditor General of India

New Delhi
The 1986

28 APR 1986

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