REPORT OF THE

COMPTROLLER AND AUDITOR GENERAL OF INDIA

FOR

THE YEAR 1983-84

UNION GOVERNMENT (CIVIL)

REVENUE RECEIPTS

VOLUME I

INDIRECT TAXES

ERRATA

Page	Para No.	Line	For	Read
4	1.02(ii)	Column 3 (1982-83)	693 (Against Sl. No. 9)	694 (Against Sl. No. 9)
19	1.18(iii)	1st from top	Dtuy	Duty
20	1.18(vii)	2nd from top	Reply of the department is awaited.	realised short by Rs. 15,831
23	1.19(iv)	19th from top	£ 6,360	£ 6.360
23	1.19(iv)	20th from top	Inserted " "	Delete " "
24	1.19	4th line from bottom	1970	1973
32	1.23(iii)	8th line from top	On the mistake being pointed out in August 1983.	On a consignment of incoloy steel imported in April 1982
37	1.25(v)	9th line from top	as on parts	as parts (Delete on)
40	1.27	20th line from top	Polyster	Polyester
44	1.29(ii)	8th line from top	declaaration	declaration
44	1.29(ii)	18th line from top	requrred	required
50	1.33	6th line from top	1.5 per kilogram.	1.50 per kilogram
66	1.48(ii)	Between 2nd and 3rd from bottom	*Insert the following* However, the exporter submitted a provisional claim for drawback at All Industry rates in March 1982.	
75	1.54(ii)	13th line from top	value	values
82	1.58(ii)	13th line from top	was	were
82	158(ii)	15th line from top	was	were
82	1.58 (ii)	19th line from top		Insert the word 'were' after the word 'number'
83	1.58(v)	15th line from top	'addresses'	'addressees'
99	Annexure 1.5	Under A, B&C.	Asterik against Bombay.	treat the asterik as for Cochin for 1983-84 only
114	2.01	19th from top	assisgned	assigned

S/18 C&AG/84

Page	Para No.	Line	For	Read
114	2.01	9th from bottom	Rs. 8,79,27,71,046	8,79,29,71,046
115	2.01(iii).	3rd from bottom	66(3)	65(3)
124	2.07(i)	4th from top	amount	amount*
130	2.13(i)	7th from bottom	awited	awaited
137	2.14(iii)	11th from top	C_2H_5OM	C_2H_5OH
137	2.14(iv)	12th from bottom	"Thungten filament coils"	"Tungsten filament coils"
178	2.21(v)	5th from top	divinl	divinyl
204	2.32(a)	7th from bottom	confirm	conform
211	2.34(1)	10th from bottom	spum	spun
227	2.37(vi)	3rd from bottom	sores	stores
261	2.45(ii)	16th from bottom	4th July 1979	4th June 1979
290	2.51(iv)	15th from top	cleaarances	clearances
310	2.56(i)	10th from top	fans	electric fans
321	2.58(iii)	13th from bottom	bsais	basis
342	2.69.	10th from bottom	Goverment	Government
354	Annexure 2.4	2nd from top	Para 2.61(ii)	2.61(iii)
470	—	Page number	470	370
370	3.02	17th from bottom	10.60 (under Actual receipts)	10.80 (under Actual receipts)
370	3.02	3rd from bottom	326.54	326.56
371	3.03	5th from top	Tax evenue	Tax revenue
371	3.03	17th from top	55.10	55.19
371	3.03	6th from bottom	0.24	0.26
374	3.05(ii)	in heading of the sub-para	Soles tax assessment	Sales tax assessments
374	3.05(ii)	5th from top	2,02,210	2,02,210*
374	-do-	-do-	1,86,155	1,86,155*
376	3.05(iv)	heading of sub-para	(iv) Sales tiv demands in process of recovers	(iv) Sales tax demands in process of recovery
383	3.07(ii)	3rd from bottom	food stuffs	foodstuffs
387	3.09(i)	18th from top	Rs. 13,784. Out of	Rs. 13,784, out of

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CHAPTER 2— CENTRAL EXCISE

PREFATORY REMARKS

The Audit Report on Revenue Receipts (Civil) of the Union Government for the year 1983-84 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 of such receipts.

Chapter 3—Refers to receipts of Union Territories without legislatures and results of audit of Sales Tax, Excise duty and Motor Vehicles Tax receipts in the Union Territories of Delhi and Chandigarh.

VOLUME I

CHAPTER 1

CUSTOMS RECEIPTS

1.01 The net receipts from customs duty during the year 1983-84, after deducting refunds and drawback paid, alongside the budget estimates and figures for the preceding year 1982-83 are given below :—

Customs receipts from	Receipts in 1982-83	Receipts in 1983-84	Budget Estimates for 1983-84	Revised estimates for 1983-84
			(In crores of rupees)	
Imports*	5204.42	5656.64	5969.28	5927.30
Exports	57.63	67.94	66.29	73.99
Cess on Exports . . .	11.55	11.90	13.13	13.77
Other goods and services .	45.40	58.55	43.00	62.35
	5319.00	5795.03	6091.70	6077.41
Deduct refunds . . .	87.40	97.45	92.67	72.38
Deduct drawback** . .	112.19	114.14	120.00	126.00
Net Receipts	5119.41	5583.44*	5879.03	5879.03

The decrease in import duty collections in relation to budget estimates was attributed to lesser realisation of duty on imports of petroleum products, man made fibres, filament tow, yarn of man made fibre, chemicals other than pharmaceuticals and miscellaneous chemicals, artificial resins, Iron and steel, copper, zinc, Railway locomotives and materials, optical, photographic, cinematographic, measuring, medical and surgical instruments. However, some of the short fall in duty realisation was counter balanced by higher duty realisations on imports of mineral substances, machinery, mechanical appliances, electrical equipment, aircraft and vessels.

*This amount includes countervailing duty (additional duty) under section 3(1) of Customs Tariff Act, 1975 and auxiliary duty leviable under section 44 of Finance Act, 1982.

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

The figures are provisional pending certification.

The marginal increase in receipts from export duty over budget estimates for 1983-84 was attributed to duties on export of coffee.

1.02 Port wise collection

(i) Import duty collected during the year 1983-84 and the two preceding years are given below port wise 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.)		
	1981-82	1982-83	1983-84	1981-82	1982-83	1983-84	1981-82	1982-83	1983-84
1. Bombay	2,463	2940	2610	N.A.	N.A.	N.A.	2,230	2,610	2786
2. Calcutta	688	819	N.A.	N.A.	N.A.	N.A.	701	767	778
3. Madras	705	842	659	N.A.	N.A.	N.A.	665	875	1006
4. Cochin	87	74	N.A.	N.A.	N.A.	N.A.	54	57	62
5. Goa	19	21	18	N.A.	N.A.	N.A.	13	16	15
6. Kandla	26	19	21	N.A.	N.A.	N.A.	99	110	91
7. Visakhapatnam	25	29	43	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
8. Delhi (Air)	450	606	N.A.	N.A.	N.A.	N.A.	75	143	207
9. Others ports	366	406	1224	N.A.	N.A.	N.A.	267	351	485
	4829	5756	4575	N.A.	N.A.	N.A.	4,104 (a)	4,929 (b)	5430 (c)

N.A.—Not available.

(a) differs from the accounts figure of Rs. 4395.98 crores.

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

(c) Differs from the accounts figures of Rs. 5656.64 crores.

(ii) The value of exports and export duty collected during the year 1983-84 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			Value of exports (In crores of rupees)			Export duty collected			Amount of drawback paid		
	1981-82	1982-83	1983-84	1981-82	1982-83	1983-84	1981-82	1982-83	1983-84	1981-82	1982-83	1983-84
1	2	3	4	5	6	7	8	9	10	11	12	13
1. Bombay .	3.398	3,608	3689	N.A.	N.A.	N.A.	2.89	3.31	4.37	N.A.	N.A.	N.A.
2. Calcutta .	619	570	N.A.	N.A.	N.A.	N.A.	7.15	5.09	6.04	N.A.	N.A.	N.A.
3. Madras .	805	591	530	N.A.	N.A.	N.A.	22.34*	28.90*	24.45*	N.A.	N.A.	N.A.
4. Cochin .	291	309	N.A.	N.A.	N.A.	N.A.	2.67	9.47	15.57	N.A.	N.A.	N.A.

1	2	3	4	5	6	7	8	9	10	11	12	13
5. Goa .	17	16	17	N.A.	N.A.	N.A.	5.51	4.79	4.96	N.A.	N.A.	N.A.
6. Kandla .	24	27	23	N.A.	N.A.	N.A.	—0.06	N.A.	N.A.	N.A.	N.A.	N.A.
7. Visakha-patnam .	35	43	48	N.A.	N.A.	N.A.	included in Sl. No. 3	included in Sl. No. 3	N.A.	N.A.	N.A.	N.A.
8. Delhi .	1138	1544	N.A.	N.A.	N.A.	N.A.	Nil	Nil	Nil	N.A.	N.A.	N.A.
9. Other Ports	738	693	2540	N.A.	N.A.	N.A.	8.50	4.72	3.62	N.A.	N.A.	N.A.
Total .	7,065	7,402	6,847	N.A.	N.A.*	N.A.	49.00 (a)	56.28 (b)	69.01 (c)	N.A.	N.A.	N.A.

*Includes figures for export through Visakhapatnam and Bangalore.

(a) differs from accounts figure of Rs. 50.71.

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

(c) Differs from accounts figuresof Rs. 67.94

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 collections from duty on imported passenger baggage has gone up from Rs. 248 crores in 1981-82 to Rs. 271 crores in 1983-84.

1.04 Cost of collection

The expenditure incurred in collection of Customs duties during the year 1983-84 alongside figures for the preceding year are given below :—

Cost of collection on	1982-83	1983-84
	(In crores of rupees)	
Import, Export and trade control functions . .	8.03	8.57
Preventive and other functions	33.52	43.05
Total	41.55	51.62
Cost of collection as percentage of gross receipts .	0.78	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 port wise 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 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 1983-84 and the preceding three years are given below :—

	1980-81	1981-82	1982-83	1983-84
(i) Number of exemptions issued and availed of .	68	63	115	71
(ii) Total duty involved (in crores of rupees) . .	274.77	438.055	539.09**	243.78
(iii) Number of cases each having a duty effect above Rs. 10,000 . . .	61	59	114	66
(iv) Duty involved in the cases at (iii) above (in crores of rupees)	274.76	438.054	539.09**	243.77

**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) in a year, increased from Rs. 257 crores in 1979-80 to Rs. 1,779 crores in 1983-84. The amount of import duty

foregone every year on goods exempted from duty (subject to end use verification) went up from Rs. 284 crores in 1979-80 to Rs. 2,307 crores in 1983-84.

1.08 **Arrears of Customs duty**

The amount of customs duty assessed upto 31 March, 1984 which was still to be realised on 31 October, 1984 was Rs. 9.79 crores. Of this Rs. 7.28 crores was outstanding for more than a year. The corresponding amount as on 31 October 1983 was Rs. 6.91 crores. The arrears included Rs. 0.31 crore in Bombay, Rs. 2.39 crores in Calcutta, Rs. 0.82 crores in Madras, Rs. 0.85 crores in Guntur, Rs. 0.36 crores in Meerut and Rs. 3.93 crores in Vishakhapatnam Collectorates.

1.09 **Time barred demands**

On the demands raised by the department upto 31 March 1984 which were pending realisation as on 31 October, 1984 recovery of demands amounting to Rs. 5.52 crores raised in eleven Customs Houses and Collectorates were barred by limitation.

1.10 **Write off of duty**

Customs duties written off, penalties and *ex gratia* payments made during the year 1983-84 and the preceding three years are given below :—

Year	Amount of duty written off
	(in lakhs of rupees)
1983-84	364.96
1982-83	6.80
1981-82	33.69
1980-81	44.39

Rs. 3.60 crores was written off in Chandigarh Collectorate in 1983-84.

1.11 **Pendency of Audit Objections**

The number of objections raised in audit upto 31 March 1983 and the number pending settlement as on 30 September 1983 in the various Custom Houses and collectorates of Customs and

Central Excise 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 1980-81		raised in 1981-82		raised in 1982-83	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount
1	2	3	4	5	6	7	8	9
1. Collector of Customs Gujarat Ahmedabad .	3	15.52	4	0.15	7	2.84	11	9.79
2. Collector of Customs, Bangalore . . .	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.	4	0.38
3. Collector of Customs Bombay . . .	18	53.16	6	1.86	13	71.89	17	29.70
4. Collector of Customs, Calcutta . . .	37	453.26	8	0.75	35	53.56	37	46.98
5. Collectorate of Customs and Excise, Chandigarh	3	0.69	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.
6. Collector of Customs, Cochin . . .	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.
7. Collector of Customs, Delhi . . .	43	3.45	12	3.49	9	1.23	15	7.67
8. Collectorate of Customs and Excise Guntur .	Nil.	Nil.	4	0.01	Nil.	Nil.	3	Nil.
9. Collectorate of Central Excise, Gwalior .	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.	3	29.70
10. Collectorate of Customs and Excise, Hyderabad	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.	1	Nil
11. Collector of Customs, Madras . . .	Nil.	Nil.	56	16.95	107	19.66	118	75.03
12. Collectorate of Customs and Excise Madras .	Nil.	Nil.	Nil.	Nil.	11	0.03	10	Nil
13. Collectorate of Customs and Excise, Madurai.	Nil.	Nil.	4	1.21	8	0.13	12	Nil
14. Collector of Customs Tiruchirappalli . .	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.	12	4.98
15. Additional Collector of Customs Vishakapatnam	Nil.	Nil.	Nil.	Nil.	3	0.99	12	232-15
Total	104	526.08	94	24.42	193	150.33	255	436.38

Total for all years—646 objections amouting to Rs. 11.37 crores.

The outstanding objections fall under the following categories :

	(Amount in Rupees lakhs)
1. Non levy of duties	18.28
2. Undervaluation	21.89
3. Misclassification	289.56
4. Other Mistakes	114.19
5. Exemptions	513.08
6. Baggage	0.14
7. Refunds	20.47
8. Drawback	18.28
9. Other Topics of Interest	136.90
10. Over assessments	4.42
Total	1137.21

1.12 **Results of audit**

Test check of the records in Custom Houses and Collectorates, conducted in audit during the year 1983-84 revealed cases of short levies of duties and cess, as also payments and refunds in excess and losses of revenues amounting to Rs. 6.16 crores in the aggregate. Excess levy of duties and payments due but not made amounting to Rs. 4.54 lakhs were also noticed in audit.

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

(a) Non levy of duties.
(b) Mistakes in valuation.
(c) Short levy due to misclassification.
(d) Incorrect grant of exemptions.
(e) Other mistakes.
(f) Export duties.
(g) Cess.
(h) Refunds of duty.
(i) Drawback payments.
(j) Other topics of interest.

1.13 Non levy of Customs duty

(i) Without payment of duty 247 cargo containers were imported during the years 1978, 1979, 1980 and 1981 by ship owners or their agents who executed guarantees to the effect that the containers would be exported within two months from the date of their import or within such further time as may be allowed. The duty not levied on the containers amounted to Rs. 36,39,636. No bills of entry were filed by the importers in respect of the containers, save that they were entered in the Import General manifests filed by the masters of the vessels with the customs authorities. No extension of time was allowed, but the containers remained in the port. No demands were raised even after the non fulfilment of the conditions in the guarantee furnished and only show cause notices were issued.

The failure to enforce the guarantee was pointed out in audit in February 1983.

The Ministry of Finance stated (December 1984) that out of a total of 247 containers referred to 111 containers have already been exported out of India and guarantees cancelled. For the remaining containers the parties have been asked to furnish proof of export. Show cause notices have also been issued where proof of export is not forthcoming. These show cause notices are in the nature of demand notices for recovery of duty including failure to fulfil the terms and conditions of the guarantees.

(ii) As per provisions of section 20 of the Customs Act 1962 on goods of Indian origin which are imported into India after exportation therefrom customs duty is leviable as on like imported goods of foreign origin. Such goods may, however, be released without payment of import duty if they are imported within three years of their exportation.

Two consignments of cut and polished precious and semi-precious stones, valuing Rs. 68,472 which were exported out of India were imported through post in July and October

1982, after three years of their original exportation. However, custom duty amounting to Rs. 58,201 was not levied.

On the omission being pointed out in audit (May 1983) the department stated that no duty was leviable since the identity of the goods as of Indian origin was established and a warning had been issued to the party. However, section 20 gives no discretion to exempt duty in respect of goods identified as of Indian Origin if the import was after 3 years. The Ministry of Finance have confirmed the facts and stated (November 1984) that sum of Rs. 7,650 has been realised from the exporter and a demand for the balance of Rs. 50,551.50 has been raised.

1.14 **Non levy of countervailing duty**

Under section 3(1) of Customs Tariff Act 1975, in addition to basic customs duty leviable on imported goods, an additional duty (called countervailing duty) is leviable at a rate equal to the excise duty for the time being leviable on like goods produced or manufactured in India. Where imported goods are stored under bond in a warehouse and are cleared subsequently, the rate of duty in force on the date on which the goods are actually removed from the warehouse is the rate at which duty is leviable.

(i) As per a notification issued on 29 June 1977 under the Central Excise Act and Rules thereunder excise duty leviable on plastic material commonly known as polyvinyl chloride compound (PVC compound) was exempted. The PVC compound is used for manufacture of phonograph discs. As per a letter issued by the Ministry of Finance on 30 June 1977 it was clarified that the duty leviable on PVC resin produced in the integrated factories should be levied and only the duty payable on the compound produced therefrom was exempted. However, no such clarification was issued in regard to imported PVC compound which *prima facie* would not have paid duty on the PVC resin to the Indian exchequer. There is a provision under Section 3(3) of the Customs Tariff Act, 1975 for Central Government to levy countervailing duty on the imported product equivalent to the duty paid in India on raw material or components going into the

indigenously produced equivalent product. No such notification was issued concurrently with the letter of the Ministry of Finance issued on 30 June 1977.

On 34 imports of PVC compound during the period from January 1981 to October 1981 countervailing duty amounting to Rs. 32,69,448 was not levied.

On the non-levy of duty being pointed out in audit (November 1981) the Custom House did not accept the objection in the absence of any notification requiring equitable levy of countervailing duty.

(ii) A consignment of "Billiton Ferro Nickel ingots" valued at Rs. 2,75,472 was imported in May 1983 and was stored under bond in a warehouse. It was cleared from the warehouse on 27 July 1983. Customs duty was levied, but additional duty was not levied because of a notification issued on 8 January 1981, which exempted such goods from levy of excise duty. The exemption notification was, however, rescinded on 19 July 1983 and therefore countervailing duty was leviable on 27 July 1983. Failure to levy the countervailing duty resulted in short levy of duty by Rs. 45,452.

The omission was pointed out in audit in February 1983 and the department stated that demand for Rs. 45,452 had since been raised (April 1984).

The Ministry of Finance have confirmed the facts and stated (September 1984) that the importer has been requested to pay the amount of Rs. 45,452.

(iii) As per a notification issued in March 1970, only on certain specified office machines and apparatus excise duty was leviable and therefore on imports of only the specified machines countervailing duty was leviable under item 33 D of Central Excise Tariff. An explanation in the notification clarifies that the term office machine or apparatus includes "an office machine or apparatus which may, in addition to its own function, be used for

performing the functions of two or more machines or apparatuses specified in the notification."

On import of a Reader Printer which was a combination of microfiim reader and a photocopying apparatus, countervailing duty was leviable by virtue of the goods being a photocopying machine which was specified in the notification. But countervailing duty amounting to Rs. 41,653 was not levied on the import made in May 1982.

On the omission being pointed out in audit (December 1982) the Custom House stated that in addition to the photocopying function, the function of "reader" could also be performed by the machine and as such on the composite article countervailing duty was not leviable. But this is not the import of the explanation and duty was leviable.

The reply of Ministry of Finance is awaited in respect of sub-paragraphs (i) & (iii).

1.15 **Revenue from uncleared goods and confiscated goods**

As per provisions of Sections 48 and 150 of the Customs Act, 1962, imported goods not cleared within two months after unloading, may, after notice to the importer, be sold by the person having custody thereof. The sale proceeds are to be appropriated towards customs duty after meeting the expenses of sale and freight and other charges payable to the carrier. Payment of charges due to the custodian and Government have precedence and only thereafter the balance if any, is payable to the owner of the goods.

(i) Imported goods, remaining uncleared or abandoned, are periodically auctioned by the Port Trust. The customs dues on the goods so disposed of are required to be credited from the sale proceeds. In order to facilitate timely credit of customs dues, the Port Trust makes *ad hoc* or advance payments to the Customs Department which is adjusted later. For this purpose, the Custom

House maintains a register known as Port Trust Sale List register wherein the balance is worked out yearly.

In the register maintained in a Custom House, errors in the computation of the balance led to non-adjustment of duty amounting to Rs. 8,83,130 over the years 1975 to 1978.

On the mistake being pointed out in audit (January 1984) the Custom House accepted the objection (March 1984) and corrected the errors and effected recovery.

(ii) Confiscated goods becoming due for disposal are priced by a valuation committee to enable their disposal by auction or otherwise.

Till 30 September 1983 sale of confiscated goods had been delayed, in a collectorate, upto 4 years, as detailed below :—

Year of confiscation	Number of lots of confiscated goods due for disposal	Value of confiscated goods in the lot (in Rs. lakhs)
Upto March 1979	304 lots	9.07
1979-80	151 lots	12.72
1980-81	689 lots	3.37
1981-82	1146 lots	3.94
1982-83	1197 lots	5.57
Total	3487	34.67

The delay in pricing of the confiscated goods by the Valuation Committee was stated to be the reason for the delay in their disposal. The details of the bulk of the goods were not available though some watches were included in them. The value of electronic goods, precious stones or textiles included in the goods for disposal was not significantly large.

The Ministry of Finance have confirmed the facts and stated (September 1984) that 2413 lots of goods valuing Rs. 9.73 lakhs had since been disposed of. The lots still to be disposed of included also item like walkie-Talkie sets, snake skins, films, yarn, antiquities, baggage and rags. Statutory restrictions came in the way of disposal of walkie-talkie sets and snake skins. Some lots (76 in number) could not be sold even after putting them to auction. Instructions have since been issued about disposal of films and baggage. The Ministry have also stated that as a result of attention given to removing the statutory and other restrictions in the way of disposal of the goods, Rs. 41.07 crores worth of goods were disposed of in 1983 as against Rs. 24.90 crores worth of goods disposed of in 1982. The Ministry expects that as a result of comprehensive instructions issued on 22 May 1984 and monitoring by Directorate of Preventive operations the delay in disposal of confiscated goods would come down in future.

(iii) In respect of goods imported by air and lying uncleared, the International Airport Authority of India have been appointed as the custodian. They are also responsible for periodical auctioning of the imported goods lying uncleared and abandoned in the Airport.

A consignment of 4,60,118 pieces of Silvered Mica Capacitors which was exported was imported by air in May 1978 and was warehoused by the International Airport Authority of India. The goods were valued at Rs. 1,84,048 in January 1979. The goods have not been sold and import duty realised, or the drawback paid at the time of export recovered from the sale proceeds even though 6 years have passed. The reasons were enquired in audit in April 1982.

It was understood that the amount of drawback to be recovered is not ascertainable as the Custom House has not been able to locate the relevant Shipping Bills relating to export.

The Ministry of Finance have stated (December 1984) that the question of recovery of drawback amount does not arise as no importer has come forward to claim ownership of the goods.

So far as duty on uncleared goods is concerned, the same is recoverable from the sale proceeds as and when the same are available for disbursement. So far repeated auctions of the goods, even at the reduced fair reserve price, have shown no response. The inability to sell the goods or dispose them of to the best advantage of Government for over 5 years is surprising because it is within the department's discretion to so fix the reserve price in order to effect the sale or disposal and not fix it at such value as to become unable to sell or dispose of the goods.

The reply of Ministry of Finance is awaited in respect of sub-paragraph (i).

1.16 Warehousing leading to non-levy of duty

Section 61(1) of the Customs Act, 1962 required that the period for which goods (other than non-consumable stores) may remain warehoused, be only one year. Goods which are likely to deteriorate shall, at the discretion of the Collector of Customs, be allowed to be warehoused for even shorter period. Customs duty is not realised so long as the goods remain warehoused under bond and duty is realised only when goods are cleared for home consumption.

Consumable stores including primer, polyester resin, caulking compound and bedding compound were imported during the years 1976 to 1980 for use in a boat building yard. The goods were taken to a private bonded warehouse. The goods deteriorated and in July 1981, the goods were ordered for destruction. Full remission of duty was allowed and no revenue was realised on the stores valuing Rs. 1,18,390. The duty not realised amounted to Rs. 1,72,243. Non-enforcement of statutory provision relating to goods likely to deteriorate and allowing the importer the benefit of avoiding payment of duty on goods which were likely to deteriorate resulted in the loss of duty. By allowing prolonged warehousing even where importer was unable or unlikely to use the goods, duty was avoided by merely holding the goods in a bonded warehouse for prolonged periods.

The objection was reported to Ministry of Finance (September 1984); their reply is awaited.

Under the Customs Act, 1962, for purposes of levy of Customs duty *ad valorem*, the assessable value of the goods is the price at which the goods are ordinarily sold in the course of international trade, where the buyer and the seller have no interest in the business of each other and price is the sole consideration for sale.

1.17 Short levy due to non-inclusion of agency commission in assessable value

As per provisions of Rule 5(a) of the Customs Valuation Rules, 1963 assessable value of imported goods includes the expenditure incurred towards payment of commission to a sole agent, distributor or indentor towards import of the goods.

On a consignment of 'Video Production Recorders' imported in November 1982 agency commission at 10 per cent of f.o.b. value was omitted to be included in the assessable value. The mistake resulted in short levy of duty by Rs. 2.53 lakhs.

On the mistake being pointed out in audit (June 1983) the department accepted the objection and recovered the amount of Rs. 2.53 lakhs (September 1983).

The Ministry of Finance have confirmed the facts.

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 August 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 that effect that freight incurred normally must be included in the assessable value. Further, in contrast, under the Customs Cooperation Council Nomenclature (C.C.C.N.), the explanatory notes on valuation of goods for purposes of levy of duty (as per the Brussel's Convention) require the inclusion of the actual freight paid in the assessable value.

While deciding revision applications, the Government of India in their orders passed on 4 June 1981 and 12 February 1982 held that section 14 of 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 cases of import by air.

(i) On a consignment of synthetic resins imported by air, in May 1983 and valuing U. S. dollars 1045 f. o. b., the c. i. f. value was determined by adding U.S. dollars 222 representing 20.125 per cent of the f. o. b. value instead of the actual freight and insurance cost incurred. The actual cost amounted to U. S. dollars 869. The incorrect practice resulted in duty being levied short by Rs. 19,805.

The incorrect practice (not having a legal basis) was pointed out in audit in April 1984.

(ii) On a consignment of fish and steaks imported by air in November 1983 the assessable value was determined after adding only 20 per cent of f. o. b. value as the cost of freight instead of adding the actual freight charges and insurance. The mistake resulted in duty being realised short by Rs. 19,357.

The mistake was pointed out in audit in August 1984; the reply of the department is awaited.

(iii) On a consignment of heavy dtuy air cylinders imported by air in October 1983 the assessable value was arrived at after addition of only 20.125 per cent of f. o. b. cost of goods instead of adding actual cost of freight and insurance charges. The mistake resulted in duty being realised short by Rs. 14,719.

The mistake was pointed out in audit in August 1984; the reply of the department is awaited.

(iv) On a consignment of 'DT Penraylper Oxide' catalyst imported by air in October 1983, the assessable value was arrived at after adding only 20.125 per cent of f. o. b. cost towards freight instead of adding the actual freight charges. The mistake resulted in duty being realised short by Rs. 14,117.

The mistake was pointed out in audit in August 1984; the reply of the department is awaited.

(v) On a consignment of PVC films imported by air in March 1979 assessable value was determined after adding towards freight only 20.125 per cent of f.o.b. cost instead of actual freight and insurance charges. The mistake resulted in duty being realised short by Rs. 10,658.

The mistake was pointed out in audit in August 1984; the reply of the department is awaited.

(vi) On a consignment of valves imported by a public sector undertaking by air assessable value was determined after adding 20.125 per cent of f. o. b. value instead of actual freight cost and insurance charges. The mistake resulted in duty being realised short by Rs. 25,221.

The mistake was pointed out in audit in August 1984; the reply of the department is awaited.

(vii) On a consignment of 'Semi Colouring Varnish' imported by air in October 1977, the assessable value was determined after adding 20.125 per cent of f.o.b. value instead of actual

freight and insurance charges. The mistake resulted in duty being reply of the department is awaited.

The mistake was pointed out in audit in August 1984; the reply of the department is awaited.

The above cases were reported to Ministry of Finance in October 1984; their reply is awaited in respect of sub-paragraphs (ii) to (vii).

In respect of sub-paragraph (i), the Ministry of Finance stated (December 1984) that instructions are in force since 1964 that freight charges incurred in ordinary course of trade are to be considered for arriving at the assessable value in case of goods imported by air. This is in order to ensure uniformity of valuation. The sea freight is considered for arriving at the assessable value only for goods of which the normal mode of transportation is by sea. In case the normal mode of transportation is by air, the air freight is being considered for arriving at the assessable value. The Brussels definition of value is based on the selling price in the country of importation and can not be treated as any guide for valuation under Customs Act. It is a fact that Central Government had in two revision applications decided in 1981 and 1982 and held that the actual freight should be charged. However, the Appellate Tribunal has recently upheld the Department's practice.

The reply is 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.

1.19 Short levy due to multiplicity of exchange rates

Sub section (3) of section 14 of Customs Act 1962 provides that for purpose of determination of assessable value under that section, the rate of exchange means the rate determined by the Central Government or ascertained in such manner as the Central Government may direct, for the conversion of Indian currency into foreign currency or vice-versa. In practice, the Central Government in the Ministry of Finance notifies every quarter the rates of exchange in respect of 18 foreign currencies. The rates notified

by the Ministry are the rates ascertained by it to be the rates determined by the Reserve Bank of India and in force on the last working day of the previous quarter. But the Ministry notifies such rates as the rates under section 14(3) of the Customs Act 1962 for a whole quarter notwithstanding the fact that the rates may not be the rates in force determined by the Reserve Bank of India on any date within the quarter. In respect of foreign currencies other than the said 18 currencies the rates of exchange are notified by the Ministry of Finance as and when changes occur in the rates as determined by the Reserve Bank of India.

Section 40 of the Reserve Bank of India Act 1934, provides that the Reserve Bank of India shall sell or buy from any authorised person, who makes a demand in that behalf, foreign currency at such rates of exchange and on such conditions as the Central Government may from time to time by general or special order determine. Further section 8(2) of the Foreign Exchange Regulations Act 1973 provides that no person, whether an authorised dealer or a money changer, shall enter into any transaction which provides for conversion of Indian currency at rates of exchange other than the rates for the time being authorised by the Reserve Bank of India. Thus, while the power to lay down conditions (subject to which the rates are to be determined) by general or special orders vests in the Central Government, the power to determine and authorise the rates of exchange vests only in the Reserve Bank of India.

The practice adopted by the Ministry of Finance under section 14(3) of Customs Act 1962 of notifying rates (which may not be in force) as the determined rates throughout a quarter has resulted in a situation where a rate of exchange notified by the Ministry of Finance is neither a rate determined by the Central Government nor a rate determined and authorised by the Reserve Bank of India. It is also not a rate ascertained in any specified manner to be the exchange rate in force legally. Since the rate notified by the Ministry of Finance, as valid for the quarter, differs from the rates in force determined and authorised by the Reserve Bank of India, short levy of duty results in practice.

(i) In five cases of imports in the year 1983, invoice value in U.S. dollars, French Francs and Dutch Guilders were converted into Indian currency at rates notified by the department instead of at rates in force on the relevant dates. The practice resulted in short levy of duty by Rs. 1,12,167.

The short levy was pointed out in audit in May, June and July 1984; the department has not accepted the objections.

(ii) On import of a consignment of copper wire rods, a bill of entry was presented to a Custom House on 20 April 1983. In the invoice, the price was expressed in pound sterling. The rate of exchange notified by the Ministry of Finance as the rate for quarter January 1983 to March 1983 was £ 6.3635 for Rs. 100. Two rates of exchange are authorised by the Reserve Bank of India for foreign exchange transaction namely "Spot selling rate" and "Spot buying rate". The Reserve Bank also determines and authorises the "middle rate of exchange" (being middle of buying and selling rates). The middle rate of exchange in force on 20 April 1983 was £ 6.4309 for Rs. 100. But the rate of exchange adopted under section 14 by the Custom House was £ 6.7975 for Rs. 100, which was neither the rate notified by the Ministry of Finance (though without legal force) nor the rate determined by the Reserve Bank of India. The mistake in adopting a rate other than that determined and authorised by the Reserve Bank of India (under general orders of the Central Government under the Reserve Bank of India Act 1934 and Foreign Exchange Regulations Act 1973) resulted in short recovery of duty by Rs. 53,407 with reference to the middle rate determined and authorised by the Reserve Bank of India.

(iii) On import of 'electrolytic copper wire rods', bill of entry was presented to the Custom House on 26 April 1983. In the invoice, the price of the goods was expressed in pound sterling. The rate of exchange adopted by the Custom House for purposes of section 14 was £ 6.7975 for Rs. 100. The

middle rate determined and authorised by the Reserve Bank of India was £ 6.3694 for Rs. 100. The basis for the rate of £ 6.7975 for Rs. 100 was not any notification issued by Ministry of Finance and the basis could not be ascertained in audit. Adoption of a rate of exchange other than that authorised and notified by the Reserve Bank of India resulted in duty being recovered short by Rs. 24,893.

The above mistakes were pointed out in audit in January 1984.

(iv) The bill of entry in respect of an imported consignment was presented to a Custom House on 15 December 1982. On the invoice the assessable value of the goods was expressed in pound sterling. The rate of exchange notified by the Ministry of Finance as the rate for the quarter October 1982 to December 1982 was £ 6.3635 equals Rs. 100. The rate of exchange authorised by the Reserve Bank of India for transaction on 15 December 1982 was £ 6.333 equals Rs. 100. The rate actually adopted by Custom House in valuing imports under the bills of entry was £ 6,360 equals Rs. 100. The "mistake resulted in excess collection of customs duty by" Rs. 48,475 with reference to the rate notified by the Ministry of Finance and Rs. 44,171 with reference to the rate authorised by the Reserve Bank of India. The existence of more than one exchange rate resulted in adoption of incorrect rate of exchange and consequent over assessment of duty.

The irregularity was pointed out in audit in August 1983.

In the above cases, the Ministry of Finance have confirmed the facts. However, they have stated (October 1984) that Section 14(3) of the Customs Act 1962 empowers the Central Government to determine or ascertain in such manner as the Central Government may direct, the rate of exchange. Such a rate is only for the purpose of converting foreign currency into Indian currency to arrive at the assessable value for calculation

of Customs duty under section 14 of the Customs Act. Such exchange rates are, therefore, only notional rates for this limited purpose and there is no actual transaction in foreign currency at such ates. The exchange rate notified by the Ministry of Finance is not used for the purpose of calculation for remittance of money abroad. The rates notified by the Reserve Bank of India are the operative rates. Due to frequent fluctuations in the exchange rates of various currencies, and as a measure of administrative convenience it has been decided in consultation with the Department of Economic Affairs that the rate notified under the Customs Act shall ordinarily remain in force for a period of three months. This is to reduce the large number of wrong collections of duty which would arise if fresh exchange rates were notified under the Customs Act with every fluctuation. Since exchange rates notified by the Department of Revenue are only for purpose of arriving at the value for Customs purpose, it would not be correct to compare them with the operative rates authorised by the Reserve Bank of India.

The reply of the Ministry of Finance stated above is valid only if sub-section (3) of Section 14 of the Customs Act had read "for the purpose of Section 14 of the Customs Act 1962, the rate of exchange means a *notional* rate determined or ascertained by the Central Government" or it had read "a rate of exchange determined for the purposes of Section 14 of the Customs Act only". But there is no such wording or intention in Section 14. The section says that the rate of exchange means the rate determined by the Central Government (which is the wording in Reserve Bank of India Act 1934 also) or ascertained in such manner as the Central Government may direct (*i.e.* ascertainment of a rate determined or authorised by any other authority *e.g.* the Reserve Bank of India under the Foreign Exchange Regulations Act 1970). The rate referred to in Section 14 is an operative rate. The advice of the Ministry of Law on the interpretation of Section 14 has either not been obtained or has been given in support of the Ministry's

view that the rate other than the legal rate fixed by the Reserve Bank of India can be adopted for purpose of section 14. If a fictional uniform rate of exchange is adopted for the purpose of customs valuation in the interest of administrative convenience, the provisions in the Customs Act will need to be amended to allow for it in the manner it is being done.

1.20 Under valuation of electronic goods

As per provisions of the Customs Act 1962 the value of goods for purposes of levy of import duty of customs is to be so determined as to reflect the value or price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade where the seller and the buyer have no interest or relation with each other, the price being the sole consideration for sale.

Eight parcels containing Video cassette recorders and Video cameras were imported by post during the year 1981. Customs duty was levied on the price declared or price shown in the invoices even though they were very low as compared to the values for such articles generally determined in Custom Houses by reference to catalogue prices.

On the basis for the valuation being enquired in audit (June 1981), the assessments were revised and further demand was raised in June 1983 for recovery of duty amounting to Rs. 30,128 and redemption fine amounting to Rs. 24,085. An amount of Rs. 1,500 on account of redemption fine was recovered in May 1984. Report on recovery of the balance amount is awaited.

The case was reported to Ministry of Finance (September 1984); their reply is awaited.

1.21 **Short levy due to under valuation and leakage of foreign exchange**

As per Section 14(1)(a) of the Customs Act, 1962 value for the purpose of levy of import duty is the price at which the imported goods are sold or offered for sale for delivery at the time and place of importation, in the ordinary course of international trade, where the seller and the buyer have no interest in the business of each other and price is the sole consideration for the sale or offer for sale.

A limited company in Faridabad imported two consignments of wire rods valuing Rs. 3,40,799 and Rs. 6,88,624 under open general licence and without any guarantee issued by any Indian Bank or any approval from the Reserve Bank of India for deferred payment. The said amounts were exclusive of interest charges at 14 per cent for a period of 120 days (fixed) calculated on the aforesaid values. The so called interest charges were included in the invoice and were paid for by the importer. The payment was made to the foreign supplier in foreign exchange through confirmed and irrevocable letters of credit opened by the importer on the State Bank of India nominated by the supplier. The letter of credit was stated to be "120 days at sight". Even though the total price mentioned in the invoice was the sole consideration for sale and foreign exchange to the full extent of the invoiced price went out of the country, customs duty was levied only on the balance of the invoiced price after excluding the so called interest charges. This was done on the plea that the so called interest charges were not payment towards the imported goods. The interest charges were considered to be payment to the same supplier towards interest, if any, paid by him to the foreign banker on the value of the goods for the period intervening between the date of shipment of the goods and the date of receipt of payment by the foreign supplier.

The letter of credit was to be opened for shipment in October or November 1981 and valid for shipment upto the end of Decem-

ber 1981. The letter of credit was to be negotiable upto 15 January 1982 as per terms and conditions laid down by the foreign supplier. This indicated clearly that credit, if at all, given by the foreign supplier was not for a period of 120 days. Further letter of credit was opened for the full amount shown on the invoice before shipment was made and the foreign exchange went out of India as soon as the letter of credit was opened or in any case as soon as it was encashed after shipment. There should normally be no question of any interest element in the amount for which the letter of credit was opened by the importer through the Bank in India on the foreign bank. In the result, either an unwarranted addition was made of about 3.6 per cent (14 per cent per annum for 120 days) on to the amount of foreign exchange remitted abroad or the real consideration for the sale of the goods was reduced by about 3.4 per cent resulting in short levy of customs duty to that extent. In the latter case, on the imports in question the short levy of customs duty amounted to Rs. 24,179.

On the short levy by under valuation (implying also possible irregularity in foreign exchange remittance) being pointed out in October 1982, the department stated in April 1983 that under executive instructions such cases were viewed as deferred payment cases. Consequently payments not forming part of the value of the goods were not to be included in the assessable value. The reply was however, silent on the fact of full foreign exchange remittance by letter of credit even prior to shipment, which contradicted the possibility of any deferred payment unless irregularity in foreign exchange remittance was committed. The reply was also silent on the outcome of investigations if any done by Director of Enforcement of the foreign exchange regulations.

The objection was reported to Ministry of Finance (August 1984); their reply is awaited.

1.22 Woollen waste or Wool

As per notifications issued on 2 August 1976 and 1 March 1979, woollen waste was exempted from basic customs duty and the additional (countervailing) duty. Only auxiliary duty of Customs was leviable on woollen waste.

The Central Board of Excise and Customs had laid down in 1960 that the woollen waste should not consist of long lengths of yarn or rovings or slivers. What was meant by long length was not quantified.

Six consignments of wool waste were imported by two firms in October 1979. On test the goods were found to be multi-coloured mass of fibre and yarn with wool content ranging from 83 per cent to 99 per cent. It was classified as woollen waste. Another consignment of wool waste imported by one of the firms in November 1979 was not classified as wool waste, after test and inspection in the laboratory of the Custom House. But after taking into account the views of the appraiser and the price of the goods they were considered to be wool waste. Another consignment imported by the same firm was found, on test in the laboratory, to be slightly soiled wool and not wool waste at all. But on retest after testing a fresh sample it was classified as waste of wool but not woollen waste. But, duty, on the goods imported in November 1979 and after, was levied at the rates applicable to woollen waste.

Three more consignments of woollen waste imported by another firm in February 1981 through the same port were, on test, found not to satisfy the definition of wool waste. On adjudication it was held to be wool fibre misdeclared as wool waste and basic customs duty was levied at 40 per cent *ad valorem* and also auxiliary duty at 5 per cent *ad valorem* as applicable to raw wool. Penalty was also levied. This decision was based on the test report, which stated that the major portion of the sample did not satisfy the definition of wool waste.

On five more imports made during the months of October and November 1981 of same description, at same price and from same foreign seller, by the same importer, as the above three consignments, duty was levied at rates applicable to woollen waste because the test reports declared the goods to be wool waste.

The inconsistencies in classification of goods similarly described and priced was pointed out in audit in February 1983.

The Custom House stated (March 1983) that the assessment of the three imports in Fabruary 1981 was based on test reports but assessment was being re-examined on the basis of orders passed by the Board on a revision petition. The price for wool waste was found acceptable for the purpose of assessment as raw wool, in view of its inferior quality.

However, the following inconsistencies were noticed in audit.

(i) In the six cases where the goods were assessed as woollen waste based on the Board's instructions of 1960, the test reports did not specify the length of the fibres.

(ii) In none of the cases where the goods were assessed as wool waste was the description of the goods amplified in terms of description in chapter 53 of the Customs Tariff covering wool.

(iii) Goods identical in description and price, involving same seller and buyer were differently assessed and differing rates of customs duty were levied based on differing test reports.

(iv) Though the Custom House found similarity of price in goods which were assessed as raw wool and as woollen waste, they had earlier gone on record that the price of greasy wool or raw wool was more than twice that of wool waste and that this was one of the factors which influenced their decision in treating the goods as wool waste.

The possible loss of duty by misclassification of wool other than woollen waste (stated to be contained in two of the six consignments) imported in October 1979 and in the five consignments imported in October and November 1981 would amount to Rs. 11.92 lakhs.

The objection was reported to Ministry of Finance (October 1984); their reply is awaited.

1.23 Stainless Steel

The Customs Tariff does not define what is stainless steel as distinct from alloy steel or incoloy steel.

(i) As per note 3(a) under section XV of Customs Tariff Act 1975, an alloy of base metal is to be classified as an alloy of the metal which predominates by weight over each of the other metals. But where an alloy of steel has a higher chromium content and has anti-corrosion property it is liable to be classified as stainless steel on which rate of duty is relatively very high.

"Reformer outlet pig tails (Bent pipes) of incoloy 800H" were imported in April 1983. They contained 37.4 per cent of iron, 30 to 35 per cent of nickel and 19 to 23 per cent of chromium and other elements in small proportions. They had good corrosion resistance property. They were assessed to duty as "other articles of nickel" under tariff heading 75.04 and countervailing duty was levied under item 68 of Central Excise Tariff. The Internal Audit Department of the Custom House raised an objection that the goods were assessable as "Alloy steel pipes and fittings" under tariff heading 73.20(1). The objection was not taken up, on the ground that the rates of duty under headings 75.04/.06 and 73.20(1), were the same. But the goods were "stainless steel pipe fittings", classifiable under tariff heading 73.20(2). It was decided by the Board after discussion in the conferences of collectors of customs held in December 1981 and March 1983 that 'incoloy steel' is stainless steel in view of the high content of chromium and its anticorrosion property.

The mistake in classification resulted in short levy of duty by Rs. 15,33,710.

The mistake was pointed out in audit in December 1983.

The Custom House admitted the audit objection in May 1984 and stated that the goods were only stainless steel (not nickel alloy or alloy steel). It also stated that when similar "primary reformer outlet pigtails made of incoloy" were imported by another importer earlier, they were assessed as "stainless steel pipes". But, the importer went in appeal to the Collector (Appeals) for the assessment of the imported goods under the heading 84.03. The appeal was decided in favour of the party. But the Custom House had not agreed with the Appellate Collector and had sought review of the decision, which is awaited. The Custom House was however of the view that goods may not be pipe fittings but just pipes, classifiable under tariff headings 73.17/19(2). Even, in case they are so classified, the short-levy would amount to Rs. 12,83,905.

(ii) In September 1982, on alloy steel and high carbon steel wires, customs duty and auxiliary duty were leviable at 35 per cent and 15 per cent, respectively. But on stainless steel wires they were leviable at 300 per cent and 30 per cent respectively.

On import of steel wires, described as "non-magnetic tinned steel wire", during September 1982 customs and auxiliary duties were levied at 35 per cent *ad valorem* and 15 per cent *ad valorem* respectively. The chemical composition of the said wire given on the body of the bill, indicated that the wires were stainless steel wires, on which customs duty at 300 per cent *ad valorem* and auxiliary duty at 30 per cent were leviable.

The mistake in levy of duty resulted in short realisation of duty by Rs. 5,27,237.

On the mistake being pointed out in audit (August 1983) the department accepted the mistake (January 1984) and raised demand.

The Ministry of Finance have confirmed the facts and stated (September 1984) that short levy amounting to Rs. 5,27,237 has since been realised.

(iii) In April 1982, the rate of duty on stainless steel was 220 per cent *ad valorem* under tariff heading 73.15(2) while on alloy steel it was 35 per cent *ad valorem* under tariff heading 73.15(1).

On the mistake being pointed out in audit in August 1983 customs duty was levied under tariff heading 73.15(1) instead of under tariff heading 73.15(2). The mistake resulted in duty being realised short by Rs. 33,911.

On the mistake being pointed out in audit in August 1983 the Custom House stated that the goods had been classified as 'Alloy Steel' as per trade parlance. But incoloy steel is accepted in trade as stainless steel if it has chromium content of more than 11 per cent and is corrosion resistant. These two technical parameters have however not been incorporated in the tariff for guidance of importers.

The Ministry of Finance have confirmed the facts.

The reply of the Ministry of Finance is awaited in respect of sub-paragraph (i).

1.24 **Other Metals and articles thereof**

(i) Electrolytic copper wire rods (continuously cast) are classifiable under tariff heading 74.01/02 as unwrought copper.

Copper wire rods (continuously cast) imported in July 1982 were classified as 'wrought copper' under tariff heading 73.03(2). As a result duty was realised short by Rs. 7,90,838.

The misclassification was pointed out in audit in May 1983. Thereupon the Custom House stated that the copper wire rod in question was a 'wrought product' and the expression 'continuous cast' does not mean that the rod was not worked upon.

The reply is not correct. There was no evidence that the continuous cast wire rods had been worked upon.

The Ministry of Finance have confirmed the facts.

(ii) On import of steel containing carbon not less than 0.60 per cent by weight and containing phosphorous and sulphur, taken separately, less than 0.04 per cent by weight each and taken together less than 0.07 per cent by weight, is classifiable as high carbon steel under tariff heading 73.15.

On import of a consignment in April 1982 of CRCA steel sheets (containing 0.9 per cent of carbon, 0.02 per cent of phosphorus, 0.023 per cent of sulphur and 0.3 per cent of manganese) and valuing Rs. 2,09,054 customs duty was incorrectly levied under tariff heading 73.13(1) which covers cold rolled sheets of iron or steel. But the imported goods were of high carbon steel and were classifiable under tariff heading 73.15(1). The misclassification resulted in short levy of duty by Rs. 83,622.

On the mistake being pointed out in audit in February 1983, the Custom House admitted the objection and requested the importer for voluntary payment of duty amounting to Rs. 65,587 in July 1983 because recovery was barred by limitation.

(iii) As per rules for classification in the Customs Cooperation Council Nomenclature which helps in interpreting the words used in the Custom Tariff Act 1975, steel is a type of iron which contains 1.9 per cent or more of carbon. Iron containing less of carbon is not steel, but only iron.

A consignment of permalloy strips imported in September 1979 was stated to contain 53.3 per cent to 55.3 per cent of iron, 44 to 48 per cent of nickel 0.4 to 1.5 per cent of Manganese, 0.02 per cent of Sulphur and 0.08 per cent of Carbon. It was classified under customs tariff heading 73.15 (1) covering alloy steel and under item 26AA of Central Excise Tariff covering iron and steel products.

Permalloy is an alloy which has high magnetic permeability and it contains iron and nickel predominantly. The strip was not alloy steel since it contained carbon less than 1.9 per cent. According to the analysis done in India the carbon content was not even 0.08 per cent and ranged between 0.01 per cent to 0.016 per cent. The permalloy strips were therefore only alloy of iron (not of steel) and were classifiable under Customs Tariff heading 73.02 covering ferroalloys (even if it is not considered a strip of iron falling under heading 73.12 because of the high nickel content and Item 26AA of the Central Excise Tariff (failing which item 68). The misclassification resulted in duty being realised short by Rs. 11,581 in respect of the said import. In respect of another similar import of permalloy strips in December 1981 through the same Custom House, the misclassification resulted in the duty being realised short by Rs. 3801. Total short collection relating to the two imports amounted to Rs. 15,382.

On the mistake being pointed out in audit, the department did not accept the objection and stated that the product was a steel product. The reply is not correct.

The above cases were reported to the Ministry of Finance in October, 1984.

The reply of the Ministry of Finance is awaited in respect of sub-paras (ii) and (iii).

1.25 Machinery, Electrical and other equipment

(i) Parts of turbines for compressors are classifiable under tariff heading 84.11 and not 84.63.

Parts of turbines for compressors imported in November 1977 by an undertaking, in the Joint Sector, included impellers for compressors, shafts for condensate, pumps for refrigeration compressors and blades for the compressors. They were classified under tariff heading 84.63 instead of 84.11. The mistake resulted in short levy of duty by Rs. 2.51 lakhs.

The misclassification was pointed out in audit in December 1978; the reply from the department is awaited (August 1984).

The reply of the Ministry of Finance is awaited.

(ii) Electrical measuring, checking, analysis or automatically controlling instruments and apparatus are classifiable under four sub headings under tariff heading 90.28. Electrical instruments and apparatus the non-electric counterparts of which fall under tariff heading 90.16 are classifiable under tariff heading 90.28(4).

Eddy current dynamometers imported in April 1979 were classified under tariff heading 90.28(4) though classifiable under heading 90.28(1) carrying a rate of duty of 60 per cent.

Even after classifying under heading 90.28(4) the rate of duty leviable was 60 per cent which is the rate as per the tariff, being the same as for heading 90.16(1) and not 40 per cent that was adopted.

The misclassification and adoption of incorrect rate resulted in short levy of duty by Rs. 2,47,868.

The mistake was pointed out in audit in November 1979 and July 1983.

The Ministry of Finance in their reply (January 1985) have not agreed to the classification under 90.28(1) instead of 90.28(4) but accepted the short-levy of duty due to adoption of incorrect rate.

(iii) Electrical apparatus for making and breaking electrical circuits being articles designed for use in circuits of 400 volts and above or below 400 volts are classifiable under heading 85.18/27(3) or 85.18/27(1) respectively.

On a consignment of switchgear assembly imported in September 1982 by a Public Sector Undertaking basic customs duty was levied at the rate of 40 per cent *ad valorem* and countervailing duty at 8 per cent under item 68 of the Central Excise Tariff, viewing the imported goods as articles designed for use in circuits of 400 volts or above.

Since the imported items were designed for use in circuits of 220 volts only, they were correctly classifiable under heading 85.18/27(1) and basic duty was leviable at 60 per cent *ad valorem* and countervailing duty at 8 per cent *ad valorem*. The misclassification resulted in short levy of duty by Rs. 55,044.

The mistake was pointed out in audit in April 1983.

The Ministry of Finance have stated (December 1984) that the item imported is a part of tripping mechanism which operates at 220 Volts. But the end product *i.e.*, Circuit Breaker is rated for higher voltage and current and is, therefore, designed for use in circuits of 400 volts or above. The original assessment, therefore, is in order.

The reply is not correct because the article in question is used only in circuit working at 220 volts even if it thereby breaks other circuits of much higher voltages.

(iv) Non-electrical instruments and apparatus for measuring, checking or automatically controlling the flow depth, pressure or other variables of liquid or gases or for automatically controlling temperature (such as pressure gauges level gauges, flow meters) are classifiable under tariff heading 90.24. But similar electrical instruments and apparatus are classifiable under heading 90.28(4). Parts and accessories suitable for use with both the above types of instruments are classifiable under heading 90.29(1). On goods classifiable under heading 90.28(4) and 90.24 auxiliary duty was leviable at 5 per cent *ad valorem* but on goods falling under heading 90.29(1) at 15 per cent, as per notifications issued on 28 February 1982 and 11 May 1982 respectively.

Component parts for instruments which were solely designed for use as instruments for measurement of pressure, level flow etc. were imported. Though they were classifiable under tariff heading 90.29(1), they were incorrectly classified under tariff heading 90.28(4). The mistake resulted in short levy of duty by Rs. 43,026

The mistake was pointed out in audit in March 1984.

The Ministry of Finance have confirmed the facts and stated (November 1984) that the amount of Rs. 43,026 has since been realised.

(v) As per a notification issued on 28 February 1982 auxiliary duty became leviable at 10 per cent *ad valorem* on locomotives and tenders and parts of such locomotives and tenders.

Components of electrical and brake equipment for locomotives were imported in June 1982 by a Public Sector Undertaking. Duty was levied as on parts of locomotives. But the imported items were for mounting underneath the carriages and coaches and were therefore only parts of coaches and not parts of locomotives. Therefore, auxiliary duty was leviable at 15 per cent *ad valorem*. The misclassification resulted in short levy of duty by Rs. 22,745.

The mistake was pointed out in audit in January 1983.

The Ministry of Finance have confirmed the facts.

1.26 **Misclassification in levy of countervailing duty**

Under Section 3 of Customs Tariff Act 1975 on imported goods countervailing duty is leviable at the rate equal to the excise duty leviable on similar articles produced in India.

(i) A consignment of tubeless tyres for use in Earth Movers and described as 'pneumatic rubber' tyres was imported in January 1983. Countervailing duty was levied by classifying it under item 68 of Central Excise Tariff instead of classifying it under tariff item 16 I(1). The misclassification resulted in duty being realised short by Rs. 12,69,589.

On the mistake being pointed out in audit (September 1983) the Custom House admitted the objection (March 1984) and raised demand. Report on recovery is awaited (June 1984).

The Ministry of Finance have confirmed the facts.

(ii) Tyres for vehicles or equipments designed for use "off the road" are classifiable under item 16 I(1) of Central Excise Tariff and duty is leviable at 60 per cent.

On certain imports of "off the road' tubeless tyres made in November 1982 countervailing duty was levied at the rate of 8 per cent *ad valorem* under tariff item 68 instead of at 60 per cent *ad valorem* resulting in duty being levied short by Rs. 4,67,650.

On the mistake being pointed out in audit (December 1983) the Custom House admitted the mistake and stated that request for voluntary payment of Rs. 4,67,650 was made to the importer since demand was barred by limitation (April 1984). Report on recovery is awaited (July 1984).

The Ministry of Finance have confirmed the facts.

(iii) Under item 16 of Central Excise Tariff Tyre means a pneumatic tyre in the manufacture of which rubber is used and includes the inner tube and the tyre flap.

On rubber tubes and flaps imported in November 1982 countervailing duty was levied at 8 per cent *ad valorem* under item 68 of Central Excise Tariff instead of charging it under item 16 of Central Excise Tariff. The mistake resulted in under assessment of duty by Rs. 2,20,535.

On the mistake being pointed out in audit (December 1983) the Custom House admitted the objection and stated that request for voluntary payment of Rs. 2,20,535 has since been made to the importer because raising of demand was barred by limitation. Report on recovery is awaited (June 1984).

The Ministry of Finance have confirmed the facts.

(iv) On artificial resins and plastic material classifiable under tariff heading 39.01/06, countervailing duty is leviable under item 15A(1)(ii) of Central Excise Tariff.

A consignment of 'Polybutene' imported in October 1981 was stored in a bonded warehouse from where it was cleared in February 1982. But instead of levying countervailing duty under Central Excise Tariff item 15A(1)(ii) countervailing duty was levied under item 68 of Central Excise Tariff resulting in short levy of countervailing duty by Rs. 27.48 lakhs.

The mistake was pointed out in audit (August 1982). In reply the department stated that the product was classifiable under Tariff item 15A but only after the tariff item was changed with effect from 1 March 1982. The reply is not correct and even before the change in the tariff heading made on 1 March 1982, polymerisation products like polybutene were classifiable under tariff item 15A.

The reply of Ministry of Finance is awaited.

(v) Iron and steel products chargeable under item 26AA of Central Excise Tariff which are machined become parts of machinery or other articles classifiable under item 68 of that tariff.

On five consignments of rough machined shaft forgings, frame forgings for rings and pinions imported by a Public Sector Undertaking during the period from March 1979 to March 1981, countervailing duty was levied under item 26AA of Central Excise Tariff instead of under item 68 CET. The mistake resulted in short levy of Rs. 86,000.

The mistake was pointed out in audit in September 1983. Reply of the department is awaited.

The reply of Ministry of Finance is awaited.

1.27 **Default under the Duty Exemption Entitlement Scheme**

As an export promotion measure, a scheme for exemption from levy of customs duty on raw materials and components, imported under advance licence, for execution of export orders, was introduced in 1976. Responsibility for ensuring discharge of export obligation by an importer is entrusted only to the officers of the Chief Controller of Imports and Exports, including that of realisation of duty on wastages of imported materials. The importer executes bonds for payment of duty on the imported items in the event of failure to discharge the export obligation. The Customs authorities act as agents of licensing authorities and make endorsements in the Duty Entitlement Exemption Certificate (DEEC) issued by the licensing authorities, when exports are effected. The bonds are cancelled by the licensing authorities on getting information from the Customs authorities on the discharge of export obligation by the importer. However, exemption from duty is granted by the Customs authorities under a notification issued by the Ministry of Finance.

In January and June 1981 an export organisation in Bombay, was allowed to import under the Duty Exemption Entitlement Scheme polyster fibre, quantity 389 tonnes valued at Rs. 55,43,793. The organisation imported 301 tonnes of polyester fibre valued at Rs. 42,97,704 between December 1981 and September 1982 and duty amounting to Rs. 2,06,36,212 which was leviable was exempted as per notifications issued under the scheme.

As per conditions attaching to the advance licence issued under the scheme, the organisation was required to export polyester blended yarn. But the organisation attempted to export cotton yarn under five shipping bills by misdeclaring the goods as "polyester blended yarn", corresponding to 120 tonnes of imported fibre. The shipping bills were passed for shipment by Customs authorities. 558 cases entered the docks but the remaining cases remained in the exporters' godowns. The Intelligence unit of the Custom House detected the fraud and its examination revealed

that there was only 50 kilograms, even of the cotton yarn, in each case as against 150 kilograms of polyester blended yarn declared in the shipping bills. The said advance licences under the scheme were cancelled by the Joint Chief Controller of Imports and Exports on 27 June 1983. The Customs Department detained three further consignments of polyester fibre imported for a value of Rs. 9,32,926. The export organisation is understood to be dealing in prosessed foods and is not engaged in exporting textiles or yarn.

On enquiry in audit in August 1983 about the action taken, the Custom House stated in December 1983 that demand for Rs. 2.06 crores of duty payable on imported fibre, had been raised together with interest at 12 per cent per annum. The department has also informed the Joint Chief Controller of Imports and Exports to forfeit the guarantee amount of Rs. 10 lakhs. Notice for imposing personal penalty had also been issued by the Custom House.

It is understood that the advance licence procedure required verification of the bonafides of the applicant for advance licence, by the officers of the Chief Controller of Imports and Exports and the Textile Commissioner, before issue of the licence. The Custom House had no information whether such verification had been done. But exemption was to be allowed in the Custom House only if the advance licence and the exemption certificate thereon recorded by the Chief Controller of Imports and Exports indicated the details of the factories in which the manufacture was to be done. But in the said case the fulfilment of this condition was not ensured by the Custom House.

The objection was reported to Ministry of Finance (October 1984); their reply is awaited.

1.28 **Ambiguity in meaning of Stainless steel and bright bars**

Certain types of alloy steel and high carbon steel are classifiable under Customs Tariff heading 73.15. Where they are coils for re-rolling, bars (including bright bars), rods, wire-rods, wires,

circles, angles, shapes and sections, strips, sheets and plates of stainless steel they are classifiable under sub-heading (2) and others under the sub-heading (1) of tariff heading 73.15.

As per a notification issued on 24 November 1982, stainless steels bars (including bright bars) which are classifiable under tariff heading 73.15(2) and have cross sectional dimension of less than 10 mm became chargeable to duty at 60 per cent *ad valorem* while those with cross sectional dimension of 10 m.m. or more became chargeable to duty at 150 per cent *ad valorem*.

On two consignments of bright steel bars (of diameter 100 m.m. to 360 m.m.) which were imported in January 1983 customs duty was levied at 60 per cent *ad valorem* instead of at 150 per cent *ad valorem*. The mistake resulted in duty being levied short by Rs. 5,00,600.

On the mistake being pointed out in audit in July 1983 and September 1983 the department stated that the goods in question were of alloy steel and not stainless steel and that bright bars in the tariff referred only to bright bars of stainless steel. The department also stated that in the light of a decision arrived at on the recommendation of the conference of the Collectors of Customs held at Delhi in December 1982, the technical specification for stainless steel requires a minimum of 17 per cent chromium content which gives it corrosion resistance quality. Therefore the imported alloy steel having lesser chromium content and lacking corrosion resistance quality was not stainless steel.

On another consignment of goods described as 'bright steel bars' imported in May 1982, customs duty was levied at 60 per cent *ad valorem* and auxiliary duty at 25 per cent *ad valorem* under tariff heading 73.15(1). On enquiry in audit as to why 'bright bars' were not classified under Tariff heading 73.15(2) where they are specifically mentioned, the department stated that the goods in question were not of stainless steel but were of alloy steel and were only described as bright steel bars (implying thereby that they were not bright bars).

The tariff heading 73.15 and notification of 24 November 1982 refer to a product bearing description 'bright bars' which need not necessarily be made of stainless steel. Further, the I.S.I. specifications prescribe only a Chromium content of 11 per cent for stainless steel. Still further, commercially the expression 'Bright Bars' refers only to steel bars which are bright in appearance and therefore 'bright bars' whether of stainless steel or alloy steel or mild steel are covered by the expression 'bright bars'. Even in notifications No. 26 of 1 March 1981 and No. 111 of 16 April 1982 there are references to bright bars which need not necessarily be of stainless steel. Since the term alloy steel covers stainless steel as well as bright bars of any composition the lack of a technical definition in the tariff and ambiguity attaching to the terms stainless steel and bright bars resulted in loss of duty amounting to Rs. 5,69,735.

The above objections were reported to Ministry of Finance (October 1984); their reply is awaited.

1.29 **Other Metals and articles thereof**

(i) About 3 tonnes of cold rolled stainless steel strips were imported in November 1982 and were meant for the manufacture of safety razor blades. Under the Duty Exemption Entitlement Scheme, the goods were cleared without levy of duty. But the goods had been supplied free of cost in replacement of an equal quantity of steel imported in May 1982 and alleged to be defective. The original consignment was for 5 tonnes and was imported in May 1982 against an automatic import licence, and not under the said scheme. The alleged defective consignment weighing 3 tonnes was neither exported back nor surrendered to the Customs authorities. The importer only claimed that the defective steel was declared to be scrap in his factory. On import of the original 5 tonnes, duty was partially exempted subject to the condition that the goods will be used in the manufacture of safety razor blades. But no verification of end use was done on either of the two imports. Differential duty not levied on the import of original

5 tonnes amounted to Rs. 2.02 lakhs and was a loss to Government because of the irregular grant of exemption not being detected in Custom House.

The irregularity was pointed in audit in July 1983. But the Custom House did not accept the objection (July 1984), though it gave no reasons.

(ii) Steel hollows are classifiable under import tariff heading 73.33/40 and item 26AA of Central Excise Tariff. As per a notification issued on 2 August 1976, on steel hollows which are imported for manufacture of seamless steel tubes for use in the manufacture of industrial and power boilers, customs duty in excess of 40 per cent and the whole of the countervailing duty was exempted.

On consignments of steel hollows imported between May 1978 and February 1980 exemption aforesaid was allowed subject to fulfilment of the conditions stipulated in the notification. In July 1983, the importers furnished a declaartion that the steel hollows had been used ultimately in the manufacture of tubes as specified in the notification. They produced the certificate from the Director General of Technical Development on the fulfilment of the conditions in the notification but the certificate was not properly worded and therefore the bonds promising payment of duty in the event of non fulfilment of conditions were not cancelled. But some of the steel tubes manufactured out of steel hollows were supplied to Electricity Board, Thermal Stations and others who are not manufacturers of industrial and power boilers and who reqrired the tubes only as replacement parts.

On 485 tonnes of steel tubes diverted for supply as replacement parts grant of exemption was therefore irregular. In the result duty amounting to Rs. 34.61 lakhs due to Government was not recovered.

The irregularity was pointed out in audit in July 1983; the department agreed (June 1984) to recover the amount.

(iii) Prior to 28 February 1982, goods produced or manufactured in a free trade zone were subject to excise duty under the Central Excise and Salt Act, 1944 save where exempted by notification issued under the Rules. After 1 March 1982, on account of the amendment to the Central Excise and Salt Act, 1944 which became effective from that date, the excise duty leviable was to be calculated not as per the schedule to the Excise Act but as per the Customs Act. The nature of the duty *viz.*, excise duty, however remained the same. On goods produced or manufactured in Kandla free trade zone excise duty was leviable on their export out of India, but the excise duty was exempted or rebated under rule 13 and 12 of the Central Excise Rules, respectively. But not so on goods removed from the free trade zone to the domestic tariff area in India, on which goods, excise duty was leviable.

Stainless steel utensils manufactured in Kandla free trade zone were cleared in January 1982 to the domestic tariff area in India. But excise duty leviable under tariff item 68 amounting to Rs. 10,661 was not levied even though there was no notification exempting the levy of duty. The failure resulted in non levy of excise duty amounting to Rs. 10,661 on the utensils.

On the non levy of excise duty being pointed out in audit in April 1983, the department stated that there was no provision for levy of excise duty on manufactured goods removed from free trade zone to the domestic tariff area. This reply is, legally, not correct since at no time was the levy of excise duty on goods produced in free trade zone and not exported, go outside the scope of Central Excise Act and till 28 February 1982 the rate applicable in respect of stainless steel utensils was that under item 68 of the Central Excise Tariff.

The above objections were reported to Ministry of Finance (October 1984); their reply is awaited.

1.30 Machinery, Electrical and other equipment

(i) As per a Customs notification issued on 11 May 1982, on import of "Locomotives and tenders and parts of such locomotives and tenders" so much of auxiliary duty as was in excess of 10 per cent ad valorem was exempted.

On import of "wheel sets for rail coaches" valuing Rs. 33,41,562 by a Public Sector Undertaking in June 1982, auxiliary duty was levied at 10 per cent as per above notification. But the parts of rail coaches were not parts of locomotives or tenders and auxiliary duty was leviable at 15 per cent *ad valorem*. The mistake resulted in duty being realised short by Rs. 1,80,044.

On the mistake being pointed out in audit (November 1982), the Custom House accepted the objection and recovered the amount (April 1984).

The Ministry of Finance have confirmed the facts.

(ii) As per a notification issued on 9 February 1981, levy of duty on capital goods, raw materials and components when imported into India for the purpose of manufacture of articles for export out of India in hundred per cent export-oriented units, was exempt. The grant of exemption was subject to certain conditions. As per another notification issued on 19 March 1984, from that date, spare parts for machinery imported for use in such units for the said purpose were also exempted from duty.

On spare parts of machinery imported for use in two such units duty was not levied even though imports were made prior to 19 March 1984. The irregularity resulted in non levy of duty amounting to Rs. 94,995.

The non levy of duty was pointed out in audit in August 1984.

The Ministry of Finance have confirmed the facts.

1.31 **Electronic goods**

(i) As per a notification issued on 2 August 1976 on component parts of apparatus for wireless reception (incorporated in a single unit with transmitting apparatus) customs duty leviable in excess of 40 per cent *ad valorem* was exempted. The Ministry of Law advised in July 1981 that component parts of such unit exempted under the aforesaid notification need not be only component part of apparatus for wireless reception.

As per a notification issued on 8 August 1977, on wireless transmission apparatus (not containing thermionic valves, transistors and such devices), duty in excess to 40 per cent *ad valorem* was exempted. As per another notification issued on 8 August 1977, if the aforesaid devices were contained in the parts of transmitter, then duty in excess of 60 per cent *ad valorem* was exempted (but not if they were components of microwave transmission and certain other specified apparatus). Therefore on components of microwave equipment containing devices like thermionic valves and transistors though exemption from duty in excess of 60 per cent was not available under the notification dated 8 August 1977 the importer could claim exemption under the notification dated 2 August 1976 for exemption of duty in excess of 40 per cent.

On component parts of Microwave equipment imported by a department of the Central Government, customs duty was levied at 40 per cent ad valorem. But the component parts of microwave equipment including the transmitter portion contained thermionic valves. Therefore no exemption was available under the notification dated 8 August 1977. The failure to amend the notification issued on 2 August 1976 while issuing the notification dated 8 August 1977 resulted in fortuitous benefit to the importer and loss of duty to Government amounting to Rs. 3.20 lakhs.

The incongruity was first pointed out in audit in September 1978; the final reply of the department is still awaited.

(ii) Mounted lenses for T. V. Camera are classifiable under Customs Tariff Heading 90.02 and duty on them is leviable at the rate in the tariff applicable to the instrument or apparatus of which they are parts or fittings. The corresponding instrument being T. V. camera, the rate applicable in the tariff against heading 85.15(1) was the rate of duty leviable on the mounted lenses viz. 100 per cent, as indicated in the tariff against heading 85.15(1).

On imports of mounted lenses made in June 1981 duty was levied under tariff heading 85.15(1) as indicated above but exemption from duty leviable on goods classifiable under

85.15(1) was allowed. The rate applicable to goods classifiable under 90.02 is only the tariff rate against heading 85.15(1) exclusive of any exemption granted by notification. In the result duty was levied short on mounted lenses by Rs. 35,654.

On the short levy being pointed out in audit (November 1981) the Custom House did not accept the objection and stated that the effective rate and not the tariff rate was intended by the entry in the statutory tariff against heading 90.02. The reply of the Custom House is not correct as was also held by the Ministry of Law whose opinion was obtained earlier on this point.

The above cases were reported to Ministry of Finance in October 1984; their reply is awaited.

1.32 Goods for Science and Technology

As per a notification issued on 26 March 1981 on import of scientific and technical instruments, apparatus and equipments (including spare parts, component parts and accessories thereof but excluding consumable items) levy of customs duty and additional (countervailing) duty was exempted subject to the conditions stipulated in the notification. As per another notification issued in February 1982 such goods were exempted from levy of auxiliary duty of customs also in respect of imports made during the year 1982-83.

(i) Truck Tractors were imported in July 1982 by a Government Department and no duty was levied on them because of a certificate issued by the Administrative Ministry concerned that the tractors were to be used for research purposes. But in fact the tractors were used for shifting heavy fixtures in an area where goods had to be moved. The nexus between use of truck for moving goods and research purpose was remote. Because of the questionable grant of exemption, duty amounting to Rs. 17,93,296 was not realised.

On the questionable grant of exemption being pointed out in audit (November 1982) the department stated that they could not go behind the certificate of the Administrative Ministry about the eligibility for exemption.

However, the Custom House made a reference to the Ministry of Finance, in March 1984, long after the audit objection was raised. The reply from the Ministry is still awaited on the eligibility of the goods for exemption as being essential for research as also on whether such exemption would have been allowed had the goods been imported by any private research institution.

The Ministry of Finance have confirmed the facts.

(ii) On a consignment of liquid plastic, adhesive and liquid for casting (described as epoxy resin) imported by a research organisation of the Defence Department in March 1982 duty was levied as on synthetic resin and a sum of Rs. 62.850 was collected on 20 March 1982. On receipt of a refund claim from the importers claiming exemption from duty in respect of the goods as per a notification issued on 26 March 1981, the Custom House refunded a sum of Rs. 62,850 in July 1982 after obtaining the "Not manufactured in India" certificate furnished by prescribed authorities. But the imported goods were in the nature of consumable and were therefore not exempt from duty under the said notification. The refund was therefore irregular and resulted in short levy of duty by Rs. 62,850.

On the mistake being pointed out in audit in September 1982, the department stated that as per a consensus in the conference of Collectors (on which consensus no instruction or tariff advice was issued by the Board) certificate issued by concerned authorities should be accepted in Custom Houses if the certificates were otherwise found to be in order. If the certificates did not conform to guidelines issued by Ministry of Education, they can be referred to the Board for orders. The acceptance of a certificate contrary to provisions of a statutory notification, as in this case, was therefore wholly without any justification.

The Ministry of Finance have confirmed the facts.

1.33 **Other goods**

As per a notification issued in November 1976, on import of cloves from the countries specified in the said notification, customs duty was to be charged at Rs. 20 per kilogram less 7½ per cent.

On 64 consignment of 'cloves' imported between January and March 1981 from such a specified country customs duty was charged at the rate of Rs. 20 per kilogram and from such an amount 7½ per cent ad valorem was deducted, though the word *ad valorem* did not appear in the tariff. Duty was not charged at Rs. 20 per kilogram less Rs. 1.5 per kilogram. The incorrect method resulted in duty being realised short by Rs. 5,05,875.

The irregularity was pointed out in audit between July and September 1981. The absence of the words 'ad valorem' after the figures "7½ per cent" in the notification was specifically pointed out in audit. Duty at Rs. 20 per kilogram less 7½ per cent implied that duty be charged at Rs. 18.50 per kilogram. This was also the view of the conference of Collectors of Customs which discussed the interpretation of the notification in December 1981.

The Custom House has not so far (May 1984) accepted the audit objection.

The Ministry of Finance have stated (January 1985) that the matter will be discussed in the Collectors' Conference.

1.34 Failure to encash condition attaching to grant of exemption

As per a notification issued on 18 June 1977 duty payable on seven heat exchangers imported as replacements by an undertaking in the Joint Sector was exempted from Customs duty amounting to Rs. 5.68 lakhs. The exemption was subject to the condition that five heat exchangers which were found defective should be surrendered by the undertaking to the Customs department.

The seven heat exchangers were cleared in July and September 1977, after availing of exemption from duty amounting to Rs. 5.68 lakhs. The five defective heat exchangers were surrendered to Customs department on 5 October, 1977 and kept in the premises of the importers. In June 1977 the scrap value of the surrendered goods had been estimated at Rs. 1.34 lakhs,

in July 1984 the goods were still to be disposed of by the Customs department after seven years.

The Ministry of Finance have stated (January 1985) that all along vigorous steps for disposal by Directorate General of supplies and disposal were pursued for early disposal. The reply is still silent on where customers for defective heat exchangers will be found in India and why such a liablity was taken on by Customs department.

OTHER MISTAKES

1.35 Levy at incorrect rates due to changes in rates of auxiliary duty

As per a notification issued on 8 December 1982, on imported goods chargeable to basic customs duty at rates of 60 per cent ad valorem or more, auxiliary duty become leviable at 30 per cent with effect from 8 December 1982 instead of at 25 per cent.

As per another notification issued on 8 December 1982 on imported goods chargeable to basic customs duty at rate less than 60 per cent ad valorem, auxiliary duty became leviable at 15 per cent ad valorem with effect from 8 December 1982 instead of at 10 per cent ad valorem.

(i) On imported goods assessable under heading 84.66 of Customs Tariff, auxiliary duty became leviable at 15 per cent with effect from 8 December 1982 instead of at 10 per cent.

On a consignment of discs for supply of software, classifiable under heading 84.66 of Customs Tariff which was imported by a Government organisation on 28 December 1982, auxiliary duty was levied at 10 per cent ad valorem instead of 15 per cent ad valorem. The mistake resulted in short levy of duty by Rs. 2,34,282.

On the mistake being pointed out in audit in September 1983, the department accepted the objection (January 1984) and recovered the amount (March 1984).

The facts have been confirmed by the Ministry of Finance who have stated (August 1984) that the short levy has since been recovered and arrangements for timely despatch of notifications to Custom Houses have since been streamlined.

(ii) A consignment of channel equipment Moden Recorder cubicle for interface imported by an Electricity Board, on 28 December 1982 was classified under tariff heading 84.66 and auxiliary duty was levied at 10 per cent *ad valorem* instead of at 15 per cent *ad valorem*. The mistake resulted in the duty being levied short by Rs. 1.17 lakhs.

On the mistake being pointed out in audit (September 1983) the department admitted the objection (June 1984). Report on recovery is awaited.

The objection was reported to Ministry of Finance (August 1984); their reply is awaited.

1.36 Incorrect rate of duty vis-a-vis date of entry inwards of vessel

As per section 15 of Customs Act, 1962, customs duty is leviable on imported goods at the rate in force on the date on which bill of entry in respect of the goods is presented to the Custom House. However, proviso to section 15 stipulates that when a bill of entry is presented before the date of entry inwards of the vessel by which the said goods are imported, then the bill of entry shall be deemed to have been presented on the date of the entry inwards.

(i) On a consignment of 'complete and finished wheel sets' imported in February 1983, duty was charged at the rate in force on the date of presentation of bill of entry (19 February 1983) instead of at the rate applicable as on the subsequent date of entry inwards (3rd March 1983) of the vessel. The mistake resulted in short levy of duty by Rs. 4,24,061.

On the mistake being pointed out in audit (November 1983) the Custom House realised the amount of Rs. 4,24,061 (January 1984).

The Ministry of Finance have confirmed the facts.

(ii) On six consignments of goods imported in a vessel which was granted entry inwards after 8 December 1982 auxiliary customs duty was levied in a Custom House at the rate in force prior to 8 December 1982 (*viz.* 25 per cent) instead of at rate effective from 8 December 1982 (*viz.* 30 per cent). The mistake resulted in duty being realised short by Rs. 1,29,755.

The mistakes were pointed out in audit between June and October 1983. The Custom House accepted the objection in all cases.

The Ministry of Finance have confirmed the facts and stated (September 1984) that amount of Rs. 1,29,755 has since been realised.

1.37 Incorrect rate of duty vis-a-vis date of clearance from warehouse

According to Section 15 of Customs Act 1962, Customs duty is leviable on imported goods entered for home consumption at the rate in force on the date on which the bill of entry in respect of the goods is presented to the Custom House. But in case of imported goods stored under bond in a warehouse and later cleared from the warehouse, the duty is leviable at the rate in force on the date on which the goods are actually removed from the warehouse.

(i) On a consignment of electrolytic zinc ingots imported on 29 January 1982 and cleared from bonded warehouse on 22 January 1983 basic customs duty was levied at 45 per cent *ad valorem* but auxiliary duty was charged only at 15 per cent *ad valorem* instead of at 20 per cent *ad valorem*. The mistake resulted in duty being realised short by Rs. 1,98,615.

On the mistake being pointed out in audit (August 1983) the department raised demand for Rs. 1,98,615 in November 1983.

The Ministry of Finance have confirmed the facts and stated (August 1984) that the mistake occurred because the assessing officer was new and that the amount of short levy of Rs. 1,98,615 has since been realised.

(ii) On import of Viscose staple fibre basic customs duty was raised from 20 per cent to 30 per cent with effect from 14 December 1982. But on four consignments of viscose staple fibre cleared from a bonded warehouse, on and after 14 December 1982, the basic customs duty was levied at 20 per cent *ad valorem* instead of at 30 per cent *ad valorem*. The mistakes resulted in duty being realised short by Rs. 1,22,697.

On the mistake being pointed out in audit (July 1983) the Custom House admitted the objection. Report on recovery is awaited (June 1984).

The Ministry of Finance have confirmed the facts.

(iii) Sections 61, 68 and 15 of Customs Act, 1962 require that where dutiable goods stored in any warehouse are not removed from the warehouse after expiry of the warehousing period, duty (together with interest) is to be recovered from the owner of the goods at the rate in force on the date on which the goods are removed from the warehouse.

On seven consignments removed from a warehouse after expiry of the bond for warehousing, duty was not recovered at rates in force on the date of removal. Duty was, instead recovered at rates in force on an earlier date, resulting in duty being realised short by Rs. 1,99,369. The mistake was pointed out in audit in March 1984. The department accepted the objection and recovered the amount of Rs. 1,99,369 (June 1984).

The Ministry of Finance have confirmed the facts.

1.38 Duty levied at incorrect rates

(i) On imports of seal ring and oil seal (made of rubber) as spare parts for crawler tractors, basic customs duty is leviable at 100 per cent *ad valorem* under tariff heading 40.05/16(1).

On seals, mentioned above, imported by a public sector undertaking in February 1983 basic duty was levied at 40 per cent instead of at 100 per cent with corresponding short levy of auxiliary duty and countervailing duty. The mistake resulted in short levy of duty by Rs. 1,58,479.

On the mistake being pointed out in audit (October 1983) the Custom House accepted the mistake and recovered the amount.

The Ministry of Finance have confirmed the facts.

(ii) On import of an automatic plate processor (a photographic equipment) by a newspaper publisher in July 1983, Customs duty was leviable at 100 per cent *ad valorem*, auxiliary duty at 35 per cent *ad valorem* and additional (countervailing) duty at 10 per cent *ad valorem*. But customs duty was incorrectly charged at 60 per cent *ad valorem* resulting in short levy of duty by Rs. 87,712. The mistake was not detected in internal audit.

On the mistake being pointed out in audit (January 1984) the Custom House issued a demand (January 1984) for the duty short levied. Report on recovery is awaited (May 1984).

The Ministry of Finance have confirmed the facts.

1.39 Mistake in computation

(i) A consignment of "Boiler Components" comprising of different items was cleared from a bonded warehouse, in March 1983 for home consumption by a Public Sector Undertaking. The value of the consignment was declared as Rs. 9,74,140 when it was taken into the bonded warehouse. But while clearing for home consumption the value was wrongly shown as

Rs. 8,17,777 in the ex-bond bill of entry. In the result, duty was realised short by Rs. 1,79,035.

On the mistake being pointed out in audit in September 1983, the Custom House admitted the mistake and recovered the short-fall in duty in May 1984. The mistake had not been detected in internal audit.

The Ministry of Finance have confirmed the facts and stated (November 1984) that the wrong calculation of the assessed value was as a result of mistake in computation.

(ii) Four consignments of stainless steel circles valued at Rs. 13,78,386 were imported in the month of December 1981 and were assessed to customs duty provisionally under heading 73.15(1) and countervailing duty under item 26AA of Central Excise Tariff. The goods were not classified under tariff heading 73.15(2) because of interim orders passed to that effect by a High Court. However, instead of demanding an amount of Rs. 6,39,334 which was the duty leviable provisionally, only an amount of Rs. 2,39,334 was realised before clearing the goods. In each bill of entry an amount of Rs. 1 lakh was realised short and in all an amount of Rs. 4 lakhs was realised short.

The mistake in computation and the transcription of figures in the value place of lakh of rupees, was pointed out in audit in April 1984.

The Ministry of Finance have confirmed the facts and stated (November 1984) that the mistake has occurred in computation and that the duty short-levied has since been realised.

(iii) On import of 122 tonnes of "Corrosion Resistant Steel sheets and plates" valued at Rs. 5,16,693 duty was levied at appropriate rates. But while computing the duty payable, the amount was arrived at as Rs. 2,31,237 instead of Rs. 3,31,237 and thereby duty was recovered short by Rs. 1 lakh.

On the mistake being pointed out in audit (November 1983), the Custom House accepted the objection (June 1984) and stated that efforts were being made to recover the short collection. Report on recovery is awaited (July 1984).

Similar short-levies of duty due to mistake in computation of the value by Rs. one lakh have been reported in audit in the past also.

In para 12 of their 27th Report (III Lok Sabha—1964-65) the Public Accounts Committee has commented adversely on the failure of Internal Audit to detect such mistakes in calculation. It is intriguing that mistakes occur mostly at the value place of lakh of rupees.

The Ministry of Finance have confirmed the facts and stated (December 1984) that such lapses in computation are likely to occur due to increasing work load and the need for speedy clearance of goods in order to avoid demurrage. The number of cases where such mistake in computation occur are rare. The fact that some of the mistakes of this kind have occurred at the value place of Rs. 1 lakh appears to be only a co-incidence.

1.40 Objection raised in Internal Audit

On imports of Aluminium ingots in July 1982 auxiliary duty was levied at 10 per cent instead of 15 per cent. The mistake was pointed out in internal audit. On that basis the short levy was Rs. 1,04,390 which was demanded and recovered. But the consequent short levy of additional duty (countervailing duty) by Rs. 22,966 was omitted to be pointed out and was not demanded or recovered.

On the omission being pointed out in audit (April 1983) the Custom House admitted the objection and raised a demand for Rs. 22,966 (January, 1984).

The Ministry of Finance have confirmed the facts and stated (September 1984) that duty short levied has since been recovered.

1.41 Non-levy of export duty

Cotton linters exported out of India are classifiable as raw cotton and export duty is leviable under item 16 of the Export Tariff.

On thirteen consignments of cotton linters exported during the period from December 1980 to August 1981, export duty was levied at Rs. 1,000 per tonne which was the rate applicable to raw cotton as per an exemption notification issued on 9 January 1979. Subsequently, the linters were reassessed and no export duty was levied in the light of another exemption notification issued on 2 August 1976 which covered soft cotton waste and the duty amounting to Rs. 22,47,442 collected earlier was refunded. But cotton linters are not soft cotton waste and duty amounting to Rs. 22,47,442 was in fact leviable.

The misclassification and incorrect grant of exemption resulted in duty being realised short by Rs. 22,47,442.

On the short levy being pointed out in audit (July 1983) the department stated (June 1984) that a show cause notice had since been issued to the exporter and a personal hearing had also been granted.

Report on confirmation of the demand is awaited (June 1984).

The objection was reported to Ministry of Finance (September 1984); their reply is awaited.

CESS

1.42 Non-levy of cess

(i) Under section 3 of the Agricultural Produce Cess Act, 1940, an export duty in the nature of cess is leviable on specified items like fish, spices, fruits, seeds etc.

Exports of canned mango in brine and pine apple tit-bits in casks, bottles and cans were made between October 1981 and August 1983. But cess was not levied on the ground that the goods were produced in a factory and, therefore, cess was not leviable. But the Supreme Court had, while deciding* a case under Sales Tax Law held (on 9 May 1980) that even after under going canning or bottling a fruit retains its identity as the original fruit. The Supreme Court had held that there was no essential difference between the pine apple fruit and canned pine apple slices and that pine apple slices must be held to possess the same identity as the original pine apple fruit.

Therefore on export of mango slices in brine, pine apple tit-bits and mango sliced chutney, cess was leviable and the cess not levied amounted to Rs. 28,564.

On the failure to levy cess being pointed out in audit (April 1984), the department did not accept the objection and stated (May 1984) that canned fruits were produce of a factory and agricultural cess was not leviable. The reply is not correct and the reason of production in a factory is not a valid reason in the light of the judgement of the Supreme Court which was on canned pine apple slices whether it was produced in a factory or elsewhere. The department has also not indicated the advice of Ministry of Law on the legal point involved.

The reply of Ministry of Finance is awaited.

(ii) On export of hybrid tomato seeds cess amounting to Rs. 23,817 was not levied in a Custom House.

On the omission being pointed out in audit in May 1983 the Custom House admitted the objection (in May and June 1983) and agreed to recover the amount. Report on recovery is awaited (March 1984).

The Ministry of Finance have confirmed the facts.

*Civil Appeal No. 2398 of 1978 in the case of M/s. Pie Wood Packers.

1.43 Payment of refund in excess

(i) As per a notification issued in August 1976, all scientific and technical instruments, apparatus and equipment including spare parts, component parts and accessories imported by or against the order of educational and research institutions approved by the Central Government are exempted from import duty. The exemption is allowed subject to fulfilment of certain conditions, one of which is production of a certificate from the prescribed authority that goods of the kind imported are not manufactured in India. On consumable goods such exemption is not available.

On certain imports made by a defence establishment in October 1979, in the absence of the aforesaid certificate "not made in India", duty amounting to Rs. 3,03,807 was levied. Subsequently the importers claimed (June 1980) refund of duty on the strength of the said certificate and refund of Rs. 3,03,807 was made in September 1982. The certificate covered certain lacquers and papers which are consumable items on which duty is not exempted. The irregular grant of refund amounted to Rs. 1,50,977.

On the irregularity being pointed out in audit (February 1983) the department accepted the objection and recovered Rs. 1,50,977.

The Ministry of Finance have confirmed the facts.

(ii) On a consignment of spare parts for 'Dolmar Electric Chin Saw Model' valuing Rs. 30,109 duty was levied after excluding the value of missing items, based on a survey done in May 1980. Import duty amounting to Rs. 13,876 was realised in August 1980 on the residual value of Rs. 16,171 c.i.f. But on a claim for refund of duty received from the importers in January 1981, a sum of Rs. 14,649 was irregularly refunded in September 1983 as being the duty realised on the missing items. The refund was in excess of the duty realised.

The irregularity was pointed out in audit in March 1984;

The Ministry of Finance have confirmed the facts and stated (December 1984) that the amount of Rs. 14,649 has been recovered.

1.44 Incorrect grant of refund

On import of crude petroleum, duty is provisionally assessed on the quantity shown in the ship's manifest. When the crude oil is taken to the storage tanks of the importer, the quantity is ascertained as per intake certificates and the assessment is finalised.

On import of a consignment of crude petroleum, four intake certificates were produced but only on three intake certificates the amount of duty was finalised and dues adjusted. The mistake resulted in incorrect refund of duty amounting to Rs. 25,000.

On the excess refund being pointed out in audit (November 1982) the department accepted the objection and recovered the amount (December 1983).

The Ministry of Finance have confirmed the facts.

DRAWBACK PAYMENTS

1.45 Fixation of All Industry rates of drawback

Drawback of Customs and Central Excise duties 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 two 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 the Government having regard to average quantity or value of each class or description of duty paid materials from which a particular class of goods is ordinarily manufactured in India. The class or description of exported goods 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 216th Report (Seventh Lok Sabha) observed that the Ministry of Finance should aim at arriving at average rates based on manufacturing data of at least 50 per cent of the exporters of any group of product. 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 data for fixing the All Industry rates. The analysis revealed as follows :—

1. Number of items for which all industry rates were announced .	753
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 and Excise .	218
3. Number of items for which data on duty element in recent exports was not received	639

4. Number of items for which data on duty element in recent exports was received :	114
(i) From one manufacturer	81
(ii) From two manufacturers	25
(iii) From more than two manufacturers	8
5. Number of rates fixed on the basis of data received, where weighted average on duty element in exports covered :	
(a) Exports of only one manufacturer or exporter	39
(b) Exports of only two manufacturers or exporters	3
(c) More than 50 per cent of exports from India made in recent times	5

The above findings were reported to Ministry of Finance (October 1984); their reply is awaited.

1.46 Delays in payments of drawback claims

Drawback in relation to any goods manufactured in India and exported means, the rebate of duty chargeable in India on any imported materials or excisable materials used in the manufacture of such exported goods. The All Industry rates of drawback are determined by the 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 produced or manufactured in India. But under the rules, any exporter can apply for fixation of a brand rate or amount of drawback to exclusively cover exports of his goods provided the rate of drawback fixed on All Industry basis is less than three fourth of the duties paid on the materials or components used in the production or manufacture of the goods exported.

Some indicative data on the number of drawback claims arising in the various ports in India, collected in audit from

custom Houses are given below :—

		1981-82	1982-83	1983-84
1. Number of shipping bills originating at sea and air ports and land customs stations.		2,98,972	2,91,583	2,91,571
2. Number of shipping bills on which drawback claims were made.	(i) At all Industry rates	2,22,376	2,28,947	2,19,961
	(ii) At brand rates.	250	238	113
3. Number of drawback claims presented during the year including claims on shipping bills of previous years.	(i) At All Industry rates	6,11,346	3,09,541	32,588
	(ii) At brand rates.	152	167	27
4. Number of drawback claims on which payments were made during the year (and amount of drawback paid).	(i) At All Industry rates	3,17,669 (Rs. 147 crores)	6,53,469 (Rs. 186 crores)	3,43,019 (Rs. 197 crores)
	(ii) At brand rates.	361 (Rs. 1.2 crores)	581 (Rs. 13.2 crores)	216 (Rs. 0.36 crores)
5. Number of drawback claims pending at end of the year.	(i) At All Industry rates	29,717	34,294	27,313
	(ii) At brand rates	286	307	144

Note :—(1) The figures for brand rates given above are very much on the lower side since Custom House in all the major sea and air ports of Bombay, Madras, Calcutta, Delhi, Cochin, Bangalore and Patna do not record break up between All Industry rate and brand rate claims for drawback. While furnishing the drawback amount paid during the years 1981-82, 1982-83 and 1983-84, the figures in respect of brand rate payments have been furnished separately only by customs authorities at Vishakapatnam, Kakinada, Tuticorin, Rameswaram, Cuddalore and Collector of Central Excise Punjab.

(2) The number of claims arising or received in the 3 years do not match total claims paid in the 3 years, indicating considerable backlog.

The Public Accounts Committee in para 1.9 of their 72nd Report (III Lok Sabha) (1968-69) recommended that the procedure for payments of drawback should be so streamlined as to make payments to exporters within two weeks of the delivery of export manifests. The size of claims presented but not paid in the same year indicates that the norm for payment within 15 days is not being achieved in practice.

The above facts were reported to Ministry of Finance (October 1984); their reply is awaited.

1.47 Irregular payment of drawback at All Industry rates

(i) On export of handloom fabrics which are piece dyed or made from coloured yarns or are printed (but excluding fabrics which contain coloured yarns only in the border and not in the body of the fabrics and fabrics which are only printed along border and not in the body of the fabrics) drawback was payable at 80 paise per kilogram, as per schedule of All Industry Drawback rates in force in the year 1979-80.

Drawback at aforesaid rates and amounting to Rs. 1,09,496 was paid to two exporters on 15 consignments of cotton handloom terry towels bleached or with green woven borders exported in the year 1979-80. Since no dyeing or printing was done on the body of the fabric, drawback was not payable at aforesaid rates and excess payament of Rs. 1,09,496 was made.

On the mistake being pointed out in audit (June 1980) the Custom House admitted the objection and raised demands for Rs. 97,551 against the two exporters in January 1984 and April 1984.

The Ministry have stated (November 1984) that the exporters have preferred appeals against the decision of the Collector to confirm the demand in order to realise the excess payment. Decision of the Collector (Appeals) is awaited.

(ii) 31 consignments of Capnuts made of aluminium alloy were exported during the years 1975 to 1980. Drawback was payable on the aluminium content at All Industry rates. The Capnuts had 80 per cent aluminium content. But drawback

amounting to Rs. 88,000 was paid on the total weight of cap-nuts instead of limiting it to 80 per cent of the weight. The mistake resulted in overpayment of drawback by Rs. 17,600.

The mistake was pointed out in audit (October 1984); reply of the department is awaited.

The objection was reported to Ministry of Finance in October 1984; their reply is awaited.

1.48 Irregular payment of drawback at brand rates

Any exporter can apply for fixation of a brand rate or amount of drawback to exclusively cover exports 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 materials or components used in the production or manufacture of the goods exported.

(i) On export of four consignments of Industrial V belts in 1981 drawback was paid at the brand rate of 18.6 per cent of f.o.b. value as per order of Government of India in letter No. 601/2001/29/80-DBK(191) dated 3 March 1981. The said order stipulated that such drawback would not be paid in case of any change in extent of import substitution or in case of manufacture in bond. However, the exported goods were manufactured in bond under provision of Rule 191B of Central Excise Rules, and no duty had been paid on one of the raw materials. The Custom House did not ensure that the conditions laid down in the letter sanctioning brand rates was complied with. In the result, drawback amounting to Rs. 44,024 was paid irregularly.

On the mistake being pointed out in audit (December 1982) the Custom House admitted the objection. Ministry of Finance have stated (December 1984) that a sum of Rs. 37,524 has already been realised and the balance will be realised shortly.

(ii) On export of shampoos, drawback was payable at the brand rates approved by the government in December 1982. The department worked out drawback payable at both the All Industry rate of 5 per cent of f.o.b. value and the brand rates

as sanctioned by Government in their letter dated 31 December 1982. While authorising the drawback payable to the party, the pay order was given for the total amount including both the above alternative amounts. In the result, drawback was over paid by Rs. 69,440.

On this mistake being pointed out in audit (October 1983) the department admitted the objection and recovered the amount of Rs. 69,440 in April 1984.

The Ministry of Finance have confirmed the facts. But they have not stated how the drawback amounts calculated under the All Industry rate and the brand rate were totalled and paid.

1.49 Entry outwards and rate in force

On export of tractors with accessories covered by three shippings bills, the bills were presented in April 1982 and May 1982. Entry outward of the vessel was on 1 June 1982. Drawback was, however, allowed at the rate of 11 per cent instead of at 6 per cent in force on 1 June 1982. In the result drawback was paid in excess by Rs. 94,954.

On the mistake being pointed out in audit in March 1984, demand was raised (June 1984). Report on recovery is awaited.

The Ministry of Finance have confirmed the facts and stated (November 1984) that action has already been initiated to realise the amount of Rs. 94,954.

1.50 Excess payment of drawback on goods taken under a residuary classification

Where no dutiable materials either imported or indigenous have been utilised in the manufacture of an exported product, normally no drawback should be admissible on the exported product.

(i) A consignment of Calcium Sennocide (20 per cent) in the form of powder was exported in May 1982. Three consignments of Calcium Sennocide (20 to 40 per cent) in the form of powder were exported during the period from January 1982 to June 1982. Three consignments of Calcium Sennocide (13 per cent) in the form of powder were exported between May 1982 and January 1983. A consignment of Sennade tablets 13.5 mg., a preparation containing active glucosides of Cassia (Senna) leaves was exported in May 1983. Drawback was paid at 12.5 per cent of f.o.b. value after classifying all the goods as 'drugs, drug intermediates and pharmaceutical products not otherwise specified'. The goods were only extract of Senna leaves 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 and 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 export of the said goods as per details given below :

(a) In the manufacture of Calcium Sennocide (20 per cent) the material used included imported triethylamine, lactose and indigenous materials like Calcium Chloride Anhydrous, Hydrochloric Acid, Methanol and Sodium Hydroxide Liquid. The duty incidence on the raw materials amounted to Rs. 37.73 per kilogram.

The f.o.b. value of the exported product varied from Rs. 416 to Rs. 598 per kilogram. The drawback allowable accordingly varied from 6.3 to 9 per cent but did not amount to 12.5 per cent which was allowed.

(b) In the manufacture of Calcium Sennocide (40 per cent) duty incidences on similar input materials amounted to Rs. 108.37 per kilogram of the exported

product. On f.o.b. value of Rs. 1430 per kilogram drawback was payable at 7.5 per cent but did not amount to 12.5 per cent.

(c) No information was available about the duty incidence on the raw materials used in the manufacture of Calcium Sennocide Powder (13 per cent) or 13.5 mg. tablets.

In the above cases the drawback paid amounted to Rs. 1,55,601 in respect of the exports mentioned above, which was therefore, irregular and was the result of fixing a high rate of 12.5 per cent as drawback on a residuary entry instead of fixing a minimum rate of 1.5 or 3 per cent as was the practice.

(ii) On 14 consignments of "Isogel" which is an extract of "Ispaghula husk" a product of Indian origin, exported during the period from May 1982 to May 1983, 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 kg. of the finished product works out to only Rs. 0.662 per kg. against an average of f.o.b. value of the finished product of Rs. 30.16 per kg. The duty incidence therefore amounts to only 2.20 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 10.30 per cent of the 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 of the totality of exported products covered by a description in the schedule. The resulting excess payment of drawback amounted to Rs. 2.86 lakhs.

The irregularity was pointed out in audit in May 1984; reply of department is awaited (July 1984).

(iii) On two consignments of "Belladona leaf extract" exported in March and November 1982 drawback was allowed at 12.5 per cent of f.o.b. value by classifying the exported product as "drugs, drug intermediates and pharmaceutical products, not otherwise specified". During the manufacture of "Belladona leaf extract", an indigenous product, no customs or excise duty had been paid at any stage on any raw material or component. Payment of drawback amounting to Rs. 50,205 was therefore irregular and was the result of looseness of the description "drugs, drug intermediates and pharmaceutical products, not otherwise specified".

The mistake was pointed out in audit (June 1984); reply from the Custom House is awaited (July 1984).

(iv) A consignment of 50 lakhs empty hard shell gelatine capsules, valued at Rs. 1,12,730 f.o.b. was exported by air in May 1982. On export, drawback at the rate of 12.5 per cent of f.o.b. value was allowed viewing the goods as "drugs, drug intermediates and pharmaceutical products, not otherwise specified". But the goods exported were empty hard gelatine capsules which were neither drugs nor drug intermediates nor pharmaceutical products. So they did not qualify for drawback under sub-serial aforesaid bearing the residual description "not otherwise specified". The mistake resulted in irregular payment of drawback amounting to Rs. 14,091.

Similarly on another consignment of empty hard gelatine capsules having f.o.b. value of Rs. 1,50,030 exported by air in June 1983 drawback amounting to Rs. 18,753 was paid irregularly.

On the irregularities being pointed out in audit, the Custom House raised demand in December 1983 for recovery of

Rs. 14,091 in one case and for Rs. 18,753 in the other case in March 1984. Report on recovery is awaited (April 1984).

(v) On export of a consignment of "Strychnine Alkaloid" in April 1983 drawback was paid after classifying it as "drugs, drug, intermediates, pharmaceutical products not otherwise specified". In production of the goods, certain seeds which were produce of Indian origin were used. But no material was used on which Customs duty or Excise duty had been paid. In the result drawback amounting to Rs. 14,570 was paid gratuitously.

The irregularity was pointed out in audit in June 1984 but the department did not accept the objection. But from June 1984 no drawback is being allowed on such goods save on the packing materials.

The Ministry of Finance have stated (January 1985) that duty might have been paid on some other raw materials or packing materials. But considering that the duty incidence is less than the rate a separate rate was fixed for the item from 1 June 1983.

The reply of Ministry of Finance is awaited in cases other than that in subparagraph (v) above.

1.51 Failure to review excessive drawback rates in force

On plastic bangles made of 'Cellulose Acetate' and 'Acrylic' drawback is payable at specified All Industry rates. But on 'other plastic bangles' drawback is payable at the rate relevant to the material from which the bangles are made of. On bangles made of 'Polyamide' drawback is payable at All Industry rates specified for 'articles of polyamide'.

A consignment of plastic bangles (made of polyamide) and valuing Rs. 48,000 were exported in February 1981. Drawback payable at All Industry rates amounted to Rs. 81,487 which was

in excess of the market price of Rs. 79,500 for the bangles. Section 76(b) of the Customs Act 1962 states that no drawback shall be allowed in respect of any goods the market price of which is less than the amount of drawback due thereon. Therefore the drawback claim was rejected. The exporter appealed that the market price declared on the shipping bill by him earlier was not the correct value. The Appellate authority ordered (May 1982) that the claim be considered on merits on the basis of the market value as per documents produced by the exporter. The market price was amended to Rs. 95,160 in November 1982. Thereafter drawback amounting to Rs. 81,487 was paid in December 1982. In 1978 three more cases were also noticed in audit where the market price declared on the shipping bill was amended later on and drawback on 'Polyamide bangles' was paid. The market price was changed in these cases from Rs. 38,730, Rs. 7,000 and Rs. 11,000 to Rs. 75,000, Rs. 13,500 and Rs. 22,000 respectively. The drawback paid in all these cases was questionable and amounted to Rs. 1,49,477.

The All Industry Rate of drawback in respect of 'articles of polyamide' was reduced to Rs. 3.70 per kilogram with effect from 1 June 1984 from the rate of Rs. 54 per kilogram. This change was stated to be the result of the discovery on a reference made to Director General Technical Development, that only indigenous materials were used in the manufacture of the exported products and that there was no justification in computing drawback with reference to import duty payable on imported raw materials.

The failure to review the basis of drawback rates fixed at Rs. 49 per kilogram in 1980, Rs. 55 in 1981, Rs. 49.48 in 1982 and Rs. 54 in 1983, till the year 1984 when rate was reduced to Rs. 3.70 per kilogram resulted in unreasonably large drawback being paid on the exports made in the earlier years.

The objection was reported to Ministry of Finance (August 1984); their reply is awaited.

1.52 Drawback and Duty Exemption Entitlement Scheme

All Industry rates of drawback are not applicable to exports made under Duty Exemption Entitlement Scheme where raw materials and components to be used in manufacture of goods for export are imported without payment of duty. This was also clarified in a public notice issued in June 1983.

(i) Drawback amounting to Rs. 1,29,960 was paid irregularly to 17 exporters on exports of readymade garments made under the Duty Exemption Entitlement Scheme.

On the irregularity being pointed out in audit in March 1984, the department admitted the mistake in all the cases. Report on recovery is awaited (July 1984)

(ii) Conductors and hardware tools and accessories of transmission line towers in the manufacture of which raw materials and components imported under Duty Exemption Entitlement Scheme were used, were exported in July 1981. Drawback amounting to Rs. 13,774 was irregularly paid at all industry rate.

On the irregular payment of drawback being pointed out in audit (June 1984) the Custom House stated that the exporter had since been asked to refund the amount of Rs. 13,774 (July 1984).

The above cases were reported to Ministry of Finance (October 1984); their reply is awaited.

1.53 Drawback and baggage

Under the provisions of the Customs Act drawback is not to be allowed on export of goods imported as baggage.

On a video cassette recorder brought in as baggage in February 1983 and exported in April 1983, drawback of Rs. 21,450 was irregularly allowed to a passenger in August 1983.

The irregular payment was pointed out in audit in December 1983. The reply from the Custom House is awaited (August 1984). Similarly drawback amounting to Rs. 50,378 was paid irregularly on export of items imported as baggage in eleven cases in the same Custom House during the years 1980-81 and 1981-82.

The objection was reported to Ministry of Finance (October 1984); their reply is awaited.

OTHER TOPICS OF INTEREST

1.54 Goods transhipped by airlines and imported but not cleared through customs.

Regulations made under the provisions in the Customs Act govern the procedure for transhipment of goods in Indian ports (including airports) prior to their import into India. The regulations do not cover imports made by post or by aircrafts other than a foreign going aircraft. When transhipment is made as per the regulations, the owner of the vessel or the aircraft has to execute a bond (with such surety as the customs officer may require). The bond requires the owner to produce to the customs officer within 15 days of the transhipment, a certificate from the other customs officer at the port of final import into India that the goods have been presented for import to the latter customs officer. Failure to produce the certificate makes the owner (or the surety, if any) liable to pay an amount equal to the market price of the transhipped goods, under the terms of the bond.

(i) During the year 1979-80 to 1983-84, in Delhi Airport, 28671 packages were transhipped by the Indian Airlines before they were imported and the cargo was presumably presented to customs in India. The value of the goods transhipped was not on record in the transhipment register in respect of 11038 packages out of 28671. The value of remaining 17633 packages was recorded as Rs. 41.92 crores. The transhipment registers for the years prior to 1979-80 were not available.

No certificates, as required under the regulation were received in proof of presentation of the goods to the customs officer at the airport of final import into India. But no action to recover any amount from the Indian Airlines was taken by the customs authorities, in enforcement of any bond. On 1 October 1979, the Indian Airlines had executed a general bond for Rs. 50 lakhs covering transhipment during the next 5 years but the bond was not enforced. Also, no action was taken to ascertain the value in respect of goods, where no value was on record in the transhipment register.

(ii) In Madras Custom House, transhipment of imported goods was made in 218 cases during the years 1981-82 to 1983-84. The value of the goods transhipped (including goods taken inland by road) were not on record in the transhipment register. In 23 cases, the certificates of presentation of the imported goods at the final port of import into India were not received in the Madras Custom House. In the 23 cases, the department failed to take action for enforcement of the bond.

In Madras Airport transhipment of imported goods was made in 5177 cases during the year 1983-84 but bonds were taken only in 235 cases for a value of Rs. 2.33 crores. In remaining 4942 cases there was no record of the value of goods transhipped. The record of transhipment of goods made prior to the year 1983-84 was not made available to audit for examination. Even in respect of 235 cases where bonds were obtained in the year 1983-84, in 208 cases involving transhipped goods valuing Rs. 2.18 crores, the certificate of presentation of the goods to the customs officer in the final port of import was not received. But no action was taken for enforcement of the bond. Out of 235 cases, in 31 cases of transhipment by air and in 4 cases of transhipment by rail, *ab initio* a period of 3 months was allowed for furnishing certificates instead of 15 days laid down in the regulations.

(iii) In Bombay Airport, 2344 bonds were taken in respect of transhipments done during the years 1979-80 to 1982-83. In respect of 261 bonds involving goods valuing Rs. 5.09 crores the certificate of presentation of the goods to Customs at the final port of entry into India was not received by customs authorities at Bombay. The value of the goods transhipped was also not on record.

In the Bombay Sea Custom House, there was no record of the number of or the value of goods transhipped. However, confirmations of presentation of goods valuing Rs. 31 lakhs at the port of final entry into India were not received in Bombay Custom House in eight cases.

The failure to enforce the transhipment regulations in Delhi, Madras and Bombay Sea and airports, involving serious risk of illegal imports into India without the knowledge of customs authorities was pointed out in audit. The replies of the Collectors and the Ministry of Finance are awaited.

1.55 Failure to recover amount due

(i) Levy and collection of Customs duty on an imported consignment of 'PVC resin' valued at Rs. 13,10,567 was stayed by a High Court in 1983 and provisional levy at lower rates was allowed. A bond secured by a bank guarantee, for Rs. 4,48,100 towards the differential duty payable was furnished by the importer. The bank guarantee was valid for one year from the date of issue and if the petition before the Court was disposed of within that period, the claim of the department for the balance amount of Rs. 4,48,100 was to be paid within six months from the date of disposal of the petition. But though the petition was decided in favour of the Government on 11 May 1983, the department did not raise demand for payment of Rs. 4,48,100 either against the importer or against the banker before the guarantee expired.

The failure to realise the differential duty amounting Rs. 4,48,100 was pointed out in audit in February 1984. The reply of the department is awaited (July 1984).

The case was reported to Ministry of Finance in August 1984; their reply is awaited.

(ii) On a consignment of P.V.C. resin valuing Rs. 5,16,848 levy and collection of import duty as assessed by the department was stayed by a High Court in 1981 and as per the orders of the High Court duty was provisionally realised at lower rates. The importers also furnished bond for Rs. 1,53,000 and bank guarantee for similar amount to cover the balance of duty under challenge before the court. However, the duty realisable provisionally as per the orders of the court was Rs. 2,82,263 and not Rs. 2,30,578 which was realised by the department. The mistake resulted in duty being realised short by Rs. 51,685. The importers petition was dismissed by the High Court on 11 May 1983. Demand for differential duty was raised only for Rs. 3,04,423 on 15 June 1983. But fact of issue of demand notice could not be corroborated by any records such as acknowldegement by the postal authorities. The bank guarantee which was extended for a year from 28 March, 1981 was not renewed after 28 March 1982.

The reasons for failure to realise the differential duty were enquired in audit (January 1984).

The Ministry of Finance have confirmed the facts and stated (December 1984) that there was an error in calculation and that the assessment has since been finalised and demand has been issued to the importers for a total amount of Rs. 3,56,108.28.

1.56 Delay in collection of duty due to ad hoc warehousing

(i) Under the provisions of section 49 of the Customs Act 1962, the Assistant Collector of Customs is authorised to permit the storage of imported goods in a public warehouse or in a private warehouse (if facilities for deposit in a public warehouse

are not available) if an application is made by the importer on the ground that the goods cannot be cleared within a reasonable time. Such goods are not deemed to be warehoused goods. In such cases duty is levied at rates in force on the date on which the bills of entry are presented irrespective of the date on which the goods are removed from the warehouse.

(ii) The circumstances under which imported goods can be warehoused, as above, are governed by executive instructions issued from time to time. Such circumstances include lock out in a factory, import licence being registered at another port and such factors because of which the goods can not be cleared for reasons beyond the control of the importer. But the admissible circumstances exclude grounds such as lack of funds, non-availability of documents, infringement of Trade Control Regulations or non-revalidation of licence.

(iii) A review of the registers maintained in a Custom House, conducted in audit, revealed that essential particulars like reasons for warehousing, period for which warehoused, value of the goods, date of clearances and duty collected were not on record in many cases which are summarised below.

	1980	1981	1982
1. Number of cases where permission was granted under section 49 . .	1260	1072	98
2. Number of cases where full particulars of value were available in the registers . .	7	22	6
3. Number of cases pending clearance as at the end of June 1984 . .	3	2	6
4. Value involved in the cases pending clearances . .	Rs. 95,260*	Rs. 10,106	Rs. 52,65,195**

*Amount covers only one case, details in two cases awaited.

**Amount covers only 5 cases, details of 6th case awaited.

(iv) There were delays ranging from 13 to 17 months on clearance of imports (valuing Rs. 5.61 lakhs) made in March 1981 and January 1982 by two public sector undertakings. The duty collected in the two cases was Rs. 7.79 lakhs. Even allowing a reasonable period of 2 months for storage under section 49, the loss of interest to Government at 12 per cent per annum works out to Rs. 1,43,158. If the goods had been regularly warehoused, the extra duty that would have been realised at rates in force on the date of removal from the warehouse works out to Rs. 38,126 in the two cases.

(v) In 34 cases where the total value of imports amounted to Rs. 3.44 crores, the period of storage allowed under section 49 ranged from four to twenty three months. Even if duty was leviable at a minimum rate of 40 per cent *ad valorem*, the duty collection deferred, in the cases, beyond 2 months of import works out to Rs. 1.42 crores. Even assuming a rate of interest of only 12 per cent per annum, the loss to Government because of delay beyond 2 months, works out to Rs. 5.72 lakhs.

(vi) A company manufacturing trucks, imported eight consignments of components valuing Rs. 10.22 crores between July 1981 to October 1982. Storage was allowed under the provisions of section 49 and later the goods were warehoused regularly under bond in the same place where they were warehoused under section 49 within the premises of the company, between March 1982 and December 1982. At the end of December 1983 goods valuing only Rs. 65.48 lakhs had been cleared from the bonded warehouse. By permitting the storage under the provisions of section 49 collection of duty was deferred.

(vii) Section 49 permits only storage of imported goods in warehouse pending clearance and this implies that completion of all customs formalities including payment of duty is to be made before the goods are permitted to be warehoused under section 49. The warehousing is done in order to save the importer from the risk of pilferage of his goods. But the department is not adopting

this view in practice. Instead under section 49, deferment in payment of duty is being allowed.

On the loss to Goverment, due to delays in collection of duty being pointed out in audit, the Custom House stated that permission under section 49 is allowed on merits of each case.

The above cases were reported to Ministry of Finance (October 1984); their reply is awaited.

1.57 Non-levy of penalty in lieu of duty

Section 116 of Customs Act 1962 requires that where goods for importation are not unloaded at the place of destination in India or goods are shortlanded and the failure or deficiency is not accounted for to the satisfaction of the Customs Officer, the person in charge of the conveyance is liable to a penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been imported.

As per two notifications issued on 2 August, 1976 and 25 March 1980, urea imported into India, for use as manure is exempt from whole of customs duty leviable thereon and only a small amount of auxiliary duty and countervailing duty is leviable.

441 tonnes of urea were shortlanded by four carriers while unloading five consignments. The agents of the carrier could not account for the urea shortlanded. The Customs Officer (after adjudication) demanded in October 1981 penalty equal to the small amount of duty leviable amounting to Rs. 87,342 from the agents of the carrier. No importer who could make use of the urea was involved in this case. There was no question of the urea being viewed as urea imported for use as manure. The short landed goods were urea per-se and not urea intended to be used for any particular purposes by any importer. As per the Act, penalty was not to exceed twice the amount of duty that would have been charegable on the urea had it been imported. The maximum duty that could have been levied was therefore double

the amount of duty leviable on urea, per-se, imported for any purpose whatsoever and such duty amounted to Rs. 5,84,113.

The absence of any constraints for limiting the penalty to the small amount of duty of Rs. 87,342 under the belief that so much was the duty leviable (instead of Rs. 5,84,113 which was the duty leviable) was pointed out in audit in July 1982. In reply, the department stated (August 1982) that it was not incumbent on customs officer to fix penalty at a figure above the duty leviable and his discretionary fixation of the amount of penalty was not questionable. The department also stated that the legal fiction in section 116 of the Customs Act 1962 stating "had such goods been imported" requires the grant of exemption before computing the duty, as if, such goods stood imported for a purpose specified by the carrier or his agent.

While the discretion to fix the amount of penalty is not questioned, the imagined constraint on the assessment of the notional duty (in the mind of the adjudicating authorities) is a cause for concern to revenue. If the view of the departmental officers is not revised, then on goods exempted from duty subject to an end use (which goods may be covered by import control and may even include prohibited goods) no penalty can be imposed at a rate higher than the nil rate, in the event of their shortlanding or their remaining unaccounted for. In the result, unscrupulous carriers would be encouraged to shortland goods illegally accounted for elsewhere in collusion with unscrupulous importers who would not even appear before the adjudicating authority.

The above case was reported to Ministry of Finance (October 1984); their reply is awaited.

1.58 Imports by post and financial adjustments between Customs and Postal authorities

In the foreign post offices at Bombay, Calcutta, Delhi, Madras, Cochin, Ahmedabad, Bangalore and Jaipur customs duty is levied on goods imported and exported by post. Enforcement of prohibitions or restrictions under the import Trade Control Act

1947 or any other law for the time being in force in regard to imports and exports are also done in the foreign post offices. Import of goods upto a value of Rs. 1,000, by post, is allowed without import licence and duty free upto a value of Rs. 200. But the import of electronic goods is banned.

(i) Volume of imports

The number of postal imports handled in foreign post offices in recent years was around 11 lakhs per year. The value of the goods imported in a year was not readily available from the records in the foreign post offices. The amount of duty collected on the imports in recent years averaged Rs. 13 crores per year. The delays in assessment and clearance of the imported postal goods was not readily available from the records in the foreign post offices. In the two foreign post offices in Bombay and Delhi, the figures of pendency was around 10,000 numbers at the end of the year, in recent years. Details of available statistics on imports by post are given in Annexures 1.8 to 1.10 to this Chapter.

(ii) Duty, release and detention

Out of around 1.4 lakhs of postal goods handled every year in the Bombay foreign post office about half the number used to be released without payment of duty and a quarter after levy of duty and the balance detained. But in recent years about half the number of goods are being detained and a quarter are being released after levy of duty the balance quarter being released without levy of duty (details are given in Annexure 1.11 to this Chapter).

(iii) Confiscation and redemption

Prohibited and banned goods if imported by post are confiscated. Some of the goods are released on payment of duty and redemption fine in lieu of confiscation. In Bombay foreign post office, in 471 cases of import of prohibited and banned goods, adjudication was pending as on 31 March 1984. The number of, confiscated goods pending disposal was 383 which included 219 goods containing perishable items valued at Rs. 1.78 lakhs.

The amount of redemption fine (including penalty) collected in recent years averaged Rs. 9 lakhs per year. (details are given in Annexure 1.12 to this Chapter).

(iv) Account of detained goods

Imports are generally detained by postal authorities on the the grounds of wanting documents, call notices issued to addressees or pendency of assessment. In Bombay foreign post office at the end of March, 1984, detained parcels numbering 137 were "not available". In Madras the manner of disposal of 17 post parcels relating to the year 1982 could not be ascertained from the postal records. Another 52 parcels, included in way bills, were stated to be 'not received'. The detained parcels pending clearance included those detained in Postal Research Centre and insured parcels.

(v) Tally of imported postal goods

On imports received by post, addressed to persons in India, which are not acepted by addresses and are returned to the senders, a reshipment fine is charged by Customs. However, there is no procedure to verify whether the fine is realised by the postal authority, on behalf of Customs, from the addressee or from the sender and credited to account of Customs. In Bombay, returned parcels are directly disposed of by the postal authorities and Customs receives no information on them. In practice, the prescribed procedure for assessing duty on returned and detained imported goods, including their auction by postal department and collection of duty by Customs, is not being observed uniformly. The tally of goods received, with goods not delivered, goods retained, goods auctioned and goods destroyed is not being effected in practice, nor approved by Customs authorities.

(vi) Exports by post

In recent years, an average of between 2 to 3 lakhs of goods are exported every year. The value of exported goods was not readily available in the records in the foreign post offices. The

indications were that value of exports from Bombay foreign post office was not less than Rs. 3 crores in 1980. Exports from Delhi foreign post office had increased in recent years. Drawback on export was claimed, on the average, in respect of about 6000 exports in a year. The amount of drawback paid averaged a little less than Rs. 1 lakh per year (available details of exports and drawback are given in Annexures 1.13 and 1.14).

(vii) Irregularities in assessment

Some of the irregularities in assessment of Customs duty on goods imported by post which were noticed in audit are given below :—

(a) In Jaipur foreign post office, custody of confiscated goods remained with postal authorities from the year, 1980 and till the end of 1982-83, though in law it is only the customs officers who are entitled to confiscate and appropriate to government imported goods. In respect of 370 confiscated articles which were lying in a postal warehouse, warehousing charges at the rate of one rupee per day per article (limited to Rs. 40 per article) is being paid by the customs department to the postal department.

(b) Cut and polished diamonds valuing Rs. 3.40 lakhs which had been exported were stated to have been imported in November 1983. But no verification of earlier export could be done by reference to papers relating to earlier export. Duty amounting to Rs. 3.23 lakhs was not levied on the imports and the diamonds were ordered (January 1984) to be exported. No confirmation of the export had been received till April 1984. The goods were neither confiscated nor detained by Customs but were released to the postal department alongwith orders for reshipment. The procedure in postal custom side does not fix responsibility for payment of duty and penalty on the postal department in the event of default in such cases. The postal department is not on parallel with a Port Trust or the Air Port Authority, as a custodian for customs, as in case of imports by sea or air.

(c) Components and parts of electrical equipment were classified under customs tariff heading 90.29(1) but auxiliary duty was wrongly levied at 5 per cent instead of at 20 per cent to 25 per cent as the case may be, depending on the nature of the components. The mistake resulted in duty being realised short by Rs. 25,984. The mistake was pointed out in audit in May 1984; the reply of the department is awaited.

(d) A consignment of synthetic industrial diamond blanks (valuing Rs. 61,693) was misclassified under customs tariff heading 82.04 and item 51(1) of the Central Excise Tariff instead of classifying under Customs Tariff heading 68.01 and item 51(1) of the Central Excise Tariff. The mistake resulted in duty being levied short by Rs. 28,364. The mistake was pointed out in audit in June 1984; reply of the department is awaited.

(viii) Financial adjustment between Customs and postal authorities

After duty is assessed in the foreign post office by the Customs Officers they claim it from the Pay and Accounts Officer of the postal department, who is required to make the payment of the duty to the Customs department even before the goods are delivered to the addressee. Realisation of the amount from the addressee is a matter between the addressee and the postal authority and it may take much time. The addressee may seek re-assessment of duty and the amount of duty may be reduced. The imports may not be accepted by addressee and may have to be returned to the sender and therefore no duty may be payable. In such cases the duty already paid to Customs is written back and adjusted from future payments made by the postal department to Customs. Details of amounts written back, where available, are given in Annexure 1.15.

(a) In practice, payment is received by the Customs from the Pay and Accounts Officer of the postal department, only after about 4 or 5 months of the assessment. If adjustment on account of write back is made, on the basis of returned goods statement, it is done only after a procedure taking considerable time.

(b) In Madras, write back of duty amounting to Rs. 5,03,474 was verified and allowed by Customs but there was no way for Customs to verify whether the goods were in fact returned to senders by the postal department and that the goods did not get disposed of in India without payment of duty.

(c) In Delhi Foreign Post Office, list of detained goods (where final disposal is not to be made without knowledge of Customs) is not being maintained. Also write back of duty is effected by following a procedure other than that laid down. As a result, discrepancy amounting to Rs. 3.48 lakhs arose in the accounts for the month of March 1982. The discrepancies were set right only on 15 June 1984 after scrutiny in audit had commenced, but payment had still not been received by Customs department (August 1984).

(d) In Calcutta, postal customs duties amounting to Rs. 15.96 lakhs relating to the year 1976-77 and Rs. 26.22 lakhs relating to 1983-84 have not been realised by customs department (April 1984).

(e) The procedure prescribed in the "Manual for Collection of Revenue and Payment of Refund and their Accounting" is not being followed and delays of many months and even years in realising customs duty are very common.

(f) The postal department acts as bailee, or agent or custodian of the addressee (and to an extent also of the sender) in clearing the goods through customs and delivering the goods to the addressee or in returning the goods to the sender. In practice, duty is realised many months and sometimes years after the release of the imported goods by Customs to the postal department. There is the risk that without any legal basis the postal department gets to be viewed as the agent of the Customs department for the purpose of collection of duty instead of postal department getting release of goods after payment of Customs duty. Section 47 of the Customs Act requires that only after payment

of duty, Customs Officer may allow clearance of the goods for home consumption. But the section does not cover goods imported by post.

The highly complex nature of customs assessment specially in regard to sensitive goods of diverse nature that are imported through customs (including jewellery, diamonds and electronic goods and components) demands strict separation of Customs and Postal duties in foreign post offices. If the principle of customs department recovering duty, before release of the goods to postal authorities is given up, assessment will lose its importance. Even in respect of imports by post such a principle is clearly needed. As per Rule 9 of the "Rules regarding mails" made under section 75 of the repealed Sea Customs Act 1978 the duties as assessed by the Customs Appraiser and noted in the parcel bill or letter mail bill shall be received by the post office from the addressees at the time of delivery to them. The credit for the total amount of duty certified by the Customs Appraisers at the end of each bill shall be given by the post office to the Customs Departments in accordance with the procedure settled between the two departments from time to time. But no regulations have so far been made by the Central Board of Excise and Customs under the powers vested in it under Section 84 of the Customs Act to regulate statutorily the assessment and clearance of goods imported or exported by post.

The above facts were reported to Ministry of Finance (October 1984); their reply is awaited.

1.59 Irregular transfer of baggage

Baggage brought by a passenger in respect of which a true declaration has been made under section 77 of the Customs Act 1962, may be detained by the Customs Department under section 80 of Customs Act. The detained baggage is to be returned to the passenger for export from India at the time of his leaving India. The baggage is liable to be confiscated if not taken back by the passenger whose baggage it is.

A Video cassette recorder brought by a passenger as baggage in July 1982 was not allowed to be imported by the passenger under the Transfer of Residence Rules because it was not in the possession of the passenger for one year prior to import. It was, however, cleared for import on payment of duty amounting to Rs. 16,500 . But the duty was not paid. Later, it was allowed to be cleared for import under tourist baggage re-export facility by another person, who claimed that he was the employer of the said passenger when abroad and he had made a gift of the video cassette recorder to the said passenger.

The gifted goods were in law the baggage of the said passenger, even if the passenger was employed by someone else. Provisions in Sections 77 and 80 do not allow of baggage being transferred by one passenger to another through the medium of Customs.

The irregularity was pointed out in audit in March 1983. The department stated that so long as the goods were re-exported there was no irregularity. But this view is contrary to the Law, as was also clarified in a letter dated 24 May 1984 issued by the Central Board of Excise and Customs to its officers.

The Ministry of Finance have confirmed the facts and accepted the irregularity. They stated that consequent to instructions issued in May 1984, such instances may not recover.

ANNEXURE 1.1

VALUE OF IMPORTS—COMMODITY WISE

The value of imports made during the years 1981-82, 1982-83 and 1983-84 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 Ministry of Finance and where information was not available, the figures compiled by the Director General of Commercial intelligence and statistics given out by the Ministry of Commerce have been indicated. The figures within bracket are in respect of some of the goods included in the respective sectional headings.

Value of Imports (In crores of Rupees)

	1981-82	1982-83	1983-84
1	2	3	4	5
1. Food and live animals chiefly for food including . . .	690	N.A.	N.A.
(*a*) Cereals and Cereal preparations	(347)	(306)	(598)
(*b*) Milk and Cream . .	(94)	(60)	(14)
(*c*) Cashew Nuts . . .	(18)	(Negligible)	(14)
(*d*) Fruits and nuts excluding cashew nut . . .	(21)	(23)	(39)
2. Crude materials inedible, except fuel	843	N.A.	N.A.
(*a*) Crude rubber (including synthetic and reclaimed) .	(78)	(54)	(72)
(*b*) Raw Cotton . . .	(12)	(—)	(1)
(*c*) Synthetic and re-generated fibre	(173)	(125)	(101)
(*d*) Raw wool . . .	(36)	(39)	(41)
(*e*) Crude Fertilizer . .	(83)	(56)	(81)

1	2	3	4	5
	(*f*) Sulphur and unroasted iron Pyrites	(106)	(69)	(63)
	(*g*) Metalliferous ores and metal scrap	(203)	(152)	(141)
	(*h*) Other crude minerals . .	(49)	(41)	(60)
3.	Mineral Fuels, lubricants and related materials . . .	5230	5605	4686
4.	Animals and vegetable oils fats and waxes	688	N.A.	N.A.
5.	Chemicals and related products not elsewhere specified . .	1324	N.A.	N.A.
	(*a*) Organic chemicals . .	(243)	(238)	(379)
	(*b*) Inorganic chemicals . .	(243)	(149)	(193)
	(*c*) Dyeing and tanning substances	(25)	(23)	(40)
	(*d*) Medicinal & pharmaceutical products . . .	(84)	(81)	(128)
	(*e*) Fertilizer, manufactured .	(510)	(146)	(106)
	(*f*) Artificial resins, plastic materials etc. . . .	(125)	(126)	(184)
6.	Manufactured goods chiefly by materials	2598	N.A.	N.A.
	(*a*) Pulp, Paper, Paper board & manufactures thereof . .	(287)	(175)	(249)
	(*b*) Textile yarn, fabrics and made up articles . .	(97)	(113)	(122)
	(*c*) Pearls, Precious Stones & semi-precious stones . .	(397)	(677)	(1082)
	(*d*) Iron and steel . . .	(1204)	(1146)	(938)
	(*e*) Non-ferrous metals . .	(397)	(279)	(361)
	(*f*) Manufactures of metal .	(116)	(136)	(140)

1	2	3	4	5
7.	Machinery and transport equipment	1981	2232	2634
	(*a*) Machinery other than Electrical	(1384)	(1383)	(1789)
	(*b*) Electrical machinery . .	(291)	(248)	(397)
	(*c*) Transport equipment . .	(305)	(601)	(448)
	(*d*) Professional, scientific controlling instruments etc. .	(201)	(190)	(273)
	(*e*) Miscellaneous manufactured articles and commodities and transactions not classified elsewhere . . .	(252)	(N.A.)	(N.A.)
TOTAL (INCLUDING OTHER ITEMS) .		13608	14354	15347

NOTE : Figures have been rounded off.

*The figures are provisional.

ANNEXURE 1.2

VALUE OF EXPORTS—COMMODITY WISE

The value of exports made during the years 1981-82, 1982-83 and 1983-84 according to the major sectional headings in the Indian Trade Classification (Revised) are given below. The information has been received from Ministry of Finance. Where information was not available the figures compiled by the Director General, Commercial Intelligence and Statistics 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)

	1981-82	1982-83	1983-84*
1 2	3	4	5
1. Food and live animals chiefly for food	1919	N.A.	N.A.
(a) Live animals chiefly for food	(5)	(17)	(6)
(b) Meat and Meat preparations	(88)	(81)	(62)
(c) Fish crustaceous Molluscs & preparations thereof	(280)	(349)	(322)
(d) Cereal and Cereal preparations for flour or starch of fruits or vegetables	(9)	(9)	(7)
(e) Cashew kernels	(182)	(134)	(156)
(f) Other fruits	(106)	(159)	(141)
(g) Sugar and Sugar preparations	(64)	(62)	(137)
(h) Coffee and coffee substitutes	(146)	(184)	(183)
(i) Tea and mate	(395)	(368)	(501)
(j) Spices	(99)	(89)	(108)

1	2	3	4	5
2.	Beverages and tobacco . .	236	N.A.	N.A.
	(a) Tobacco unmanufactured and tobacco refuse . .	(205)	(209)	(149)
3.	Crude materials inedible except fuels	775	N.A.	N.A.
	(a) Mica	(29)	(19)	(27)
	(b) Raw cotton . . .	(36)	(101)	(148)
	(c) Jute Raw	(12)	(9)	(0.15)
	(d) Crude vegetable materials .	(157)	(81)	(96)
	(e) Oil seeds and oleoginous fruits	(36)	(19)	(33)
	(f) Oil cakes	(118)	(149)	(143)
	(g) Hides and skins (except for raw skins) . . .	(Negligible)	(N.A.)	(Negligible)
	(h) Footwear	(36)	(26)	(22)
	(i) Leather and leather manufactures (except footwear) .	(369)	(346)	(344)
	(j) Iron ore	(352)	(374)	(385)
	(k) Ores, minerals other than iron ore and Mica . .	(37)	(32)	(37)
4.	Minerals fuels, lubricants & related materials . . .	225	134	165
5.	Vegetable non-essential oils fats and waxes	17	19	21
6.	Chemicals and related products	375	332	288
7.	Manufactured goods classified according to materials . .	2582	N.A.	N.A.
	(a) Cotton fabrics . . .	(295)	(266)	(271)
	(b) Fabrics made of man-made fibres	(36)	(22)	(26)
	(c) Woollen fabrics . .	(5)	(4)	(1)
	(d) Made-up articles wholly or chiefly of cotton . .	(104)	(97)	(74)
	(e) Ready made garments .	(596)	(528)	(588)
	(f) Coir manufactures . .	(17)	(25)	(23)

1	2	3	4	5
	(g) Jute manufactures including twist & Yarn . . .	(258)	(203)	(165)
	(h) Metal manufactures excluding iron and steel . .	(233)	(202)	(192)
	(i) Iron and Steel . . .	(79)	(56)	(46)
8.	Machinery and transport equipment	616	585	476
9.	Miscellaneious manufactured articles including Handicrafts .	2169	N.A.	N.A.
	(a) Pearls, precious stones & semi precious stones . .	(761)	(825)	(1200)
	(b) Works of Art . . .	(138)	(110)	(115)
	(c) Carpets handmade . .	(181)	(169)	(193)
	(d) Jewellery	(50)	(69)	(74)
10.	Commodities and transactions not elsewhere specified . .	N.A.	N.A.	N.A.
TOTAL :	(including other items and articles under reference). . . .	7806	8830	9396

*Figures are provisional.

**Figures have been rounded off.

ANNEXURE 1.3

IMPORT DUTY COLLECTION CLASSIFIED ACCORDING TO BUDGET AND TARIFF HEADS

The import duty collected is given below classified according to budget heads. The corresponding tariff heads or sections are shown within brackets.

Sl. No.	Description of goods	1981-82	1982-83	1983-84
		(In crores of Rupees)		
1	2	3	4	5
1.	Fruits dried and fresh	33	49	51
	(Chapter 8 of tariff covering edible fruits & nuts)	(33)	(40)	(50)
	(Section II of tariff covering vegetable products)	(56)	(61)	(83)
2.	Vegetable non-essential oils, fluid or solid, crudes, refined or purified	50	27	41
	(heading 15.07 of tariff covering vegetable oils)	(50)	(27)	(41)
	(Section III of the tariff covering animal and vegetable fats)	(76)	(44)	(72)
3.	Kerosene	87	79	80
	[heading 27.10(3) of tariff covering Kerosene]	(86)	(75)	(79)
4.	High Speed Diesel Oil and vaporising oil	76	99	70
	[heading 27.10(5) of tariff covering high speed diesel oil]	(76)	(102)	(69)
5.	Motor spirit	10	6	2
	[heading 27.10(2) of tariff covering Motor spirit]	(11)	(6)	(2)
6.	Lubricating oils	66	31	17
	[heading 27.10(8) of tariff covering lubricating oil]	(65)	(31)	(17)
7.	Other petroleum products	N.A.	N.A.	N.A.

1	2	3	4	5
8.	Chemicals other than Pharmaceuticals	343	368	477
	(heading 28 of tariff covering Inorganic chemicals) . .	(269)	(342)	(124)
9.	Pharmaceutical chemicals and products	54	60	64
	(heading 29 and 30 of the tariff covering organic chemicals and pharmaceutical products) .	(N.A.)	(N.A.)	(419)
10.	Dyes, colours, paints and varnishes	25	32	48
	(heading 32 of the tariff covering Tanning and Dyeing Extracts etc.)	(28)	(32)	(54)
11.	Artificial resins, plastic materials, articles thereof . .	178	226	231
	(heading 39 of tariff covering Artificial resins and plastic materials etc.) . . .	(189)	(227)	(233)
12.	Rubber and Articles thereof .	58	74	79
	(heading 40 of tariff covering Rubber, Synthetic rubber, etc.)	(58)	(74)	(78)
13.	Pulp, Paper, Paper board & articles thereof . . .	73	76	78
	(heading 47 & 48 covering Paper making material, Paper, Paper Board & Articles thereof	(74)	(63)	(78)
14.	Yarn of man-made fibres .	217	246	141
	(heading 50 of tariff covering Silk and waste silk). . .	(227)	(245)	(15)
15.	Man made fibres and filament tow	103	145	105
	(heading 56 of tariff covering man-made fibres) . . .	(86)	(140)	(104)
16.	Iron and Steel & Articles thereof	608	574	544
	(heading 73 of tariff covering Iron and steel) . . .	(606)	(572)	(540)
17.	Copper & articles thereof .	169	169	205
	(heading 74 of tariff covering Copper and its articles) . .	(169)	(169)	(205)
18.	Nickel & articles thereof .	34	36	34
	(heading 75 of tariff covering Nickel and its articles) . .	11	21	13
19.	Aluminium & Articles thereof .	(N.A.)	N.A.	N.A.
	(heading 76 of tariff covering Aluminium and its articles) .	(12)	(19)	(13)

1	2	3	4	5
20.	Lead & Articles thereof . . (heading 78 of tariff covering lead and its articles . .	19 (19)	26 (26)	22 (19)
21.	Zinc & its articles . . . (heading 79 of tariff covering Zinc and its articles) . .	62 (62)	83 (83)	67 (70)
22.	Tin . . . . . (heading 80 of tariff covering tin and its articles) . . .	19 (19)	15 (14)	22 (22)
23.	Tools, implements etc. . . (heading 82 of tariff covering Tools, Implements, Cutlery, Spoons & Forks) . . .	33 (29)	41 (39)	42 (35)
24.	Machinery, mechanical appliances & electrical equipments . (Section XVI of tariff chapter 84 & 85 covering Boilers, machinery and Mechanical Appliances Electrical machinery equipment)	1095 (1111)	1497 (1157)	1729 (1701)
25.	Railway Locomotives & Materials . . . . . (heading 86 of tariff covering Railway and Tram way Locomotives, rolling stock, Railway Track Fixtures, Traffic signalling equipments)	34 (34)	47 (47)	N.A. (30)
26.	Motor Vehicles & Parts thereof (heading 87 of tariff covering Tractors, Motor Vehicles, Motor lorries & Vans, Works Trucks Tanks & other armoured vehicles)	80 (79)	104 (104)	109 (109)
27.	Optical, photographic Cinematographic measuring, medical and Surgical instruments . (heading 90 of tariff covering Optical Surgical etc. instruments)	85 (103)	107 (106)	109 (108)
28.	All other articles . . . (Passenger baggage) . .	483 (248)	651 (281)	927 (271)
29.	Other budget heads . . (other tariff heads) . . .	160 (502)	204 (317)	265 1006
TOTAL BUDGET HEADS . .		4291	5119	5617
(TOTAL OF TARIFF HEADS) .		(4376)	(4467)	(5528)

ANNEXURE 1.4

EXPORT DUTY AND CESS—COMMODITY WISE

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

(In crores of rupees)

Commodities	Export Duty			Export Cess		
	1981-82	1982-83	1983-84	1981-82	1982-83	1983-84
1. Coffee . .	7	23	36	1	1	1
2. De-oiled ground nut meal . .	4	3	*	N.A.	N.A.	N.A.
3. Tobacco (unmanufactured) . .	9	8	6	2	1	1
4. Marine Products	Not levied			2	3	2
5. Cardamom .	Not levied			1	Negligible	N.A.
6. Mica . . .	6	5	6	1	1	1
7. Hides, skins and leather . .	5	4	4	a	a	a
8. Lumpy iron ore .	8	7	7	1	1	1
9. Iron ore fines (including blue dust) . . .	5	4	4	N.A.	N.A.	N.A.
10. Chrome concentrate . . .	2	1	*	Nil	Nil	N.A.
11. Other articles .	*	*	1	*	*	*
12. Other agricultural Produce under A.P. Cess Act 1940 . . .	Not levied			4	4	4
13. Under other budget heads . .	5	4	5	2	2	2
	51	59	69	14	13	12

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

ANNEXURE 1.5
SEARCHES AND SEIZURES

Seizures and Searches		1979-80		1980-81		1981-82		1982-83		1983-84	
		coastal	Town	Coastal	Town	Coastal	Town	Coastal	Town	Coastal	Town
A. Total No. of searches and seizures.	Bombay*	43		33		114		**		311	1361
	Delhi	Nil	Nil	Nil	Nil	Nil	N.A.			N.A.	N.A.
	Madras	30	N.A.	12	N.A.	19	N.A.			1627	N.A.
	Calcutta	6	Nil	6	Nil	10	Nil			789	647
	Ahmedabad	124	191	101	260	176	346			83	838
	Cochin	6	82	5	67	1	137			..	2031
	TOTAL .	209	273	157	327	320	483			2810	4877
B. Value of goods seized (Rs. lakhs).	Bombay*	278.43		68.53		791.92		**		625	876
	Delhi	Nil	N.A.	Nil	N.A.	Nil	N.A.			N.A.	N.A.
	Madras	0.12	N.A.	43.09	N.A.	0.65	N.A.			372	N.A.
	Calcutta	Nil	Nil	Nil	Nil	3.26	N.A.			238.65	532.34
	Cochin	Nil	12.13	Nil	47.20	Nil	9.54			N.A.	241.87
	Ahmedabad	10.85	11.03	478.99	28.05	676.11	73.73			746.35	527.93
	TOTAL .	289.40	23.16	590.61	75.25	1471.94	83.27			1982	2178.14
C. Number of seizure cases adjudicated upon and resulting in levy of duty and penalty or imprisonment.	Bombay*	33		32		132		**		233	1550
	Delhi	Nil	Nil	Nil	Nil	Nil	Nil			N.A.	N.A.
	Madras	Nil	Nil	Nil	Nil	Nil	Nil			950	N.A.
	Calcutta	Nil	Nil	2	Nil	Nil	Nil			1030	287
	Ahmedabad	122	109	108	169	93	190			66	363
	Cochin	Nil	37	Nil	41	Nil	80			N.A.	613
	TOTAL .	155	146	142	210	225	270			2279	2813

NOTE: Figures for Bombay cover coastal and town together.

**Figures for 1982-83 awaited.

*Figure for 1983-84 includes both coastal and town.

ANNEXURE 1.6

CONFISCATION

		1979-80	1980-81	1981-82	1982-83	1983-84
A. Number of Motor Vehicles confiscated	Bombay	1 (0.51)	Nil	4 (4.46)	*	20 (5.65)
	Delhi	6 (1.55)	Nil	Nil	*	N.A.
(C.I.F. value in brackets in Rs. lakhs)	Madras	1 (1.26)	Nil	Nil	*	27 (7.68)
	Calcutta	2 (0.60)	1 (1.55)	9 (9)	*	5 (2.70)
	Ahmedabad	4 (1.10)	5 (10.90)	2 (0.57)	*	13 (9.81)
	Cochin	4 (0.67)	3 (0.80)	23 (8.49)	*	16 (N.A.)
TOTAL		18 (5.69)	9 (13.25)	38 (22.52)	*	81 25.84
B. Trade goods confiscated (in Rs. lakhs)	Bombay	453.61	657.41	677.34	N.A.	N.A.
	Delhi	123.88	42.95	52.70	N.A.	N.A.
	Madras	266.76	942.58	989.82	N.A.	N.A.
	Calcutta	2.74	12.48	67.13	N.A.	N.A.
	Ahmedabad	1.18	46.37	71.52	N.A	N.A.
	Cochin	221.33	287.93	70.78	N.A.	N.A.
TOTAL		1,069.50	1,989.72	1,929.29	N.A.	N.A.

C. Pending confiscation proceedings, Appeals, Revisions as on 31-3-82 in respect of confiscated :	Bombay	Nil	(0.64)	(1.79)	*	3 (2)
	Delhi	1 (0.18)	Nil	Nil	*	N.A.
(*a*) Motor Vehicles (value in brackets in Rs. lakhs).	Madras	1	Nil	Nil	*	8 (3.16)
	Calcutta	2 (0.60)	1 (1.55)	12 (10.89)	*	N.A.
	Ahmedabad	Nil	Nil	Nil	*	N.A. (7.5)
	Cochin	Nil	1 (0.60)	2 (1.20)	*	81 N.A.
TOTAL		4 (0.78)	2 (2.79)	14 (13.88)	*	92 (12.66)
(*b*) Trade goods (value in Rs. lakhs)	Bombay	98.41	63.29	66.60	N.A.	N.A.
	Delhi	0.23	Nil	0.05	N.A.	N.A.
	Madras	N.A.	N.A.	N.A.	N.A.	N.A.
	Calcutta	22.09	8.99	106.59	N.A.	N.A.
	Ahmedabad	Nil	Nil*	Nil	N.A.	N.A.
	Cochin	Nil	Nil	52.18	N.A.	N.A.
TOTAL		120.73	72.28	225.42	N.A.	N.A.

*Figures for 1982-83 are awaited

ANNEXURE 1.7

EXEMPTION FROM DUTY SUBJECT TO END USE VERIFICATION

(In crores of rupees)

		1979-80	1980-81	1981-82	1982-83	1983-84
(a) Value of goods imported on which duty exempted.	Bombay	40.57	87.57	119.72	*	1428
	Delhi	4.70	7.76	17.81	*	N.A.
	Madras	57.96	172.47	254.06	*	78.15
	Calcutta	11.00	25.65	124.29	*	35.60
	Ahmedabad	131.33	235.01	255.68	*	196.02
	Cochin	11.70	4.72	5.34	*	40.85
TOTAL		257.26	533.18	776.90	*	1778.62
(b) Amount of duty forgone	Bombay	86.02	111.49	190.86	*	2042
	Delhi	4.77	6.78	14.24	*	N.A.
	Madras	56.76	163.85	233.01	*	41.22
	Calcutta	5.37	23.45	22.35	*	27.52
	Ahmedabad	130.87	206.44	220.01	*	196.02
	Cochin	N.A.	N.A.	N.A.	*	Nil
TOTAL		283.79	512.01	680.47	*	2306.76

(c) Value for which bond taken by Custom House.	Bombay	86.02	111.49	179.86	*	2178
	Delhi	3.37	4.20	13.29	*	N.A.
	Madras	56.76	163.85	233.01	*	53.32
	Calcutta	5.37	23.45	22.35	*	28.10
	Ahmedabad	132.45	216.40	224.30	*	187.94
	Cochin	14.05	5.66	6.39	*	40.85
TOTAL		298.02	525.05	679.20	*	2488.21
(d) Number of bonds in respect of which end use condition verified during the year.	Bombay	1619	2096	1328	*	1649
	Delhi	128	168	193	*	N.A.
	Madras	935	766	438	*	83.28
	Calcutta	375	458	674	*	29.47
	Ahmedabad	N.A.	N.A.	N.A.	*	119.64
	Cochin	23	23	3	*	10.57
TOTAL		3080	3511	2636	*	1891.96
(e) Value of bonds brought forward from previous year for verification of end use condition.	Bombay	20.70	24.58	90.59	*	2274
	Delhi	5.62	8.54	11.01	*	N.A.
	Madras	46.47	81.71	176.73	*	91.40
	Calcutta	21.25	17.62	36.86	*	54.46
	Ahmedabad	1.91	3.85	13.76	*	20.77
	Cochin	0.58	0.61	5.94	*	39.90
TOTAL		96.53	136.91	334.89	*	2480.53

		1979-80	1980-81	1981-82	1982-83	1983-84
(f) Value of end-use bonds carried forward to next year for verification of end-use condition.	Bombay	20.41	23.91	78.22	*	2040
	Delhi	0.91	1.52	0.79	*	N.A.
	Madras	81.79	178.50	334.28	*	66.41
	Calcutta	17.62	36.86	58.28	*	54.85
	Ahmedabad	2.04	13.76	23.27	*	109.39
	Cochin	1.12	2.06	7.15	*	10.20
TOTAL		123.89	256.61	501.99	*	2280.85
(g) Number of end-use bonds pending cancellation.	Bombay	422	671	570	*	5704
	Delhi	205	335	713	*	N.A.
	Madras	—	—	—	*	2518
	Calcutta	4	—	—	*	702
	Ahmedabad	—	—	—	*	101
	Cochin	—	—	—	*	87
TOTAL		631	1006	1283	*	9112
(i) Of above number pending for adjudication or appeal.	Bombay	—	—	—	*	—
	Delhi	—	—	—	*	—
	Madras	1	—	—	*	Nil
	Calcutta	—	—	—	*	—
	Ahmedabad	—	—	—	*	Nil
	Cochin	—	1	—	*	Nil
TOTAL		1	1	—	*	—

(*ii*) Of above number pending decision in High Court.	Bombay	—	—	—	*	—
	Delhi	—	—	—	*	—
	Madras	3	—	—	*	61
	Calcutta	—	—	—	*	4
	Ahmedabad	—	—	—	*	Nil
	Cochin	—	—	—	*	Nil
TOTAL		3	—	—	*	65

*Figures for the year 1982-83 still awaited

ANNEXURE 1.8

NUMBER AND VALUE OF IMPORTS HANDLED IN THE FOREIGN POST OFFICES DURING THE YEARS 1978 TO 1982

Foreign Post Office	Years				
	1978	1979	1980	1981	1982
Bombay	1,38,987	1,41,648	1,42,142	1,32,503	N.A.
Bangalore	N.A. 1978-79	60,983 1979-80	81,690 1980-81	90,578 1981-82	90,227 1982-83
Calcutta	N.A.	N.A.	N.A.	N.A.	N.A.
Madras	3,00,968	4,86,588	3,17,670	3,22,165	3,91,178
Delhi	N.A.	2,54,114	2,00,147	2,65,158	2,69,189
Cochin	1,76,923	1,77,557	1,91,968	2,65,056	2,21,377
Ahmedabad	97,026	1,40,833	2,03,102	2,28,967	2,24,907
Jaipur	15,886 (22.99)	17,356 (35.95)	18,036 (59.27)	14,975 (45.82)	14,218 (40.80)

NOTES : (*i*) The value of imports in Jaipur foreign post office given in brackets are in Rs. lakhs.

(*ii*) The value of imports in the year 1982-83 via Ahmedabad foreign post office was Rs. 1.42 crores. The value was not on record in the other post offices.

(*iii*) N.A. = Not available.

ANNEXURE 1.9

AMOUNT OF DUTY COLLECTED ON IMPORTS, IN THE FOREIGN POST OFFICES

(In Rs. lakhs)

Foreign Post Office	Years				
	1979-80	1980-81	1981-82	1982-83	1983-84
Bombay	N.A.	N.A.	N.A.	N.A.	N.A.
Calcutta	78.66	105.02	123.10	117.54	113.88
Madras	N.A.	N.A.	270.61	290.98	N.A.
Delhi	337.67	386.02	374.62	357.12	N.A.
*	(2,44,733)	(1,92,193)	(2,55,154)	(2,54,154)	(—)
Cochin	N.A.	N.A.	N.A.	N.A.	N.A.
Bangalore	N.A.	N.A.	N.A.	N.A.	N.A.
Ahmedabad	N.A.	N.A.	N.A.	N.A.	N.A.
Jaipur	N.A.	N.A.	N.A.	N.A.	N.A.

*The figures in brackets relate to number of assessment done in the year in Delhi foreign post office and not number of imports in the year.

N.A. = Not available.

ANNEXURE 1.10

PENDENCY IN ASSESSMENT OF CUSTOMS DUTY ON IMPORTED POSTAL GOODS IN THE FOREIGN POST OFFICES

Foreign post office	As on 31 March of			
	1980	1981	1982	1983
Bombay	7,580	19,989	9,871	8,669
Calcutta	N.A.	N.A.	N.A.	N.A.
Madras	N.A.	N.A.	N.A.	N.A.
Delhi	9,411	7,954	10,002	9,729
Cochin	N.A.	N.A.	N.A.	N.A.
Bangalore	N.A.	N.A.	N.A.	N.A.
Ahmedabad	N.A.	N.A.	N.A.	NA.
Jaipur	N.A.	N.A.	N.A.	N.A.

N.A. = Not available.

ANNEXURE 1.11

CLEARANCES IN BOMBAY FOREIGN POST OFFICE

Year in which cleared	Number of imports	Number released without levy of duty	Number of goods detained	Number on which duty levied
1978	1,38,987	61,850	33,636	45,354
1979	1,41,648	57,644	30,466	51,314
1980	1,42,142	45,395	41,103	45,086
1981	1,32,503	33,143	62,507	37,155

ANNEXURE 1.12

REDEMPTION FINE LEVIED IN BOMBAY FOREIGN POST OFFICE

Year	Number of cases	Amount of redemption fine (in Rs. lakhs)
1979-80	2640	3.99
1980-81	4439	6.44
1981-82	5111	9.77
1982-83	2285	8.17

ANNEXURE 1.13

NUMBER OF GOODS EXPORTED BY POST

	Year				
	1978	1979	1980	1981	1982
Bombay	5,017	4,741	13,750	N.A.	N.A
Calcutta	N.A. 1978-79	N.A. 1979-80	N.A. 1980-81	N.A. 1981-82	N.A. 1982-83
Madras	28,001	27,732	27,103	27,274	27,168
Delhi	N.A.	85,983	83,311	2,32,471	1,91,753
Cochin	392	1,134	1,020	900	1,551
Bangalore	4,232	5,627	4,526	3,228	5,964
Ahmedabad	76	157	76	95	138
(Value in Rs. lakhs)	(16.57)	(18.92)	(12.57)	(16.74)	(17.25)
Jaipur	N.A.	N.A.	N.A.	N.A.	N.A

N.A. = Not available.

ANNEXURE 1.14

DRAWBACK ON POSTAL EXPORTS

	1980-81		1981-82		1982-83	
	No. of cases	Amount (in Rs. lakhs)	No. of cases	Amount (in Rs. lakhs)	No. of cases	Amount (in Rs. lakhs)
Bombay	5677	66.00	4858	73.00	4971	70.00
Calcutta	N.A.	1.60	N.A.	2.37	N.A.	3.33
Madras	740	5.84	973	4.71	957	3.75
Delhi	473	3.56	215	2.64	266	3.44
Cochin	Nil	Nil	Nil	Nil	Nil	Nil
Bangalore . . .	N.A.	N.A.	N.A.	N.A.	N.A.	N.A
Ahmedabad . . .	Nil	Nil	Nil	Nil	Nil	Nil.
Jaipur	N.A.	N.A.	N.A.	N.A.	N.A.	N.A

N.A. = Not abailable.

ANNEXURE 1.15

AMOUNT WRITTEN BACK IN THE LAST FIVE YEARS

(Amount in lakhs)

	1978-79	1979-80	1980-81	1981-82	1982-83
Bombay	8.30	21.68	9.27	34.21	20.25
Calcutta	1.62 (118)	1.24 (143)	1.28 (91)	2.98 (133)	1.79 (145)
Madras	N.A.	N.A.	N.A.	5.03	2.92
Delhi	N.A.	7.04	3.76	6.25	2.32
Cochin	0.42	1.07	0.42	0.58	0.14
Bangalore	N.A.	N.A.	N.A.	N.A.	N.A.
Ahmedabad	N.A.	N.A.	N.A.	N.A.	N.A.
Jaipur	N.A.	N.A.	N.A.	N.A.	N.A.

NOTES : (*i*) Number of cases have been given within brackets wherever available.

(*ii*) N.A. = Not available.

CHAPTER—2

UNION EXCISE DUTIES

2.01 **Trend of receipts**

During the year 1983-84 the total receipts from Union Excise duties amounted to Rs. 10,221.74 crores*. The receipts during the year 1983-84 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	
	1982-83 Rs.	1983-84 Rs.
A—Shareable duties :—		
Basic excise duties	66,66,63,47,004	78,17,21,86,948
Auxiliary duties of excise	50,426	1,40,712
Special excise duties	3,18,17,33,910	3,35,60,26,790
Additional excise duties on mineral products	3,34,62,154	7,39,23,548
Total (A)	69,88,15,93,494	81,60,22,77,998
B—Duties assisgned to States :—		
Additional excise duties in lieu of sales tax	5,00,51,54,347	7,03,02,54,098
Excise duties on generation of power	1,48,49,59,920	1,76,27,16,948
Total (B)	6,49,01,14,267	8,79,27,71,046
C—Non-shareable duties :—		
Regulatory excise duties	4,351	..
Special excise duties	2,83,66,248	1,95,28,575
Additional excise duties on textiles and textile articles	75,06,76,886	1,33,55,81,284
Other duties	(—)87,021	24,31,250
Total (C)	77,89,60,464	1,35,75,41,109
D—Cess on commodities	3,25,54,77,629	10,35,06,13,867
E—Other receipts	17,88,33,334	11,40,47,718
Total	80,58,49,79,188	102,21,74,51,738

*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
1979-80 . . .	6,011.09	139	307	60,629
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

(iii) The number of commodities each of which yielded excise duties in excess of Rs. 100 crores during the year 1983-84, 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 commodities each yielding receipts		
	Above Rs. 100 crores	Between Rs. 10 crores and 100 crores	Below Rs. 10 crores
1979-80 . . .	18(72)	47(24)	72(4)
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)

*Figures are provisional.

(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			Number of factories (1982-83)
		1981-82	1982-83	1983-84	
1	2	3	4	5	6
		(In crores of rupees)			
1.	Cigarettes	686·81	647.13	906.05	26
2.	All other goods not elsewhere specified	535.85	593.95	785.13	6206
3.	Man-made fibres & yarn	526.88	556.63	873.07	646
4.	Motor spirit	518.37	559.17	618.39	91
5.	Tyres and tubes	360.39	403.25	400.82	69
6.	Refined diesel oil and vaporising oil	359.18	380.34	423.14	101
7.	Iron or steel products	346.63	338.33	260.08	1177
8.	Cement	169.52	336.26	559.76	119
9.	Motor vehicles	314.54	305.92	322.27	287
10.	Sugar (including khandsari)	295.48	346.49	401.37	3428
11.	Petroleum products not otherwise specified	182.28	188.23	196.04	27
12.	Paper and paper board	169.35	176.25	220.58	769
13.	Kerosene	149.58	168.29	176.42	89
14.	Cotton fabrics	162.50	149.99	169.37	3369
15.	Man-made fabrics	145.12	149.06	230.41	508
16.	Electricity	146.60	146.49	179.69	2003
17.	Plastics	138.03	140.33	158.95	478
18.	Biris	123.12	120.89	132.71	9191
19.	Patent or proprietary medicines	100.92	118.96	135.51	904
20.	Aluminium	141.81	111.76	115.36	283
21.	Cotton yarn, all sorts	103.58	94.27	125.70	1039

(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			Number of factories (1982-83)
		1981-82	1982-83	1983-84	
1	2	3	4	5	6
1.	Camphor	0.94	0.98	1.12	5
2.	Cinematograph projectors	0.62	0.62	0.60	11
3.	Typewriter ribbons	0.49	0.48	0.83	9
4.	Playing cards	0.77	0.46	0.32	14
5.	Linoleum	0.42	0.42	0.71	1
6.	Flax fabrics and ramie	0.33	0.39	0.39	7
7.	Menthol	0.40	0.39	0.46	7
8.	Parts of wireless receiving sets	0.21	0.25	0.20	11
9.	Mechanical lighters	0.08	0.31	0.31	43
10.	Zip and slide fasteners	0.25	0.18	0.21	14
11.	Coated textiles	0.19	0.18	0.16	14
12.	Hockah tobacco	0.25	0.15	0.06	135
13.	Electric machines for games of skill etc.	Nil	0.11	0.23	10
14.	Television cameras	0.01	0.05	0.07	6
15.	Cigars and cheroots	0.01	0.01	0.03	393
16.	Polyester films	Nil	Nil	Nil	—
17.	Lead	0.92	1.23	1.32	7
18.	Flax yarn and ramie yarn	0.03	0.02	0.02	2

(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				
	1979-80	1980-81	1981-82	1982-83	1983-84
	(in crores of Rupees)				
1. Crude Oil .	66.46	58.74	111.19	209.89	838.80
2. Coal & Coke .	24.50	21.86	31.01	34.17	55.97
3. Rubber . .	6.61	6.27	5.52	6.62	6.82
4. Handloom cess on cotton fabrics	5.55	6.02	5.45	4.66	5.19
5. Tea . .	4.25	4.56	4.48	4.55	4.86
6. Handloom cess on rayon artificial silk fabrics	1.94	2.00	1.28	0.90	1.20
7. Salt . .	1.34	1.22	1.35	1.30	1.36
8. Oil and oil seeds	1.23	1.10	1.04	1.25	1.45
9. Paper . .	Nil	0.01	1.22	0.92	1.28
10. Handloom cess on man-made fabrics . .	Nil	Nil	1.14	1.41	1.93
11. Other commodities . .	4.17	4.69	5.43	59.87	116.20
Total receipts from cess . . .	116.05	106.47	169.11	325.54	1035.06*

*Figures received from Ministry of Finance.

2.02 Variations between the budget estimates and actual receipts

The budget estimates *vis-a-vis* actual receipts during the year 1983-84, alongside the corresponding figures for the preceding three years are given below :—

Year	Budget Estimates	Actual receipts
	(In crores of rupees)	
1980–81	6264.81	6500.02
1981–82	7116.90	7420.74
1982–83	8521.46*	8058.50*
1983–84	9990.27	10221.74**

2.03 Cost of collection

The expenditure incurred during the year 1983-84 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 crores of rupees)		
1980–81	6500.02	38.42	0.59
1981–82	7420.74	44.03	0.59
1982–83*	8058.50	51.83	0.62
1983–84**	10221.74	62.79	0.61

*Figures for 1982-83 revised by Ministry of Finance.

**Figures are provisional.

2.04 Exemptions, rebates and refunds

(i) Exemptions

In the Central Excise Tariff, the number of sub-items (each with rate against it) under which the excisable commodities are required to be classified was 334 during the year 1982-83 and 333 during the year 1983-84. The number of exemption notifications issued during the year 1982-83 and 1983-84 numbered 287 and 160 respectively. Because exemption notifications are issued under the various tariff items, the number of rates of basic excise duty in force during the years 1982-83 and 1983-84 were 1,067 and 1,105 respectively. The largest number of exemption notifications were in force in respect of the following tariff items :—

Tariff item No.	Description	Number of exemption notifications in force during	
		1982-83	1983-84
15A	Plastics	41	41
68	All other goods not elsewhere specified	36	39
18	Man-made fibres, filament yarn and cellulosic spun yarn	31	34
14	Paints and varnishes	30	29
11A	Petroleum products not otherwise specified	27	27
17	Paper	33	26
19	Cotton fabrics	23	26
6	Motor spirit	22	22
26A	Copper	25	20
14E	Patent or proprietary medicines	20	20
27	Aluminium	22	17

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) Rebates

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

	1981-82	1982-83	1983-84
		(in Rs. crores)	
(*a*) Rebate under Rule 12 . .	14.04	17.44	16.69
(*b*) Rebate under Rule 12A . .	1.70	3.77	1.49
(*c*) Duty not levied under Rule 13	248.35	263.59	279.80
Total	264.09	284.80	297.98

(iii) Refunds

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

	1981-82	1982-83	1983-84
Number of cases	6052	6360	5443
Amount of refunds (in Rs. crores) . . .	39.10	31.64	26.10

*The figures furnished by the Ministry of Finance cover only 23 Collectorates out of 31 Collectorates.

**The figures furnished by the Ministry of Finance cover only 26 out of 31 Collectorates.

2.05 Provisional assessments

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

	Relating to					
	1981-82 and earlier years		1982-83		1983-84	
	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	4338	762.35	1749	312.56	1519	240.40
(*b*) Pending decision by Government of India or Central Board of Excise and Customs .	242	5.50	30	2.60	83	12.96
(*c*) Pending adjudication by the department .	174	4.02	118	1.75	87	5.77
(*d*) Pending finalisation of classification lists . .	107	24.18	155	13.47	275	28.41
(*e*) Pending finalisation of price lists	1535	79.35	1458	124.87	2102	85.61
(*f*) Other reasons .	399	30.48	286	13.80	510	24.82
Total . .	6795	905.88	3796	469.05	4576	397.97

(Please see paragraph 2.62 infra in this report relating to delays in approval of price lists.)

2.06 Outstanding demands

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

	Relating to					
	1981-82 and earlier years		1982-83		1983-84	
	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	3005	83.76	1817	55.12	2491	192.52
(*b*) Pending before Appellate Collectors . . .	1307	11.09	577	4.77	425	5.29
(*c*) Pending before Board . .	230	1.95	50	5.91	41	1.08
(*d*) Pending before Government .	681	19.79	127	0.83	94	0.77
(*e*) Pending before Tribunals . .	550	15.88	320	14.59	139	10.88
(*f*) Pending before High Courts .	2297	69.65	507	25.26	433	51.06
(*g*) Pending before Supreme Court .	204	14.32	275	3.78	170	57.63
(*h*) Pending for coercive recovery .	36233	26.86	2511	4.01	2145	18.31
TOTAL . .	44507	243.30	6184	114.27	5938	337.54

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

(i) Revenue not demanded before limitation

The total amount of revenue lost to Government during the last three years because demands were not raised before limitation was Rs. 6.89 crores as detailed below :—

	Amount* Rs.
1981-82	41,69,775
1982-83	2,38,32,165
1983-84	4,09,21,843

(Please see paragraph 2.57 and 2.58 infra in this report relating to demands barred by limitation and delays in raising demands.)

(ii) Revenue remitted or abandoned

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

	1981-82		1982-83		1983-84	
	Number of cases	Amount Rs.	Number of cases	Amount Rs.	Number of cases	Amount Rs.
1	2	3	4	5	6	7
Remitted due to						
(*a*) Fire	26	2,09,424	44	5,87,122	47	4,16,594
(*b*) Flood	1	3,559	2	1,590	6	4,189
(*c*) Theft	1	238	—	—	1	464
(*d*) Other reasons	33	1,67,670	503	4,67,049	550	1,07,942
TOTAL	61	3,80,891	549	10,55,761	604	5,29,189

*Figures furnished by the Ministry of Finance cover only 29 out of the 31 Collectorates.

**Figures furnished by the Ministry of Finance cover only 27 out of 31 Collectorates.

1	2	3	4	5	6	7
Abandoned or written off due to :						
(*a*) Assessee died leaving behind no assets . .	165	78,203	58	11,578	80	9,465
(*b*) Assessee untraceable . . .	229	35,763	78	2,60,193	103	13,673
(*c*) Assessee left India	3	100	—	—	—	—
(*d*) Assessee incapable of payment of duty . . .	2445	2,94,499	1224	2,14,571	188	58,110
(*e*) Other reasons .	202	1,62,202	28	1,06,005	143	1,18,923
TOTAL . .	3044	5,70,767	1388	5,92,347	514	2,00,171

2.08 Rewards to informers

The amount of rewards* paid to informers and departmental officers as well as the extra duty realised which is attributable to payment of rewards, during the last three years, is given below :—

	1981-82	1982-83	1983-84
		(in rupees)	
(*a*) Amount of rewards paid to informers	23,745	36,931	39,215
(*b*) Amount of rewards paid to departmental officers . .	48,747	60,093	24,861
(*c*) Extra duty realised which is attributable to payment of rewards	2,57,713	87,504	96,748

*Figures furnished by the Ministry of Finance cover only 25 out of 31 Collectorates.

2.09 Seizures, confiscation and prosecution

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

(Amount in Rs. crores)

	1981-82		1982-83		1983-84	
	Number	Amount	Number	Amount	Number	Amount
(*i*) Seizure cases .	2294	7.53	2488	7.13	2239	7.31
(*ii*) Goods seized .	2101	6.66	2144	9.02	1880	10.23
(*iii*) Goods confiscated:						
(*a*) in seizure cases . .	1493	2.06	1278	1.94	1083	2.51
(*b*) in non-seizure cases .	128	0.57	115	1.33	104	2.01
(*iv*) Number of offences prosecuted :						
(*a*) arising from seizure .	87	0.03	56	0.02	45	0.23
(*b*) arising otherwise . .	13	0.03	35	0.01	—	—
(*v*) Duty assessed in respect of goods seized or confiscated . .	1630	1.16	1568	1.47	1212	1.79
(*vi*) Fines levied :						
(*a*) on seizure and in confiscation cases	1448	0.19	1421	0.19	1000	0.20
(*b*) in other cases . .	78	0.001	40	0.03	30	0.004
(*vii*) Penalties levied .	2964	0.49	2514	0.29	2008	0.32
(*viii*) Goods destroyed after confiscation	75	0.003	55	0.01	31	0.005
(*ix*) Goods sold after confiscation .	265	0.009	101	0.01	109	0.01
(*x*) Prosecutions resulting in conviction . .	8	Nil	36	—	9	—

2.10 Writs and Appeals

(i) Writ petitions

Number* of writ petitions involving excise duties which were pending in courts as on 31 March 1984 are given below :—

	In Supreme Court	In High Courts
Pending for over 5 years	122	503
Pending for 3 to 5 years	270	824
Pending for 1 to 3 years	304	1463
Pending for not more than 1 year	129	667
TOTAL	825	3457

(ii) Appeals

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

	Year		
	1981-82	1982-83	1983-84
1	2	3	4
1. (*a*) Number of appeals filed before Collectors (Appeal)	3040	3562	2745
(*b*) Number of appeals disposed of during 1983-84	2411	866	312
2. (*a*) Number of appeals filed before the Tribunal by the assessee	109	209	619
(*b*) Number of appeals decided during 1983-84 in favour of the assessee	7	20	92
3. (*a*) Number of appeals filed before the Tribunal by the department	36	160	353
(*b*) Number of appeals decided in favour of the department during 1983-84	1	15	73
4. (*a*) Number of appeals filed in the High Courts by the assessees	53	85	189
(*b*) Number of appeals disposed of in favour of the assessees during 1983-84	6	4	32
5. (*a*) Number of appeals filed by the department before the High Court	5	2	59

*Figures furnished by the Ministry of Finance.

1	2	3	4
(*b*) Number of appeals decided in favour of the department during 1983-84 (including appeals filed by assessees) .	21	50	50
6. (*a*) Number of appeals filed in the Supreme Court by the assessees	13	24	105
(*b*) Number of appeals decided in favour of the assessees .	1	2	2
7. (*a*) Number of appeals filed in Supreme Court by the department . . .	48	41	47
(*b*) Number decided in favour of the department . .	Nil	Nil	3

2.11 Outstanding audit objections

The number of objections raised in audit upto 31 March 1983 in 31 Collectorates, and which were pending settlement as on 30 September 1983 was 4795. The duty involved in the objections amounted to Rs. 422.77 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	250.29
2. Short levy of duty due to under valuation . . .	34.92
3. Short levy of duty due to misclassification . . .	70.87
4. Short levy of duty due to incorrect grant of exemption .	17.55
5. Exemption to small scale manufacturers	1.14
6. Irregular grant of credit for duty paid on inputs and irregular utilisation of such credit	8.08
7. Demands for duty not raised	3.04
8. Irregular rebates and refunds	1.33
9. Cess	0.79
10. Others	34.76
TOTAL	422.77

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.12 **Results of audit**

Test check of records in audit in the various Central Excise Collectorates including check of excise records of licensees manufacturing excisable commodities revealed under assessment of duty and losses of revenue amounting to Rs. 55.79 crores. As a result of the audit objections, consequential additional demands raised by the department amounted to Rs. 17.44 crores.

The irregularities 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 on 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 topics of interest.

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

2.13 Duty not levied on production, suppressed or not accounted for

As per Rule 53 of the Central Excise Rules, 1944, every manufacturer is required to maintain 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 payment of duty, (f) quantity delivered from the factory without payment of duty for export or other purposes, and (g) the rate of duty and the amount of duty.

(i) Structurals

Under Rule 9 read with Rule 173G no excisable goods should 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.

A manufacturer had undertaken fabrication and erection of angular trusses, purtins etc. The fabricated items were not entered in the stock account, and were cleared without payment of duty.

On the non levy of duty being pointed out in audit (August 1981), the department issued a show cause notice demanding Rs. 1,67,371 in respect of clearances made during the period from 31 March 1981 to 31 March 1982. Report on recovery is awited (April 1984).

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) Fabrics

In a dyeing and bleaching mill cotton and man-made fabrics were processed. The manufacturer was allowed to pay duty on the quantity of fabrics processed as per declaration in the excise records maintained and returns sent by him. But the

quantity of fabrics processed during the year 1980 as reflected in the balance sheet of the company as on 31 December 1980 was more than the quantity declared in the excise records and returns by 39,54,000 metres. The duty not realised on the production of fabrics not reflected in the excise records amounted to Rs. 1,97,700.

On the discrepancy and short levy being pointed out in audit (May 1983) the department stated (October 1983) that the discrepancy was under investigation; report on action taken is awaited (May 1984).

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iii) **Electricity**

On electricity, excise duty was leviable at 2 paise per unit with effect from 1 March 1978. Under Rule 173 PPP of Central Excise Rules, 1944, State Electricity Boards were given a single licence to generate electricity in all the generating stations under them. The Boards were required to maintain centralised records and to pay duty at one place, on a monthly basis.

A State Electricity Board, generated 11348 million units of electricity during the year 1981-82 but only 11300 million units of generation were disclosed in the monthly returns submitted to the department. The mistake resulted in short levy of duty by Rs. 7,93,800.

On the mistake being pointed out in audit (July 1983) the department realised the short fall in duty in April 1984 and also issued show cause notices (April 1984) demanding further duty amounting to Rs. 1,39,570 on similar short fall in duty during the years 1978-79 to 1980-81. Report on recovery of the amount is awaited (July 1984).

The Ministry of Finance have stated (December 1984) that show cause-*cum*-demand notices for Rs. 1,23,450 have been issued.

2.14 **Excisable goods cleared as non-excisable**

(i) **Acetylene gas**

On acetylene gas whether it is in dissolved condition or not, duty is leviable under tariff item 14H(vi) with effect from 18 June 1977.

A manufacturer of calcium carbide used acetylene gas partly in manufacture of acetylene black. He produced acetylene black by decomposition of acetylene which he obtained by action of water on calcium carbide. On acetylene gas produced and consumed by him in the manufacture of acetylene black no duty was realised on the ground that the gas manufactured was impure, explosive, not conforming to ISI specification, not capable of being bought and sold and, therefore, not liable to duty. But on the gas conveyed through pipe line to the acetylene black plant duty was leviable under tariff item 14H(vi). The gas had purity sufficient for production of acetylene black and the scope of the tariff item 14H(vi) is wide enough to cover acetylene dissolved or not. In the case of J.K. Cotton Spinning and Weaving Mills *Vs.* Union of India* the High Court of Delhi held that excisable goods produced in a continuous process are dutiable so long as the goods are identifiable and capable of physical removal. When goods go within the pipe line for being utilised and to be converted into another type of goods, there is physical removal. The non-levy of duty on the gas resulted in duty amounting to Rs. 90.48 lakhs not being realised on clearances of gas made during the period from February 1982 to February 1984.

After the omission being pointed out in audit in September 1982 and March 1983 an appeal was filed before the Collector (Appeals) in February 1983. The Collector (Appeals) held (September 1983) that the unit manufactured acetylene gas conforming to the description given under tariff item 14H(vi) and the gas was liable to duty but that the demand should be

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limited to the period from 21 December 1982. Duty amounting to Rs. 48.61 lakhs which related to period prior to December 1982 could not, therefore, be realised.

The assessee filed (December 1983) a writ petition in the High Court against the appellate order and the recovery has been stayed.

The Ministry of Finance have stated (November 1984) that the appeal against the adjudication order of the Assistant Collector withdrawing the demand against the assessee was filed even prior to the receipt of audit Query. The reply is not correct since the first audit enquiry was in September 1982. The reply is silent on the reasons for loss of revenue that had been occurring even prior to February 1983 or September 1982.

(ii) **Floating crane**

As per a notification issued on 28 February 1982 on ocean going vessels levy of excise duty was exempted.

A manufacturer of floating crane and jacket launch barge was allowed to clear his products without payment of duty viewing them as ocean going vessels. But the vessels in question were not ocean going vessels. The incorrect grant of exemption resulted in duty amounting to Rs. 28,68,240 not being realised.

On the irregularity being pointed out (July 1983) in audit the department accepted the mistake and recovered duty amounting to Rs. 28,68,240 in December 1983.

The Ministry of Finance have confirmed the facts (December 1984).

(iii) **Methanol**

"All other goods not elsewhere specified but excluding alcohol, all sorts, including alcoholic liquors for human consumption" are classifiable under tariff item 68.

Chemically alcohol is a generic name covering any chemical having the organic chemical alcohol group in its chemical composition. It has been held* by the Supreme Court that in a taxing statute the meaning given to a word in commercial parlance is to be given preference over the dictionary meaning. It has been held** by the High Court of Bombay that standard books are highly technical books containing technical information for technical people, therefore, they have no significance in classifying the excisable goods.

Production, manufacture, possession, transport, purchase and sale of intoxicating liquors, fall under entry 8 of the State list in Schedule VII of the Constitution.

As per entry 51 in the said State list in the Constitution, State excise duty can be levied only on potable alcohols, whereas methanol is not potable.

(a) Methanol is obtained as a by-product in the manufacture of polyester staple fibre and polyester yarn. In a State, it was allowed to be cleared from a factory as non-excisable on the ground that methanol being methyl alcohol was not classifiable even under tariff item 68. But the product is sold as methanol (not as methyl alcohol) and it is not intended to be excluded from tariff item 68 by viewing the term "alcohol all sorts" as covering it. On clearances made from the factory during the years 1979-80 to 1982-83 duty not levied amounted to Rs. 27.33 lakhs.

The non-levy of duty was pointed out in audit in July 1984.

(b) In another State a manufacturer of "Methanol", was also, similarly, allowed to clear it without payment of duty. The manufacturer was clearing and selling the product as industrial chemical and not as alcohol. In that State methanol was not subject to control by the Excise department of the State Government. Duty was irregularly waived on methanol and

*AIR 1973 SC 2440 and AIR 1883 SC 78.
**1981 ELT 432.

duty not levied amounted to Rs. 1,77,841 on clearances made during the years 1982-83 and 1983-84.

The omission was pointed out in audit (January 1983); the department did not accept the objection.

(c) In yet another State a manufacturer of polyester filament yarn and polyester fibre produced "Methanol" as a bye-product and was similarly allowed to clear it without payment of duty. In the State, control on movement of methanol was exercised by State Government. On methanol cleared during the period from August 1981 to December 1982 from one unit and from April 1982 to January 1983 from another unit of the said manufacturer duty not realised amounted to Rs. 13.94 lakhs.

On the non-levy of duty being pointed out in audit (June 1983) the department did not accept the objection and stated (August 1983) that methanol is methyl alcohol and is, therefore, excluded from the purview of tariff item 68. Further the clearances of the product were also controlled by the Prohibition and Excise Department of the State Government. The reply is silent on whether the department took into account the fact that the State Legislatures have no power to levy excise duty on non-potable alcohol. Further, methanol is non-potable and it is not clear why it is sought to be classified as alcohol in a generic sense and excise duty is not being realised on methanol, which is commercially an industrial chemical and not alcohol.

Tariff item 68 and explanation in tariff item 14E refer to alcohol, alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics as also to definitions of 'alcohol' and 'dutiable goods', as given in the Medicinal and Toillet Preparations (Excise Duties) Act, 1955. In the said Act 'Alcohol' is said to mean "ethyl alcohol of any strength and purity having the chemical composition $C_2 H_5 OH$". It is, therefore, not clear how the term 'alcohol' has been interpreted by the department as covering methyl alcohol which is $CH_3 OH$. The term "alcohol, all sorts" can only refer to "$C_2H_5 OH$, all sorts" and not to methyl alcohol.

(d) A manufacturer of 'fertiliser' in yet another State manufactured 'methanol' which is a non-potable industrial chemical. Duty amounting to Rs. 1.42 lakhs was not levied on clearances of methanol made during the period from June 1982 to February 1983 on the ground that "alcohol all sorts" are excluded from levy of duty implying that even methyl alcohol, propyl alcohol etc. (which are not understood to be alcohol, in common parlance, but are industrial chemicals) are to be excluded from duty.

The rationale behind interpreting the term "alcohol all sorts" appearing in tariff item 68, so as to take out a host of chemicals having a chemical alcohol group out of excise net was not intimated to Audit. Further the rationale for non-levy of central excise duty on non-potable alcohols, when no excise duty can be levied by the State Legislatures on non-potable alcohol was not intimated to Audit.

In paragraph 2.41(i) and 2.09(iii) of Audit Reports for the years 1981-82 and 1982-83, similar objections on non-levy of duty on methanol were highlighted.

In reply to the above cases, Ministry of Finance had stated that duty is not leviable on methanol. They have quoted in support, an opinion of the Ministry of Law to the following effect :

"When a Statute says that certain words shall include certain things, the intention is to give more extensive meanings to the words. In other words, the word 'including alcoholic liquors for human consumption', are not intended to exclude alcoholic liquors in other forms. Therefore, alcohol in any form is excluded from tariff item 68."

But there are many other chemicals like glycol which are chemically 'alcohols' which are clearly not intended to be excluded from levy of duty and on which in fact duty is being

levied. (Please see para 2.48(i)(c) in this report about duty being realised on glycol).

As per Chamber's technical dictionary the term 'alcohol' is commonly used for 'ethyl alcohol' (which is potable). The general term 'alcohol' covers chemical compounds containing a hydrogen atom substituted by the hydroxyl group and it is inconceivable that this is the meaning of alcohol referred to in the opinion of the Ministry of Law. The definition of alcohol given in an allied Act referred to in tariff item 68 and 14E of the First Schedule to Central Excise Act limits the meaning of alcohol to ethyl alcohol which is C_2H_5 OM. The opinion does not clarify whether methanol, glycol etc. which are alcohols but are not potable are intended to be excluded from levy of central excise duty. Nor has the Ministry clarified why central excise duty is being levied on so many chemicals which are chemically 'alcohol' but not on methyl alcohol or methanol which is CH_3 OH.

(iv) **Electric bulbs**

As per Rule 9 of the Central Excise Rules, 1944 no excisable goods shall be removed from any place where they are produced or manufactured until the excise duty leviable thereon has been paid. Goods that cannot be classified under items 1 to 67 of Central Excise Tariff are classified under item 68.

A manufacturer of electric lighting bulbs and tubes produced "Thungten filament coils", by coiling tungsten wires on molebdynum wires and by dissolving the molebdynum wire in a mixture of nitric acid and sulphuric acid. The mixture of acids containing molebdynum was cleared at a price of Rs. 20 per kilogram but it was viewed as non-excisable by the department. Even though the acids in question going into the mixture cost only around Re. 1 each per kilogram, the cleared goods were viewed as only waste acid and not as valuable excisable product. Non levy of duty on the product, under tariff item 68, resulted in duty amounting to Rs. 31,000 not being realised on the clearances made during the period from April 1982 to June 1983.

On the mistake being pointed out in audit (September 1983) the department stated (November 1983) that the mixture of molebdynum dissolved in nitric or sulphuric acid was not a manufactured product as per definition of the term manufacture in Section 2(f) of the Central Excises and Salt Act, 1944, as there is no treatment on the nitric or sulphuric acid. Also no new or different article having different name, character and use had emerged. The reply of the department is not correct since the cost of the mixture of the acids containing molebdynum cannot go up to as high as Rs. 20 per kilogram from Re. one per kilogram unless the cleared product was different from a mixture of acids. It cannot also be said that the cleared bye product being molebdynum dissolved in acids was the same as the molybdynum wire.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(v) **Aluminium**

A manufacturer of aluminium capacitor housing and aluminium speed cups, produced them, from duty paid aluminium strips, rods or slugs. The production process involved manufacture of extruded aluminium articles which were subjected to further manufacturing processes to produce capacitor housing and speed cups. No duty was collected on the extruded aluminium articles though duty amounting to Rs. 5,07,803 was realisable on such articles during the period from 1 April 1981 to 31 January 1983.

On the omission being pointed out in audit (March 1983) the department issued (March 1984) show cause-*cum* demand notice for a sum of Rs. 5,07,803. Report on adjudication is awaited (June 1984).

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(vi) **Paper ribbons**

A manufacturer of typewriter ribbons was also manufacturing carbon paper ribbons in the same factory. On the paper ribbons duty was paid under tariff item 22E. But no duty was realised on carbon paper which was classifiable under tariff item 17(ii) and was also manufactured and captively used in the manufacture of paper ribbons. The omission resulted in duty amounting to Rs. 88,000 not being realised on clearances made during the period from July 1981 to June 1983.

On the omission being pointed out in audit (August 1983) the Ministry of Finance have stated (November 1984) that demand for Rs. 1.94 lakhs had since been raised for the period from December 1979 to September 1983.

(vii) **Bitumen**

Cable compound of different grades and categories were produced by a manufacturer using bitumen as raw material. Raw bitumen was converted into different products with different softening and penetrating points. On the products duty was leviable under tariff item 68. But the compounds were incorrectly exempted from duty even though there was no notification exempting them from duty. The duty not realised under tariff item 68 amounted to Rs. 4.02 lakhs on clearances made during the period from 1 April 1982 to 31 March 1983.

The omission was pointed out in audit in February 1984.

The Ministry of Finance have stated (December 1984) that the different grades of bitumen produced by the assessee are obtained by heating and blowing air through straight grade bitumen. 'Blown grade bitumen' would continue to be classified under tariff item 11 and duty would not be leviable again on the bitumen produced from duty paid bitumen. The reply is not clear. The classification lists were for products which were cleared under tariff item 68 as cable compounds and not for clearance of bitumen under tariff item 11.

2.15 Irregular clearances allowed without levying duty

(i) Motor vehicles

Under item 34 of the Central Excise Tariff, duty is leviable on motor vehicles and tractors including trailers. "Motor Vehicle" means all mechanically propelled vehicles other than tractors designed for use upon roads. Duty is leviable at one rate on motor vehicles of engine capacity exceeding 2500 cc. On motor vehicles of engine capacity not exceeding 2500 cc, duty is leviable at different rates on vehicles with body (*viz.* saloon cars and others) and on other motor vehicles *i.e.* vehicles without body (including chassis whether or not with cabs). An explanation in the tariff states that the term "motor vehicle" shall include a chassis. Another explanation states that where a "motor vehicle" is mounted, fitted or fixed with any weight lifting or other specialised material handling equipment then such equipment shall not be taken into account.

As per the ratio laid down by the Supreme Court in the case of Union of India *Vs.* Delhi Cloth and General Mills Ltd. goods produced as a result of construction of a body on a chassis are, excisable goods, different from the chassis. The vehicle arising as a result of body built on the chassis has another distinct name, character and use and so the chassis is separately excisable.

As per practice in trade, chassis of vehicles are cleared by the manufacturer on payment on duty and bus or lorry bodies are built thereon by body builders. Prior to introduction of tariff item 68, if duty was paid on the chassis duty was not again recovered on the bodies when bodies were built by independent body builders. Duty was levied on the vehicle in the form it was cleared from the factory manufacturing the chassis. After the introduction of tariff item 68 on 1 March 1975 duty became leviable on "all other goods not elsewhere specified". But the Finance Ministry clarified in June 1975 that since the vehicle fell under *tariff item* 34 and duty had already been levied on chassis duty would not be leviable under tariff item 68.

In February 1983 Ministry of Finance, clarified that where a motor vehicle chassis is cleared under bond for export and on such chassis a bus body is built in separate premises before the actual export and such a motor vehicle is subsequently diverted for home consumption duty should be levied on the full value of the motor vehicle including the body.

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 the provisions of Rule 56A of Central Excise Rules, 1944.

(a) Bus bodies built on motor vehicle chassis, in a factory, were cleared without levy of duty on the ground that duty had already been paid on chassis. Duty amounting to Rs. 3.36 crores was not levied on bus bodies built during the period from August 1979 to June 1984.

The omission was pointed out in audit in January 1984.

The Ministry of Finance have stated (December (1984) that levy of duty on independent body builders was never contemplated. Tariff item 34 and explanation thereunder do not make a distinction to suggest that independent body building is separately charged to duty. The reply of the Ministry only clarifies the intention. The wordings of the tariff do not bear out such an intention. There is need for amending the tariff after taking advice of Ministry of Law so that the tariff may reflect the intention truly.

(b) A State Transport Corporation obtained duty paid chassis and manufactured thereon complete buses with body, in their central workshop and also had them manufactured through outside agencies. Duty was not levied on the buses although the buses were excisable products different from the motor

vehicle chassis. The omission resulted in duty amounting to Rs. 1.48 crores not being realised on clearances made during the years 1980-81 to 1983-84.

The omission was pointed out in audit in July 1984.

The Ministry of Finance have stated (December 1984) 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 instruction 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. Presently there is no provision in the tariff for not levying duty on chassis and on motor vehicles with body.

(c) A manufacturer producing motor vehicles of engine capacity not exceeding 2500 cc was allowed to clear them without body, but without payment of duty. After clearance the vehicles without body were captively consumed for further manufacture of motor vehicles with body, which vehicles were cleared on payment of duty. Had the vehicles without body been cleared after payment of duty and credit for the duty paid been used under provisions of Rule 56A for payment of duty on vehicles with body, Rs. 5.24 lakhs more of duty would have been realised by the department in respect of vehicles cleared in the month of August 1982 alone.

On the short realisation of duty being pointed out in audit (May 1983) the department stated (February 1984) that in the tariff, the intention of the legislature was to give an option to the manufacturer to clear motor vehicles either with body or

without body. Duty cannot be again levied on vehicle with body when it is produced using vehicle without body, which has been cleared after payment of duty. But the fact that the tariff covers both vehicles with body and vehicles without body, clearly indicates the intention of the legislature that both types of vehicles are excisable products and that they are distinct and separate excisable goods with separate character, name and use. Clearance of vehicles without body may be done only on payment of duty as per provisions of Rules 9 and 49 of Central Excise Rules. Even a change in procedure or manner of clearance prescribed by Rules cannot make an excisable product (vehicle without body) clearly described in the first schedule (Tariff) to the Central Excise Act, a non excisable product at the option of the manufacturer. Nor can duty be exempted on vehicle without body, in the absence of a notification granting exemption.

The Ministry of Finance have stated (December 1984) that according to tariff description motor vehicles can be cleared with body or without body. Duty will be charged in the shape the motor vehicles are removed from the factory. The assessee had cleared vehicles, referred to above, with body, after payment of duty. Since both categories of vehicles (i.e. with body and without body) are classifiable under the same tariff item, the provisions of Rules 9 and 49 as they stand amended on 9 July 1983 are of significance. The reply does not answer the point that there is discrimination between body manufacturers who produce chassis and have to pay duty on motor vehicles with body and independent body manufacturers who are not charged duty. The reply also contradicts the Ministry's reply in the preceding sub-paragraph that once chassis is cleared on payment of duty the vehicle with body will not be excisable. The reply herein contends that vehicle with body is also excisable and because of the provisions of Rule 9 and 49 only the vehicle with body is excisable and not the chassis. There is need to amend the tariff after taking advice of Ministry of Law in order to reflect the unreflected intentions of the Ministry into the tariff.

(d) Another manufacturer of "Chassis" cleared a major portion of his produce to State Transport Corporations for purposes of building body and manufacture of vehicles. On the remaining chassis body building was done on job work basis or through agency of regular body-builders and the complete transport vehicles (with body) were cleared by the manufacturer. On both types of clearances duty was levied only on the value of the chassis.

Since a new product, namely a bus or a lorry emerged after construction of the body on the chassis, duty was also leviable on the value of the vehicles with body. Omission to do so resulted in loss of revenue amounting to Rs. 6,31,954 on 90 vehicles cleared during the period from 28 March 1982 to 27 April 1983.

On the omission being pointed out in audit (in June and August 1983), the department did not accept the objection (November 1983).

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) Yarn, fabrics and graphite

Rules 9, 49 and 173 G of Central Excise Rules, 1944 require that duty shall be paid on excisable goods before their removal from any place where they are produced, cured or manufactured, or any premises appurtenent thereto, whether for consumption, export or manufacture of any other commodity in or outside such place. Further, as per explanation below Rules 9 and 49, excisable goods produced and consumed or utilised (i) either as such or after subjection to any process or processes or (ii) for the manufacture of any other commodity whether in a continuous process or otherwise shall be deemed to have been removed immediately before such consumption or utilisation.

(a) Cotton yarn in all forms, including cones and cheese, is classifiable under tariff item 18A. As per a notification issued on 18 June 1977 (since superseded by another notification issued on 13 November 1982) single yarn or multiple fold yarn in plain (straight) reel hanks was exempted from duty. Cotton yarn was manufactured in several textile mills in the form of cones and cheese and used captively in the manufacture of double fold plain reel hanks (after doubling), which were cleared free of duty. In some mills which do not have facilities for doubling or the capacity for doubling is not adequate, the single yarn in cone or cheese form were cleared under bond for doubling and conversion into plain reel hanks elsewhere. On the cotton yarn in cone or cheese form duty was leviable whether collection was deferred or not because no exemption had been notified. The omission to levy duty on yarn in cone or cheese form resulted in revenue amounting to Rs. 5.11 crores not being realised in 48 mills under four collectorates.

On the omission being pointed out in audit, the department stated that manufacture of multiple fold yarn in plain (straight) reel hanks without first winding the yarn in cheese or cone form was a physical and technological impossibility and therefore the exemption should be deemed to cover duty payable on yarn in cone or cheese form also. In respect of cotton yarn removed under bond to other factories for doubling and conversion into doubled yarn in plain reel hanks, the department stated that under Rule 96E of Central Excise Rules, 1944 no duty was payable on clearances of yarn in cone or cheese form made under bond. The replies are not correct. Further the need for a bond, where no duty was payable, was not explained even though Rule 96E granted no exemption from duty.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(b) The Customs, Excise and Gold (Control) Appellate Tribunal also held on 12 October 1983 that the process of doubling or twisting is a process of manufacture. Duty is

leviable not only on the doubled yarn but also on the yarn removed for manufacture of the doubled yarn, subject to enjoyment of exemption or set off granted, if any.

From a spinning mill a part of the manufactured yarn was cleared for sale after payment of duty. Balance of the yarn was removed without payment of duty and used for manufacture of doubled yarn, but duty was paid only at the time of removal of the doubled yarn. As per provision of Rules 9 and 49 removal of the single yarns without payment of duty was irregular and resulted in non-recovery of duty amounting to Rs. 22,98,673 during the period from October 1982 to March 1983.

On the irregularity being pointed out in audit (April 1983) a show cause-*cum* demand notice for Rs. 22,98,673 was issued by the department on 18 June 1983 which is pending adjudication (May 1984).

The Ministry of Finance have confirmed the facts (December 1984).

(c) As per two notifications issued in November 1979 duty is payable on grey cotton fabrics and semi-processed man made fabrics if they are processed in any factory other than the factory of production. Grey fabrics or partly processed fabrics are, however, permitted to be sent to other processing units under bond as per Rule 96D of Central Excise Rules, 1944. This Rule does not allow any exemption from payment of duty, but only postpones the collection.

In seven processing mills which were engaged in the processing of cotton fabrics and man-made fabrics, grey fabrics and partially processed fabrics were received under bond under Rule 96D. But when the processed fabrics were finally cleared duty leviable on the grey cotton fabrics and partially processed man-made fabrics was not realised along with duty payable on the finished goods (for the manufacture of which the goods were received

under bond). The duty not realised amounted to Rs. 18.52 lakhs on clearances made during the period from March 1981 to March 1983 (in one case upto July 1983).

On the irregularity being pointed out in audit (September 1981, August, October, November and December 1983), the department did not accept the audit objection and stated (April, May and June 1984) that duty on the grey fabrics or partially processed fabrics is to be realised only when they are cleared for home consumption and not when they are sent for further processing under Rule 96D. The reply is not correct because there is no such stipulation of clearances for home consumption in Rules 9 and 49 governing removal of excisable goods only on payment of duty. Further execution of bond will not be necessary if no duty was payable.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(d) Under Rule 49A cotton yarn and cellulosic spun yarn produced in a composite mill can be cleared for use in the manufacture of cotton fabrics in the same mill. Duty leviable on the cotton yarn and cellulosic spun yarn can be paid along with the duty on the cotton fabrics. This provision has the effect of postponing the payment of duty on yarn and not of remission or abatement of duty. Central excise duty is leviable on the total quantity of yarn issued for manufacture of cloth including the quantity of yarn converted into hard waste.

In a composite mill where yarn and cotton fabrics were manufactured, hard waste was produced during the weaving process. But 4,23,102 kilograms of hard waste was cleared without payment of duty, resulting in duty amounting to Rs. 6,70,292 not being realised on clearances made during the years 1979-80 to 1981-82.

On the mistake being pointed out in audit (November 1980 and September 1982), the department raised demand for Rs. 6,70,292. Report on recovery is awaited (June 1984).

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(e) Section 2(f)(vii) of the Central Excises and Salt Act, 1944 as amended in February 1980 stipulates that processes of bleaching, dyeing, printing etc. of man-made fabrics are manufacturing processes. If a processed man-made fabric on which appropriate duty has been paid is further subjected to any of the above processes, it amounts to further manufacturing and excise duty will again be leviable on it. Rule 96D of the Central Excise Rules, 1944 also permits removal of man-made fabrics for processing under bond without payment of duty. The collection of duty on the fabrics is thereby deferred for payment at the point of its final clearance after processing.

As per a notification issued on 24 November 1979 when processed man-made fabrics are used within the factory in which they were manufactured, for further manufacture into processed man-made fabrics they are exempt from the whole of additional duty of excise payable on the processed man-made fabrics.

A manufacturer of man made fabrics received partly processed fabrics under bond (without payment of duty) from other units and cleared the fabrics after further processing and after paying appropriate additional excise duty leviable on the man-made fabrics finally processed. But on the fabrics which were cleared under bond without payment of duty in the initial manufacturing units, and were finally cleared during the period from May 1982 to April 1983 additional duty of excise amounting to Rs. 6,08,733 was leviable, but was not realised. The deferred duty was not demanded by the department at the time of final clearance of the processed man-made fabrics.

On the omission being pointed out in audit (July 1983) the department stated (December 1983) that there is no loss of duty since the assessee received the goods for processing and the duty was paid on final removal after processing the fabrics. But duty paid at the time of final clearance represents duty on the final product which is a different excisable product manufactured from the man made fabrics received under bond without payment of duty. No doubt set off would have been available but the same was not applied for under Rule 56A and legally revenue was payable on both the excisable goods.

Another manufacturer received under bond processed man made fabrics on which duty had not been paid. He graded and packed such fabrics and cleared them on payment of duty after grading and packing. The quantity of fabrics cleared by him on payment of duty was less than the quantity received. The difference was attributed to folding losses at the stage of grading and packing. On such quantity of processed fabrics, not accounted for, no duty was demanded in terms of the bond. There was no exemption from payment of duty on such quantity of processed fabrics on which the duty which was payable (in terms of the bond) only stood deferred and was not exempted.

On the short levy as above being pointed out in audit (May 1982) the department stated (March 1984) that a show cause-*cum* demand notice for Rs. 1,71,416 in respect of clearances in the years 1979 to 1982 of fabrics so lost (in folding etc.) had since been issued. Report on recovery is awaited (June 1984).

The Ministry of Finance have confirmed the facts and have stated (November 1984) that the excise licence of the second manufacturer has been cancelled.

(f) Rule 56B of Central Excise Rules, 1944 provides for the removal of excisable goods which are in the nature of semi-finished goods to another premises for carrying out certain

manufacturing process provided a bond is furnished. Either the goods are returned to the factory after further processing or they are cleared after payment of duty from the other premises after completion of the manufacturing process.

A manufacturer of graphites cleared some of his produce to another factory of his as per provisions of Rule 56B for their conversion into graphite electrodes. Some of the goods were broken in transit and were not used for manufacture of electrodes. The department allowed the clearance of the broken goods without realising duty amounting to Rs. 59,487 during the period from January 1981 to December 1982. The duty was realisable under the bond on the goods in respect of their manufacture prior to their transit.

On the mistake being pointed out in audit (August 1983), the department stated (July 1984) that a show cause-*cum* demand notice had been issued demanding Rs. 1.17 lakhs for the aforesaid period.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iii) **Metals and structurals**

Under Section 3 of the Central Excises and Salt Act, 1944, duty of excise is leviable on all excisable goods produced or manufactured in India at rates set forth in the first schedule to the Act. Under Rules 9 and 49 of the Central Excise Rules, 1944, the manufactured goods cannot be removed or cleared without payment of duty save to the extent provided for in the Rules for purposes of storing etc. In the case* of J.K. Cotton Spinning and Weaving Mills *Vs.* Union of India, the High Court of Delhi held on a reading of the amended Rules 9 and 49 that so long as the excisable goods produced were capable of removal, duty became leviable on them even if they were described as intermediate goods.

*1983 ELT 239 Del.

(a) Iron and steel castings and steel forgings were machined in a factory as a result of which distinct identifiable machined parts different from the castings and forgings were produced. The products were classifiable under tariff item 68 and duty amounting to Rs. 1,55,89,307 was leviable on clearances made during the period from March 1975 to 18 August 1981.

The omission was pointed out in audit in May 1979 and February 1984. The department accepted the audit objection and stated (in December 1983 and March 1984) that the manufacturer had begun to pay duty under tariff item 68 from 19 August 1981 onwards, under protest. A sum of Rs. 8,06,400 for the period from 21 February 1980 to 30 September 1980 was realised in January 1982 and demand for the period from March 1975 to March 1979 for Rs. 52,49,574 was confirmed but recovery was stayed by the Government of India, in revision. The demand was pending before the Appellate Tribunal. The demands for the period April 1979 to 20 February 1980 and October 1980 to 18 August 1981 for Rs. 95,33,333 are still to be confirmed (April 1984).

In the above case, reply of the Ministry of Finance is awaited.

(b) The Central Board of Excise and Customs had held that zinc dust and powder as also zinc dross, ash and skimming were classifiable under item 68 of the Central Excise Tariff. But from 1 March 1981, the Board decided that these products were classifiable under tariff item 26B.

Prior to 1 March 1981, a manufacturer was allowed to clear 'Zinc dross' and 'Zinc ash' without payment of duty. On clearances made during the period from 1 April 1979 to 28 February 1981 duty amounting to Rs. 2.60 lakhs was not realised.

On the omission being pointed out in audit (June 1982) the department stated (February 1984) that suitable steps had since been taken to recover the duty and demand had since been raised.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(c) A manufacturer of steel structurals cleared them without payment of duty from June 1977. He did not obtain central excise licence and also did not observe other formalities under the law. The department failed to detect the manufacture and clearances of the excisable goods during the period from June 1977 to March 1983. The value of the goods manufactured and cleared amounted to Rs. 2.94 crores on which duty amounting to Rs. 22.40 lakhs was recoverable.

On the failure being pointed out in audit (August 1983), the department stated (June 1984) that an offence case had since been booked against the manufacturer and a show cause notice demanding duty amounting to Rs. 22.40 lakhs had since been issued (December 1983). The department also assessed duty amounting to Rs. 4,47,162 on clearances made during the period from April 1983 to January 1984.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iv) **Jute**

On export of excisable goods rebate of excise duty is allowed under Rule 12 of the Central Excise Rules, 1944. However, export may also be made without payment of duty on executing a bond prescribed under Rule 13. As per a decision of the Central Board of Excise and Customs circulated on 2 November 1979 duty on packing material is not to be allowed as rebate under Rule 12; correspondingly duty leviable on packing material is not to be foregone against bond executed under Rule 13.

In fourteen jute mills duty was not levied on pack sheets used for packing export consignment of jute goods. The omission resulted in duty amounting to Rs. 19.67,014 not being levied on clearances made during various periods from April 1974 to October 1979.

On the mistakes being pointed out in audit (April 1980, April 1981 and May 1982) the department stated (April 1982) that demand for Rs. 1,34,967 on clearances made from one jute mill during the period from April 1974 to October 1979 had since been raised. However, demands in respect of 13 other jute mills were raised only in respect of clearances made after 24 February 1979. The duty leviable on earlier clearances, amounting to Rs. 18.88 lakhs was barred by limitation.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(v) **Anodes**

'Titanium substrate insoluble anodes' are classifiable under tariff item 68.

Silver coated copper rods were produced by others on behalf of a manufacturer according to his specifications. The rods were cleared by him along with anodes aforesaid, classifiable under tariff item 68. But no duty was realised on the rods as part of the anodes under tariff item 68. The omission resulted in duty amounting to Rs. 84,149 not being realised on clearances made during the period from December 1981 to December 1983.

The omission was pointed out in audit in January 1984. The department did not accept the objection, but stated that a case against the manufacturer was pending adjudication.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.16 Non-levy of duty on goods consumed captively

Section 3 of the Central Excises and Salt Act, 1944, requires levy of excise duty on all excisable goods other than salt, which are produced or manufactured. Section 2(d) defines "excisable goods" to mean goods specified in the first schedule as being

subject to a duty of excise (and includes salt). Section 2(f) defines "manufacture" to include any process incidental or ancillary to the completion of a manufactured product. Rules 9,49 and 173G of Central Excise Rules, 1944 provide that duty shall be paid on excisable goods before their removal from any place where they are produced, cured or manufactured, or any premises appurtenant thereto, whether for consumption, export or manufacture of any other commodity in or outside such place. Further as per explanation below Rules 9 and 49, excisable goods produced and consumed or utilised as such or after subjection of any process or for the manufacture of any other commodity whether in a continuous process or otherwise shall be deemed to have been removed immediately before such consumption or utilisation.

In an integrated factory, duty, therefore, becomes leviable at each stage of manufacture save where excisable goods produced at any stage are specifically exempted from duty or Rules specifically provide for deferment of duty or for set off against duty already paid on raw materials and components.

It has been judicially held* that any manufactured product capable of being removed would be excisable goods and not intermediate non-excisable product.

(i) Aluminium slugs

(a) A manufacturer of aluminium containers also manufactured aluminium slugs. Some of the slugs were consumed captively in the manufacture of aluminium containers. However, no duty was realised on such slugs even though aluminium slug is an excisable product, distinct from the aluminium containers. Duty not levied amounted to Rs. 3 lakhs on clearances made during the year 1982-83.

*M/s J.K. Cotton Spinning and Weaving Mills *Vs.* Union of India 1983 ELT. 239 (Del).

On the mistake being pointed out in audit (July 1983), the department stated (February 1984) that as per Rules 9 and 49 of Central Excise Rules after they were amended on 9 July 1983 no duty was payable on products falling under the same tariff item as the product in whose production they were consumed in the same factory.

The Ministry of Finance have not accepted the objection and have stated (September 1984) that the assessee applied for availing the facility of credit under Rule 56A in respect of aluminium slugs used in the manufacture of aluminium containers and permission was duly granted in September 1981. But the reply is silent on why the consequences of allowing facility under Rule 56A, namely levy of duty on slugs and setting off the duty paid and recovery of differential duty on the containers did not follow.

(b) Two manufacturers of collapsible aluminium tubes also manufactured aluminium slugs from aluminium strips or sheets. On the slugs consumed captively in the manufacture of collapsible tubes, similarly, no duty was realised. Duty not realised amounted to Rs. 2.23 lakhs and Rs. 61,225 on clearances made during the period from April 1982 to June 1983 and from January 1983 to December 1983 respectively.

The mistakes were pointed out in audit in July 1983 and February 1984.

The Ministry of Finance have stated that duty is not payable on goods produced in intermediate stage under the 'later the better principle' even on clearances made prior to 9 July 1983 when Rules 9 and 49 were amended. The reply is not correct since the said principle was contrary to the provisions in the Rules and even after 9 July 1983, only the Rules govern the levy of duty and not the so called principle. The principle goes beyond the provisions of the Rules even after 9 July 1983.

(ii) **Aluminium tubes**

A manufacturer of aluminium collapsible tubes, also produced extruded tubes out of aluminium slugs. The tubes are classifiable under tariff item 27(e). He was irregularly allowed to remove the tubes for heat treatment, lacquering and printing without first paying duty on the tubes. When the goods were lacquered and printed they were converted into containers and were finally cleared as containers on payment of duty under tariff item 27(f).

On the extruded tubes, which were classifiable under tariff item 27(e) if duty had been paid it could have been set off under Rule 56A of Central Excise Rules towards duty payable on the containers. But such set off was not asked for nor allowed. The procedural irregularities resulted in non-levy of duty amounting to Rs. 1.47 crores which was legally recoverable during the year 1982-83.

The mistake was pointed out in audit in February 1984.

The Ministry of Finance have stated (December 1984) that the Central Board of Excise and Customs prescribed the principle of 'later and better' for levy of duty in such integrated units. After 9 July 1983 legal backing is provided to this principle, and the Board has further clarified the position in respect of intermediate products in the integrated plants which have been fulfilled in this case. The reply is not correct and does not cover clearances made prior to 9 July 1983 when the so called 'later the better principle' had no legal basis whatsoever.

(iii) **Aluminium sheets**

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 manufacturer of 'aluminium circles' produced them from 'aluminium sheets' which he had first manufactured out of aluminium scrap. On aluminium sheets no duty was realised on the ground that exemption as aforesaid was allowed on aluminium

circles. The sheets are, however, distinct excisable goods mentioned in the tariff and different from circles which are also mentioned in the tariff. Therefore, even before the use of the sheets for the manufacture of circles the sheets had been manufactured and duty was leviable on them. The incorrect grant of exemption, on the circles and non levy of duty on sheets resulted in duty amounting to Rs. 19.39 lakhs not being realised on clearances made during the period from 15 June 1979 to March 1983.

On the omission being pointed out in audit (May 1983) the department stated (March 1984) that aluminium circles manufactured from aluminium scraps were exempted from duty because the sheets in question were intermediate products on which duty was not leviable as per Board's tariff advice issued on 29 June 1981. However, there was no valid notification exempting aluminium sheets from duty and even Rules 9 and 49 were amended only with effect from 9 July 1983.

The Ministry of Finance have replied (December 1984) on the same lines as in the reply given in sub-para (i) (b) above.

(iv) **Copper**

A manufacturer of 'Copper strips' produced bare copper wire of different gauges not exceeding 14 SWG during the process of manufacture of copper strips, which wire was consumed captively. But no duty was realised on the wire. The omission resulted in duty amounting to Rs. 4,58,926 not being levied on clearances made during the years 1979-80 to 1981-82.

On the mistake being pointed out in audit (September 1983) the department accepted the audit objection and stated (February 1984) that a demand notice for Rs. 4,58,926 had since been issued in November 1983.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(v) **Asbestos fibre and yarn**

A manfacturer of "asbestos fibre and yarn" and "other manufactures" cleared a part of the asbestos fibre and yarn out of the factory on payment of duty while the remainder was used captively for further manufacture of products falling under the same tariff item. No duty was paid on fibre and yarn captively consumed. In the result duty amounting to Rs. 2.85 crores was not realised on clearances made during the year 1982-83.

On the omission being pointed out in audit (November 1983), the department stated (December 1983) that the question of levy of duty was under consideration.

The Ministry of Finance have confirmed the facts but stated that if set off were allowed there would be no loss of revenue. But the Rules do not provide for allowing set off retrospectively where it has not been claimed and allowed.

(vi) **Cellulose acetate**

A manufacturer of cellulose acetate moulding granules also manufactured cellulose secondary acetate and used major part of it in the manufacture of granules. No duty was levied on the secondary acetate. The duty not collected on the cellulose secondary acetate captively consumed during the period from 1 March 1982 to 8 July 1983 amounted to Rs. 79,89,135.

On the omission being pointed out in audit (February 1984), the department stated (July 1984) that a show cause notice had since been issued to the assessee demanding Rs. 81,99,016.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(vii) **Yarn**

A manufacturer of yarn used non-cellulosic spun yarn captively in the weaving of fabric, after sizing the yarn. Duty was realised on the weight of yarn which was cleared as cones.

The yarn could be used for weaving of fabrics only after beaming (warp). On beamed yarn also duty is leviable. But duty was not levied on the beamed yarn and the differential duty not realised (even if set off were to be allowed) amounted to Rs. 10,69,058 on clearances made during the period from March 1979 to January 1980.

On the short-levy being pointed out in audit (March 1980) the Ministry of Finance stated (1981) that on sizing of yarn no additional duty is leviable because sizing is only a process and not a manufacturing process involving production of another product with a distinct character, name and use. As per Central Excise Act "manufacture" includes any process incidental or ancillary to the completion of a manufactured product and in relation to cotton yarn sizing and beaming is a manufacturing process which converts goods in one form into goods in another form. Duty is, therefore, leviable on the sized or beamed yarn even if unsized or unbeamed yarn was also an excisable product. Therefore, it cannot be held that sizing or beaming does not convert by manufacture non-cellulosic yarn in one form into another. In January 1983 demands for 58,17,137 covering clearances made during the period from October 1976 to November 1982 were raised. The manufacturer filed a writ petition in the Supreme Court and recovery of Rs. 58,17,137 was stayed.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(viii) Iron and steel products

As per a notification issued on 13 May 1980 and amended on 13 February 1981, on iron or steel products manufactured with the aid of electric furnace from any of the material mentioned therein duty became leviable at the rate of Rs. 200 per tonne (Rs. 100 per tonne upto 12 February 1981). But where the aforesaid products were made from duty paid steel ingots

such products are exempted from the whole of the duty leviable on them.

Three manufacturers produced steel ingots in composite units and transferred the steel ingots to the rolling mills during the year 1980-81 to 1982-83 and thus the ingots were captively used for further manufacture of iron or steel products. But no duty was paid on the ingots and further, the manufacturers were allowed to clear the iron and steel products (manufactured out of the ingots) on payment of duty at Rs. 200 per tonne (or Rs. 100 per tonne). But out of the steel ingots captively consumed 1450 tonnes were lost during processing in the rolling mill section. Duty amounting to Rs. 2,53,556 was not realised on the quantity of ingots lost.

On the omission being pointed out in audit (in September 1982, December 1982 and October 1983) the department stated that duty was not payable on the ingots used in the same factory for production of iron and steel products. But after the retrospective amendment of Rules 9 and 49 in 1982 on steel ingots deemed cleared, duty is payable, in the absence of an exemption notification under Rule 8(1). As per provisions of Section 3 of the Excise Act, duty is leviable on the excisable goods at the rates set forth in the First Schedule. Steel ingots are set forth in the first Schedue. Rules 9 and 49 do not exempt or waive duty leviable, except that duty is not payable on inputs captively used. However, on inputs recycled within the factory, there is no provision for non-payment of duty. The entire provisions of Rule 56A are not allowed to be read into the Rules 9 and 49 even after 9 July 1983.

The Ministry of Finance have stated (December 1984) that it has all along been the intention of the Government to realise the duty particularly in the case of metals at the stage when the goods leave the factory of production. This intention of the Government to realise duty under the 'later the better' principle has been given a statutory backing by amending Rules 9 and 49 of Central Excise Rules on 9 July 1983. In the instant

case it cannot be held that duty has not been realised on the ingots wasted in the manufacture of iron and steel products. Where iron and steel products are manufactured from steel ingots brought from another factory and similar manufacturing loss takes place duty on waste generated is exempted under notification issued on 1 March 1964. This position would hold good for an integrated factory also where iron and steel products are manufactured, in the same factory from steel ingots.

The reply of the Ministry is not correct. The later the better principle was contrary to the provisions of the Act and the Rules and remains so. Even after 9 July 1983, ingots cannot be removed for production of iron and steel products that are exempt from duty, without first realising the duty on the ingots. The notification of 1 March 1964 also does not exempt the scrap, arising from ingots, from duty since no duty had been paid on the ingots.

2.17 Duty not levied on excisable goods wasted or cleared as scrap

(i) Steel melting scrap

Prior to 1 August 1983 steel melting scrap was classifiable under tariff item 26 and chargeable to duty at Rs. 330 per tonne. As per a notification issued on 3 March 1964 such scraps obtained from steel ingots during the manufacture of iron and steel products were exempted from duty provided the appropriate amount of duty of excise or countervailing duty had already been paid on the steel ingots.

(a) A manufacturer of iron and steel products produced 'defectives', 'cuttings', 'misrolls' etc. (steel melting scraps) during the manufacture of iron and steel products out of steel ingots. The steel ingots had been produced by the same manufacturer using scrap purchased from market. Steel melting

scraps arising during manufacture of iron and steel products were captively consumed. On the strength of the above notification no duty was demanded on the scraps even though no duty had been paid on the ingots. The incorrect grant of exemption resulted in duty amounting to Rs. 17.13 lakhs not being realised on 4788 tonnes of scrap cleared during the period from April 1979 to July 1982.

On the mistake being pointed out in audit (August 1982) the department stated (June 1983) that scraps were recycled and so it was immaterial if it had, at one stage, taken the shape of ingot or bazar scrap, and that no duty was payable. The reply is not correct since excise is a duty on the manufacturing aspect and not a tax on goods *per se*. The department was not also able to show that duty had been paid on the scrap purchased from the market by the manufacturer or that the scrap purchased had arisen from duty paid ingots or products.

The Ministry of Finance have stated (December 1984) that the scrap generated in the assessee's factory is recycled back for remelting and manufacture of ingots, by following the principle of 'later the better'. Duty would be collected only at the time of clearance of the final product from the factory of the manufacturer. The reply is not correct since the so called principle is contrary to the provisions of the Act and the Rules. There is need for taking advice of the Ministry of Law so that revenue is foregone legally and not contrary to legal provisions.

(b) Steel melting scrap arising during the manufacture of the motor vehicle as also worn out and broken grinding wheels, rejected forgings, and castings were cleared by a manufacturer who had neither obtained any Central Excise licence for their clearance nor filed any classification list in respect of steel melting scrap. On the iron and steel products from which this scrap was produced during the manufacturing process, it could not be proved that duty had been paid.

The inability to verify payment of duty on the various products, on which duty was presumed to be paid, was pointed out in audit. In reply the department stated (October 1983) that there was no need to demand documentary proof of payment of duty before the grant of the exemption under notification issued on 3 March 1964. But the question here was how to know which scrap originated in which process when not all the raw materials giving rise to scrap were raw materials on which duty had been paid.

A demand for Rs. 21,33,405 was raised by the department in September 1983 and the case is stated to be under adjudication (June 1984).

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) **Rubber scrap and rejects**

On scrap arising during the process of manufacture duty is leviable if the so called scrap is a product having a distinct commercial character, name and use and is therefore an excisable product.

(a) A manufacturer of tyres sold scrap rubber compound valued at Rs. 4,93,486 but no duty was realised on it during the period from October 1982 to September 1983. Duty not levied under tariff item 68 covering products not elsewhere specified amounted to Rs. 45,988.

The omission was pointed out in audit in April 1984.

(b) A manufacturer of auto parts and accessories cleared a part of his production as having been rejected and as unusable auto parts. He was allowed to clear it without payment of duty. But he sold the goods, ostensibly, as rejected and unusable auto parts. The said parts were not exempted from duty. As per a notification issued on 19 April 1979, parts and accessories of motor vehicles classifiable under tariff item 68 are

exempt only if intended for use as input in further manufacture of excisable goods in the factory where they are manufactured. On clearances made during the period from May 1979 to October 1982 duty not levied amounted to Rs. 6.09 lakhs.

On the non levy of duty being pointed out in audit (December 1982) the department stated (February 1984) that the said rejects and unusable goods were not subject to duty under tariff item 68, even though the tariff item covers "goods not elsewhere specified". The reply is not correct so long as the goods cleared were commercial products duly manufactured and therefore excisable.

In the above cases, the Ministry of Finance have stated (December 1984) that the matter is under examination.

SHORT LEVY DUE TO UNDERVALUATION

As per Section 4 of the Central Excises and Salt Act, 1944, where goods are assessable to duty *ad valorem*, the normal price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal would be the assessable value provided the price is the sole consideration for sale.

2.18 Price not the sole consideration for sale

Where price is not the sole consideration for sale, as per provision of Rule 5 of the Central Excise (Valuation) Rules, 1975, the assessable value of goods shall be based on the aggregate of such price and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.

Television sets

Two manufacturers of television sets recovered 'after sales service charges' along with cost of their sets which were in addition to the declared prices. In one case, the additional charges were realised at a uniform rate and in the other, at rates varying

with the price of the set. In the latter case a discount was excluded from the price for arriving at the assessable value. But the discount was not in fact allowed to the buyers. Irregular computation of assessable value in both the cases because of the exclusion of the additional charges, resulted in duty being realised short by Rs. 14.20 lakhs on clearances made during the period from May 1981 to December 1983 in the first case and from March 1976 to June 1977 in the second case.

On the irregularity being pointed out in audit (15 November 1977 and February 1984) the department stated (January 1981) that in the second case a show cause notice demanding Rs. 1.56 lakhs on clearances made during the year 1976 had been issued but the show cause notice had to be withdrawn in October 1978 because the demand was barred by limitation. No demands were raised for the subsequent period, nor reasons given. Reply of the department on the first case is also awaited.

The Ministry of Finance have stated (December 1984) that in one case the show cause-*cum*-demand notice issued for the years 1976 to 1977 (which included the period referred to above) was dropped on 26 October 1978 because the legal position was not clear till the judgement of Supreme Court was delivered in May 1983 in the case of Bombay Tyres and others Vs. Union of India. In the other case show cause-*cum* demand notices have been issued to the assessee for the period from 1 September 1979 to 31 December 1979 and June to July 1984. The notice for the period from January 1980 to May 1984 will be issued shortly.

2.19 Assessable value not redetermined so as to include excess duty received though not leviable

Section 4 of the Central Excises and 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.

(i) **Tyres**

For the purpose of computing the assessable value, from the price inclusive of excise duty, only the effective duty of excise payable should be excluded. For this purpose the effective duty of excise has been explained in Section 4 of the Excise Act to mean the duty of excise payable after reducing it by the amount of any exemption granted from excise duty. But where the exemption is for reduction of "duty of excise equal to any duty of excise already paid on the raw material or component parts used in the manufacture of the excisable goods" then such reduction shall not be made from the excise duty in order to arrive at the effective duty of excise.

Under a notification issued on 1 March 1979 as it stood amended on 22 February 1982 the excise duty payable on tyres, tubes and flaps was exempted from so much of the "duty of excise leviable as is equivalent to the amount of countervailing duty paid on the imported raw materials and components". The countervailing duty is an additional duty levied under the Customs Tariff Act, 1975. Section 4 of the Excise Act only allows non-reduction from the effective excise duty of so much of "duty of excise as is equal to any duty of excise already paid on the raw material and component parts". It does not allow of non reduction from effective excise duty of so much of "duty of excise as is equal to any additional (countervailing) duty already paid".

A manufacturer of tyres was allowed to clear his products on payment of duty computed on an assessable value from which was reduced the amount of countervailing duty paid on the inputs. Because of this irregularity in computation of the assessable value the duty charged on tyres was taken at Rs. 615.38 (if post manufacturing expenses were not to be included in assessable value) or at Rs. 681.87 (if post manufacturing expenses were to

be included in assessable value). The excise duty payable was irregularly deducted in as much as in arriving at assessable value the exempted amount equal to countervailing duty paid on input was also deducted. This was incorrect, because the countervailing duty was not duty of excise already paid. In the result, on clearances of tyres made during the period from March 1982 to December 1982 duty amounting to Rs. 20.50 lakhs was not realised.

The short levy was pointed out in audit in April 1983; the reply of the department is awaited. The short levy is continuing even after December 1982. The short levy of duty on account of non-inclusion of post manufacturing expenses in the assessable value is a separate point of objection which was highlighted in paragraph 2.18(i) of Audit Report 1982-83 involving loss of revenue amounting to Rs. 3.76 crores. This irregularity is also still continuing.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) **Miscellaneous goods**

As per a notification issued on 1 March 1979, electrical stampings and laminations and calcined petroleum coke if manufactured from imported steel sheets and petroleum coke respectively, were exempted from so much of the duty of excise leviable thereon as was equivalent to the amount of countervailing duty paid on the imported raw-material or components, subject to procedure prescribed in Rule 56A of the Central Excise Rules being followed. As per another notification issued on 1 March 1975 similar exemption was granted in respect of 'gramophones' manufactured from 'imported gramophone parts'.

Five manufacturers used imported component parts in the manufacture of electrical stampings and laminations, calcined petroleum coke and gramophones. Credit for the countervailing

duty paid on the inputs was allowed to be utilised towards payment of duty on the finished products and thereby exemption was allowed to the extent of such credit. But the manufacturers realised from their customers the full duty payable on the finished products inclusive of the exempted amount and not the net duty payable. But no action was taken to redetermine the assessable value for purpose of levy of duty by adding the excess amounts realised from customers to the price. The incorrect valuation resulted in duty being realised short by Rs. 41.53 lakhs on the clearances made during the period from November 1980 to May 1983.

On the mistakes being pointed out in audit (March, June and July 1983) the department did not admit the objection in respect of the stampings and laminations and stated (September 1983) that in calculating the effective duty payable, the exempted portion should not be taken into account. The reply of the department is not to the point. Duty exempted is not leviable and so cannot be realised from customers. In the other two cases reply of the department is awaited. The mistake arose due to the confusion arising from the notifications which link the exemption granted under Rule 8(1) to the procedure set out in Rule 56A for grant of credit. In practice such notifications are being interpreted as allowing the full benefit under Rule 56A without any concept of exemption under Rule 8(1) coming into play.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iii) **Cement**

A manufacturer of cement was allowed refund of excise duty amounting to Rs. 13,03,889. The amount had been realised by the manufacturer from his customers earlier. But on receipt of the refund the manufacturer did not pass on the amount to his customers and the amounts were in addition to the price of the goods sold and duty was required to be redetermined on the enhanced assessable value. Failure to do so resulted in excess refund of duty by Rs. 3,74,159.

On the omission being pointed out in audit (May 1983) the department issued show cause-*cum* demand notice for Rs. 3,74,159 in July 1983. Report on confirmation of demand and recovery of duty is awaited (May 1984).

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iv) **Aerated water**

A manufacturer of aerated water was paid an amount of Rs. 3,55,832 by the department as refund of duty. The amount had been realised by the manufacturer from his customers, earlier. But the amount received as refund was retained by the manufacturer and was not passed on to his consumers. Non revision of the assessable value prior to making refund resulted in excess refund of Rs. 47,569.

On the omission being pointed out in audit (December 1982) the department stated that there was no provision in Section 4 of the Central Excises and Salt Act, 1944, for redetermining the assessable value. But the assessable value is required to be redetermined in such cases as was also clarified by the Board in February 1981.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.20 **Excisable goods not fully valued**

Expenses incurred by the manufacturer on conducting tests for adjudging the suitability of goods before their clearance from his factory and in making them fit for delivery, when recovered from the purchaser, form part of the assessable value. Similarly all other considerations for the sale, received directly and indirectly by the manufacturer are includible in the assessable value. The manufactured goods are required to be valued in the form in which they are removed.

(i) Motor vehicles

As per provisions of Section 4 of the Central Excise Act and the interpretation of that Section given by the Supreme Court on 7 October 1983, charges for some services rendered after delivery to the buyer e.g. after sales service and marketing and selling organisation expenses, are includible in the assessable value.

A manufacturer of motor vehicles sold the vehicles to buyers through his distributors and dealers at prices fixed by the manufacturer. A dealer's commission was included in the invoice made out by the manufacturer and sent to the buyer. From the total retail price (inclusive of dealer's commission) declared by the manufacturer a deduction of 7.5 per cent (for petrol driven vehicles) and 5.5 per cent (for diesel driven vehicles) was allowed by the department towards the dealer's commission. About 60 per cent of the sales were made directly to buyers and 40 per cent through dealers. The additional charges so included in the invoice and irregularly excluded for purposes of determination of assessable value ranged from Rs. 800 to Rs. 1,000 per vehicle in case of sales to Government bodies and from Rs. 2,000 to 2,500 in case of sales to non-Government buyers. The incorrect valuation of assessable value resulted in short levy of duty by Rs. 19.73 lakhs on clearances made between April 1977 and November 1979.

On the mistake being pointed out in audit (March 1980) the department stated (April 1981) that three demands amounting to Rs. 48,01,032 had since been issued in July 1980 in respect of clearances made during the period from April 1977 to May 1980.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) Vegetable products

A manufacturer of vegetable products recovered from all his buyers, distribution charges in addition to the declared value of the vegetable products. However, he excluded the distribution charges from the assessable value which was accepted by the

department. The mistake resulted in duty being realised short by Rs. 5,50,663 on clearances made during the period from February 1981 to September 1982.

The mistake was pointed out in audit in July 1981. The Ministry of Finance have confirmed the facts and stated (December 1984) that an amount of Rs. 5,03,709 has been recovered, the difference being accounted for by deduction of transport charges from sale value.

(iii) **China and porcelainware**

A manufacturer of china and porcelainware cleared sanitaryware cisterns with fittings made out of metal and plastic. Duty was levied only on the porcelain portion manufactured i.e. shell, lid, syphon and plunger plate, on the reasoning that the fittings were bought and not manufactured. The reasoning was upheld by the Appellate Collector. But the cisterns were cleared as complete items along with necessary fittings. Therefore, the reasoning was questionable. Assessable value is the consideration for sale of the complete manufactured product cleared from the factory. The appellate decision was not contested further by the department. In the result, duty was levied short by Rs. 21.79 lakhs on clearances made from July 1981 to June 1983.

The short levy was pointed out in audit in November 1983. The reply of the department for not appealing against the ratio of the decision of the Appellate Collector, for so many years, is awaited.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iv) **Sanitaryware**

A manufacturer of cisterns was allowed to clear them with fittings and flush bends purchased from outside. But the value of fittings and flush bends amounting to Rs. 105.83 lakhs was not included in the assessable value of the cisterns. The omission resulted in duty being levied short by Rs. 38,89,427 on clearances made during the year 1982-83.

On the mistake being pointed out in audit (September 1983) the department issued a show cause notice for Rs. 37,22,738. Report on raising of demand for the balance amount relating to earlier years and demand relating to the year 1983-84 is awaited (July 1984).

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(v) **Machinery**

A manufacturer of cigarette machinery and parts thereof also modified old machines to improve their efficiency and performance. The modified machines were allowed to be cleared after payment of duty on the value of parts and fittings used while effecting modification. The manufacturer uniformly recovered certain charges separately from the customers. But such amounts were not included in the assessable value for levy of duty. Short levy of duty on the clearances of 17 so called modified machines cleared during the period from 29 December 1978 to 18 August 1982 included also new machines which came into existance and duty amounting to Rs. 25,47,674 was realised short on 17 machines and Rs. 7,49,316 on 5 other machines.

On the short levy being pointed out in audit (March 1982) the department raised demands in December 1982 and August 1983 which were confirmed in September 1983 and February 1984.

The Ministry of Finance have confirmed the facts. Report on recovery is awaited (December 1984).

(vi) **Cotton fabrics**

(a) As per a notification issued on 8 November 1982, on various types of cotton fabrics the effective rate of duty was fixed in the range of 3 to 15 per cent *ad valorem* corresponding to value of fabrics ranging from Rs. 5 to Rs. 12 per square metre.

A manufacturer was allowed to show the value of three types of fabrics produced by him at Rs. 8, Rs. 9 and Rs. 9 per metre. But he was also allowed to charge additional price of Rs. 5, Rs. 5 and Rs. 10 per bale subject to the condition that the assessable value of the fabrics would be enhanced. But the assessable value was not increased. The rate of duty charged was not on the real rate applicable at the real value. In the result duty was realised short by Rs. 46,245 on clearances made during the period from January 1982 to July 1983.

The mistake was pointed out in audit in December 1983 and February 1984.

The Ministry of Finance have confirmed the facts and have stated (December 1984) that the adjudication is pending.

(b) A manufacturer of cotton fabrics valued first quality fabrics, and sub-standard (seconds) fabrics at different prices which were approved by the department. The duty levied on sub-standard (seconds) fabrics was lower than the duty realised on fents and rags indicating that the sub-standard (seconds) fabrics were undervalued. The undervaluation resulted in short levy of duty by Rs. 52,024 on clearances made during the months of April and May 1981.

On the undervaluation being pointed out in audit (January 1982) the department issued (in September 1982, January 1984 and February 1984) show cause-*cum* demand notices for Rs. 1,62,359 in respect of clearances made during the period from April to May 1981 and from 24 July 1983 to 14 September 1983.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.21 **Value of comparable goods and costed value**

As per Section 4(1)(b) of the Central Excises and Salt Act, 1944, read with Rule 6(b)(i) of 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 manufactured by the assessee or by any other assessee. Where the value of comparable goods cannot be ascertained the value is to be determined as per Rule 6(b)(ii) of Valuation Rules, 1975 on the basis of cost of production including reasonable margin of profit.

(i) **Caustic soda**

In two units producing "Caustic Soda" the assessable values ranged from Rs. 1,147 to Rs. 1,604 per tonne during the years 1974-75 to 1977-78. The values were determined on the basis of cost data and approved by the department. In a third unit the value approved by the department on the basis of sale price was higher at Rs. 1980 per tonne. The goods produced in all the three units were comparable. Failure to determine the assessable value in the two units on the basis of value of comparable goods resulted in duty being levied short by Rs. 10.34 lakhs during the years 1974-75 to 1977-78.

On the undervaluation and consequential short levy being pointed out in audit, (October 1980 and December 1982) the department did not admit the objection and stated (February 1982) that the value determined on the basis of cost of production was correct. The department also stated (February 1984) that the goods were not comparable and many factors like raw material, craftsmanship, quality, goodwill and size of unit made the goods non comparable. However, such reasoning will make any comparison impossible and go against the express intention behind the provision about comparable goods in the Rules.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) **Other goods**

A primary manufacturer supplied raw materials to various secondary manufacturers for manufacturing goods falling under tariff item 68. The goods were cleared by the various secondary manufacturers without payment of duty or after payment of duty

on value equal to cost incurred (but excluding cost of raw materials). Duty on full value of manufactured goods was not demanded from the primary manufacturer. In the result duty amounting to Rs. 33,10,280 was not realised on clearances made during the period from October 1978 to September 1981.

On the omission being pointed out in audit (October 1981) the department accepted (September 1983) the objection and stated that a show cause notice for Rs. 33,10,280 had since been issued to the assessee.

The Ministry of Finance have stated (December 1984) that it has been held by several High Courts that the department's stand is not legally tenable. Appeals have been filed in the Supreme Court but no stays have been granted. Accordingly the department has to follow the High Court's orders till such orders are reversed or stay is granted by the Supreme Court.

The reply is not correct because the Board has not withdrawn its directions to the Collectors that in such cases the primary manufacturer is the manufacturer for purposes of levy of excise duty. The Collectors and Assistant Collectors are therefore left with two contradictory directions in regard to similar cases till such time as the Board tells them that the Board's instructions are cancelled and the directions of the High Court be adopted. Whether the Board has the right to agree or disagree with the High Court's views in similar cases has not been stated in the reply.

The decisions of the High Courts apply only in the specific cases and not in similar cases, as per the categorical advice of the Ministry of Law, given citing the case of Sialkot Industrial Corporation *Vs.* Union of India. The Ministry of Finance and the Board would appear to have a right to disagree with the High Court. The Ministry of Law has stated that if, in similar cases arising in the jurisdiction of the same High Court, the department follows the Board's instructions (contrary to the view of the High Court), the aggrieved party may move the High Court

and, it is likely, the High Court may follow its earlier decisions and grant relief to the party. In such an event, the department may however take up the matter on appeal to the Supreme Court for an authoritative opinion. It would therefore, seem that protective assessment and demands as per view of department (same as the basis of audit objection) is not illegal. As regards the claims of parties who are outside the territorial jurisdiction of the High Court, the Ministry of Law has said there appears to be no objection to follow by the Board's instructions.

(iii) **Rotors and stators**

A manufacturer of stators and rotors used them captively in the manufacture of monoblock pumps. He was allowed to pay duty on stators and rotors after valuing them on cost basis. But the cost of the shaft fixed to the rotor, which formed an integral and essential part of the rotor was not included in the assessable value. The omission resulted in short levy of duty by Rs. 4,40,600 on 10,239 rotors captively used during the period from October 1981 to June 1982 alone.

On the omission being pointed out in audit (November 1982), the department stated (April 1983) that a show cause notice had since been issued. Later the department stated (August 1983) that since the rotors were also sold without shaft the rotors and the shaft were two different items. Therefore, the shaft was not an integral part of the rotor. Reply of the department is not correct since the shaft was also cleared as a part of the rotors which are excisable goods.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iv) **Electrical stampings and laminations**

Two manufacturers of electrical stampings and laminations produced them from duty paid steel sheets and used them captively in the manufacture of electric motors, rotors and

stators. They were allowed to avail of exemption under notifications issued on 1 March 1979 and 1 March 1983. But while working out the assessable value of electrical stampings and laminations on the basis of cost data the element of excise duty paid on the steel sheets was not included on the plea that credit for duty paid on steel sheets had been availed of under Rule 56A in terms of the exemption notification. The plea was that on grant of credit the steel sheets had become non-duty paid material so the duty element was not to be included in the cost data [please see contrary stand taken by the department in paragraph 2.45(1)(a) of this Report]. Since the aforesaid notifications are exemption notifications, credit allowed is only to be expunged as a means of granting exemption. Where exemption is granted to the extent of duty paid the grant of proforma credit (unlike in Rule 56A) does not render the duty paid steel sheets into non-duty paid steel sheets.

Non-inclusion of the element of excise duty paid on the steel sheets in the cost data resulted in the assessable value of electric stampings and laminations being undervalued. Consequently duty was levied short by Rs. 1,17,802 on clearances made during the period from August 1980 to October 1983 by the two manufacturers. The mistake was directly attributable to the confusion created by notifications which link the procedure in Rule 56A for grant and utilisation of credit, to the grant of exemption under Rule 8(1). It is not clarified in such notification that the proforma credit granted is to be expunged in such cases and not utilised for payment of duty. It has not also been clarified that credit granted under exemption notification is really a proforma credit that cannot be utilised. It is unlike credit given under Rule 56A which is real credit which can be utilised though loosely and wrongly referred to as proforma credit.

The short levy was pointed out in audit in November 1983.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(v) **Resins**

A manufacturer produced "ion exchange resins" which he consumed captively. Duty on such resins was realised on their assessable value determined on the basis of cost data. When indigenous divinl benzene was used in the manufacture of the resin it was estimated that 75 kilograms of benzene was used in production of 330 kilograms of resin. But when imported benzene was used, the consumption was indicated as 99 kilograms of divinyl benzene for every 330 kilograms of resin. But in costing the value of the resin, only price 57 kilograms of indigenous benzene was taken into account towards 330 kilograms of resin. 100 batches of resin cleared during the year 1976 were produced using imported benzene and on them duty was realised short by Rs. 1,04,271 because of the mistake in costing.

On the irregularity being pointed out in audit (September 1977) the department stated (December 1983) that the revised price list of the products filed by the assessee was approved by the department on 12 April 1983.

The Ministry of Finance have stated (December 1984) that demand for Rs. 11.02 lakhs (being the differential duty payable on the resins for the period from January 1975 to December 1980) has been realised.

(vi) **Varnishes**

A manufacturer of varnishes used it within the factory of manufacture. The full cost of the raw material used in the manufacture was not included in the cost of the varnish. The duty paid on the raw material was excluded. The exclusion was sought to be justified on the ground that duty payable on the varnish was exempted to the extent of the duty paid on the raw materials under a notification issued on 4 June 1979. But this was no ground for excluding the duty paid on the raw materials from the costing. Further the cost data issued did not relate to the year of production but to the previous year. Further the cost of thinners, produced in the factory and added to the varnish before its clearances and use, was excluded from the

cost of the varnish. The irregularities in computing the cost resulted in duty being levied short by Rs. 2.84 lakhs on varnishes manufactured and used during the period from July 1980 to June 1983.

On the irregularities being pointed out in audit (April 1984), the department stated (June 1984) that the matter was under investigation. On the question of addition of thinner in the varnish, it was stated that addition of thinner to varnish was an operation done after the clearance of the varnish. But if such a view is taken duty will be payable on the thinner separately. It was stated that the quantity of thinner used was being ascertained in order to compute the duty leviable thereon.

The Ministry of Finance have stated (December 1984) that the duty element on the T.I. 68 goods used in the manufacture of varanish has been included in the assessable value of varnish. The assessments which were provisional upto 30 June 1983 have been finalised (date of finalisation not indicated) except for the period subsequent to 1 July 1983 pending certificate of the Chartered Accountant. The thinner had never been used in the manufacture of varnish and as such its value is not includible in the assessable value of the varnish. The reply is silent on whether the amount of Rs. 2.84 lakhs has since been realised and also on whether duty had separately been realised on the thinners not used in the manufacture of varnish, but cleared.

2.22 Valuation of goods partly consumed captively

Where excisable goods are partly cleared for sale and partly consumed captively within the factory of manufacture, the normal price determined under Section 4(1)(a) of the Central Excises and Salt Act, 1944, is the assessable value. Where the value is not so determinable the assessable value of the excisable goods wholly consumed within the factory of production is to be determined on the basis of value of comparable goods manufactured by the assessee or by another assessee. If a comparable value is not available the assessable value is to be determined on the cost of production including reasonable margin of profit.

(i) **P.V.C. resins**

A manufacturer of P.V.C. resins consumed a portion thereof captively in the manufacture of rigid P.V.C. pipes and fittings. In respect of resins captively consumed separate price lists based on cost data was filed and accepted by the department. But the value in respect of suspension grade resins was Rs. 5,672 per tonne which was considerably lower than the value of similar resins sold to others at Rs. 10,233 per tonne. Failure to value the resins captively consumed on the basis of the value of comparable goods sold to others resulted in short levy of duty by Rs. 19.91 lakhs on clearances made during the period from October 1982 to October 1983.

On the mistake being pointed out in audit (November 1983) the department stated (June 1984) that the resin captively consumed was of an inferior grade containing impurities and was not marketable and, therefore, its value was not comparable with that of resins sold by the assessee. The department, however, also stated that samples of the resins had been drawn and sent to the departmental Chemical Examiner in order to verify whether the resin consumed captively was in fact of such inferior grade as to justify a ratio in price of 1 : 2.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) **Electric motor**

A manufacturer produced starter and wiper motors. The prices of motors consumed captively were declared at a lesser value than the prices of comparable motors sold as spare parts. Acceptance of the incorrect declaration and consequent under-valuation, resulted in duty being realised short by Rs. 2.86 lakhs on clearances made in the year 1978.

On the short levy being pointed out in audit (May 1979), the department stated (October 1979) that the motors used captively were different from those sold in the market. But they have been unable to substantiate the statement so far with details nor explain away the difference in prices on that basis.

In April 1984 the department stated that the factory is closed from January 1981.

The Ministry of Finance have stated (December 1984) that the motor sold in the market was a bare armature while the product captively consumed was assembly of armature, pole piece, head and other components like washer, nuts, etc. As such the items are not comparable goods and assessable value cannot be fixed under Rule 6(b) (i) in these circumstances. The reasons for such a reply arguing against comparison are not clear, in the light of the facts that the value of the completely assembled products consumed captively were fixed very low at Rs. 119 (for starter motor) and Rs. 25 (for wiper motors) as against Rs. 150 and Rs. 45 respectively for the so called armature (part only) cleared for sale in the market.

(iii) **Soap**

A manufacturer of soap supplied paper and wax to another manufacturer who produced therefrom waxed paper which he supplied to the first manufacturer. The waxed paper was used by the first manufacturer for the purposes of wrapping the soap produced and cleared by him. Waxed paper was produced by the second manufacturer according to the specifications given by the first manufacturer. The second manufacturer also produced similar waxed paper for a third party after procuring paper and wax himself. On the waxed paper cleared for supply to the first manufacturer duty was levied on assessable value arrived at on the basis of cost data. Accordingly duty was levied on values of Rs. 18.53 and Rs. 18.88 per kilogram on two kinds of wax paper. But similar wax paper was sold to

the third party at Rs. 21 per kilogram. In the result on paper supplied to the first manufacturer during the period from April 1981 to February 1982 duty was realised short by Rs. 40,000.

The irregularity was pointed out in audit in January 1983 but the department did not accept the objection.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.23 Mistake 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) Paints and varnishes

A manufacturer of nitrocellulose lacquer consumed his entire production, captively, in coating 'cellophane'. On clearances of the lacquer made in the years 1978-79 to 1981-82 the assessable values were determined on the basis of cost data which included profit at 5 per cent. The gross profit for the years and the actual cost of the solvent used in the manufacture of lacquer, were not taken into account in the computation of the cost. Adoption of incorrect data resulted in duty being levied short by Rs. 4,72,134 on clearances made during the four years 1978-79 to 1981-82.

On the mistakes being pointed out in audit (August 1981) the department stated (December 1982) that for the year 1979-80 and earlier periods no rectification could be effected. But the department did not state whether rectification in respect of the years 1980-81 onwards have been effected.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) **Pigments**

A manufacturer of pigments, dyes and binders used his goods captively and was allowed to pay duty on value arrived at on cost basis. However, the basis of costing was the price of raw materials in 1979 after adding 15 per cent thereto towards labour charges and overheads. The old prices and percentage had no relevance to cost of the product manufactured and cleared during the years 1979 to 1982. The acceptance of value based on incorrect costing resulted in duty being realised short by Rs. 1.83 lakhs on the clearances made during the said years.

On the mistake being pointed out in audit (May 1983) the department stated (October 1983) that the manufacturer was using second quality materials and his formulations were cheaper than that of other manufacturers. The department further stated that the issue was being examined thoroughly. The reply is not relevant to the objection, on costing not having been done on actual or reliable cost data.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iii) **Electric motors**

A manufacturer of stators for electric motors was allowed to value his goods on the basis of cost data. But non inclusion of winding and finishing charges in the assessable value was overlooked. The failure resulted in duty being levied short by Rs. 1,81,527 on clearances made during the year 1982-83.

On the failure being pointed out in audit (June 1983) the department issued a show cause-*cum* demand notice for Rs. 1,81,527 in April 1984.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iv) **Dice**

A manufacturer of dice, used for making tiles, produced such dice on behalf of other manufacturers and duty on the dice was levied on value computed on cost basis. From September 1980 onwards value was computed by reference to the accounts for the year 1979 and not on cost incurred in the year 1980-81. The omission resulted in duty being levied short by Rs. 1.14 lakhs on clearances made during the period from April 1982 to December 1983.

The mistake was pointed out in audit in January 1984.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.24 **Valuation of mobile equipment**

(i) **Mobile drilling rigs**

Drilling rigs whether static or mobile are classifiable under tariff item 68, or under tariff item 34 if it is viewed as a motor vehicle.

A manufacturer of drilling rigs mounted the rig on a platform which was fixed on a motor vehicle chassis. The rig was coupled to air compressors. The equipment as a whole was not classified under excise tariff but only rig was classified under tariff item 68 and cleared on payment of duty. Duty was realised on value of drilling equipment only and not on value of the total equipment. The mistake resulted in duty amounting to Rs. 2,03,080 not being realised on such units cleared during the period from 1 July 1982 to 31 December 1982.

On the mistake being pointed out in audit (June 1983), the department stated that the rigs and the compressors formed a specialised equipment independent of the truck.

The Ministry of Finance have stated (December 1984) that the customer supplies truck and compressor with which rigs are coupled. The customer is correctly billed for the value of drilling

equipment and duty paid on them under tariff item 68. The entire mobile unit called rig fixed with specialised equipment is classifiable under tariff item 34 and the duty liability has already been discharged under this tariff item on the trucks. As per the Board's policy duty is not leviable again on such mobile units under tariff item 34.

The reply is not correct. The unit was sold as an integral unit, classifiable under tariff item 34. Exclusion of a part of its value is not allowed under the tariff or the Excise Act (which does not reflect the Board's policy). It was open to the manufacturer to claim set off or exemption to the extent of duty paid on the components classifiable under tariff item 68. But there is no notification granting exemption or set off towards duty paid on the chassis (tariff item 34) which was used as a component if the final product is classifiable under tariff item 68.

(ii) **Mobile service units**

A manufacturer of mobile service units built bodies over chassis of motor vehicles or trailers supplied by customers and equipment like lathe, compressor, generator, control panel, oil pump and grease pump were fixed permanently by welding. Duty was paid by the assessee only on the value of equipment fixed on the chassis and not on the total value of the unit. But a new product known as mobile service unit with a distinct name, characteristic and use, different from the chassis or trailer had been produced. In the result, on 113 mobile service units cleared during the period from April 1980 to December 1983 duty amounting to Rs. 10 lakhs was not realised.

On the irregularity being pointed out in audit (March 1984) the department stated (April 1984) that it relied on a tariff advice issued by the Central Board of Excise and Customs on 13 March 1981, wherein the Board clarified that when specialised equipment is mounted or fixed

on duty paid chassis (e.g. fire tenders, aerial tower wagons, self-propelled baggage conveyor for aircraft etc.) they were classifiable under tariff item 34 and not under tariff item 68. Further, no differential duty under tariff item 34 was leviable and only duty under tariff item 68 was leviable on the specialised equipment mounted or fixed on the vehicles. The reply is not correct because if the goods cleared (as in this case) are 'Motor vehicles' as defined in tariff item 34, levy of duty only on a portion or part of the mobile service unit under tariff item 68 is not allowed by tariff item 34 or by the Excise Act or Rules 9 and 49 of Central Excise Rules 1944. There is also no exemption notification to allow it. From another manufacturer in the jurisdiction of the same collectorate drilling rigs mounted on motor vehicle chassis were cleared and duty was realised under tariff item 68 on the full value of the unit including the value of the chassis.

The Ministry of Finance have stated (December 1984) that the policy in this regard is contained in the tariff advice of 1981 and the department should follow it. The need for unambiguously legalising the policy by making necessary changes in the tariff or by issue of exemption notification needs to be examined in consultation with the Ministry of Law.

(iii) **Mobile generating sets**

A manufacturer of generating sets also manufactured mobile generators mounted on trailers. He cleared during the years 1979 to 1982 in all 73 generating sets of 11.25 KVA which were mounted on two tonne trailers. The value of the trailers was not included in the assessable value on the ground that they were supplied by the buyers. But the value of the trailer, was required to be included in the value of the mobile generators, which was the nature of the goods cleared. Failure to do so resulted in duty being realised short by Rs. 93,440.

On the undervaluation being pointed out in audit in June 1982, the department stated that by fitting a generator set to a trailer, no new goods with distinct name and identity were

brought into existence and therefore the value of the trailers was not includible in the assessable value. The reply is not correct because the mobile generating set has distinct name, character and use. It is different from a non mobile generating set. Further the mobile set was an integral unit and as per Central Excise Act it is assessable to duty as manufactured product, irrespective of whether the mobile component of the goods was received from outside or produced in factory and used in further manufacture of the complete set.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.25 **Value of packing**

As per Section 4(4) (d)(i) of the Central Excises and Salt Act, 1944, value in relation to any excisable goods, where such goods are delivered at the time of removal in a packed condition, includes the cost of packing except where the packing is of durable nature and is returnable to the assessee.

(i) **Metal containers**

In a judgement delivered on 9 May 1983 and 7 October 1983 the Supreme Court has ruled that cost of packing whether primary or secondary is to be included in the assessable value. Only cost of special packing, at the instance of wholesale buyer, which is not generally provided as a normal feature of wholesale trade is to be excluded.

A manufacturer of 'metal containers' cleared them after packing them in corrugated cartons supplied free of cost by the customer. The fact of free supply is not relevant to the provisions of Section 4(4)(d)(i) and cost of the packing was includible in the assessable value. However, the value of the cartons was not included in the assessable value of metal containers. The omission resulted in undervaluation and a consequential short levy of duty by Rs. 32,775 on clearances made during the period from January 1982 to December 1982.

The irregularity was pointed out in audit in June 1983.

The Ministry of Finance have stated (December 1984) that the metal containers produced by the manufacturer are not being sold after packing them in cartons in the ordinary course of wholesale trade to the buyers. The buyer supplied the cartons for packing to protect containers from damage in transit. In the light of the Supreme Court's decision in the case of Bombay Tyres and others Vs. Union of India dated 9 May 1983 and 7 October 1983, the cost of cartons is not to be included in the assessable value as it is not the packing in which the goods are ordinarily sold by the assessee.

The reply is not correct. It gives no reason why delivery in corrugated board packing of empty engine oil tins of 1 and 5 litre capacity, always supplied in the same packing to the same customer, all along, is viewed by the Ministry as not being "in the ordinary course of wholesale trade". The tins will get defaced if they are not packed in corrugated card board. The ratio of the Supreme Court judgment is not correctly reflected in the reply of the Ministry as applied to the facts of the case.

(ii) **Biscuits**

A manufacturer of biscuits cleared them in packed tin containers. The cost of the tin containers was not included in the assessable value which was based on the wholesale price, on the ground that the tins were durable and returnable. But the containers were not returned. The full value of the containers was realised by the manufacturer from his buyers and no refund was made in relation to any return of the containers. In the result, the assessable value was computed short and duty was realised short by Rs. 1.65 lakhs on clearances made during the period from April 1982 to March 1983. During that period 1,46,623 big tins and 18,324 small tins of biscuits were cleared.

On the irregularity being pointed out in audit (July 1983), the department stated (August 1983) that the value of the containers would be refunded as and when the tins were returned and the return of the containers was not obligatory. It was verified in audit that only 28 per cent of the tins were returned in respect of

clearances made during the period from April 1980 to February 1981 for which records were made available. No other indication of the number of tins returned was available. Such fine distinction between the words "returnable" and "obligatorily returnable" was not intended under Section 4 of the Excise Act. Only the fact of return of the containers, barring a few exemptions, will be evidence of the fact that the containers are returnable.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iii) **Electrical goods**

Two manufacturers of electrical goods did not include the cost of secondary packing charged from the buyers, in the assessable value of the goods cleared. The omission resulted in duty being levied short by Rs. 20,11,569 on clearances made during the periods from April 1979 to March 1980 and April 1981 to February 1983.

On the omission being pointed out in audit the department issued (February 1984) demand notice for Rs. 18,53,142 in one case. Report on recovery and action taken in the other case is awaited (July 1984).

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.26 **Valuation of goods manufactured on behalf of others**

As per Section 2(f) of the Central Excises and Salt Act, 1944, the term 'manufacturer' is defined to include not only any person who employs or hires labour in the production or manufacture of excisable goods, but also any person who engages in the production or manufacture of excisable goods on his own account.

In the case* of Shree Agency *Vs.* K. Bhattacharjee, the Supreme Court had held that where secondary manufacturers (weavers in that case) were not independent manufacturers and

*1977 ELT J 168(SC) AIR 1972 SC 780.

the primary manufacturer (a dealer in excisable goods) was in fact the manufacturer who absorbed in his books all the real profits of the weavers, the exemption available to secondary manufacturers will not be available because the real manufacturer will be the primary manufacturer. In consultation with Ministry of Law the Ministry of Finance clarified on 14 May 1982, that a person who supplies raw materials and gets his goods manufactured by another non-independent manufacturer, on job work basis, remains the primary manufacturer (also referred to as loan licensee). Duty on the goods produced by the job worker is to be assessed by reference to the primary manufacturer on whose behalf the goods were produced.

As per a notification issued on 30 April 1975, on goods classifiable under tariff item 68, manufactured in a factory as a job work, levy of duty was exempted to the extent it was in excess of the duty calculated on the amount charged for job work. For the purpose of grant of exemption 'job work' was defined to mean work where an article intended to undergo manufacturing process, is supplied to the job worker and that article is returned by the job worker to the supplier after the article has undergone the intended manufacturing process. With the introduction of Rule 56C in the Central Rules, 1944 with effect from 1 April 1981, the notification of 30 April 1975 was rescinded.

As per Rule 56C if the job worker follows the procedure prescribed in the said Rule his customer (the primary manufacturer) is liable to pay duty on the goods manufactured by the job worker (secondary manufacturer), or the job worker is to pay duty on the goods, cleared by him, whose value is to be inclusive of the value of the materials supplied by his customer.

(i) Railway points and crossings

A manufacturer of 'railway points and crossings' received from a job worker shapes and designs made to manufacturer's specifications. The manufacturer supplied as raw materials rails to the job worker. Even after 1 April 1981 the inspection charges were not included by the manufacturer in the value of the points

and crossings. The mistake resulted in duty being realised short by Rs. 38,056 on points and crossings cleared during the period from April 1981 to December 1982.

On the mistake being pointed out in audit (February 1983) the department did not admit the objection but stated (December 1983) that a show cause-*cum* demand notice had however, been issued in the interest of revenue.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) **Recorded cassettes**

As clarified by the Ministry of Finance in their circular letter of 14 May 1982 issued in consultation with Ministry of Law, a brand name owner getting goods manufactured on his behalf by others is to be deemed to be the primary manufacturer of such goods.

Recorded cassettes were manufactured on behalf of the brand name owners but the price at which such recorded cassettes were sold by the secondary manufacturers to the brand name owners was taken to be the assessable value instead of assessing the value in the hands of the brand name owners (as the primary manufacturers). The mistake resulted in short levy of duty by Rs. 1,04,198 on clearances of recorded cassettes made during the period from May 1982 to October 1983.

The mistake was pointed out in audit in December 1983.

The Ministry of Finance have stated (December 1984) that 4 out of 6 manufacturers of recorded cassette tapes referred in the DAP are supplying recorded cassettes without affixing any brand name. The supply of pre-recorded master cassette will not amount to supply of raw material either. The duty paid by these assessees was, therefore, correct. In the case of another assessee, affixing the brand name of another firm, a show cause notice has been served to safeguard revenue. In view of the judgements of several High Courts, affixing of brand name of another

person by the *defacto* manufacturer would not make the brand owner the manufacturer within the definition of Section 2(f) of the Central Excises and Salt Act, 1944. This issue is pending before the Supreme Court of India and as such in the absence of any stay order granted by the Supreme Court no final verdict can be given whether the brand name owner is manufacturer or not. In the remaining case the assessee was found to be related to the buyer and therefore the values have been assessed in accordance with the clause for 'related person' in this case.

(iii) **Rail milk tankers**

A manufacturer of rail milk tankers classifiable under tariff item 68 produced them, on job work basis, out of raw materials supplied by his customers. Valuation of the excisable product in the hands of the primary manufacturer was done on the basis of cost data but the element of profit was omitted to be included in the cost data. The omission resulted in duty being realised short by Rs. 81,000 on 21 milk tankers.

On the omission being pointed out in audit (February 1982) the department stated that the element of profit stood included in the job charges paid by the primary manufacturer.

But the Ministry of Finance have stated (December 1984) that on review the Assistant Collector has been asked to file an appeal under Section 35E of the Excise Act.

2.27 **Sale through related persons**

As per provision of Section 4(1)(a)(iii) of the Central Excises and Salt Act, 1944, assessable value of excisable goods, the 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) **Preserved food**

From a unit manufacturing preserved food, excisable goods were transferred during the year 1976-77 to 1981-82 to branch offices of the manufacturer 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 from branch offices to the dealers. The mistake resulted in short levy of duty by Rs. 2,35,473.

On the mistake being pointed out in audit (January 1979 and December 1980) the department admitted the objection and raised demands for Rs. 2,35,473 in July 1983.

The Ministry of Finance have not denied the facts in their reply. Report on recovery is awaited (December 1984).

(ii) **Paints and varnishes**

A manufacturer of paints and varnish sold his goods to a sole selling agent and duty was levied on the basis of price for sale to the sole selling agent instead of levying duty on the assessable value determined on the basis of the price charged by the sole selling agent from his buyers. Though the sole selling agent received a discount of 25 per cent which was not included in the sale price at which he purchased the goods and the element of transport cost was also not included in the price, no part of the discount was passed on to his buyers by the sole selling agent. The undervaluation of goods resulted in short levy of duty by Rs. 1.78 lakhs on clearances made during the period from 1 April 1981 to 31 August 1982.

On the underassessment being pointed out in audit (April 1983), the department raised a demand for the amount.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.28 Discounts

In a judgment* delivered on 15 November 1983 the Supreme Court held that discounts allowed in the trade should be deducted from the sale price having regard to the nature of goods, if the allowance of discount is established under agreements or under terms of sale or by established practice and the allowance and the nature of discount is known at or prior to the removal of the goods. Such discounts shall not be disallowed because they are not payable at the time of each invoice or deducted from invoice price.

(i) Electric lighting bulbs

A manufacturer of electric lighting bulbs and fluorescent lighting tubes transferred a major portion of his goods from his factory to his own sale offices situated in various stations. He was allowed to pay duty on an assessable value lower than the price at which sale was made from his sale offices. In the result duty was realised short by Rs. 1,36,908 on clearances of fluorescent tubes made during the period from September 1981 to September 1982.

On the mistake being pointed out in audit (January 1983) the department stated (May 1983) that though the assessee had charged about 2 per cent more on sale than the prices at which he cleared the goods he had raised credit notes in favour of the buyers, for the excess. The department had viewed the credit notes as discount allowed and therefore to be an admissible deduction. But discount, by its very nature, is not an amount realised

*Union of India, and others vs. Bombay Tyres International Private Limited [1983 ECR 2233 D (SC)].

and refunded and there was no justification in viewing a refund credit note as discount. Further there is no guarantee that the customers did get the credit notes or benefit of credit in future by encashment or adjustment of the credit notes.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) **Electric fans**

A manufacturer of electric fans was allowed to deduct a discount of 2 per cent from his declared price in order to arrive at the assessable value. It was seen that he cleared most of his goods under credit sales in which no discount was given. But discount was approved by department on the ground that all sales will be on cash basis and discount would be allowed. Adoption of incorrect assessable value on all clearances, in the absence of any established practice for grant of discount, resulted in duty being levied short by Rs. 1.09 lakhs on clearances made during the period from October 1978 to March 1980.

On the mistake being pointed out in audit (March 1981) the department issued (April 1982) a show cause notice.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.29 **Valuation at invoice price**

As per a notification issued on 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. The Ministry

of Finance issued instructions on 10 December 1975 that the invoice price of such goods should be verified with reference to accounts of the manufacturer as certified by Auditors.

The concession is subject to the condition that such price is the sole consideration for the sale and is not influenced by any commercial, financial or other relationship, whether by contract or otherwise between the manufacturer and the buyer.

The grant of exemption is also subject to the condition that exemption is availed of uniformly in respect of all the goods (falling under tariff item 68) sold by him. The Central Board of Excise and Customs, in a circular letter issued on 11 June 1982 clarified in consultation with Ministry of Law that the aforesaid exemption can be availed of only when the entire production is cleared on sale, and cannot be availed of when production is partly cleared on sale, and partly transferred to branch offices or depots of manufacturer for subsequent sale, or free distribution or is partly consumed captively.

(i) A manufacturer of automobile and machinery gears classifiable under tariff item 68 was allowed exemption under aforesaid notification. But on goods cleared to his own branch office a discount of 40 per cent was allowed in the invoice while no discount was allowed on clearances made on sale. The exemption is available only in respect of goods cleared on sale and not on goods transferred to own branches. Because of undervaluation of the goods transferred, duty was realised short by Rs. 3.28 lakhs on clearances made during the period from March 1983 to May 1983.

The short levy was pointed out in audit in May 1984.

The Ministry of Finance have not accepted the objection of short levy but have stated (December 1984) that the assessee was

not entitled for assessment on invoice value. However, the goods are being cleared now on the basis of price list.

(ii) A manufacturer of telecommunication equipment classifiable under tariff item 68 opted for valuation based on invoice price. His agreement with a Government department, provided for reimbursement to him, by the department, of interest accrued on loans, deposits and cash credit, taken by him towards his working capital necessary for making supplies to the department. The interest so reimbursed was a consideration for the supplies made and formed part of the price of the goods even though it was omitted to be mentioned in the invoice. But the interest was not added to the invoice value and duty was realised short by Rs. 27,12,703 on manufactured products supplied during the years 1979-80 to 1982-83.

On the short levy being pointed out in audit (January 1984) the department accepted the audit objection and stated (June 1984) that duty had since been demanded on clearances made during the years 1979-80 to 1982-83.

The Ministry of Finance have confirmed the facts and have stated (December 1984) that the amount has been realised.

(iii) A manufacturer of engineering goods received specifications, drawings, data sheets and advances from his customers and produced the goods subject to quality control and inspection by the customers. He opted to pay duty on the basis of price on the invoice value in terms of the notification dated 30 April 1975. The price on the invoice did not include the cost of additional considerations mentioned above flowing from the buyer to the assessee which resulted in duty being levied short by Rs. 5.15 lakhs on clearances made during the years 1981-82 and 1982-83.

The mistake was pointed out in audit in January 1984.

The Ministry of Finance have stated (December 1984) that the engineering goods are manufactured on the basis of specification as stated in the contract. Drawings are provided by the manufacturer and cost of such drawings is always included in the contract price. As regards advance, it is the normal trade practice when goods are manufactured for specific purposes and can not be normally sold to a third party. The amount of advance is received to ensure that the customer takes delivery since otherwise such goods can not be sold to third parties. No interest is earned by the manufacturers as the advance money is always utilised for the purchase of material to fabricate goods. These being questions of facts, for determining the point of additional consideration, have been examined by the concerned Collector to reach a conclusion that there is no short levy.

The reply is silent on the point that where additional considerations are involved and require examination, it is not correct to allow the benefit of the exemption notification allowing assessable value being taken as the invoice price, in view of the specific prohibition in proviso (iv) of that notification.

(iv) A manufacturer of goods classifiable under tariff item 68 cleared them partly on sale and partly by transfer to his branches on payment of duty. The transfer was made on invoice value which was lower than the price on which the goods were normally sold to outside parties. As the goods transferred to the branches were not cleared from the factory on sale, duty was payable on the assessable value as determined under Section 4 of the Central Excises and Salt Act, 1944, instead of on the lower invoice value. Adoption of lower invoice value resulted in short levy of duty by Rs. 3,05,827 on clearances made during the period from February 1982 to July 1983.

On the irregularity being pointed out in audit (March 1983) the department admitted the facts and stated (February 1984) that show cause-*cum* demand notices had since been issued to

the manufacturer. Report on confirmation of demand is awaited (April 1984).

The Ministry of Finance have confirmed the facts (September 1984).

(v) A manufacturer of 'Calender bowls' used as raw materials "asbestos paper" and also "used and worn out calender bowls" supplied by the buyer. But the value of the raw materials so supplied was not included in the assessable value of the final product which resulted in duty being levied short by Rs. 31,016 on clearances made during the period from July 1982 to October 1983.

The omission was pointed out in audit in February 1984.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(vi) A manufacturer of boiler parts opted for the exemption under the notification dated 30 April 1975. Some parts of the boiler were manufactured by others on his account (raw materials were supplied by him in some cases). Parts received from the sub contractors were also supplied to his customers along with parts produced in the manufacturer's own factory. Under an agreement which provided for price escalation, he raised supplementary invoices on all the parts towards price escalation. But he did not pay duty on the escalation in price of parts manufactured by the sub contractors. Failure to demand duty on escalation in price of such parts resulted in duty being levied short by Rs. 8.28 lakhs on parts supplied during the period from April 1980 to February 1983.

The mistake was pointed out in audit in March 1983.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.30 **Valuation of gifts and free samples**

(i) 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 price specified in the price list required to be filed under the Drugs (Price Control) Order, 1979 showing price at which the medicines are to be sold. The duty, if any, leviable in excess of duty calculated on the discounted price stands exempted.

A manufacturer of patent or proprietary medicines was allowed to pay duty on his goods in terms of the notification dated 8 October 1966. He cleared vaporub medicine in two packings, one separately and another with a gift packet of cough drops included in the packing. He declared same prices for vaporub cleared with or without the gift pack of cough drops. Therefore the gift packets were cleared from the factory not as consideration for sale but purely as gifts not for sale. The provisions of Excise Act do not allow of manufactured products for purposes other than sale, being cleared without payment of duty. Duty is required to be paid on the gifts on the value of similar goods or on the costed value of the gifts. On 3,65,328 units of combined packs cleared during the period from October 1982 to January 1983, no duty was realised on the cough drops which were also cleared. But as per provisions of Section 4 of the Central Excise Act and the Valuation Rules made thereunder, duty amounting to Rs. 1.07 lakhs was leviable on the basis of the value of similar goods sold at any other time nearest to the time of removal of the goods under assessment .

The irregularity was pointed out in audit in September 1983. The department stated (March 1984) that the matter was being looked into.

The Ministry of Finance have stated (March 1984) that on 13 June 1983 (even before receipt of audit objection) orders had been issued for raising demand for differential duty. The reasons for the delay in actual issue of notice and date of raising of demand have not been given in the reply.

(ii) As per a notification issued on 1 April 1977, on free samples of patent or proprietary medicines duty was exempted on clearances limited in any month to 4 per cent by value of the total duty paid clearances made during the preceding months of all types of patent or proprietary medicines. This requires computing the 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 goods not sold for any price. On free samples cleared in excess of the limit which were also not sold for a price, the assessable value was again required to be determined under the Valuation Rules, without allowing any exemption.

(a) Eighteen 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 wrongly allowing exemption in terms of notification issued on 8 October 1966. No exemption was available in respect of medicines which were not sold and were distinctly marked 'not for sale'. The irregular valuation of physician's samples after allowing exemption from assessable value (based on discount applicable to goods sold) resulted in short levy of duty by Rs. 21.88 lakhs on clearance of free samples made during the years 1981 to 1983.

On the irregularity being pointed out in audit (June 1983 and April 1984) the department did not accept the objection and stated (November 1983, April and May 1984) that valuation done after allowing an exemption from assessable value, even in respect of free sample, was in order.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(b) Another manufacturer was also allowed to clear free samples similarly and it resulted in short levy of duty by Rs. 41,679 on the clinical samples cleared in excess of what was

allowed to be cleared without payment of duty, during the period from 1 April 1977 to November 1979.

On the mistake being pointed out in audit (January 1980) the department accepted the objection and raised demand against the manufacturer (November 1981).

The Ministry of Finance have stated (December 1984) that assessable value of medicine is to be arrived at in the light of the provisions of notification dated 8 October 1966 for all types of medicines, uniformly. As the prices of all the medicines have been fixed in accordance with this notification, the same procedure is to be followed in the case of clinical samples cleared in excess of the free percentage. The reply is not legally correct since the said notification has no relevance to goods not priced or sold for consideration. To legalise the view of the Ministry the notification of 8 October 1966 as amended from time to time would need to be amended to cover also free samples cleared in excess.

(c) Two more manufacturers of patent or proprietary medicines, were also charged duty on clinical samples, cleared in excess of prescribed limit, after allowing exemption in terms of notification issued on 8 October 1966. The irregular valuation of clinical samples resulted in short levy of duty by Rs. 1,70,235 on clearances made during the period from January 1982 to August 1983.

The short levy was pointed out in audit in December 1983.

In para 2.10(ii) of the Audit Report for the year 1981-82, a similar objection was reported on which the Ministry of Finance stated that *ad hoc* discounts admissible in valuation of nearest trade packing were to be allowed on the free samples as per instructions of the Board issued in October 1962. But such instructions go contrary to the plain reading of Section 4 of the Central Excise Act on valuation of excisable goods not subject

to exemption. The wording of the notification of 8 October 1966 allows exemption only in respect of priced goods for sale.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

SHORT LEVY DUE TO MISCLASSIFICATION

2.31 Medicines

Tariff item 14E covers "patent or proprietary medicines" which term is explained therein to mean any drug or medicinal preparation, in whatever form, for use in the internal or external treatment of, or for the prevention of ailments in human beings or animals, which bears either on itself or on its container or both, a name which is not specified in a monograph in a pharmacopoeia, formulary or other publications notified in this behalf by the Central Government in the Official Gazette, or which is a brand name, that is, a name or a registered trade mark under the Trade and Merchandise Marks Act, 1958 (43 of 1958), or any other mark such as a symbol monogram, label, signature or invented words or any writing which is used in relation to that medicine for the purpose of indicating or so as to indicate a connection in the course of trade between the medicine and some person, having the right either as proprietor or otherwise to use the name or mark with or without any indication of the identity of that person.

A manufacturer of a product known as 'Tripartigen Plates' was allowed to classify the product under tariff item 14E covering patent and proprietary medicines. He was allowed exemption from duty under a notification issued on 24 April 1962 covering 'sera and vaccine'. However the product was meant for use in radial immunodiffusion and for laboratory use only. It did not have any prophylactic or therapeutic effect. It was not also meant for oral, or external application in the treatment of any disease. The product did not merit classification under tariff item 14E and was to be classified under tariff item 68 covering "all other

goods not elsewhere specified". The mistake resulted in short levy of duty by Rs. 62,592 on clearances made during the period from January 1982 to December 1982.

On the mistake being pointed out in audit (June 1983) the department stated (September 1983) that the product was approved as a drug by the State Food and Drug Administration. The product contained 'Sera' and was used for diagnosis in pathological laboratories. Therefore the product was classifiable under tariff item 14E and also grant of exemption from duty was in order. But the product is used only for diagnosis in pathological laboratories and not for treatment or for prevention of any ailment in human beings or animals. Therefore, its classification as a medicine is not covered by the language of tariff item 14E.

The Ministry of Finance have stated (August 1984) that demands amounting to Rs. 2.27 lakhs have since been raised in respect of clearances made during the period from 1 January 1982 to 30 April 1984. Duty is being realised from May 1984.

2.32 Chemicals and plastics

(i) Carbon dioxide

Carbonic acid (carbon dioxide) is classifiable under tariff item 14H.

(a) Carbon dioxide gas produced in a distillery was sold after purifying it and after paying excise duty under tariff item 68. In a tariff advice issued in August 1981 it was stated that carbon dioxide gas produced in distilleries and in fertilizer factories or in other factories will fall outside the purview of tariff item 14H so long as the gas does not confirm to the marketable grade as per ISI specifications. However, the ISI specification* refers only to two grades of carbon dioxide gas viz. grade I suitable for use as reagent and for welding purposes and grade II suitable for beverages, fire extinguishers, refrigeration and general commercial purposes. But tariff item 14H covers "Carbonic acid (carbon

(IS-307-1968-Reaffirmed 1977-third Reprint July 1982).

dioxide)". Therefore contrary to the tariff advice the gas, howsoever, produced will be classifiable under tariff item 14H. Accordingly, duty was leviable on carbon dioxide produced by the aforesaid manufacturer. But duty amounting to Rs. 2,36,551 was not levied on clearances made from 1 March 1982 to 28 February 1983.

On the short levy being pointed out in audit (March 1983), the department did not accept the objection.

The Ministry of Finance have stated (December 1984) that sample of carbon dioxide gas has been sent to National Test House Bombay and action will be taken on receipt of the test report. However, the show cause-*cum* demand notice has been issued as a precaution.

(b) Another manufacturer of carbon dioxide gas was allowed to classify the gas under tariff item 68 on the ground that it was not of marketable grade given in ISI specification. But the tariff makes no such exception. The ISI specification also does not exclude any goods called marketable goods from the description of carbonic acid (carbon dioxide). The misclassification resulted in duty amounting to Rs. 1.98 lakhs not being realised on clearances made during the period from October 1982 to December 1983.

On the misclassification being pointed out in audit (April 1984) the department stated (May 1984) that the recommendation of the Tariff Conference of Collectors for classification of impure carbon dioxide under tariff item 14H was not accepted by the Board. Further the impure gas was not recognised in the commercial circles as carbon dioxide and therefore it was correctly classifiable under tariff item 68.

The Ministry have stated (December 1984) that in its tariff advice it had clarified that Carbon Dioxide gas not conforming to marketable standard, as specified in the ISI specification, is not covered by tariff item 14H. The reply of the Ministry is not

correct because neither the tariff nor the ISI specifications exclude impure carbon dioxide from the tariff description "carbonic acid (carbon dioxide)".

(ii) **Blended resin**

As per a notification issued in June 1971, on 'Alkyd resin' classifiable under tariff item 15A(I) levy of duty was exempted. However on blended resins duty was leviable at 40 per cent *ad valorem.*

A manufacturer of "linseed resin modified penta alkyd" was allowed to clear it as 'varnish' after classifying it under tariff item 14(II)(i). Chemical Examiner's report revealed its composition to be a blend of alkyd resin with esterified (artificial) resin produced during manufacture of the aforesaid product. Therefore on the product duty was leviable at 40 per cent. But the department assessed the product as 'Varnish' and levied duty at 15 per cent *ad valorem.* Incorrect classification resulted in a short levy of duty by Rs. 35,000 on clearances made during the period from 17 September 1979 to 9 September 1980.

The mistake was pointed out in audit in December 1982. The department admitted (September 1983) the misclassification, but stated that the product being modified alkyd resin was exempt from duty. Subsequently the department admitted the product to be blended resin and issued (June 1983) show cause notice for Rs. 6,47,657 on clearances made during the period from 18 March 1979 to 17 March 1983.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iii) **Adhesives**

Adhesives manufactured from resin are classifiable under tariff item 15A covering artificial and synthetic resins and other materials specified therein.

(a) A manufacturer of four varieties of adhesives produced adhesives from an admixture containing resin. He was allowed to clear the adhesives by paying duty under tariff item 68. Failure to classify the goods correctly under tariff item 15A resulted in duty being levied short by Rs. 1.43 crores on clearances made during the period from March 1981 to November 1983.

On the mistake being pointed out in audit (January 1984) the department stated (January 1984) that adhesives are manufactured from admixture of other chemicals including chlorine bearing synthetic rubber along with resin. However, chlorine bearing synthetic rubber also is a resin and adhesives manufactured therefrom are also classifiable under tariff item 15A.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(b) Two manufacturers of adhesives produced adhesives from resin, synthetic rubber etc. They were allowed to clear the adhesive by paying duty under tariff item 68. Failure to classify the goods correctly under tariff item 15A resulted in duty being levied short by Rs. 58,080 on clearances made during the period from April 1981 to September 1982.

The mistakes were pointed out in audit in January 1983. In one case the department stated (November 1983) that the matter is under examination; two demands had also been raised by way of abundant caution.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iv) **Resin solution**

Artificial and synthetic resins are classifiable under tariff item 15A while paints and varnishes are classifiable under tariff item 14.

A manufacturer of rosinated glossy varnish was allowed to classify the varnish under tariff 14 and clear it partly for captive consumption and partly to another unit for use in manufacture of

paints. On the quantity captively consumed, exemption from duty was allowed as per a notification issued on 4 March 1972 (in respect of items classifiable under tariff item 14) and duty was levied under tariff item 14-II(i) on clearances made to the other unit. In the other unit credit for duty paid was allowed under Rule 56A of the Central Excise Rules. The product that was cleared, was a solution of maleic resin in white spirit (a volatile organic solvent) and it was classifiable under tariff item 15A even though called a varnish. Failure to classify the goods correctly led to non-levy of duty amounting to Rs. 1.34 lakhs on the goods captively consumed and incorrect grant of credit for Rs. 36,000 in the other unit on the clearances made during the period from 1 July 1979 to 28 August 1981.

On the misclassification being pointed out in audit (December 1981) the department did not admit the objection and stated (February 1984) that demand for Rs. 3.14 lakhs on clearances made during the period from 19 June 1979 to 20 August 1983 had, however, been raised.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(v) Polyamide chips

As per a notification issued on 1 March 1973 polyamide chips classifiable under tariff item 15A were exempted from duty if used in the manufacture of nylon yarn.

A manufacturer of nylon yarn was allowed to clear polyamide chips which fell on floor during production and got oxidised during the process of manufacture. The chips were cleared as "polyamide nylon chips waste" under tariff item 68 during the period from 1 March 1975 to 28 February 1978 and thereafter under tariff item 181V. But duty on such waste of polyamide nylon chips was leviable under tariff item 15A and there was no reason for change in classification.

On the mistake being pointed out in audit (February 1979), the department issued (August 1979) a show cause-*cum* demand notice for Rs. 52,021 on clearances made during the period from March 1975 to October 1978 but it was barred by limitation. But the department did not accept the objection and stated (April 1984) that the polyamide nylon chips waste was not capable of being used in the manufacture of nylon yarn. But the polyamide nylon chips produced during the manufacture of nylon yarn was capable of being removed and its liability to duty was not in doubt. The mistake in classification was of the chips gone waste and non-realisation of duty at correct rate thereon could not be justified.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.33 **Paper and Glass**

(i) **Egg trays**

"Paper pulp trays" meant for keeping eggs, apples etc. are classifiable under tariff item 68 and not under tariff item 17 covering paper and paper boards.

A manufacturer of "paper pulp trays" meant for keeping eggs, apples etc. was allowed to classify them under tariff item 17 and avail of exemption from duty as per a notification issued on 28 February 1982. The misclassification resulted in duty being levied short by Rs. 13.89 lakhs on clearances made during the period from 1 March 1982 to September 1983.

The misclassification and short levy were pointed out in audit (December 1983).

The Ministry of Finance have accepted the mistake (December 1984).

(ii) **Glassware**

Glassware including tableware is classifiable under tariff item 23A and duty is leviable at 35 per cent *ad valorem*.

As per a notification issued on 26 November 1977 on glassware including tableware so much of the duty as was in excess of 25 per cent *ad valorem* was *exempted* provided molten glass is taken to the first mould manually and compressed air or mechanically operated press is used.

A manufacturer cleared "plain glass ware" and was allowed to pay duty at 25 per cent *ad valorem*. The plain glassware after clearance underwent further processes with the aid of machines to create cut design and was cleared only thereafter. The production of cut design glassware was therefore not complete till the processes using power were gone through. Further, the conditions laid down in the notification were not satisfied in the case of plain glassware removed for production of cut design glassware. In the result duty was leviable at tariff rate of 35 per cent but duty was realised short by Rs. 1,87,158 on clearances of cut design glassware made from January 1981 to January 1983.

On the short levy being pointed out in audit (May 1982) the department did not accept the objection and stated that no further duty could be levied on decorated glassware made in a different factory from 'plain glassware'. On 'plain glassware' removed without payment of duty within the premises, and subjected to further processes with machines and with the aid of power to produce 'cut design glassware' exemption was irregularly allowed.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iii) **Frit glass**

A manufacturer of 'enamel frit' was allowed to classify the product under tariff item 68 and was allowed exemption from duty as per a notification issued on 30 April 1975 on the ground that the product was used captively for further manufacture in the same factory. 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. The Board has 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' under tariff item 23A. As per Chemical Examiner's report and tariff advice 'enamel frit' was to be classified under tariff item 23A(4). The product though having a description 'enamel frit' was only 'frit' which was classifiable under tariff item 23A(4). Misclassification resulted in duty amounting to Rs. 32.50 lakhs not being levied on clearances made during the years 1979 to 1984.

The mistake was pointed out in audit in January 1983.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.34 **Yarn and fabrics**

(i) **Doubled yarn**

As per clarification issued by the Ministry of Finance on 24 May 1980 doubled yarn obtained by doubling of similar or different varieties of spun yarn continues to be spun yarn and its classification would depend upon the predominant fibre. The Board in a subsequent letter issued on 13 January 1983 amplified that cellulosic spum yarn when doubled with non-cellulosic spun yarn will be classified depending upon predominance of cellulosic or non-cellulosic spun yarn in the resultant doubled yarn.

A manufacturer was allowed to classify under tariff item 68 doubled yarn which was manufactured out of duty paid cellulosic spun yarn or non-cellulosic spun yarn. On the doubled yarn exemption from duty was allowed under a notification issued on 30 April 1975 because the doubled yarn was to be used in the factory of manufacture. But the doubled yarn was classifiable

under tariff item 18 or 18E depending on whether cellulosic spun yarn or non-cellulosic spun yarn was predominant, and not under tariff item 68. In the result no exemption was available and duty was realised short by Rs. 63.78 lakhs on clearances made during the period from June 1980 to September 1982.

On the mistake being pointed out in audit (March 1982) the department did not accept the objection and stated (February 1983) that no further duty was payable because on the constituent yarns duty had already been realised. But the doubled yarn is different from its constituents and duty is again leviable on it subject to any set off that may become available. On reconsideration the department isued a show cause-*cum* demand notice for Rs. 63,78,541 on 8 June 1983. Report on adjudication is awaited (June 1984).

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) Blended yarn

As per a notification issued on 28 February 1982, on non-cellulosic spun yarn in which polyester fibre predominates by weight, duty became leviable at the rate of Rs. 18 per kilogram provided such yarn did not contain 70 per cent or more of polyester fibre and the yarn is made out of polyester, cotton and man-made fibre of cellulosic origin only.

A manufacturer of blended yarn with 48 per cent polyester 27 per cent polynosic and 25 per cent cotton used the yarn for captive consumption but was allowed to pay duty at the rate of only Rs. 9 per kilogram which was the rate applicable to spun yarn of man made cellulosic fibre. Since the polyester was the predominant fibre by weight, duty was leviable at Rs. 18 per kilogram. The incorrect classification of the yarn resulted in short levy of duty by Rs. 2,71,175 on clearances of 24,100 kilograms of yarn made during the period from 20 January 1983 to 30 April 1983.

The irregularity was pointed out in audit in November 1983.

The Ministry of Finance have confirmed the facts (December 1984. Report on rectification is awaited.

(iii) **Rubberised sheets**

As per a clarification issued by the Central Board of Excise and Customs in September 1980 tyre cord warp sheets are classifiable as fabrics under tariff item 19 or tariff item 22 based on the content of the fibre or yarn or both used in their manufacture. As per a further clarification issued in December 1980 rubberised cotton fabrics fall under tariff item 19 I(b).

A manufacturer of rubber products and tyres also rubberised cotton warp sheets for use in manufacture of cycle tyres and moped tyres. He also rubberised cotton cloth purchased from outside for use in manufacture of rubber hoses. On the rubberised cotton warp sheets and cotton cloth duty was not realised under tariff item 19 I(b). The omission resulted in duty amounting to Rs. 5,59,293 not being realised on rubberised cotton warp sheets and cotton cloth cleared during the period from April 1981 to March 1982.

On the omission being pointed out in audit (April 1982) the department raised (July 1983) demand for the amount.

The Ministry of Finance have stated (December 1984) that adjudication of demands have to await decision of a High Court.

2.35 **Miscellaneous manufactured articles**

(i) **Printed tin sheets**

As per a notification issued in July 1977, on lacquered steel sheets and varnished steel sheets which are classifiable under tariff item 28(2) duty was exempted. The Central Board of Excise and Customs clarified in August 1982 that lacquered or varnished or printed tinned steel sheets are classifiable under tariff item 28(2) and exemption under the aforesaid notification

is to be allowed in respect of such sheets. But printed tin sheets manufactured out of duty paid tin steel sheets which are special to products of a particular manufacturer, cleared in the form of sheets and not containers, are classifiable under tariff item 68.

Printed tin sheets used for making metal jackets for dry battery cells, were allowed to be classified under tariff item 28(2) and allowed to be cleared free of duty in terms of the aforesaid notification. But they were to be classified under tariff item 68. The incorrect classification resulted in non-levy of duty amounting to Rs. 27.05 lakhs on clearances made during the period from November 1982 to March 1984.

On the mistake being pointed out in audit (March 1984) the department stated (April 1984) that the clarification of August 1982 did not distinguish between brand name printing and general printing. Also if duty was levied on the printed tin sheet under tariff item 68 the buyer would be entitled to avail set off to that extent from duty payable on the dry battery cells and so revenue had not suffered. But the classification of brand name printed sheets is ambiguous as between tariff item 28(2) and tariff item 68 because of the tariff advice issued by the Board on 5 December 1981 to the effect that paper printed with a specific design of relevance to specific user will be classifiable under tariff item 68 and not under tariff item 17. This conflicts with the ratio of the clarification issued by the Board in August 1982.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) **Steel furniture**

Steel furnitures made partly or wholly of steel, whether in assembled or unassembled condition are classifiable under item 40 of the Central Excise tariff and duty is leviable at 25 per cent *ad valorem*.

(a) A manufacturer of steel furniture, who cleared steel racks in unassembled form, was allowed to pay duty under tariff item 68. The misclassification resulted in duty being levied short by Rs. 1,25,033 on clearances made from two units during the years 1982-83 and 1983-84.

The mistake was pointed out in audit in November 1983 and January 1984. The department stated (May 1984) that on clearances made from one unit show cause notice demanding duty amounting to Rs. 1,15,707 had since been issued The reply on clearances from the other unit is awaited.

(b) Only spotted angles and channels made of steel which are not furniture in unassembled form are classifiable under tariff item 68.

A manufacturer of steel furniture was allowed to pay duty on shelves, panels and partition plates under tariff item 68 on the ground that for purposes of cash assistance which is allowed on exports, the products were not classified as steel furniture but as steel products. However, the products were unassembled steel furniture classifiable under tariff item 40 and on clearance made during the period from 23 May 1981 to September 1981, duty was realised short by Rs. 1,23,714 because of the misclassification.

The mistake was pointed out in audit in March 1983.

In the above cases, the Ministry of Finance have stated (December 1984) that the matter is under examination.

(iii) **Adhesive tapes**

Adhesive tapes, all sorts, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power are classifiable under tariff item 60.

(a) A manufacturer of adhesive electrical insulating tapes cleared the goods on payment of duty under tariff item 68 instead of under tariff item 60. The incorrect classification resulted in duty being levied short by Rs. 1.74 lakhs on clearances made during the period from September 1979 to March 1982.

(b) Another manufacturer of adhesive electrical insulating tapes similarly cleared the goods on payment of excise duty under tariff item 68 instead of under tariff item 60. The incorrect classification resulted in duty being levied short by Rs. 27.21 lakhs on clearances made during the period from April 1982 to December 1983.

On the above misclassifications and short levy being pointed out in audit [October 1982 and January 1984), the department stated (March 1983 and July 1984) that the product was classified under tariff item 68 as per an advice issued by the Board in July 1981. But this tariff advice covered only "electrical insulating tapes non-adhesive" and was not relevant to the misclassification. Adhesive tapes, all sorts, clearly include the said adhesive tapes even if they have electrical insulating properties.

In the above cases the Ministry of Finance have stated (December 1984) that the matter is under examination.

(iv) **Switches and sockets**

On "electric lighting fittings namely switches plugs and sockets all kinds" duty is leviable under tariff item 61. Government of India clarified in September 1977 that all kinds of switches, sockets and plugs designed for circuits of not more than 250 volts are covered by this tariff item. In a tariff advice issued in December 1981 it was further clarified by the Government that switches used in torches which operate at much lower voltage than the conventional domestic range of 220—250 volts are also classifiable under tariff item 61.

A manufacturer of torches and switches and sockets for flashlights and torches, was allowed to classify them under tariff item 68 instead of classifying them under tariff item 61. As a

consequence the goods were exempted from duty under a notification issued on 30 April 1975 because the switches were used in the factory of production. The mistake therefore resulted in duty amounting to Rs. 41.45 lakhs not being realised on clearances made during the period from January 1981 to April 1982.

On the mistake being pointed out in audit [September 1982] the department accepted the misclassification and stated (November 1982) that an offence case for suppression of facts had been booked against the party and that duty leviable would be recovered after adjudication. It was further stated in March 1984 that a writ petition had been filed in the High Court (December 1982) challenging the excisability of switches and sockets and as per the order of the High Court the assessment was provisional. Show cause notices demanding duty amounting to Rs. 3,40,68,461 in respect of clearances made during the period from December 1977 to July 1983 issued by the department between December 1982 and November 1983 are pending.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(v) **Bolts, nuts and screws**

On bolts, nuts and screws including those used as fasteners in motor vehicles duty is leviable under tariff item 52.

A manufacturer of motor vehicle parts was allowed to clear some nuts and screws after classifying them under tariff item 68 and after enjoying exemption in terms of a notification issued on 19 April 1979 covering goods classifiable under tariff item 68. The incorrect classification resulted in short levy of duty by Rs. 55,278 on coupling nuts and cable screws cleared during the period from August 1981 to August 1982.

On the mistake being pointed out in audit [January 1983], the department stated that a show cause notice had already been issued by them in July 1981 regarding payment of duty on certain

bolts, nuts and screws. But no action had been taken to recover duty on the said two items pointed out in audit.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(vi) **Metal containers**

Metal containers are classifiable under tariff item 46, plastics under tariff item 15A and paper and paper board under tariff item 17. Articles not elsewhere specified fall under tariff item 68.

A manufacturer of containers made of paper (internally having plastic rings and strengthened by metal ring on the outside and with metal cap) was allowed to classify the product under tariff item 17 from March 1982 instead of classifying it under tariff item 68. Because of the classification duty was exempted under a notification dated 28 February 1982 covering articles of paper and paper board including containers. In the result duty amounting to Rs. 21.60 lakhs was irregularly forgone on clearances made during the period from March 1982 to May 1983.

On the mistake being pointed out in audit (July 1983) the department issued show cause-cum demand notice for Rs. 26,31,730.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

SHORT LEVY DUE TO INCORRECT GRANT OF EXEMPTION

2.36 **Sugar**

Levy of duty on any goods may be exempted by Government by issue of a notification under Rule 8(1) of the Central Excise Rules.

(i) As per a notification issued on 21 April 1982 on so much of sugar produced in a factory during the period commencing with 1st day of May 1982 and ending with 30th day of September

1982, as was in excess of the average production in the corresponding period of the preceding three sugar years, levy of excise duty was exempted to the extent indicated in the notification. However, the notification was not applicable to sugar produced in a factory in which there was no production during the period May to September in all the three preceding sugar years. But the notification was amended on 11 June 1982, to provide that even where there was no production during the period May to September in all the three preceding sugar years the exemption was to be allowed. But exemption was to be admissible only in respect of sugar produced on or after 1 May 1982 which had not been cleared before 11 June 1982, when notification was amended.

There was no production in two sugar factories in the preceding three sugar years relevant to the sugar year 1981-82. The department allowed exemption from duty amounting to Rs. 2,14,118 and Rs. 2,55,624 on the entire production in the two factories in the months of May 1982 to September 1982 instead of allowing it only on clearances made on or after 11 June 1982 out of such production. The mistake resulted in irregular grant of exemption from duty amounting to Rs. 1,17,682 and Rs. 1,94,039 in the two factories.

On the mistake being pointed out in audit (October 1983), in respect of one factory the department accepted the mistake and stated (March 1984) that action for recovering Rs. 1,70,682 would be initiated. Report on recovery is awaited (May 1984). In respect of other factory the department stated that the exemption was granted provisionally. However the reply was silent on action taken to recover the amount of Rs. 1,94,039.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) As per a notification issued on 28 April 1978, where sugar is produced in a factory during the period from 1 May 1978 to 15 August 1978 and the production is in excess of the average production of sugar in the corresponding periods in the preceding

three years *viz.* 1 May to 15 August of 1974, 1975 and 1976, exemption from duty at Rs. 54 per quintal was allowed on the quantity of free sale sugar cleared from the factory out of production in the period 1 May to 15 August 1978. Exemption at Rs. 9.60 per quintal was similarly allowed on the levy sugar cleared. In computing the average production of sugar during the period 1 May to 15 August in the preceding three years the production recorded in Excise Form R.G.I. was to be taken as the basis for production in the said period.

If in any of the preceding three years there was no production during the period 1 May to 15 August, then only the production in the corresponding periods in such of the three preceding years in which the factory had actually produced was to be taken into account. In other words the period or periods in which the factory did not at all produce during any of the preceding three years was to be ignored in computing the average and the average was to be computed with reference to only the remaining years. But where production during the period 1 May to 15 August in all the three preceding years was nil, then on the entire production cleared during the period 1 May to 15 August 1978 exemption from duty was available at the said rates.

In a sugar factory, crushing had stopped in April 1977. Also 163 quintals of sugar was stated to have been produced in April 1977 as per factory records. But in the said Excise record in Form R. G. I., production in May 1977 was shown as 163 quintals. The production in the factory in the said period 1 May to 15 August was 23,620 quintals in 1974-75 and 4767 quintals in 1975-76. In 1976-77 it was taken as 163 quintals (so called production of May 1977) and average production in the three years 1974-75 to 1976-77 was computed at 9517 quintals. If the production of 163 quintals had been shown in excise records as achieved in April 1977 the average production in the three years would have worked out to 14,193 quintals; consequently increase in production in 1977-78 over average production of past three years would have dropped and exemption available would have come down by Rs. 1,17,575. Therefore, there was incentive to

show the production as achieved in May 1977 even if the sugar had been produced in April 1977. Exemption from duty amounting to Rs. 1,17,575 was at stake.

The incentive is in the form of exemption which is related as much to production in 1977-78 as to failure to produce in 1976-77. Ambiguity in past record of poor production is encouraged as much as production in current year.

The structure of the notification together with the questionable entry in the Excise record in Form RG-1 in the above case resulted in exemption from duty amounting to Rs. 1.18 lakhs being irregularly allowed.

On the irregularity being pointed out in audit (March 1981) the department stated (June 1983) that it appears that 163 quintals of brown sugar stated to be produced on 23 May 1977 was produced on 1 May 1977 or after. But the appearance is not the reality since as per records in the factory it stopped crushing on 27 April 1977 and the whole of the quantity of sugar produced by that date was accounted for in April. Though production ended on 29 or 30 April 1977, and 163 quintals of brown sugar were accounted for as produced on 23 May 1977. Yet as per records, 163 quintals was part of 1023 quintals bagged on 30 April 1977. But only 860 quintals out of 1023 quintals bagged were shown as produced on 30 April 1977.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.37 **Petroleum products and related materials**

(i) As per a notification issued on 16 December 1977 petroleum products (including low sulphur heavy stock) produced in refineries (wherein refining of crude petroleum or shale or blending of non duty paid petroleum products is carried on) 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.

(a) Refined diesel oil known as high speed diesel oil produced in the refinery was cleared to a captive thermal power station for generation of electricity without payment of duty under the aforesaid notification. Because the high speed diesel oil was consumed in the refinery as fuel for generation of electrical energy and not as fuel for production of finished petroleum products, the grant of exemption was irregular. The irregularity resulted in duty amounting to Rs. 64,673 not being levied on clearances made during the months of September and October 1982.

On the irregularity being pointed out in audit (November 1982) the department issued four show cause notices in January, April, September and November 1983 demanding duty amounting to Rs. 21.88 lakhs in respect of clearances made during the period from September 1982 to October 1983. Two demands aggregating Rs. 9.59 lakhs for the period from September 1982 to December 1982 have since been confirmed in April and June 1983. The appeal of the assessee before the Appellate Collector is pending.

The Ministry of Finance have stated (December 1984) that two demands for duty amounting to Rs. 9,58,725 for the period from September 1982 to March 1983 have been confirmed but have been set aside by Collector (Appeals). The reply is silent on action taken to appeal against the appellate order.

(b) On low sulphur heavy stock (LSHS) produced in an oil refinery duty was exempted because it was to be used as fuel in boilers to generate steam which in turn was to be used for atomising LSHS in burners and also for purposes of processing crude. The steam was used, in an emergency, for generation of electricity which was used in office. The grant of exemption was therefore irregular on the LSHS which was not used as fuel for production of excisable petroleum products. On 8760 tonnes of LSHS consumed yearly on the average duty amounting to Rs. 13.53 lakhs was irregularly exempted upto October 1982.

On the irregularity being pointed out in audit (June 1984) the department did not accept the objection and stated (July 1984) that steam was used in production of petroleum products

and only rarely the ultimate use of LSHS was for generation of electricity. But in this case the electricity was not used in production of petroleum products. The department also stated that as per another notification issued on 23 October 1982 exemption from duty was available in respect of LSHS used as fuel for any purpose within a refinery. However, benefit of exemption under that notification was not available prior to 23 October 1982.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(c) From a refinery, furnace oil classifiable under tariff item 10 was supplied as fuel for generation of electricity. A part of electricity generated was supplied to State Electricity Board and to a bunkering unit. However, no excise duty was levied on the furnace oil. The incorrect grant of exemption under aforesaid notification resulted in duty amounting to Rs. 1.32 lakhs not being levied on clearances made during the period from March 1978 to March 1983.

The mistake was pointed out in audit in April 1984. The department had earlier stated in May 1983 that on similar objection reported in draft audit paragraph 285 of Audit Report for the year 1979-80, no further action could be taken for want of a decision from the Ministry.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(d) As per Rule-143A of Central Excise Rules, 1944, the owner of a refinery may, prior to payment of duty on goods processed or manufactured and warehoused under bond in a refinery, be allowed to blend, treat or make such alterations and conduct such manufacturing process on the aforesaid goods in such manner and subject to such conditions as specified by the Government. Duty is, therefore, leviable if the said goods are used in the refinery otherwise than as fuel. When process involved in such use

is not carried out on the warehoused product in the manner and under the conditions specified by the Government that process cannot defer payment of duty, as permitted in Rule.

In an oil refinery 'spindle oil' manufactured therein as well as drawn from bonded warehouse was used. However assessee was allowed to clear the oil free of duty even though the goods were not used as fuel but for spindle washing of catalyst. The condition precedent to grant of exemption not having been fulfilled the exemption was not available. On 708 tonnes of 'spindle oil' so used for spindle washing of catalyst during the period from 7 September to 9 September 1978 duty not levied amounted to Rs. 26.02 lakhs.

On the mistake being popinted out in audit (March 1979) the department did not admit the objection and stated (September 1980) that spindle oil was used as intermediary product in the refinery for manufacture of other petroleum products, and as per clarification issued by the Ministry on 1 September 1967 no duty on intermediate product, is leviable, unless it is removed. The reply is not correct and exemption from duty on the spindle oil cannot be granted by describing it as intermediate product. There is no provision in the Rules allowing removal of excisable products without levy of duty, by calling them intermediate products.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) **Reduced crude**

As per notification issued on 25 April 1964 reduced crude, produced wholly from indigenous crude oil, is exempted from the whole of the duty if it is intended to be used as fuel for generation of electrical energy by a person who is engaged in the business of supplying electrical energy, but not by a person who produces electrical energy for consumption or supply to his own undertaking (not for sale).

Exemption under the aforesaid notification was allowed in respect of reduced crude produced in a refinery and used as fuel for generation of electrical energy in a thermal power station in the refinery. The electricity was mainly utilised for manufacture of other petroleum products. Only a small quantity of electricity was sold to an undertaking under a contract. Therefore the exemption was allowed irregularly and duty amounting to Rs. 3.73 crores was omitted to be realised during the period from April 1979 to June 1982.

On the omission being pointed out in audit (February 1982) the department stated that exemption was granted under another notification issued on 18 May 1963, since the reduced crude was utilised to generate electricity which, in turn, was used for production of other petroleum products. But as per the notification dated 18 May 1963 only intermediate petroleum products used as fuel within the refinery of production for manufacture of other finished petroleum products is exempted from duty. The nexus which use of the fuel for production of electricity has with the further use of electricity to produce other petroleum products is too remote and not a manner of use of the fuel, to be covered by the notification dated 18 May 1963.

Reply of the Ministry of Finance is awaited.

(iii) **Aviation fuel**

With effect from 1 March 1982, aviation turbine fuel became classifiable under sub-item (i) of tariff item 7 and duty became leviable at Rs. 500 per kilolitre. As per a notification issued on 2 April 1982 duty in excess of Rs. 338.19 per kilolitre was exempted.

Two assessees were allowed to clear 1866.909 kilolitres of 'aviation turbine fuel' during the period from 1 March 1982 to 1 April 1982 on payment of duty at Rs. 338.19 per kilolitre. Failure to levy duty at the rate of Rs. 500 per kilolitre resulted in duty being realised short by Rs. 3,02,085.

On the omission being pointed out in audit (June 1983 and November 1983) the department issued show cause notice for Rs. 2,26,498. However the notice was vacated in one case by the department on the plea that the effective rate of duty on aviation turbine fuel even before the issue of the notification on 2 April 1982, was only Rs. 338.19 per kilolitre. The reply is incorrect since notification issued on 2 April 1982 is effective only prospectively.

The Ministry of Finance have confirmed the facts (January 1985).

(iv) **Industrial chemicals**

As per notifications issued on 26 July 1971 and 30 October 1974 oxygen, ammonia, furnace oil and heavy petroleum stock, were exempted from duty if used in the manufacture of fertilisers.

In a fertiliser factory, during the period from May 1981 to June 1982, oxygen, ammonia, furnace oil and heavy petroleum stock were used in the manufacture of technical grade urea and calcium ammonium nitrate which were not fertilisers but were industrial chemicals. However, exemption from duty was allowed on oxygen, ammonia, furnace oil and heavy petroleum stock used in the manufacture of the two industrial chemicals. The mistake resulted in duty amounting to Rs. 14,04,043 not being realised.

On the mistake being pointed out in audit (September 1982) the department raised demand (April 1983) and recovered a sum of Rs. 7,98,691. Report on recovery of the balance amount is awaited (May 1984).

The Ministry of Finance have confirmed the facts (December 1984).

(v) **Coke oven gas**

As per a notification issued on 28 February 1982, goods manufactured in one factory and intended for use in any other factory of the same manufacturer are fully exempt provided the procedure set out in chapter X of Central Excise Rules, 1944, is followed and the goods are classifiable under tariff item 68.

A Public Sector Undertaking manufactured 'coke oven gas' in one of its units and cleared the same without payment of duty as per aforesaid notification to another of its units. But the procedure set out in Chapter X was not followed. Irregular grant of exemption resulted in non levy of duty amounting to Rs. 7.69 lakhs on clearances made during the period from March 1982 to August 1982.

On the irregularity being pointed out in audit (January 1983) the department stated (June 1983) that a show cause notice demanding Rs. 9.82 lakhs had since been issued.

The Ministry of Finance have confirmed the facts and stated (December 1984) that no retrospective relaxation of non observance of stipulated Chapter X procedure is permitted. However, it has to be kept in mind that action can be taken if the amendments were published in the Gazette and known to the public on the same date, which was not done. A High Court has pronounced that the effect of the amendment to any notification will take effect from the date the Gazette incorporating any notification is made available to the public and not from the date when any notification was published in the Gazette. The reply is silent on the action taken by the Ministry to give publicity to the notifications from date of their publication in Gazette and inserting clauses to that effect in the notification to prevent confusion in the field as to the date when they become effective. It is also not clear if the continuation of irregularity upto August 1982 is accounted for by delay in publication or publicity of notification dated 28 February 1982, which was intended to be given effect to along with the presentation of the budget.

(vi) **Ship's stores**

As per a notification issued on 7 May 1977, excisable goods supplied as sores for consumption on board of a vessel of Indian Navy are exempt from payment of duty. However, no such exemption is available in respect of vessels of the Coast Guard

Organisation which is separate from the Navy. On quantity of 73.628 kilolitres of high speed diesel oil supplied as ship stores during the period from 12 December 1981 to 8 March 1982 for consumption on board of Coast Guard Vessels no duty was levied though duty amounting to Rs. 24,595 was leviable.

On the mistake being pointed out in audit the department did not accept the mistake, nor did it clarify how the exemption was allowable.

The Ministry of Finance stated (December 1984) that the matter is under examination.

2.38 **Electricity**

(i) As per a notification issued on 1 March 1978 electricity produced by generating stations and supplied to auxiliary plants of such stations for generation purposes is exempt from levy of duty. It was clarified by Government of India in May 1978 that station transformers are not such auxiliary plants in terms of notification dated 1 March 1978 because such transformers are used for converting electrical energy from one voltage to another and they are not used for purposes of generation of electricity.

(a) In two generating stations of a State Electricity Board, electricity consumed in transformers was also claimed to be auxiliary consumption in terms of the aforesaid notification on the ground that the transformer was at a stage prior to bus-bar and unless energy reaches the bus-bar it cannot be distributed. But a transformer necessary for distribution is not one necessary for generation. The irregular grant of exemption resulted in short levy of duty amounting to Rs. 3,12,748 for the period from May 1980 to December 1982 in case of one power house and for the month of January 1983 in case of the other.

On the mistakes being pointed out in audit the department issued a show cause notice (August 1983) demanding duty amounting to Rs. 3,12,748. Report on confirmation of the demand and recovery of the amount is awaited (May 1984).

In their reply (December 1984) the Ministry of Finance have neither confirmed nor denied the facts.

(b) In three generating stations on electricity consumed in station transformers exemption was claimed under aforesaid notification. The claim was allowed incorrectly resulting in short levy of duty by Rs. 6.05 lakhs during the period from April 1981 to September 1981 and May 1982 to February 1983.

On the irregularity being pointed out in audit (May 1982 and May 1983), the department stated that the demand for Rs. 5.21 lakhs in respect of two generating stations had since been raised. Reply in respect of third generating station is awaited (June 1984).

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(c) Exemption was granted on power produced in one generating station of an Electricity Board but used for pumping water in another generating station even though the pumping house was not an auxiliary plant of either of the generating stations. The incorrect grant of exemption resulted in duty amounting to Rs. 8,17,346 not being realised during the period from March 1978 to March 1983.

On the irregularity being pointed out in audit the department issued a show cause notice in October 1982.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(d) A Public Sector Undertaking engaged in operating electric power project was allowed to avail of exemption from duty on 2,27,02,000 units of electricity supplied to its auxiliary plants from May 1982 to September 1982. However as per meter readings only 11,19,484 units of electricity had been consumed

in the auxiliary plants during the said period. Accordingly on 2,15,82,516 units of electricity exemption granted was irregular and resulted in short realisation of duty by Rs. 4,31,650.

On the mistake being pointed out in audit (November 1983), the department issued (December 1983) a show cause-cum demand notice for Rs. 4,31,650.

The Ministry of Finance have confirmed the facts (December 1984).

(ii) As per a notification issued on 1 March 1978, electricity produced by a generating station, an industrial unit or an establishment (including railways) and used in such generating station (including its auxiliary plant if any, industrial unit or other establishment, as the case may be) is exempt from duty. The Board, had clarified in May 1978 that the exemption would not be available in respect of electricity supplied to the workers quarters for lighting, household purposes, hospitals etc.

(a) Four generating stations under a Public Sector Undertaking produced and supplied 1,77,83,309 units of electricity to their staff quarters without payment of duty even though no exemption was available. The mistake resulted in duty amounting to Rs. 3.56 lakhs not being realised during the period from March 1978 to March 1980.

On the mistake being pointed out in audit (January 1980 and January 1981) the Ministry of Finance have stated (December 1984) that the verification of records revealed that the exemption has not been availed of for the electricity supplied to workers quarters for household purposes. Therefore the exemption was allowed correctly. The subtle distinction drawn by the Ministry between electricity used in a residence for household purposes and non household purposes is not in the interest of revenue, nor warranted.

(b) As per another notification issued on 27 April 1978 the electricity generated in a generating station is exempt from so much of the duty as is equivalent to the duty leviable on ten per cent of the electricity so generated. It was clarified that the notification issued on 27 April 1978 was intended to give relief to the assessee against the transmission losses taking place during the process of stepping up of voltage for long distance transmission which is usually done when electricity is transmitted from generating stations. But the notification as worded did not bring out this intention nor exclude any type of generating station and so it covered an industrial unit and other establishments producing and using electricity without transmitting them.

A paper mill generated electricity and used it for captive consumption without payment of duty as per notification dated 1 March 1978. Some of the electricity was also sold to a sister concern and used in residential quarters, but on payment of duty. The paper mill was also allowed exemption from duty on electricity to the extent of 10 per cent of the electricity generated for purposes other than captive consumption as per notification dated 27 April 1978. As a result duty amounting to Rs. 7,15,696 was irregularly exempted during the period from February 1981 to June 1984.

The mistake was pointed out in audit in August 1983.

The Ministry of Finance have stated (December 1984) that the electricity produced by the assessee was subject to the benefit of exemption under both the notifications dated 1 March 1978 and 27 April 1978, in view of the circumstances of generation and use of electricity by the assessee. The legal applicability in principle has since been decided authoritatively by the Appellate Tribunal on 13 January 1984 in a similar case.

The reply is silent on action, if any, taken by the Ministry after 13 January 1984 to rescind its clarification referred to above in relation to the notification dated 27 April 1978. The reply is

not relevant to assessments done from February 1981 to January 1984 contrary to the clarification given by the Ministry at a time when no pronouncements by the Tribunal were available. The contrary directives hold the field after January 1984, on the resolution of which contradiction, the reply is silent.

2.39 **Vegetable products**

As per notification issued on 28 February 1965 and amended from time to time, vegetable product was exempted from so much of duty leviable thereon as was in excess of 5 per cent *ad valorem*.

As per another notification issued on 29 May 1971 vegetable product made from indigenous rice bran oil was exempted from the duty of excise leviable thereon to the extent of Rs. 10 per quintal subject to the condition that the vegetable product made from rice bran oil was issued in admixture with til oil or with vegetable product made from other oils or admixed with both. The exemption was granted subject to a further condition that the vegetable product made from rice bran oil was in excess of one per cent of the total vegetable products in the consignment.

As per yet another notification issued on 15 October 1983 vegetable product, made (i) solely from indigenous rice bran oil or (ii) from a mixture of rice bran oil and other oils before being subjected to the process of hydrogenation for conversion into vegetable product *i.e.*, mixed prior to hydrogenation, was exempted from the duty leviable at the rates specified in the First Schedule to the Excise Act (*i.e.*, the tariff rate) to the extent of Rs. 30 per quintal. This exemption was to be granted subject to the condition that the vegetable product made from rice bran oil is issued in admixture with til oil or with vegetable product made from other oils or with both and that the percentage of vegetable product made from rice bran oil is in excess of 1 per cent of the total vegetable products in the consignment. But where the vegetable products are not mixed but a vegetable product is made from a mixture of rice bran oil with other oils (*i.e.* the oils are

mixed before the mixture is subjected to hydrogenation for conversion into vegetable product) the conditon imposed was that the percentage of rice bran oil (in the mixed oil) should be in excess of 1 per cent of the vegetable product produced out of the mixture.

(i) In five factories rice bran oil was used in manufacture of vegetable product during the years 1980-81 to 1983-84. The quantity of rice bran oil used varied from 138 tonnes to 3656 tonnes and the quantity of vegetable product produced varied from 6514 tonnes to 31028 tonnes. Though as per the notifications exemption was to be allowed only in respect of duty payable on the vegetable product produced from rice bran oil, the exemption was allowed in respect of the duty payable on the mixed vegetable product cleared, which mixture included the vegetable product produced from oils other than rice bran oil also. The excess grant of exemption on the mixture of vegetable products cleared by the five manufacturers resulted in short levy of duty by Rs. 25.52 lakhs on clearances made during the period from April 1980 to October 1983.

(ii) A manufacturer cleared 1892 tonnes of mixed vegetable product during the period from October 1983 to March 1984. In the production of the mixed vegetable product 312 tonnes of rice bran oil was used and exemption at the rate of Rs. 30 per quintal was claimed only on the vegetable product produced from the rice bran oil. As pointed out by the Vanaspati Manufacturers Association of India technologically it is not desirable to mix the rice bran oil with other oils and thereafter produce the vegetable product though such a technology is visualised in the notification. From April 1984 exemption was allowed at the rate of Rs. 30 per quintal on 1717 tonnes of mixed vegetable product on the wrong presumption that in the factory the oils were mixed before hydrogenation. Exemption should have been allowed only on vegetable product produced out of 67 tonnes of rice bran oil (which vegetable product was thereafter mixed with other vegetable products). The irregular grant of exemption resulted in short levy of duty by Rs. 5.15 lakhs.

(iii) Under the notification issued on 15 October 1983 the exemption at the rate of Rs. 30 per quintal was to be allowed only if duty was payable at the tariff rate given in First Schedule to the Excise Act. This exemption was not available, if duty was being paid after enjoying the exemption granted under the notification dated 28 February 1965 for payment of duty at 5 per cent *ad valorem*. The exemption at Rs. 30 per quintal was, however, allowed over and above the exemption reducing duty from 10 per cent to 5 per cent *ad valorem*. The irregular grant of double exemption resulted in short levy of duty by Rs. 30.54 lakhs on clearances of vegetable products made during the period from October 1983 to June 1984 by five manufacturers.

The aforesaid short levies of duty due to irregular grant of exemption were pointed out in audit in October 1984.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.40 **Plastics, chemicals and medicines**

(i) **Plastic bags**

As per a notification issued on 29 May 1971 certain articles made of plastic classifiable under tariff item 15A(2) were exempt from duty. Plastic sheets and plastic films are two such articles. But bags made of sheets or films which are classifiable under tariff item 68 are not included in such articles.

A manufacturer of poly bags (plastic bags) produced them from 'Polythene sheets'. The 'Poly bags' cleared during the period from April 1980 to March 1981 were incorrectly exempted from duty amounting to Rs. 3,29,249.

On the mistake being pointed out in audit (October 1981) the department admitted the mistake and stated (October 1983) that two show cause notices for Rs. 15.39 lakhs covering clearances made during the period from April 1976 to June 1981 had since

been issued (May 1982). Report on confirmation of demand and recovery is awaited (April 1984).

The Ministry of Finance have not denied the facts in their reply (December 1984).

(ii) **Resin**

As per a notification issued on 1 June 1971 duty leviable on 'alkyd resin' was wholly exempted. However, the notification specifically excluded blends or mixtures of alkyd resin with other artificial or synthetic resins, from the grant of exemption.

On 'rosinated alkyd medium' produced in a factory and used captively in the manufacture of paints, no duty was levied even though the notification dated 1 June 1971 did not cover the item. As per the Chemical Examiner's report, the product was a blend of alkyd resin with esterfied artificial resin (estergum). In the result duty amounting to Rs. 7.60 lakhs was irregularly foregone on clearances made during the period from March 1982 to July 1982.

On the mistake being pointed out in audit (September 1982) the department did not accept the objection and stated (May 1984) that the blend of alkyd with estergum (artificial resin) was covered by the notification since estergum arose in the course of manufacture of the products. The reply is not correct, because so long as the product is not unblended alkyd resin, grant of exemption was irregular.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iii) **Gas**

As per a notification issued on 19 May 1979 ammonia gas and synthesis gas supplied by a fertiliser corporation to a heavy water plant was exempt from payment of duty provided the gases were returned in full after extraction of deuterium and the gases were used in the manufacture of fertiliser.

Ammonia and synthesis gases supplied to a heavy water plant were not returned in full, but exemption from duty was allowed under the aforesaid notification. The fertiliser corporation, realised the value of ammonia gas, and synthesis gases not returned and still excise duty was not demanded. On gases not received back during the period from January 1980 to February 1982 and from July 1982 to March 1983 duty not realised amounted to Rs. 11.71 lakhs.

On the non levy being pointed out in audit (June 1983) the department issued a show cause-*cum* demand notice for Rs. 11.71 lakhs in March 1984.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iv) **Medicines sold in retail and in bulk**

As per a notification issued on 8 October 1966, excise duty payable on patent or proprietary medicines was exempted to the extent it exceeded the duty payable on the declared retail price of the medicines after deducting therefrom discount at 25 per cent.

(a) A manufacturer of injection ampoules of a certain medicine priced them at Rs. 1.34 per ampoule. The retail price on a ten ampoule package was indicated as Rs. 13.40. But on hundred ampoules packages it was indicated as Rs. 107.16. Thus latter price was wrongly taken as retail price and discount of 25 per cent was allowed thereon to arrive at the assessable value for purposes of grant of exemption. The mistake was committed inspite of a tariff ruling issued by the Board on 19 December 1968 (designed to prevent such mistakes). The mistake resulted in duty being realised short by Rs. 44,700 on clearances made during the period from January 1982 to March 1983.

On the mistake being pointed out in audit (June 1983) the department stated (September 1983) that the retail price of Rs. 107.16 was also approved. The reply is not correct because ampoules are sold only in retail at Rs. 1.34 per ampoule and

that price stands approved. The price of Rs. 107.16 should not have been accepted by the department without verifying whether in fact the price can co-exist with the price of Rs. 1.34 printed on the ampoules as the retail price.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(b) Where the medicines are supplied directly from the factory of the manufacturer to Government departments including railways, local bodies and hospitals partial exemption from excise duty was available under another notification issued on 16 July 1966. In such cases duty in excess of what is chargeable at 12.5 per cent of the price (excluding exiese duty) contracted between the parties for such supplies was exempted.

A manufacturer of patent or proprietary medicines was allowed to clear the products after enjoying exemption in terms of the notification issued on 8 October 1966. Certain packs of medicines supplied under contract to Government departments, railways, local bodies and hospitals were also cleared similarly instead of allowing exemption under notification issued on 16 July 1966. The mistake resulted in duty being realised short by Rs. 34,000 on clearances made under the contracts.

On the irregularity being pointed out in audit (May 1983) the department stated (December 1983) that it could not compel an assessee to opt for clearance under any particular notification, and that an option was available to him to choose to clear his goods under either notification.

The Ministry of Finance have stated (December 1984) that benefit under both the notifications can be availed of by the assessee at his option.

The notification issued on 16 July 1966, is a specific notification applicable to medicines supplied to Government departments, hospitals etc. under a contracted price which are not sales through wholesalers or retailers. Therefore, the two notifications cover two distinct class of clearances. Reply of the Ministry of Finance is not correct.

Similarly another manufacturer of patent or proprietary medicines was also allowed the benefit of exemption under notification dated 8 October 1966 on supplies made to Government departments, railways, local bodies and hospitals instead of allowing benefit of exemption under notification dated 16 July 1966. The mistake resulted in underassessment of duty by Rs. 18,420 on supplies made during the years 1981 and 1982.

On the mistakes being pointed out in audit (April 1983) the department stated (July 1983) that assessee can opt for benefit under either of the two notifications. But the two notifications cover two separate class of sales, one to retailers and the other to bulk consumers.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(v) **Medical samples**

As per a notification issued on 1 April 1977 clinical samples of proprietary medicines were exempted from payment of duty provided they satisfied the two conditions (i) that the samples are packed in a form distinctly different from regular trade packings and (ii) that each smallest packing was marked with the words "Physician's sample, not to be sold".

A manufacturer was allowed to clear clinical samples of medicines which were marked 'Physician's sample, not to be sold'. But in one of the cases the samples cleared were not packed in a form distinctly different from regular trade packing. Incorrect grant of exemption resulted in non levy of duty amounting to Rs. 16,557 on clearances of the samples made during the period from July 1981 to October 1981.

On the mistake being pointed out in audit (December 1982) the department stated (December 1983) that the packing of the samples could not be changed by the manufacturer without the

approval of their foreign principals. However, the department has since issued (April 1984) a show cause notice demanding Rs. 16,557.

The Ministry of Finance have confirmed the facts (December 1984).

(vi) **Patent medicines**

As per notifications issued on 3 May 1969 and 19 June 1980 any patent or proprietary medicine containing one or more of the ingredients specified in the schedule to the said notification was exempted from duty in excess of 2.5 per cent *ad valorem* on clearances made upto 18 June 1980, and on clearances made thereafter levy of duty was wholly exempted. The grant of the exemption was subject to the condition that if the medicine, in addition, contained any ingredient not specified in the said schedule such ingredient should be a pharmaceutical necessity; otherwise the exemption will not be available. But even if an ingredient, not specified in the schedule was a pharmaceutical necessity, it must be therapeutically inert and should not interfere with therapeutic or prophylactic activity of the ingredient or the ingredients specified in the schedule, if the exemption is to be availed of.

(a) A manufacturer cleared two medicines, 'subamycin' and 'enteromycetin caplets—500', which contained 'calcium carbonate' as ingredient. Calcium carbonate was not specified in the aforesaid schedule and it was not therapeutically inert. However, the manufacturer was allowed the exemption as per the aforesaid notification, resulting in duty being levied short by Rs. 14.75 lakhs on the clearances made during the period from March 1979 to March 1982.

On the mistake being pointed out in audit (May 1982), the department stated (June 1982) that the Assistant Drug Controller of the State had certified (May 1982) that the

ingredient was used as dusting powder for sugar coating of tablets and it was a pharmaceutical necessity, and was therapeutically inert. The department agreed with him (October 1984) and was of the view that the ingredient was therapeutically inert in so far as the said medicines are concerned; because its concentration in each tablet was below 600 milligrammes and it had no therapeutic value. But as per pharmacopoeia "Calcuim carbonate" is an antacid and is not therapeutically inert. The department has not stated why calcium carbonate needs to be used as a dusting powder in sugar coating.

The Ministry of Finance have stated (December 1984) that the Director of Drugs Control, in the state has given an opinion that calcium corbonate used in the medicines as dusting power was therapeutically inert and is considered a pharmaceutical aid in the context. Therefore, the conditions in the said notifications were satisfied. The reply is not categorical and is an attempt at equating a "pharmaceutical necessity" demanded by the notification with the expression "pharmaceutical aid in the context".

A similar objection was highlighted in paragraph 2.47(b) of Audit Report 1980-81, about "calcium carbonate" and "magnesium carbonate" used as antacid and laxative in the medicine 'Amezole' containing the drug metronidozole and involving irregular exemption of duty amounting to Rs. 3.35 lakhs. The objection is still under examination in the Ministry of Finance for over three years.

(b) A manufacturer of 'Dembutol' was allowed to avail of the aforesaid exemption but the product contained as ingredients dibasic calcium phosphate, carboxy methyl cellulose and methlene chloride which were not specified in the schedule. The said ingredients were not therapeutically inert. Incorrect grant of exemption resulted in duty being levied short by Rs. 8.19 lakhs on clearances made during the period from June 1981 to March 1983.

On the mistake being pointed out in audit (May 1983), the department stated (May 1984) that the Drug Controller in the concerned State Government had certified (June 1983) that the first two ingredients, were therapeutically inert, only in dembutol. The third ingredient being highly volatile gets removed during the manufacturing process. However, the pharmacopoeia indicates the first two ingredients as having therapeutic value and the exemption notification does not refer to inertness only in relation to any particular medicine.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.41 **Tyres, papers, cement and glassware**

(i) **Tyres**

As per a notification issued on 1 March 1979, on tyres exemption from duty was allowed to the extent of the duty paid on certain specified inputs like synthetic rubber, carbon black, and rubber processing chemicals and subject to the procedure prescribed in Rule 56A of the Central Excise Rules, 1944, being followed.

A manufacturer of tyres and tubes was allowed exemption from duty to the extent of duty paid on the specified inputs under the aforesaid notification. But the inputs were used for the manufacture of treading and gum-compound which in turn was used in the manufacture of tyre cord fabrics which went into the manufacture of tyres. In the absence of separate accounts for the manufacture of fabrics using gum-compound and its use in tyres it was not clear how the procedure prescribed in Rule 56A could be followed in such cases. Exemption allowed to the extent of Rs. 87,244 during the period from April 1982 to February 1983 was, therefore, irregular.

On the irregularity being pointed out in audit (May 1983), the department did not accept the objection and stated (September 1983) that in all probability Government was not

ignorant of the manner in which the raw material has necessarily to be used, when it issued the exemption notification.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) **Paper**

Converted types of paper is the term used to describe papers commonly known as 'imitation flint paper' or 'leatherette paper' or 'Plastic coated paper' or paper obtained by one side of the paper being subjected to printing of colour, with or without design, irrespective of the fact whether or not such paper was subsequently varnished or glazed by chemicals or embossed. Waxed paper is not covered by the term "converted type of paper". On 28 February 1982, a notification was issued exempting converted types of paper (other than wall paper) from duty provided they have been produced out of duty paid base paper.

A manufacturer of waxed paper was allowed to clear his products without payment of duty, from 28 February 1982 under aforesaid notification on the plea that waxed paper was nothing but a converted type of paper. The irregular grant of exemption resulted in duty amounting to Rs. 3.83 lakhs not being levied on clearances of waxed paper made during the period from March 1982 to February 1984.

The irregularity was pointed out in audit in April 1984.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iii) **Cement**

On grey portland cement and certain other varieties of cement (whether produced in a large plant or in a mini plant) which were subject to price and distribution control by Government

under the Cement Control Order, 1967, effective rates of duty were reduced below the tariff rate by issue of exemption notification with effect from 1 March 1983. The effective rate of duty on portland cement was fixed at Rs. 205 per tonne. But as per a notification issued on 1 March 1983 further exemption was granted on grey portland and certain other varieties of cement as was produced in a mini cement plant. On the grant of exemption, duty payable was only Rs. 170 per tonne. The rate of Rs. 170 per tonne was conditional upon the cement being subject to price control by Government. However, Government removed price control on cement produced in mini coment plants under its price policy which came into force from 28 July 1982. In the result, on cement produced in mini cement plants which was not subject to price control, duty was leviable at the rate of Rs. 205 per tonne.

On clearances of 18,195 tonnes of portland cement not subject to price control made from a mini cement plant during the period from 16 March 1983 to 31 October 1983, duty was levied only at the rate of 170 per tonne resulting in duty being levied short by Rs. 6,36,843.

On the above mistake being pointed out in audit (January 1984) the department stated that the mini cement plant was not subject to Monopolies and Restrictive Trade Practices Act, 1969. Further the notification did not cover only "white cement or other varieties of cement" the price of which is not controlled by the Cement Control Order, 1967. The notification was further subject to the definition of cement given in the Cement Control Order, 1967. Therefore, further reduction in rates of duty was admissible on grey portland cement.

The Ministry of Finance have reiterated (January 1985) the plea of the department that the term 'other varieties of cement' refers to only special varieties of cement and not to grey portland

cement and that the fact of price control had relevance only to such special varieties of cement. The above pleas were discussed by the Ministry of Finance with Ministry of Law and representative of Comptroller and Auditor General of India in a tripartite meeting held on 29 November 1983 in the context of a similar objection reported in paragraph 2.42 of Audit Report for the year 1982-83. In the discussion the view was that the term 'other varieties of cement' would cover portland cement also. Therefore, grey portland cement the price of which was not controlled by the Cement Control Order, 1967 would not be eligible for the grant of exemption under the notification dated 1 march 1983 even if it was produced in a mini cement plant.

(iv) **Glassware**

As per a notification issued on 2 November 1968 and amended on 17 June 1972 stoneware which are only salt glazed are exempt from the whole of the duty of excise leviable thereon.

A manufacturer of salt glazed stoneware pipes was allowed to clear them without payment of duty as per aforesaid notification. But the stoneware pipes were not only salt glazed, but the inside surface of the pipes were painted with coating composition based on "borax" and other materials like iron oxide. Also colour glaze was done before heating and before salt glaze treatment in the kiln. Therefore, exemption under the aforesaid notification was not available. The irregular grant of exemption resulted in duty being realised short by Rs. 7.06 lakhs on clearances made during the period from November 1979 to March 1983.

The irregularity was pointed out in audit in June 1983. The department did not accept the objection but all the same issued a show cause-*cum* demand notice to the assessee.

The Ministry of Finance have stated (December 1984) that the sample of the product was sent to the Chemical Examiner Calcutta Customs House who opined that the glazed portion does not show the presence of any colouring compound and the sample is a variety of salt glazed ware. However, more sample have been sent for chemical examination to ascertain whether stoneware pipes were only salt glazed or glazed with some colour compound, in order to determine the applicability of exemption notification.

2.42 **Yarns**

(i) As per a notification issued on 13 November 1982 duty in excess of effective rates of duty specified in the notification was exempted in respect of various types of cotton and cellulosic spun yarn. The exemption in respect of yarn in cross reel hanks was allowable subject to the condition that such yarn is purchased by a Registered Handloom Cooperative Society or by an organisation set up or approved by the Government for the development of handlooms.

On cotton and cellulosic spun yarn in cross reel hanks cleared by 24 mills in the jurisdiction of three collectorates exemption was allowed even though they were not sold to a cooperative society or approved organisation as aforesaid. The mistake resulted in short levy of duty by Rs. 1.11 crores on clearances made during the period from November 1982 to February 1984. The short levy in other mills remains to be ascertained.

On the mistakes being pointed out in audit (January 1984) the department stated that when an earlier notification was superseded by the notification issued on 13 November 1982, no change in effective rates of duty was contemplated. One Collector stated (April 1984) that he had already brought the ambiguous wording in the notification to the notice of the Board in 1983.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) A manufacturer of cellulosic spun yarn was allowed exemption from duty amounting to Rs. 28,90,470 on clearances of cellulosic spun yarn even though there was no notification granting exemption. The exemption was incorrectly called set off but was nevertheless exemption granted without any legal authority.

On the irregular grant of exemption being pointed out in audit (December 1982), the department stated (June 1984) that it was a lapse on the part of the departmental officers.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iii) As per two notifications issued on 28 February 1982 on cellulosic spun yarn containing upto a sixth of non-cellulosic fibre by weight duty was leviable at the rate of Rs. 6 per kilogram upto 28 February 1983 and thereafter at Rs. 9 per kilogram.

From a manufacturer of cellulosic spun yarn duty was charged at Rs. 6 per kilogram on clearances made during the period from March 1983 to December 1983 instead of at Rs. 9 per kilogram The mistake resulted in duty being levied short by Rs. 5.08 lakhs.

On the mistake being pointed out in audit (December 1983) the department stated (May 1984) that a show cause-*cum* demand notice for Rs. 5.08 lakhs had since been issued. But demand amounting to Rs. 1.51 lakhs was barred by limitation. Report on recovery is awaited (July 1984).

The Ministry of Finance have confirmed the facts (December 1984).

(iv) As per a notification issued on 3 November 1962 nylon yarn of 210 deniers with a tolerance of 4 per cent meant for use in the manufacture, repairs or both of fishing nets and parachute

cords was exempted from so much of duty as was in excess of Rs. 4 per kilogram.

A manufacturer of nylon yarn of two ply and three ply claimed that denier of each ply in the yarn was 210. Denier of any yarn of silk, nylon or rayon whether spun or otherwise is the number of grams per 9000 metres of the yarn. The denierage of a fibre or ply in the yarn is not relevant but only that of the yarn. Further as per chemical test report the plies in the yarn could neither be distinctly seen nor be separated mechanically by hand as was usually possible in any normally plied yarn. It was not even possible to say that the yarn consisted of plies. Still he was allowed to clear the yarn after paying duty at the rate of Rs. 4 per kilogram as per above notification. But duty was leviable at the rate of Rs. 19.60 per kilogram because the denier of the yarn was much in excess of 210. The incorrect grant of exemption resulted in short levy of duty by Rs. 5.15 lakhs on clearances made during the period from July 1980 to March 1981.

On the short levy being pointed out in audit (December 1981), the department stated (May 1983), that the matter had been referred to the Board for clarification. Report on decision from the Board is awaited (June 1984).

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(v) **Waste yarn**

(a) On non-cellulosic wastes classifiable under tariff item 18(iv) duty is leviable at the rate of Rs. 9 per kilogram. However, as per a notification issued on 23 June 1979 on such wastes arising during the manufacture of crimped yarn duty is leviable only at Rs. 2 per kilogram.

A manufacturer of man-made non-cellulosic textured yarn cleared waste arising during the manufacture of textured yarn (not crimped yarn) at the rate of Rs. 2 per kilogram instead of at Rs. 9 per kilogram. On the 15,733 kilograms of such waste cleared during the period from September 1980 to March 1983 duty was realised short by Rs. 1,10,130.

On the short levy being pointed out in audit (October 1983) the department did not accept the objection and stated (January 1984) that texturising includes crimping. However, the exemption notification covers only crimped wastes and not textured wastes, even though crimping is a kind of texturing. The reply is not relevant to such textured waste which was not crimped waste.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(b) On wastes of non-cellulosic textured filament yarn (other than crimped yarn) cleared by another manufacturer during April 1983 duty was levied at Rs. 2 per kilogram instead of Rs. 9 per kilogram. The mistake resulted in short levy of duty by Rs. 39,746.

On the mistake being pointed out in audit (March 1984), the department stated (March 1984) that texturised yarn includes yarn with crimps, coils loops or curls. But "crimped yarn" is not textured yarn though textured yarn includes crimped yarn.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(vi) **Processed yarn**

As per a notification issued in November 1979, where man-made fabrics are subjected to the processes of calendering with plain rollers, singing padding, back filling, cropping and hydro extraction they are exempted from the whole of the additional

duty of excise leviable thereon but subject to the condition that the fabrics were not subjected to any process in the same factory other than those mentioned above.

A processing company was engaged in dyeing and bleaching man-made fabrics, which it cleared after payment of duty. The fabrics were taken out but were again brought to the factory after hand printing them outside. The fabrics were then subjected to process of calendering and the fabrics were allowed to be cleared without payment of any further duty quoting the notification aforesaid. The fabrics having undergone the process of dyeing and bleaching (process not mentioned) in the same factory in which they were subjected to calendering, the exemption under the notification was not available. The irregularity resulted in short levy of duty by Rs. 69,352 on clearances made during the period from May 1981 to December 1981.

On the irregularity being pointed out in audit (June 1982), the department stated (March 1984) that as the manufacturer had cleared the fabrics on payment of duty, only the processes done after their return to the factory were relevant for purposes of the notification. But such a view goes contrary to the intention behind the notification and allows splitting of calendering process in the same factory from the other processes carried out in the same factory. In November 1983 the department issued demand for Rs. 91,917 on clearances made during the period from 21 March 1981 to 23 December 1981 only as a precautionary measure and had not accepted the objection

The Ministry of Finance have stated (December 1984) that once the man-made fabrics are cleared after bleaching or dyeing and on payment of duty, they enter the stream of trade and lose their identity. Such bleached or dyed fabrics when returned to the assessee after they have been subjected to the process of printing and have been cut into specified lengths would be eligible for exemption under the said notification dated 24 November 1979 as the only process to which the new category of goods were subjected to was calendering. If the reply of the Ministry

be correct, the condition in the notification that the fabrics be subject to no other process can be defeated so very easily by merely clearing the fabrics out of the factory and bringing them back into it for carrying out other processes. The reply is silent on why there is such an ineffective and easily defeatable condition in the notification which has also been issued by the Ministry in the exercise of its power of delegated legislation.

2.43 **Fabrics**

As per a notification issued on 13 November 1976 on processed woollen fabrics (classifiable under tariff item 21) woven in a factory other than a composite mill and processed by an independent processor, duty in excess of 0.80 per cent was exempted.

Three firms were engaged in the processing of woollen fabrics. They cleared their products on payment of duty after enjoying the exemption aforesaid on the ground that they were independent processors engaged exclusively in the processing of woollen fabrics.

The wife of the one of the partners in the first firm was a partner in a firm that owned a spinning mill. Also the husband (first partner in first firm) one brother-in-law and wives of two brothers of the second partner in the first firm were partners in the firm owning the spinning mill. Two female partners in the second firm were close relatives and the husband of one and two daughters-in-law of the other were partners in a firm owning a weaving and spinning mill. The husband and daughter-in-law of the sole proprietor of the third firm were the partners in a firm owning a spinning mill and her three brothers-in-law were partners in another firm owning another spinning mill.

Though the letter of the law that the three firms be independent processors was not violated, duty amounting to Rs. 27.27 lakhs was avoided during the years 1981-82 to 1983-84 by adopting the *modus operandi* for avoidance of duty indicated above.

The avoidance of duty was pointed out in audit (in June 1983, May 1984 and June 1984); the department did not make any comment.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.44 **Copper, iron and steel**

(i) **Copper wire rods**

As per a notification issued on 16 July 1966 wire bars, wire rods and castings of copper are exempted from levy of duty, if they are manufactured from virgin copper in any crude form on which the prescribed amount of duty of excise or additional duty (countervailing duty) leviable under Customs Tariff Act, 1975 has already been paid.

A manufacturer produced copper wire rods, out of copper wire bars on which appropriate amount of duty had been paid. He was allowed benefit of the aforesaid exemption on the ground that the wire rods were manufactured out of copper wire bar and the wire bars were virgin copper in crude form. But wire bar is not copper in crude form and it is classifiable under tariff item 26A(ia) and not under tariff item 26A(i) covering copper in crude form. Incorrect grant of exemption resulted in non-levy of duty amounting to Rs. 1,90,33,489 on 5768 tonnes of copper wire rods, cleared during the period from April 1982 to December 1983.

On the mistake being pointed out in audit (March 1984), the department stated (April 1984) that wire bars were only copper in crude form. However, the department issued show cause-cum demand notice for an amount of Rs. 79,56,559 in respect of 2172 tonnes of wire rods. Report on recovery of duty is awaited.

The Ministry of Finance have confirmed the facts (December 1984)

(ii) Iron and steel

As per a notification issued on 30 November 1963, iron and steel products classifiable under tariff item 26AA(ia) are exempt from payment of duty if they are manufactured out of other iron or steel products falling under tariff item 26AA(ia) on which the appropriate amount of duty of excise has already been paid.

(a) A manufacturer of steel forgings produced the goods out of imported as well as indigenous iron and steel products. He cleared them without payment of duty in terms of the notification dated 30 November 1963. The notification only covers steel forging manufactured from iron and steel products on which duty of excise has been paid. It does not cover imported iron and steel products on which additional (countervailing) duty has been paid. Therefore, on forging produced from imported iron and steel products duty was realised short by Rs. 10.89 lakhs on clearances made during the period from April 1982 to July 1983.

On the mistake being pointed out in audit (September 1983), the department stated (February 1984) that a show cause-*cum* demand notice for the amount had since been issued and it is under adjudication.

The Ministry of Finance have stated that legally there was short levy of duty but the intention of the Ministry was to allow exemption even if countervailing duty is paid. Due to drafting mistake, the intention was not carried into the notification.

(b) A manufacturer of steel wires produced the goods out of imported alloy steel rods. He cleared them without payment of duty in terms of the notification dated 30 November 1963. But on the imported iron and steel products only additional (countervailing) duty had been paid and not excise duty. Therefore, on steel wires produced from imported alloy steel rods duty was realised short

by Rs. 8.34 lakhs on clearances made during the period from April 1982 to March 1983.

The omission was pointed out in audit in March 1984.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(c) A manufacturer of mild steel bars and angles produced the goods out of imported as well as indigenous iron and steel products. He used 115 tonnes of imported mild steel products on which collection of countervailing duty was stayed by a court. The bars and angles were however allowed to be cleared without payment of duty in terms of the notification issued on 30 November 1963. But the notification only covers iron and steel products manufactured from iron and steel products on which duty of excise has already been paid. It does not cover imported iron and steel products on which only additional (countervailing) duty has been paid (though in this case even payment of countervailing duty was stayed). Therefore, on bars and angles produced from imported iron and steel products duty was realised short by Rs. 41,654.

The irregularity was pointed out in audit in December 1983.

Reply of the Ministry of Finance is awaited (December 1984).

(iii) **Steel products**

As per two notifications issued on 30 November 1963 and 13 May 1980 iron or steel products classifiable under tariff item 26AA(ia) and iron or steel products classifiable under tariff item 26AA(iii), were exempt from payment of excise duty, if they were manufactured from the raw materials specified in the said notification or combination thereof.

In three manufacturing units on 771 tonnes of iron or steel products classifiable under tariff item 26AA(ia) and 26AA(iii) which were produced from 'steel casting' (not a specified raw

material) exemption was irregularly granted and clearances were made during the period from July 1982 to June 1983. Duty amounting to Rs. 2,79,733 was not realised.

On the mistake being pointed out in audit (September 1983), the department accepted the objection and stated (January 1984) that show cause notices demanding the duty had since been issued to the three units (November 1983). Report on confirmation of demands is awaited (April 1984).

The Ministry of Finance have confirmed the facts (December 1984).

(iv) **Steel pipes and tubes**

As per a notification issued on 1 March 1973 and amended on 7 February 1976 steel pipes and tubes, other than seamless pipes and tubes are exempt from the whole of excise duty, if they are made from plates, sheets, strips, skelp, hoops or flats not exceeding 5 mm in thickness on which the appropriate duty of excise has already been paid.

A manufacturer of pipes and tubes produced them out of strips exceeding 5 mm in thickness but was allowed the aforesaid exemption irregularly. In the result excise duty amounting to Rs. 15.42 lakhs was not realised on clearances made during the period from February 1982 to December 1982.

On the mistake being pointed out in audit (May 1983) the department stated that only flats and hoops and not plates, strips, sheets and skelp are required to be of thickness less than 5 mm. The reply is not correct and the definition of hoops and flats given under tariff item 25 covering iron and steel and products thereof indicates that the criterion of 5 mm thickness is applicable to all the products.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(v) **Steel flats**

As per a notification issued on 13 May 1980 on steel flats of thickness 5 mm or less duty was leviable at Rs. 450 per tonne but reduction of Rs. 330 per tonne was allowable if the flats were manufactured out of steel ingots of semi-finished steel on which appropriate amount of duty had been paid. As per a notification issued on 1 August 1983 duty again became leviable at Rs. 450 per tonne but reduction by Rs. 130 per tonne was allowable if the flats were produced with the aid of electric furnace.

From a manufacturer of steel flats duty was continued to be realised at the rate of Rs. 120 per tonne even after 1 August 1983 instead of at Rs. 320 per tonne. The mistake resulted in duty being realised short by Rs. 1,25,020 on 344 tonne of flats cleared between August 1983 and February 1984.

The omission was pointed out in audit in March 1984.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(vi) **Steel rails**

As per a notification issued on 18 June 1977 on rails and sleeper bars duty in excess of Rs. 175 per tonne was exempted subject to the condition that they were actually used for railway track and the procedure set out under Chapter X of the Central Excise Rules, 1944 was followed. Otherwise, duty was leviable at the rate of Rs. 330 per tonne.

From a factory manufacturing rails, goods were despatched to the Railways on payment of duty at the rate of Rs. 175 per tonne. Warehousing certificates in respect of 1733 tonnes of rails despatched during the years 1980-81, 1981-82 and 1982-83 were, however, not received from the Railways till April 1984 nor was it ascertained whether the rails were actually used for railway track. No demand for the differential duty amounting to Rs. 2,95,426 was raised by the department.

On the reasons being enquired in audit (in January and February 1984), the department stated (March 1984) that demand for duty amounting to Rs. 2,95,426 had since been raised against the manufacturer and a show cause notice was also issued (March 1984). However, department stated that liability could not be fixed on the consignor of the rails since the consignee had executed necessary bond. But the responsibility for obtaining warehousing certificates from the consignees rests on the consignor who is liable for duty otherwise. Moreover, the recovery against the bond executed by the consignee had not also been made.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.45 **Aluminium**

Excisable goods can be exempted from the whole or any part of the duty leviable thereon by issue of notifications under Rule 8(1) of Central Excise Rules, 1944.

Where duty payable on output (excisable goods) is exempted to the extent of duty paid on any input (excisable goods) used in the manufacture of the output the input goods continue to remain duty paid goods for the purpose of valuation of the output (on cost basis) under Section 4 of the Central Excises and Salt Act, 1944, and duty paid is part of the cost of the input goods.

Where credit is allowed under Rule 56A *ibid* to the extent of duty already paid on raw materials or components (inputs) which are used in the manufacture of excisable goods (output), on the credit being allowed the inputs become non duty paid. This is so because the credit is allowed to be utilised towards payment of duty on the finished excisable goods (output).

When only Rule 56A is invoked there is no grant of exemption, and the duty paid on the output goods is the whole of the duty payable. The duty is paid by utilising the credit allowed

towards payment of duty on output. When credit becomes inadequate then duty is paid in cash.

If the value of the output is required to be computed on cost basis, in cases where credit towards duty paid on inputs is allowed, then the duty paid on inputs is no longer a part of the cost of the input for purposes of valuation of the output (on cost basis). Therefore, in such cases (and only in such cases) the value of the output goods will not include the duty paid on the input, because credit for that duty has been allowed, thereby effectively making the inputs non duty paid goods. The costed value of such outputs, therefore, is exclusive of the duty paid on the inputs.

In November 1980 in deciding a revision application, Government confirmed that if duty paid raw material is brought into a factory and credit for the duty paid on such raw materials is allowed under Rule 56A such materials will become non-duty paid raw materials.

(i) **Plates, sheets and circles**

As per a notification issued on 3 December 1981, on aluminium plates, sheets and circles (other than circles having thickness from 0.56 mm to 2 milimetres) duty in excess of 26 per cent was exempted. On circles having thickness from 0.56 mm to 2 mm, duty in excess of 15 per cent was exempted, if they are manufactured from aluminium of any description specified in the notification on which duty of excise or countervailing duty has been paid.

(a) A manufacturer used duty paid aluminium ingots, produced in another factory in the manufacture of aluminium plates sheets and circles. He was allowed credit towards the duty paid on the ingots. On credit being taken for duty paid on the raw materials (ingots) they become non-duty paid and therefore, no exemption from duty was to be allowed on the plates, sheets

and circles manufactured. But, the exemption was allowed, resulting in duty being realised short by Rs. 48.02 lakhs on clearances made during the month of March 1982.

The short levy was pointed out in audit in April 1982; but the department did not admit the objection and stated (April 1982) that the words 'duty paid' in the notification meant duty discharged by the manufacturer of 'inputs' and the character of the goods remained duty paid even after grant of credit. (See contrary view taken by the department in paragraphs 2.21 (iv) of this report). However, subsequently the department issued two show cause notices (September 1983) demanding Rs. 12.89 crores on clearances made during the period from December 1981 to August 1983.

(b) Similarly, two more manufacturers of aluminium, sheets, strips and circles were also granted double benefit of credit for duty paid on inputs and exemption from duty on output resulted in short-levy of duty by Rs. 20.36 lakhs and 6.33 lakhs on clearances made during the period from April 1983 to November 1983 and from March 1982 to October 1983 respectively.

On the mistake being pointed out in audit (February and March 1984) the department gave similar reply as above.

Similar mistakes involving duty amounting to Rs. 6.94 crores were reported in paragraph 2.58(i) to (iv) of Audit Report for the year 1982-83.

The Ministry of Finance have stated (December 1984) that the Appellate Tribunal has since held (in 1984 ECR 1189 and 1984 ECR 1866 CEGAT) that where duty is exempted and a credit procedure is followed in addition, or where credit is

granted under Rule 56A and there is no express bar to the grant of exemption, then on grant of proforma credit, the duty paid raw material will not become non-duty paid.

The CEGAT has, however, distinguished the exemption-cum-proforma credit procedure as per a notification issued under Rule 8(i) from the set off procedure under Rule 56A where real (not proforma) credit is allowed and no exemption is granted. The reply of the Ministry is silent on remedial action proposed to be taken for the future on the need for and grant of double benefit arising from interpretation given by the Tribunal of the notifications issued by the Ministry.

(ii) **Extruded shapes, pipes and tubes**

As per a notification issued on 3 December 1981 on extruded aluminium shapes and sections including extruded pipes and tubes, duty in excess of 26 per cent was exempted if the products were manufactured out of aluminium on which appropriate duty of excise or countervailing duty had been paid.

Ten manufacturers of extruded shapes and sections and extruded pipes and tubes of aluminium (including collapsible tubes) were allowed credit under Rule 56A of the Central Excise Rules, 1944 towards duty paid on aluminium ingots, billets, slabs, slugs or strips which were used in the manufacture of the specified finished products. However duty was levied only at 26 *per cent ad valorem*, on the finished products, under the notification referred to above instead of at 40 *per cent*. The grant of credit for duty paid on the ingots and also grant of exemption under aforesaid notification, as if the appropriate duty had been paid on the inputs, resulted in double benefit to the manufacturer with consequent loss of duty amounting to Rs. 1.93 crores on clearances of outputs made during various periods between December 1981 to November 1983.

On the mistakes being pointed out in audit (between July 1983 and February 1984) the department did not accept the objection in 6 cases and stated that the double benefit could not be denied to the manufacturer and that on grant of credit material did not become non duty paid. The department also stated (November 1983) that in July 1975 the Law Ministry had disagreed with the view that on grant of credit for duty paid, such goods become non-duty paid. However, in November 1980 in deciding a revision application the Government had held that on grant of credit for duty paid, the goods become non-duty paid.

Reply is awaited in 3 cases. In one case the department had issued three show cause-cum demand notices in October 1983 and December 1983 for Rs. 2.47 crores covering clearances made during the period from 3 December 1981 to 31 October 1983.

On similar objections raised in paragraphs 2.58(i) to (iv) of the Audit Report for 1982-83, the Ministry of Finance had stated (December 1983) that the mater will be re-examined.

The Ministry of Finance have since stated (December 1984) that duty paid character of raw material does not change on grant of credit under Rule 56A. The Ministry has also cited two decisions of the Appellate Tribunal (1984 ECR 1189 and 1984 ECR 1866 CEGAT) which pronounces on exemptions allowed linking them to a credit procedure. Such exemptions have been distinguished by the Tribunal from pure set off by credit given under provisions in Rule 56A, where there is grant of real credit and not proforma credit. The stand taken by the department before the Tribunal implies that it was not the intention to grant double benefit (by issue of the notification granting exemption) to assessee towards the duty paid on the raw material; once by refund of the duty as credit which is utilised to pay duty on other excisable goods and again by allowing reduction in duty on other excisable goods on the ground that duty was paid on the raw material (despite grant of credit). The acquiescence by the

Ministry to the grant of double benefit is to the detriment of revenue The reply is silent on remedial action for the future.

The Appellate Tribunal has pointed out the flaw in the department's logic to the effect that where the duty paid on the input (going into each unit of output) is not quantifiable and therefore exemption is linked to a real credit procedure, an exemption can still be given. [Please see connected point in para 2.56(i) in this report]. The Tribunal has also emphasised the distinction between (i) set off by grant of credit given under Rule 56A and its utilisation and (ii) grant of exemption by notification issued under Rule 8(1) where exemption is linked to a credit procedure. The Tribunal has also pointed out that the failure to specify a condition in the notification, that it will not apply to cases where credit is taken under Rule 56A, enables the assessee to claim double benefit. Therefore, the Tribunal has stated that exemption is not to be denied, if proforma credit is granted under notification dated 4 July 1979 in relation to T. I. 68 goods used as raw material. But the Tribunal has not said that credit granted under Rule 56A is not real credit which is used to pay duty. Still the Tribunal has given its decision that even after grant of credit (for duty paid on raw material) under Rule 56A, the raw material can be held to be duty paid, despite the Rule 56A employing only the word 'credit' and not 'proforma credit' and providing for utilisation of the credit to pay duty leviable on other products, which duty would be paid in cash but for the credit (there being no exemption). While appearing to accept the decision of the Tribunal, the reply of the Ministry is silent on the distinction between real credit under Rule 56A and proforma credit linked to exemption under Rule 8(1).

(iii) **Containers**

As per proviso to a notification issued on 13 November 1982 duty become leviable at 26 *per cent ad valorem* instead of

40 *per cent ad valorem* on aluminium containers manufactured out of aluminium of descriptions specified in the notification on which the duty has already been paid at specified rates

Three manufacturers of aluminium containers used duty paid aluminium circles or sheets in the production of containers. But credit for duty paid on the aluminium circles was similarly allowed under Rule 56A and in addition duty was levied at 26 *per cent* instead of 40 *per cent*. The irregularity resulted in duty being realised short by Rs. 7.85 lakhs on clearances of containers made during various periods between April 1982 to January 1984.

On the mistake being pointed out in audit (September 1983) the department stated (October 1983) that a show cause-cum demand notice for Rs. 1.72 lakhs had been issued in one case. But in two cases the department stated (in March and April 1984) that the double benefit was intended under the notification and the raw materials had not become non-duty paid. But the conditions precedent to grant of exemption no longer subsisted on grant of credit. The reply of the department is silent on the irregularity in grant of exemption when it was clearly not to be granted subsequent to grant of credit towards duty paid on inputs.

The Ministry of Finance have replied on the same lines as in the reply given to the preceding sub paragraph. The grant of double benefit by the Ministry to the assessee is not warranted.

(iv) **Foils**

As per proviso to a notification issued on 3 December 1981, and amended on 13 November 1982, duty in excess of 25 *per cent ad valorem*, was exempted (as against duty leviable at 32 *per cent ad valorem* on aluminium foils provided they are manufactured out of aluminium of specified description, on which the duty of excise or the additional duty leviable at the rates specified in the

aforesaid notification or in a Customs notification of 3 December 1981 had already been paid.

A manufacturer of aluminium foils produced them from duty paid aluminium sheets. He was allowed credit for duty paid on the sheets under the provisions of Rule 56A of the Central Excise Rules, 1944, and was allowed to clear the aluminium foils at the lower rate of duty under the aforesaid notification. On grant of credit for duty paid on sheets the said sheets become non-duty paid material. Therefore, benefit of lower rate of duty on aluminium foils produced from such sheets was not to be allowed in addition to the grant of credit towards duty paid on inputs under Rule 56A. The irregular grant of double benefit resulted in duty being levied short by Rs. 41.23 lakhs on clearances made during the period from September 1982 to August 1983.

On the mistake being pointed out in audit (October 1983) the department stated (November 1983) that the double benefit was intended despite the decision of government in a revision petition in November 1980 that, on grant of credit for duty paid on inputs they become non-duty paid.

The Ministry of Finance have replied on the same lines as in the reply given to the preceding sub paragraph. The grant of double benefit by the Ministry to the assessee is not warranted in cases where credit under Rule 56A is allowed.

2.46 **Engineering, electrical and transport goods**

(i) **Pumps**

As per a notification issued on 1 March 1978 power driven pumps designed primarily for handling water are exempt from duty. In the case of M/s Jyoti Ltd. versus Union of India the High Court of Gujarat held that in such pumps, the 'bowl

assembly' would constitute a power driven pump, but the 'column assembly', 'the discharge head assembly' and other constituents were only accessories. On such accessories, which are not described anywhere else in the tariff, duty is leviable under tariff item 68.

(a) A public sector undertaking manufactured 'deep tubewell turbine pumps'. It was allowed exemption on such pumps under the aforesaid notification. But duty on accessories amounting to Rs. 7.26 lakhs on the clearances made during the period from April 1980 to March 1982 was not realised.

On the mistake being pointed out in audit (January 1983), the department stated (July 1984) that a show cause-cum demand notice for the period 1978-79 to 1982-83 had been issued (November 1983).

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(b) A manufacturer of 'verticle turbine pumps' was allowed to avail of exemption from duty under the aforesaid notification. But on the accessories which were not part of the pump no duty was levied. The mistake resulted in duty amounting to Rs. 1.52 lakhs not being realised on the clearances made during the period from April 1979 to December 1982.

On the mistake being pointed out in audit (February 1983), the department stated (July 1984) that a show cause notice demanding Rs. 1.52 lakhs had since been issued in June 1984.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) **Batteries**

By a notification issued on 18 April 1955 electric batteries of the type commercially known as stationary batteries were exempted from duty. By another notification issued on 25 January 1964 parts of electric storage batteries were exempted from duty provided they were used in the factory of production itself in manufacture of electric storage batteries which were not exempt from duty.

A manufacturer of containers and covers of stationary batteries (but not plates and other parts) was allowed to clear the said two parts from his factory without payment of duty even though they were not used in manufacture of stationary battery in the same factory. The incorrect grant of exemption resulted in duty amounting to Rs. 2,71,109 not being realised on clearances made during the period from December 1970 to September 1979.

On the irregularity being pointed out in audit in February 1979, further duty free clearances were stopped with effect from October 1979. But again from January 1983 clearances were allowed provisionally without payment of duty. Under Section 11C of the Excise Act Government by issue of notification waived the duty not realised on such parts used in manufacture of batteries in the same factory even though no duty was payable on the batteries. But in respect of parts cleared from out of the factory, as such, there is no notification granting exemption or waiver from levy or collection of duty. No explanation has been given for the non-realisation of duty.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iii) **Computers**

Tariff item 33DD covers computers (including central processings units and peripheral devices) all sorts. In view of the diversity

of peripheral devices (which are not parts of the computer) the inclusive description has been added to the description 'computers'.

As per a notification issued on 22 July 1977, computers (only computer) classifiable under tariff item 33 DD are exempted from the whole of the duty of excise leviable thereon, when sold to an educational and research institution, subject to certain conditions. But as per another notification issued on 19 June 1980 so much of the duty of computers (including central processing units and peripheral devices) all sorts, as was in excess of the effective rate of duty given in the notification, was exempted.

A manufacturer of computers was allowed to clear central processing units and peripheral devices to educational and research institutions, without payment of duty, under the aforesaid notification issued on 22 July 1977. The grant of exemption on peripheral devices was irregular and resulted in short levy of duty by Rs. 37.63 lakhs on clearances made during the period from 1 February 1982 to 31 August 1983.

On the irregularity being pointed out in audit (January 1984), the department stated exemption in respect of peripheral devices was also intended. But such an intention is not evident. Also the difference in the wording in the two exemption notifications goes against reading the same intention into the two exemption notifications viz. that the term "computer" invariably includes peripheral devices even when not expressly stated so. The ambiguity in the wording is being interpreted to the detriment of revenue.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iv) **Cine films**

As per a notification issued on 12 August 1977, on coloured and black and white cine feature films, duty in excess of certain

specified amounts was exempted if the films did not exceed 4000 metres in length and were cleared for home consumption or for public exhibition.

A manufacturer cleared three coloured feature films to a foreign corporation and was allowed to avail of exemption under the above notification. The films were neither for public exhibition in India nor for home consumption and, therefore, duty should have been paid at the tariff rates. Accordingly, the department issued notice in April 1983 in respect of two of the three feature films demanding differential duty. But in doing so the demand was based on the tariff rate prescribed for black and white films instead of the tariff rate for colour films The mistake resulted in short levy of duty by Rs. 1,18,800. Demand for duty amounting to Rs. 1,73,250 in respect of the third film is still to issue.

On the mistake and omission being pointed out in audit (July 1983) the department accepted the objection and raised the necessary demands.

The reply of the Ministry of Finance issued in December 1984 is silent on the short levy of Rs. 1,18,800 but has confirmed the raising of the demand for Rs. 1,73,250.

2.47 **All other goods not elsewhere specified (T.I. 68)**

(i) As per a notification issued on 1 March 1975 animal feed classifiable under tariff item 68 was exempted from duty.

A manufacturer of dicalcium phosphate was allowed to classify his goods under tariff item 68. But from January 1980 levy of duty was exempted in terms of the aforesaid notification. But dicalcium phosphate was an additive in animal feed and was not in itself animal feed. It is also used in manufacture of soaps

and drugs. Incorrect grant of exemption resulted in short levy of duty by Rs. 3,55,012 on clearances made during the period from November 1982 to April 1983.

The short levy was pointed out in audit in May 1983. The department stated (June 1984) that show cause-cum demand notice for Rs. 3,55,012 was issued in June 1983.

The Ministry of Finance have confirmed the facts (December 1984).

(ii) As per a notification issued on 1 March 1975 goods classifiable under tariff item 68 and manufactured in factories belonging to the Central Government and meant for use by a department of the said Government are exempt from the whole of the duty of excise leviable thereon.

A Board set up by Government for execution of an irrigation and power project did job work and manufactured goods classifiable under tariff item 68. It was allowed exemption from duty under aforesaid notification on the goods cleared during the period from December 1976 to June 1980 even though a sum of Rs. 74,78,438 was realised as job work charges. The goods manufactured were neither manufactured for nor subsequently used by departments of the Central Government. The irregular grant of exemption resulted in non levy of duty amounting to Rs. 5.98 lakhs.

On the omission being pointed out in audit (March 1983), the department issued show cause-cum demand notice for Rs. 5,98,276 in May 1983 and imposed a penalty amounting to Rs. 30,000 in June 1984.

The Ministry of Finance have confirmed the facts. (December 1984).

2.48 T.I. 68 goods used in manufacture of any goods

(i) **Output already exempted from duty**

As per a notification issued on 4 June 1979, all excisable goods in the manufacture of which any goods falling under tariff item 68 are used as inputs are exempt from so much of the duty of excise leviable thereon as is equivalent to the duty already paid on the inputs. The exemption is to be allowed subject to the condition that the finished goods are not exempt from whole of the duty leviable thereon or chargeable to nil rate of duty. Also the exemption was to be allowed subject to adoption by the manufacturer of a procedure (similar to that in Rule 56A) for allowance of credit (and its utilisation) towards duty paid on inputs after he declares the input goods and output products to the department.

(a) A manufacturer of tyres and tubes also produced rubber products which were exempted from duty under two notifications issued on 1 April 1967 and 1 April 1968. The manufacturer used certain duty paid inputs falling under tariff item 68 in the manufacture of the said rubber products. He was allowed exemption on the tyres and tubes to the extent of duty paid on the said inputs even though the rubber products were exempt from duty. The mistake resulted in duty being realised short by Rs. 2.37 crores on clearances of tyres made during the period from April 1981 to November 1983. The short levy on clearances made prior to that period and subsequent to that period are still to be computed.

The short levy was pointed out in audit in February 1982.

The reply of the Ministry of Finance is awaited (December 1984).

(b) Steel ingots were produced in a Public Sector Undertaking using duty paid ferro manganese obtained from outside. To the extent of duty paid on ferro manganese, exemption was allowed in payment of duty on the iron and steel products as per notification dated 4 June 1979. But the ingots were removed to another

mill within the same factory without payment of duty and used in the manufacture of iron and steel products. Since duty had not been paid on the ingots the grant of the exemption was incorrect. The mistake resulted in duty being realised short by Rs. 1,57,56,340 on clearances made during the period from October 1981 to December 1982.

On the mistake being pointed out in audit (February and March 1983) the department stated (March 1984) that under the principle of 'later the better' the grant of exemption was in order. But there is no such legal principle and the notification does not allow of grant of exemption in such a manner. Even under the Rules 9 and 49 of Central Excise Rules as they stand amended from 9 July 1983, if duty is not payable on the ingots used captively in the manufacture of iron and steel products, the exemption is not to be allowed at an earlier stage of clearance. Therefore, the Rules and notifications are being incorrectly interpreted unjustifiably to the detriment of revenue.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(c) Monoethylene glycol classifiable under tariff item 68 was used in the manufacture of polyester polymer chips which was exempt from duty. The polyester polymer chips were used captively in the manufacture of polyester filament yarn. Exemption to the extent of duty paid on the monoethylene glycol was allowed towards payment of duty on polyester filament yarn. The exemption was not allowable since the chips were exempt from duty. The exemption irregularly allowed amounted to Rs. 65.31 lakhs during the period from September 1981 to February 1984 in one unit and Rs. 1.59 lakhs during the period from July 1982 to December 1982 in another case.

On the irregularity being pointed out in audit (August 1983 and April 1984), the department did not accept the objection (June 1984) and stated that according to a clarification

issued by Government in June 1980 even if an intermediate product is exempt from duty the exemption could be allowed on the finished product.

The Ministry of Finance have also replied (January 1985) on the same lines. But that clarification was issued in the context of notifications issued under Rule 8(1) subject to procedure in Rule 56A being followed. Therein a specified output is linked to a specified input. But under notification dated 4 June 1979, the output and input cannot be remotely connected with an exempted excisable product coming in between.

(d) A manufacturer used wood pulp to produce cellulose xanthate which he used to produce viscose filament yarn. The cellulose xanthate could be exempted from duty to the extent of duty paid on wood pulp classifiable under tariff item 68. But exemption from payment of duty was allowed on the yarn ignoring the fact that pulp was used in the manufacture of xanthate which itself was exempt from duty. The irregularity resulted in duty amounting to Rs. 41.09 lakhs not being levied on clearances of yarn made during the period from 23 November 1982 to June 1984.

The mistake was pointed out in audit in September 1983.

The Ministry of Finance have stated (December 1984) that as per their letter issued on 21 June 1980 on the advice of Ministry of Law the grant of exemption was in order. The reply is not relevant and the Ministry has not considered the implications of the words input and output in the context of tariff item 68. The reply advanced by the Ministry has serious implications for revenue in the context of tariff item 68.

(e) A manufacturer of paints and varnishes was allowed exemption to the extent of duty paid on raw materials classifiable under tariff item 68. But the raw materials were used in the manufacture of alkyd resins which were exempt from duty. Though

the alkyd resins were used in the manufacture of paints and varnishes, exemption could not be granted. But it was irregularly granted. In the result duty amounting to Rs. 17.65 lakhs was not realised on clearances made during the period from 10 October 1982 to 30 September 1983.

Another manufacturer producing varnish was allowed exemption to the extent of duty paid on raw materials classifiable under tariff item 68 used in the manufacture of varnish. A part of the raw materials was used in the manufacture of thinner (also classifiable under tariff item 68) but the thinner was cleared without payment of duty for captive consumption. The exemption from duty on varnish allowed to the extent of duty paid on raw material used in the manufacture of 'thinner' was therefore irregular. In the result duty was realised short by Rs. 48,384 on clearances made during the years 1981 to 1983.

On the short levy being pointed out in audit (December 1983 and June 1984) the department stated (May 1984 and June 1984) that the exemption was allowed in terms of a letter dated 21 June 1980 issued by the Board.

The Ministry of Finance have also given a similar reply (December 1984). But the said letter has no application to cases other than those where a specified input and a specified output are linked by a notification issued under Rule 56A. Such was not the position in the above cases. The interpretation of input and output in the context of tariff item 68 does not allow of excisable products intervening between input and output.

(f) A manufacturer of paints produced alkyd resins which was wholly exempted from duty under a notification issued on 29 August 1981. However, he was allowed exemption from duty on the paints to the extent of duty paid on oils classifiable under tariff item 68 which were used in the manufacture of alkyd resin. Though most of the resin was captively consumed in the manufacture of paints, part of it was removed from the factory for other purposes. Exemption from duty on paints was allowed incorrectly to the extent of Rs. 3,74,850 on clearances made during the period

from April 1981 to January 1983. The oils were used in manufacture of resin (classified under tariff item 15A) and the resin was a distinct excisable item which was wholly exempted from duty.

The mistake was pointed out in audit in March 1983.

The Ministry of Finance have stated (December 1984) that in view of advice of Ministry of Law contained in the letter issued by the Ministry of Finance on 21 June 1980, the benefit is not to be denied to assessee even if alkyd resin is exempt from duty. The reply is not relevant to interpretation of the words input and output in the context of tariff item 68.

(g) A manufacturer of paints and varnishes used duty paid excisable goods (classifiable under tariff item 68) in the production of alkyd and maleic resins which were captively used in the manufacture of paints and varnishes. He was allowed to avail of the aforesaid exemption towards payment of duty on paints and varnishes. But real output was the resin which was totally exempt from duty as per a notification dated 29 August 1981. The exemption was, therefore, irregularly availed of resulting in duty amounting to Rs. 3.78 lakhs not being realised on clearances of paints and varnishes made during the period from April 1982 to January 1983.

On the mistake being pointed out in audit (March 1983), the department did not admit the objection and stated (November 1983) that the resin was an intermediate product and although it was exempt from duty, the exemption from duty on paints and varnishes was given correctly. But the duty paid input goods (falling under tariff item 68) in this case were not used as raw material or component parts of paints and varnishes but of alkyd resin a different excisable product.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(h) A manufacturer used as inputs copper naphthenate, formic acid, processed china clay, sizoleum supra and sodium

sulphide flakes in the manufacture of processed cotton canvas fabric. Similarly he used resorcinol flakes in the manufacture of dipped rayon and nylon tyre cord fabric. The inputs were however not used directly in the manufacture of the fabrics. They were used in manufacture of padding solution classifiable under tariff item 68 which was exempted from duty under a notification issued on 28 February 1982. Therefore, no exemption from duty was allowable on the fabrics to the extent of the duty paid on the said inputs. But exemption was still allowed resulting in duty being realised short by Rs. 3,71,969 on clearances of fabrics made during the period from March to September 1982.

On the short levy being pointed out in audit (October 1982 and January 1983), the department stated (November 1983) that the exemption was allowed correctly since the padding solution manufactured, though it was exempt from duty, was applied on the fabrics.

The Ministry of Finance have replied on the same lines as indicated in sub-paragraph (d) above. The reply of the department and Ministry are not correct and is the result of confusion arising from wrongly reading the provisions of Rule 56A (for successive use of credit) into the exemption notification dated 4 June 1979. The confusion also arises from viewing an exempted amount of duty as being paid by utilising credit instead of expunging credit to the extent of duty exempted.

(i) A manufacturer of 'Linoleum' (falling under tariff item 22C) was allowed exemption from duty payable on the linoleum to the extent of duty paid on 'gumrosin' (classifiable under tariff item 68). The 'gumrosin' was, used in the manufacture of 'Linoxyne' (classifiable under tariff item 15A) which was captively consumed in the manufacture of 'Linoleum'. The Linoxyn when used in the factory manufacturing linoleum was fully exempt from duty as per a notification issued on 22 April 1982.

Therefore the grant of exemption to the extant of duty paid on inputs used in manufacture of output (Linoxyn) which was

exempt from duty was irregular. The irregularity resulted in duty being levied short by Rs. 1.16 lakhs on clearances made during the period from 22 April 1982 to June 1983.

On the irregularity being pointed out in audit (September 1983) the department issued (November 1983) a show cause notice demanding duty amounting to Rs. 1.18 lakhs. Report on confirmation of demand and recovery is awaited (June 1984).

The Ministry of Finance have stated (December 1984) that the exemption is not to be denied if there be an intermediate product exempted from duty. The reply is not correct because the exemption notification does not allow of such a remote connection between input and output. It refers only to the immediately next manufactured product as the output and not any remote product in a chain of excisable products.

(j) A manufacturer of iron and steel products was allowed exemption under notification dated 4 June 1979 to the extent of duty paid on the inputs. But he was also allowed exemption to the extent of duty paid on (i) goods not classifiable under tariff item 68 and (ii) goods classifiable under tariff item 68 but not used as inputs in the manufacture of iron and steel products. The irregular grant of exemption resulted in short levy of duty by Rs. 2,49,493 on clearances made during the period from December 1980 to October 1981.

On the short levy being pointed out in audit (May 1982) the department stated (January 1983) that short levy of Rs. 2,49,493 had since been regularised in August 1982.

The Ministry of Finance have confirmed the facts (December 1984).

(ii) **Input not raw material or components**

The aforesaid notification issued on 4 June 1979 was amended on 28 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) In three paper mills exemption was allowed to the extent of duty paid on non-ferric alum, alumina ferric, anhydrous sodium sulphate, rosin, burnt lime, sulphuric acid and acetic acid (all classifiable under tariff item 68) which were used in the manufacture of paper but not as raw materials or components. The irregular grant of exemption on clearance of paper made during the period from March 1982 to August 1983 amounted to Rs. 39,66,611.

The irregularity was pointed out in audit in October 1982, September and October 1983.

Ministry of Finance have stated (November 1984) that the issues involved are similar to those in another case where the decision is pending with the Tribunal. Demands have been raised against all the units.

(b) Three manufacturers of electrical goods, aluminium and starch were allowed to avail of exemption under notification dated 4 June 1979 even though the input goods were not raw material or component parts of the output goods. Incorrect grant of exemption resulted in short levy of duty by Rs. 28,33,249 on clearances made after 1 March 1982.

On the mistakes being pointed out in audit (in December 1982, February 1983 and March 1983) an amount of Rs. 58,982 was recovered in October 1983 in the case of one manufacturer. In respect of another manufacturer the department issued a show cause-*cum* demand notice on 11 August 1983.

The Ministry of Finance have confirmed the facts and stated (December 1984) that in the case of the third manufacturer, also action for recovery is under process.

(iii) Exemption not intended under notification

Credit can be allowed only to the extent of duty paid on inputs classifiable under tariff item 68. Further, the credit can be used only for payment of duty on output goods in which

the inputs are used and not for payment of duty on other output goods.

(a) A manufacturer of 'organic surface active agents' availed of exemption to the extent of duty paid on the raw materials and components under the aforesaid notification. He also cleared a part of his production for export under bond without payment of duty. But exemption to the extent of duty paid on raw materials and components used in the manufacture of the exported product was also allowed to be utilised on the finished products cleared for home consumption. Such a mistake occured because of the conceptual inconsistency in the exemption notification where in only procedure for grant of credit and its utilisation is visualised and not for expunction of the credit. In the result duty was realised short by Rs. 98,900 on the goods cleared for home consumption.

The mistake was pointed out in audit in November 1983.

The Ministry of Finance have stated (November 1984) that the notification dated 4 June 1979 prescribes a procedure on the lines of Rule 56A and that benefit of the credit obtained on inputs used in the manufacture of outputs exported under-bond is permissible under sub-clause (vi)(a) of sub-rule (3) of Rule 56A. As such there was no loss of revenue. The Ministry have, therefore, not admitted the short levy.

The reply of the Ministry is not correct and the grant of exemption related to goods exported without payment of duty is without legal basis. The confusion between grant of exemption under the notification dated 4 June 1979 and provisions of statutory Rule 56A needs to be resolved by seeking advice of Ministry of Law.

(b) A manufacturer of "flashlights and torches" classifiable under tariff item 68 was allowed credit for duty paid on "switches for torches" purchased from outside and to utilise the credit towards payment of duty on flashlight and torches. But switches

for torches were classifiable under tariff item 61 (and not 68). Therefore, no credit under Rule 56A or under notification dated 4 June 1979 was admissible. The irregular grant and utilisation of credit resulted in short levy of duty on flashlight and torches by Rs. 95,954 on clearances made during the period from June 1980 to May 1982.

On the omission being pointed out in audit (July 1982) the department stated (March 1983) that the credit had since been disallowed in August 1982 and that two show cause notices demanding duty of Rs. 96,464 had been issued in September and November 1982. But the manufacturer had filed a writ petition in the High Court in December 1982.

In their reply (December 1984) the Ministry of Finance have neither confirmed nor denied the facts.

(iv) **Exemption on wasted inputs**

When exemptions are granted under the notification issued on 4 June 1979 and any waste arising during the process of manufacture is cleared, duty is payable on such waste.

A manufacturer of roller bearings was allowed exemption from duty on such bearings to the extent of duty paid on brass rods. On brass scrap arising during the manufacturing process and cleared during the period from July 1981 to June 1982 duty amounting to Rs. 1,00,408 was payable. However, the duty was not realised.

On the mistake being pointed out in audit (November 1982), the department stated that as per a notification issued on 1 March 1981, the scrap was exempted from duty provided it is produced from duty paid material. However, the credit for the duty paid on the input material gone waste having been taken (and not expunged) used for payment of duty on any finished product, the input material gone waste cannot be viewed as duty paid

material. Grant of the exemption from duty on the scrap was not in order.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(v) Inter-factory movement of production

Under the notification issued on 4 June 1979 exemption is allowed subject to the conditions set out in the Appendix to the notification. One of the conditions is that credit not utilised towards payment of duty on output will be transferred by the manufacturer towards payment of duty on output from another factory of manufacturer only in cases of (i) shifting of the plant or factory belonging to the manuacturer to another site; (ii) merger of the factory with another factory; or (iii) transfer of business of the manuacturer to another manuacturer provided manufacturer is availing of similar exemption in the factory to which credit or stock is transferred.

(a) A manufacturer of cosmetics and toilet preparations had two factories in two different towns. He started a third factory in the second town and production commenced from 1 July 1982. Production in the old factory in the second town was suspended from 30 September 1982. Duty paid inputs brought into the two older factories were transferred to the new factory and credit for duty paid on such inputs was allowed to be availed of towards payment of duty on output cleared from the new factory during the period from 1 July 1982 to 5 March 1983. The credit availed of in the new factory during the aforesaid period amounted to Rs. 1,55,042. But as per the terms of the notification dated 4 June 1979 such transfer of credit was irregular because there was no shifting of plant or factory or merger of factories or transfer of business between two manufacturers.

On the irregularity being pointed out in audit (May/June 1983), the department stated in July 1983 and March 1984

that the transfer of credit was in order but did not state how the conditions in the notification were satisfied.

The Ministry of Finance have stated (December 1984) that the credit has been transferred to the other factory of the same manufacturer in accordance with the conditions laid down in para 9(a) of the Annexure to the notification of 4 June 1979. The reply is not correct since the said condition 9(a) does not allow of transfer of credit as was done. Further, another condition is that the original duty paying documents and gate passes must be available for grant of credit and this precludes the taking of *denovo* credit on the same inputs in a second factory, when transfer is not allowed and thereby disallows grant of exemption in the case like the one given above. So long as the concepts of licence and factory differentiate different units of the same manufacturer, transfers of credit between two units of a manufacturer are not to be allowed in terms of aforesaid notification.

(b) A manufacturer was allowed credit for duty paid on 'input goods' classifiable under tariff item 68 which were to be used in the manufacture of excisable goods. He was allowed to remove a part of such inputs to another unit of his without payment of duty. He was permitted to utilise credit for duty already allowed on the said inputs towards payment of duty on excisable goods manufactured in the other unit. The irregular utilisation of credit resulted in duty being realised short by Rs. 2.91 lakhs during the period from October 1980 to 20 November 1980.

On the irregularity being pointed out in audit (July 1981), the department admitted the objection and stated (January 1984) that a show cause notice demanding Rs. 3.30 lakhs covering clearances made during the period from 9 November 1980 to 13 March 1981 had since been issued in June 1982 and demand confirmed on 23 March 1984. The department

further stated (June 1984) that the assessee had gone in appeal.

The Minisrry of Finance have stated (December 1984) that the demand is to be adjudicated again.

(vi) **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.

Seven manufacturers were allowed exemption from duty amounting to Rs. 26,24,868 during the period from June 1979 to March 1983 in respect of input goods received in their factories on or after 4 June 1979. But declarations had not been made to the department. The irregular grant of exemption resulted in duty being levied short by Rs. 26,24,868.

The Collector had not also exercised his discretion to relax the condition regarding filing of declaration in these cases.

On the short levy being pointed out in audit, the department raised demands for Rs. 4,90,743 in three cases. Reply in the remaining four cases is awaited (May 1984).

The Ministry of Finance have stated (December 1984) that the matter is under examination.

EXEMPTIONS TO SMALL SCALE MANUFACTURERS

2.49 **Irregular grant of exemption on clearances of specified goods in excess of limits applicable to small scale units**

As per three notifications issued on 1 March 1978, 19 June 1980 and 1 March 1981, on specified excisable goods cleared for home consumption by or on behalf of a manufacturer during a financial year, duty was fully exempted on the first clearances upto a value of Rs. 7.5 lakhs and upto 25 per cent of duty

otherwise leviable on the subsequent clearances upto a value of Rs 15 lakhs. The exemption was to be allowed subject to the condition that the aggregate value of all specified goods cleared for home consumption during the preceding financial year did not exceed Rs. 15 lakhs, but as per another notification issued on 30 March 1979, in place of Rs. 15 lakhs the limit for aggregate value was raised to Rs. 20 lakhs and was to be computed in respect of all excisable goods and not merely specified goods. From 1 April 1983 the limit of Rs. 15 lakhs for 25 per cent exemption and aggregate limit of Rs. 20 lakhs were both raised to Rs. 25 lakhs.

(i) **Paints and varnishes**

A manufacturer of paints and varnishes (specified goods) and other goods classifiable under tariff item 68 was allowed exemption under aforesaid notifications holding that the value of clearances of all excisable goods did not exceed Rs. 20 lakhs during the preceding financial year 1981-82. But the value of blown grade bitumen on which duty was leviable was not included in the value of the total clearances. The non-inclusion of the value of blown grade bitumen resulted in duty being levied short by Rs. 1,09,013 on clearances made during the year 1982-83.

The irregularity was pointed out in audit in August 1983.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) **Acids and waxes**

A manufacturer of waxes and hydrochloric acid was allowed to clear hydrochloric acid valuing Rs. 4,93,132 without payment of duty during the financial year 1980-81 on the strength of the above notifications. But the aggregate value of clearances of waxes and acid manufactured by him during the preceding financial year *i.e.* 1979-80 had exceeded the limit of Rs. 20 lakhs. The incorrect grant of exemption resulted in short levy of duty by Rs. 77,668.

The short levy was pointed out in audit in July 1983.

The Ministry of Finance have in their reply (December 1984) neither confirmed the audit objection nor denied it but have stated that the assessee has filed a writ petition. The grounds of the petition have not been stated.

2.50 Irregular grant of exemption on clearances of T.I. 68 goods in excess of limits applicable to small scale units

As per a notification issued on 18 June 1977 on goods classifiable under tariff item 68 duty was exempted on clearances upto a value of Rs. 30 lakhs during a financial year (Rs. 24 lakhs during the first year 18 June 1977 to 31 March 1978) provided the value of all excisable goods cleared by or on behalf of the manufacturer during the preceding financial year did not exceed Rs. 30 lakhs.

As per a notification issued on 1 March 1979, on clearances of goods (classifiable under tariff item 68) of value not exceeding Rs. 15 lakhs in the aggregate from units with investment on plant and machinery not exceeding Rs. 10 lakhs (Rs. 20 lakhs from April 1981) levy of duty was exempted. On clearances beyond the first clearances valuing Rs. 15 lakhs, duty in excess of 4 per cent *ad valorem* was exempted. As per another notification issued on 19 June 1980, the limit of Rs 15 lakhs for full exemption was raised to Rs. 30 lakhs with no exemption beyond that limit. If the total value of the said excisable goods cleared for home consumption by the manufacturer or on his behalf from one or more factories in the preceding financial year exceeded Rs. 30 lakhs (raised to Rs. 40 lakhs from 1 April 1983) the exemption was not available.

(i) Value of clearance

A manufacturer of goods classifiable under tariff item 68 claimed exemption from duty on design printed waxed paper and cellophane wrappers after classifying them under tariff item 17 as converted paper. The goods were, however, classifiable under tariff item 68 and the value of their clearances

when included in the total value of clearances raised the value of total clearances to more than Rs. 30 lakhs. Therefore, exemption under aforesaid notification was irregularly allowed resulting in short levy of duty by Rs. 7.58 lakhs on clearances made during the years 1981-82 to 1983-84.

On the mistake being pointed out in audit (November 1983 and January 1984), the department stated (July 1984) that show cause notice had since been issued. Report on recovery is awaited (September 1984).

(ii) **Survey instruments**

A manufacturer of survey instruments was allowed exemption from duty on clearances of goods (classifiable under tariff item 68) made from different units of the manufacturer even though during the preceding financial years clearances exceeded the value of Rs. 30 lakhs. The mistake resulted in short levy of duty by Rs. 4,45,648.

On the mistake being pointed out in audit (February 1979) the department issued show cause notice (December 1983) demanding Rs. 4,45,648 in respect of clearances made during the period from 6 December 1977 to 21 June 1981. Report on adjudication and recovery is awaited (July 1984).

(iii) **Roofing felt manufacture**

During the year 1979-80 a manufacturer of blown grade asphalt installed in his factory a plant for manufacture of roofing felt classifiable under tariff item 68. The value of all the plant and machinery installed in the unit was Rs. 10.98 lakhs as on 31 July 1979. Even though the capital investment on plant and machinery in the unit exceeded Rs. 10 lakhs, the department allowed the manufacturer to clear the roofing felt under the aforesaid notifications without payment of duty. Duty not realised amounted to Rs. 3,58,428 on clearances made during the periods from 1 August 1979 to 19 March 1980 and from 1 April 1980 to 22 December 1980.

On the irregularity being pointed out in audit (May 1982) the department stated that only the cost of plant and machinery relevant to manufacture of roofing felt was not to exceed Rs. 10 lakhs. This is not the intention behind the notifications and the Ministry also clarified on 8 February 1978 that the investment on plant and machinery in the unit as a whole was the relevant criterion.

(iv) **Air and gas compressors**

Capital investment on plant and machinery in a unit manufacturing air and gas compressors amounted to Rs. 16 lakhs (in excess of Rs. 10 lakhs) and clearances of goods from that unit valued Rs. 43,87,683 which was in excess of Rs. 30 lakhs. However, exemption was allowed on clearances made during the years 1979-80 and 1980-81. The incorrect grant of exemption resulted in duty amounting to Rs. 3,51,015 not being realised.

On the irregularity being pointed out in audit (March 1983), the department admitted the objection and raised demand for Rs. 3,51,015 which has since been confirmed in July 1984.

(v) **Value of motor vehicle parts**

As per a notification issued on 30 April 1975, on goods classifiable under tariff item 68 cleared from the factory of a manufacturer, on sale, 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 is exempted (at the option of the assessee). The exemption is subject to the conditions (i) that such price is the sole consideration for the sale and is not influenced by any commercial, financial or other relationship whether by contract or otherwise between the manufacturer and the buyer and (ii) that the exemption is availed of uniformly in respect of all goods (classifiable under tariff item 68) which are sold by the manufacturer.

A manufacturer of motor vehicle parts opted to pay duty under aforesaid notification. He did not pay duty on clearances of goods made during the years 1980-81 to 1982-83 on the plea that the value of the goods cleared during each year had not exceeded the limit of Rs. 30 lakhs. The goods transferred to head office and sale depot were not goods cleared on sale and did not qualify for exemption under notification dated 30 April 1975. Further the value of the sales together with value of goods cleared to head office and sale depots exceeded Rs. 30 lakhs. Also as against 40 per cent discount allowed on goods sold at factory gate, discount at 60 per cent (upto July 1982) and 50 per cent (after July 1982) was allowed on goods transferred to head office and sale depot. The assessable value of goods cleared was, therefore required to be determined under Section 4 of the Central Excises & Salt Act, 1944 and when so determined, it amounted to Rs. 30.64 lakhs, Rs. 32.83 lakhs and Rs. 35.48 lakhs during the years 1980-81, 1981-82 and 1982-83 respectively which was more than Rs. 30 lakhs. The incorrect grant of exemption resulted in non-levy of duty amounting to Rs. 5.60 lakhs.

On the omission being pointed out in audit (October 1983) the department stated (March 1984) that show cause notice had since been issued (November 1983). Report on recovery is awaited (July 1984).

In the above cases, the Ministry of Finance have stated (December 1984) that the matter is under examination.

2.51 **Evasion and avoidance of duty by legal splitting of units or manufacturers in order to claim exemption available to small scale units**

(i) **Identical firms**

As per a notification issued on 28 February 1982 , fifty per cent of the duty leviable on synthetic organic dyestuffs was exempted if the aggregate value of clearances of all excisable

goods from one or more factories by or on behalf of any manufacturer during the preceding financial year did not exceed Rs. 20 lakhs.

In two units such dyestuffs and goods classifiable under tariff item 68 were manufactured and exemption from duty on clearances made during the year 1982-83 was allowed under the aforesaid notification. But value of goods cleared from each of the units had in the aggregate exceeded Rs. 20 lakhs in the previous year and the units were owned by two firms in each of which the same two individuals were partners. It has been legally held that in such cases the two firms become the same manufacturer (but not if the partners in the two firms are not all the same). Therefore the units belonged to the same manufacturer. In the result duty was realised short by Rs. 4,72,046.

On the mistake being pointed out in audit (September 1983) the department stated (April 1984) that demand had since been raised.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) Ownership of factory

As per notification issued on 22 April 1982 on first clearances of aerated waters (other than those with common trade mark) made from a factory upto a value of Rs. 7.5 lakhs, in any financial year, was exempt from duty. On subsequent clearances upto a value of another Rs. 7.50 lakhs duty was payable at 75 per cent of the duty otherwise leviable.

During the financial year 1982-83, from a factory, aerated waters were allowed to be cleared without payment of duty on first clearances upto a value of Rs. 7.5 lakhs. Thereafter clearances were made at the concessional rate aforesaid. On 5 August 1982 a new owner acquired the factory and he was allowed to clear his goods valuing Rs. 4,67,097 from 5 August 1982 to 28 February 1983 without payment of duty

even though the limits were related to clearances from the factory (whether by one or more manufacturers from the same factory) and not by each owner. Incorrect grant of exemption resulted in duty being levied short by Rs. 1,34,690 on clearances made from 5 August 1982 to 28 February 1983.

The mistake was pointed out in audit in March 1983.

The Ministry of Finance have confirmed the facts and stated (December 1984) that demand is under adjudication.

(iii) **Inter-related factories**

As per a notification issued on 19 June 1980 manufacturers of specified excisable goods were entitled to exemption from full duty on the first clearances upto a value of Rs. 7.5 lakhs. On subsequent clearances upto a value of Rs. 7.5 lakhs only 75 per cent of duty otherwise leviable was to be charged. The exemption was allowed subject to the condition that the value of specified goods cleared during the preceding financial year 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.

A manufacturer of 'Cosmetics and toilet preparations' was not entitled to any exemption on talcum powder and sandalwood face powder cleared by him since the clearances from his factory exceeded the aforesaid limits. Under the same name, which his factory bore, there were two more factories which were owned by the said manufacturer's sister and mother respectively. The right to manufacture and sell the talcum powder and sandalwood face powder under the said manufacturer's brand name and trade marks were made available to the mother and sister for a financial consideration. But on the talcum powder manufactured under the same brand name and trade marks in the other two factories, exemption under the aforesaid notification was allowed on clearances made during the years 1979-80 to 1981-82.

The exemption limits refer to aggregate of clearances from same factory by more than one manufacturer or by same manufacturer from more than one factory. The limits do not refer clearances of more than one manufacturer from more than one factory even where the manufacturers are related or interconnected. Had the benefit of exemption been denied to the products manufactured in the additional units set up by the two female members of the family of the manufacturer, duty amounting to Rs. 31.80 lakhs more would have been realised during the years 1981-82 and 1982-83.

The avoidance of duty under the aforesaid notification was pointed out in audit in October 1983 and February 1984.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iv) **Aerated water factories**

Inter-connected manufacturers of aerated waters were allowed full exemption from duty on clearances made from their ten factories during the years 1978-79 to 1981-82. Each factory was owned by one or two members of a family or other close relations. All the units (except one) were run under the same name and the aerated waters manufactured in all the ten factories were marketed in similar bottles and under the same trade mark and brand name. Except for one unit, all other units were outside Central Excise licencing control till February 1982.

Exemption on aerated water produced in small scale units was stopped from 28 February 1982. Thereafter, under a separate notification issued on that date, full exemption from duty was allowed on the first clearances upto a value of Rs. 7.5 lakhs in a year and 25 per cent reduction in duty was allowed on subsequent clearances upto a value of another Rs. 7.5 lakhs. But exemption was subject to the condition that in case aerated waters were sold under a common trade mark or brand name,

even if they were manufactured in factories belonging to other manufacturers, the aggregate value of the clearances of all such aerated waters was not to exceed Rs. 15 lakhs in the preceding financial year. Consequently the manufacturer was not entitled to the exemption. Accordingly eight factories were again brought under licencing control and duty at full rates was levied on clearances made from March 1982 onwards. But, the eight units surrendered their licence on 31 March 1982 and stopped production from 1 April 1982.

Under another notification issued on 22 April 1982 (in supersession of the notification issued on 28 February 1982) each of the manufacturers marketing aerated waters under a common trade mark and brand name were required to pay only 50 *per cent* of the duty otherwise leviable, even if the aggregate value of cleaarnces of aerated waters under common trade mark from different factories (owned by one or more manufacturers) exceeded Rs. 15 lakhs in the preceding financial year. From all the ten factories clearances were again started from May 1982 onwards and only 50 *per cent* of the duty was realised. The clearances from each factory did not exceed the stipulated limit of Rs. 15 lakhs.

Even though the intention behind the notification was to facilitate growth of small units by grant of exemption, the large scale manufacturers of aerated water were not prevented from getting exemption from duty amounting to Rs. 46.23 lakhs during the years 1981-82 to 1983-84. Exemption was available in spite of the numerous other conditions in the notifications, the wordings of which were such that they could all be avoided as was done in this case. The crucial condition of aggregation by reference to trade mark irrespective of how many manufacturers are involved is no longer valid. Therefore, by splitting the manufacturing activity amongst a number of manufacturers who are related or inter-connected or are members of the same family, exemption can be enjoyed.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(v) **Sodium silicate factories**

Two units were manufacturing sodium silicate (specified excisable goods). On clearances made from both units exemption was separately allowed. One of the units, owned by a sole proprietor, was set up in 1966. The clearances from that unit during the 4 years 1978-79 to 1981-82 valued Rs. 4.56 lakhs, Rs. 4.96 lakhs, Rs. 6.97 lakhs and Rs. 7.38 lakhs respectively. The second unit was set up in 1978 and is owned by a firm of 3 partners which included the wife and father of the sole proprietor of the first unit. The value of the clearances from the second unit during the years 1980-81 and 1981-82 were Rs. 3.99 lakhs and Rs. 5.58 lakhs respectively. Benefit of exemption allowed to both the units independently resulted in avoidance of duty amounting to Rs. 1,22,279 on clearances made during the years 1980-81 and 1981-82.

On the avoidance being pointed out in audit (March 1983) the department stated that the avoidance was legal and the department could not prevent it. The reply was silent on what the intention was behind the words in the notification saying "from one or more factories". Aggregate of clearances from more than one factory exceeding small scale limits could so easily be avoided by recourse to the simple device of setting up inter-connected firms and companies and by multiplying the identity of the manufacturers so that no single manufacturer, on paper, owns more than one factory each of which can enjoy the exemptions available to small scale units.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(vi) **Leaf spring factories**

A firm consisting of two brothers as partners was engaged in manufacture of leaf springs and paid duty on clearance of goods amounting to Rs. 37,73,325 during the year 1982-83. In another firm one of the brothers (who is a partner in the aforesaid firm) was a partner along with his sister-in-law, mother and two other

relatives. The second firm cleared leaf springs amounting to Rs. 15,52,990 during the year 1982-83 but no duty was realised thereon. If the clearances of the two firms were to be clubbed, the second firm would not have been entitled to exemption to which it was otherwise eligible as a small scale unit with clearance not exceeding Rs. 30 lakhs and investment in plant and machinery not exceeding Rs. 20 lakhs. In the absence of a provision in law against such avoidance, duty amounting to Rs. 1,27,656 was avoided by recourse to the mechanism of having inter-connected separate firms.

The avoidance of duty was pointed out in audit in August 1983. The department merely stated (February 1984) that the avoidance was legal.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(vii) **Motor vehicle part factories**

A manufacturer of hydraulic brake master cylinders and wheel cylinders (classifiable under tariff item 68) was allowed exemption from payment of duty on clearances made from his unit upto February 1981 under an exemption notification, on the ground that the value of clearances did not exceed Rs. 30 lakhs in the previous year and investment on plant and machinery in the unit did not exceed Rs. 10 lakhs. The unit was not under licencing control upto February 1981.

The unit of the manufacturer which was run as a private limited company was under the same management as twelve other private and public limited companies. Two Directors of the said manufacturing company were also Directors of a major public limited company. The said manufacturing company and the major public limited company held shares in each other. But the inter-connection of the said manufacturing company with the public limited company in the large scale sector did not disentitle the

manufacturing company from availing of exemption from duty amounting to Rs. 3.53 lakhs. Duty to that extent was avoided during the years 1979-80 and 1980-81.

On the avoidance of duty being pointed out in audit (November 1983) the department stated (January and June 1984) that exemption was granted because the manufacturing company was a separate legal entity and the legal avoidance of duty could not be prevented.

The Ministry of Finance have stated (December 1984) that limited companies, whether public or private, are separate entities and distinct from shareholders composing them. Hence, each limited company is a manufacturer by itself and entitled to a separate exemption limit. The assessee is manufacturing goods on its own behalf and clearing the same to its own customers.

The legal avoidance is taking place because the company was manufacturing and clearing the goods for and on behalf of the interests of the inter-connected group as a whole and this is not a disqualification under the exemption notification issued by the Ministry under the Central Excise Act and Rules.

2.52 **Evasion and avoidance of duty by resort to production by one manufacturer on behalf of another in order to claim exemption available to small scale or unlicenced units**

Under notification issued on 1 March 1978 and another issued on 18 June 1980 exemption from duty was allowed on specified goods cleared by or on behalf of a manufacturer. Where a manufacturer produces goods on behalf of another manufacturer (called loan licensee) exemption is allowed only if the loan licensee is entitled to it. As held by the Supreme Court in the case of Shree Agencies Vs. S. K. Bhattacharji, the criterion is that the producing (secondary) manufacturer should not be independent of the loan licensee in regard to the manufacture. As clarified by the Ministry of Finance in consultation with the Ministry of Law, in a circular issued on 14 May 1982, the loan licensee is the manufacturer whether the loan licensee does or does not

supply raw materials or his specification or his brand name to the secondary manufacturer who is producing on his behalf.

(i) Patent or proprietary medicines

A manufacturer of medicines (apparently not independent in this regard) produced patent or proprietary medicines, under the brand name of another major manufacturer who supplied raw material to the former. The major manufacturer was not entitled to the aforesaid exemption. But on clearances made on behalf of the major manufacturer exemption was allowed resulting in duty being realised short by Rs. 1,03,120 during the period from November 1978 to September 1979.

The mistake was pointed out in audit in February 1981.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) Tin and tinned sheets

A person who supplies raw materials and gets his goods manufactured by a job worker (who is not independent in this regard) is the primary manufacturer and is liable to pay duty on the goods so got manufactured by him.

A job worker was engaged on the work of detinning tin sheet scrap by electrolysis and recovering the tin in the form of ingots. However, no duty was paid on the tin ingots by the job worker on the plea that his clearances did not exceed Rs. 30 lakhs and was therefore exempt from duty. No duty was realised from the primary manufacturer either, with the result that duty amounting to Rs. 1,12,315 was not realised due on the tin ingots manufactured by or on behalf of the primary manufacturer.

On the omission being pointed out in audit (May 1983) the department accepted the objection and stated (October 1983) that duty was payable on the ingots manufactured and cleared on

behalf of the primary manufacturer. Report on rectification of the mistake is awaited.

The Ministry of Finance have stated (August 1984) that necessary demands are being raised.

(iii) **Tools**

When goods are manufactured in a small scale unit (which is not independent in this regard) for and on behalf of another manufacturer the production whether required to be included in computing the limits of turnover in the small scale unit or not, duty is payable on the goods produced for and on behalf of the other manufacturer as per conditions applicable to him.

A manufacturer produced tungsten carbide tipped drill bits and other tools which were classifiable under tariff item 51A. He also manufactured on behalf of another manufacturer drill bits made out of tungsten tool tips received from the other manufacturer. Duty was not levied on the goods manufactured on behalf of another because permission was granted by the department under Rule 56B for clearance of semi-finished goods. But the tungsten tool tips were finished goods which were marketable and are classifiable under tariff item 62. Therefore on such goods valuing Rs. 28,01,652 cleared during the year 1981-82 on behalf of another, excise duty amounting to Rs. 4,41,260 was leviable. But only Rs. 69,147 was realised on goods valuing Rs. 13,35,278 allowing an exemption applicable to small scale units not having a turnover of more than Rs. 15 lakhs. The mistake in granting exemption on goods manufactured on behalf of another resulted in duty being levied short by Rs. 3,72,113.

On the mistake being pointed out in audit (May 1983) the department admitted the objection and issued show cause-cum demand notices in June, October and November 1983 for duty amounting Rs. 13,64,095 on clearances made during the years 1979-80 to 1983-84.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iv) **Sodium silicate**

Clearances made by a manufacturer on behalf of a loan licensee is required to be taken into account in determining the admissibility of exemption to the manufacturer under a notification issued on 19 June 1980.

A manufacturer of sodium silicate was allowed exemption on clearances valuing upto Rs. 5 lakhs made upto 30 September 1980 and 75 per cent of the duty leviable was realised on subsequent clearances made upto 31 January 1981. On further clearances made from 5 February 1981 to 31 March 1981, on behalf of another person (on whom he was not dependent in this regard) who supplied the raw materials and paid conversion charges, no duty was realised in the hands of either manufacturer though duty amounting to Rs. 58,188 should have been levied on the goods.

On the omission being pointed out in audit (April 1983) the department stated (August 1983 and January 1984) that the other person (on whom he was not dependent in this regard) was entitled to exemption on the clearances. But the other person held neither an excise licence nor was he engaged in manufacture. Therefore unless he can be held liable to duty as a manufacturer on whose behalf manufacture is being done, duty should have been levied on the clearances. Otherwise large scale manufacturer can avoid paying duty by claiming to be manufacturers on behalf of tiny manufacturers who do not need to take excise licence.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(v) **Stampings and laminations**

The clearances of all excisable goods made by a manufacturer exceeded Rs. 20 lakhs every year. He supplied silicon steel sheets to another manufacturer and got them converted into stampings and laminations (classifiable under tariff item 28A) by paying only conversion charges. On clearances of the stampings and laminations by the second manufacturer (not independent in this

regard) benefit of exemption under notifications dated 1 March 1978 and 19 June 1980 was allowed incorrectly. The clearance was not viewed as clearance on behalf of first manufacturer. In the result from the first manufacturer no duty was realised on the stampings and laminations. The amount of duty not realised on clearances during the years 1979-80 and 1980-81 amounted to Rs. 1.95 lakhs.

The short realisation of duty was pointed out in audit in April 1981.

The Ministry of Finance have stated (December 1984) that it has been held by several High Courts that the department's stand is not legally tenable. Appeals have been filed in the Supreme Court but no stays have been granted. Accordingly the department has to follow the High Court's orders till such orders are reversed or stay is granted by the Supreme Court.

The reply is not correct because the Board has not withdrawn its directions to the Collectors that in such cases the primary manufacturer is the manufacturer for purposes of levy of excise duty. The Collectors and Assistant Collectors are therefore left with two contradictory directions in regard to similar cases till such time as the Board tells them that the Board's instructions are cancelled and the directions of the High Court be adopted. Whether the Board has the right to agree or disagree with the High Court's views in similar cases has not been stated in the reply.

The decisions of the High Courts apply only in the specific cases and not in similar cases, as per the categorical advice of the Ministry of Law given, citing the case of Sialkot Industrial Corporation Vs. Union of India. The Ministry of Finance and the Board would appear to have a right to disagree with the High Court. The Ministry of Law has stated that if, in similar cases arising in the jurisdiction of the same High Court, the department follows the Board's instructions (contrary to the view of the High Court), the aggrieved party may move the High Court and,

it is likely, the High Court may follow its earlier decisions and grant relief to the party. In such an event, the department may, however, take up the matter on appeal to the Supreme Court for an authoritative opinion. It would, therefore, seem that protective assessment and demands as per view of Department (same as the basis of audit objection) is not illegal. As regards the claims of parties who are outside the territorial jurisdiction of the High Court, the Ministry of Law has said that there appears to be no objection to follow the Board's instructions.

(vi) **Rubber belts**

A secondary manufacturer (not independent in this regard) produced V-belts and fan-belts on behalf of a loan licensee and embossed the brand name of the loan licensee thereon. The loan licensees's clearances of excisable goods exceeded Rs. 20 lakhs in the financial year 1981-82. Accordingly, on the goods produced on his behalf by the secondary manufacturer, no exemption (available to small scale units) was to be allowed. However, such exemption was irregularly allowed resulting in duty being realised short by Rs. 90,000 on clearances made during the year 1982-83.

On the mistake being pointed out in audit (June 1983), the department accepted the mistake in principle but stated (March 1984) that recovery was barred by limitation.

The Ministry of Finance have stated (December 1984) that the primary manufacturer does not have any financial or other control over the secondary manufacturer. Nor does he supply any raw material or technical know-how to the latter. The prices of the goods remain the same even when supplied to primary manufacturer under his brand name. Therefore, the benefit of the exemption notification was correctly given in this case. The reply of the Ministry goes counter to criteria given in their letter of 14 May 1982 (referred to in the preamble to this paragraph) in regard to use of brand name of loan licensee.

(vii) **Chokes and starters**

A primary manufacturer of fluorescent lighting tubes received chokes, starters and petty fittings produced on his behalf by secondary manufacturers and with his brand name printed thereon. The chokes, starters and petty fittings were marketed without duty being realised by the department either from the primary manufacturer or from the secondary manufacturer. The duty not realised amounted to Rs. 1,38,364 on clearances of chokes, starters and petty fittings made during the period from 1 July 1980 to 30 June 1983.

On the non levy of duty being pointed out in audit (March 1983 and March 1984) the department stated that the chokes, starters and petty fittings embossed with the brand name of the primary manufacturer were produced by the secondary manufacturers (whose independence in this regard was not definite) in small scale units and therefore no duty was payable on them. The reply goes contrary to the decision of the Ministry of Finance given in consultation with the Ministry of Law.

The Ministry of Finance have accepted the objection.

IRREGULAR GRANT OF CREDIT FOR DUTY PAID ON RAW MATERIALS AND COMPONENTS (INPUTS) AND IRREGULAR UTILISATION OF SUCH CREDIT TOWARDS PAYMENT OF DUTY ON FINISHED GOODS (OUTPUTS)

Rule 56A of the Central Excise Rules, 1944, provides for grant of credit for duty paid on the raw materials and components used in the manufacture of notified finished excisable goods, provided the raw materials and components fall under the same tariff item as the finished excisable goods. Further the excisable goods in the manufacture of which the raw materials and components are used should not be exempt from the whole of the duty of excise leviable thereon and should not be chargeable to duty at nil rate.

2.53 Irregular grant or utilisation of credit

(i) Copper pipes and tubes

As per a notification issued on 19 June 1980 duty payable on copper alloys was exempted under Rule 8(1) to the extent of duty paid on zinc, which was used as input in the manufacture of the alloys, provided the procedure set out in Rule 56A was followed. Sub-rules 2 and 2A of Rule 56A require that a manufacturer should apply for permission to avail the said procedure and take credit for duty paid only on the inputs brought in on or after the date of application. As per sub-rule 2B inserted by a notification issued on 21 February 1981, the Collector could permit the manufacturer to take credit for duty paid on inputs received after the date of issue of a notification under Rule 8(1) if the manufacturer could not apply in time due to late receipt of notification issued under Rule 8(1).

A manufacturer of pipes and tubes produced them using copper alloys fabricated from duty paid copper and zinc. He applied on 2 August 1980 (after 19 June 1980) for availing credit for duty paid on zinc in terms of the procedure in Rule 56A. Permission was granted on 9 August 1980. He, however, availed of credit amounting to Rs. 9,06,352 on 345 tonnes of zinc of which only 38 tonnes were received after 19 June 1980. Incorrect grant of credit for duty paid on inputs received prior to 19 June 1980 resulted in short levy of duty of Rs. 9,06,352.

On the mistake being pointed out in audit (September 1981) the department issued show cause notice in March 1982. In January 1984 the department stated that the party had filed a writ petition in the High Court and obtained a stay order. On verification it was seen that the writ petition was against another show cause notice issued on 11 September 1981 relating to the irregular utilisation of credit for Rs. 6,21,270 after 28 August 1981, from which date the benefit of grant of credit for duty paid on zinc was discontinued.

The Ministry of Finance have confirmed the facts and stated (December 1984) that certain quantities of zinc are common to both the demand notices, *viz.* the demand for Rs. 6,21,270 which has been challenged by the assessee in a writ petition before the High Court and the demand for Rs. 9,06,352 pending action for recovery. As such, the latter amount has also become a subject matter of the stay order granted by the Court against the former demand.

(ii) **Refractory material**

Duty paid graphite blocks classifiable under tariff item 68 were used in making moulds for producing refractories which were also classifiable under tariff item 68. The refractories were produced by pouring raw materials, in molten state, into the moulds. The manufacturer was allowed credit for duty paid on graphic blocks and allowed to utilise it for payment of duty on refractories. But the graphite blocks were not used in the manufacture of refractories but only in the manufacture of moulds.

Irregular grant of credit and allowing its utilisation resulted in duty being realised short by Rs. 1,38,687 on clearances made during the period from September 1982 to November 1983.

The irregularity was pointed out in audit in June 1984.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iii) **Air conditioners**

During the year 1980-81, room air-conditioners were allowed to be cleared without payment of duty to a free trade zone. But credit for duty paid raw materials and component parts used in the manufacture of the air conditioners was irregularly allowed and it was irregularly utilised for payment of duty on other goods cleared for home consumption. In the result duty was realised short by Rs. 44,766 on the other goods so cleared. On all such clearances made during the period from 1 April 1980 to 30 November 1983 the duty realised short was Rs. 8,61,300.

On the irregularity being pointed out in audit (November 1981), the department issued show cause-*cum* demand notices between January 1982 and December 1983. However, the manufacturer has argued that non-payment of duty on exports or deemed exports is not the same as exemption from duty. The plea is not correct because in this case duty free clearance was not allowed under Rule 12 and 13 of the Central Excise Rules but in term of an exemption notification issued on 21 August 1975.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.54 **Irregular utilisation of credit for payment of duty on scrap or waste**

Sub-rule 3(iv)(a) of Rule 56A requires that any waste of raw materials or component parts on which credit has been allowed to the extent of duty paid may be cleared only on payment of duty.

(i) A manufacturer was allowed credit for duty paid on steel billets out of which bars were manufactured. On steel melting scrap arising in the course of manufacture using duty paid billets, duty was paid by utilising the credit. But such scrap was not a declared finished output and, therefore, credit could not be used for payment of duty thereon. The credit was also irregularly utilised toward payment of duty on scraps which arose in the course of manufacture using ingots and billets produced in the same factory. The iregular utilisation of credit resulted in duty being levied short by Rs. 6.22 lakhs on clearances made during the period from April 1981 to July 1982.

On the mistake being pointed out in audit (2 September 1982) the department issued (25 September 1982) a show cause notice demanding an amount of Rs. 46.66 lakhs towards duty

payable on clearances of scraps during the period from September 1977 to August 1982.

Report on confirmation of demand is awaited (August 1984).

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) Rule 56A requires that credit can be utilised to pay duty only on finished products and on raw material which are cleared and not on wastes which are not finished product or raw material.

Two manufacturers were allowed credit for duty paid on steel sheets from which electrical stampings were manufactured and they utilised the credit in payment of duty on clearance of scrap arising out of the raw materials. Similarly another manufacturer was allowed credit for duty paid on steel skelp used in the manufacture of cold roll strips and he utilised the credit towards payment of duty on scrap. Irregular utilisation of credit resulted in short payment of duty by Rs. 57,423, Rs. 26,768 and Rs. 33,852 on clearances of scrap made during the periods from June 1981 to September 1981, from March 1982 to May 1982 and from January 1981 to July 1982 by the three manufacturers respectively.

On the mistake being pointed out in audit (January, August and September 1982), the department admitted the facts in two cases and recovered the duty leviable in January 1983 and December 1983. Report of the action taken for recovery of Rs. 57,423 from the third manufacturer is awaited (February 1984).

The Ministry of Finance have confirmed the facts (November 1984).

2.55 Irregular utilisation of credit where output is exempted from duty

(i) Rotors, stators, compressors and water coolers

As per a notification issued on 24 September 1966 rotors and stators were exempted from the whole of duty of excise leviable thereon if such rotors or stators were used in the factory of production as component parts in the manufacture of compressors on which duty of excise was leviable. As per another notification issued on 28 September 1973 parts of refrigerating appliances (compressors being one such part) were exempted from whole of the duty of excise leviable thereon, if such parts were used in the factory of production in the manufacture of refrigerating appliances on which duty is leviable whether in whole or in part. As per another notification issued on 24 September 1966 similar exemption was also available in respect of rotors and stators used in the factory of production as component parts in the manufacture of refrigerating appliances on which the duty is leviable whether in whole or in part.

A manufacturer of rotors, stators, compressors and water coolers produced rotors and stators from duty paid electrical laminations. He used the rotors and stators in the manufacture of compressors. Some of the compressors were used in the manufacture of water coolers. He availed of credit for the duty paid on electrical lamination used in the manufacture of rotors and stators (which were wholly exempted from duty) which in turn were used in the manufacture of compressors. When the compressors were used in the factory of production for manufacture of water coolers, credit for duty paid on the corresponding electrical laminations was utilised in payment of duty on finished products, though credit proportional to the electrical laminations used in the manufacture of compressors (which were used in the manufacture of water coolers) should have been expunged. Failure to expunge the credit and misutilisation of the credit resulted in duty being realised short by Rs. 34.56 lakhs on clearances of compressors and water coolers made between September 1979 and February 1982.

On the irregularity being pointed out in audit (January 1981 and December 1981) the department stated that according to Government of India letter dated 8 May 1979 the manufacturer of rotors and stators and compressors could pay duty on rotors and stators (even though they were exempted from duty) and avail of exemption under notifications dated 27 February 1965 and 1 March 1979 issued under Rule 8(1) read with Rule 56A. The reply is not correct because as per the exemption notifications read with Rule 56A credit, where given, is not to be utilised for payment of duty but only expunged in terms of the exemption granted.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) A manufacturer received duty paid raw materials and component parts for use in the manufacture of compressors. The compressors were used in the manufacture of water coolers. The duty paid on the raw materials and component parts was utilised for the payment of duty on the water coolers. But under a notification issued on 9 August 1982, compressors used in the manufacture of water coolers were exempted from the whole of the duty leviable thereon. The manufacturer, therefore, cleared compressors without payment of duty. On such compressors duty not being leviable, credit for duty paid on raw material and components should have been expunged to the extent the raw materials and components were used in the manufacture of such compressors. Failure to do so resulted in duty being realised short by Rs. 2,85,294 on clearances made during the period from August 1982 to February 1983.

On the mistake being pointed out in audit (June 1983) the department accepted the objection and issued show cause notice for Rs. 8,41,733 in respect of clearances made from August 1982 to September 1983.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iii) **Refrigerators and air conditioners**

Where the credit exceeds the duty payable on finished products, the excess credit is required to be lapsed, as per clause 3(vi) of the said Rule 56A.

Two manufacturers of refrigerators, air conditioners, other air conditioning appliances and electric motors obtained parts of such goods from outside and utilised them in the manufacture of said finished goods. They were allowed credit for duty paid on such parts and the credit allowed was more than the duty payable on the air conditioners. But the excess credit was not lapsed, and instead, was allowed to be used to pay duty on clearance of goods in which the parts were not used. In the result duty was realised short by Rs. 7,86,291 on clearances of such goods made during the period from July 1980 to December 1981.

On the short levy of duty being pointed out in audit (March 1982) the department did not admit the objection but stated (August 1983) that according to a clarification issued by Ministry of Finance on 16 October 1978, no co-relation of credit with duty payable on output is necessary. The reply is not relevant and the provisions of Rule 56A referred to above do not allow of credit given towards duty paid on a part which is used in one finished product, being used for payment of duty on another finished product in which such part is not used.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iv) **Aluminium strips**

A manufacturer of aluminium strips used such strips in the manufacture of paper covered aluminium strips. He produced the strips from duty paid aluminium rods from which aluminium wires were first drawn. The wires were then flattened into strips. The manufacturer was allowed to avail credit for duty paid on the aluminium rods which he utilised towards paying duty on the aluminium strips. But aluminium wires obtained from aluminium rods were exempt from duty as per a notification issued on 27 March 1976. Since the rods were not used directly

in the manufacture of strips, but only in the manufacture of wires the utilisation of the credit for duty paid on aluminium rods was irregular. The mistake resulted in duty being realised short by Rs. 52,987 on clearances made during the period from July 1982 to January 1984. Further assessable value of strips was computed on cost basis but duty paid on the aluminium rods was not included in the cost on the ground that the rods had become non-duty paid on grant of the credit. [Please see contrary view in paragraph—2.45(1)(a) of this Report]. The underassessment in the value of the strips resulted in further short levy of duty by Rs. 32,782 on the clearances made during the period from April 1982 to February 1984.

On the irregularities being pointed out in audit (March 1984) the department stated (June 1984) that even if aluminium wires were intermediate products which were exempted from duty, credit for duty paid on rods could be used to pay duty on strips, as held by the Ministry of Finance on 21 June 1980.

The Ministry of Finance have stated (December 1984) that the assessee, in this case, will be entitled to avail proforma credit for duty paid on the aluminium rods, towards payment of duty on the aluminium strips, notwithstanding the coming into existence of aluminium wires at the intermediate stage. This view was arrived at after obtaining the Law Ministry's advice and communicated *vide* Board's letter dated 21 June 1980. As regards the short levy on account of mistake in costing is concerned, demands for differential duty are being worked out by including the element of administrative overheads and excise duty while computing the assessable value of the goods meant for captive consumption. The first part of the reply is not correct because the aluminium rods and wires are classifiable under tariff items 27 & 33B respectively and the conditions for grant and utilisation of credit under the statutory Rule 56A are not satisfied.

(v) **Tyres**

A manufacturer of tyres cleared a part of his production of tyres for use as original equipment in motor vehicles. On such clearances levy of duty was exempt under a notification issued

on 1 April 1968. However, the manufacturer was irregularly allowed credit for duty paid on raw materials used in the manufacture of such tyres as were exempted from duty and to utilise the credit towards duty payable on those tyres which were cleared on payment of duty. The irregular grant and utilisation of credit resulted in duty being realised short by Rs. 1.99 lakhs on tyres cleared on payment of duty during the period from September 1982 to March 1983.

On the mistake being pointed out in audit (April/June 1983), the department accepted the objection and raised demand and also stated that the credit amounting to Rs. 55,693 availed had since been expunged.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(vi) **Rubber pipings and tubings**

A manufacturer produced rubber pipings and tubings which he cut to produce rubber coats and aprons. Pipings and tubings classifiable under tariff item 16A are exempted from duty under a notification issued on 29 August 1967. The coats and aprons were held by the department to be classifiable under tariff item 68, against which decision the manufacturer has appealed. Towards duty paid raw materials used in the manufacture of rubber pipings and tubings, credit was allowed under Rules 56A. The credit was allowed to be utilised towards payment of duty on coats and aprons. The utilisation was irregular because the raw material was used in manufacture of pipings and tubings on which levy of duty is exempt. The irregularity resulted in short levy of duty by Rs. 3.87 lakhs on clearances made during the period from April 1981 to August 1983.

On the irregularity being pointed out in audit (October 1983) the department stated (November 1983) that the manufacturer was provisionally allowed to classify the coats and aprons under tariff item 16A and as per a clarification issued by the Ministry of Finance in June 1980 credit was allowed even if an intermediate

product is exempt from duty. The reply also repeated by the Ministry of Finance (January 1985) is not correct and the clarification issued by the Ministry of Finance is not relevant to the case, but only to notifications issued under Rule 8(1) read with Rule 56A. The reasons for provisional classification contrary to the decision of the department are also not clear.

2.56 **Irregular or excess grant of credit and its utilisation in relation to stampings, motors, fans and resins**

Rule 8(1) of Central Excise Rules, 1944, provides that the Central Government may, by notification, exempt any excisable goods from the whole or any part of the duty leviable on such goods. Under Rule 56A of the Central Excise Rules, subject to certain conditions, credit is allowed for duty already paid on raw materials and components used in the manufacture of excisable goods and such credit is allowed to be utilised towards payment of duty on the excisable goods (output). When Rule 56A is invoked, there is no grant of exemption, and duty paid on output goods is the whole of the duty payable. Duty is paid on output by utilisation of the credit allowed for duty paid on inputs. If credit is inadequate balance of duty is paid in cash.

But as per proviso (i) to Rule 56A(2) no credit shall be allowed in respect of duty paid on any material or component parts which are used in the manufacture of the finished excisable goods where the finished goods (output) are exempt from the whole of the duty of excise leviable thereon or are chargeable to nil rate of duty.

(i) **Electrical stampings, motors and fans**

As per a notification issued in March 1979 (subsequently replaced by another notification issued on 1 March 1983) under Rule 8(1) of the Central Excise Rules, when electrical stampings

and laminations all sorts are used in the manufacture of electric motors all sorts and parts thereof the duty payable on the latter is exempted from so much of the duty of excise as is equivalent to the amount of duty paid on the stampings and laminations, subject to the procedure set out in Rule 56A being followed in relation to the exemption. Similarly, electric fans are exempt from duty paid on electric motors, used in their manufacture.

As per a notification issued on 1 March 1969 electric motors were exempted from the whole of the duty payable if used in the factory of production in the manufacture of fans.

As per a notification issued on 13 April 1968 rotors and stators which are used in the factory of production (as component parts in the manufacture of electric motors) are exempt from payment of duty.

Nineteen manufacturers of connected items like electric fans, electric motors, rotors and stators, electrical stampings and laminations and steel sheets produced many of these items from the succeeding items in the aforementioned connected chain of outputs and inputs.

The steel sheets were used in the manufacture of stampings. The stampings were used in the manufacture of rotors and stators which became parts of motors. The electric motors produced were used in the manufacture of fans. Because the procedure for grant and utilisation of credit under Rule 56A was allowed, exemption was allowed on output (say on electric motors) to the extent of duty paid on inputs (say electrical stampings and laminations). On next stage of output (say electric fans) exemption was allowed to the extent of duty paid on its input (say electric motors) and also to the extent of duty paid on earlier stage of input (say stampings and laminations). The grant of exemption to the latter extent was irregular.

Such irregularities resulted in duty being realised short by Rs. 2.44 crores on clearances made by the manufacturers during various periods between April 1980 and November 1983.

On the irregularities being pointed out in audit between August 1981 to March 1984, in 4 cases the department accepted the irregularity and raised demands for Rs. 31.89 lakhs. In 5 cases the reply of the department is awaited. In 9 cases the department did not accept the objection (though in two cases demand was still raised for Rs. 2.74 lakhs). The department stated that according to a clarification issued by the Ministry of Finance in June 1980, where an intermediate product fully exempt from duty has come into being during the process of manufacture of a specified finished product, utilisation of credit (for duty paid on inputs used in the manufacture of the intermediate products) towards payment of duty on specified finished products was permissible, provided the intermediate product has been manufactured and consumed within the factory manufacturing the finished product. But this clarification goes counter to the provisions of Rule 56A which does not refer at all to intermediate products but only to notified finished products. In the cases in question there is no intermediate product but only a chain of notified output products. In relation to them only provisions of Rule 56A have been applied by the department and not provisions of Rule 8(1). If a notified product is exempted from duty, Rule 56A cannot be invoked merely by describing it as intermediate product. The substantive provisions of the exemption notified under Rule 8(1) have been ignored and no exemption has at all been granted. This adversely affects revenue because assessee is irregularly allowed credit for duty payable which is exempted and has, therefore, not been paid.

The department also stated that the manufacturer had an option to claim exemption or credit under Rule 56A. But in the cases in question the manufacturer had no option in law. He could not avail of credit for duty paid as per provisions of Rule 56A after paying duty on goods exempted from duty.

Payments made where duty is exempted are mere deposits and not payments of duty.

The department also stated that the notification intended that the benefits given irregularly be given. The reply is not correct and the confusion arises because the notifications issued under Rule 8(1) of Central Excise Rules, 1944 granting exemption from duty have been made subject to procedure prescribed in Rule 56A being followed. In practice the exemption part is overlooked and successive gross credits (on output becoming input) are allowed under Rule 56A resulting in loss of revenue to Government instead of limiting credits to net duty paid. More credit should not have been allowed than the duty payable (net of exemption allowed) on any goods. There is weakness in the notifications of 1 March 1979 and 1 March 1983 which refer both to grant of credit under Rule 56A and grant of exemption from duty under Rule 8(1). The weakness resulted in credit being allowed and utilised at successive stages of production ignoring the exemption.

In reply to similar objections in paragraph 2.57 in the Audit Report for the year 1982-83 the Ministry of Finance had stated (December 1983) that the matter will be re-examined.

The Ministry of Finance have stated (December 1984) that in view of the stampings and laminations being notified as inputs and electric motors being notified as outputs against them, the credit would be admissible despite the coming into being of an intermediate product *i.e.* rotors and stators which are exempt from duty. The Law Ministry which was consulted on this issue had advised accordingly and necessary instructions incorporating the advice had been issued in the Ministry's letter dated 21 June 1980. The Ministry has also stated that for grant of credit under Rule 56A it is immaterial whether duty has been paid on the raw material or component parts through credit or in cash. If credit is otherwise admissible credit should be allowed even if duty was paid by utilisation of credit.

The reply ignores the fact of grant of exemption from duty and the legal necessity that duty which is exempted cannot be paid in cash or by utilisation of credit (Please also see connected point in para 2.45(ii) in this report). Any payment towards duty which is exempted is mere deposit and not payment of duty. The reply is also incorrect about exempted rotors and stators which being notified as output are hit by the prohibition in Rule 56A in regard to exempted outputs.

(ii) **Coil mountings**

A manufacturer of electric motors and component parts thereof was allowed exemption from duty on such goods to the extent of duty paid on electrical stampings and laminations. But the assessee used the electrical stampings for manufacture of coil mountings falling under tariff item 68. The coil mountings were exempt from duty as per notification issued on 30 April 1975. The procedure prescribed in Rule 56A, (which procedure is also the substantive provisions of Rule 56A) cannot be applied in relation to goods wholly exempted from duty. Therefore, the grant of exemption amounting to Rs. 1,97,643 was questioned in audit.

On the irregularity being pointed out in audit (July 1983) the department stated (September 1983) that coil mounting is only a process incidental to the manufacture of electric motors. Further, the stampings received by the assessee and verified by the department were sent outside for coil mounting and were received back by virtue of permission granted by the Collector of Central Excise under Rule 56A. The department also stated (December 1983) that according to a clarification issued by the Government of India in June 1980, exemption could be allowed even if an intermediate product exempt from duty was produced.

The Ministry of Finance have stated (December 1984) that as per Ministry's letter dated 21 June 1980 stampings and laminations and electric motors being notified as inputs and

outputs against each other under a notification dated 1 March 1979 the benefit of the notification would be available to the assessee despite coming into existence of an intermediate product, totally exempt from duty.

The reply is not correct because only certain parts of Rule 56A are being invoked and not other provisions of Rule 56A which are contradictory to the case. In Rule 56A there is no substantive part separate from procedural part. The contradictions have not been removed so far and pending examination revenue continues to get affected adversely.

(iii) **Resins**

As per a notification issued on 1 March 1963, duty payable on vegetable non-essential oils was exempted provided it was used in manufacture of paints and varnishes or artificial & synthetic resin and the procedure prescribed in Rule 56A was followed and also provided the goods in the manufacture of which the oil is used are not exempted from duty or chargeable to nil rate of duty.

(a) A manufacturer of paints and varnishes used duty paid vegetable non-essential oils in the manufacture of alkyd and maleic resins. The alkyd and maleic resins were captively used in the manufacture of paints and varnishes. The assessee was allowed exemption from duty paid on the paints and varnishes to the extent of duty paid on the vegetable non-essential oils after following the procedure prescribed in Rule 56A. But the exemption was not available since the oil was first used in manufacture of alkyd and maleic resins, which were exempt from payment of duty under a notification issued on 20 August 1981. In the result duty was realised short by Rs. 2.03 lakhs on clearances made during the period from January to December 1982.

On the short levy being pointed out in audit (March 1983) the department stated (June 1983) that the exemption was allowed in terms of a letter dated 21 June 1980 issued by the Board regarding intermediate products.

The Ministry of Finance have stated (December 1984) that in view of the Law Ministry's advice communicated in Ministry's letter dated 21 June 1980, there is no short levy. But that letter has application only in cases where a specified input is linked to a specified output by a notification issued under Rule 56A. But in the above case, two outputs viz. paints and *resins* which are separate and distinct outputs are notified as outputs and one of the outputs (not intermediate product) is exempt from duty.

(b) Another manufacturer of paints and varnishes also produced alkyd resins and was allowed exemption from duty on the paints to the extent of duty paid on vegetable non-essential oils which he used in the manufacture of alkyd resin even though the alkyd resin was exempted from the whole of the duty payable on it. Exemption from duty leviable on paints was also allowed to the extent of Rs. 35,400 on the clearances made during the year 1979-80 on the ground that so much duty had been paid on the vegetable non-essential oils which were used in the manufacture of alkyd resin (even though the resin was a distinct excisable product wholly different from the paints).

On the irregular grant of exemption being pointed out in audit (August 1983) the department stated (March 1984) that according to a clarification issued by the Government of India in June 1980 exemption was allowable even in cases where a product exempted from duty comes into being at an intermediate stage during the process of manufacture of a notified finished product, provided the product arising at the intermdiate stage is consumed within the factory in the manufacture of the notified finished product which is cleared on payment of duty.

The Ministry of Finance have stated (December 1984) that credit of duty paid on the oils used in the manufacture of paints and varnishes has been correctly allowed since the alkyd resin manufactured is an intermediate product, subsequently used exclusively in the manufacture of varnishes which are notified products. The clarification of 21 June 1980 is relevant only for the purposes of notifications issued under Rule 56A and where only one output is notified in relation to an input. The

notification issued on 1 March 1963 does not notify only one specific finished product. If the oils are used in the manufacture of the exempted resin (a specified output) the benefit of the exemption notification is not available as per that notification.

DEMANDS FOR DUTY NOT RAISED

2.57 Demands barred by limitation

As per Section 2(f) of the Central Excises and Salt Act, 1944 'manufacture' includes any process incidental or anciliary to the completion of a manufactured product. As per Rule 9 and 49 of the Central Excise Rules if the manufacture of excisable goods has been completed, the goods may not be removed without payment of duty, except where they are so allowed to be removed by Government in the manner notified and subject to such conditions as have been specified.

As per provision of Section 11A of the Central Excises and Salt Act, 1944, when any duty of excise has not been levied or paid or has been short levied or short paid, a Central Excise Officer may within six months from "the relevant date" serve notice on the person chargeable with duty, which has not been levied or paid or which has been short levied or short paid, requiring him to show cause as to why he should not pay the amount specified in the notice. Where a monthly return showing particulars of duty paid on goods removed by him during the month is to be filed by the manufacturer (under the Self-Removal Procedure) "the relevant date" is the date on which the return is filed.

(i) A manufacturer of sheet glass was allowed to clear his products on payment of duty. The assessable value of the product was arrived at after excluding the elements of freight, forwarding charges, post manufacturing expenses, discount and selling profit from the price of the product fixed for sale from the manufacturer's depot. The Internal Audit party of the department pointed out in February 1980 that deduction of post manufacturing expenses and selling profit was not in order.

But because of delay of more than two years in the issue of show cause notice duty amounting to Rs. 17.42 lakhs payable on clearances made during the period from April 1980 to August 1981 could not be demanded. The demand was barred by limitation.

On the reason for the delay being enquired in audit (October 1982), the department stated (October 1983) that the delay in issue of show cause notice was due to divergent views held in the department.

The Ministry of Finance have confirmed the facts and stated (December 1984) that one view was that the post manufacturing expenses are deductible from the assessable value in the light of various Court judgements. Under a contrary view demands were raised on 12 March 1982 restricting the period to six months.

(ii) As per a notification issued on 16 March 1976 duty in excess of 15 per cent *ad valorem* leviable on mill boards and straw boards was exempted in respect of clearances upto 500 tonnes and duty in excess of 25 per cent *ad valorem* was exempted in respect of subsequent clearances made in a year. As per another notification issued on 19 June 1980 duty on paper and paper board in excess of 20 per cent was exempted in respect of clearances upto three hundred tonnes made in any financial year. But the exemption was not available to a manufacturer whose total clearances of paper and paper board during the preceding financial year exceeded three hundred tonnes or who had availed of exemption under the notification dated 16 March 1976.

On clearances of mill board, exemption was allowed to a manufacturer under notification dated 16 March 1976. He opted for exemption under notification dated 19 June 1980 so as to avail of exemption on insulation boards also and refund of duty amounting to Rs. 1,13,256 already collected was made on the insulation boards. But the exemption was wrongly allowed

under the notification of 19 June 1980 because exemption was allowable only on the first clearance of 300 tonnes.

On the erroneous refund being pointed out in audit (March 1983), the department stated (November 1983) that an appeal for recovery of the erroneous refund, was filed by it. But the appeal was rejected by the appellate authority because it was barred by limitation. Because the department did not take timely action on receipt of audit objection in March 1983 and it did not prefer the appeal within the period of 6 months from the date of making the refund, revenue amounting to Rs. 1,13,256 was lost to Government.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(iii) On sheet moulding compound and dough moulding compound duty is leviable under tariff item 68.

From 1 March 1980 a manufacturer of sheet moulding compound and dough moulding compound was allowed to classify his goods provisionally under tariff item 15A(2) whereunder duty was exempted as per a notification. But in May 1980 it was decided by the department to classify the products under tariff item 68. The manufacturer paid duty under tariff item 68, under protest, with effect from 16 May 1980. Recovery of duty under tariff item 68 on clearances made from April 1979 to 16 May 1980 was not made.

On the omission being pointed out in audit (December 1981), the department issued (February 1982), show cause-*cum* demand notice for an amount of Rs. 1,37,462 towards duty payable for the period from April 1979 to May 1980 and demand was confirmed in January 1983. But the demand was barred by limitation.

The Ministry of Finance have stated (December 1984) that an appeal, against the order holding the demand as time barred, has been filed.

(iv) Square or rectangular conductors, whether insulated or not, are classifiable under tariff item 68 covering "all other goods, not elsewhere specified". They are not classifiable under tariff item 33B (covering wires and cables other than square or rectangular conductors).

A manufacturer of insulated copper and aluminium strips of rectangular cross-section, for use as conductor, was allowed to classify his goods under tariff item 68 and pay duty accordingly from April 1979. But on clearances made from 1 March 1975 to 31 March 1979 demand for duty was barred by limitation because of the delay in deciding on the classification. In the result duty amounting to Rs. 29,71,204 on clearances made during the period from 1 March 1975 to 31 March 1979 was lost to Government.

The reasons for the delay were enquired in audit in May 1980.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(v) A manufacturer of motor vehicle parts made nozzles and nozzle holders and also forged shapes and sections which were cleared for captive consumption. However, on the forged products no excise duty was recovered during the period from 1 August 1980 to 6 April 1981 which resulted in duty amounting to Rs. 2,28,851 not being realised.

On the mistake being pointed out in a audit (November 1982), the department issued a show cause notice for Rs. 2,28,851 in April 1983 which was, however, barred by limitation.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.58 **Delays in raising demands**

(i) As per a notification issued on 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. The Ministry of Finance issued instructions on 10 December 1975 that the invoice price of such goods should be verified with reference to accounts of the manufacturer as certified by auditors.

A Public Sector Company fabricated and cleared various items of machinery and parts thereof (all classifiable under tariff item 68), during the period from July 1982 to June 1983 and realised duty from its customers as per aforesaid notification. But no duty was demanded by the department on the goods so cleared though duty amounting to Rs. 12,82,270 was payable to it.

On the omission being pointed out in audit (September 1983) the department demanded and realised the amount.

The Ministry of Finance have confirmed the facts (December 1984).

(ii) Demands for payment of special and additional excise duties leviable on yarn, on which basic excise duty had been partially exempted, were stayed by a High Court. But demand and collection of special excise duty and additional excise duty on yarn on which the whole of the basic excise duty was leviable had not been stayed by the High Court. Still the department failed to demand and collect special and additional excise duties on the latter category of yarns cleared from a unit. The failure resulted in duty amounting to Rs. 3,52,833 not being demanded on clearances made during the period from July 1982 to August 1983.

On the mistake being pointed out in audit (June and July 1983) the department stated (April 1984) that the amount of Rs. 3,52,833 had since been demanded and recovered.

The Ministry of Finance have confirmed the facts (January 1985).

(iii) A Public Sector Undertaking engaged in the production of 'coke oven gas' was allowed to clear such gas without payment of duty on the plea that its value could not be determined at the time of its removal. During the period from April 1978 to January 1981 duty was paid to the department after delays ranging from 3 to 15 months. The benefit derived by the manufacturer by way of interest at 12 per cent on the duty not demanded amounted to Rs. 1,34,855.

The failure to demand duty was pointed out in audit in December 1981. The department stated that the manufacturer was having difficulty in paying duty at the time of removal.

The Ministry of Finance have stated (November 1984) that there is no provision in the Act for charging interest. The delay in collection of duty was due to delay in receipt of test reports on the gas from the National Test House Alipore and because value was determined on the bsais of test reports. The reasons for non-levy of duty on a provisional valuation have not been given in the reply.

(iv) As per a notification issued on 30 June 1979 crushed bones and bone products classifiable under tariff item 68 were exempted from the whole of the duty leviable.

A manufacturer of 'crushed bones and bone products' was allowed exemption on his clearances of gelatine made during the period from 1 July 1979 to 18 February 1981. But as clarified by the Central Board of Excise and Customs on 9 January 1981 gelatine is not a 'bone product'. Still, duty amounting to Rs. 2,48,486 was not demanded on the said clearances.

On the short levy being pointed out in audit (April 1983), the department stated (July 1984) that though the mistake was noticed, there was delay in raising demand because of the non-cooperative attitude of the manufacturer.

The Ministry of Finance have stated (December 1984) that the demand could, however, be raised only in September 1981 because the assessee, despite repeated requests, did not furnish the figures for computation of the amount of demand till July 1981, by which time the demand had already become time-barred. The reply is silent on the failure to take action under the provisions of the Act and the Rules to raise legal demands even against uncooperative assessees.

(v) Under the Khadi And Other Handloom Industries Development (Additional Excise Duty on Cloth) Act, 1953, additional 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.

Cotton fabrics manufactured in powerloom factories in which five or more powerlooms are installed were exempted from levy of cess under a notification dated 20 December 1961, but only if a special procedure was followed. As per a notification issued on 18 June 1963 processed cotton fabrics, which had been manufactured in powerloom factories in which less than five powerlooms were installed were also exempted from levy of handloom cess. The Ministry of Finance clarified on 21 April 1971 that processed fabrics manufactured in powerloom factories in which five or more powerlooms were installed would also be exempt from levy of cess even when the special procedure was not being followed. However, the Board of Excise and Customs reconsidered the matter further and issued instructions on 30 December 1978 stating that demands for collection of cess on processed fabrics manufactured in powerloom factories in which five or more powerlooms were installed should be raised if special procedure was not followed, but demands should not be enforced until further orders

Handloom cess was not levied in four powerloom factories though five or more powerlooms were installed in each of the factories and the fabrics were cleared after processing by independent processors (special procedure was not followed). The cess not demanded in above three cases amounted to Rs. 1,77,143 for the years 1977-78 to 1982-83. In the remaining one case the amount of cess not demanded is still to be computed. Demands were not raised though they were required to be raised in compliance with Board's instructions.

On the omission to raise demands being pointed out in audit (December 1982 and January 1983) the department stated (December 1983) that the concerned range officers have since been directed to raise demands. The reasons for not enforcing recovery on the demands raised have not been communicated to Audit.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

IRREGULAR REBATES AND REFUNDS

2.59 **Irregular grant of refund**

(i) On plywood and plywood board duty is leviable under tariff item 16B.

A manufacturer of flush doors and plywood paid duty on flush doors under protest from 21 July 1973. A High Court had held* in March 1980 that board and plywood used in the manufacture of flush doors were classifiable under tariff item 16B. However, the flush door being a different product from plywood, was classifiable under the tariff item 68 (which came into force on 1 March 1975). Based on the decision of the High Court, the manufac-

*(Wood Crafts Products Ltd. Vs. The Superintendent (Technical) and others ELT November 1980 page 684)

turer claimed a refund of Rs 27,76,283 being duty recovered on the flush doors under tariff item 16B less the duty leviable under tariff item 68. The refund was in respect of clearances made during the period from 21 July 1973 to 7 August 1981. The Department allowed the refund claimed irregularly. While making refund the department failed to recover duty payable on the board and plywood used in the manufacture of flush doors on which duty had not been recovered earlier, but only on the flush doors. The mistake resulted in duty amounting to Rs. 39,56,263 not being realised on the clearances of board and plywood.

On the mistake being pointed out in audit (June 1982) the department issued (September 1982) a show cause-cum demand notice for the amount.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

(ii) As per two notifications issued on 16 March 1976, on white printing paper supplied for educational purposes, levy of duty was exempted.

From a paper factory 492 tonnes of white printing paper were supplied to two news agencies and a press, for printing religious books, as per the allotment made by Ministry of Industry during the period from May 1978 to April 1979. In July 1979 it was clarified by the Ministry of Finance that on paper supplied to news agencies no exemption was to be allowed since such paper cannot be considered to be for educational purposes. In August 1979 the Ministry of Law advised that paper supplied for printing religious books cannot also be viewed as supplied for educational purposes. The department therefore realised further duty amounting to Rs. 1.94 lakhs which was, however, refunded as per orders of Appellate Collector passed on 8 June 1982 holding that the term 'educational purposes' covered religious books. The depart-

ment did not appeal against the order despite the advice given by the Ministries of Finance and Law.

The irregular refund of duty amounting to Rs. 1.94 lakhs was pointed out in audit in July 1983.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

CESS

2.60 Non-levy of cess

(i) **Coffee cess**

As per provisions of Coffee Act, 1942, a duty of excise (referred to as cess) is leviable on coffee. From 16 December 1977 the cess is leviable at the rate of Rs. 11.80 per quintal. The cess is realised by the Coffee Board (referred to as the Board). The cess collected is initially credited to the account of the Board. The amount of cess less the cost of collection is required to be remitted into the Consolidated Fund of India.

For the last several years all coffee produced in the estates in India are required to be delivered to the Coffee Board. But registered owners in Assam (upto, and inclusive of, the year 1979-80), Madhya Pradesh, Maharashtra, Mizoram, Orissa, Sikkim, West Bengal, Kolli Hills of Tamil Nadu and the Union Territory of Andaman and Nicobar Islands are exempted from so delivering the coffee to the Board.

The amount of coffee produced in Assam (upto and inclusive of the year 1979-80), Madhya Pradesh, West Bengal and the Kolli Hills of Tamil Nadu were not known to the Board. The amount of coffee produced in Mizoram, Sikkim and Union Territory of Andaman and Nicobar Islands was known to the Board only in respect of a few years.

Section 23 of the Act provides for the submission of the information on the amount of coffee produced, by the owners of the estates, to the Board. On failure to register a coffee estate with the Board the owner is liable to fine of Rs. 1,000 and further fine of Rs. 500 per month for each month during which the failure continues. For failure to furnish information a registered owner is liable to fine of Rs. 1,000. No fine of either kind was imposed by the Board in the said areas.

During the period of 31 months from January 1981 to July 1983 cess was credited by the Board to Government account after delays ranging from 1 to 3 months on 31 occasions. The amount of remittance which was delayed amounted to Rs 5 lakhs.

On enquiry in audit (October 1983) of the reasons for delay, the Board stated (February 1984), that the procedure for remittance was being streamlined.

The Ministry of Commerce have stated (February 1985) that the procedure was streamlined in February 1984.

(ii) **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. As per definition in Section 2(f) (iv) of the Central Excises and Salt Act, 1944, as it stood amended in February 1980 the term 'manufacture' includes processes, viz., dyeing, bleaching etc. if carried out on cotton fabrics. If grey cotton fabrics of one kind on which handloom cess has been paid are further subjected to any of the above processes to produce another kind of fabric, manufacture is involved and handloom cess is again leviable on the other kind of fabric so manufactured.

(a) A manufacturer of dyed and bleached cotton fabrics, produced from mill made grey fabrics on which handloom cess had been paid, was allowed to clear dyed and bleached cotton fabrics without payment of handloom cess again thereon. On clearances made in the year 1981 handloom cess not levied amounted to Rs. 90,458.

(b) Two manufacturers produced processed cotton fabrics falling under tariff item 19I(b). They produced the fabrics from mill made grey fabrics on which handloom cess had been paid. They were allowed to clear the processed cotton fabrics without payment of handloom cess again thereon. On clearances made during the period from April 1980 to March 1982 handloom cess not levied amounted to Rs. 36,865.

(c) Another manufacturer produced dyed bleached cotton fabrics from grey cotton fabrics. The bleached fabrics were consumed captively without payment of handloom cess on it. On clearances made during the period from December 1979 to July 1982 handloom cess not levied amounted to Rs. 1,351.

On the above omissions being pointed out in audit (in March and August 1982 and February 1983) the department did not admit the objections and stated (January 1984) that as per Ministry's clarification issued in April 1983 handloom cess, if collected on fabrics at grey stage, need not be collected again at the processed stage.

The Ministry of Finance have stated (December 1984) that it has been confirmed by the Development Commissioner for Handlooms that the cess on processed fabrics is not to be charged a second time if the cess has been paid at the grey stage. In the instant case in sub paragraph (a) above cess was paid at the grey stage and as such there is no short levy. The reply goes contrary to the provisions in the 1953 Act, that what is leviable under

the Act is a duty of excise (described as cess) and this duty of excise is leviable on all fabrics that are manufactured. Just as regular excise duty is levied on output cloth which is distinct and separate in character from input cloth on which duty of excise might have already been levied, additional excise duty called cess is also leviable under the Act. Cess is recoverable again like excise duty if exemption or set off is not allowed by notification. The advice of the Ministry of Law needs to be taken so that the cess is foregone legally and not contrary to law as of now

(iii) **Paper cess**

As per an order issued on 27 October 1980 under the Industries (Development and Regulation) Act, 1951, from 1 November 1980 a duty of excise at the rate of 1/8 *per cent ad valorem* was leviable as cess on paper pulp (including paper products). The levy was withdrawn on 3 February 1981 by another order. The cess was, therefore, leviable during the period from 1 November 1980 to 2 February 1981.

On 'pulp' manufactured in a factory cess was not levied resulting in cess amounting to Rs. 84,261 not being realised on clearances made during the period from 1 November 1980 to 2 February 1981.

On the omission being pointed out in audit (August 1983) the department stated (June 1984) that the matter had been taken up with the Ministry of Finance. The Ministry of Finance have stated (December 1984) that the matter is under examination. A similar objection which was highlighted in paragraph 2.63 (iii) of last Audit Report is also still under examination in the Ministry.

(iv) **Jute cess**

Under the provisions of Industries (Development and Regulation) Act, 1951 a duty of excise (for collection as a cess) is

leviable from 1 November 1976 on manufactures of jute (barring a few specified ones) containing 50 per cent or more of jute by weight which are manufactured or produced in the Scheduled Industry of Textiles (which includes any industry engaged in the manufacture of any goods made wholly or in part of jute including those dyed, printed or otherwise processed). The cess was leviable on such jute manufactures from 1 November 1976 as per orders issued on 25 July 1976 and 19 October 1976.

(a) A manufacturer of 'polythene laminated jute bags' containing more than 50 per cent of jute by weight was allowed to clear them without payment of cess. Cess not levied amounted to Rs. 27,061 on clearances made during the years 1979-80 to 1982-83.

The omission was pointed out in audit in January 1983.

(b) Two manufacturers produced 'laminated jute bags' containing more than 50 per cent of jute by weight but were allowed to clear them without payment of cess. Cess not levied amounted to Rs. 47,163 on clearance of laminated jute bags made during the period from March 1979 to August 1982.

On the omissions being pointed out in audit (April 1982 and February 1983), department issued (September 1983) a show cause notice demanding Rs. 24,463 from one of the manufacturers. Adjudication orders are still awaited. But department did not accept the objection in respect of the second manufacturer and stated that the product being classifiable under tariff item 68 no cess was leviable. The reply is not correct and there is no remission from cess even if goods are classified under tariff item 68. Also no reason has been advanced that weight of jute was not more than 50 per cent in the product.

In the above cases the Ministry of Finance have stated (December 1984) that the matter is under examination.

PROCEDURAL DELAYS AND IRREGULARITIES WITH REVENUE IMPLICATIONS

2.61 Delays in approval of price lists under the Self Removal Procedure

Under the Self Removal Procedure, excisable goods may be cleared by producers, manufacturers or licensees of private warehouses without intervention of Excise Officers. The assessees are required, under the Central Excise Rules, to file a price list of the goods for removal, in a prescribed form. The price lists show the price of the goods and trade discount, if any. Prior approval of the price list is necessary only under certain specified circumstances. But, it is an offence to clear the goods without even filing a price list with the Excise Department. Under certain other circumstances, after a price list or revised list has been filed, and pending approval of the price list, duty may be paid provisionally and the goods cleared. Such cases are deemed to be cases of provisional assessment. For their finalisation, no time limit has been fixed, in the Excise Act or the Rules.

(i) During the years 1980-81 to 1982-83, in the 25 Collectorates under the Department of Central Excise, 5 *per cent* of the price lists filed were approved after 3 months and about 1 *per cent* after 1 year. About 3 *per cent* had not been approved at all till 31 March 1983. [Collectorate-wise details are given in the statement in Annexure 2.2.]

(ii) In 197 cases, goods involving duty amounting to Rs. 3.8 crores were cleared during the three years without filing price lists. [Collectorate-wise details are given in Annexure 2.3.]

(iii) In 3961 cases, where goods were cleared involving duty amounting to Rs. 28.5 crores, duty was paid provisionally (after executing a bond for payment of the differential duty, if any) because price lists were not finally approved. Duty involved in many other cases where clearances were made provisionally for various reasons including non-approval of price lists amounted to Rs. 457 crores. [Collectorate-wise details are given in Annexure

2.4] The year to which the oldest provisional assessment (still pending finalisation) relates are also given in the annexure.

(iv) If the price list filed by an assessee is altered by the department prior to its approval, the assessee may accept the revision in prices made by the department, under protest. In such an event the assessee will not be barred by limitation under the Central Excise Act from claiming refund even after a period of 6 months from the date of clearance of the goods. [The number of cases of payment of duty under protest, where appeals were filed or applications were made to the Court could not be ascertained from the records available in the collectorates. If appeals have been filed or applications have been made to the Courts, the duty collected in such cases is also, in a manner of speaking, provisional. In 1164 cases, duty was paid under protest and duty involved amounted to Rs. 118 crores in the three years 1980-81 to 1982-83. [Collectorate-wise details are given in Annexure 2.5.]

(v) In the following cases, noticed in audit, substantial amounts of duty were realised provisionally. The final assessment are still to be done. Inordinate delays in dealing with price lists were also noticed in audit.

(a) In Patna Collectorate, 260 provisional assessments involving duty amounting to Rs. 312 crores were pending finalisation as on 31 March 1983. They included clearances of cigarettes and smoking mixtures by a leading cigarette manufacturer involving duty amounting to Rs. 303 crores ; 109 cases involving duty amounting to Rs. 260 crores were pending for more than a year. On clearances of footwear made by a leading manufacturer of footwear, duty amounting to Rs. 66 lakhs was involved ; Rs. 1.20 crores were involved in provisional clearances of shells and slides. Also Rs. 3.4 crores were involved in clearances of glass and glassware and 1.16 crores in clearances of asbestos cement products.

(b) In the Collectorates of Allahabad, Kanpur and Meerut, in 90 cases clearances were made after paying duty provisionally, because of non-approval of price lists. The duty involved in only

70 cases amounted to Rs. 8.87 crores. Information on duty involved in the other cases is awaited.

(c) In Haryana, the price lists filed by 5 sugar mills were not approved finally because of changes in tariff value and pattern of sale. The duty involved amounted to Rs. 22.34 crores.

(d) In the two Collectorates of Hyderabad and Guntur, clearances were made during the years 1980-81 to 1982-83 after payment of duty provisionally in 550 cases, which involved duty amounting to Rs. 18 crores.

(e) In 4 Collectorates in Tamil Nadu in 713 cases of provisional assessment, duty involved amounted to Rs. 9.43 crores.

(f) In Thane Collectorate in 477 provisional assessment cases, the duty involved amounted to Rs. 47 crores. The reasons for the delay in finalising assessments included want of particulars of captive consumption, want of cost data, want of balance sheet, non inclusion of post manufacturing expenses and want of cost data certified by Chartered Accountants.

(g) In Calcutta Collectorate, price lists filed by 36 textile mills have not been finalised and price lists were only provisionally approved subject to verification. Duty amounting of Rs. 86 lakhs was realised provisionally during the years 1981-82 and 1982-83.

(h) In Poona Collectorate, in 1356 cases, duty amounting to Rs. 17 crores was realised provisionally for want of verification of prices and relatedness of persons and for other reasons.

(i) In Orissa, Rs. 2.58 crores of duty was involved in clearances made without filing the price lists. The provisional assessments pending finalisation involved duty amounting to Rs. 98 crores. Discrepancies were also noticed in regard to duty involved in the provisional assessment, as per records in the Ranges or the Divisional office and in the collectorate.

(j) In Karnataka in 69 provisional assessment cases, duty amounting to Rs. 49.50 lakhs was pending finalisation for want of balance sheet, cost data, post-manufacturing expenses and other information.

(k) In Rajasthan goods valuing Rs. 1.38 crores were cleared without filing price lists, duty involved amounted to Rs. 24.97 lakhs.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.62 **Irregular minus balances in personal ledger accounts of assessees**

As per the provisions of the Central Excise Rules, 1944, sufficient credit balance should be maintained by an assessee in his Personal Ledger Account for the purpose of clearing excisable goods under the Self Removal Procedure. The balance should cover the duty payable on the goods intended to be removed at any time.

In an oil refinery, additions to the credit in the Personal Ledger Account of the assessee was wrongly made to the extent of Rs. 75,82,000 between 8 February 1983 and 17 February 1983. But the amount of Rs. 75,82,000 was deposited into Government treasury only on 31 March 1983. However, between 9 February 1983 and 26 February 1983, the assessee cleared goods on which duty payable amounted to Rs. 85,59,861. In the result the Personal Ledger Account had in reality registered minus balances ranging between Rs. 1.55 lakhs and Rs. 63.78 lakhs between 10 February 1983 and 26 February 1983. The clearances were allowed to be made irregularly without realising the duty.

The irregularity was pointed out in audit in June 1984.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.63 Delays in filing of excise returns under Self Removal Procedure

As per provisions in the Central Excise Rules, assessees clearing goods under the Self Removal Procedure are required to file with the department a monthly return within 7 days after the end of each month. The return shows quantities of excisable goods manufactured or received under bond during the month, the quantity used within the factory for manufacture, the quantity removed on payment of duty and the amount of duty paid. Based on the information in the return, the departmental officer is required to assess duty payable on the goods removed and verify whether the duty paid is correct. If the amount paid fall short he has to raise a demand against the assessee. Under the Excise Act the verification has to be done within 6 months from the end of the relevant month. Raising of demands thereafter is barred by limitation.

The correctness of the information in the return is required to be verified during inspection of the factory by the Excise Officers.

The delays noticed in 5 collectorates, in conducting the aforesaid verification and the consequences thereof, as seen in audit, are detailed below :—

(i) The returns were not filed by 4 assessees in 2 collectorates. In one case two and a half years had elapsed and still the absence of the return could not be noticed by the Excise Officer. In 2377 cases in 4 collectorates the returns were received late and delays ranged upto 30 days. In one case the delay was over a year.

(ii) There were delays in checking the returns in the department after their receipt. In 9911 cases the delays ranged from 30 days to 2 years. In 4527 cases in 3 collectorates, verification and assessment of duty was delayed by 3 months to one year. In 250 cases assessment had not been done. In one collectorate, in 534 cases because of delay in assessment, the short payment in duty by assessees amounting to Rs. 1.14 crores was not noticed

in time and demands were raised after considerable delay. As a result there was delay in collecting differential duty amounting to Rs. 20.46 lakhs in 325 cases. In one collectorate, in 209 cases, short payment of duty by assessees amounting to Rs. 93.24 lakhs was detected but the amounts were not demanded or collected.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.64 **Accounting of excise duty receipts under Self Removal Procedure**

The collection of excise revenue, in each collectorate, is done through nominated public sector banks. Some of the banks are nominated as focal point banks and they furnish daily scrolls of collections along with paid challans to the Pay and Accounts Officers of the Central Excise department in each collectorate. The credit is taken by or allowed to the assessees in his personal ledger accounts towards payments of excise duty made by him in the bank. The Excise Officers in the ranges, in each collectorate, send a monthly return to their Chief Accounts Officer giving details of credits taken by and or allowed to the assessee on the basis of assessee's copy of the paid challans. The Chief Accounts Officer is required to verify that the credit taken or allowed in the personal ledger account tallies with the receipted amount in the scrolls sent by the focal point banks to the Pay and Accounts Officer. If such a verification (loosely referred to as reconciliation) is not done, the possibility of credits in personal ledger accounts taken or allowed on the basis of bogus challans cannot be ruled out. Also payments received in the banks not getting reported by focal banks and their non credit to government account by the banks cannot be ruled out.

(i) In 25 collectorates of Excise, the verification as aforesaid, had not been done by the Chief Accounts Officer for a number of years. In 7 collectorates it had not been done after March 1980. Credits amounting to Rs. 198.70 crores in the personal ledger accounts were not verified against credits in banks scroll (as

noticed from records available in the collectorates). The details are given below :—

Sr. No.	Name of Collectorate	*Credits not verified, relating to years* Upto March 1980	1980-81	1981-82	1982-83	1983-84	Total
						(Amount in Rs. Crores)	
1.	Bangalore	..	0.08	3.34	3.82	6.64	13.88
2.	Allahabad	N.A.	N.A.	5.79	N.A.	N.A.	5.79
3.	Kanpur	0.08	0.49	0.89	0.75	N.A.	2.21
4.	Meerut	N.A.	0.83	0.90	1.66	N.A.	3.39
5.	Guntur	Nil	Nil	Nil	Nil	N.A.	N.A.
6.	Hyderabad	25.74	7.34	11.46	14.56	N.A.	59.10
7.	Chandigarh	Nil	N.A.	N.A.	N.A.	N.A.	N.A.
8.	Bombay-I	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
9.	Bombay-II	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
10.	Pune	Nil	Nil	Nil	Nil	N.A.	N.A.
11.	Goa	N.A.	N.A.	N.A.	N.A.	N.A.	26.56
12.	Thane	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
13.	Aurangabad	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
14.	Ahmedabad	Nil	Nil	Nil	Nil	Nil	Nil

15. Baroda	Nil	Nil	Nil	Nil	N.A.	N.A.
16. Shillong	1.40	N.A.	3.73	N.A.	N.A.	5.13
17. West Bengal	Nil.	0.16	0.11	0.29	N.A.	0.56
18. Nagpur	Nil	Nil	Nil	Nil	N.A.	N.A.
19. Cochin	Nil	3.10	9.68	2.49	N.A.	15.27
20. Indore	0.13	0.04	N.A.	N.A.	N.A.	0.17
21. Jaipur	Nil	Nil	Nil	Nil	N.A.	N.A
22. Madras	36.66	N.A.	19.28	10.70	N.A.	66.64
23 Madurai	Nil	Nil	Nil	Nil	N.A.	N.A.
24. Coimbatore	Nil	Nil	Nil	Nil	N.A.	N.A.
25. Delhi	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Total	64.01	12.04	55.18	34.27	6.64	198.70

N.A.=Figures not available.

In 23 out of the 25 collectorates the number of staff engaged on verification of credits was 152 which included 3 Office Superintendents and 13 Deputy Office Superintendents. The number of staff employed in two collectorates was not available.

(ii) In one collectorate, credits amounting to Rs. 14,100 allowed to four assessees could not be traced in the bank scrolls relating to the year 1983-84. The amount was subsequently recovered from the assessees to whom the credit was given in their personal ledger accounts.

(iii) In another collectorate credits amounting to Rs. 1.14 crores and Rs. 3.73 crores were in excess of the credits traceable in the bank scrolls relating to the years 1977-78 and 1981-82 respectively.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.65 **Incorrect classification of shareable duty**

Special excise duties which were leviable upto 16 March 1972 were not shareable by the Centre with the States. But from 1 March 1978 special excise duties again became leviable, but they were shareable duties. Arrears of special excise duties leviable prior to 17 March 1972 and realised after that date continued to be non-shareable duties.

(i) In one collectorate special excise duties amounting to Rs. 2,50,77,020 realised during the years 1981-82 to 1983-84 were incorrectly classified as non-shareable duties. The receipts did not represent arrears of the special excise duties realisable prior to 17 March 1972 and were therefore not classifiable as non-shareable duties.

On the misclassification being pointed out in audit (February 1984) the Pay and Accounts Officer of the collectorate stated (March 1984) that there was no mis-classification, since the

revenue figures were compiled according to the classification recorded on the challans. The incorrect classification on the challan, not rectified by any departmental officer, resulted in shareable special excise duties amounting to Rs. 2.51 crores realised during the years 1981-82 to 1983-84 being wrongly classified as non-shareable duties.

(ii) In a collectorate, in the accounts for the year 1981-82 receipts amounting to Rs. 28.43 lakhs, pertained to shareable special excise duties leviable after 1 March 1978. But the amount was misclassified as arrears of non-shareable special excise duty leviable prior to 17 March 1972. Further, duty on electricity assignable to the States amounting to Rs. 18.87 lakhs was also misclassified as arrears of non-shareable special excise duty.

On the mis-classifications being pointed out in audit (June 1984), the department confirmed the mis-classifications, but stated (July 1984) that both the amounts related to shareable special excise duties leviable after 1 March 1978. But only the amount of Rs. 28.43 lakhs related to shareable special excise duty and the amount of Rs. 18.87 lakhs related to electricity duty. The facts were again pointed out in audit, to the department in July 1984.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

OTHER TOPICS OF INTEREST

2.66 Non production of records for audit

The records relating to receipts realised under the Gold (Control) Act, 1968 and credited to the Consolidated Fund of India were not made available for audit in two Collectorates (since reorganised into four Collectorates) despite repeated requests for the records having been made from February 1980 onwards. The department stated that they were awaiting instructions from the Ministry of Finance. The Ministry of Finance were requested to advise the Collectors to make the records available for audit but they have not so far issued the necessary advice.

The receipts under the Act, comprise licence fees, fines and penalties. Further because seizures are made under the Act, the disposal of the seized goods also result in further receipts to Government. The scrutiny in audit of the accounts of gold and ornaments seized and their proper disposal has also not been possible in the absence of records being made available to Audit.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.67 **Valuation cells**

Based on the recommendations of the Public Accounts Committee made in paragraph 1.255 of their 111th Report (1969-70), Valuation Cells were set up in the Central Excise collectorates. The functions assigned to these Cells included study of methods of valuation, problems of assessment of goods, keeping a watch on the market value of goods, collection of data relating to prices, and building of necessary expertise on the valuation of goods.

(i) During the three years 1980-81 to 1982-83 the expenditure incurred on the valuation cells in ten Collectorates amounted to Rs. 5.79 lakhs, Rs. 7.01 lakhs and 7.92 lakhs respectively, but no additional revenue was realised because of the setting up of the Cells (details in Annexure 2.6).

(ii) Action on 4,856 classification cases and 26,746 valuation cases were pending in 11 Collectorates as on 31 March 1983 (details in Annexures 2.7 and 2.8).

(iii) Verification of 3,943 price lists were pendnig in 9 collectorates as on 31 March 1983. Of these, 507 cases had been received during the year 1980-81 and 875 cases during 1981-82, during the year 1982-83, 2561 cases had been received (details in Annexure 2.9).

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.68 **Impact of reduction in duty on prices of refrigerators and tyres**

As per notifications issued on 1 October 1983, the effective rates of duty on refrigerators and certain specified tyres (used in motor vehicles and in vehicles and equipment designed for use off the road) were reduced as follows :—

Domestic refrigerators of capacity not exceeding 165 litres.	From 40 per cent to 25 per cent *ad valorem*.
Other refirgerators	From 80 per cent to 50 per cent *ad valorem*.
Specified tyres	From 60 per cent to 50 per cent *ad valorem*.

The reduction in the rate of duty was made on the expectation that the price of said goods to the consumer would come down or, at least, not go up. It was also expected that the price coming down or remaining the same, the increase in volume of clearances would compensate for the decrease in the amount of duty realised per unit.

A review of the clearances made by 7 leading refrigerator manufacturers in five collectorates, and 10 leading tyre manufacturers in eight collectorates revealed as follows :

(i) A manufacturer of refrigerators increased his prices in October 1983 and January 1984; and another in January 1984 ; five manufacturers did not increase their prices.

(ii) Eight manufacturers of tyres increased their prices during January 1984 while another raised his prices in March 1984. Details of prices of one manufacturer were not available.

(iii) From October 1983, the average monthly clearances by 13 manufacturers increased compared to average monthly clearances in the previous 12 months. But there was marginal decrease in the average monthly clearances made by 4 manufacturers between October 1983 and February 1984 as compared to the average monthly clearances in the previous 12 months (details in Annexure 2.10).

(iv) The net revenue foregone on clearances made between October 1983 and February 1984, as a result of reduction in the rates of duty (after adjusting for increase in duty collection because of increase in volume of clearances) was Rs. 6.64 crores (details in Annexure 2.11).

(v) One manufacturer declared dividend of 15 *per cent* on ordinary shares in the two years 1980 and 1981 and 20 *per cent* in the year 1982. Two manufacturers made addition to their assets by Rs. 1.02 crores and Rs. 82.31 lakhs during the year 1982-83, as against Rs. 1.70 crores and Rs. 21.44 lakhs respectively during the previous year 1981-82. Another manufacturer whose installed capacity for manufacture was 6 lakhs tyres per annum, produced only 2.03 lakhs tyres during the year 1982-83.

(vi) One manufacturer gave "market conditions" as the reason for raising prices, in the returns filed with the department. But earlier, while reducing prices soon after 1 October 1983, he gave "keen and cut throat competition of market conditions" as the reason. Two manufacturers consigned tyres to their own regional sale depots and the price at which sales were made from the depots was not verified.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.69 **Fortuitous benefit**

In its 95th Report (4th Lok Sabha) the Public Accounts Committee had recommended that the Goverment should consider whether it would be possible to incorporate a suitable provision in the Central Excise Bill on the lines of Section 37(1) of the Bombay Sales Tax Act, so that Trade does not get fortuitous benefit of excess collections of tax realised from the consumers. This would ensure that the excess collection accrues to Government. Later in their 13th Report (6th Lok Sabha) the committee again recommended that the Government might re-examine the question of amending the Central Excise Law in the light of subsequent developments. The Committee in its 46th

Report (7th Lok Sabha) reiterated its earlier recommendation that "a suitable provision should be incorporated in the Central Excise Act on the lines of Section 37 of Bombay Sales Tax Act".

The Ministry of Finance have stated (December 1983) that the question of feasibility of making a provision on the lines of section 37 and 46 of the Bombay Sales Tax Act in the Central Excises and Salt Act, 1944 is still under examination in consultation with the Ministry of Law.

(i) A manufacturer of steel furniture and structurals was allowed a refund of duty amounting to Rs. 7.27 lakhs in August 1981. However, the duty paid by him earlier, had already been realised by him from his purchasers as part of the sale price of the goods. While sanctioning the refund, the assessable value was not redetermined so as to enhance it by the extent of refund of duty allowed to the manufacturer. In the result, refund was made in excess by Rs. 58,165 and the whole of the refund was also a fortuitous benefit to the manufacturer.

On the excess refund being pointed out in audit (May 1983), the department stated (July 1983) that further demand was barred by limitation.

The Ministry of Finance have stated (December 1984) that the question of feasibility of making a provision on the lines of Section 37 and 46 of the Bombay Sales Tax Act in the Central Excises and Salt Act, 1944 is still under examination.

(ii) In 1977, Ministry of Chemicals and Fertilisers fixed the ex-factory price of urea at Rs. 1158 per tonne. Based on it, the maximum retail price of urea was fixed from time to time. The elements of excise duty included in the maximum retail price per tonne were Rs. 174 and Rs. 87 for the periods from 1 November 1977 to 9 March 1979 and from 10 March 1979 to 6 June 1980 respectively. But the excise duty legally leviable under the Excise Act in two periods was only Rs. 173.70 and Rs. 86.85 respectively.

A manufacturer of urea cleared urea at the ex-factory prices fixed by the Government but paid excise duty during the said two periods at Rs 173.70 and Rs. 86.85 respectively. However, he was allowed to realise Rs. 174 and Rs. 87 per tonne towards excise duty from his dealers.

The incorrect computation of the excise element includible in the maximum retail price enabled the manufacturer to realise fortuitous benefit amounting to Rs. 1.48 lakhs during the period from 1 November 1977 to 6 June 1980.

On the mistake in fixing maximum price being pointed out in audit (May 1981) the department admitted (August 1983) that there was a fortuitous benefit to the assessee.

The Ministry of Finance have stated (December 1984) that the Department can not take any action against the party for fortuitous gains as there is no provision for recovering more than what is due to the Government under the Central Excises and Salt Act, 1944 or the Rules framed thereunder.

(iii) On motor cars classifiable under tariff item 34 I(2)(i) excise duty is leviable at 25 *per cent ad valorem*. As per notification issued on 23 May 1975, duty was reduced to 15 *per cent* ad valorem subject to fulfilment of the condition that the manufacturer furnishes a taxi registration certificate in respect of such cars from the competent authority within three months of the date of their clearances, or such extended period as the Assistant Collector may allow. The Board had indicated in January 1976 that differential duty on such motor cars, originally cleared for use as taxis, but subsequently diverted for other purpose, must be realised within 15 days of such diversion, where diversion is made within 3 months.

A manufacturer cleared motor cars (for use solely as taxis) on payment of duty at 15 *per cent ad valorem*. But in respect of 297 cars cleared during the period from March 1979 to March

1980 certification in respect of their use solely as taxis was not furnished within a period of 3 months. Differential duty amounting to Rs. 11.26 lakhs was realised from the manufacturer, but only after periods ranging from twelve to twenty four months from the dates of clearance of cars. Gratuitous benefit by way of interest on the unpaid sums amounted to Rs. 1,72,270 at the rate of 12 *per cent* per annum, simple interest.

On the irregularity being pointed out in audit (November 1981), the department stated (April 1983) that there was no irregularity. The reply avoids the implied irregularity of not recovering duty promptly.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

2.70 **Excess grant of credit under scheme for incentive to manufacturers to produce more goods**

As per rule 56AA of the Central Excise Rules, which is in force from 27 November 1982 credit is allowed in relation to duty paid on excisable goods, cleared from a factory for home consumption, in excess of specified clearances. As per a notification issued on 27 November 1982 under the provisions of Rule 56AA of Central Excise Rules, credit is given to the manufacturer for an amount equal to a fifth of the duty, paid on clearances (during a specified period) of specified goods, in excess of 110 *per cent* of the clearances of such goods made during a specified base period. Generally the specified period is 1 March to 28 February and the specified base period is the corresponding period in the previous year.

In three units in a collectorate credit of Rs. 52,256 was granted in excess of what was to be granted.

(a) A manufacturer of paper (specified goods) claimed credit in relation to duties paid on the excess clearance by an amount which was more than the amount of credit due and it was allowed. The mistake resulted in short levy of duty by Rs. 38,487 during the year 1982-83.

(b) Two manufacturers of dissolved acetylene (specified goods) were allowed credit in relation to excess clearances of dissolved acetylene. But in doing so the department computed the credit incorrectly and credit was allowed in excess by Rs. 1,958 and Rs. 11,811 to the two manufacturers respectively during the year 1982-83. There was a corresponding short levy of duty.

The mistakes were pointed out in audit in May 1984.

The Ministry of Finance have stated (December 1984) that though there is no provision for arriving at the cut off date in the wordings of the notification [issued by the Ministry] which allows the excess rebate. However, show cause notices have been issued as a precautionary measure and in one case the excess amount said to have been allowed has been recoverd.

2.71 **Failure to enforce prescribed statistical testing methods**

On vacuum and gas filled bulbs not exceeding 60 watts the tariff rate of duty was 30 *per cent ad valorem*. As per a notification issued on 1 March 1976 duty in excess of 10 *per cent ad valorem* was exempted. As per an explanation in the notification, for the purpose of determining the classification and nomenclature of bulbs or the wattage, length or diameter of bulbs, the definitions and procedures for testing (including tolerance) prescribed in the Indian Standard Specifications was to be adopted. As per Indian Standard Specifications the tolerance allowed is 4 *per cent* plus 0.50 watts. In a batch of 25 to 30 bulbs if not more than 5 bulb are found to be outside the specification (even after allowing the said tolerance) then the batch is to be accepted as being within the specification.

In a factory manufacturing electric lighting bulbs of 60 watts rating, only 2 bulbs manufactured in the morning shift and one bulb in the evening shift out of production ranging between 10,000 to 20,000 bulbs per shift, were taken out for testing in a laboratory in the factory. On rating of 60 watts, tolerance upto 62.90 watts was allowed. But on many days 50 to 66 *per cent* of the bulbs tested were rated in excess of 63 watts. Therefore,

even after testing, the samples drawn (far short of percentage prescribed by I.S.I.) yielded ratings much in excess of 60 watts plus allowable tolerance. Still duty was not levied at the rates applicable to bulbs of wattage rating in excess of 60 watts. In the result duty was realised short by Rs. 40,908 on clearances made during the period from January 1981 to August 1981.

On the irregularity being pointed out in audit (October 1981) the department accepted that prescribed procedure for testing was not followed and issued show cause-cum demand notice in June 1982.

The Ministry of Finance have stated (December 1984) that the matter is under examination.

ANNEXURE 2.1

(See para 2.11)

Number of outstanding audit objections and amount of revenue involved

(Amounts in Rs. crores)

Sl. No.	Name of Collectorate	Raised upto 1980-81		Raised in 1980-81		Raised in 1981-82		Raised in 1982-83		Total	
		No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount
1	2	3	4	5	6	7	8	9	10	11	12
1.	Chandigarh	85	0.19	28	0.12	36	0.31	31	0.20	181	0.82
2.	Cochin	3	0.01	1	..	1	..	1	..	5	0.01
3.	Madras	6	0.03	17	0.05	21	0.28	36	0.32	80	0.68
4.	Trichy	4	..	2	..	6	..	15	0.02	27	0.02
5.	Madurai	5	0.70	9	0.20	8	0.20	17	0.05	39	0.15
6.	Coimbatore	..	..	3	0.02	5	0.03	15	0.11	23	0.16
7.	Jaipur	21	0.24	7	0.07	10	0.08	35	0.75	73	1.14
8.	Patna	2	0.18	..	..	..	..	5	0.02	7	0.20
9.	Indore	92	4.88	74	3.40	93	1.00	176	232.34	435	241.62
10.	Calcutta	..	..	116	6.48	128	4.10	154	32.19	398	42.77
11.	West Bengal	..	..	83	4.82	83	13.01	72	7.65	238	25.48
12.	Kanpur	78	0.70	59	0.17	64	1.31	39	1.16	240	3.34
13.	Allahabad	91	0.37	46	0.11	62	0.15	57	1.72	256	2.35
14.	Meerut	106	0.22	95	4.28	104	0.19	59	3.28	364	7.97

15. Bangalore	19	3.74	2	0.03	6	0.08	8	0.94	35	4.79
16. Belgaum	8	0.29	..	..	..	..	4	0.04	12	0.33
17. Bombay-I	12	0.64	20	3.35	38	3.98	48	4.88	118	12.85
18. Bombay-II	5	0.85	6	0.20	58	10.75	80	8.21	149	20.01
19. Bombay-III	1	..	5	0.09	20	0.28	50	2.97	76	3.34
20. Pune	3	0.05	2	0.01	19	0.66	27	1.37	51	2.09
21. Goa	2	1.00	..	..	5	0.03	4	0.01	11	1.04
22. Aurangabad	..	..	..	..	1	0.02	2	0.05	3	0.07
23. Bhubaneswar	40	3.67	16	0.37	18	0.82	74	25.37	148	30.23
24. Hyderabad	276	1.11	125	0.12	151	0.65	169	0.01	721	1.89
25. Guntur	11	0.14	48	0.02	58	0.12	33	..	150	0.28
26. Ahmedabad	..	..	..	..	..	..	25	0.51	25	0.51
27. Baroda	..	..	..	..	..	..	49	1.07	49	1.07
28. Rajkot	..	..	..	..	..	..	13	0.04	13	0.04
29. Shillong	5	0.10	5	0.58	1	..	8	5.75	19	6.43
30. Nagpur	1	0.01	1	..	7	0.01	15	0.02	24	0.04
31. Delhi	414	3.62	210	1.66	118	2.69	83	2.08	825	10.05
Total	1290	22.74	980	26.15	1121	40.75	1404	333.13	4795	422.77

ANNEXURE 2.2

[See para 2.61(i)]

Delay in approval of price lists

Sl. No.	Collectorate	Number of price lists received			Number of price lists which were received in the three years but were approved after			Number of price lists not approved as on 31-3-1983
		1980-81	1981-82	1982-83	3 months	6 months	1 year	
1	2	3	4	5	6	7	8	9
1.	Shillong	155	221	261	55	35	180	208
2.	Bangalore	3339	9285	10299	1573	789	117	Nil
3.	Nagpur	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A
4.	Patna	569	539	474	22	10	28	24
5.	Jaipur	153	146	265	78	39	4	9
6.	Cochin	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
7.	Bhubneswar	2053	1166	1976	N.A.	N.A.	N.A.	322
8.	Indore	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
9.	Allahabad	670	1265	1612	142	27	10	1135
10.	Kanpur	1164	1003	1207	1457	306	444	110

11. Meerut	2140	3131	4721	208	387	19	16
12. Bombay-I	29584	39304	32219	1551	1121	193	441
13. Thane	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A
14. Pune	4068	6276	7285	973	252	20	143
15. Goa	347	296	556	Nil.	Nil.	2	Nil.
16. West Bengal 17. Calcutta	3806	3661	3372	2125	892	165	465
18. Madras	6593	7002	8091	585	Nil.	Nil.	94
19. Madurai	2319	4662	5592	89	Nil.	Nil.	120
20. Ahmedabad	1866	1726	2141	14	52	20	Nil.
21. Baroda	1777	2838	3242	3	3	5	Nil.
22. Hyderabad	1297	1687	1893	75	26	31	15
23. Guntur	555	823	1107	6	..	..	..
24. Delhi	5001	11827	14496	1806	775	204	2660
25. Chandigarh	6502	9184	8064	603	228	181	106
Total	73,958	1,06,042	1,08,873	11,365	4,942	1,623	6,868

ANNEXURE 2.3

[See para 2.61(ii)]

Clearances made in the three years 1980-81 *to* 1982-83 *without filing price lists*

Sl. No.	Collectorate	Number of cases	Amount of duty involved (in Rs. lakhs)
1.	Shillong	Nil	Nil
2.	Bangalore	Nil	Nil
3.	Nagpur	N.A.	N.A.
4.	Patna	N.A.	N.A.
5.	Jaipur	8	24.97
6.	Cochin	N.A.	NA.
7.	Bhubneswar	73	258.01
8.	Indore	N.A.	N.A.
9.	Allahabad	Nil	Nil
10.	Kanpur	Nil.	Nil
11.	Meerut	1	0.03
12.	Bombay-I	N.A.	N.A.
13.	Thane	N.A.	N.A.
14.	Pune	Nil.	Nil
15.	Goa	Nil.	Nil

16. West Bengal	N.A.	N.A.
17. Calcutta	N.A.	N.A.
18. Madras	N.A.	N.A.
19. Madurai	N.A.	N.A.
20. Ahmedabad	3	0.62
21. Baroda	31	81.94
22. Hyderabad	N.A.	N.A.
23. Guntur	N.A.	N.A.
24. Delhi	67	12.92
25. Chandigarh	14	0.65
Total	197	379.14

ANNEXURE 2.4

[See para 2.61 (ii)]

Provisional assessments

Sl. No.	Collectorate (with year of oldest provisional assessment case in brackets)	Cases where price lists were not approved and clearances were provisional along side amount of excise duty involved		Cases of provisional assessmenet involving price lists or for other reasons	
		No.	Amount (Rs. in lakhs)	No.	Amount (Rs. in lakhs)
1	2	3	4	5	6
1.	Shillong (1980-81)	423	2298.51	N.A.	N.A.
2.	Bangalore (1980-81)	69	49.49	75	N.A.
3.	Nagpur (NA)	N.A.	N.A.	N.A.	N.A.
4.	Patna (1975-76)	N.A.	N.A.	260	31256.99
5.	Jaipur (1982-83)	13	13.37	N.A.	N.A.
6.	Cochin (NA)	N.A.	N.A.	N.A.	N.A.
7.	Bhubneswar (1975-76)	777	9783.45	N.A.	N.A.
8.	Indore (NA)	N.A.	N.A.	N.A.	N.A.
9.	Allahabad (1978-79)	N.A.	N.A.	13	656.94
10.	Kanpur (1978-79)	N.A.	N.A.	26	28.98
11.	Meerut (1975-76)	N.A.	N.A.	50	201.87

12. Bombay-I (1980-81)	1059	5087.14	N.A.	N.A.
13. Thane (1979-80)	477	4700.78	N.A.	N.A
14. Pune (1973-74)	1356	1703.30	N.A.	N.A.
15. Goa (1975-76)	342	1070.60	N.A.	N..A
16. West Bengal	N.A.	N.A.	N.A.	N.A.
17. Calcutta	N.A.	N.A.	N.A.	NA
18. Madras (1980-81)	N.A.	N.A.	215	152.20
19. Madurai (1980-81)	N.A.	N.A.	554	957.91
20. Ahmedabad (1978-79)	2	2	6	17.10
21. Baroda (1978-79)	124	24.10	378	1733.15
22. Hyderabad (1975-76)	Nil.	Nil.	380	1845.43
23. Guntur	Nil.	Nil.	170	10.26
24. Delhi (NA)	332	8561.38	52	8535.68
25. Chandigarh (1981-82)	46	251.56	568	258.80
Total	5020	33,545.68	2747	45655.31

ANNEXURE 2.5

[See para 2.61 (iv)]

Number of cases where duty was paid under protest

Sl. No.	Collectorate	1980-81		1981-82		1982-83	
		No. of cases	Amount of duty (in Rs. lakhs)	No. of cases	Amount of duty (in Rs. lakhs)	No. of cases	Amount of duty (in Rs. lakhs)
1	2	3	4	5	6	7	8
1.	Shillong	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.
2.	Bangalore	5	NA	12	NA	42	0.98
3.	Nagpur	Nil.	Nil.	Nil.	Nil.	Nil.	Nil.
4.	Patna	NA	NA	NA	NA	NA	NA
5.	Jaipur	Nil.	Nil.	2	46.58	4	48.96
6.	Cochin	NA	NA	NA	NA	NA	NA
7.	Bhubneswar	5	14.11	22	5.48	25	4.90
8.	Indore	NA	NA	NA	NA	NA	NA
9.	Allahabad	Nil.	Nil.	4	59.30	Nil.	Nil.
10.	Kanpur	1	1.08	Nil.	Nil.	Nil.	Nil.
11.	Meerut	Nil.	Nil.	Nil.	Nil.	11	NA

12. Bombay-I	3	180.66	4	183.47	5	174.67
13. Thane	95	114.41	145	103.41	188	93.52
14. Pune	25	37.77	40	197.77	79	219.46
15. Goa	NA	NA	NA	NA	12	NA
16. West Bengal	NA	NA	NA	NA	NA	NA
17. Calcutta	NA	NA	NA	NA	NA	NA
18. Madras	8	NA	29	NA	62	NA
19. Madurai	39	59.91	40	97.51	12	51.08
20. Ahmedabad	3	3.55	6	13.81	10	15.57
21. Baroda	2	31.00	33	52.84	103	55.62
22. Hyderabad	4	27.15	2	24.78	16	25.13
23. Guntur	6	37.26	1	12.35	NA	1.18
24. Delhi	6	2581.05	8	3463.72	14	2911.03
25. Chandigarh	6	310.16	8	320.76	17	230.50
Total	208	3398.11	356	4581.78	600	3832.60

ANNEXURE 2.6

[See para No. 2.67 (i)]

Expenditure incurred on valuation cells in collectorates where no demands were raised

(in Rs.)

	1980-81	1981-82	1982-83
1. Jaipur	73,000	92,000	92,000
2. Cochin	1,03,875		
3. Bhubaneswar	15,765	41,518	40,318
4. Allahabad	82,040		
5. Bombay II	87,045	1,36,078	1,52,335
6. Goa			30,543
7. Madurai		1,27,913	1,41,211
8. Hyderabad		1,90,992	2,12,148
9. Guntur	92,000		
10. Delhi	1,05,669	1,13,480	1,24,339
Total	5,59,394	7,01,981	7,92,894

ANNEXURE 2.7

[See para 2.67 (ii)]

Number of classification cases referred to and decided by the valuation cells during the years

Sl. No.	Collectorate	1980-81				1981-82				1982-83			
		Brought forward	Cases referred	Cases decided	Carried forward	Brought forward	Cases referred	Cases decided	Carried forward	Brought forward	Cases referred	Cases decided	Carried forward
1	2	3	4	5	6	7	8	9	10	11	12	13	14
1.	Shillong	Nil.	..	..	..	..	..	..	..	..	..	..	..
2.	Bangalore	1766	373	1780	359	359	2062	2106	315	315	2190	2209	296
3.	Nagpur	27	1032	1041	18	18	852	857	13	13	1107	1108	12
4.	Patna	9	492	490	11	11	206	209	8	8	393	401	Nil.
5.	Jaipur	..	17	3	14	14	..	..	14	14	..	..	14
6.	Cochin	Nil.	Nil.	..	..	Nil.	3	2	1	1	282	184	99
7.	Bhubaneswar	Nil.	Nil.	..	..	Nil.	Nil.	..	..	Nil.	Nil.	..	..
8.	Indore	..	4196	4196	..	..	3690	3690	..	..	3529	3529	..
9.	Allahabad	1	213	212	2	2	263	264	1	1	315	315	1
10.	Kanpur	..	..	..	..	..	..	..	..	..	..	..	..
11.	Meerut	..	..	..	..	..	..	..	..	..	..	..	..
12.	Bombay-I	9	63	69	3	3	176	158	21	21	70	77	14

1	2	3	4	5	6	7	8	9	10	11	12	13	14
13.	Bombay-II	..	2	2	..	..	1	1	..	..	3	3	..
14.	Pune	..	4344	2180	2164	2164	3337	2145	3356	3356	3147	2209	4294
15.	Goa	..	177	177	..	..	201	201	..	..	188	188	..
16.	West Bengal	4	Nil.	Nil.	4	4	59	..	63	63	5	..	68
17.	Calcutta	..	..	..	..	..	..	..	..	..	..	..	..
18.	Madras	..	..	..	..	..	..	..	..	..	..	..	..
19.	Madurai	..	5	5	..	..	12	7	5	5	3	3	5
20.	Ahmedabad	..	2	2	..	..	16	7	9	9	1	1	9
21.	Baroda	..	1	..	1	1	1	2	..	..	..	..	..
22.	Hyderabad	Nil.	315	315	Nil.	Nil.	411	411	Nil.	Nil.	504	504	Nil.
23.	Guntur	Nil.	635	635	Nil.	Nil.	583	583	Nil.	Nil.	612	612	Nil.
24.	Delhi	Nil.	..	..	..	..	..	..	..	..	..	..	..
25.	Chandigarh	64	1693	1628	129	129	1886	1984	31	31	1493	1480	44
	Total	1880	13560	12735	2705	2705	13759	12627	3837	3837	13842	12823	4856

ANNEXURE 2.8

[See para 2.67 (ii)]

Number of valuation cases referred to and decided by valuation cells during the years :

Sl. No.	Collectorate	1980-81				1981-82				1982-83			
		Brought forward	Cases referred	Cases decided	Carried forward	Brought forward	Cases referred	Cases decided	Carried forward	Brought forward	Cases referred	Cases decided	Carried forward
1	2	3	4	5	6	7	8	9	10	11	12	13	14
1.	Shillong	Nil.	..	..	..	..	..	..	..	..	..	..	..
2.	Bangalore	2907	5201	5006	3102	3102	6834	5987	3949	3949	6039	6003	3995
3.	Nagpur	59	1572	1624	7	7	1507	1510	4	4	1417	1414	7
4.	Patna	17	874	843	48	48	1054	1064	38	38	756	791	3
5.	Jaipur	..	..	..	..	..	..	..	..	..	..	..	..
6.	Cochin	..	1	1	..	..	1	1	..	..	413	129	284
7.	Bhubaneswar	..	..	..	..	..	..	..	..	..	..	..	..
8.	Indore	..	6276	6276	..	..	7973	7973	..	..	10799	10799	..
9.	Allahabad	..	468	468	..	..	677	676	1	1	722	722	1
10.	Kanpur	..	..	..	..	..	..	..	..	..	..	..	..
11.	Meerut	..	..	..	..	..	..	..	..	..	..	..	..
12.	Bombay-I	2	18	18	2	2	17	15	4	4	12	14	2
13.	BombayII	..	..	..	..	..	..	..	..	..	..	..	..

1	2	3	4	5	6	7	8	9	10	11	12	13	14
14.	Pune .	..	17380	8690	8690	8690	16808	8162	17336	17336	2061	15802	22195
15.	Goa .	..	350	350	..	..	314	314	..	..	453	453	..
16.	West Bengal	13	6	2	17	17	130	..	147	147	17	..	164
17.	Calcutta	..	..	..	..	..	..	..	..	..	..	..	..
18.	Madras .	..	..	..	..	..	..	..	..	..	..	..	..
19.	Madurai .	4	1	4	1	1	11	1	11	11	10	10	11
20.	Ahmedabad	..	2	1	1	1	..	..	1	1	..	..	1
21.	Baroda .	2	2	4	..	..	3	2	1	1	1	2	..
22.	Hyderabad	..	7312	7312	..	..	7055	7055	..	..	7036	7036	..
23.	Guntur .	..	805	805	..	..	1026	1026	..	..	1671	1671	..
24.	Delhi .	..	..	..	..	..	..	..	..	..	..	..	..
25.	Chandigarh	139	5569	5647	61	61	8540	8563	38	38	7900	7855	83
	Total	3143	45837	37051	11929	11929	51950	42349	21530	21530	57917	52701	26746

ANNEXURE 2.9

[See para 2.67 (ii)]

Price lists pending on 31 March 1983

	Received in 1980-81	Received in 1981-82	Received in 1982-83
1. Shillong	32	68	108
2. Patna	4	13	7
3. Bhubneswar	6	34	222
4. Pune	..	10	133
5. Goa	1	1	..
6. West Bengal	52	104	309
7. Hyderabad	..	7	6
8. Delhi	410	617	1633
9. Chandigarh	2	21	83
TOTAL	507	875	2561

ANNEXURE 2.10

[See para 2.61 (iii)]

Clearances of refrigerators and tyres

Sl. No. of manufacture	Monthly average clearance (from October 1982 to September 1983)	Clearances made after September 1983				
		October 1983	November 1983	December 1983	January 1984	February 1984
(1) Refrigerators of capacity not exceeding 165 litres.						
1.	11	12	3	35	3	58
2.	1570	2101	1077	2303	2719	2391
3. (a) 65 litres	92	442	41	19	Nil.	Nil.
(b) 165 litres	14050	9770	30004	18846	21575	40269
(c) 165 litres DD.	553	273	297	35	165	1367
4.	12219	(Clearance averaged 18220 per month)				
5.	3472	2711	4154	6330	4451	4935
6.	1	3	5	3	2	26
(2) Refrigerators of capacity more than 165 litres and deep freezers.						
7.	49	NA	48	70	83	70
3. (a) 85 litres	58	3	1	Nil.	Nil.	Nil.
(b) 275 litres	91	51	61	79	136	136
(c) 425 litres	39	Nil.	Nil.	10	17	44
5.	187	420	86	22	467	844

Specified truck and bus tyres.						
8.	27317	13950	55940	57211	34485	65718
9.	55378	(Clearance averaged 70923 per month)				46751
10.	17299	(Clearance averaged 16425 per month)				
11.	36208	(Clearance averaged 50101 per month)				
12. (a)	25661	25788	30801	24373	28836	24698
(b)	25620	20933	27072	30247	40726	32054
13.	103892	(Average monthly clearance between October 1983 and February 1984 was 109927)				
14.	58240	(Average monthly clearance between October 1983 and February 1984 was 65643)				
15.	25150	(Average monthly clearance between October 1983 and February 1984 was 26072)				
16.	18131	11906	13820	17120	26329	10393
17. (a)	7083	7104	11856	5880	3881	1595
(b)	10821	6708	16188	19682	10747	13806

ANNEXURE 2.11

[See para 2.68(iv)]

Revenue implication of reduction in duty on refrigerators and tyres

Item	Sl. No. of Manufacturer	Expected clearance between 10/83 and 2/84	Actual clearance between 10/83 and 2/84	Duty payable (without reduction) actual clearance (Amount in Rs.)	Reduced duty paid on actual clearance (Amount in Rs.)	Duty payable (without reduction) on expected clearance (Amount in Rs.)	Duty foregone between 10/83 and 2/84 (Amount in Rs.) (Cols 7 minus 6)
1	2	3	4	5	6	7	8
Domestic refrigerators of capacity not exceeding 165 litres	1	55	111	1,91,110	1,08,610	1,07,811	(—)799
	2	7850	10,591	87,34,078	63,33,630	64,44,850	1,11,220
	3 (a)	460	502	2,78,258	1,73,911	2,54,840	80,929
	(b)	70,250	1,20,464	9,84,29,287	5,15,18,304	5,73,94,250	58,75,945
	(c)	1,765	2,137	24,04,658	15,02,910	19,85,625	4,82,715
	4	61,095	91,100	10,78,07,000	6,27,00,000	7,22,75,385	95,75,385
	5	17,360	22,581	1,80,40,496	1,12,77,000	1,38,70,640	25,93,640
	6	5	39	65,547	40,967	8,405	(—)32,562
Other refrigeraturs and deep freezers	7	245	271	14,12,415	9,28,384	12,76,940	3,48,556
	3(a)	..	4	6,696	4,186	6,696	2,510
	(b)	455	463	11,13,861	4,17,699	10,94.275*	6,76,576
	(c)	..	71	2,42,109	1,51,318	2 42,109	90,791
	5	935	1,839	48,66,348	30,51,652	24,74,010*	(—)5,77,642
	8(a)	1,36,585	2,27,304	7,82,24,088	6,51,86,740	4,69,85,240	(—)1,82,01,500

	(b)	2,840	3,179	2,04,84,643	1,72,19,904	1,83,00,960	10,81,056
	9	..	2,59,520	24,02,65,070	23,16,47,680	24,02,65,070*	86,17,390
	10	..	82,126	4,57,14,121	3,80,95,105	4,57,14,121*	76,19,016
	11	1,81,040	2,50,508	9,94,15,719	8,28,98,610	7,18,72,880	(—)1,10,25,730
	12(a)	1,28,305	1,34,406	10,72,24,281	10,88,67,710	10,22,59,085	(—)66,08,625
	(b)	1,28,100	1,51,132	1,06,39,208	98,60,004	89,67,000	(—)8,93,004
Specified Tyres	13	5,19,460	5,49,635	25,52,49,000	21,37,90,000	24,10,29,440	2,72,39,440
	14	2,91,230	3,28,215	10,90,40,000	9,09,40,000	9,66,88,360	57,48,360
	15	..	1,04,288	11,27,67,000	9,41,72,000	11,27,67,000*	1,85,95,000
	16	..	79,568	5,83,07,528	4,84,97,931	5,83,07,528*	98,09,597
	17(a)	..	30,316	2,09,95,623	1,74,96,353	2,45,28,713*	70,32,360
	(b)	54,109	67,171	6,48,02,923	5,40,02,440	5,22,01,564	(—)18,00,876
							10,55,80,487
							(—)3,91,40,738
						TOTAL	6,64,39,749

(Note :—*For purposes of calculation of duty foregone expected clearances based on past average limited to actual clearance between 10/83 and 2/84).

CHAPTER 3

RECEIPTS OF THE ADMINISTRATIONS OF THE UNION TERRITORIES

3.01 Tax and non-tax receipts of Union Territories without Legislature

The trend of tax and non-tax revenue receipts of the Administrations in the Union Territories, which do not have a 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	1981-82	190.90	10.61	Nil	Nil	Nil	201.51
	1982-83	211.02	12.01	Nil	Nil	Nil	223.03
	1983-84	230.83	13.71	Neg.	Nil	Nil	244.54
State excise	1981-82	55.19	7.98	0.04	0.13	Nil	63.34
	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
Taxes on goods and passengers	1981-82	**19.04	0.36	Nil	Nil	Nil	19.40
	1982-83	**20.13	0.42	Nil	Nil	Nil	20.55
	1983-84	**21.25	0.51	Nil	Nil	Nil	21.76
Stamp duty and registration fee	1981-82	9.09	2.39	0.01	0.03	0.01	11.53
	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

Taxes on motor vehicles	1981-82	6.72	0.32	0.06	0.01	Nil	7.11
	1982-83	7.27	0.41	0.08	0.01	Nil	7.77
	1983-84	8.78	0.25	0.34	0.02	Nil	9.39
Land revenue	1981-82	0.23	Neg.	0.08	0.09	0.01	0.41
	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
Other taxes and duties on commodities and services	1981-82	10.42	0.62	Neg.	0.03	Nil.	11.07
	1982-83	10.98	0.90	Nil.	0.03	Nil.	11.91
	1983-84	10.09	0.81	Neg.	0.03	Nil.	10.93
Total tax revenue	1981-82	291.59	22.28	0.19	0.29	0.02	314.37
	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
B: Non-tax revenue	1981-82	7.46	5.90	0.71	6.53	0.32	20.92
	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
Total revenue	1981-82	299.05	28.18	0.90	6.82	0.34	335.29
	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

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.

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 "Other Administrative Services" and "Stationery and Printing". In Delhi, most of the non-tax revenues are accounted for under the heads "Other Administrative Services" and "Education".

SECTION A : UNION TERRITORY OF DELHI

3.02 **Collection of tax revenue** vis-a-vis **budget estimate**

The collection of tax revenue during the year 1983-84 *vis-a-vis* the budget estimates, alongside the corresponding figures for the preceding two years, are given below :

Tax revenue	Year	Budget estimates	Actual receipts*	Percentage increase(+) or decrease (—) of actuals over budget estimates
		(In crores of rupees)		
1. Sales-tax	1981-82	160.97	190.90	(+)19
	1982-83	205.00	211.02	(+)3
	1983-84	245.00	230.83	(—)6
2. State excise	1981-82	32.14	55.19	(+)72
	1982-83	49.00	66.10	(+)35
	1983-84	62.00	76.17	(+)23
3. Taxes on goods and passengers	1981-82	35.00	19.04	(—)46
	1982-83	19.50	20.13	(+)3
	1983-84	21.00	21.25	(+)1
4. Stamp duty and registration fees	1981-82	8.06	9.09	(+)13
	1982-83	8.95	10.60	(+)21
	1983-84	9.34	11.93	(+)28
5. Taxes on motor vehicles	1981-82	7.45	6.72	(—)10
	1982-83	9.11	7.27	(—)20
	1983-84	9.69	8.78	(—)9
6. Land revenue	1981-82	0.21	0.23	(+)10
	1982-83	0.22	0.26	(+)9
	1983-84	0.33	0.17	(—)48
7. Other taxes and duties on commodities and services including entertainment tax	1981-82	9.54	10.42	(+)9
	1982-83	10.19	10.98	(+)8
	1983-84	11.98	10.09	(—)16
Total tax revenue	1981-82	253.37	291.59	(+)15.00
	1982-83	301.97	326.54	(+)8.13
	1983-84	359.34	359.22	Negligible

*Figures for 1983-84 are provisional.

3.03 Cost of collection of tax revenue

Cost of collection of tax revenue as furnished by the departments (where records are maintained to determine the same) are given below :—

Tax revenue	Year	Tax receipts	Expenditure on collection	Cost of collection as percentage of collection (in round figures)
		(In crores of rupees)		
1. Sales-tax	1981-82	190.90	1.53	1
	1982-83	211.02	1.70	1
	1983-84	230.83	2.06	1
2. State excise	1981-82	55.10	0.36	1
	1982-83	66.10	0.40	1
	1983-84	76.17	0.46	1
3. Taxes on goods and passengers.	1981-82	19.04	1.12	6
	1982-83	20.13	1.38	7
	1983-84	21.25	1.72	8
4. Stamp duty and registration fee	1981-82	9.09	0.31	3
	1982-83	10.80	0.27	3
	1983-84	11.93	0.10	1
5. Taxes on motor vehicles	1981-82	6.72	0.36	5
	1982-83	7.27	0.38	5
	1983-84	8.78	0.49	5
6. Land revenue	1981-82	0.23	0.15	65
	1982-83	0.24	0.17	71
	1983-84	0.17	0.17	100
7. Other taxes and duties on commodities and services	1981-82	10.42	0.06	0.6
	1982-83	10.98	0.08	0.7
	1983-84	10.09	0.05	0.4

3.04 Uncollected revenue in the Union Territory of Delhi

A—Tax revenue	Amount collected as on 31-3-1984	Amount pending as on 31-3-1984	Amount pending for more than 5 years as on 31-3-1984
	(In lakhs of rupees)		
1. Land revenue	17.27	15.18	15.18
2. Stamp and registration	1192.77	0.35	0.11
3. State excise	7617.26	246.19	246.19
4. Sales tax	23083.23	7574.93	3107.23
5. Taxes on vehicles	877.56	*	*
6. Taxes on goods and vehicles (Terminal tax)	2125.00	82.24	82.24
7. Other taxes and duties on commodities and services	1008.85	Nil.	Nil.
Total	35921.94	7918.89	3450.95
B—Non-tax revenue			
1. Education	176.06	Nil.	Nil.
2. Public works	93.76	Nil.	Nil.
3. Police	275.46	103.00**	Nil.
4. Housing	65.42	0.98	Nil.
5. Urban development	2.52	0.13	Nil.
6. Other administrative service	335.07	1.94	0.43
7. Other heads of receipts	239.02	N.A.	N.A.
Total :	1187.31	106.05	0.43
Total revenue receipts	37109.25	8024.94	3451.38

*Information is awaited from the department.

**Represnts recoveries due for supply of police personnel for guard duty and other duties.

N.A.—Not available.

3.05 **General**

(i) Under the Delhi Sales tax Act, 1975, a dealer who is a trader is required to register himself and pay tax if his gross turnover exceeds Rs. 1 lakh in a year. A dealer who is a manufacturer is required to register himself if his turnover exceeds Rs. 30,000 in a year. *Halwais* are required to register themselves if their turnover exceeds Rs. 75,000 in a year. The dealers are required to get themselves registered under the Central Sales Tax Act also, if they engage in inter-State sale or purchase for any amount. The number of registered dealers is given below. The figures within brackets indicate the number of dealers who are also registered under the Central Sales Tax Act.

	As on 31 March, 1982	As on 31 March, 1983	As on 31 March, 1984
1. Total number of registered dealers	76,651 (70,432)	82,128 (75,855)	86,597 (80,631)
2. (a) Number of dealers having turnover exceeding Rs. 10 lakhs	9,528 (9,007)	10,880 (10,272)	13,469 (12,679)
(b) Number of dealers having turnover exceedings Rs. 5 lakhs	12,673 (11,733)	14,929 (13,606)	14,727 (13,810)
(c) Number of dealers having turnover exceeding Rs. 3 lakhs but below Rs. 5 lakhs	19,770 (17,957)	20,534 (19,088)	16,899 (15,941)
(d) Number of dealers having turnover exceeding Rs. 1 lakh but below Rs. 3 lakhs	19,831 (18,154)	20,720 (19,490)	20,288 (18,852)
(e) Number of dealers having turnover less than Rs. 1 lakh	14,849 (13,581)	15,065 (13,399)	21,214 (19,349)

(ii) Progress in Soles tax assessments

	1981-82		1982-83		1983-84	
	Local	Central	Local	Central	Local	Central
(a) Number of assessments pending at the beginning of 1983-84 . .	1,82,709	1,67,117	2,00,022	1,84,271	2,02,210	1,86,155
(b) Number of assessments arising during 1983-84	73,035	66,769	77,970	72,964	83,269	76,639
(c) Number of assessments completed during 1983-84	55,722	49,615	61,397	55,466	63,747	57,955
(d) Number of assessments pending at the end of 1983-84 . . .	2,00,022	1,84,271	2,16,595	2,01,769	2,21,732	2,04,839
(e) Number of assessments out of (c) above which related to previous year	661	554	780	689	637	557
(f) Number of assessments out of (c) which related to earlier years and were liable to be barred by limitation if not completed in 1983-84 . .	52,089	46,533	56,541	51,130	59,890	54,585
(g) Assessment effort engaged on avoiding bar of limitation . . .	94 per cent		92 per cent		94 per cent	

*Differs from closing balance for 1982-83 and discrepancy under reconciliation.

(iii) Sales tax demands raised and pending

	1981-82		1982-83		1983-84	
	Local	Central	Local	Central	Local	Central
	(In crores of rupees)					
(a) Recovery of demands for tax in arrears at the beginning of the year .	35.89	15.81	37.46	16.34	45.15	18.73
(b) Demands raised during the year .	7.51	3.73	14.16	5.31	16.63	6.71
(c) Tax collected during the year .	2.88	1.98	3.57	1.87	4.23	2.74
(d) Adjustments on account of write-off, reduction and revision of demands .	3.06	1.22	2.90	1.05	3.29	1.21
(e) Demands for tax outstanding at the end of the year (a+b)—(c+d) .	37.46	16.34	45.15	18.73	54.26	21.49
	53.80		63.88		75.75	

(iv) Sales tiv demands in proeess of recovers

	1981-82		1982-83		1983-84	
	Local	Central	Local	Central	Local	Central
				(In crores of rupees)		
(a) In process of recovery including recovery as arrears of land revenue .	17.21	8.44	21.48	9.31	26.36	11.23
(b) Recovery stayed by court . .	4.08	1.15	0.77	0.24	0.46	0.25
(c) Recovery stayed by other authorities	1.83	1.62	5.03	2.16	8.10	2.68
(d) Recovery held up due to insolvency of dealers	2.68	0.79	1.74	0.67	2.01	0.36
(e) Recovery held up on appeal or review	4.87	2.28	8.69	3.95	9.57	4.87
(f) Demand likely to be written-off .	4.09	1.11	3.66	1.03	4.69	1.04
(g) Other reasons	2.70	0.95	3.78	1.37	3 07	1.06
Total	37.46	16.34	45.15	18.73	54.26	21.49
	53.80		63.88		75.75	

*Information is still awaited from the Department (December 1984).

(v) Sales tax demands certified for recovery as arrears of land revenue

	1981-82		1982-83		1983-84	
	Number of certificates	Amount in Rs. crores	Number of certificates	Amount in Rs. crores	Number of certificates	Amount in Rs. crores
(a) Number and amount of certified demands pending for recovery from the previous year	8,739	3.69	14,583	7.03	31,282	11.59
(b) Demands certified for recovery during the year	13,121	7.08	31,441	9.46	11,889	8.90
(c) Certified demands recovered during the year	6,354	1.21	4,338	2.85	11,739	3.77
(d) Certified demands returned without effecting recovery	923	2.53	10,404	2.05	1,075	1.13
(e) Certified demands pending at the close of the year	14,583	7.03	31,282	11.59	30,357	15.59

3.06 Short-levy due to non-detection of misdeclarations and suppression of sales

Under the Delhi Sales Tax Act, 1975 and the rules made thereunder, a registered dealer can purchase goods from another registered dealer, without paying tax, if the goods are for resale within the Union Territory of Delhi, or for use in manufacture in Delhi, of goods, sale of which is taxable in Delhi. The facility is allowed, provided the purchasing dealer furnishes to the seller a declaration in a prescribed form to the said effect. But if the dealer makes a false representation in regard to the goods or class of goods covered by his registration certificate or conceals the particulars of his sales or files inaccurate particulars of his sales, penalty not exceeding two and a half times the amount of tax which would thereby have been avoided will be leviable, in addition to the tax payable on the sales.

(i) Purchases valuing Rs. 8.16 lakhs were made by a registered dealer during the year 1979-80 without payment of tax and after furnishing two declarations. But the purchases were not reflected by him in his purchase account. The concealment was not detected by the assessing officer and resulted in tax amounting to Rs. 40,378 not being levied on the corresponding sales amounting to Rs. 8.18 lakhs. Penalty not exceeding Rs. 1,02,194 which was leviable for furnishing inaccurate particulars of sales, was also not imposed on the dealer. The dealer had also not furnished any utilisation account in respect of purchases made under 10 other declaration forms issued to him by the department. Tax was also leviable on the sales resulting from purchases, if any, made by him by using the 10 forms.

On the omission to levy tax being pointed out in audit (June 1984), the department reassessed (September 1984) the dealer and raised additional demand for Rs. 10.60 lakhs including interest amounting to Rs. 3.92 lakhs towards belated payment of tax. A penalty of Rs. 13.36 lakhs was also imposed (December 1984). Report on recovery is awaited (January 1985).

(ii) Sales amounting to Rs. 12,02,547 made by a dealer of foam articles during the year 1978-79 were excluded from levy of tax, although the declarations furnished by the assessee in support of the sales were false. They had been given in favour of certain other registered dealers and not the assessee. The declarations also covered only sales amounting to Rs. 18,505. Further, on sales amounting to Rs. 3,65,851 made by the same assessee, although declarations were furnished by the assessee in support of the sales, they were given by purchasing dealers whose whereabouts were not known to the department and whose registrations were in process of cancellation. The irregular exclusion of the sales from the taxable turnover resulted in short-levy of tax by Rs. 1,56,840. Penalty not exceeding Rs. 3,92,100 was also leviable.

On the irregularity being pointed out in audit (April 1984), the department stated (September 1984) that demand for tax amounting to Rs. 1,56,840 and penalty amounting to Rs. 3,92,100 had since been raised against the dealer. Report on recovery is awaited (January 1985).

(iii) A registered dealer purchased, without payment of tax, goods valuing Rs. 4,80,181 from another registered dealer during the year 1978-79 by furnishing the prescribed declarations, but accounted for purchases amounting to only Rs. 30,485 in his account records. The short accountal of purchases amounting to Rs. 4,49,696 resulted in suppression of corresponding sales amounting to Rs. 5,62,120 (including profit margin at 25 per cent). The suppression of sales was not detected by the assessing authority. The failure resulted in tax being levied short by Rs. 56,212. Further, penalty not exceeding Rs. 1,40,530 was leviable on the dealer for furnishing inaccurate particulars

On the failure to detect suppression of sales being pointed out in audit (May 1984), the department raised (August 1984) demand for Rs. 2,01,673. Report on recovery is awaited (January 1985).

(iv) A registered dealer purchased, without payment of tax, goods valuing Rs. 7.39 lakhs during the year 1979-80, by furnishing the prescribed declarations. But he did not reflect the purchases in his purchase account. The concealment of purchases and the corresponding sales amounting to Rs. 7.50 lakhs, which were not detected by the assessing authority, resulted in tax amounting to Rs. 37,490 not being levied. The dealer was also liable to pay penalty not exceeding Rs. 93,725 for furnishing inaccurate particulars of his sales.

On the failure being pointed out in audit (June 1984) the department reassessed the dealer (August 1984) and raised additional demand for Rs. 37,490 and penalty amounting to Rs. 93,725. **Report on recovery is awaited (January 1985).**

(v) A dealer in tin containers and geometry boxes was allowed to exclude from his turnover, sales amounting to Rs. 12.02 lakhs for the assessment year 1978-79 on the basis of declarations issued by the purchasing dealers. But sales amounting to Rs. 5 lakhs should not have been excluded because declarations in respect of them were bogus. In the result, tax was levied short by Rs. 35,025. Penalty not exceeding Rs. 87,562 was also leviable.

The irregularity was pointed out in audit in November 1983; the reply of the department is awaited (January 1985).

(vi) A registered dealer purchased, without payment of tax, goods valuing Rs. 5.18 lakhs from another registered dealer during the year 1978-79 by furnishing the prescribed declarations, but accounted only purchases amounting to Rs. 2 lakhs in the returns filed by him. The short-accountal of purchases valuing Rs. 3.18 lakhs resulted in suppression of corresponding sales amounting to Rs. 3.46 lakhs, which was not detected by the assessing authority. The failure resulted in tax being levied short by Rs. 34,590. Further, penalty not exceeding Rs. 86,476 was leviable on the dealer for furnishing inaccurate particulars.

On the suppression of sales being pointed out in audit (April 1984) the department stated (July 1984) that goods valuing Rs. 2.55 lakhs had been accounted for by the dealer as sales to embassies on which tax was not payable and goods valuing Rs. 0.28 lakh were claimed by him to be wastage. But sales to embassies were not covered by prescribed certificates from purchasers and there was no proof of any wastage. Demand for Rs. 28,339 has since been raised by the department against the dealer. Report on recovery and the action taken to recover the balance amount of tax and penalty is awaited (January 1985).

(vii) On sales amounting to Rs. 3,36,600 made by a registered dealer during the year 1978-79 tax was not paid on the strength of declaration given by the purchasing dealer. But the declaration had, in fact, been given by the purchasing dealer to some other dealer on purchases made from that other dealer and not from the dealer who was assessed. The assessing authority had failed to detect the misdeclaration and tax amounting to Rs. 23,562 was not levied. Penalty not exceeding Rs. 58,905 was also leviable on the seller for the offence of furnishing inaccurate particulars of his sales.

The irregularity was pointed out in audit in November 1983; reply of the department is awaited (January 1985).

(viii) On sales of motor parts amounting to Rs. 2,19,245 made by a dealer during the year 1978-79 tax was not levied. Sales amounting to Rs. 40,000 were not supported by genuine declarations since by interpolation, declaration for Rs. 4,000 had been changed to Rs. 40,000. The declarations supporting sales amounting to Rs. 1,01,540 did not relate to the assessee and had been given by the purchasers to other dealers. Declaration for Rs. 81,705 was accepted from a dealer who had gone out of business. The irregular exclusion of sales from taxable turnover resulted in tax being levied short by Rs. 21,924. Further, penalty not exceeding Rs. 54,810 was leviable on the dealer for furnishing incorrect particulars of sales.

On the irregularities being pointed out in audit (October 1983), the department raised (June 1984) demand for Rs. 77,513 (including penalty). Report on recovery is awaited (January 1985).

(ix) During the year 1978-79, a registered dealer purchased, without payment of tax, goods valuing Rs. 3,38,972. But the goods were not covered by his registration certificate. The misrepresentation was not noticed by the assessing authority. The omission resulted in tax amounting to Rs. 16,949 not being levied. Further, penalty not exceeding Rs. 42,371 was also leviable.

On the omission being pointed out (February 1983) in audit, the Ministry of Home Affairs have stated (December 1984) that penalty amounting to Rs. 20,000 has since been imposed, against which the dealer had appealed.

(x) A registered dealer purchased, without payment of tax, goods valuing Rs. 2,12,023 from another registered dealer during the year 1978-79 and furnished the prescribed declarations. But he did not account for the purchases in his accounts books. The non-accountal resulted in suppression of corresponding sales amounting to Rs. 2,16,263. The suppression was not detected by the assessing authority. The failure resulted in tax amounting to Rs. 10,812 not being realised. Further, penalty not exceeding Rs. 27,030 was leviable on the dealer.

On the failure being pointed out in audit the department revised the assessment and raised demands for tax amounting to Rs. 15,000 and penalty amounting to Rs. 5,000 and collected the same together with interest of Rs. 900.

The above cases were reported to Ministry of Home Affairs between November 1983 and September 1984; their reply is awaited (January 1985) save in respect of sub-paragraph (ix) above.

3.07 Short-levy due to failure to detect or notice interpolations in declaration forms

Under the Delhi Sales Tax Act, 1975 and the rules made thereunder, on sales of goods, made by one registered dealer to another registered dealer, tax is not payable, if such sales are supported by a declaration given by the purchasing dealer, in a prescribed form. If the assessing authority, in the course of any proceedings under the Act, is satisfied that a dealer has concealed the particulars of his sales or furnished inaccurate particulars of sales, he may direct that the dealer shall pay, by way of penalty, in addition to the amount of tax payable, a sum not exceeding two and a half times the amount of tax, which would thereby have been avoided.

(i) In respect of the assessment years 1978-79 and 1979-80, a dealer did not pay tax on sales amounting to Rs. 9.18 lakhs, on the strength of prescribed declarations given by the purchasing dealer, which were accepted by the assessing authority. But in the declarations, there were interpolations and amounts had been altered and increased. Thereby the value of the declarations had been inflated. Failure to detect the alterations and interpolations resulted in part of the declarations not being disallowed and tax being levied short by Rs. 91,798. Penalty not exceeding Rs. 2,29,496 was also leviable for falsification of the records.

On the failure being pointed out in audit (December 1983) the department stated (June 1984) that the assessment had since been revised and tax amounting Rs. 1.85 lakhs demanded and penalty amounting Rs. 2.45 lakhs levied. Report on recovery is awaited (January 1985).

(ii) Sales of butter and tinned food stuffs amounting to Rs. 6.72 lakhs, were made by a registered dealer to other registered dealers during the year 1978-79 duly supported by the

prescribed declarations and without collection of tax. But the selling dealer had altered, interpolated and inflated the figures of sales in the declarations. Failure on the part of the assessing officer to notice the alterations and interpolations resulted in tax amounting to Rs. 47,035 not being realised. Further, penalty not exceeding Rs. 1.18 lakhs was also leviable for the falsification of the records.

On the failure being pointed out in audit (November 1983) the department stated (November 1983) that the assessment had since been revised and further tax amounting to Rs. 28,025 recovered. The department also stated that penalty amounting to Rs. 70,063 had also been imposed for falsification of records, but the same was reduced to Rs. 10,000, on appeal. Report on recovery of penalty is awaited (January 1985).

The above cases were reported to Ministry of Home Affairs between August and October 1984; their reply is awaited (January 1985).

3.08 Non-levy of tax

As per the provisions of the Delhi Sales Tax Act, 1975 and rules made thereunder, tax is not payable on sales of goods made by one registered dealer to another registered dealer, if such sales are supported by declarations given by the purchasing dealer in a prescribed form. If the assessing authority is satisfied that a dealer has concealed the particulars of his sales or has furnished inaccurate particulars of his sales, he may, direct that the dealer shall pay, by way of penalty, in addition to the tax, a sum not exceeding two and a half times the amount of tax, which would thereby have been avoided.

(i) A Sales Tax Officer disallowed deduction from turnover claimed by a dealer (engaged in the business of sanitary goods)

in his quarterly returns. He further enhanced the turnover by Rs. 1 lakh per quarter. However, he allowed deduction of sales made to registered dealers without any proof of such sales having been made to them. As a result, tax was levied short by Rs. 91,955.

On the mistake being pointed out in audit (July 1983), the department stated (September 1983) that demand for Rs. 90,181 had since been raised. Report on recovery is awaited (January 1985).

(ii) Sales amounting to Rs. 58.87 lakhs made by a manufacturer of pumps and motors during the year 1978-79 were not included in the taxable turnover although sales amounting to Rs. 57.63 lakhs only were supported by the prescribed declarations from purchasing dealers. Failure to levy tax on sales amounting to Rs. 1.24 lakhs, which were not supported by prescribed declarations, resulted in tax amounting to Rs. 12,435 not being realised. Further, penalty not exceeding Rs. 31,087 was leviable for the offence of furnishing incorrect particulars.

On the mistake being pointed out in audit (May 1984), the department stated (July 1984) that demands for tax amounting to Rs. 12,520 and penalty amounting to Rs. 31,300 had since been raised. Report on recovery is awaited (January 1985).

(iii) Where goods purchased are covered by the registration certificate of the registered purchaser, he has to furnish to the registered seller, a prescribed declaration to the effect that the goods are intended for use as raw material in the manufacture of goods for sale within the Union Territory of Delhi.

In November 1979* the High Court of Delhi had held that calcium carbide, oxygen gas, electrodes and actylene gases used for welding were not raw materials that went into any finished product and could not, therefore, be included in certificates of registration as raw materials for manufacture. The Commissioner of Sales Tax clarified in 1979-80 that goods, which do not go into the manufacture of finished products, but are merely consumed in the process of manufacture cannot be purchased without payment of tax and such items should not be mentioned in the registration certificate of the dealers.

During the years 1979-80 to 1982-83, a dealer purchased, without payment of tax, calcium carbide and oxygen gas valuing Rs. 3.22 lakhs and held that they were covered by his registration certificate. Five other dealers also similarly purchased, welding electrodes valuing Rs. 3.09 lakhs during the year 1977-78. But the goods were not used in the manufacture of any finished products. The assessing authorities failed to disallow the claim, for non-payment of tax on the purchase. The failure resulted in tax amounting to Rs. 44,184 not being realised.

On the failure being pointed out in audit (October 1982 and September 1984), the department accepted the objection in five cases and raised demand for Rs. 21,641 which was realised (December 1984). Report on action taken in the remaining case is awaited (January 1985).

The above cases were reported to Ministry of Home Affairs between August 1984 and September 1984; their reply is awaited (January 1985).

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*Cmmissioner of Sales tax, New Delhi *Vs.* Standard Metal Industries (1980) (45-STC-229).

3.09 **Mistakes in computation of tax**

As per notification issued on 20th July 1976 under the Central Sales Tax Act, 1956 on inter-State sale of dry fruits, tax became leviable at 2 per cent, but only when the sale was to registered dealers having their place of business out-side the Union Territory of Delhi. Further, such sales were to be supported by declaration given in prescribed forms. The lower rate of 2 per cent was not admissible on sales made to Government departments.

(i) On sales of dry fruits amounting to Rs. 3.96 lakhs made by a dealer to a Government department during the year 1976-77, tax was levied at 2 per cent instead of at 4 per cent or at 10 per cent, despite the fact that the sales were not supported by prescribed declarations. The mistakes resulted in tax being levied short by Rs. 13,784 including interest not charged.

On the mistake and omission being pointed in audit (October 1981), the department revised (January 1984) the assessment and raised demand for Rs. 13,784. Out of which an amount of Rs. 13,417 was realised (August 1984). Report on recovery of the balance amount is awaited (January 1985).

(ii) On sales of needles, buttons and polythene bags amounting to Rs. 32 lakhs, made by a dealer during the year 1978-79, tax was levied at the rate of 7 per cent, but was wrongly computed by the assessing authority at Rs. 1.40 lakhs instead of at Rs. 2.24 lakhs. The mistake resulted in tax being levied short by Rs. 84,000.

On the mistake being pointed out in audit (November 1983), the department re-assessed (January 1984) the dealer and raised additional demand for Rs. 84,000. Report on recovery is awaited (January 1985).

The above cases were reported to Ministry of Home Affairs between May and September 1984. The Ministry have confirmed

the fact in sub-paragraph (i) above; reply is awaited (January 1985) on the remaining case.

3.10 Incorrect computation of taxable turnover

As per Section 5 of the Bengal Sales Tax Act, which was applicable in the Union Territory of Delhi upto 20th October 1975, on sales made by one registered dealer to another, tax was not leviable provided the purchasing dealer furnished a declaration to the effect that goods purchased were meant for resale or for use as raw material in the manufacture of finished goods for sale in the Union Territory of Delhi. If the goods so purchased were not utilised for the above purposes, tax was leviable on the purchase price of the goods.

In Delhi, a dealer purchased, without payment of tax, certain raw materials during the year 1973-74 by furnishing the prescribed declaration, but used the goods in a contract work. As a result, he became liable to pay tax on the purchase price of the raw material. For purposes of levy of tax, the value of the raw material was taken as Rs. 11,97,511 which was equal to 14 per cent of the total cost of the contract work at Rs. 77,47,771. However, in similar cases pertaining to the assessment years 1972-73 and 1974-75, the cost of raw material used in the contract works was determined at 60 per cent of the total cost of the contract work. The lower percentage adopted, without justification, for determining the value of raw material used in the contract work completed at a cost of Rs. 77,47,771 resulted in the value of raw material being assessed short by Rs. 46,48,663 and consequent short realisation of tax by Rs. 2,32,433.

On the mistake being pointed in audit (July 1979), the department raised (February 1981) further demand for Rs. 2,32,433 against which the dealer has appealed on the ground that the use of the material in the pipes was incidental to the contract work.

The above case was reported to Ministry of Home Affairs in July 1984; their reply is awaited (January 1985).

3.11 Non-recovery of interest

Under the Delhi Liquor Licence Rules, 1976, an assessed fee is payable by a licensee on his sales of Indian made foreign liquor and beer. The fee is to be paid in respect of every month by the 10th of the following month. As per the terms and conditions of licence, interest at 18 per cent per annum is payable for the period of delay in payment of the assessed fee.

On belated payments of assessed fee, the department did not recover interest amounting to Rs. 54,132 from various licensees during the year 1978-79.

On the omission being pointed out in audit (December 1979), the department accepted the objection (September 1983) and stated (September 1983) that action to recover the amount had since been taken; report on recovery is awaited (January 1985).

The case was reported to Ministry of Home Affairs in May 1984; their reply is awaited (January 1985).

TAXES ON MOTOR VEHICLES

3.12 Irregular grant of exemption from payment of tax

As per a notification issued in July 1963 by the Chief Commissioner of Delhi, under the provisions of the Delhi Motor Vehicles Taxation Act 1962, levy of road tax was exempted on (i) vehicles owned by Central and State Governments and Administrations of Union Territories and local authorities functioning in the Union Territory of Delhi and used exclusively for departmental purposes and (ii) vehicles owned by specified recognised educational institutions and used for carrying pupils of the institutions. The exemption was not admissible in respect of vehicles owned by autonomous bodies, public sector undertakings and educational institutions, as did not use them for carrying pupils.

On 32 vehicles operating in the Union Territory of Delhi, tax was not levied, although the vehicles belonged to autonomous bodies and public sector undertakings. Tax was also not levied on 6 vehicles which, though owned by educational institutions, were not used for carrying pupils. The irregular grant of exemption resulted in tax amounting to Rs. 24,884 not being realised in respect of the period from January 1983 to March 1984.

The irregularities were pointed out in audit in February 1984; the reply of the department is awaited (January 1985).

The case was reported to Ministry of Transport in July 1984; their reply is awaited (January 1985).

SECTION B

UNION TERRITORY OF CHANDIGARH

3.13 Irregular grant of exemption from payment of motor vehicles tax

Under the Punjab Motor Vehicles Taxation Act, 1924, as applicable to the Union Territory of Chandigarh, motor vehicles owned and kept for use by departments of the Central or State Governments are exempt from levy of motor vehicles tax. No such exemption is, however, available in respect of vehicles belonging to autonomous bodies and corporations. The term "motor vehicle" includes a vehicle, carriage or other means of conveyance propelled, or which may be propelled, on a road by electrical or mechanical power either entirely or partially.

In Chandigarh, tax amounting to Rs. 60,500 was not levied on nine harvesting combines belonging to the Haryana State Co-operative Supply and Marketing Federation, Chandigarh and the Haryana Seed Development Corporation, Chandigarh, for various periods between April 1973 and March 1983.

On the omission being pointed out in audit (March 1984), the Chandigarh Administration stated (June 1984) that the tax

was not assessed at the time of registration under the view that the harvesting combines were used solely for agricultural purposes. However, the amount was being realised as arrears of land revenue through the Collector, Chandigarh. Report on recovery is awaited (January 1985).

The case was reported to Ministry of Home Affairs in August 1984; their reply is awaited (January 1985).

N. Sivasubramanian

(N. SIVASUBRAMANIAN)
Director of Receipt Audit-II

New Delhi
The 1985

25-4-1985

Countersigned

T. N. Chaturvedi

(T. N. CHATURVEDI)
Comptroller & Auditor General of India.

New Delhi
The 1985.

25-4-1985