REPORT OF THE

COMPTROLLER AND AUDITOR GENERAL OF INDIA

FOR

THE YEAR 1981-82

UNION GOVERNMENT (CIVIL)

REVENUE RECEIPTS

VOLUME I

INDIRECT TAXES

ERRATA

Page	Para No.	Line	*For*	*Read*
55	2.02	5th from bottom	polyster	polyester
64	2.09(i)	11th from top	December1979	December 1978
65	2.09 (iv)	16th from bottom	Rs. 1,11,969	Rs. 1,11,960
66	2.09 (vii)	3rd from bottom	(May	(January
73	2.11(iv)	8th from bottom	on reason	no reason
73	2.11(iv)	4th from bottom	1 April 1979 to 28 February 1981	1 January 1977 to 31 December 1981
74	2.11(iv)	1st from top	Rs. 11,00,517	Rs. 25.91 lakhs
77	2.13(ii)(a)	13th from bottom	11,554	11,454
77	2.13(ii)(b)	3rd from bottom	December 1980	December 1981
88	2.18(i)	9th from bottom	millimeters	millimetres
88	2.18(i)	6th from bottom	A unit	Six units
98	2.22(i)(a)	3rd from top	1982	1981
98	2.22(i)(a)	4th from top	1 March 1976	1 March 1975
105	2.24(i)	8th from bottom	3,12,001	1,12,001
138	2.36(i)	5th from bottom	Rs. 5,53,376	Rs. 5,53,396
141	2.36(v)	14th from bottom	Rs. 19,034	Rs. 10,034
146	2.37(v)	2nd from top	Rs. 93.33 lakhs	Rs. 94.33 lakhs
149	2.38(iv)	10th to 15th from top	(iv) As per a notification . . . or in part. A manufacturer	(iv) A manufacturer
155	2.40	7th from bottom	by audit	by Audit
159	2.41(iii)	10th from bottom	Rs. 2,43,234	Rs. 3,43,234
163	2.41(ix)(a)	6th from bottom	Rs. 33,986	Rs. 4,12,090
164	2.41(ix)(a)	Ist and 2nd from top	goods valuing Rs. 3,54,821 on	goods on
164	2.41(ix)(a)	3rd from top	Rs. 2,88,807	Rs. 3,38,807
170	2.42(vi)	2nd from top	infraxed	infra red
170	2.42(vi)	5th from top	69	96
176	2.45(i)	2nd from top	rabate	rebate
182	2.46(iii)(b)	16th from bottom \ 10th from bottom /	Rs. 1.04 lakhs	Rs. 1.06 lakhs
184		16th from bottom	man) — (made	man-made
187	2.47(v)	2nd from top	ceass	cease
192	2.51	9th from top	order and duty	order and recovery of duty
193	2.52	6th from top	ceses	cases
200	2.04(ii)	8th line from botom of the table under the heading 'year'	—	1980-81
		12th line from bottom of the table under the heading 'year'	197-80	1979-80

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CHAPTER I—CUSTOMS RECEIPTS

PREFATORY REMARKS

The Audit Report on Revenue Receipts (Civil) of the Union Government for the year 1981-82 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 and results of audit of such 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 snd results of audit thereof.

Chapter 3—refers to receipts of Union Territories and mainly relating to Sales Tax, Excise Duty, Stamp and Registration Fees, Motor Vehicles Tax, Land Revenue and Entertainment Tax receipts of the Union Territory of Delhi as also relating to Union Territory of Chandigarh in respect of Sales Tax and results of audit thereof.

The points brought out in this report are those which come to notice of audit during the test check of the relevant records in the various departments and departmental offices. They are not intended to convey or to be understood as conveying any general reflection on the working of the departments concerned.

VOLUME I

CHAPTER 1

CUSTOMS RECEIPTS

1.01 The net receipts from Customs duty during the year 1981-82 after deducting refunds and drawback paid alongside Budget Estimates and figures for the preceding year 1980-81, are given below :—

Customs Receipts from	Receipts for 1980-81	Receipts for 1981-82	Budget Estimates for 1981-82	Revised Budget Estimates for 1981-82
		(In crores of rupees)		
Imports	3413.02	4395.98	3879.86	4222.00
Exports	110.24	50.71	72.92	53.00
Cess on exports . . .	10.28	12.05	10.58	12.84
Other goods	47.11	39.34	35.00	35.00
Gross Revenue . . .	3580.65	4498.08	3998.36	4322.84
Deduct refunds . . .	84.21	86.97	65.66	60.84
Deduct Drawback* . .	87.16	110.75	100.00	122.00
Net Revenue	3409.28	4300.36	3832.70	4140.00

The buoyancy in the revenue collections was attributed to increase in imports especially of machinery, mechanical appliances and electrical equipment, iron and steel, yarn of man-made fibres and lubricating oils.

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

The decrease in revenue from export duties as compared to estimates was attributed to lower realisations from export of groundnut meal, coffee and lumpy iron ore.

1.02 Cost of Collection

The expenditure incurred in collection of customs duties during the year 1981-82, alongside figures for preceding year are given below :—

Cost of Collection on	1980-81	1981-82
	(In crores of rupees)	
Import, Export and Trade Control functions . .	6.61*	6.86
Preventive and other functions	27.78*	26.34
	34.39*	33.20
Cost of collection as per centage of gross receipts .	0.96	0.74

1.03 Arrears of customs duty

The amount of customs duty assessed upto 31 March 1982, which was still to be realised on 31 October 1982 was Rs. 1749.61 lakhs (of this Rs. 1488.66 lakhs was outstanding for more than a year). The corresponding amount as on 31 October 1981 was Rs. 2270.51 lakhs.

1.04 Arrears of Foreign Travel Tax

The arrears of foreign travel tax (which is payable by a passenger going on international journey for which fare has been paid in Indian currency) which were still to be collected by the carriers of passengers and credited to Government in respect of journeys commenced between 15 October 1971 and 15 June 1979 is given below. Similarly the arrears in respect of journeys

*As revised by the Ministry of Finance in February, 1982.

which commenced on or after 15 June 1979 (when rate was changed from ad *valorem* to *specific*) are also given below :—

Arrears of tax as on 31 March, 1982.

Custom House administering control over the journeys subjected to tax	Journeys prior to 15 June 1979	Journeys after 15 June 1979
	(In lakhs of rupees)	
Delhi	134.26	1.59
Bombay	18.07	2.09
Calcutta	7.65	2.55
Madras	2.31	Nil

In Madras, Rs. 2.31 lakhs are due from a carrier who is stated to have gone under liquidation.

1.05 Time barred demands

Of the demands raised by the department upto 31 March 1982 which were pending realisation as on 31 October 1982, recovery of demands amounting to Rs. 326.92 lakhs relating to eleven Custom Houses and Collectorates were barred by limitation, but issued in expectation of voluntary payments.

1.06 Ad hoc exemptions

Under Section 25(2) of the Customs Act, 1962, the Central Government is empowered to exempt by order, in the public interest and 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 1981-82 and the preceding three years are given below :—

	1978-79	1979-80	1980-81	1981-82
(*i*) Number of exemptions issued and availed of	198	97	68	63
(*ii*) Total duty involved (in crores of rupees)	59.98	204.54	274.77	438.055
(*iii*) Number of cases each having a duty effect above Rs. 10,000	125	75	61	59
(iv) Duty involved in the cases at (iii) above (in crores of rupees)	59.95	204.53	274.76	438.054

1.07 Write off of duty

Customs duties written off, penalties abandoned and ex-gratia payments made during the year 1981-82 and the preceding three years are given below :—

Year	Amounts of duty written off
	(In lakhs of rupees)
1981-82	33.66
1980-81	44.39
1979-80	3.73
1978-79	27.62

1.08 Results of audit

Test check of the records in Custom Houses and Collectorates, during audit, revealed cases of short levies of duties and cess and payments and refunds in excess and losses of revenues amounting to Rs. 13.48 crores in the aggregate. Excess levy of duties and payments due but not made amounting to Rs. 27.11 lakhs were also noticed in audit.

Illustrative cases of the irregularities noticed, in audit are given in the succeeding paragraphs, under the following categories :—

(*a*) Non-levy of duties
(*b*) Mistakes in valuation
(*c*) Misclassifications
(*d*) Incorrect grant of exemption
(*e*) Other mistakes
(*f*) Export cess
(*g*) Passengers' baggage
(*h*) Refund of duty
(*i*) Drawback payments
(*j*) Overassessments
(*k*) Other topics of interest

NON LEVY OF DUTIES

1.09 Non levy of duty on expiry of bond or failure to fulfil its conditions

Under the Customs Act 1962, on goods imported under bond without payment of duty and warehoused under licence, duty is to be levied as also interest and penalty if the goods are not cleared within the time prescribed.

(*i*) A unit manufacturing 'hose clamps' using imported stainless steel strips, steel rods etc. imported under bond without payment of duty did not satisfy the condition that the finished products would be exported out of India. Production was discontinued on 12 April 1978, on the ground that there was no further market for the goods outside India.

On stainless steel valued at Rs. 1.29 lakhs (out of total quantity valued at Rs. 1.64 lakhs which was imported between March 1973 and March 1978) not re-exported, action for levy of import duty and interest amounting to Rs. 2,91,565 was initiated only in April 1979 by the department, after receipt of audit query. The Ministry of Finance have stated (December 1982) that the duty and interest have since been paid and remaining stock in bonded warehouse cleared.

(*ii*) A public sector unit engaged in the manufacture of television tubes, imported glass shell under bond, but did not pay duty on 893 shells (out of 54,642 brought from the port in May 1977) which were found to be broken after import. Out of 20,500 more shells brought in subsequently in the same year, 216 were found broken similarly. On the breakages the non levy of duty being pointed out in audit in May 1977 and again in October 1978, demand for duty amounting to Rs. 72,352 was raised and collected by the Department in November 1979.

The Ministry of Finance have confirmed (December 1982) the facts.

1.10 Non recovery of duty on ship's stores

When foreign going vessels revert to coastal trade, duty is leviable on the ship's stores remaining unconsumed, at the time of reversion.

On reversion of seven foreign going vessels to coastal run (between July 1976 and October 1978), duty payable on ship's stores as aforesaid had not been levied or determined in a port. Further, on 20 vessels so reverting duty amounting to Rs. 8.55 lakhs had not been collected even though after the reversions 1 to 3 years had elapsed, (as seen in audit between August 1979 and February 1982).

In the 7 cases pending for assessment of duty delay was stated to be for want of results of chemical tests and final bills. Out of Rs. 8.55 lakhs recovery of Rs. 2.08 lakhs is to be made from parties who have gone into liquidation. Out of Rs. 75,543 due from a party only an amount of Rs. 15,000 was recovered.

The cases were reported to Ministry of Finance (September 1982); their reply is awaited.

1.11 Non recovery of duty on unclaimed goods

As per provisions of Customs Act 1962, imported goods, which remain unclaimed and undelivered, are required to be sold by the custodian (Port Trust) by auction and customs duty realised from the proceeds thereof.

The annual accounts of a Port Trust for the year 1981-82 showed a sum of Rs. 1.81 crores as being held in suspense in order to pay customs duty on unclaimed and abandoned goods sold by it in auctions held during the month of September 1973 and between March 1977 and September 1980. However, the duty had not been demanded by the Custom House nor realised.

In another major Custom House, *ad-hoc* payments for Rs. 60 lakhs and Rs. 1 crore were received from the Port Trust in April 1981 and February 1982 against the duty payable on

such sales by auction held during the years 1978-79 and 1979-80 respectively. In respect of the year 1980-81, not even the advance or *ad-hoc* payment was received. In respect of the years 1975-76 and 1976-77, payments of duty were received in the Custom House only in July 1980 (Rs. 11,844 and Rs. 2,69,135 respectively for the two years), while in respect of auctions held in 1977-78, *ad-hoc* payment of Rs. 60 lakhs was received in April 1980 and balance of Rs. 19,14,324 in July 1981.

The reason for not raising demands was enquired in audit (December 1980). No reply has been received from either Custom House so far (August 1982).

The Ministry of Finance have confirmed the facts.

1.12 Non levy of additional (countervailing) duty

Under Section 3 of the Customs Tariff Act 1975 countervailing duty, corresponding to the excise duties leviable on like goods produced or manufactured in India, is leviable on imported goods, as additional duty.

(*i*) Battery Grade (but not technical grade or chemically pure) manganese dioxide is specifically mentioned as classifiable under Chapter 25 of first Schedule to Customs Tariff Act, 1975. However, in terms of a note under Chapter 25, that chapter is to be taken to apply only to goods which are in the crude state or which have been washed, crushed, ground, powdered etc. but not calcined or subjected to any further process. Special chemical manganese dioxide (obtained by the process of calcination) and electrolytic manganese dioxide are to be classified under chapter 28 and on their import, in addition to customs duty leviable, additional (countervailing) duty at 8 per cent *ad valorem* under item 68 of Central Excise Tariff is also leviable.

In a major Custom House, special chemical manganese dioxide and electrolytic manganese dioxide imported between December 1979 and July 1980 were classified wrongly under chapter 25 and only customs duty was levied. No additional

(countervailing) duty was collected, because goods falling under chapter 25 of Customs Tariff Act, 1975, were exempt from additional duty as per a notification issued by Government of India, in March 1979. This resulted in additional duty amounting to Rs. 1,68,691 not being realised.

On the mistake being pointed out in audit (between May 1980 and January 1981), the Custom House accepted the misclassification and the non-realisation of additional (countervailing) duty and stated (February 1982) that efforts were being made to realise the amount.

The Ministry of Finance have confirmed the facts and stated (August 1982) that Rs. 14,507 have so far been collected.

(*ii*) As per a notification issued in October 1980, duty of excise was to be levied and collected as cess at the rate of 1/8 per cent *ad valorem* on paper and paper board all sorts including newsprint, with effect from 1 November 1980. Accordingly, from 1 November 1980, on imports, corresponding countervailing duty was leviable.

On consignments of newsprint and other types of paper imported between 17 November 1980 and 19 November 1981 the aforesaid cess (countervailing duty) amounting to Rs. 1,11,210 was not levied in a Custom House.

On the omission being pointed out in audit (between August 1981 and April 1982), the Custom House admitted the mistake (September 1981).

The Ministry of Finance have confirmed the facts and stated (October 1982) that duty amounting to Rs. 14,753 has been realised so far.

(*iii*) On imports of "Blends of Pitch with other coal tar distillation products", countervailing duty is leviable under item 68 of the Central Excise Tariff.

On imports of 240 tonnes of coal tar pitch and binder valued at Rs. 6,78,905 customs duty was levied but countervailing duty amounting to Rs. 78,753 was not levied.

On the omission being pointed out in audit (December 1979), the Custom House stated (September 1981) that demand for Rs. 78,753 had since been raised. Collection has been stayed by the High Court on a petition filed by the importer.

The Ministry of Finance have accepted the above facts.

1.13 Short levy of duty in land custom stations

(*i*) Under a notification issued by Government of India on 22 June 1935 (as amended from time to time) Motor Cars, Motor Cycles etc. are allowed to be imported by Members of an Automobile Club or Associations belonging to the Federation of alliance *Internationale De Tourisme* under an international pass (Triptyque) or customs permit (Carnet de passage on douanes) issued by such associations and the vehicles are exempt from payment of customs duty provided the pass or permit is guaranteed by the Western India Automobile Association. Such vehicles have to be re-exported out of India within six months from the date of import. Further, the vehicles can be imported only by a person who is the holder of the pass or permit. The Ministry of Finance in their letter dated 8 October 1963, however, allowed the import of a vehicle by a person other than the holder of the pass or permit provided the Collector of Customs is satisfied that the actual importer is otherwise entitled to the pass or permit and holds a proper authority from the holder of a pass or permit and also the Western India Automobile Association gives a specific guarantee for the re-export of the vehicle within the specified time.

Four vehicles were allowed to be imported through a land customs station during the period from November 1972 to November 1973 by persons other than the pass or permit holders but without guarantee from the Automobile Association regarding the re-export of the vehicles. The vehicles were not re-exported

and demand notices raised by Customs against the Automobile Association were not honoured by it on the ground that the association had not guaranteed the export of the vehicles in these cases. Non-compliance by the Collector of Customs with the instructions of the Government resulted in loss of customs duty amounting to Rs. 57,401 in the four cases.

The audit objection was made to the Collector in November 1976 and the collectorate in turn referred it to the Ministry of Finance in 1977.

The Ministry of Finance have confirmed the facts (September 1982).

(*ii*) On motor vehicles, with engine capacity not exceeding 2,500 cubic centimeters, Central Excise duty (basic) was leviable at 17½ per cent *ad valorem* which was raised to 25 per cent with effect from 1 March 1979. Special excise duty at 5 per cent of basic duty was also leviable before 1 March 1979, which was abolished from 1 March 1979 but reimposed with effect from 19 June 1980.

Four saloon cars falling under the description of motor vehicles were imported through a land customs station in Eastern India during the period from 2 June 1979 to 26 June 1980. They were assessed to additional (countervailing) duty at 17 1/2 per cent *ad valorem* based on the old rate of Central Excise duty and special excise duty at 5 per cent *ad valorem* even though some of the imports were made during the period from 1 March 1979 to 19 June 1980.

The short realisation of countervailing duty, indicative of a failure in the system requiring appraising and assessing staff even in remote land customs stations being made aware of changes in rates of duty without delay, was pointed out in audit (October 1981). The Collectorate stated that efforts were being

made to recover the short levy of Rs. 12,145 in respect of the four saloon cars.

The Ministry of Finance have confirmed the facts (September 1982).

MISTAKES IN VALUATION

1.14 Stevedoring charges not included in value

As per 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, packing and other incidental charges normally incurred in overseas trade practice, by traders in general. Marine insurance charges being normal incidence in import trade practice and stevedoring being normal incidental charges are, therefore, required to be included in the price of goods. Where the actual insurance charges paid are not capable of being determined an *ad hoc* addition at one and one eighth per cent of f.o.b. value is added towards insurance charges generally.

Stevedoring and insurance charges were not added to the contracted c.&f. value of 7,960 tonnes of ammonium sulphate, imported in June 1978. Failure to add the Stevedoring Charges at Rs. 21.28 per tonne and an *ad hoc* addition of one and one eighth per cent towards insurance to value resulted in duty being levied short by Rs. 46,702 in a Custom House.

On the omission being pointed out in audit (February 1980) the omission to add stevedoring charges was admitted by the Custom House. As for the insurance charges, the Custom House stated that no expenditure on insurance charges was, in fact, incurred by the importer who was a public sector undertaking. The Board had, however, issued specific instructions that insurance charges being charges incurred 'in the ordinary course of business', should be added even if such charges are not actually incurred.

The matter was reported to the Ministry of Finance (September 1982); their reply is awaited.

MISCLASSIFICATIONS

1.15 Short levy of Customs duty due to misclassification

(*i*) On 'composite fertilisers' customs duty is not leviable, though on 'mineral or chemical fertilisers, nitrogenous, phosphate or potassium and other fertilizers not elsewhere specified', duty is leviable at 60 per cent *ad valorem*. The term 'composite' herein refers to a fertiliser which has more than one of the three nutrients, *viz.*, nitrogen, phosphorus and potassium. This was also confirmed in the conference of collectors, on the advice of the chief chemist, in August 1981, overruling the view of the conference of Collectors in April 1969 which had considered calcium ammonium nitrate to be a composite fertiliser on account of its being a composition of calcium, magnesium and ammonium nitrates.

On three consignments of calcium ammonium nitrate imported during the period from March 1978 to July 1978 by a Public Sector Undertaking, basic customs duty was levied at 'nil' rate, even though the imported item had only one nutrient *viz.* nitrogen and was not a composite fertiliser. This resulted in duty amounting to Rs. 2 crores not being levied on the imported consignments.

On the mistake being pointed out in audit (February 1980), the Custom House did not accept the audit objection till a view was taken at the conference of Collectors in August 1981. The Custom House stated in July 1982 that the importers had been requested to make good the short recovery. Report on recovery is awaited (August 1982).

The Ministry have stated that the imports of calcium ammonium nitrate in the past were assessed on established/authorised practice and that it would not be necessary to re-open past assessments on the imports which were made by the Public Sector Undertaking on Government Account.

(*ii*) Delivery pumps fitted with measuring mechanism are classifiable under heading 84.10(2) of the Customs Tariff.

A 'hydraulic pump' described as 'power driven' imported by a Public Sector Undertaking in August 1980 was assessed to customs duty under heading 84.10(1) at 40 per cent *ad valorem* and additional (countervailing) duty at 5 per cent, as also special excise duty at 5 per cent thereon under item 30-A of the Central Excise Tariff. The Internal Audit Department of the Custom House correctly pointed out that additional duty was leviable at 8 per cent *ad valorem* under item 68 of the Central Excise Tariff and Rs. 8,470 more of duty was recoverable. But the item being delivery pump with a measuring mechanism (as seen from the literature) was required to be classified under heading 84.10(2) and customs duty levied thereon at 60 per cent *ad valorem*. Failure to do so resulted in duty being levied short by Rs. 90,976 (including the short levy of Rs. 8,470 pointed out by the Internal Audit Department).

On the mistake in classification being pointed out in audit (January 1981), the Custom House admitted the mistake (June 1982) and stated that the differential duty of Rs. 90,976 was recovered in February 1982.

The Ministry of Finance have confirmed the facts.

1.16 Short levy of countervailing duty due to misclassification

(*i*) Hypalon being chlorosulphonated polyethylene is classifiable under heading 39 of Customs Tariff, covering artificial resins and plastic materials and is liable to countervailing duty under item 15-A of Central Excise Tariff covering plastics.

On a consignment of Hypalon, imported in September 1978, customs duty was levied as also additional (countervailing) duty under item 15 A of Central Excise Tariff. On a refund application made by the importer, the Custom House reclassified the goods as synthetic rubber falling under item 16-AA of Central Excise Tariff which covered polybutadiene etc. but not polyethylene, and refund of Rs. 54,474 was given wrongly (July 1980). Four more consignments of 'Hypalon' imported during the period from December 1979 to October 1981 were also classified as synthetic rubber and countervailing duty was levied accordingly.

On the mistake being pointed out in audit (between May 1980 and March 1981), the department stated (October 1980) that the Hypalon did not possess resinous property and therefore did not fall under tariff item 15-A. This view of the department is incorrect and goes contrary to the Tariff Advice issued in September 1974 requiring that Hypalon be assessed to countervailing duty under item 15-A. The short levy in the five consignments coming to notice of audit amounted to Rs. 2.39 lakhs.

The Ministry of Finance have accepted the Audit view in principle.

(*ii*) In terms of the general explanatory notes in the first schedule to the Customs Tariff Act, parts of machines are to be classified under the same Heading as the machine. Pencil type glow plugs are employed as a starting aid in certain precombustion chamber diesel engines and 'heating units' which are parts of such plugs are to be classified under heading "Electrical starting ignition equipment for Internal combustion engines (including glow plug)". Further 'heating units' are not mere resistors and are to be classified as part of a machine or apparatus and not as 'electric heating resistors'.

'Heating units' imported by a private firm in September 1978 and November 1979 were classified as heating resistors and assessed to customs duty at 75 per cent *ad valorem* and to countervailing duty of 8 per cent under item 68 of Central Excise Tariff, instead of being assessed as glow plug to customs duty at 120 per cent *ad valorem* and countervailing duty at 8 per cent. The mistake resulted in duty being levied short by Rs. 97,307.

On the mistake being pointed out in audit (February 1979), the Custom House stated (April 1982) that the heating units satisfied the description of electric heating resistors. However, it adopted the rate of duty in respect of glow plugs in five subsequent assessments made between August 1980 and December 1981 involving duty amounting to Rs. 7.71 lakhs.

On the facts being reported to Ministry of Finance (August 1982), they have accepted the objection (December 1982).

(*iii*) As per a circular issued by the Government of India in September 1968, Tyres and Tubes which are designed to be fitted to equipment which fall within the meaning of term 'Motor Vehicles' were to be assessed to duty as "Tyres for Motor Vehicles' under sub item (1) of item 16 of Central Excise Tariff. But those meant for other equipments were to be assessed as "All other tyres" under sub item (3) of item 16 ibid. According to another circular issued by the Government of India in May 1968, Dumpers are excisable under item 34 of Central Excise Tariff as 'Motor Vehicles'. Consequently Tyres and Tubes designed for Dumpers are classifiable as Tyres for Motor Vehicles.

"Tubeless tyres" (meant for use in R-25 Dumpers) imported in December 1979 were classified as 'All other tyres' and assessed to additional (countervailing) duty at 25 per cent *ad valorem* instead of classifying them as "Tyres for Motor Vehicles" and assessing to duty at 55 per cent *ad valorem* and special excise duty at 5 per cent of basic Excise duty. This resulted in duty being levied short by Rs. 77,210.

On the incorrect classification being pointed out in audit (May 1980), the Custom House accepted the objection and the duty short levied was recovered (September 1981).

The Ministry of Finance have confirmed the facts.

(*iv*) Under item 26-B(1) of the Central Excise Tariff, duty is leviable on unwrought Zinc including dross, ashes and broken Zinc. Under item 26-B(2) duty is also leviable on manufactures of Zinc. As per an amendment introduced by Finance Act, 1981, with effect from 1 March 1981, Zinc waste and scrap were classified under a separate item 26-B(1a) and Calots under item 26-B(2) of C.E.T. However, it was clarified in Board's instructions dated 2 March 1982 that prior to 1 March 1982, Zinc Scrap had stood included in the inclusive classification under item 26-B(1).

On a consignment of Zinc scrap (weighing 21 tonnes) imported in November 1980 duty was levied under Customs Tariff item 79.01/02 at 60 per cent *ad valorem* and auxiliary duty of 15 per cent *ad valorem* as also additional (countervailing) duty of 8 per cent *ad valorem* under item 68 of Central Excise Tariff. However, the goods were liable to countervailing duty under item 26-B(1) of Central Excise Tariff at Rs. 2,625 per tonne and 10 per cent of the countervailing duty as special excise duty. The mistake resulted in duty being levied short by Rs. 56,595.

On the mistake being pointed out in audit (May 1981), the department stated that Zinc scrap would not fall under item 26-B(1) of Central Excise Tariff prior to 1 March 1981, despite the clarification issued by the Board in March 1982.

The Ministry of Finance have confirmed the facts.

(*v*) On import of 'Mud gunning pump' in March, 1981 additional (countervailing) duty at 5 per cent *ad valorem* under item 30-A of Central Excise Tariff (covering only power driven pumps for liquids) was levied in addition to customs duty in a major Custom House. The Central Board of Excise and Customs had clarified on 10 April 1972 that 'mud pump' is for pumping the silt under water and not just liquid. It is not covered by item 30-A of Central Excise Tariff. It would, therefore, fall under item 68 of Central Excise Tariff and was dutiable at 8 per cent *ad valorem*. The misclassification resulted in additional duty being levied short by Rs. 20,891.

On the mistake being pointed out in audit, the Custom House did not accept the objection. The classification by Custom House is not covered by description in item 30-A of Central Excise Tariff and is also contrary to the Board's advice.

On the facts being reported to Ministry of Finance (August 1982), they have accepted the objection (December 1982).

INCORRECT GRANT OF EXEMPTION

1.17 Short levy of duty due to incorrect grant of exemption

(i) Section 25(2) of the Customs Act 1962, empowers the Government to issue orders to exempt goods from payment of duty. Three such exemption orders were issued in July 1978, March 1979 and July 1979 exempting printing and writing paper of substance not exceeding 60 grammes per square metre, when imported to meet the requirements of Government departments. By an order issued in February 1980, under Section 154 of Customs Act 1962, Government deleted the condition regarding the weight per square metre of the paper imported. Section 154 of Customs Act 1962 provides for correction of any clerical or arithmetical mistakes in any decision or order passed by the Central Government, the Board or any officer of Customs under the Act or errors arising therein from any accidental slip or omission, at any time.

The condition as to the weight of the substance of the paper was *prima facie* a legal fact and not a clerical error. The order issued in February 1980 deleting the condition relating to weight was really an extension of the concession to paper exceeding the specified weight, which extension could not be allowed retrospectively under the Act. By invoking Section 154, effectively, on imports (in 1979 under fourteen bills of entry) of paper not conforming to the weight condition, as per tests conducted, duty amounting to Rs. 1.17 crores was forgone retrospectively, contrary to the provisions of the Act.

On the irregularities being pointed out in audit (between March and May 1980), the department stated that their action was covered by Section 154 of the Act which is not correct.

The Ministry of Finance have stated that it was the intention to exempt from duty the papers likely to be imported and as per available indication of the weight of the paper the condition was drafted as 'not exceeding 60 grammes per square metre' which

was approved by Government. However, it was not the intention to impose such a condition if the weight of the paper were to be in excess. On the papers being found to be of excessive weight the Ministry of Law opined that 'it would appear that there was a clerical error in the insertion of the words—of a substance not exceeding 60 grammes per square metre—while issuing the *ad-hoc* exemption orders'. However, the mistake was clearly one of ignorance as to the real weight of papers proposed to be exempted from duty and was not a clerical or arithmetical mistake.

(*ii*) Integrated and diffused chips imported in March 1980 were assessed in a major Custom House under heading 85.18/27(1) of the first schedule to the Customs Tariff Act 1975 at concessional rate of 75 per cent *ad valorem* as per a notification dated 8 September 1977. However, the notes in chapter 85 of the schedule lay down that such chips being monolithic integrated circuits are electronic micro circuits which were to be assessed at the full standard rate of duty at 120 per cent *ad valorem*. Duty was, therefore, levied short by Rs. 82,626.

On the short levy being pointed out in audit (August 1980), the Custom House accepted the objection in March 1982. Report on recovery is awaited (April 1982).

The Ministry of Finance have confirmed the facts.

(*iii*) On Electrical capacitors assessable under heading 85.18/27(2), customs duty is leviable at the rate of 120 per cent *ad valorem* and additional duty at the rate of 8 per cent *ad valorem* under item 68 of Central Excise Tariff. As per a notification issued in August 1977 on paper capacitors levy of so much of customs duty as was in excess of 60 per cent *ad valorem* was exempted.

On electrolytic capacitors imported in July 1980, as per the aforesaid exemption notification of August 1977, duty was levied at the rate of 75 per cent *ad valorem* and additional duty at the rate of 8 per cent *ad valorem*, though the goods were in fact electrolytic capacitors and not paper capacitors and were not eligible for the concessional rate of duty. This resulted in duty being levied short by Rs. 97,927.

On the mistake being pointed out in audit (October 1981). the department raised a demand for recovery of Rs. 97,927 (February 1982). Report on recovery is awaited.

The Ministry of Finance have confirmed the facts.

OTHER MISTAKES

1.18 Short levy of duty due to other mistakes

(*i*) On imported goods chargeable to basic customs duty, at rates less than 60 per cent *ad valorem*, auxiliary duty was increased from 5 per cent to 10 per cent *ad valorem* from 1 March 1981.

On a consignment of cold rolled tin free steel sheets, chromium coated, which was imported and finally removed from bonded warehouse during December 1981, basic customs duty at 30 per cent *ad valorem* was levied but auxiliary duty was levied only at 5 per cent *ad valorem* instead of at 10 per cent *ad valorem.*

On the mistake being pointed out in audit (June 1982), the Custom House issued a notice of demand in June 1982 for Rs. 36,797 for recovering the difference in auxiliary duty. Report on recovery is awaited (June 1982).

The Ministry of Finance have confirmed the facts (October 1982).

(*ii*) Clerical or arithmetical mistakes in transcribing digits representing value of one lakh of rupees or more arising due to want of care, lead to sizable short fall in levy of duty.

On a consignment of dumper parts imported by a Public Sector Undertaking during May 1981 the value of one of the items was Rs. 53,42,068. However, in the bill of entry it was erroneously recorded as Rs. 52,42,068 resulting in duty being levied short by Rs. 56,600.

On the mistake being pointed out in audit (October 1981), the department admitted the mistake and recovered the duty short levied (July 1982).

The Ministry of Finance have confirmed the facts.

(*iii*) As per the provisions in the Customs Act, where the value of imported goods is invoiced in foreign currency, its value in Indian rupees is determined by converting at the rate of exchange prevailing on the date of presentation of the bill of entry.

In a major Custom House, in converting value in U.S. dollars shown in an invoice relating to a consignment imported in July 1981, the rate of exchange was incorrectly applied at U.S. dollars 12.015 for Rs. 100 instead of the correct rate of U.S. dollars 11.385 for Rs. 100 prevailing on the date of presentation of the bill of entry. On the mistake being pointed out in audit in January 1982, the Custom House admitted the objection and raised demand for Rs. 1,64,437 for the duty short levied.

The Ministry of Finance stated (August 1982) that the amount has been recovered.

PASSENGERS' BAGGAGE

1.19 Duty on Passengers' baggage

(*i*) As per Customs Act 'baggage' includes unaccompanied baggage but not motor vehicles. Declaration of baggage made by the passengers arriving at any port or airport may be in writing or oral. In cases of doubt, physical examination is conducted by Preventive Officers. On the basis of the declaration and examination, duty is assessed and collected and baggage cleared from customs control.

(*ii*) On goods imported as baggage, to the extent not exempted, customs duty is leviable under heading 100.01 of the first schedule to the Customs Tariff Act, 1975. In 1978 the duty free allowance was raised to Rs. 1,000 and on goods for value

upto Rs. 2,000 in excess thereof, duty was leviable at 120 per cent *ad valorem*. From 17 June 1980 this rate was raised effectively to 150 per cent. From 15 July 1980, in addition to duty free allowance and 150 per cent duty on excess for value upto Rs. 2,000 the rest of the baggage also became dutiable effectively at 320 per cent instead of viewing the rest as imported unauthorisedly and, therefore, liable to confiscation, fines and penalties. This was designed to do away with the time consuming process of adjudication. Goods which were obviously in the nature of trade goods, not being baggage, were, however, liable to fine and penalty as imports without licence. From 15 March 1981 the rates of 150 per cent and 320 per cent were raised to 155 per cent and 325 per cent respectively and from 28 February 1982 to 160 per cent and 330 per cent respectively.

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(*iii*) In the port of Bombay the trend of incoming passengers' baggage, in the last three years was as follows :—

	1979-80	1980-81	Percentage increase during 1980-81 over 1979-80	1981-82	Percentage increase during 1981-82 over 1979-80	Percentage increase during 1981-82 over 1980-81
1 2	3	4	5	6	7	8
				(Revenue and value in crores of rupees)		
1. *By Air*						
(*a*) Incoming passengers	8,88,376	9,87,510	11	11,22,720	26	14
(*b*) Revenue Collection on accompanied baggage .	47.00	64.42	37	77.42	65	20
(*i*) Duty	42.80	62.53		77.08		
(*ii*) Redemption fine	4.03	1.80		0.24		
(*iii*) Personal penalty	0.17	0.09		0.10		

1	2	3	4	5	6	7	8
	(*c*) Revenue collection on unaccompanied baggage	2.51	4.15	65	5.77	129	39
	(*i*) Duty	1.89	3.88		5.75		
	(*ii*) Penalty	0.62	0.27		0.02		
II.	*By Sea*						
	(*a*) Revenue Collection on baggage accompanied and unaccompanied	4.49	5.12	14	6.47	44	26
	(*i*) Duty	3.62	4.90		6.42		
	(*ii*) Fine	0.87	0.22		0.05		
III.	Number of seizure cases (by air) . . .	286	N.A.		45		
	Value of goods seized	2.20	7.12		0.39		
IV.	Number of baggage cases (by air) adjudicated (unlicensed imports)	47,453	19,172	(—)60	4,288*	(—)91	(—)78
	Value of goods adjudicated	16.35	0.03	(—)99	3.32*	(—)81	10966
V.	Number of baggage cases (by sea) adjudicated. .	5946	2224	(—)63	486	(—)92	(—)78

*goods confiscated. N.A. — not available.

The above figures bear out, that the expectation of value of goods in adjudicated cases going down consequent to change in baggage duty structure, has been fulfilled, save for an increase in 1981-82 over 1980-81. The percentage increase in revenue earnings on accompanied baggage by air in 1981-82 over that in 1979-80 is much higher (65 per cent) than the percentage increase in number of incoming passengers (26 per cent). Even after allowing for the increase in number of passengers in 1981-82, the net increase of 39 per cent in revenue realisation in 1981-82 over that in 1979-80 is only slightly higher than the increase of about 30 per cent in the rate of duty on the first Rs. 2,000 (in excess of free allowance) from 120 per cent (that was being levied in 1979-80) to 155 per cent (in 1981-82). There was apparently only an increase of 9 per cent in the per capita duty realisation from baggage imports attributable to the prohibitive rate of duty of 330 per cent. There is need for primary data on the composition of the baggage (from which now substantial revenue is earned) being brought on record by the Custom Houses and for opening sub-heads under heading 100.01 of the Customs Tariff in order to analyse the revenue from baggage which has registered a steep increase as given below :—

Year	Revenue from baggage (In crores of rupees)
1978	42.39
1979	57.98
1980	85.53
1981	121.93

(*iv*) The Tourist Baggage Rules provide for import, temporarily of personal effects of bona fide tourists, free of duty, provided they are re-exported when the tourists leave India. Articles of high value such as cameras, are passed free of duty on obtaining an undertaking in writing from the tourist that he will re-export them out of India, or pay duty leviable thereon on

failure to do so. Such articles are entered in a "Tourists Baggage Re-export Form" (T.B.R.E. Form) a copy of which is given to the tourist, to be surrendered by him at the port or airport of departure from India. The re-export forms collected from the tourists at the port or airport of their departure from India are sent after suitable endorsement to the port or airport of issue of the TBRE form for pairing. This ensures that such articles of high value have been re-exported and have not been disposed of by the tourist within the country unauthorisedly.

The number of T.B.R.E. Forms issued in Bombay and Delhi airports during the last five years which could not be paired were as below :—

Year	Number of T.B.R.E. forms issued	Number of forms paired	Number of forms not paired	(Per centage not paired)
BOMBAY				
Upto 1976	..	..	14,389	
1977	63718	56634	7084	11
1978	73107	56547	16560	23
1979	65358	52505	12853	20
1980	73940	59199	14741	20
1981	97759	80667	17092	17
DELHI				
1977-78	26080	24763	1317	5
1978-79	21016	18086	2930	13
1979-80	27026	24184	2842	11
1980-81	29752	24657	5095	17
1981-82	31047	22465	8582	27

Of the T.B.R.E. Forms issued, in the year 1980, in Bombay, which remained unpaired, sixty per cent pertained to import of gold jewellery valuing more than Rs. 10,000 in each case, amounting in all to at least Rs. 8.8 crores of gold jewellery imported in that year, without payment of duty.

(*v*) On motor cycles and other such motor vehicles (not being baggage) if brought in by passengers, Customs duty is leviable under heading 87.09/12 at 130 per cent and additional countervailing duty at 20 per cent and 5 per cent special excise duty. Though redemption fine and penalty are leviable on such items, imported without licence or customs permit, the amount of duty, fine and penalty levied falls short of the high rate of duty on baggage imported similarly on which duty of 330 per cent *ad valorem* is levied.

It was seen in audit that on import of 23 such motor cycles by the crew of airlines the difference in duty effect worked out to Rs. 1,21,350 *i.e.* average of Rs. 5,280 per motor cycle.

(*vi*) The value of jewellery items, imported by passengers, as baggage, is determined under orders issued from time to time and with effect from 1 June 1982, was fixed at Rs. 125 per gramme. For other articles, price lists are published by the Air Customs pool from time to time by reference to trade catalogues published from important shopping centres abroad. They serve as guidance to Customs Officers assessing various items of baggage. Goods like textiles, sarees etc., are valued at between Rs. 75 to Rs. 150 each. Electronic goods, watches, cameras etc., are not always valued uniformly, as they might have been used, but the depreciation allowed is never recorded on the baggage documents and considerable discretion vests with the assessing officer, the exercise of discretion by him cannot be checked after the goods are cleared, there being no record of facts, except the duty assessed on a rough and ready basis subject to the guidance of price lists.

It was seen in audit that two pieces of "Sony colour T.V. 20 inches model" were valued at Rs. 3,800 each and two other pieces of same description at Rs. 4,000 each. The valuation of calculators ranged from Rs. 200 to Rs. 1,200 and the description on record was "Calculators". Out of 1,000 baggage duty receipts, in 320 receipts textiles were mentioned; On 133 receipts the value of textiles was shown as exactly Rs. 500 and charged to duty at 155 per cent or at 160 per cent *ad valorem*. On 10

receipts the value of textiles was shown as more than Rs. 500. On enquiry in audit (April 1982) about the basis for discretionary valuation of baggage items, the Custom House stated (April 1982) that the valuation depends upon various attendant circumstances such as period of use, condition of articles etc. The system of assessing and collecting the lawful duty on baggage items would seem to merit a review in the light of the increasing revenues from baggage items and the absence of recorded data.

The matter was reported to the Ministry of Finance (September, 1982); their reply is awaited.

REFUND OF DUTY

1.20 Irregular refund of duty due to incorrect grant of exemption

(*i*) As per notifications issued in December 1979 caprolactum manufactured from benzene (derived from raw naphtha) on which the appropriate amount of excise duty has been paid, is exempted from the levy of so much of excise duty as is in excess of 23 per cent *ad valorem* and from the levy of the whole of the special duty of excise.

On caprolactum imported in April 1980 customs duty was levied at 75 per cent *ad valorem*, auxiliary duty at 15 per cent *ad valorem* and additional (countervailing) duty at 50 per cent *ad valorem* as also special excise duty at 5 per cent of the amount of additional duty. On appeal, the importers were allowed (December 1980) refund, as per the above referred notifications, of countervailing duty paid in excess of 23 per cent and of special excise duty paid, on production of evidence that the caprolactum imported by them was manufactured from benzene. It was held that the expression 'Benzene (derived from raw naphtha) on which the appropriate amount of duty of excise has been paid' occurring in the notification had no significance and was not to be construed as a condition precedent to the grant of exemption. Refund of Rs. 8,07,829 was made to the importers in July 1981 in compliance with the appellate orders which were not challenged by the department before the government. In view of the fact that appropriate amount of excise duty had not

been paid, in India, on the benzene from which caprolactum was manufactured, the notification could not apply to imported caprolactum. The reason for the department making the refund without appealing to government was enquired in audit (December 1981); the reply of the department is awaited (July 1982).

The matter was reported to Ministry of Finance (September 1982); their reply is awaited.

(*ii*) As per a notification issued in February 1979 a concessional rate of customs duty at the rate of 40 per cent *ad valorem* was leviable on import of certain items including synthetic backers or embellishments for footwear used in the leather industry.

Three consignments of P.V.C. leather cloth and polyurethane leather cloth were imported (August 1979) in running lengths and were assessed to customs duty initially at 100 per cent *ad valorem*, to auxiliary duty and to appropriate countervailing duty, as for fabric. Subsequently the assessment was revised and concessional rate of 40 per cent, as per notification, was allowed and excess duty collected amounting to Rs. 2,05,553 was refunded, even though the goods in question were not synthetic backers or embellishments or any of the other items specified in the notification.

On the mistake being pointed out in audit (August 1980) and in the light of the fact that the goods imported were in running lengths and were not synthetic backers or embellishments the Custom House issued demands for Rs. 2,05,553 (August 1980). On a review of similar other imports the Custom House also raised additional demand for Rs. 5.83 lakhs (September 1980). Report on recovery is awaited.

The Ministry of Finance have confirmed the facts and stated (October 1982) that the demands have been stayed by the High Court till the appeal against the demands is decided.

(*iii*) A consignment of 'Metallic Security Threads' imported by a security paper mill in July 1977 and valued at Rs. 5,62,216 was classified as falling under heading 52.01 of the Customs Tariff and basic duty was levied at 100 per cent *ad valorem*, auxiliary duty at 20 per cent *ad valorem* and countervailing duty at Rs. 56 per kilogram under item 18 of Central Excise Tariff. However, on similar imports made in October 1977 countervailing duty was not levied under item 18 of Central Excise Tariff. In reply to an audit query the Custom House stated that the imported security threads were made of silver and were correctly assessed under heading 71.05/11(1) without any countervailing duty. But subsequently accepting the opinion of the Ministry, the Custom House stated (May 1981) that the goods in question were not made of precious metal and so were classifiable under heading 52.01 and countervailing duty was leviable under item 18 of Central Excise Tariff. Tariff Ruling to that effect was also issued by the Board in June 1969.

In the meanwhile, refund of Rs.2.55 lakhs realised as countervailing duty was made by the Custom House (April 1981), the refund claim having been processed on the duplicate bill of entry as the original bill of entry in which the said objection was raised was under examination in the Internal Audit Department.

No report on recovery of Rs. 2.55 lakhs has so far been received (August 1982).

The matter was reported to Ministry of Finance (August 1982); their reply is awaited.

(*iv*) On import of a consignment of 'di ammonium phosphate' valuing Rs. 84.66 lakhs, duty was levied at 60 per cent *ad valorem* and auxiliary duty at 10 per cent *ad valorem* as also countervailing duty at 15 per cent *ad valorem*, The importers asked for reassessment as levy of duty on the goods was exempt in terms of a notification dated 11 August 1973. Instead of refunding the amount of Rs. 58,41,586 due to the importers, refund of Rs. 59,26,246 was made in November, 1980.

On the excess refund being pointed out in audit (March 1981), the department accepted (July 1982) the mistake and effected recovery of the excess refund of Rs. 84,660.

The Ministry of Finance have confirmed the facts (October 1982).

DRAWBACK PAYMENTS

The grant of drawback of customs duty is authorised under the provisions of Section 75 of the Customs Act 1962 and rebate of excise duty under 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 the 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 rates) are determined by Government, having regard to the average quantity or value of each class or description of duty paid materials from which a particular class of goods is ordinarily produced or manufactured in India. The class or description of exported goods are identified by the Ministry of Finance (and modified over the years) and a sub-serial number is allotted to each class or description in a table appended to the said drawback rules. The amount or rate of drawback, determined on the basis of the averages aforesaid, is mentioned against each class or description in the table.

Under the rules, every exporter can apply for fixation of a brand rate or amount of drawback to exclusively cover exports of his goods, if the amount or rate of drawback fixed on All Industry basis is less than three-fourths of the duties paid on the materials or components used in the production or manufacture of the goods exported.

The total payments of drawback made during the year 1981-82 and five preceding years are given below :—

Year	Amount (In crores of rupees)
1976-77	120
1977-78	133
1978-79	150
1979-80	152
1980-81	164
1981-82	204

1.21 Over payment of drawback due to lack of rules for classification

A *quid pro quo* does not exist under the Drawback Rules enabling the Government to deny drawback at the average All Industry rates if the duties paid on the raw materials and components used in the exported goods, are *prima facie* less than the amount of drawback claimed by any margin. There is risk of gratuitous drawback being paid under sub-serial numbers with descriptions worded in a very general way or of a broad nature.

(*i*) On export of 'organic chemicals not specified elsewhere' drawback of duty is allowed at 3 per cent of f.o.b. value, under sub-serial No. 1123 of the drawback schedule. "Drug intermediates, liquids (being organic chemicals)" are specifically mentioned against sub-serial No. 1204 of the schedule.

On four consignments of Beta-Ionone, a drug intermediate, used for the manufacture of Vitamin-A, which were exported during the period from October, 1978 to January, 1979 drawback was allowed at 3 per cent of f.o.b. value under sub-serial No. 1123 of the drawback schedule, instead of at 2 per cent under sub-serial No. 1204(b). The incorrect classification resulted in excess payment of drawback amounting to Rs. 21,044.

On the mistake being pointed out (January 1981) in audit, the Custom House justified its assessment on the strength of a letter received (September 1978) from the Ministry of Finance stating that since Beta-Ionone is an organic compound of known structure, it would be classified under sub-serial No. 1123. This is not a basis for classification under drawback schedule, implying as it does that drug intermediates are of unknown structure. On the other hand, under the replenishment import licencing scheme of the Ministry of Commerce, Beta-Ionone is treated as a drug intermediate. In this case the goods exported were manufactured by a pharmaceutical company. Even on merits, the Custom House could not justify any higher duty element on the material going into the exported product than what is covered by the rate of 2 per cent fixed for drug intermediate under Rule 3 of the Drawback Rules. Unlike in the rules for classification of goods for levy of duty, when it comes to payment of drawback, the classification cannot be divorced of the scheme for calculation of drawback rates under Rule 3 of the Drawback Rules, in the absence of any rules for interpretation therein.

The Ministry of Finance have stated (October 1982) that the matter is not free from doubt and it is proposed to discuss it in the conference of Collectors.

(*ii*) On seven consignments of hydraulic pumps exported between May 1976 and August 1977, drawback was allowed at All Industry rate of 3 per cent of f.o.b. value which was applicable to "parts of motor vehicles including tractors". There was, however, no evidence on record to indicate that the exported goods were "parts of motor vehicles including tractors". On export of complete hydraulic pumps and assemblies thereof, drawback was to be allowed at the rate of Rs. 135 per tonne only, which was applicable both in respect of "centrifugal and non-centrifugal pumps." The goods were physically examined before export and the description in the shipping bills reading 'hydraulic pumps' was found to be in order. Therefore, allowance of drawback on the subject goods as 'part of Motor Vehicles including tractors' resulted in loss of Rs. 47,401 to Government.

On the mistake being pointed out in audit (August 1978), the department stated that the hydraulic pumps were specially made for motor vehicles. The Ministry have stated (October 1982) that the goods exported are not used for pumping fluids or air but are used to generate hydraulic pressure which actuates the power lift mechanism of the tractor and these were specially designed parts of tractors. The replies are not relevant to the audit objection pointing out that the duty incidence on the materials going into the manufacture of the pumps (even if specially designed for motor vehicles) is on the average not more than the duty drawback of Rs. 135 per tonne prescribed for centrifugal and non-centrifugal pumps. The drawback schedule has to be read with the scheme of averaging in the drawback fully in view. Interpretation of the schedule cannot be done in the manner in which the Customs or Excise Tariff schedules are interpreted for purposes of classification. The real element of drawback due (based on the average duty paid on materials going into manufacture of exported product) will have to be the deciding factor. In respect of the specific item 'centrifugal and non-centrifugal pumps', All Industry drawback rates having been prescribed, recourse to a residuary entry covering also many other parts of motor vehicles and to the detriment of revenue, was not in order.

(iii) On exports of 'pressure stoves made of brass and metallic components thereof' drawback was payable at 22 per cent of the f.o.b. value as per sub-serial number 3816(a) of the schedule of drawback rates, for the year 1979-80. This *ad valorem* rate was based on price of brass in 1978 because excise duty on brass is a specific duty per kilogram. On export of 'brass manufactures other than utensils and articles made out of sheets or strips and artware', covered by sub-serial number 3805(c), the drawback was also payable at specific rate of Rs. 9.10 per kilogram. In the drawback schedule, effective from September 1980, the description of sub-serial number 3816(a) was amended to exclude metallic components *i.e.* the rate was limited to brass stoves only. Further, the description of sub-serial number 3805(c) was amended

to read 'articles made of alloys of copper' and the drawback rate thereon was fixed at Rs. 10 per kilogram.

On two consignments, containing 60,000 dozens of brass nipples for pressure stoves, exported in June 1980, the exporter was allowed drawback at 22 per cent of the f.o.b. value under sub-serial number 3816(a) though as component part of *burners* they were not strictly component part of pressure stoves. The goods exported being only articles made of brass, drawback was appropriately payable at specific rates under sub-serial number 3805(c) as "other manufactures of brass" and not at *ad valorem* rates as "metallic components of pressure stoves". Since the rates of drawback payable on exports are fixed taking into consideration the duty paid on the raw materials and by averaging, the misclassification of nipples as 'pressure stoves or its components' and payment at *ad valorem* rates was detrimental to revenue. The excise duty realised by Government on brass was specific and low and did not increase with rise in price of brass (and therefore of brass nipples) between 1978 and 1980. By allowing drawback at 22 per cent on value of brass, the drawback paid bore no relation to the duty realised on brass in 1980 and resulted in excess payment of drawback amounting to Rs. 1,46,894 on two export consignments.

On the excess payment of drawback being pointed out in audit (January 1981), the department did not accept the objection. The Ministry of Finance have stated that as the brass nipples were identifiable parts of the burners of pressure stoves, the classification and payment of drawback was in order. When specific rate under sub serial number 3805(c) for payment of drawback on brass articles had been fixed, classification of the brass nipples under sub-serial number 3816(a) and payment at *ad valorem* rates without reference to the scheme of drawback rates and to the detriment of revenue was not in order.

(*iv*) On several consignments of materials for meter gauge wagons brass bearing (bronze bearing) exported between January 1978 to April 1978, drawback was allowed on content of copper,

tin, lead and zinc used in the manufacture of the exported products, at the rates applicable to such metals as if they had been exported as finished products. The exports were not of metals but bronze bearings which were parts of railway wagons and brand rates were required to be fixed as per the drawback schedule. However, they were classified as articles of metal alloys and drawback amounting to Rs. 1.91 lakhs was paid accordingly on the contents of metal therein.

On the basis for the classification being enquired in audit (July 1979), the department stated (July 1979) that bronze bearings were classifiable for purposes of claiming compensatory cash assistance as 'metal alloys' and not as 'wagon components' and, therefore, the bearings were classified as articles of respective metals *pro rata*. The basis for the drawback being the scheme underlying the drawback rules, the above reasoning is not in order. However, in a letter dated 6 October 1979, the Ministry of Finance, subsequently, advised the Custom Houses that where net weight of metals in exported goods are ascertainable the drawback may be calculated on each constituent metal as if it was exported individually. The Ministry of Finance have stated (November 1982) that the classification as articles of metal alloys instead of as parts of railway wagons was in order, since drawback is intended to relieve the export goods of the incidence of duties on imports. While this is logical, it is not, so far covered by the provisions of the statutory Drawback Rules which require brand rates to be fixed in cases as above, and so long as the above advice is not incorporated in the rules, the payments made as above would not be as per the Drawback Rules. Further, such logic is not uniformly observed in practice (as in the case of brass nipples mentioned in the preceding sub-paragraph) because of the logic not having been incorporated in the rules.

(*v*) Eleven consignments of 'small and cutting tools all types' which were exported between February 1981 and April 1981 contained (a) tungsten carbide tips and inserts and (b) Tungsten Carbide Tipped Augur Drills. Drawback amounting to Rs.2,66,176 was paid at the rate of Rs. 185 per Kilogram by classifying

the consignment under sub-serial number 3905 of the relevant drawback schedule which had ceased to be effective from 19 September 1980. Therefore, the payment of drawback amounting to Rs. 42,697 in August 1981 was irregular. But even when sub-serial number 3905 was in existence it did not cover tungsten carbide tipped and augur drills and, therefore, payment of drawback thereon amounting to Rs. 44,593 was wholly irregular. Moreover, the Ministry of Finance had fixed in July 1981 brand rates of drawback for the period from September 1980 to June 1981 and the period from 19 September 1980 to 28 February 1981 respectively for the two items which were exported. The Custom House could not state why the payment was made and also why it was made in August 1981 under All Industry rates of an expired Schedule when brand rates had been declared in July 1981.

The Ministry of Finance have confirmed the facts (October 1982).

(*vi*) On bulk of castor oil B.P. exported in March 1981 drawback amounting to Rs. 42,243 was allowed in December 1981 in a major Custom House, at 5 per cent of f.o.b. value of the exports, by reference to sub-serial number 1205 of Drawback Schedule (as on 19 September 1980) covering 'Drugs and Pharmaceuticals not otherwise specified'. The drawback was allowed on the basis of Ministry's clarification, issued in July 1981 to the effect that the goods exported *viz.* castor oil B.P., were classifiable under sub-serial number 1205 of Drawback Schedule.

Castor oil B.P. in bulk is not covered by the description against any of the items in the Drawback Schedule covering the period of export. No duty is paid on any raw materials going into manufacture of castor oil but duty is paid on some imported chemicals used in preparation of the oil to the pharmaceuticals standard. Drawback on Castor Oil was allowed only with effect from 1 June 1981, but only in relation to the duty incidence on packing materials used for its export (the actuals being allowed depending upon the packing material used). Even under Central

Excise Tariff Castor Oils fall under tariff item 12 (vegetable non-essential oils) indicating that Castor Oil is a prime product on which normally drawback cannot be claimed in relation to duty on raw materials. In a brand rate fixed in October 1982, about 1.25 per cent was allowed towards imported purifying chemicals and 1.7 per cent towards packing charges.

Instead of allowing brand rate, the grant of drawback on Castor Oil by classifying it wrongly as "Drugs and Pharmaceuticals" in 1981 was, therefore, irregular and resulted in loss of revenue of Rs. 16,897 to Government, being the difference between drawback at 5 per cent allowed and brand rate at 3 per cent which might have been fixed.

The mistake was pointed out in audit (May 1982); the Ministry of Finance have stated (November, 1982) that the Castor Oil was manufactured under a licence for manufacture of drugs and its classification as drugs was, therefore, correct. Such a view, however, only highlights the need for rules for classification under drawback schedule, since 5 per cent drawback as for drugs has been allowed against realisation by Government of duties not exceeding 3 per cent, resulting in net loss to Government.

1.22 **Irregular payment of drawback**

Under Rule 12 of the Central Excise Rules, rebate of the excise duty paid on exported goods is allowed. No drawback of excise duty paid on finished excisable goods is allowed in addition; only drawback of duty paid on excisable materials used in the manufacture of the finished goods is allowed.

(*i*) On articles made of polythene coated paper, drawback allowed at all industry rates is based on the duty already realised on such coated paper going into the manufacture of the articles. Separate drawback rates (other than those for articles) had not been provided for claiming drawback at all industry rate on export of coated paper *per se*. Provision existed only for claiming refund or rebate of the Central Excise duty paid on such coated paper, on its export *per se*.

In a Custom House claim for drawback on export of 'poly coated kraft paper' was allowed, but under the description in the drawback schedule reading 'articles made of polythene coated paper'. This resulted, effectively, in refund of excise duty payable on such paper. No Central Excise duty on the exported item had, however, been ever realised by the department at rates leviable on poly coated kraft paper, since the export was under bond.

It was pointed out in audit (September 1979) that payment of claim for drawback on articles made of polythene coated paper as if the item exported was the paper *per se*, was contrary to the intention behind (as also the interpretation of) the Drawback Rules and Schedule thereunder. Further, there was provision in this schedule only for a specific rate (brand rate) for claiming drawback on coated paper *per se*, when exported. Therefore, drawback on the exported goods should have been allowed only under such brand rate and not under the all Industry rates applicable to 'articles made of polythene coated paper'. The irregular payment of drawback resulted in excess payment of drawback amounting to Rs. 15,386. The Custom House was of the view (October 1981) that the payment was in order.

The Ministry of Finance have stated (September 1982) that as the matter is not free from doubt, it is proposed to discuss it in a tariff conference of Collectors of Customs.

(*ii*) Sections 74 and 75 of the Customs Act 1962, allow the payment of drawback when any goods imported into India are exported to any place outside India or if the imported goods are used in the manufacture of other goods, when such manufactured goods are exported to any place outside India.

A sum of Rs. 1,43,387 was paid (March 1981) as drawback on imported spare parts when placed on board two vessels owned by a public sector company controlled by a State Government. The vessels were engaged in transporting goods from one port in India to another. There was no export of the imported

spare parts to any place outside India and accordingly the payment of drawback was not lawful.

The irregular payment of drawback resulting in loss of Rs. 1,43,387 was pointed out in audit (December 1981); the reply of the department is awaited (June 1982).

The Ministry of Finance have stated (December 1982) that the two vessels were touching only Indian ports but did enter international waters while going from one Indian port to another and thereby they were categorised as foreign going vessels. The drawback paid on equipment installed on board such vessels has been justified by the Ministry.The Ministry have also stated that foreign going vessels including permanent fittings on such vessels are exempt from customs duty.

However, under Section 74 of the Customs Act, drawback is payable only on export to any place outside India and the term 'export' is defined in the Act as "taking out of India to a place outside India". Therefore, mere passage of a coastal ship through international waters while going from one Indian port to another would not qualify as export. Further, the expression "ocean going vessel" is not defined in the Act but even assuming that it means the same as "foreign going vessel" defined in the Act, the very issue of an exemption notification allowing exemption from customs duty leviable on ocean going vessels implies that duty is leviable on ocean going vessels but that the levy of duty has been exempted subject to certain conditions. Such an exemption would not have been required if drawback of duty was available to such ships. This only confirms that drawback was not payable in respect of ocean going vessels or fitments thereon if the criteria of export was not fulfilled. There is not only no exemption notification in respect of fitments to allow of a claim for refund of duty but the spare parts in question in this case were not fitted on board the vessels but were merely carried as spare parts.

(*iii*) As per Rule 5(2) of the Customs and Central Excise Duties Drawback Rules 1971, the provisions of Section 16 of the Customs Act 1962 determine the date with reference to

which drawback is payable on exported goods. Section 16 of the Customs Act 1962 provides (in so far as exports by air are concerned) that the effective date for the rate of duty is the date on which shipping bill is presented.

On 1,000 kilograms of 'Hexochlorophene' (f.o.b. value Rs. 1,69,445) exported by air, the shipping bill was presented to Custom House on 7 June 1980. The goods were loaded into the aircraft on 12 June 1980. The Custom House paid drawback amounting to Rs. 99,801 on the goods as per a Government order issued on 25 July 1980 which was effective from 9 June 1980 as the relevant date instead of 7 June 1980. This resulted in excess payment of drawback amounting to Rs. 91,327.

The mistake was pointed out in audit in May 1982.

The Ministry of Finance have stated (October 1982) that due to oversight the effective date was shown in the order as 9 June 1980 and an amendment has since been issued (October 1982) making the order effective from 7 June 1980.

1.23 **Mistakes in payment of drawback**

In a major Custom House claims for drawback on the export of certain accessories of lathe machine, were allowed by classifying the machines as 'tools for lathes, shapers and planers all types entirely made of high speed steel'. However, the goods were not tools made of high speed steel but were only 'lathe machine accessories and attachments' falling under the description in the drawback schedule which upto 31 May 1979 read as 'machinery components, parts, spares and accessories thereof all sorts, not otherwise specified, mainly made of metals' and thereafter read as 'machine tools, all sorts, not otherwise specified and component parts, spares and accessories', upto 18 September 1980. The misclassification resulted in excess payment of drawback amounting to Rs. 1,04,169 on 45 consignments exported between September 1976 to November 1979.

On the mistake being pointed out in audit, in September 1979 and March 1980, the department admitted the mistake and recovered Rs. 7,225 on six consignments. Report on recovery in respect of the remaining consignments is awaited.

The Ministry of Finance have confirmed the facts.

OVER ASSESSMENTS

1.24 Excess levy of duty

Duty amounting to Rs. 27.11 lakhs was levied in excess while assessing import consignments, in the cases which came to notice during test check in audit. Excess levy amounting to Rs. 13.82 lakhs related to imports by Government Departments and Public Sector Undertakings. Not all the Public Sector Undertakings had claimed refund of duty paid in excess. A few illustrative cases relating to Public Sector Undertakings, where cost consciousness is relatively more necessary, are given below.

(*i*) Electrically Heated Tunnel type air re-circulating ovens with non-flame proof switchgear and panel, imported in May 1981, by a Public Sector Undertaking of Government of India, were assessed to customs duty and to auxiliary duty at 5 per cent *ad valorem*. The technical description attached to the bill of entry showed that the items imported were industrial electric furnaces or ovens and in terms of a notification dated 1 March 1981, auxiliary duty was not leviable on industrial furnaces and ovens, non-electric or electric. The levy of auxiliary duty at 5 per cent *ad valorem*, therefore, resulted in excess levy of duty amounting to Rs. 1,19,518 on the consignments.

On the mistake being pointed out in audit (October 1981), the Custom House admitted the audit objection (October 1981) and stated that three claims for refund of duty preferred by the importer had been received and since paid.

The Ministry of Finance have confirmed the facts and have stated the excess collection has since been refunded.

(*ii*) A consignment of 'valve guards for recovered ammonia compressors' valued at Rs. 42,775 imported by a Public Sector Undertaking was assessed to customs duty at 40 per cent and

additional duty at 131.25 per cent under Central Excise tariff, as refrigerating and air conditioning appliances. But on Air Conditioning or refrigerating equipment customs duty was leviable at 60 per cent or 100 per cent, depending on classification.

On Audit pointing out the discrepancy in levying customs duty at 40 per cent and asking to see the literature on the goods (December 1981), the department re-examined the case with reference to the catalogue etc. and stated (March 1982) that the goods were used as 'compressor valves for recovered ammonia gas' and that they were not meant for refrigeration and air conditioning appliances and customs duty was correctly levied but additional duty levied was not in order and should have been levied at only 8 per cent (and not 131.25 per cent). The discrepancy was thereby resolved but an excess levy of additional duty amounting to Rs. 76,444 coming to light as a result of the audit objection, the department stated (March 1982) that no refund could be made because it was barred by limitation. The Public Sector Undertaking had not objected to the excess levy.

The Ministry of Finance have confirmed the facts (October 1982).

(*iii*) As per a notification issued in August 1976, Urea imported for use as manure is exempt from levy of basic customs duty. It is also exempt from levy of auxiliary duty as per another notification issued in March 1980 and amended in June 1980.

On two consignments of urea imported by a Public Sector Undertaking for use as manure in June 1980, auxiliary duty at 5 per cent *ad valorem* was levied overlooking the exemption notification. This resulted in duty amounting to Rs 7,76,049 being levied in excess.

On the mistake being pointed out by audit (September 1981), the department admitted the mistake (June 1982).

The Ministry of Finance have confirmed the facts.

OTHER TOPICS OF INTEREST

1.25 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 was entrusted only to the officers of the Chief Controller of Imports and Exports including the realisation of duty on wastages of imported materials. The importer executed bonds for payment of duty on the imported items in the event of failure to discharge the export obligation. The customs authorities acted as agents of licensing authorities and made endorsements in the Duty Entitlement Exemption Certificate (DEEC) issued by the licensing authorities, when exports were effected. The bonds were cancelled by the licensing authorities on getting information from the customs authorities on the discharge of export obligation by the importer.

As per information on record in Bombay Custom House the imports and exports, made under the scheme through that port during the four years 1976-77 to 1979-80 were as follows :—

	1976-77	1977-78	1978-79	1979-80
(*i*) Number of Exporters who availed of duty exemption under the scheme .	28	43	131	224
(*ii*) Number of commodities imported . . .	7	24	43	61
(*iii*) Value of goods imported (in Rs. crores) . .	1.98	1.22	4.44	50.71
(*iv*) Duty foregone (in Rs. crores) . . .	1.19	1.18	5.40	45.93
(*v*) Value of goods exported (in Rs. crores) .	1.16	4.52	13.28	62.07

The number of bonds executed, number discharged on receipt of no objection certificates and number of bonds pending for cancellation were as follows :—

	1976	1977	1978	1979	1980
(*i*) Number of bonds executed	10	51	83	234	376
(*ii*) Number of bonds discharged	6	37	53	88	40
(*iii*) Bonds not discharged .	4	14	30	146	336

As per information on record in Calcutta Custom House, the imports and exports under the scheme during the years 1976-77 to 1979-80 were as follows:—

	1976-77 to 1979-80
(*i*) Number of exporters who availed of duty exemption under the scheme	30
(*ii*) Value of Goods imported (Rs. in crores)	9.54
(*iii*) Duty foregone (in Rs. crores)	4.82
(*iv*) Value of goods exported (in Rs. crores)	8.04
(*v*) Number of bonds executed	42

(*a*) In thirty six cases in Bombay the value of exports was less than the value of imports. Against imports valuing Rs. 3.71 crores on which duty amounting to Rs. 2.33 crores was forgone, the value of exports amounted to Rs. 48.20 lakhs. In 21 out of the 36 cases, no export at all had taken place and against the foreign exchange outgo of Rs. 2.98 crores (c.i.f. value of the imports) the duty forgone amounted to Rs. 1.68 crores. Interest at 12 per cent which was lost to Government on the duty forgone amounted to Rs. 49.20 lakhs for the period from the date of import to 31 May 1982. Similarly, in the remaining 15 cases, the interest lost to Government on the duty forgone on balance of imports after adjusting value of exports amounted to Rs. 6.54 lakhs.

(*b*) On imports of copper unwrought and zinc by the two importers, the export obligation was met only partly and the Custom House issued demands for recovering duty amounting to Rs. 10.46 lakhs (May 1980). However, the bond executed by the importer was released by the licensing authorities without getting facts verified by the Customs.

(*c*) On imports of stainless steel sheets made by an importer under the scheme (August 1978), the duty forgone amounted to Rs. 75.20 lakhs. A bond was executed by the importer but only for Rs. 73.00 lakhs which was forfeited to Government on the failure of the importer to discharge the export obligation. The landed cost of 205.63 tonnes of stainless steel sheets imported in August 1978 was Rs. 33.9 lakhs and with the import duty leviable thereon (Rs. 75.20 lakhs) the cost to the importer worked out to Rs. 53,048 per tonne. The ruling market price of stainless steel sheets during the period January 1980 to March 1980 when the export obligation was to be fulfilled (time for export was extended upto 30 April 1980) was Rs. 67,525 per tonne. The net profit derived by the importer at Rs.14,477 per tonne on 205.63 tonnes of stainless steel sheets imported under the scheme, amounted to Rs. 29.76 lakhs, even if the bond had been for Rs. 75.20 lakhs (instead of Rs. 73 lakhs) and had been forfeited to government. Apart from forfeiting the bond, no other action to penalise the importer, such as confiscating his windfall profit as penalty for defaulting on the export obligation was taken under the penal provisions of the Import Trade Control Act and the rules framed thereunder.

(*d*) On imports allowed under 17 Duty Exemption Entitlement Certificates in Calcutta the duty forgone amounted to Rs. 2.03 crores but no record of exports having taken place was on record. Demands for recovery of the duty had been raised in these cases, but only for an amount of Rs. 1.06 crores. Of these, demands for Rs. 23.00 lakhs were outstanding for over 3 years and for Rs. 35.4 lakhs for over 2 years, as on 31 December 1981. In 13 other cases though demands were required to be raised (since the exports had not taken place) the duty not demanded

amounted to Rs. 1.73 crores. In 8 other cases, the time allowed for exports had expired but no record was available to indicate whether export had taken place. The duty not levied in these cases amounted to Rs. 99.50 lakhs.

(*e*) In the case of four exporters who had fulfilled export obligation, the value of exports was less than the value of imports on which duty exemption was availed of. Against imports valuing Rs. 72.58 lakhs on which duty amounting to Rs. 38.48 lakhs was forgone, goods valuing only Rs. 37.41 lakhs were exported.

(*f*) In another port a leading soap factory was allowed to import, under an advance licence given in July 1979 and duty exemption certificate issued in December 1979, 190.08 tonnes of raw material *viz.* sodium tripolyphosphate with an obligation to export finished product *viz.* synthetic detergent powder. It exported 1058.51 tonnes of detergent powder from May 1980 to December 1980. However, the Custom House through which the export was effected, allowed drawback claims amounting to Rs. 4,25,106 on the detergent powder and a further amount of Rs. 1,17,249 as drawback was also sanctioned but not paid.

When the irregularity was pointed out in audit (June 1981) the Department admitted (August 1981) that no drawback was payable and the export was in discharge of export obligation.

The Ministry of Finance have stated (September 1982) that the exporter had not declared the fact that the exports had been made in discharge of obligations and duty had not been paid on the materials used in the manufacture of the exported goods under the DEEC scheme. The drawback copy of the printed shipping bill required the exporter to declare at the foot of shipping bill that he had used duty paid raw materials in the product exported. It was not indicated why against the mis-declaration by the exporter, penal action under the Customs Act was not taken.

In respect of sub-paras (a) to (e) mentioned above, the reply of the Ministry is awaited.

1.26 **Delay in starting penal proceedings for failure to account for short landings**

The Customs Act, 1962 stipulates that where goods are short-landed or not accounted for, to the satisfaction of the Assistant Collector of Customs, the person in charge of the conveyance (steamer agent) is liable to a penalty not exceeding twice the amount of the duty that would have been charged. He is required to produce a 'no demand certificate' from the Port Trust before his conveyance can be allowed to depart by the Customs Officer who is also required to ensure that penalties have been recovered before such permission is given.

(*i*) From 22 steamer agents, penalties, as aforesaid, amounting to Rs. 86.87 lakhs were outstanding as on 31 December 1981. From 5 (out of the 22) steamer agents port trust charges amounting to Rs. 57.01 lakhs were outstanding at the end of 30 June 1981, but deposits made by them towards such payments amounted to only Rs. 26.45 lakhs, and penalty amounting to Rs. 47.71 lakhs as aforesaid was due from these 5 steamer agents. Only a sum of Rs. 75,000 had been recovered when permission for the conveyance to depart was given.

(*ii*) Penalty amounting to Rs. 85.23 lakhs as aforesaid, in 1,008 cases, during the years 1976 to 1981, was stated to have not been recovered upto the end of December 1981. All penalty registers for the years were not readily available but from some of the available registers it was seen in audit that the uncollected penalty during the years 1973 to 1981 amounted to Rs. 165 lakhs.

(*iii*) In addition to the cases referred to above (where penalty was not collected or secured), 2,133 ships' manifests relating to the years 1967 to 1975 had not been checked till the end of April 1982 with a view to identifying the goods not unloaded or shortlanded. The penalty leviable thereon had, therefore, not been quantified till April 1982.

The matter was reported to the Ministry of Finance (September 1982); their reply is awaited.

1.27 **Delay in disposal of confiscated goods**

In para 1.69 of their 72nd Report (1968-69), the Public Accounts Committee had recommended that auction of confiscated goods be conducted soon after the goods are confiscated and time allowed for the parties to initiate legal proceedings had expired. In October 1969 Government directed the Custom Houses and Collectors of Central Excise to take action accordingly.

(*i*) On nine imported cars and vehicles valuing Rs.3,93,325, duty amounting to Rs 9,72,263 was realisable by the department and though the vehicles were confiscated between August 1979 and February 1980, they had not been disposed of by auction till June 1982.

On the delay being pointed out in audit, the department stated (February 1982) that a Committee had been formed for the valuation of the vehicles and their disposal by auction. Only three vehicles valued at Rs. 1,26,000 on which duty amounting to Rs. 3,11,446 was realisable were auctioned on 29 and 30 June 1982 and six vehicles are still to be auctioned (September 1982).

(*ii*) Parts of wrist watches valued at Rs 11,63,060 were seized in 1969 and confiscated in September 1970 and April 1971. They were finally sold in October 1978 (after repeating the auction for a fifth time infructuously in August 1978 on a reserve price of Rs. 1.98 lakhs. The sale fetched only Rs. 1,76,500 (the highest bid in the second auction) whereas the highest bid in the first auction was for Rs. 3,11,000.

(*iii*) 5,19,300 ceramic capacitors seized on 19 February 1974 were confiscated on 25 September 1974. After disposal of a criminal case on 9 June 1976, the capacitors were sold by auction for Rs. 54,000, only on 22 August 1978 because the Superintendent of the godown had not come to know till 29 September 1977 that the goods had been confiscated.

The Ministry of Finance have stated that there were no unusual delays or *malafide*. The time taken in getting cars valued by experts from State Trading Corporation and watches from H.M.T. took some time. A failure in receipt of intimation caused some delay in disposal of the capacitors. With instructions issued in October 1981 to speed up the disposal proceedings and quick utilisation of available expertise on valuation of disposal goods, future delays in disposals or infructuous auctions are not anticipated.

1.28 **Delay in finalisation of provisional assessments**

In their 76th and 140th Reports (VI Lok Sabha), the Public Accounts Committee had expressed their unhappiness over the large number of provisional assessments pending finalisation for want of requisite information and documents from the importers.

(*i*) In two ports, the pendency of provisional assessments in recent years was as follows :—

Pending provisional assessments as on	In Calcutta Port	In Madras Port
31 March 1978	Not available	Not available
31 March 1979	Not available	817
31 March 1980	2872	109
31 March 1981	3090	1080
31 March 1982	Not available	1447

The yearwise analysis of the pending provisional assessments as on 31 March 1980 and as on 31 March 1981 was as follows:

Provisional assessment relating to	Calcutta		Madras	
	31 March 1980	31 March 1981	31 March 1980	31 March 1981
1970 and earlier years . .	139	132	Nil	Nil
1971	53	47	Nil	Nil
1972	97	69	9	5
1973	132	99	12	6
1974	192	145	20	6
1975	283	229	25	17
1976	366	269	85	57
1977	535	340	71	35
1978	893	472	105	71
1979	182	897	37	119
1980	N.A.	391	645	22
1981	N.A.	N.A.	N.A.	751

In spite of the directions issued by the Ministry of Finance in August 1979 that if information or documents are not submitted by an importer assessment should be finalised *ex-parte*, the pace of finalisation of assessments was very slow. The reasons for the sudden addition to number of pending cases in 1979 and 1980 have not been made available to audit so far (July 1982).

(*ii*) In Calcutta port, out of provisional assessments pending on 31 March 1981 provisional assessments done during the years 1972 to 1980 were test checked in audit and in 166 cases only formal notices were seen to have been issued to the importers to furnish the relevant documents and particulars. Only in eight cases extension of time was formally allowed but even thereafter assessments were not finalised *ex-parte*. Out of 166 cases only in 7 cases assessments were finalised *ex-parte*, where demands amounting to Rs. 5.46 lakhs were raised which have not been realised so far (August 1982).

(*iii*) Out of 2,872 and 3,090 provisional assessments pending in Calcutta port as on 31 March 1980 and 31 March 1981, respectively, 1,005 and 1,024 cases related to imports against project contracts. Out of 124 cases relating to the years 1961 to 1970, only 7 cases were finalised during the year 1980-81, leaving a balance of 117 cases still outstanding. The cases are to be finalised within two months from the date of last import under the contract and this date had expired in most cases and in others there was no indication that any further imports were expected. Still the assessments were not finalised nor demands raised where due.

(*iv*) Whenever assessment is done provisionally, the Regulations of 1963 require the importer to execute a bond for the amount of difference between the estimated duty that may be finally assessed (as contended by the department) and the provisional duty assessed. In the 926 provisional assessments reviewed in audit, the value of the bonds amounted to Rs. 77.36 crores which would accrue to Government if the bonds were to be enforced against the guarantor. Because of delay in finalisation of the assessments *ex-parte*, as directed by the Ministry, revenue to this extent has not been demanded so far despite the amounts having been secured by bonds.

(*v*) Of 3090 provisional assessments which were pending finalisation as on 31 March 1981, 1024 cases related to imports by Public Sector Undertakings and various Government Departments who had not furnished the information or documents required.

The Ministry of Finance, in their reply, have agreed that the pendency of provisional assessment cases is rather heavy and have added that necessary action is being taken.

CHAPTER 2

UNION EXCISE DUTIES

2.01 Trend of receipts

During the year 1981-82 the total receipts from Union Excise duties amounted to Rs. 7,420.74* crores. The receipts from basic excise duty and from other duties levied as excise duties, during the year 1981-82, alongside the corresponding figures for the preceding year are given below :—

	Receipts from Union Excise duties	
	1980-81 Rs.	1981-82 Rs.
1	2	3
A—Shareable duties		
Basic excise duties	55,25,46,15,203	61,85,20,78,520
Auxiliary duties of excise	(—) 4,37,048	37,324
Special excise duties . .	2,57,99,49,844	3,36,16,66,475
Additional excise duties on mineral products . .	37,63,940	10,11,644
TOTAL (A)	57,83,78,91,939	65,21,47,93,963
B—Duties assigned to States:—		
Additional excise duties in lieu of sales tax . . .	4,08,91,53,015	4,94,58,49,505
Excise duty on generation of power	1,31,06,39,013	1,41,60,19,841
TOTAL (B) . . .	5,39,97,92,028	6,36,18,69,346

*Revised provisional figures, intimated by the Controller General of Accounts in December 1982.

C—Non Shareable duties		
Regulatory excise duties .	65,670	42,039
Auxiliary duties of excise	2,00,043	1,43,528
Special excise duties . .	4,27,59,809	7,64,67,378
Additional excise duties on textiles and textile articles .	62,93,46,373	83,45,47,790
Other duties . . .	38,04,724	39,16,349
TOTAL (C) . . .	67,61,76,619	91,51,17,084
D—Cess on commodities .	1,06,46,84,919	1,69,10,89,139
E—Other receipts . .	2,16,61,706	2,45,36,738
TOTAL—Major Head . .	65,00,02,07,211	74,20,74,06,270

The trend of receipts in the last five years and the number of tariff items and sub items (each with a 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
1977-78	4,447.51	136	294
1978-79	5,341.95	138	304
1979-80	6,011.09	139	307
1980-81	6,500.02	139	313
1981-82	7,420.74	140	322

The number of commodities which yielded excise duties in excess of Rs. 100 crores each during the year 1981-82, the number of commodities which yielded receipts between Rs. 10 crores and 100 crores, and the number which yielded less than Rs. 10

crores per year, alongside corresponding figures for the preceding five 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
1977-78	12(60)	41(34)	85(6)
1978-79	18(71)	43(25)	78(4)
1979-80	18(72)	47(24)	72(4)
1980-81	21(75)	49(21)	67(4)
1981-82	21(76)	52(21)	68(3)

The commodities which have yielded more than Rs. 100 crores per year and less than Rs. 1 crore per year in recent years are given below :—

Sl. No.	Commodities each yielding more than Rs. 100 crores per year*	Receipt from commodity in		
		1979-80	1980-81	1981-82
1	2	3	4	5
				(In rupees crores)
1.	Cigarettes	583.37	613.30	686.84
2.	All other goods not elsewhere specified	382.26	433.72	536.03
3.	Man-made fibres and yarn	396.49	464.98	527.27
4.	Motor spirit	558.32	492.09	518.41
5.	Tyres and tubes	207.62	288.25	360.41
6.	Refined diesel oil and vaporising oil	387.05	280.44	359.22
7.	Iron and steel products	271.23	275.63	340.55
8.	Motor vehicles	160.14	227.42	314.56
9.	Sugar (including khandsari)	240.31	248.29	294.94
10.	Petroleum products not otherwise specified	208.38	175.15	182.03
11.	Paper	149.93	174.46	169.60
12.	Cement	123.79	136.74	169.59
13.	Cotton fabrics	125.48	153.07	161.25

*The figures for the earlier years are from the respective Statistical Year Book (Central Excise); the figures for 1981-82 have been furnished by the Directorate of Statistics and Intelligence, Central Excise and Customs.

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1	2	3	4	5
14.	Kerosene	165.25	123.78	149.63
15.	Electricity	154.83	139.08	146.65
16.	Aluminium	105.34	111.51	142.03
17.	Man-made fabrics	96.66	112.45	140.61
18.	Plastics	109.64	123.49	137.68
19.	Biris	116.26	117.59	123.15
20.	Cotton yarn	97.53	108.59	103.41
21.	Patent or proprietary medicines	77.98	84.18	100.97
	*Commodities yielding less than Rs. 1 crore per year**			
1.	Camphor	0.46	0.73	0.98
2.	Lead	0.59	0.82	0.94
3.	Vacuum flasks	0.77	1.05	0.93
4.	Petroleum gases	..	..	0.84
5.	Playing cards	0.93	0.93	0.82
6.	Cinematograph projectors and parts thereof	0.52	0.66	0.60
7.	Typewriter ribbon and similar ribbons	0.53	0.53	0.44
8.	Linoleum	0.52	0.66	0.40
9.	Menthol	0.44	0.43	0.39
10.	Television image and sound records etc.	..	..	0.32
11.	Flax fabrics and ramie fabrics	0.20	0.23	0.30
12.	Hookah tobacco	1.69	0.30	0.29
13.	Zip or slide fastners	0.22	0.25	0.24
14.	Parts of wireless receiving sets	0.32	0.23	0.23
15.	Coated textiles	0.06	0.13	0.19
16.	Articles of a kind used for sound recording etc.	..	..	0.13
17.	Mechanical lighters	0.04	0.05	0.09
18.	Flax yarn and ramie yarn	..	..	0.03
19.	Television cameras	..	..	0.01
20.	Cigars and cheroots	0.03	0.02	..

*The figures for the earlier years are from the respective Statistical Year Book (Central Excise); the figures for 1981-82 have been furnished by the Directorate of Statistics and Intelligence, Central Excise and Customs.

2.02 Variations between the budget estimates and actual receipts

The variations between budget estimates and actual receipts during the year 1981-82 alongside the corresponding figures for the preceding three years are given below :—

Year	Budget Estimates	Actual Receipts	Variations	Percentage increase or decrease over estimates
		(In crores of rupees)		
1978-79	5299.06	5341.95	(+) 42.89	(+)0.81
1979-80	6008.00	6011.09	(+) 3.09	(+) 0.05
1980-81	6264.81	6500.02	(+)235.21	(+)3.75
1981-82	7116.90	7420.74	(+)303.84	(+)4.27

The notable changes visualised in the budget presented to the Parliament on 28 February 1981 and incorporated in the Finance Act, 1981 (16 of 1981) and the noticeable effects thereof are given below :—

(*i*) The rate of duty under the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 was raised from 10 per cent to 15 per cent. The additional yield during the year was Rs. 31.31 crores*.

(*ii*) A new item No. 15BB was introduced in the Central Excise Tariff for levy of excise duty on polyster films. It yielded receipt amounting to Rs. 1.52 crores during the year.

*As per information received from the Directorate of Statistics and Intelligence, Central Excise and Customs.

2.03 Cost of collection

The expenditure incurred during the year 1981-82 in collecting Union Excise duties alongside the corresponding figures for the preceding three years is given below:—

Year	Receipts from excise duties	Expenditure on collection	Cost of collection as percentage of receipts
	(In crores of rupees)		
1978-79	5341.95	35.35	0.66
1979-80	6011.09	35.39	0.58
1980-81	6500.02	38.42	0.59
1981-82	7420.74	44.03	0.59

2.04 Arrears in collection of union excise duties and irrecoverable revenue

(*i*) The demands for excise duties outstanding for recovery on 31 March 1982 (as reported by the Ministry of Finance) was Rs. 250.25 crores*, commodity-wise details are given below:—

Commodity	Amount of excise duty due
	(In crores of rupees)
Unmanufactured tobacco	11.82
Motor spirit	14.38
Refined diesel oil	1.87
Paper	9.46
Rayon yarn	4.90
Cotton fabric	10.37
Iron or steel products	8.17
Tin plates	0.16
Refrigerating and air conditioning appliances	4.66
All other items	184.46
TOTAL	250.25

*Figures are provisional and do not include figures of Collectorates of Delhi and Goa.

(*ii*) The amount of revenue which is not realisable by Government owing to demands not having been raised during the year 1981-82 within the period of limitation was Rs. 10.51 crores.

(*iii*) The amount of revenue remitted and abandoned or written off as irrecoverable during the year 1981-82 was Rs. 31.67 lakhs* (as reported by the Ministry of Finance). The reasons for the remissions and writes off were stated to be as follows:—

	Number of cases	Amount Rs.
(*i*) Remission on account of :		
(*a*) Fire	48	17,06,245
(*b*) Flood	3	44,464
(*c*) Theft	1	238
(*d*) Other reasons	118	11,57,995
(ii) Revenue abandoned or written off due to :		
(*a*) Assessee having died leaving behind no assets	141	19,206
(*b*) Assessee being untraceable	96	15,410
(*c*) Assessee having left India	7	7,600
(*d*) Assessee incapable of paying duty	606	2,13,755
(*e*) Other reasons	4	2,658
TOTAL		31,67,571

*Figures are provisional and do not include figures of Delhi Collectorate.

2.05 Prosecution for frauds and evasions*

The prosecution of offences under the Central Excise Law for frauds and evasions, the amount of penalties imposed and the value of goods confiscated during the year 1981-82 were as given below:—

(*i*)	Number of offences prosecuted .	88
(*ii*)	Number resulting in convictions .	28
(*iii*)	Value of goods seized. . .	Rs. 15.77 crores
(*iv*)	Value of goods confiscated .	Rs. 2.26 ,,
(*v*)	Value of penalties imposed . .	Rs. 2.38 ,,
(*vi*)	Amount of duty assessed in respect of goods confiscated . .	Rs. 1.56 ,,
(*vii*)	Amount of fine adjudged in lieu of confiscation	Rs. 0.41 ,,
(*viii*)	Amount settled in composition .	Rs. 53,526
(*ix*)	Value of goods destroyed after confiscation	Rs. 54,585
(*x*)	Value of goods sold after confiscation	Rs. 1,79,639

2.06 Results of audit

Test check of records in the various central excise collectorates and basic excise records of the licensees manufacturing excisable commodities revealed under-assessment of duty and losses of revenue amounting to Rs. 54.94 crores.

The irregularities noticed broadly fall under the following categories:—

(*a*) Short levy of duty due to undervaluation

(*b*) Short levy of duty due to misclassification

(*c*) Short levy of duty due to incorrect grant of exemption

(*d*) Exemption to small scale manufacturers

(*e*) Short levy of duty due to irregular utilisation of credit allowed for duty paid on inputs

*Figures are provisional and do not include figures of Collectorates of Delhi and Nagpur.

(*f*) Non levy of duty

(*g*) Irregular refunds and rebates

(*h*) Short levy of cess

(*i*) Other topics of interest

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

SHORT LEVY OF DUTY DUE TO UNDERVALUATION

2.07 Adjustment for equalised freight

Under secton 4 of the Central Excises and Salt Act, 1944, value shall be deemed to be the normal price at which goods are ordinarily sold in the course of wholesale trade for delivery at the time and place of removal. Where goods are sold by the assessee at different places to different classes of buyers (not being related persons), each such price shall be deemed to be the normal price of the goods in relation to each such class of buyers. The Ministry of Finance in consultation with the Ministry of Law clarified in March 1976 and in July 1976, that dealers in different regions to whom goods may be sold at different prices constitute different class of buyers and that when the price is inclusive of equalised freight, no deduction of the same from the price is permissible to arrive at the assessable value.

A manufacturer of glazed tiles had been transferring goods to his sales depots in two major cities and was charging Rs. 2.20 and Rs. 4 per carton as freight on despatches to the two cities respectively. The assessable value was arrived at by excluding such uniformly fixed freight charges included by him in the price on all sales from the two depots. The exclusion of the equalised freight from the normal price resulted in undervaluation and the consequent short levy of duty amounting to Rs. 3,33,066 on clearances made during the period from April 1978 to March 1981.

On the mistake being pointed out in audit (August 1980 and August 1981), the department intimated (May 1982) that a show cause notice for the recovery of the amount had been issued in February 1982.

The Ministry of Finance have stated (September 1982) that a writ petition has been filed by the assessee in a High Court.

2.08 Value of packing

According to section 4(4)(d)(i) of the Central Excises and Salt Act, 1944, value in relation to excisable goods which are cleared in a packed condition, includes the cost of packing except where the packing is of durable nature and is returnable by the buyer to the manufacturer. Where durable containers are supplied by the buyer to the manufacturer and he clears excisable goods therein for supply to the buyer, the value of the durable packing is to be included in the assessable value for purposes of levy of excise duty. This was also clarified by the Central Board of Excise and Customs in March 1976.

(*i*) A manufacturer of gases and chemicals, supplied nitrogen and hydrogen gases (falling under tariff item 68) in durable cylinders some of which were purchased by him and some supplied by the buyers. On sale of gases in cylinders supplied by the buyers, value of the cylinders was not included in the assessable value of gases, resulting in duty being levied short by Rs.3,25,920, on clearances made during the period from February to December 1981.

The omission was pointed out in audit (June 1982); the reply of the department is awaited (July 1982). Similar short levy in respect of clearances prior to February 1981 and also after January 1982 is still to be computed by the department.

The Ministry of Finance have confirmed the facts (November 1982).

(*ii*) A manufacturer of electric fans, packed them first in polythene bags and thereafter in wooden cases. The cost of the wooden cases was not included by the department in the

assessable value of the fans, even though the wooden cases were neither durable nor returnable. This resulted in undervaluation leading to duty being levied short by Rs. 8,51,205 on clearances made during the period from April 1979 to March 1981.

On the mistake being pointed out in audit (December 1981), the department stated (May 1982) that the wooden cases are used as additional packing for parts of the fans to save them from pilferage and breakages and this sort of packing was not in any way related to the process of manufacture of fans. The section of the Act referred to above does not allow of such reasoning to the detriment of revenue.

The Ministry of Finance have confirmed the facts (November 1982).

(*iii*) A company manufacturing plywood (falling under tariff item 16B) recovered packing charges separately in respect of the sales made in the place of manufacture but did not include the charges in the assessable value. In respect of up country sales it also charged prices higher than the prices approved by the department for purpose of valuation. This resulted in duty being levied short by Rs. 3,54,379 on clearances made during the period from March 1980 to June 1981.

On the failure to notice the undervalution being pointed out in audit (May 1981), the department stated (October 1981) that a show 'cause-*cum*-demand notice had been issued (July 1981). Report on confirmation of demand and recovery is awaited (July 1982).

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*iv*) A manufacturer of pressure cookers cleared most (98 per cent) of his product after packing them in wooden cases which were not returnable. However, the value of such wooden packing was not included in the assessable value of the cookers. This resulted in duty being levied short by Rs. 1,77,553 on the clearances made during the period from October 1979 to September 1981.

On the mistake being pointed out in audit (March 1982), the department admitted the mistake (July 1982) and issued a show cause-*cum*-demand notice for Rs. 1,77,553 to the manufacturer. Report on confirmation of demand is awaited (August 1982).

The Ministry of Finance have confirmed the facts (November 1982).

(*v*) A manufacturer of oxygen and acetylene gases (falling under tariff item 14H) claimed deductions on the assessable values of the gases based on sale price, at the rate of Rs. 1.25 and Rs. 3.90 per cubic metre of oxygen and acetylene respectively on account of the cost of returnable containers, which were allowed by the department. However, the deductions were, in fact, claimed against interest charges and depreciation on the value of the cylinders and not on their cost which was not included in the price of the gas. The deduction though based on volume of gas annually delivered in the containers, represented part of the cost of manufacture and supply of the gases which was included in the sale prices of the gases. The deduction did not represent any post manufacturing expenses and was akin to consumable packing (depreciation on cyclinder) necessary to remove the gas from the place of its manufacture even upto the factory gate. The deduction allowed was, therefore, contrary to law and resulted in duty being levied short by Rs. 88,156.

On the mistake being pointed out in audit (November 1981), the department issued a show cause-*cum* demand notice (April 1982) for Rs. 1,33,542 in respect of clearances of oxygen gas made from April 1978 to December 1981. Reply of the department is awaited.

The Ministry of Finance have confirmed the basic facts and have stated (November 1982) that the audit objection is under examination.

(*vi*) In paragraph 77(a) of the Audit Report for the year 1978-79, underassessment of duty amounting to Rs. 4.21 crores arising from failure to include cost of corrugated fibre board

containers used for packing cigarettes in computing the assessable value of cigarettes was pointed out. The omission was sought to be justified on the ground that the containers were purchased by or supplied by the customers and were not essential for packing cigarettes. The Public Accounts Committee (1981-82 Seventh Lok Sabha) in their sixty ninth report recommended that the Government should examine in depth the issue involved in order to see if Excise Law can be so amended as to make the position abundantly clear. The Government in their action taken notes had stated (November 1981) that the observations made by the Committee would be kept in view in drafting the Central Excise Bill, which was stated to be under preparation.

Similar underassessments and short levy of duty amounting to Rs. 2.39 crores were noticed in audit (October, November and December 1981) in three units assessed under the jurisdiction of one collectorate. The assessable value of cigarettes produced by the three units was determined after excluding the cost of corrugated fibre board containers used for packing though the cost of the same was recovered from the buyers, indicating that the containers were neither procured nor supplied by the customers and still their use was not dispensed with by the manufacturers.

The facts were intimated to the department in January 1982, its reply is awaited (July 1982).

The Ministry of Finance have stated (November 1982) that the three demands for Rs. 4.94 crores in respect of the clearances from April 1980 to April 1982 have been raised against the three units and are pending adjudication.

2.09 Excisable goods not fully valued

Section 4 of the Central Excises and Salt Act, 1944, allows of deduction of the duty payable from the price of the manufactured product, 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 re-determined after adding such excess to the original assessable value.

(*i*) A mill manufacturing kraft paper had recovered from its customers excise duty at 40 per cent *ad valorem* but paid to Government duty at only 10 per cent and 7½ per cent *ad valorem* respectively on paper exceeding and not exceeding 65 grammes per square metre respectively. The assessable value was not redetermined so as to include the excess duty recovered which resulted in duty being levied short by Rs. 5,45,789 on clearances made from December 1979 to April 1981.

On the omission being pointed out in audit (September 1979), the department confirmed the facts and raised demand (September 1981); the appeal of the manufacturer is pending.

The Ministry of Finance have confirmed the facts (November 1982).

(*ii*) Another paper mill realised from its customers duty on kraft paper at 40 per cent *ad valorem* but paid only 20 per cent *ad valorem* to Government and the department did not take action to revise the assessable value of the excisable goods. Non revision of assessable value resulted in duty being short levied by Rs. 4,30,251 on 2,935 tonnes of kraft paper cleared during the period from July 1980 to June 1981.

The omission was pointed out in audit (October 1981); reply of the department is awaited (July 1982).

The Ministry of Finance have confirmed the facts and have stated (November 1982) that on a writ petition filed by the assessee, interim order of injunction has been passed by the High Court.

(*iii*) Yet another paper mill recovered from its customers more duty than it paid to Government but no action was taken by the department to redetermine the assessable value of paper resulting in duty being levied short by Rs. 2,97,757 on clearances made during the period from May 1979 to February 1982.

On the failure being pointed out in audit in October 1981, the department issued show cause-*cum* demand notices in November 1981, February 1982 and April 1982. Report on confirmation of demand and recovery of duty is awaited (July 1982).

The Ministry of Finance have confirmed the facts and have added (November 1982) that internal audit of the department had also raised an objection earlier, details of which have, however, not been made available.

(*iv*) A manufacturer of cellophane collected from customers 1.5 per cent of the invoice price as banking and incidental charges, (from 21 February 1979) which were not included in determining the assessable value of goods cleared during the period from March 1980 to March 1981. This resulted in duty being levied short by Rs. 6,03,750.

On the under valuation being pointed out in audit (June 1979), the department issued show cause notice to the assessee, but short levy on clearances during the period from February 1979 to February 1980 was not demanded. The manufacturer paid under protest an amount of Rs. 1,11,969 only on the clearances during the months September to November 1980. Manufacturer's appeal was rejected in September 1981.

Report on recovery of the balance amount and the amount due in respect of the remaining period is awaited (June 1982).

The Ministry of Finance have stated (November 1982) that the assessee has filed a revision petition to the Government of India.

(*v*) A manufacturer of compressed industrial oxygen gas and acetylene gas, valued such gases sold to consumers in open market and to buyers under rate contracts separately; the valuations had been approved by the department. The manufacturer also transferred the gases to his depots after paying duty on the valuation as for rate contracts though sales effected from the depots were not verified to have been made under the rate contract.

On the undervaluation being pointed out in audit (October 1979), the sales from the depots not made under rate contracts were segregated by reference to sale invoices and the department raised a demand for Rs. 2.07 lakhs as differential duty leviable on sales from depots made during the period from 1 April 1978 to 30 April 1981. The demand was realised on 27 November 1981.

The Ministry of Finance have confirmed the facts (November 1982).

(*vi*) A factory manufacturing electric motors and power driven pumps utilised the electric motors within the factory for the manufacture of power driven pumps. Duty was realised by the manufacturer from the buyer of the pumps, both on the value of the electric motors and on the value of the pumps. But in assessing excise duty, the element of duty on the electric motors was not included in computing the assessable value of the pumps. Audit pointed out in April 1979 that this had resulted in short realisation of duty by Rs. 27,884 during the period from July 1977 to February 1978. Thereupon the department issued (May 1979) a show cause notice demanding differential duty of Rs. 2.36 lakhs on clearances made during the period from February 1973 to January 1978.

Report on confirmation of demand and recovery is awaited (May 1982).

The Ministry of Finance have stated (July 1982) that the confirmation of the demand is being expedited.

(*vii*) It has been clarified by the Central Board of Excise and Customs in February 1981 that refund of duty would warrant redetermination of the assessable value; the duty refunded becomes part of the price of the goods (exclusive of duty) recovered by the manufacturer; thereby altering the assessable value of the goods.

An assessee was sanctioned a refund of Rs. 12.11 lakhs (May 1981) as he had paid more duty on polyethylene than leviable but the effect of duty paid by him had already been passed on

by him to the consumers as part of the sale price recovered from them. While sanctioning the refund the assessable value was not redetermined which resulted in excess refund to the assessee. After this was pointed out in audit (May 1981), the refund bill was taken up for review (June 1981) and a show cause-cum demand notice for recovery of Rs. 3,26,974 was issued to the assessee (July 1981).

The Ministry of Finance have confirmed the facts (July 1982). Report of confirmation of demand and recovery is awaited (November 1982).

(*viii*) A factory manufactured internal combustion engines to customer's specifications. Some of the engines were hand operated ones, but most of them were provided with electric starters. Some were both hand operated and electric starter operated. The electric starters being considered accessories, their value was excluded while determining the assessable value of the engines for the purpose of levy of excise duty where the electric starters were fixed to the engines which could not be operated without such starters, electric starters formed an integral part of the engines and were not accessories. The value of such starters was, therefore, required to be included in the value of such engines for the purpose of levy of duty. Failure to do so resulted in duty being levied short by Rs. 4,14,815.

On the omission being pointed out in audit (August 1981), the department accepted the objection and recovered Rs. 4,14,815.

The Ministry of Finance have admitted the objection (October 1982).

(*ix*) A manufacturer of woollen fabrics in the public sector, selling his products through his show rooms after payment of duty (based on price list approved by the department), was, in fact, selling them at prices higher than those in the approved price list. Failure of the department in assessing duty based on actual sale price resulted in duty being levied short by Rs. 1,25,860.

On the omission being pointed out in audit (September 1981), the department issued show cause-cum demand notice for Rs. 1,25,860 in respect of the years 1979-80 to 1981-82. Report on recovery is awaited (July 1982).

The Ministry of Finance have not accepted the objection and have stated (November 1982) that department had initiated action prior to receipt of audit objection. However, demand was raised only on 17 May 1982 for Rs. 1,25,860.

(*x*) A manufacturer of fertilizers paid duty at concessional rates as per a notification dated 16 June 1976 but recovered duty at full rates from his customers. He was not reassessed to differential duty on the higher assessable value on account of the excess realisation. This resulted in duty being levied short by Rs. 1,28,599 on clearances made during the years 1977-78 and 1978-79.

On the mistake being pointed out in audit (May 1979), the department stated (April 1980) that redetermination of assessable value would be taken up at the time of finalisation of the assessments. However, the assessments have not been finalised by the department nor the differential duty demanded (April 1982).

The Ministry of Finance have confirmed the basic facts (November 1982).

2.10 Incorrect computation of assessable value

(*i*) As per a notification issued in June 1977, on wireless receiving sets of three bands (falling under tariff item 33A), if they be of value not exceeding Rs. 250, duty is leviable at 25 per cent *ad valorem*, while on sets of value exceeding Rs. 250 each, duty is leviable at 35 per cent *ad valorem*. An explanation in the notification states that for the purposes of the notification 'value' shall have the same meaning as in section 4 of the Central Excises and Salt Act, 1944.

A leading manufacturer of wireless receiving sets was allowed by the department to pay duty at 25 per cent *ad valorem*. The sets being valued at Rs. 209. 14 per set (after deducting from the sale price of Rs. 380, the trade discount of Rs. 64.50, post manufacturing expenses and profits amonting to Rs. 51.46 and excise duty of Rs. 54.90 computed at 25 per cent *ad valorem* and 5 per cent special duty thereon). However on a dispute arising about the validity of deducting the post manufacturing expenses and profits amounting to Rs. 51.46, the department allowed the deduction only provisionally subject to its being disallowed on final reckoning. It also obtained security on balance duty at 25 per cent *i.e.* Rs. 54.90 per set. However without the deduction in question the value of the sets had gone up to Rs. 260.60 and duty was leviable at 35 per cent *ad valorem* and 5 per cent special duty thereon *i.e.* at Rs. 95.77 instead of Rs. 54.90 per set. The security taken was therefore insufficient and on the 34,947 sets, cleared during the period from April 1981 to October 1981 duty amounting to Rs. 14.28 lakhs was either not levied or was not secured.

On the mistake being pointed out in audit (March 1982), the department did not accept the audit objection (May 1982).

The Ministry of Finance have stated (November 1982) that it has been reported by the Collector that value of the sets including post manufacturing expenses comes to Rs. 249.90 per set and duty is payable at 25 per cent only. This is not correct as the manufacturer had himself given the cost of manufacture as Rs. 209.14 and the 'post-manufacturing expenses and profits' as Rs. 51.46, making up the total assessable value as Rs. 260.60.

(*ii*) As per a notification dated 20 April 1961, manufacturers of patent or proprietary medicines were allowed to clear clinical samples duty free but limited, in any month, to five per cent (four per cent from 1 April 1977) by value of the total duty paid clearance during the preceding month, of all types of patent or proprietary medicines. The samples were to be intended for

free supply to hospitals, nursing homes or medical practitioners and were to be packed distinctly and marked "physician's sample not to be sold".

In order to arrive at the quantity of clinical samples which could be cleared duty free, two manufacturers were allowed to value such samples stamped 'not for sale' as if they were not so stamped and allowing the discounts (allowed *ad hoc*) on wholesale and retail prices shown in price lists. The above referred notification not having defined the meaning of the term "value" in relation to clinical samples allowed to be cleared duty free under the notification, the value of the samples (cleared by manufacturer to himself for consumption as gifts) which could not be compared with saleable similar goods had to be valued as per section 4 of the Central Excises and Salt Act and rules made thereunder on the cost of production inclusive of normal profits allowing only actual discounts and not artificial *ad hoc* discounts. Failure to limit the quantity of free samples after valuation accordingly, resulted in duty being levied short by Rs. 3.72 lakhs on quantity of clinical samples cleared duty free in excess of the quantity limit. The mistake was pointed out in audit (December 1978 and July 1979) to the department, which has not accepted the objection.

The Ministry of Finance have stated (November 1982) that *ad hoc* discounts as 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 and show cause-cum demand notices in accordance therewith were issued for an amount of Rs. 12.26 lakhs on clearances made between April 1975 and November 1979. The question of limiting discount to actual amount as indicated above would also require to be considered.

2.11 Manufactured product consumed captively

Where excisable goods are partly sold to outsiders and partly consumed captively within the factory of manufacture the normal price determined under section 4(1)(a) of the Central Excises

and Salt Act, 1944, is taken to be the assessable value. However, where the goods are wholly consumed within the factory of production the assessable value is to be determined under section 4(1)(b) *ibid* read with rule 6(b) of the Central Excise (Valuation) Rules, 1975, on the basis of value of comparable goods or the cost of production if value of comparable goods is not ascertainable.

Rule 6(b)(ii), requires that where excisable goods are not sold by the manufacturer but are used or consumed by him or on his behalf in the production or manufacture of other products, the value of the goods shall be based on cost of their production or manufacture including normal profits. Central Board of Excise and Customs also issued instructions in December 1980 that the data for determining the value on cost basis should be based on cost data relating to the period of manufacture and if such data is not available at the time of assessment duty should be levied provisionally and finalised when the data for the relevant period becomes available.

(*i*) A manufacturer of sulphuric acid (98 per cent strength) consumed most of it within the factory and declared its price as Rs. 425 per tonne which was accepted by the department] with effect from 1 April 1979. On the supplies made to others he collected conversion charges on job work basis over and above the cost of sulphur. Taking the cost of sulphur and conversion charges into account the cost of production worked out to Rs. 613 per tonne of sulphuric acid which was the assessable value. The market price of the acid in the area was Rs. 1,050 per tonne and the manufacturer had purchased acid at that price in April and May 1980 when his own factory was shut. In the result duty was levied short by Rs. 1,53,521 on the clearances made during the period from April 1979 to May 1980.

On the incorrect valuation being pointed out in audit (July 1980), the department stated that no manufacturer in the ordinary course of wholesale trade will normally sell his goods at a price below the cost of production especially when the ruling

market price did not warrant such a reduction in the selling prices. The department was requested to examine in the light of the facts stated above whether the sale price was not a shadow sale price. After re-examining the issue, it stated (April 1981) that there had been three other sales of sulphuric acid to different parties at the declared and approved price of Rs. 425 per tonne during the currency of the price approved by the department and discreet enquiries by the department did not show that such sales were shadow sales. The cost of sulphur which was only Rs. 700 per tonne in January 1979 went up to Rs. 1,380 per tonne in October 1979 resulting in substantial increase in production cost. When there was a further increase in cost of sulphur to Rs. 1,800 per tonne in June 1980, the declared price was raised to Rs. 750 per tonne from 11 July 1980 (after audit was conducted in June 1980).

The Ministry of Finance have stated (November 1982) that the sale at Rs. 425 per tonne was to an independent buyer and the price of Rs. 750 per tonne was provisional which was finally approved at Rs. 812.13 per tonne.

(*ii*) A public sector undertaking got price of sulphuric acid manufactured by it approved by the department at Rs. 950 per tonne from 13 April 1981. After 15 April 1981 there was no sale of the product, which was only used captively. As per annual cost statement of the plant for the year 1980-81, the cost of production of the acid was Rs. 1,276 per tonne exclusive of profits. In the result duty had been levied short by Rs. 1,61,452 on 2,260 tonnes of the product used captively during the period from 15 April 1981 to 31 December 1981.

On the mistake being pointed out in audit (May 1982), the department stated (June 1982) that the revised assessable value had since been arrived at for demanding the differential duty from the manufacturer. Report on rectification is awaited.

The Ministry of Finance have stated (November 1982) that demand for Rs. 1,59,994 in respect of 2,240 tonnes has been raised.

(*iii*) Two manufacturers of trade batteries producing parts of batteries mainly for captive consumption and partly for sale as spares sent their products to sale depots in two other stations. The spare parts were assessed to duty on valuation based on the prices declared, which were far less than their value on cost basis which was the assessable value since spares were not sold in the course of wholesale trade. In the result, duty was levied short by Rs. 1,00,599 on the clearances made during the period from April 1981 to March 1982.

On the undervaluation being pointed out in audit (October 1981), the department stated (March 1982) that the manufacturers are basically sellers of batteries and not of parts which were sold only to the extent needed for use in their batteries in their depots, as such they were not in the wholesale market for the parts. However, this does not justify the undervaluation (contrary to the Act) accepted by the department since it is inconceivable that a normal price would be a unremunerative price.

The Ministry of Finance have stated (November 1982) that the matter is being examined.

(*iv*) A manufacturer of screws, nuts and bolts used them captively in the manufacture of typewriters and cleared them also as spare parts for which a regular price list was available. These prices were more than those approved by the department, based on the cost data furnished by the assessee. Regular prices under section 4 of the Central Excises and Salt Act, 1944 being available, on reason was on record as to why the assessments were not done on the basis of such prices and were instead done on the basis of the cost data. Adoption of incorrect assessable values resulted in duty being levied short by Rs. 25.91 lakhs on clearances made during the period 1 April 1979 to 28 February 1981.

On the mistake being pointed out in audit (June 1981), the department accepted the objection and raised demand for

Rs. 11,00,517 in April 1982. Report on collection of demand is awaited.

The Ministry of Finance have accepted the objection (July 1982).

(*v*) A manufacturer of condensed milk also produced metal containers for packing the milk. The value of containers was allowed by the department to be determined on the basis of cost of production (including element of profit) even though comparable metal containers of the same specifications were also purchased by the manufacturer at higher prices. Failure to assess the value correctly resulted in duty being levied short by Rs. 1,55,284 on the clearances made during the period from January 1975 to December 1975.

On the mistake being pointed out in audit (in January 1976 and again in July 1978 and February 1980), the department stated (November 1980) that differential duty of Rs. 1,55,284 had been recovered from the manufacturer in September 1980.

The Ministry of Finance have confirmed the facts (November 1982).

(*vi*) A manufacturer of plywood (falling under tariff item 16B) consumed his entire production internally and paid duty on the assessable value determined with reference to price lists based on cost of production in the previous year. The price list in question was approved by the department provisionally and the assessable value was not finalised on the basis of the cost of production in the current year. Failure to revise the value resulted in duty being levied short by Rs. 1,93,316 on the clearances made during the period from October 1975 to December 1980.

On the mistake being pointed out in audit (May 1981), the department issued show cause-cum demand notice (June 1982) for Rs. 1,93,316. Report on confirmation of demand and recovery is awaited.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*vii*) A manufacturer of 'varnishes', consuming them captively, was allowed to value his manufactures for the period from July 1979 to December 1980 on the basis of cost data which related to the manufacturing period prior to July 1979. This resulted in duty being levied short by Rs. 1,04,900.

The mistake was pointed out in audit (March 1982) to the department; its reply is awaited.

The Ministry of Finance have stated (November 1982) that the provisional assessment on the basis of past data will now be finalised on the basis of certified accounts.

(*viii*) A manufacturer of anhydrous ammonia partly consumed it captively and was allowed to value such part at Rs. 3,200 per tonne which was lower than the sale price of the product at Rs. 3,600 per tonne. The undervaluation resulted in duty being levied short by Rs. 2,94,920 on 4,681 tonnes of ammonia consumed captively during the period from September 1980 to October 1981.

On the undervaluation being pointed out in audit (January 1982), the department raised demand against the manufacturer (April 1982). Report on recovery is awaited (July 1982).

The Ministry of Finance have confirmed the facts (October 1982).

2.12 Supplies to related persons

As per section 4(1)(a)(iii) of the Central Excises and Salt Act, 1944, where the manufacturer so arranges that the goods are generally not sold by him in the course of wholesale trade except to or through a related person, the normal price of the goods sold by him to or through such related person shall be the price at which they are ordinarily sold by the related person (in the course of wholesale trade at the time of removal), to dealers (not being related persons).

The entire production of tape recorders in a factory was supplied to dealers who were associated with the factory and had interest directly or indirectly in the business. Accordingly, the value for purposes of assessment of duty, should have been the price at which the goods were sold by such dealers. But, instead, the price charged from the dealers was approved by the department as the assessable value, which resulted in duty being levied short by Rs. 3,77,272 on clearances made during the period from July 1977 to March 1979.

On the mistake being pointed out in audit (April 1978), the department admitted the objection and confirmed demand for Rs. 3,77,273 in October 1981.

The Ministry of Finance have stated(July 1982) that the appeal of the manufacturer is pending.

2.13 Invoice price

As per a notification dated 30 April 1975, goods (falling under tariff item 68) cleared from the factory of manufacture, on sale, are exempt (at the option of the assessee) from so much of the duty leviable thereon as is in excess of the duty calculated on the price shown on the invoice of the manufacturer, on the sale of such goods. 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.

(*i*) Electrical switch gears cleared during the year 1978-79 were valued in the invoice at Rs. 2,25,64,411 which was accepted by the department. But their value as per manufacturer's trading and profit and loss accounts was Rs. 2,26,09,600. The value had not been verified with reference to the audited accounts resulting in duty being levied short by Rs. 35,895.

On the undervaluation being pointed out in audit (February 1980), investigations done by the department revealed undervaluation by Rs. 4,48,682 on clearances made during the year 1978-79 and a show cause-cum demand notice was issued to the

manufacturer by the department in January 1981 and the demand confirmed in July 1981. Report on recovery is awaited (May 1982).

The Ministry of Finance have confirmed the facts (November 1982).

(*ii*) (*a*) A public sector undertaking manufacturing aircrafts received a sum of Rs. 44.81 lakhs from one of its customers as reimbursement of expenditure incurred on tooling required for manufacture of vessels supplied and another sum of Rs. 4,75,917 as reimbursements of royalty paid on parts for the vessel manufactured by the undertaking. However it omitted to include such payments in the cost of the vessel. It did not also pay duty amounting to Rs. 1,15,103 on the amount by which the vessel was undervalued as aforesaid in the invoice price to its customer, (which was allowed by the department). The mistake was pointed out in audit in September 1979.

The Ministry of Finance have stated (November 1982) that two show cause-cum demand notices for Rs. 1,03,650 and Rs. 11,554 have been issued and are pending adjudication.

(*b*) The same undertaking did not also include the cost of tooling and development charges in the invoice price of goods under tariff item 68 supplied to another customer. However, the tooling and development charges incurred in the manufacture of the goods were recovered by the manufacturer from the person to whom the goods were supplied as part of the contract for the supply of the manufactured product. The undervaluation of the invoice price (allowed by the department) resulted in duty being levied short by Rs. 74,125.

The mistakes were pointed out in audit in December 1980.

The Ministry of Finance have stated (November 1982) that demand for Rs. 95,239, since raised, is under adjudication.

(*iii*) A public sector factory manufacturing spares for machines, marketed them through show rooms in different cities at cost price which was one third of the price at which direct sale of spares was also being made at the factory gate. Further, some of the spares were also being sold at the show rooms at the same prices as at the factory gate. The cost price indicated in the debit notes were incorrectly approved as the invoice prices. In the result duty was levied short by Rs. 1,17,045 during the year 1980-81.

The mistake was pointed out in audit in June 1981. The differential duty payable for the period from 1 March 1975 to 31 March 1980 is still to be worked out.

The Ministry of Finance have confirmed the facts (October 1982).

(*iv*) An assessee engaged in the manufacture of gas (industrial) compressors installed and commissioned compressor plants for a consideration of Rs. 23,53,482 received from the customers. The assessee paid duty only on a value of Rs. 3,84,800. On the balance value of Rs. 19,68,682, the duty levied short amounted to Rs. 1,57,495.

On the undervaluation being pointed out in audit (July 1981), the department (April 1982) raised demand for the amount and confirmed it. Report on recovery is awaited (June 1982).

The Ministry of Finance have stated (November 1982) that the demand is under appeal.

(*v*) A manufacturer of textile machinery was realising 10 per cent of the cost of the machinery as advance, six months before commencement of supply, but the machinery was invoiced at the price ruling at the time of supply. The assessee had opted to pay duty on the basis of invoice price. Against machinery worth Rs. 160.64 lakhs to be supplied to a buyer payment of 30 per cent (instead of 10 per cent) of the contract value was received in advance between July 1977 and July 1978 and the

supply was commenced in December 1978. There were upward price revisions once in January 1979 and again in January 1980 after the commencement of supply. However the machinery was invoiced only at the value originally specified in the contract. The additional value realised over the invoice price and the interest accrued on the advance payment received were Rs. 23.12 lakhs and Rs. 20.30 lakhs respectively.

On the incorrect valuation being pointed out in audit (March 1980), the department reported (April 1982) that a sum of Rs. 1,08,193 had been demanded from the assessee in February 1982 and recovered. The wrong valuation had not been commented upon either by Internal Audit or by the Valuation Cell of the department.

The Ministry of Finance have admitted the objection (August 1982).

(*vi*) A manufacturer of P.V.C. pipes and fittings was also manufacturing solvent cement. He stopped paying duty on the cement from October 1978 on the advice of the department that, on supplies made free of cost to a State Water Supply and Drainage Board, no duty was leviable.

The advice given by the department was objected to in audit (February 1979) since solvent cement was sold to other buyers as well and also used for captive consumption, and was normally priced at Rs. 40 to Rs. 50 per kilogramme. Bulk (about 85 per cent) of the supplies made free of cost to the Board, on the basis of a contract, was linked to the bulk supply of P.V.C. pipes and fittings and the consideration for supply of cement was included in the consideration for the total supply. The nil price at which supply of solvent cement was invoiced should not, therefore, have been viewed in isolation nor the option exercised by the assessee for valuation based on price as per sale invoice accepted by the department.

As a result of the audit objection the department initiated proceedings in December 1979 for recovery of duty of Rs. 58,653 on clearances made during the period from October 1978

to November 1979 but allowed duty free clearances of solvent cement from December 1979 onwards on a provisional basis. The department reported in November 1981, February 1982 and April 1982 that the demand for Rs. 25,331 for the period October 1978 to May 1979 was barred by limitation and that the recovery of the demand for Rs. 33,322 relating to the period June 1979 to November 1979, which was issued in November 1981, had been stayed by the Appellate Collector. Another demand for Rs. 1,05,198 had also been issued on 23 March 1982 relating to the period December 1979 to July 1981.

There was no record of this case having been taken up by the valuation cell of the department for rectification of valuation. Report on finalisation of demands and recovery is awaited (May 1982).

The Ministry of Finance have confirmed the facts (August 1982).

2.14 Discount and escalation charges

Under section 4 of the Central Excises and Salt Act, 1944, a trade discount, which is given according to normal practice of wholesale trade is allowed to be deducted in determining the assessable value.

(*i*) Batteries (for flash light) manufactured in a factory were valued by the department at Rs. 314.06 per case, in respect of clearances made during the period 5 October 1974 to 14 May 1975 and again after 7 August 1975. But during the period 15 May 1975 to 6 August 1975, the value was reduced by Rs. 15 per case on account of a special discount stated to have been given to all buyers. However the records revealed that such discount was not given to all buyers and, to some, discount of Rs. 10 only was given. The reduction in assessable value was therefore not admissible and resulted in duty being levied short by Rs. 1.45 lakhs on the clearances made between 15 May 1975 to 6 August 1975.

In reply to the audit objection issued in June 1976, the department stated (July 1980) that discount or credit notes had been allowed to all buyers. But it was unable to verify its contention from the records in the factory which were not made available to a party which was deputed and consequently it issued show cause notice and raised demand for duty. But the demand being barred by limitation has not been confirmed so far (October 1982).

The Ministry of Finance have confirmed the facts (July 1982).

(*ii*) If the price charged by the manufaturer in the invoice for sale of goods is subject to specified conditions regarding escalation in the price of raw material labour etc., the final valuation would be inclusive of the supplementary invoice for the escalation charges.

(*a*) A manufacturer raised supplementary bills against the purchaser in January 1980 for Rs. 48,36,365 towards escalation charges on account of variation in exchange rates for imported materials, machinery and equipment used in manufacture of vessels supplied by him. Since such a bill also raised the ex-factory value of the vessels supplied, duty was payable on the higher valuation. Non demand of duty on the higher valuation resulted in short recovery of duty by Rs. 3,86,909.

On the underassessment being pointed out in audit in October 1980, the department issued a [show cause-*cum* demand notice on the assessee in February 1981 and confirmed the demand in November 1981. Report on recovery is awaited (June 1982).

The Ministry of Finance have confirmed the facts (August 1982).

(*b*) A public limited company, executing contracts for manufacture, installation and commissioning of machinery for production of sugar, had opted to pay duty on valuation based on invoice price. The company while billing customers for escalation of charges for material and labour as per the agreement

with its customers, did not pay duty to the Government on the increase in the invoice price. In respect of clearances made during the period July 1979 to June 1980 duty amounting to Rs. 4,51,006 was payable to Government on this account, based on the escalation charges billed by the company.

On the omission being pointed out in audit (October 1980), the department issued a show cause-*cum* demand notice in April 1981. Report on finalisation of demand and action taken for assessing additional duty if any, relating to period prior to July 1979 is awaited (February 1982).

The Ministry of Finance have stated (July 1982) that steps to adjudicate the demand will be taken soon.

2.15 Cost of assembly or erection

Goods which are assembled (or erected) by the manufacturer at site, after clearance from the factory of manufacture in knocked down condition, should be valued in the assembled condition (including bought out items) for purposes of levy of excise duty. This was also clarified by the Board in a memorandum issued on 5 October 1981. If assembly is done over a period, the duty levied provisionally at the time of clearance is to be finalised after assembly (or erection) at site.

(*i*) A public sector undertaking engaged in the manufacture of specialised equipment like heat exchangers, pressure vessels, etc. on a turn-key basis, realised Rs. 3,47,43,909 during the years 1975-76 and 1976-77 towards "site erection charges" from its customers. However, the department did not revalue the equipment to include such charges. This resulted in duty being levied short by Rs. 3,47,439.

On the omission being pointed out in audit (December 1977 and March 1978), the department agreed that site erection charges were includible and that assessments are being done now accordingly.

Report on issue of demand and recovery of duty is awaited.

The Ministry of Finance have stated (November 1982) that the plant and machinery affixed to ground at site, not being movable, would not be goods. However, not all goods fixed to ground become immovable property other than goods.

(*ii*) An assessee manufacturing "Bagging and handling conveyor system" erected it at the premises of his client. The contract for Rs. 1,61,64,832 included an amount of Rs. 16,16,483 towards engineering charges. This amount however, was not included in the assessable value of the machinery for the purpose of levy of excise duty. Non inclusion of the charges resulted in duty being levied short by Rs. 1,29,319.

On the omission being pointed out in audit (June 1981), the department stated (October 1981) that a show cause-*cum* demand notice for Rs. 1,29,319 had been issued to the assessee (August 1982).

Report on confirmation of demand and recovery is awaited.

The Ministry of Finance have stated (November 1982) that the matter is being reconsidered.

2.16 Job work and material supplied by customer

As per a notification dated 30 April 1975, goods falling under tariff item 68, manufactured in a factory as a 'Job Work' were exempted from so much of the duty of excise leviable thereon, as was in excess of the duty calculated on the amount charged for job work. 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 56-C in the Central Excise Rules, 1944 with effect from 1 April 1981 the notification of 30 April 1975 was rescinded, and if the job worker followed the procedure prescribed in Rule 56-C, his customer, the primary manufacturer alone would be liable to

pay duty on goods manufactured by the secondary job worker manufacturer, or the job worker manufacturer should pay duty on the job work goods on the basis of the value determined under section 4 of the Central Excises and Salt Act, 1944, which was inclusive of the value of the raw materials, if any, supplied by his customer.

(*i*) A manufacturing unit received steel tubes, bars and strips from another manufacturing unit and converted them into bearing races, rollers and cages and paid duty on the value of the job charges only. New commodities having specifications and names different from the raw materials having come into existence and the process of manufacture not falling under the definition of the term 'job work' in the aforesaid notification, duty was levied short by Rs. 10.82 lakhs on the manufactured products cleared during the period from July 1977 to February 1981, because of under valuation.

On the mistake being pointed out in audit (November 1977), the department issued show cause-*cum* demand notices in February and March 1981. The demand has been stayed by the High Court on appeal filed by the manufacturer.

The Ministry of Finance have stated (November 1982) that the matter is pending in a High Court.

(*ii*) A manufacturer of railway crossings and switches of different sizes, shapes and designs made to specifications given by the Railways, used raw material *viz.* rails supplied free of cost by the customer and parts *viz.* billets, nuts and bolts which he procured himself. He was allowed to pay excise duty only on the manufacturing charges received from the customer. This resulted in duty being levied short by Rs. 9,43,997 because of duty not being levied on the value of material supplied by the customer, on clearances made during the period from March 1975 to March 1981.

On the mistake being pointed out in audit (February 1979), the department stated (February 1982) that show cause notice had been issued to the manufacturer.

The Ministry of Finance have stated (November 1982) that the assessee has filed a writ petition in a High Court against the demand.

(*iii*) A manufacturer doing job work on behalf of customers who supplied raw materials continued to pay duty, even after 1 April 1981, only on the value of job charges realised by him and excluding the value of raw materials supplied by the customers. This resulted in undervaluation of the goods and duty being levied short by Rs. 1,02,214 on clearances made during the period from April to December 1981.

On the mistake being pointed out in audit (between January 1982 to March 1982), the department stated (June 1982) that a sum of Rs. 65,409 has since been recovered from the assessee and action was being taken to recover the balance amount.

The Ministry of Finance have admitted the audit objection (October 1982).

(*iv*) A manufacturer of internal combustion engines and their spare parts was allowed to clear crankshafts without payment of duty. The shafts were manufactured from forged crankshafts purchased from market and by getting them machined outside on job work basis. Heat treatment and final machining was done by manufacturer prior to sale of crankshafts by him. The manufacturer was therefore, liable to pay duty on the crankshafts at the time of their final clearance, as its manufacturer. On 69 crankshafts cleared during the period from November 1979 to July 1980, the duty not levied amounted to Rs. 83,197.

On the omission being pointed out in audit (April 1981), the department accepted the objection and issued a show cause-*cum* demand notice (March 1982). Thereupon the manufacturer filed a writ in High Court and interim stay has been granted.

The Ministry of Finance have admitted the audit objection (October 1982).

SHORT LEVY DUE TO MISCLASSIFICATION

2.17 Cosmetics

Preparations for the care of skin including beauty creams, vanishing creams, cold creams, skin foods, tonics etc. being cosmetics and toilet preparations fall under tariff item 14F, whereas patent or proprietary medicines fall under tariff item 14E. The Central Board of Excise and Customs clarified in July 1975 that for purpose of levy of excise duty classification of a product as between tariff item 14F or 14E, should depend on whether the product has more of the properties of a cosmetic or that of a drug. Classification should be made on the basis of the literature, ingredients and usage in respect of the product. It is not to be decided merely on the fact that the product has been brought under the control of the Drugs Controller.

(*i*) A manufacturer prepared antiseptic perfumed cream in white petroleum jelly base (85 per cent to 86 per cent) and it contained small quantities of boric acid (1 per cent), zinc oxide (3 per cent), anhydrous lanolin (5 to 6 per cent) and talcum powder (5 per cent). It was allowed to be classified as patent or proprietary medicine on the ground that the Food and Drugs Controller in a state approved the product as a patent or proprietary medicine. Considering the fact that the cream is used in the care of skin (for keeping skin soft and supple) and as after shave cream and keeping in view the clarification given by the Board in 1975, the product should have been subjected to chemical analysis for ascertaining its therapeutic value *vis-a-vis* its use for care of skin. This was especially necessary since duty leviable under tariff item 14F was higher than the duty liability under tariff item 14E. Failure to classify the product under tariff item 14F resulted in duty being levied short by Rs. 5.97 crores on the clearances made by one of the units manufacturing the product during the period from April 1977 to March 1982. The short levy in respect of the other units of the manufacturer is still to be determined.

The mistake was pointed out in audit in December 1977 and again in December 1979. In July 1982 the Central Board of Excise and Customs decided that the antiseptic cream fell under tariff item 14F, being a cosmetic for care of skin.

The Ministry of Finance have stated (November 1982) that on reconsideration the Board has withdrawn the tariff advice of July 1982 and reclassified the antiseptic cream as patent or proprietary medicine. No reasons have been given.

(*ii*) According to the instructions issued by the Central Board of Excise and Customs in September 1981 all preparations which are in the nature of beautification aids are to be classified under tariff item 14F which covers cosmetics and toilet preparations for care of skin and hair and includes make-up creams, lipsticks, beauty creams etc.

A manufacturer of "Eye brow pencils" and "Bindi pencils" used as beauty aids was allowed to classify them under tariff item 68 and pay duty at 8 per cent *ad valorem* instead of demanding duty on them under tariff item 14F(i) at 100 per cent *ad valorem*. Mistake in classification allowed by the department resulted in duty amounting to Rs. 4,41,394 not being demanded on the clearances made during the period from January 1981 to January 1982.

The mistake was pointed out in audit (March 1982), the reply of the department is awaited.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*iii*) A manufacturer of cosmetics paid duty on clearances of 'cream sachets' (alcohol free concentrated perfumes) till March 1978 after classifying them as cosmetics. Thereafter, he applied for reclassification of the product under tariff item 68 on the plea that they were cream based perfumes. The plea was turned down by the department and he paid duty under protest. His claim for refund was rejected by the department in October

1978. However, in October 1980 his appeal was allowed on the ground that such cream sachets were not like normal creams used for the care and beautification of the skin and were therefore classifiable under tariff item 68 as perfume and a refund of Rs. 2,28,355 representing the duty paid on clearances of the product made during the period 16 November 1976 to 25 March 1980 was allowed (May 1981). The department did not apply for review of the appellate order.

The classification of cream sachets under tariff item 68 was incorrect since the cream sachets were aids to beauty, visual or tactile or olfactory, taking the broader dictionary meaning of "beauty" into account, *viz.*, the quality that gives pleasure to the sight or aesthetic pleasure generally, aesthetic relates to perception by the senses generally. On the mistake being pointed out in audit (June 1982), the department did not accept the mistake.

The Ministry of Finance while confirming the basic facts, have stated (November 1982) that the refund was allowed consequent to an order in appeal passed by the competent quasi-judicial authority.

2.18 **Petroleum product and xylene**

(*i*) Till 1 March 1982, tariff item 7 covered only kerosene which is described as a mineral oil (excluding mineral colza oil and turpentine substitute) having a flame height of eighteen millimeters or more and ordinarily used as an illuminant in oil burning lamps. From 1 March 1982 tariff item 7 covers "Aviation turbine fuel" also.

A unit manufactured "Aviation turbine fuel" and classified it under tariff item 7 for purposes of paying duty although it is not ordinarily used as an illuminant in oil burning lamps and the product should have been classified under tariff item 11A as "Petroleum products—not otherwise specified". The misclassification resulted in duty being levied short by Rs. 4.91

crores in respect of clearances of the fuel made in five airports during the period from August 1979 to September 1981.

On the mistake being pointed out in audit (December 1981), the department has not so far accepted the misclassification despite the acceptance implicit in amendment (with effect from 1 March 1982) to tariff item 7 made in the Budget of 1982, subsequent to the audit objection.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*ii*) Xylene a coal-tar distillate is classifiable under tariff item 6 (motor spirit) if pure and under tariff item 8 (diesel oil) if mixed with other substances. By a notification, it was exempted from payment of basic and additional excise duty from 5 August 1978.

In a public sector factory xylene was being classified and cleared under tariff item 68 instead of paying duty under tariff item 6 or 8. Incorrect classification and levy of excise duty under tariff item 68 allowed by department on clearances made from 1 March 1975 to 4 August 1978 resulted in duty being realised short by Rs. 38,05,449.

The mistake was pointed out in audit (March 1981) to the department.

The Ministry of Finance have stated (November 1982) that xylene was exempted from duty under Board's orders contained in its letter dated 4 November 1957, and the question of short levy would not therefore arise. The grant of exemption without a valid notification and by Board's letter, (which however does not grant exemption to xylene classifiable as motor spirit or diesel oil), was not in order. The Ministry have also stated that classification of xylene under tariff item 68 is questionable and is under examination.

2.19 Conveyor belting

In a tariff advice given in August 1974, the Central Board of Excise and Customs classified plastic coated or P.V.C. impregnated conveyor beltings under tariff items 19 or 22 or 22B depending on whether the fabric used was cotton, man-made or other textile. However, in another tariff advice issued in November 1980, the Board classified imported plastic coated or P.V.C. impregnated conveyor beltings as other goods under tariff item 68 for the purpose of levy of countervailing duty, irrespective of the nature of the yarn used therein, taking the view that the imported belting would be neither articles of plastic nor textile fabrics and would therefore, not fall under tariff item 15A or 19 but only under tariff item 68.

A representation received from an indigenous manufacturer in the South, that the classification of imported beltings under tariff item 68 was an invidious distinction to the disadvantage of the indigenous industry and that on indigenous belting also duty should be levied under tariff item 68, was rejected by the Board. It clarified on 3 April 1981 that indigenously manufactured conveyor beltings were not to be classified under tariff item 68, but only imported beltings should be so classified irrespective of the nature of the yarn used therein.

A factory in the East had all along contested the classification of such products cleared by it during the years 1969 to 1974. Government in their revision-in-order passed on 28 October 1980 held that such beltings were not classifiable under tariff item 19 because it is not marketed as cotton fabric and is not known as cotton fabric in commercial parlance; its classification under tariff item 15A as plastic product was also ruled out and it was held that the belting was to be assessed under tariff item 68 with effect from 1 March 1975 when tariff item 68 was introduced. Also no duty was to be levied for the period prior to that date.

The tariff advice issued in November 1980 by the Board limiting it to imported conveyor beltings did not take into account the revision order in appeal of Government passed in October 1980 in regard to indigenous beltings. On receipt of Board's clarification of 3 April 1981, in regard to indigenous beltings, the clearance of indigenous belting by the factory in the East was sought to be classified accordingly. But the manufacturer filed a writ petition and the High Court directed levy of duty in the light of order in revision of Government referred to above. Still, show cause-cum demand notice for duty amounting to Rs. 2.63 crores was issued by the department based on Board's clarification of 3 April 1981, on which the High Court has granted an injunction.

The rationale for indigenous conveyor beltings being classified differently from the imported ones, to the disadvantage of indigenous manufacturers and the action being taken by the Government to resolve the discrepancy between the tariff advice issued (as well as clarification) and the revision order in appeal (both issued by the Government) was examined in audit (August 1982). The quantum of revenue not recovered on clearances of indigenous beltings made under tariff item 68 and the countervailing duty foregone on imported beltings by allowing their classification under tariff item 68 from 1 March 1975 onwards was also considered in audit.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

2.20 Manila paper or kraft paper

With effect from 24 January 1978, the effective rate of duty on "All sorts of paper commonly known as kraft paper", falling under tariff item 17(2) with description "Paper Board and all other kinds of paper not elsewhere specified," was raised from 30 per cent to 37.5 per cent *ad valorem* and from 1 March 1979,

the rate was further raised to 40 per cent *ad valorem*. However, the effective rate applicable to other varieties of paper falling under the same sub-item remained at 30 per cent *ad valorem*. The Central Board of Excise and Customs in a circular letter dated 6 March 1979 stated that certain varieties of paper including many types of manila paper and machine finished kraft special etc. exceeding 65 grammes per square metre (GSM) in weight and falling under tariff item 17(2), had been treated all along as kraft paper by the trade. But, with the increase in the rate of duty on kraft paper, machine glazed manila, machine finished kraft papers etc. were declared by the trade to be different from kraft paper and duty at the lower rate applicable to other varieties of paper also falling under item 17(2) was only paid. In the circular of the Ministry the incorrect rate adopted by the trade was brought to the notice of the field formations for necessary action to levy duty at the higher rate applicable to kraft paper on such papers.

A manufacturer of "manila wrapping paper" exceeding 65 GSM cleared them on payment of duty at 30 per cent *ad valorem*. The relevant classification lists filed by him on 6 February 1978, 1 March 1978 and 1 March 1979 for assessment at 30 per cent *ad valorem* were approved by the department and the assessments finalised accordingly. No sample was sent for test despite the circular of the Board issued in March 1979, pointing out the malpractices resorted to by the trade. The 'Quality Control' report prepared by the manufacturer showed that "Manila wrapping paper" manufactured by the mill was similar to kraft paper in characteristics and specifications, as laid down by the Indian Standards Institution with regards to bust factor, breaking length and moisture contents. Failure to levy duty on the product, as kraft paper, resulted in duty being levied short by Rs. 5,59,839 on clearances during the period from December 1978 to October 1980.

On the mistake being pointed out in audit (November 1980), the department (Collector) stated (October 1981) that manila wrapping paper was not commonly known in the market as

'kraft paper' though it was used as packing paper. The reply did not consider the fact that the change of practice by the trade was less than three years old and was not approved by the Board. Also for many years prior to 1978, many types of manila paper were commonly described by trade as kraft paper, when duty on kraft paper was less. The department further stated that though some characteristics of kraft paper were shared by manila wrapping paper, there were also a number of differences. Clearly the circular of the Ministry and the practice of the trade allowed by the Board prior to 1978, in classifying manila paper as kraft paper or vice versa was not in keeping with classification by technical parameters. In such circumstances, the trade practice prior to 1978 should prevail and cannot be allowed to be changed by the trade to the detriment of revenue when rates of duty change. The paper in question being wrapping and packing paper with good mechanised strength was required to be classified according to established trade practices, and not as per changes in name adopted by trade to evade duty. Accordingly duty was leviable at the higher rate of 40 per cent.

The Ministry of Finance have stated (November 1982) that the manila paper in question was not kraft paper as commonly known, on the basis of the Collectors report referred to above. The arguments go counter to the directions of the Ministry to prevent changes in names. The malpractice cannot be prevented so long as classification in exemption notification is by reference to "Commonly known" which is difficult to determine and is not laid down precisely with reference to technical parameters determined by the Indian Standard Institution in respect of manila paper, kraft paper etc. and readily available.

2.21 Misclassified as all other goods not elsewhere specified (n.e.s.)

(*i*) In the instructions issued by the Central Board of Excise and Customs in August 1971 bearings with thickness of 3/16 inch or below were deemed to be thin walled bearings (falling under tariff item 34A). It was clarified in a tariff advice issued

in August 1978 that the question whether a bearing is thin walled bearing or not is to be decided in accordance with the relevant I.S.I. specifications. In the tariff advice issued in June 1981, the Board further clarified that if an article described as "bush" primarily functions as a bearing it should be classified as bearing and not otherwise.

A manufacturer of bushes classified them under tariff item 68 as all other goods n.e.s. and paid duty at 8 per cent *ad valorem* even though the bushes cleared by him functioned as bearings on which duty was leviable at 20 per cent *ad valorem*. This resulted in duty being levied short by Rs. 26.64 lakhs on clearances made during the year 1980-81.

On the mistake being pointed out in audit (July 1981), the department stated (November 1981) that prior to the issue of the tariff advice in June 1981, the bushes were classified in accordance with the earlier instructions of the Board. However, department had since issued a show cause-cum demand notice.

The Ministry of Finance have stated (November 1982) that the assessee has filed a writ petition and obtained stay order from the High Court.

(*ii*) Electric wires and cables are assessable to duty under tariff item 33B with effect from 24 April 1962. The Central Board of Excise and Customs advised on 28 December 1965 that bare copper wires of gauges finer than 14 SWG not being used as electric conductors, unless insultated were not covered by tariff item 33B. Subsequently the Central Board of Excise and Customs in their tariff advice given in April 1979 stated that such bare copper wires conducted electric current and as such would be classifiable under tariff item 33B.

A manufacturer of cables, supplied duty paid copper rods to his two ancillary units for conversion into annealed bare copper wires, finer than 14 SWG, which were ultimately used in his cable factory (but without payment of any further duty) in the

manufacture of telecommunication wires and cables. The department demanded duty under tariff item 68 (all other goods n.e.s.) on the annealed bare copper wire, even though duty was leviable at higher rate under tariff item 33B. This resulted in duty being levied short by Rs. 21,97,956 on clearances made during the period from June 1977 to May 1979.

On the mistake being pointed out in audit (September 1978), the department stated (November 1979) that recovery may not be legally possible but later stated (December 1981) that demands had been raised and confirmed for Rs. 2,50,827 in respect of one unit and for Rs. 2,55,040 in respect of the other (covering clearances made during the period from December 1978 to May 1979). Demands for the earlier period upto November 1978 were barred by limitation. The appeals against the demands are pending.

The Ministry of Finance have confirmed the basic facts (November 1982).

(*iii*) On steel furniture and parts thereof falling under tariff item 40, duty is leviable at 25 per cent *ad valorem*. However, slotted angles and channels made of steel are excluded from the tariff item. But not such angles specially slotted for assembly as parts of steel furniture.

A manufacturer of steel furniture (falling under tariff item 40) also manufactured angles with holes which he was allowed by the department to classify under tariff item 68 (all other goods n.e.s.) and pay duty at 8 per cent *ad valorem*. This resulted in duty being levied short by Rs. 38,045 on clearances made during the period from January 1979 to March 1982.

On the mistake being pointed out in audit (May 1981), the department issued three show cause notices, for recovering the duty but stated that levy of duty is exempt on parts of steel furniture other than those which have been given a special shape or design so as to make them clearly identifiable as essential components of steel furniture and from which in conjunction

with other parts, an article of steel furniture can be assembled with or without bolts and nuts. But the angles punched with holes as per design of steel furniture are such essential components of furniture and will not be exempt from duty.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*iv*) Bolts, nuts and screws are classifiable under tariff item 52 and certain specified parts of motor vehicles under tariff item 34A. Such goods will fall under either of these two tariff items and are not classifiable under tariff item 68 (all other goods n.e.s.).

A manufacturer of tractors and parts of motor vehicles was allowed to clear steering screws and steering nuts after classifying them under tariff item 68 and paying duty at 8 per cent *ad valorem*. The products were only screws and nuts used in tractors and not specified parts of motor vehicles. But they could in no case go outside the description of tariff item 52, under which duty is leviable at 15 per cent *ad valorem*. The misclassification of goods allowed by the department resulted in duty being levied short by Rs. 1,06,743 on the clearances made from April 1980 to March 1981.

On the mistake being pointed out in audit (July 1981), the department did not accept the audit objection.

The Ministry of Finance have stated (November 1982) that the steering screws and nuts have specific function and are not fasteners. However, they have not indicated what these other functions are and how the goods cease to become nuts and screws when tariff description is not limited to fastener nuts and screws but covers all types of nuts and screws known as such.

(*v*) On steel melting scrap arising in the course of manufacture of electrical stampings and laminations (falling under tariff item 28A) levy of duty is exempt, as per a notification issued in May 1979 subject to certain conditions. Otherwise duty is leviable at Rs. 330 per tonne on such scrap (under tariff item 26).

A manufacturer was allowed by the department to classify such steel melting scrap under tariff item 68 (all other goods n.e.s.) instead of tariff item 26, and pay duty accordingly. This resulted in duty being levied short by Rs. 56,582 on clearances made during the period from July 1981 to December 1981.

On the mistake being pointed out in audit (January 1982), the department stated (February 1982) that only the scrap arising in the ore based integrated steel plants is chargeable to duty under tariff item 26 and not any steel scrap capable of being melted. This view is not supported by description in tariff item 26 or the expression used in the notification issued in May 1979.

The Ministry of Finance have confirmed the facts (November 1982).

2.22 Failure to classify as all other goods (n.e.s.)

(*i*) Forged iron or steel products, in crude form, are assessable to specific rate of duty, under tariff item 26AA(ia), on the basis of their weight. On subsequent grinding, machining, polishing etc., the manufactured steel products, are classifiable under tariff item 68 (all others goods n.e.s.) and duty leviable thereon. Clarification to this effect was also issued by the Central Board of Excise and Customs in September 1975.

(*a*) A steel plant assembling wheel sets from forged wheels and axles, finished such sets by machining them with the aid of power and cleared them as component parts of railway wagons. The department realised duty thereon under tariff item 26AA(ia), on the steel content of the wheel sets, although in the light of the aforementioned clarification duty was leviable under tariff item 68. Misclassification of 38,588 wheel sets cleared by the steel plant during the period 1 April 1977 to 31 March 1980 resulted in duty being levied short by Rs. 99.43 lakhs.

On the omission being pointed out in audit (December 1980), the department stated (October 1981) that action to raise demand under tariff item 68 was being taken.

The Ministry of Finance have stated (November 1982) that demand for Rs. 17.65 lakhs on clearances made from 1 September 1982 has been raised and confirmed, demands for earlier periods from 1 March 1976 have also been raised.

(*b*) Another manufacturer was similarly allowed to pay duty on steel castings only with reference to their weight though the castings were machined and duty was payable under tariff item 68. This resulted in duty being levied short by Rs. 1,49,884 on clearances made during the period from April 1973 to April 1977.

On the mistake being pointed out in audit (June 1977), the department stated (June 1978) that it had already noticed the mistake. Action if any, taken after noticing the mistake had not been intimated to audit till August 1982.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

In paragraph 89 of the Audit Report for the year 1978-79 a similar case of non levy of duty amounting to Rs. 1,16,994 was reported and the Ministry of Finance had stated in February 1980 that the matter was under examination. No report on any action taken in that case had been reported to Audit (August 1982).

(*ii*) Laminated jute bags classifiable under tariff item 68 (all other goods n.e.s.) were exempted from duty under a notification dated 6 June 1979.

Laminated jute bags manufactured in a factory, were classified under tariff item 22A(2) as 'jute manufactures' and cleared free of duty under a notification exempting laminated jute products falling under tariff item 22A from duty. Because of the incorrect classification of laminated bags, duty amounting to Rs. 11.59 lakhs was not levied on clearances during January 1977 to 5 June 1979.

On the mistake being pointed out in audit (March 1981), the department stated that on the analogy of hessian rolls and bags laminated with paper, tar etc., and containing more than 50 per cent of jute by weight, which are classified as jute manufactures, the laminated jute bags were also classified under tariff item 22A. The analogy is not apt because, unlike paper and tar, plastic film is a high value item though much lighter in weight. This is also clear from the exemption notification issued subsequently in June 1979 under tariff item 68.

The matter was reported to the Ministry of Finance in July 1982; their reply is awaited.

(*iii*) A leading manufacturer of nylon twine and rope, rayon cord etc., produced them from nylon and rayon yarn on which duty had been paid, but cleared his products free of duty as 'Yarn'. The products comprised of plies of yarn twisted together to give better strength and were distinct and different from yarn, possessing characteristics and use different from that of yarn. For these reasons and in the light of the advice given by the Central Board of Excise and Customs in a letter dated 22 June 1977 the products were classifiable under tariff item 68 with effect from 1 March 1975. However the department allowed clearance of the products during the period from March 1975 to July 1979 without levying duty under tariff item 68 with the result that revenue amounting to Rs. 10.48 lakhs had been lost to Government, recovery being barred by limitation.

The failure to classify the products under tariff item 68 and to levy duty thereon was pointed out in audit as early as in October 1977 and the department accepted (December 1978) the audit objection. But duty amounting to only Rs. 26 was recovered (March 1978) on clearances made after receipt of tariff advice dated 22 June 1977. The department did not demand duty in other cases where also it was due. Instead the department only wrote to the manufacturer who started paying duty under protest from 14 October 1979. On the Audit again raising objections in December 1979 and February 1980, the department

stated (July 1981 and April 1982) that show cause notice was issued on 26 February 1980 and adjudicated in January 1981 demanding duty of Rs. 48,655 for the period 26 August 1979 to 14 October 1979. Duty amounting to Rs. 10,48,102 leviable for the earlier period (March 1975 to July 1979) was barred by limitation.

The Ministry of Finance have confirmed the facts (November 1982).

(*iv*) Hose assemblies for use in air brake system used in motor vehicles were produced by two manufacturers from rubber hoses, hose clips and lock nuts purchased from market and using some components like hose adaptors, sleeves and union nuts, manufactured by themselves. On the assemblies duty was leviable under tariff item 68, from 1 March 1979 and was accordingly realised till 30 April 1980. The assemblies were, however, allowed to be cleared free of duty, thereafter, on the plea that hose assembly was classifiable under tariff item 16A as rubber products and that the duty liability on hoses under tariff item 16A had already been discharged. The plea was on the lines of a clarification which had been issued by the Central Board of Excise and Customs on 2 April 1968 but which was rescinded on 3 August 1974. The hose assembly was a new product having distinct characteristics, trade name and use, classifiable under tariff item 68 and therefore, different from rubber hose. This was also the view in the tariff advice issued by the Board on 22 July 1981. The misclassification allowed by the department resulted in the non levy of duty amounting to Rs. 2,20,325 on clearances made from 14 February 1981 to 13 August 1981.

On the mistake being pointed out in audit (September 1980), the department issued show cause notices to the two manufacturers on 14 August 1981. On clearances for the period upto 13 February 1981 duty amounting to Rs. 3.96 lakhs could not be demanded being barred by limitation.

The Ministry of Finance have confirmed the facts (November 1982).

SHORT LEVY DUE TO INCORRECT GRANT OF EXEMPTION

In the Central Excise Tariff, the number of sub items (each having a rate specified against it) under which the excisable commodities are required to be classified, was 322 during the year 1981-82. The number of rates of basic excise duty, in force, however, was 832 because of exemption notifications having been issued under the various tariff items, and in force during the year. The largest number of exemption notifications in force were in respect of the following tariff items :

Tariff item No.	Description	Number of exemption notifications in force during 1981-82
68	All other goods not elsewhere specified	37
15A	Plastics	34
18	Man made fibres, filament yarn and cellulosic spun yarn	32
17	Paper and paper board and articles thereof	27
19	Cotton fabrics	26
14	Paints and varnishes	25
11A	Petroleum products not otherwise specified	21
21	Woollen fabrics	19
6	Motor spirit	18
14E	Patent or proprietary medicines	18
26A	Copper	18

2.23 Sugar

(*i*) As per a notification dated 3 April 1981, with effect from sugar year 1980-81, sugar which is produced and cleared by a sugar factory as additional entitlement under an incentive scheme, is assessable to duty at a concessional rate, subject to eligibility certificate in this regard being received from the Directorate of Sugar of Government of India.

A sugar factory, which received the requisite eligibility certificate in July 1981, was permitted under a release order dated 25 July 1981 issued by the said Directorate of Sugar, to clear during August 1981, 558.7 tonnes of free sale sugar of which 325.9 tonnes were normal free sale sugar quota and 232.8 tonnes were additional entitlement under the incentive scheme. As per the release order, first clearance was to be made at the normal rate of excise duty and subsequent clearances against additional entitlement under incentive scheme at concessional rate of duty as per notification dated 3 April 1981. However, the factory cleared only 285.9 tonnes of sugar during August 1981 against the aforesaid release order, out of which it claimed 68.3 tonnes to be against normal free sale quota, paying duty at normal (higher) rate of duty and 217.6 tonnes to be against additional entitlement quota at concessional (lower) rate of duty. The term additional entitlement meant that it was not available to be used for clearance at concessional rate of duty unless the normal free sale quota was cleared on normal rate of duty. The entire sugar cleared, having come within the normal free sale quota, the normal rate of duty should have been levied thereon. The clearance of 217.6 tonnes sugar at the concessional rate of duty instead of at normal rate resulted in duty being levied short by Rs. 1,13,208 on clearances made during August 1981.

The mistake was reported in audit to department (February 1982).

The Ministry of Finance have confirmed the facts (October 1982).

(ii) Under a notification issued in February 1976, Government prescribed concessional rates of basic duty at 15 per cent and additional duty at 5 per cent (against the rates of 37½ per cent and 7½ per cent) respectively of the price fixed for levy sugar (not the tariff value) in respect of the quantity of sugar cleared in excess of 35 per cent of the production (free sale quota) of a new sugar factory in a (sugar) year.

Accordingly, new sugar factories were liable to pay duty on tariff value in respect of free sale sugar on 35 per cent of their production in each sugar year. On the balance of free sale sugar, duty was leviable at the concessional rate of 15 per cent plus 5 per cent till 27 June 1978, when the rate was revised to 6 per cent plus 5 per cent. From 16 August 1978, when sugar was decontrolled the aforesaid notification of February 1976 was rescinded. On clearances of free sale sugar, the concessional rate as also concession in valuation (levy price instead of tariff value) was availed of by two factories on 'free sale' sugar quota within the 35 per cent of production or clearance. But the duty concession was available only in respect of free sale sugar quota in excess of 35 per cent. This irregularity resulted in duty being levied short by Rs. 21,60,553 on clearance of 15,849 quintals of sugar in one factory and 39,116 quintals in the other.

On the mistakes being pointed out in audit (April 1979 and May 1979), the department contended (August 1979) that if the factory was first to clear 35 per cent of its production as free sale sugar it would be deprived of the benefit of the duty concession notified for new sugar factories, till the initial 35 per cent of production was cleared as free sale sugar and this was not the intention. The contention of the department is not borne out by the notification which visualises duty concession as also concession on valuation of production or clearance in excess of 35 per cent free sale quota. The department reported (September 1979, December 1981 and March 1982) that show cause notices demanding the duty had been issued. Report on recovery of demand is awaited (March 1982).

The Ministry of Finance have stated (November 1982) that show cause notices for the differential duty aggregating to Rs. 22.56 lakhs have been issued and the matter is under further examination in consultation with the Law Ministry.

(*iii*) A sugar factory with a capacity of 600 tonne per day and in production from 1966 was sold in 1972 and the previous owners set up a new plant with a capacity 1,250 metric tonne

per day in another premises; production in the new factory started in November 1972.

The new factory claimed rebate of duty amounting to Rs. 7,22,653 in respect of the sugar season 1973-74 (under a notification issued by the Government on 4 October 1973) on the ground that the factory was a new one, having started production in November 1973. The claim was rejected by the department holding that the factory was an old one, in production from 1966. Thereupon, the factory filed another claim for Rs. 55,43,694 in respect of the sugar season 1974-75, under a notification dated 12 October 1974 which was appplicable only to factories producing sugar for more than three years. But a clause in the later notification specifically forbade its application to a factory which had been producing sugar only for three years or less. The claim was initially rejected, but later the department decided to accept the decision of the Appellate Collector (dated 20 February 1976) viewing the factory as having been in production from prior to November 1973. Accordingly a rebate of Rs. 48,19,632 was allowed in October 1979.

It was pointed out in audit (March 1981) that the rationale of the exemption notification on sugar was strictly related to the concept of a sugar factory and was based on the criterion whether it is new or old. It was therefore not open to the department to look at the continuity of licence to manufacture enjoyed by the owner or his continuing to be a manufacturer of sugar. The department was required to go strictly by the fact whether the factory was a new one or an old one, in deciding on the admissibility of the rebate.

In failing to move the Government against the decision of the Appellate Collector, the department incurred a loss of duty amounting to Rs. 48,19,632 on the rebate allowed.

The Ministry of Finance have stated (November 1982) that licence of the factory at 'Belwandi' was renewed upto 1973 and the place of factory in licence was amended from 'Belwandi' to

'Shrigonda' and the collector is satisfied that the factory in the new place is an old unit. The reply does not answer the various other reasons indicating that factory in new place was a new factory.

2.24 **Petroleum products and electricity**

(*i*) As per an exemption order issued on 13 June 1978 under rule 8(2) of the Central Excise Rules, 1944, the Central Board of Excise and Customs exempted from levy of excise, petroleum products falling under items 6 to 11A received by Hindustan Petroleum Corporation from Bharat Petroleum Corporation or *vice versa*, but the exemption was not to apply except where the said products were utilised as fuel for the production or manufacture of other finished products. On low sulphur heavy stock supplied by Barauni Refinery to Haldia Refinery for use as internal fuel or as blending component or both, levy of duty was exempted by an order dated 21 February 1977; but on the supply of products by Hindustan Petroleum Corporation to Bharat Petroleum Corporation or *vice versa*, the exemption was strictly limited to products used as fuel only.

On low sulphur heavy stocks (LSHS) and waxing distillates (falling under tariff item 6 to 11A) supplied by Bharat Petroleum to Hindustan Petroleum, duty was not levied even though the products were partly used for blending and processing into new products, that were sent out by Bharat Petroleum and were not entirely consumed as fuel. The condition precedent to exemption not having been fulfilled, the exemption was not available. On 40,833 tonnes of LSHS supplied from January 1979 to July 1979 and 3,12,001 tonnes of waxing distillates supplied from July 1979 to September 1980 to Hindustan Petroleum, duty was not levied though exemption was not available. Non levy of duty amounted to Rs. 60.06 lakhs.

On the mistake being pointed out in audit (October 1979), the Ministry stated (December 1981) that exemption could apply also to products which were not used as fuel. The reading of the exemption order, which is the only legal basis for the

department to forego revenue, does not allow of such a reading to the detriment of revenue. The exemption order has not been amended so far (September 1982). In the meanwhile on similar supply of waxing distillate from one refinery to another, for further refining (and not used as fuel) during the period October 1980 to September 1981, further non levy of duty amounted to Rs. 3.01 crores.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(ii) On electricity, excise duty is leviable at the rate of 2 paise per Kilowatt hour (under tariff item 11E) with effect from 1 March 1978. However, as per a notification dated 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 plants, if any,) industrial units or other establishment, as the case may be, is exempt from duty. As per another notification dated 27 April 1978 ten per cent of the electricity produced by a generating station was exempted from duty.

(a) A factory manufacturing sugar also generated and supplied electricity to another factory in adjacent premises and claimed exemption on such supply as per notification dated 1 March 1978 on the plea that the other unit was part of the sugar factory. The other factory housed chemical, distillation and sugar cube plants and was licensed separately by the excise department and not in the name of the sugar factory which was a separate licensee. Accordingly electricity consumed in the other factory was not exempt from duty. On 45,24,175 kilowatt hour of electricity so supplied during the period from March 1978 to December 1980, non levy of duty amounted to Rs. 90,484.

The omission was pointed out in audit (January 1981) to the department.

The Ministry of Finance have confirmed the basic facts and have stated (November 1982) that the matter of grant of exemption is under examination.

(*b*) An oil refinery producing electricity primarily for its own requirements sold about 5 per cent of electricity generated to others and on such sales made during the period (from 28 April 1978 to 25 February 1980) it was allowed to avail of the exemption from duty under the notification dated 27 April 1978 to the extent of Rs. 59,117. The notification dated 27 April 1978 not being intended to benefit industrial units incidentally generating electricity but only generating stations engaged mainly in the business of generation and sale of electricity, exemption allowed, thereunder, was irregular in this case. It resulted in duty being levied short by Rs. 59,117.

On the mistake being pointed out in audit (March 1980), the department did not admit the objection on the ground that the term 'generating station', could cover a captive station as well as regular station engaged in electricity business. The Department, however, issued 5 show cause-*cum* demand notices (June and September 1980, March and August 1981 and January 1982) for an amount of Rs. 75,453 on the aforesaid refinery covering production during the period from 25 April 1978 to 30 November 1981, out of which one demand was confirmed (July 1981) holding that a 'generating station' was different from an 'industrial unit' and that the refinery was not entitled to benefit under the notification dated 27 April 1978.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

2.25 **Plastics**

(*i*) As per a notification issued in December 1979 polyethylene falling under tariff item 15A manufactured from duty paid raw naphtha or any chemical derived therefrom was exempted from so much of duty of excise as was in excess of 27 per cent *ad valorem*. The use of material other than raw naphtha or any chemical derived therefrom which is technologically necessary for the production of finished product was permitted in Ministry of Finance's letter dated 24 February 1982 issued in the context of copper (tariff item 26A).

A manufacturer of polyethylene used alcohol alongwith raw naphtha in the process of manufacture and paid duty at 40 per cent *ad valorem* on the polyethylene which was deemed to have been produced from alcohol, but at the concessional rate of 27 per cent *ad valorem* on the polyethylene which was deemed to have been produced from raw naphtha; on a proportionate basis by reference to quantity of alcohol and raw naphtha used in manufacture of polyethylene. The rate of 27 per cent *ad valorem* was incorrectly availed of since polyethylene was not manufactured from duty paid raw naphtha as required in notification of December 1979, but from alcohol which was not technologically necessary; therefore the manufacturer could not take advantage of the executive instruction either. The irregular exemption availed of resulted in duty being levied short by Rs. 3.96 crores on clearances made during the period from April 1980 to March 1981.

On the mistake being pointed out in audit (May 1981), the department stated that the exemption was allowed based on the decision of the Supreme Court in the case of TISCO v/s The Union of India. But this decision is not relevant, herein, since the wordings used in the notification which was before the Supreme Court were "Exempts steel ingots in which duty paid pig iron is used" whereas in the present case the wordings are entirely different *viz.* "Manufactured from raw naphtha". Further the notification of December 1979 and clarification of February 1982 had been issued much after the judgement of the Supreme Court and after knowing the law laid down by that court.

The Ministry of Finance have stated (November 1982) that the matter is being examined.

(*ii*) As per a notification issued on 29 May 1971 all articles of plastics falling under tariff item 15A(2) (except rigid plastic boards, sheets, films and flexible P.V.C. sheets, films and lay flat tubings not containing any textile materials) were exempt from

duty subject to the condition that the articles were manufactured either out of plastic materials falling under tariff item 15A(1) or out of scraps of plastics.

Chemically resistant tanks and other components produced by a manufacturer who used P.V.C. sheets, pipes and other shapes of P.V.C., glass fibre and resin (as bonding material) in the manufacture, were allowed to be cleared without payment of duty though the goods were not eligible for the exemption. They had been manufactured out of materials falling under tariff items 15A(2) and 22F and not exclusively out of materials falling under tariff item 15A(1) or scraps of plastics. This had already resulted in non levy of duty amounting to Rs. 21,45,120 on clearances made upto April 1980.

On the mistake being pointed out in audit in April 1980, the department accepted the mistake and in November 1980, withdrew the exemption and directed the manufacturer to clear the goods on payment of duty and also demanded duty on clearances made from April 1980 (for six months prior to the issue of show cause notice). No formal demand was issued. On appeal being decided in favour of the manufacturer the department decided not to ask for a review by Government on the ground that the products were recognised as manufactures of plastics and were predominantly made of duty paid plastic materials and the aforesaid notification did not specify that the exemption was available only to articles wholly made of plastics. After discussion in the tariff conference of Collectors the Central Board of Excise and Customs issued a tariff advice in August 1981 to the effect that glass fibre reinforced plastic materials manufactured from P.V.C. sheets, pipes and other shapes of P.V.C. with glass fibre and resins were not eligible for exemption under the aforesaid notification. This advice being in accordance with the view earlier taken by Audit, the department was requested by Audit (December 1981) to realise duty on products such as fibre glass reinforced plastic containers, boats, helmets, bath tubs, commode sheet covers etc. produced by other manufacturers. The department stated (March and May 1982) that

the point had been referred again to the Board for decision. The duty not levied on clearances made by the manufacturer in whose case the point was raised by Audit had in the meanwhile gone up from Rs. 21,45,120 to Rs. 46,21,859 on clearances made upto the end of February 1982.

The Ministry of Finance have stated (November 1982) that the tariff advice of August 1981 would not appear to cover the case in question but have neither accepted nor rejected the audit objection of incorrect grant of exemption.

(*iii*) As per a notification issued on 27 February 1980, 'phenol formaldehyde moulding powder' (falling under tariff item 15A) is exempt from so much of duty as is in excess of 30 per cent *ad valorem*, if it is manufactured from raw naphtha or any chemical derived therefrom, on which the appropriate amount of duty has already been paid.

A manufacturer of 'phenolic material M' stated to be phenol formaldehyde (though no tests had been conducted by the department to confirm the statement) used duty paid raw materials, received under the procedure prescribed in Rule 56A of the Central Excise Rules in the manufacture of the powder. Credit for the duty paid on the raw materials was availed of towards payment of duty on the moulding powder manufactured. The raw materials having ceased to satisfy the description "material on which the appropriate amount of duty of excise has already been paid" as soon as credit was taken (provisions of sub rule 3(iii) of rule 56A ibid refer), the concessional rate of duty of 30 per cent *ad valorem* was not available in respect of the moulding powder. Duty was therefore leviable at 40 per cent *ad valorem*. Order of Government of India dated 26 November 1980, on a revision application also bears out that in this case exemption under the notification of 27 February 1980 was not available. In the result duty was levied short by Rs. 38.46 lakhs on clearances made during the period from February 1980 to March 1981.

The mistake was pointed out in audit to the department in June 1981.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

2.26 **Patent or proprietary medicines**

As per a notification dated 19 June 1980, levy of duty on patent or proprietary medicines containing one or more of the ingredients specified in the schedule attached to the notification is exempt. But the exemption is not available if the medicine contains any ingredient not specified in the schedule, unless such ingredient is a pharmaceutical necessity which is therapeutically inert and does not interfere with therapeutic or prophylactic activity of the ingredients specified in the schedule.

A manufacturer of 'ISO BENZACYL FORTE' (falling under tariff item 14E) availed of the exemption under the aforesaid notification. This product contained three ingredients out of which two were specified in the schedule attached to the above notification *viz.*, 'isonizid' and 'benzoyl pas calcium', a salt of para amino salicylic acid. The exemption was claimed and allowed and refund of duty amounting to Rs. 64,973 on clearances during the period from 19 June 1980 to 31 August 1980 was made by the department to the manufacturer. Also duty amounting to Rs. 2,62,661 on clearances during the period from September 1980 to March 1981 was not recovered. However, the third ingredient *viz.* pyridoxine hydrochloride was not an inert ingredient of the type specified and therefore duty was leviable.

On the mistake being pointed out in audit (July 1981), the department accepted the objection and stated (April 1982) that show cause notice has been issued to the manufacturer.

The Ministry of Finance have admitted the audit objection (September 1982). Report on confirmation of demand and recovery is awaited.

2.27 **Other chemicals**

(*i*) As per a notification issued in June 1979 varnishes are exempt from duty in excess of 10 per cent *ad valorem* if they are manufactured from ingredients on which the appropriate amount

of excise duty has already been paid and the varnishes are used for insulating electric wires and cables. By an order issued in November 1980 in a revision application, the Government confirmed that if such duty paid raw material is brought into the factory under the procedure prescribed in rule 56A of the Central Excise Rules then credit having been taken for the duty paid on such raw materials, they will become non duty paid raw materials.

A manufacturer of insulated wires also manufactured varnishes from duty paid ingredients (falling under tariff item 68) which were brought into the factory under the procedure prescribed in rule 56A, by availing credit for the duty paid on the raw materials. Such materials having become non duty paid thereby, levy of duty at the concessional rate of ten per cent *ad valorem*, on the varnishes, was not in accordance with the above notification. However benefit of the notification was allowed resulting in duty being levied short by Rs. 2.21 lakhs on clearances made during the period from June 1981 to December 1981.

On the mistake being pointed out in audit (March 1982), the department issued a show cause-*cum* demand notice for Rs. 1,38,030 covering clearances made during the period from July 1981 to December 1981. Report on recovery is awaited (August 1982).

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*ii*) As per a notification dated 20 August 1977, on sodium hydrosulphite (falling under tariff item 14AA), levy of excise duty was exempted upto a quantity not exceeding 150 tonnes cleared by or on behalf of a manufacturer for home consumption during any financial year, provided his total production does not exceed 360 tonnes during the financial year in which clearances are made.

A manufacturer of sodium hydrosulphite, was allowed to sell his produce at different prices based on the size of the packing such as 1 Kilogramme, 5 Kilogrammes, 25 kilogrammes. The manufacturer was allowed by the department to avail of the benefit of the exemption in respect of his products cleared in smaller packings and priced higher irrespective of the chronology of such sales during the financial year. Duty being leviable at 15 per cent *ad valorem* allowing duty exemption only on sales of smaller packings at higher price (per kilogramme) resulted in department realising duty short by Rs. 64,419 during the year 1980-81. So much more duty would have been realised by the department had duty been exempted on clearances upto 150 tonnes made chronologically during the year as provided for in the notification.

On the mistake being pointed out in audit (July 1981), the department stated that in the absence of specific wording in the notification, restricting the benefit to first clearances upto 150 tonnes only, the manufacturer could avail of the benefit of exemption on the higher priced sales irrespective of chronology of sales during the financial year. It is settled law that exemptions must be strictly construed and must not be extended beyond the express requirements of the language used; the principle of beneficial construction being inapplicable in such cases. The expression 'exemption upto a quantity, not exceeding 150 tonnes, cleared during any financial year' no doubt does not use the words 'first clearances in a financial year' but it does use the words 'upto.....during' indicating that exemption is to be allowed only on clearances chronologically reaching upto a specified figure during the passage of time in the year. The view taken by the department to the detriment of revenue was therefore not available to it.

The Ministry of Finance have stated (November 1982) that the notification allows of the exemption being claimed by the assessee in the manner he did. Since the exemption notification has to be interpreted strictly the interpretation of the notification would require reference to the Ministry of Law or the ambiguity in the notification removed by amending the same.

(*iii*) Under a notification issued in December 1961 (as amended), raw naphtha intended for use in the manufacture of fertilizers (tariff item 14 HH) was subject to duty at the concessional rate of Rs. 4.15 per kilolitre (as against the normal effective rate of Rs. 2,000 per kilolitre in force upto 28 February 1975 and Rs. 2,100 per kilolitre thereafter). Hydrogen obtained by cracking of raw naphtha is utilised to a large extent in the production of ammonia and fertilizers, and the balance is sold by fertlilizer factories to oil refineries nearby which in turn also sell hydrogen to the fertilizer factory when needed by the latter. Thus, there is a two way movement of hydrogen between them.

A fertilizer factory was allowed use of raw naphtha which had paid duty at concessional rate, for the manufacture of hydrogen which was supplied to a refinery, under a special exemption order issued by the Central Board of Excise and Customs on 20 June 1974. This was subject to the condition that an equal quantity of hydrogen would be received back from the refinery within a period of six months from the date of supply of the hydrogen or that an equal quantity of hydrogen had already been received by the fertilizer factory from the refinery during the period of six months immediately preceding the supply. The time limit of six months was later increased to two years by an order of the Board dated 16 July 1975.

It was seen in audit that during the period of six months prior to 16 July 1975 (the date when the period of return was increased from six months to two years), a quantity of 11,44,150 cubic metres of hydrogen was returned by the fertilizer factory to a refinery but after the time limit of six months. The concessional rate of duty availed of by the fertilizer unit on raw naphtha used

up in the production of hydrogen gas so returned beyond six months was, therefore, irregular. The differential duty in this case amounted to Rs. 12.15 lakhs.

The department, while accepting the audit objection raised in the case (November 1981), stated that differential duty could not be collected thereafter as it was barred by limitation.

The Ministry of Finance have not accepted the objection and have stated (November 1982) that the amending order of 16 July 1975 was issued in view of the difficulties expressed by both the concerned parties. The intention was to amend the original order of 20 June 1974 from the date of its issue so that it is meaningful and serves the purpose for which it was issued. The intention not having been expressed in the statutory order, the revenue of Rs. 12.15 lakhs foregone was legally a loss which was recoverable before it was barred by limitation.

2.28 **Tyres and tubes**

Under a notification dated 14 July 1978, amended on 30 March 1979 levy of duty on clearances of tyres and tubes excluding flaps (tariff item 16) was exempt from so much of the duty of excise leviable thereon as was in excess of 87.5 per cent of such duty provided the clearances did not exceed 75 per cent of the licensed capacity of the factory. This was further subject to the proviso that the factory commenced production of the said goods for the first time, earlier than the first day of April 1976 and the licensed and installed capacity as certified by the Director General of Technical Development did not exceed five lakh numbers of tyres and five lakh numbers of tubes per year.

In a factory with a certified licensed and installed capacity of four lakh numbers of tyres and four lakh numbers of tubes per year (as in May 1980) production of tyres and tubes during 1979-80 exceeded the certified licensed and installed capacity and, in fact, 7,64,947 tyres and 7,98,891 tubes were produced. Further the factory cleared 3,75,000 each of tyres and tubes at the concessional rate of 48.125 per cent *ad valorem* (being 87.5 per cent of the effective rate of duty of 55 per cent *ad valorem*) though the permissible limit was only three lakh numbers of tyres and tubes each (75 per cent of the licensed installed capacity). No information was on record whether consequent to production of tyres and tubes going up during the year 1979-80 to almost twice the licensed installed capacity certified, the Director General Technical Development (DGTD) was moved by the Department of Revenue to review his certificate on installed capacity. Based on existing certificate, the factory was allowed the benefit of concessional rate of duty forgoing, thereby, revenue amounting to Rs. 3,91,79,988 on the total clearance. Out of this amount the allowance of the concession on clearances beyond the limit of 75 per cent of certified capacity, which was in no way justifiable, resulted in duty amounting to Rs. 81,25,596 (Rs. 77,38,663 basic and Rs. 3,86,933 special) being not realised.

On the omission being pointed out in audit (May 1980), the department issued a show cause notice for recovery of duty amounting to Rs. 77,38,663 (special duty was not demanded in view of stay granted by a High Court in September 1980). The department also stated (June 1981) that the case was under adjudication by the Collector, keeping in view the decision of Government permitting the factory to increase its production upto 25 per cent above the licensed capacity. Report on recovery of demand is awaited (November 1981).

The Ministry of Finance have stated (November 1982) that DGTD and Department of Industrial Development have confirmed (August 1980) that establishing production in excess of licensed capacity was in violation of Industrial Development and Regulation Act, 1957, and show cause notice under that Act was issued to the Company but no decision was taken thereon. Demand for Rs. 81.26 lakhs in respect of duty concession incorrectly availed of on excess clearance, had been confirmed.

2.29 Paper

(*i*) Under a notification issued on 18 June 1977 certain varieties of paper were allowed partial exemption from duty ranging from 50 per cent (produced in mills whose installed capacity exceeded 5,000 tonnes per year but did not exceed 10,000 tonnes per year) to 75 per cent (produced in mills whose installed capacity did not exceed 2,000 tonnes per year) subject to the condition that such paper contained not less than 50 per cent by weight of pulp made from bagasse, jutestalks, cereal straw, elephant grass, mesta or waste paper.

(*a*) A factory manufacturing packing and wrapping paper cleared the same at concessional rates of duty under the aforesaid notification. In the process of manufacture wastes of corrugated boxes were also used in addition to the raw materials specified in the notification. Accordingly the assessee was not entitled to avail of the concessional rate of duty under the above notification since he had used wastepaper boards (waste of corrugated boxes) which was not one of the specified raw materials. The incorrect allowance of the concession resulted in duty being levied short by Rs. 10,92,725 on clearances made during the period from April 1980 to March 1981.

On the mistake being pointed out in audit (July 1981), the department stated that the term 'waste paper' has not been defined in the notification and as commonly known in the market, waste paper includes wastes of all types of paper and paper

boards. The above view is not borne out by the instruction of the Board issued in its letter dated 14 April 1955 which makes a distinction between paper and paper board with reference to a weight below or above 180 grammes per square metre subject to trade usage and classification; whereas the CCCN classification (not incorporated into Excise Tariff) states that reference to paper includes reference to paper board (irrespective of thickness or weight), except when the context otherwise requires. In the Excise Tariff the distinction between paper and paper board having been emphasised and distinguished with reference to weight based on trade practice, the distinction extends to waste paper and waste paper board. Also when paper boards or waste paper boards are intended to be included in waste paper, such intention is specifically expressed in the notifications by the Government as *e.g.* in notification No. 77/74–CE dated 27 April 1974.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*b*) A paper mill with an installed capacity of 4,000 tonnes per annum which was in production from July 1977 was allowed to avail of 60 per cent concession in duty for mills with capacity not exceeding 5,000 tonnes under the aforesaid notification, on clearances made upto December 1980. From 17 January 1981, the installed capacity of the mill was raised from 4,000 tonnes to 6,000 tonnes per annum and it was allowed to avail of 50 per cent concession in excise duty. The Director General Technical Development granted certificate of registration for the increased annual capacity of 6,000 tonnes on 1 July 1980 and production during the calendar year 1980 was 5,515 tonnes while production in the financial year 1980-81 was 5,643 tonnes. Either way production was far in excess of the capacity of 4,000 tonnes per annum on the basis of which 60 per cent concession in duty was allowed upto 16 January 1981. The reason why the annual capacity was not deemed to have been raised to 6,000 tonnes from July 1980 itself, when certificate of registration was granted, was

not on record, nor enquired into by the department. The allowance of 60 per cent concession in duty (instead of 50 per cent) during the period from 1 July 1980 to 16 January 1981 resulted in duty being levied short by Rs. 4.40 lakhs.

On the mistake being pointed out in audit (August 1982) the department stated that even though the installed capacity of 6,000 tonnes per annum was registered with the Director General Technical Development on 1 July 1980, the actual production from the installed capacity of 6,000 tonnes per annum commenced only from 17 January 1981. However, the mill reported the installation of additional machinery (*viz.* 6 drying cylinders) and increase in production to the Director General of Technical Development on 26 July 1980 and the actual production of 5,515 tonnes during 1980 was also far in excess of the original capacity of 4,000 tonnes per annum. Further, the monthly production was in excess of 333.3 tonnes (1/12th of 4,000 tonnes) even from January 1980 onwards and ranged between 400 to 500 tonnes during January, February, May, July, September 1980 and between 500 and 600 tonnes during August, October, November and December 1980.

The Ministry of Finance while accepting the basic facts have stated (November 1982) that the eligibility of the assessee to exemption is being examined further.

(*ii*) As per a notification dated 18 June 1977 on uncoated and coated printing and writing paper (other than poster paper) manufactured in a paper mill whose installed capacity exceeds 5,000 tonnes per annum but not 10,000 tonnes, duty was leviable at 12.5 per cent *ad valorem* provided the paper was of a substance not exceeding 25 grammes per square metre and contained not less than 50 per cent by weight of pulp made from bagasse, jute stalks, cereal straw, etc.

A manufacturer cleared during December 1980, 65,054 kilogrammes of uncoated printing paper produced out of 50,000 kilogrammes of wood pulp after paying duty at 12.5 per cent *ad valorem*. No chemical test to determine eligibility for the

concessional rate of duty was carried out by the department. Since wood pulp consumed was more than 77 per cent by weight of paper produced, it is *prima facie* inconceivable how more than 50 per cent by weight of the paper could come from any of the substances mentioned in the notification referred to above. Therefore on 65,054 kilogrammes of paper duty was leviable at 25 per cent *ad valorem*. Payment of duty at concessional rate of 12.5 per cent resulted in duty being levied short by Rs. 36,593.

The mistake was pointed out in audit in October 1981.

The Ministry of Finance have confirmed the facts (November 1982).

2.30 Cotton fabrics

Section 2(f) of the Central Excises and Salt Act, 1944, as amended in February 1980 stipulates that processes of bleaching, mercerising, dyeing, printing etc. of cotton fabrics are manufacturing processes. Tariff item 19 was also amended to cover cotton fabrics subjected to the process of bleaching, mercerising, dyeing, printing etc. If an unprocessed cotton fabric on which appropriate duty has been paid is further subjected to any of the above processes, it being subjected to further manufacturing, excise duty will again be leviable on it. As per a notification issued on 24 November 1979, unprocessed cotton fabrics, when used, within the factory in which they were manufactured, for further manufacture into processed cotton fabrics, are exempt from duty of excise as well as the additional duties of excise payable on the unprocessed cotton fabrics.

From nine composite textile mills grey (unprocessed) cotton fabrics were cleared to other manufacturing units managed by the same manufacturers, for being processed. The clearance was made under bond without payment of duty during the period from April 1980 to September 1981. Duty not levied amounted to Rs. 1.66 crores which was, however, not also demanded at the time of the final clearance of the processed fabrics from the other units, as deferred levy of duty.

On the omission being pointed out in audit (October 1981 to February 1982), the department stated (January to March 1982) that under the relevant Central Excise Rule, the unprocessed fabric could be cleared under bond without payment of duty from one licensed premises to another and the collection of duty on the fabrics thereby deferred for payment at the point of its final clearance after the cloth is processed. However, the reasons for allowing exemption from payment of duty when the processing was not done in the same factory were not given.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

2.31 Other manufactured goods

(*i*) On wool tops and carded gilled slivers containing more than fifty per cent by weight of wool calculated on the total fibre content, duty is leviable under tariff item 43. As per a notification dated 1 March 1979, levy of duty is exempt on carded gilled slivers, if used in the manufacture of dutiable wool tops.

A manufacturer of wool tops and carded gilled slivers produced the wool tops from the carded gilled slivers and in the process slivers of short length were separated. He termed them as noils (which, however, are entirely different from slivers) and did not pay duty on them and his action was accepted by the department. The slivers of short length were used in the manufacture of yarn on woollen system. On the 1,12,734 kilogrammes of slivers obtained from carded gilled slivers, non-levy of duty amounted to Rs. 10,12,625 on clearances made during the period from July 1979 to September 1981.

The omission to levy duty was pointed out in audit (February 1982) to the department.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*ii*) As per a notification issued on 24 April 1962 and amended by subsequent notification on 27 June 1964, with effect from 1 March 1964, iron in any crude form including pig iron, scrap

iron, melting iron or iron cast in any other shape or size falling under tariff item 25 and produced out of old iron or steel scrap or scrap obtained from duty paid virgin metal is exempt from the payment of excise duty leviable thereon.

In Nasik a manufacturer of iron casting produced out of duty paid pig iron (virgin metal) and scrap generated during the process of casting, availed of the exemption under the aforesaid notification. The notification as it is worded does not allow of duty paid virgin metal being directly used for manufacture of iron in any crude form. Only the use of old iron, steel scrap or scrap obtained from duty paid virgin metal is allowed. The incorrect allowance of exemption resulted in non-levy of duty amounting to Rs. 7 lakhs on clearances made during the year 1980-81. Similarly on clearances made by two other manufacturers in Bombay and Ahmedabad duty was levied short by Rs. 1,92,920 and Rs. 81,310 respectively.

On the mistakes being pointed out in audit (January 1982), the department stated (April 1982) that the exemption was applicable to iron in any crude form *i.e.* all products falling under tariff item 25 and manufactured from duty paid pig iron also.

The Ministry of Finance have stated (November 1982) that duty is leviable only on iron in crude form or iron cast but not both. However such a view would make the notification redundant in many respects.

(*iii*) As per a notification dated 21 June 1969 levy of duty was exempted on zinc dust, zinc powder, zinc plates and zinc sheets falling under sub-items (1) and (2) of tariff item 26B which are used in the manufacture of zinc unwrought in the factory of production.

On 10,903 tonnes of zinc cathodes and ingots cleared by a manufacturer during the period from August 1976 to March 1981 no duty was levied on the ground that the products cleared

were to be used in the manufacture of zinc dust and powder. The notification dated 21 June 1969 does not visualise such clearances being exempted from levy of duty. The incorrect application of the notification to the case resulted in duty amounting to Rs. 2.98 crores not being levied.

On the mistake being pointed out in audit (August 1977), the department stated (May 1978) that the case was referred to the Central Board of Excise and Customs which clarified on 21 August 1981 that zinc dust and zinc powder (falling under tariff item 68) are not unwrought products of zinc, and accordingly the exemption in the above referred notification would not be available on the said clearances. The department issued show cause-*cum* demand notice in July 1982. Report on recovery is awaited (July 1982).

The Ministry of Finance have confirmed the facts (November 1982).

2.32 **Machinery and miscellaneous manufactured articles**

(*i*) As per a notification issued in April 1968 rotors and stators (falling under sub-item D of tariff item 30) are exempt from the whole of duty leviable thereon, if such rotors and stators are used in the factory of production as component parts in the manufacture of 'Electric Motors' (falling under sub-items A to C of tariff item 30) on which duty of excise is leviable whether in whole or in part. As per another notification issued in March 1969, electric motors are exempt from duty, if used in the factory of production as component parts in the manufacture of domestic electrical appliances, falling under tariff item 33C.

Three manufacturers of rotors and stators, used them as component parts in the manufacture of electric motors, which in turn were used in the manufacture of "Domestic Electrical Appliances" falling under tariff item 33C. Because the electric motors were wholly exempted from levy of duty as per the notification of March 1969 exemption as per notification of April 1968 was not available. However, no duty was realised on electric

motors. There was, however, no notification to exempt duty on rotors and stators used in manufacture of "Domestic Electrical Appliances". In the result duty was recovered short by Rs. 13.22 lakhs on clearances during the period July 1975 to June 1981.

On the mistake being pointed out in audit (August 1981, September 1981 and March 1982), the department stated (May and June 1982), that the stators and rotors were exempt from duty under the notification of March 1969, which is not correct so long as duty is not leviable on the motors.

The Ministry of Finance have confirmed the basic facts and have stated (November 1982) that the admissibility of the exemption is under consideration.

(*ii*) As per a notification issued on 1 March 1978 levy of duty on power driven pumps (falling under tariff item 30A) designed primarily for handling water (as for example 'deep tube-well turbine pumps') is exempt. A High Court has held (in case of M/s. Jyoti Ltd. *versus* Union of India) 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.

A manufacturer of 'deep tube-well turbine pumps' was allowed to avail of exemption from duty in respect of such pumps under the aforesaid notification. But non-levy of duty on accessories (which would fall under tariff item 68) amounted to Rs. 11.22 lakhs on the clearances made during the period from July 1979 to December 1980.

On the mistake being pointed out in audit (March 1981), the department stated (February 1982) that the aforementioned decision of the High Court related to a particular case and a particular assessee and had no general application. The reply did not touch upon the point why the judicial interpretation of the notification was not adopted by the department in order to safeguard revenue.

The Ministry of Finance have stated (November 1982) that demand for Rs. 7.77 lakhs on accessories cleared during the period from September 1981 to February 1982 was raised and penalty of Rs. 1 lakh imposed. The licensee filed a writ petition theiragainst and interim injunction was granted by the High Court.

(*iii*) By a notification dated 1 March 1975 parts of gramophones, record players etc. which are classifiable under sub-item (ii) of tariff item 37A were exempted by Government from duty if they are used in the factory of production in the manufacture or assembling of goods like gramophones, record players etc. classifiable under sub-item (i) of tariff item 37A. The notification did not cover styli which are separately classifiable under sub-item (v) of tariff item 37A, even though they are sub-parts of cartridges which are parts of gramophone etc. classifiable under sub-item (ii). According to well established rules of interpretation, the heading providing most specific description of goods should be preferred to heading providing a mere general description and styli can therefore never be classified under sub-item (ii) but only under sub-item (v).

As per another notification dated 25 August 1962 exemption of duty is allowed on parts and accessories of gramophones when they are fitted in radiograms falling under tariff item 33A(3). This notification is not limited to parts of gramophones falling under sub-item (ii) of tariff item 37A unlike the other notification.

A factory manufacturing 'styli' and clearing them, as such, for use as spares after payment of duty, fitted some of them also on pick-up cartridges but without payment of duty, though the styli were distinct excisable goods falling under sub-item (v) of tariff item 37A. The cartridges were cleared after payment of duty under sub-item (ii) of tariff item 37A. In the absence of any exemption from duty on styli going into manufacturing of cartridges and the express requirement in the language of the notification of 1 March 1975 that only parts falling under sub-item (ii) are exempt from duty, the underassessment of duty on

the styli amounted to Rs. 4,18,851 in respect of the period March 1975 to July 1980.

The underassesssment was pointed out in audit in November 1977. The department did not accept the objection. The Board considered this question in a Conference of Collectors in November 1981 and Audit was informed (December 1981) by the Ministry that when complete pick up cartridges are used in the manufacture of items falling under sub-item (i) of tariff item 37A, styli, falling under sub-item (v), though not under sub-item (ii) of tariff item 37A, will also be entitled to exemption under notification dated 1 March 1975. In the view of Audit, the stand of the Ministry will not be correct so long as the reference to sub-item (ii) in notification dated 1 March 1975 is not deleted and it is not also extended to cover sub-item (v), as in notification dated 25 August 1962.

The Ministry of Finance have stated (November 1982) that credit for duty paid on styli could have been obtained under Rule 56A of the Central Excise Rules and no loss of duty seems to be involved in the case. However, no action to rectify the view taken in November 1981 and directing recourse to Rule 56A instead, has been taken so far (November 1982).

(*iv*) As per a notification issued in May 1970, levy of duty on metal containers (falling under tariff item 46) manufactured without aid of power, is exempt. Printing done on metal sheets, which is specific or special to the metal containers of a particular manufacturer, is a process in the manufacture of the metal containers and if such process is carried out with the aid of power, levy of duty will not be exempted under the said notification. This was also clarified by the Central Board of Excise and Customs in February 1977.

A manufacturer of metal containers used tinned sheets weighing 69,675 kilogrammes in producing metal containers, without the aid of power. However, with the aid of power, the name, trade mark and particulars of the manufacturer were printed on

metal containers valuing Rs. 7,13,338 but duty amounting to Rs. 1,12,350 was not levied by the department during the year 1980-81.

On the mistake being pointed out in audit (June 1981), the department stated (June 1981) that a demand for Rs. 1,12,350 has since been raised as a precaution, but did not admit the objection.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

2.33 **All other goods not elsewhere specified**

(*i*) As per a notification dated 1 March 1975 levy of duty on animal feed (including compound livestock feed) falling under tariff item 68 was exempt.

A manufacturer of aureomycin chlortetracycline was allowed to classify his products under tariff item 68 and clear it under the aforesaid notification as 'animal feed'. The literature on the product indicated that the product was to be mixed in small quantities with 'animal feed' for promoting growth, production and feed efficiency in poultry, dairy cattle, pigs etc. The product was, therefore, a supplement to animal feed and not animal feed as such and was not eligible for exemption from duty. The irregular allowance of exemption resulted in duty being levied short by Rs. 6.27 lakhs on clearances made during the period from April 1975 to March 1982.

The irregular grant of exemption was pointed out in audit in February 1980 when the department agreed to look into the case. It subsequently issued ten show cause-*cum* demand notices for Rs. 6.31 lakhs covering clearances made during the period referred to above.

The Ministry of Finance have stated (November 1982) that all the demands (except for one amount of Rs. 4,700) have since been confirmed. Report on recovery is awaited.

(*ii*) Upto end of February 1979, rims of cycles were classifiable under tariff item 35 and exempt from payment of duty; thereafter they were classifiable under tariff item 68 whereunder duty was payable at 8 per cent *ad valorem*. By a notification issued on 1 March 1979, the duty on the rims was brought down to 5 per cent as against the full rate of 8 per cent *ad valorem* and by another notification issued in June 1980 they were exempted from the whole of the duty. Exemption from duty in respect of rims falling under tariff item 35 as well as under tariff item 68 was limited to rims of cycles and did not cover rims of cycle rickshaw or heavy duty cycle rims.

A leading manufacturer of tyres was also engaged in manufacture of cycle rims, cycle rickshaw wheel rims and heavy duty cycle rims. On clearances of 'cycle rickshaw rims' and 'heavy duty cycle rims' also he was allowed to avail of the aforementioned concession of exemption which was meant for parts of 'cycles' only. As the 'cycle rickshaw rims' and 'heavy duty cycle rims' were not 'cycle rims' or parts of cycles, they were not eligible for concessional rate of duty or exemption from duty and they were assessable to duty at the full rate under tariff item 68.

On the mistake being pointed out in audit (February 1981), the department stated (September 1981) that in the classification list furnished, the manufacturer did not declare that he also manufactured rims meant for cycle rickshaws. Show cause-*cum* demand notice was issued (December 1981) for an amount of Rs. 1,80,533 relating to the period 10 May 1979 to 31 May 1979. The demand relating to the period prior to 10 May 1979 was being raised. A case of excise offence had also been booked against the unit. Report on recovery and adjudication is awaited (April 1982).

The Ministry of Finance have admitted the objection (September 1982).

2.34 **Exemptions to the extent of duty paid on inputs**

(*i*) As per a notification issued in March 1969, electric motors (falling under tariff item 30) if used in the factory of production as component parts in the manufacture of electric fans (falling under tariff item 33) were exempt from the whole of duty leviable thereon. By another notification issued in March 1979, subject to the procedure set out in rule 56A being followed electric motors, were exempted from so much of the duty payable as was equivalent to the duty paid on the electrical stampings and laminations (falling under tariff item 28A) used in their manufacture; similarly electric fans were exempted to the extent of duty paid on electric motors, used in their manufacture.

(*a*) A manufacturer of electrical stampings and laminations, used in the manufacture of electric motors which in turn were used in the manufacture of electric fans, was producing all the three products in one premises. He availed of credit for the duty paid on electrical stampings towards the payment of duty on electric motors and credit for the duty so paid on electric motors towards the payment of duty on electric fans, in terms of the two notifications issued in March 1979. However, the second notification only exempted duty to the extent of the duty paid on input while the first notification wholly exempted the duty leviable on electric motors, provided they were used in the factory of production in the manufacture of electric fans. Therefore, no duty being leviable on such electric motors, payment of duty thereon and allowing credit therefor towards abatement of duty leviable on electric fans does not arise. The incorrect application of the notifications resulted in duty being levied short on electric fans by Rs. 70.23 lakhs cleared during the period from 10 October 1981 to 15 March 1982 demand for which period was not barred by limitation. Revenue which was lost on the clearances made during the period prior to that is still to be computed.

On the mistake being pointed out in audit (December 1981), the department stated (May 1982) that a demand notice for

Rs. 70.23 lakhs had been issued to the manufacturer. Information on the loss of revenue for the periods prior to that is awaited.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*b*) As per another notification issued in March 1979, on electrical stampings and laminations (falling under tariff item 28A) levy of so much of the duty as was equivalent to the duty paid on the steel sheets and plates (falling under tariff item 26AA) used in the manufacture of stampings and laminations was exempted.

A manufacturer of electric motors was allowed to clear such motors on payment of duty thereon after exempting therefrom the duty leviable on the electrical stampings and laminations used in the manufacture instead of the duty actually paid on such stampings and laminations, as stipulated in the notification. This resulted in duty being levied short by Rs. 5,47,702 on clearances made during the period from April 1980 to December 1981.

On the mistake being pointed out in audit (September 1981), the department stated (November 1981) that exemption was to be allowed with reference to the gross duty payable on electrical stampings and laminations since the manufacturer was permitted to follow the procedure prescribed in rule 56-A of the Central Excise Rules. By reading rule 56-A into the said notification to such an extent that credit is allowed for all duties paid upto the stage of steel sheets and plates, it would mean that duty had no longer been paid on the stampings and laminations and duty payable on the motors would automatically be the gross duty payable; the exemption notification becoming inapplicable. The double exemption allowed by the department by viewing duty exempted as duty paid on all previous stages of production was to the detriment of revenue and was unauthorised.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*ii*) As per a notification dated 14 July 1978, subject to the certain conditions, tyres and tubes were exempted from the levy of so much of the duty leviable thereon as was in excess of 75 per cent of such duty and under another notification dated 18 June 1977, they were exempted from so smuch of the duty of excise leviable thereon as was equivalent to the duty of excise already paid on the imports (subject to procedure similar to that in rule 56-A being followed).

(*a*) A manufacturer used duty paid raw materials (falling under tariff item 68) in production of tyres and tubes and availed of exemption under both the aforesaid notifications. Instead of the net duty payable on the tyres and tubes (exclusive of duty paid on inputs) being taken as the basis for allowing benefit of 25 per cent concession under the notification dated 14 July 1978, the gross duty leviable inclusive of the duty paid on inputs was taken into account which resulted in duty being levied short by Rs. 4,46,719 on clearances made during the period from July 1978 to May 1979.

On the mistake being pointed out in audit (November 1981), the department did not accept the mistake and held that the duty leviable had to be worked out first, 75 per cent set off and then the credit given for duty paid on inputs. It cited in support an amendment to the notification dated 14 July 1978 vide notification dated 4 June 1979 under which the credit for the duty already paid on goods used as inputs is allowed to be utilised only to the extent of net effective duty payable on the output. This amendment does not imply that an exemption from duty leviable allowed under rule 8(1) to the extent of duty already paid on inputs can allow of duty exempted to that extent being viewed as duty leviable, on which alone 25 per cent concession is to be allowed. A percentage of duty leviable which is to be waived can be computed only after first arriving at the net duty leviable.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*b*) As per a notification dated 16 June 1976, on tyres and tubes cleared in excess of a base quantity (determined in the

manner specified in the notification) 25 per cent of the duty leviable was exempted. The net duty leviable was to be arrived at by reducing from the amount of duty leviable, the duty already paid on input materials, which was allowed to be set off (as clarified by Government in a letter dated 30 January 1978). From 14 July 1978 the exemption was reduced to 12½ per cent and its grant subjected to certain conditions.

A manufacturer of tyres and tubes was allowed exemption at 25 per cent and 12½ per cent but the percentages were calculated on the amount of duty payable, without reducing it by the amount of duty already paid on the raw materials.

This resulted in duty being levied short by Rs. 18,01,362 on clearances made during the period June 1978 to March 1980.

The audit objection was sent to the department in July 1981; their reply is awaited (February 1982).

The case was reported to Ministry of Finance (July 1982); their reply is awaited. The Ministry had accepted audit objections on similar short levies reported in paragraph 2.38(a) of Audit Report for the year 1980-81.

EXEMPTIONS TO SMALL SCALE MANUFACTURERS

2.35 **Specified goods (annual clearance not exceeding Rs. 20 lakhs)**

As per a notification dated 1 March 1978, on specified excisable goods (specified in notification) cleared upto a value of Rs. 5 lakhs in the aggregate in a year, levy of duty was exempted provided the value of clearances of such specified goods during the preceding financial year did not exceed Rs. 15 lakhs. As per another notification dated 30 March 1979 the grant of exemption was also made subject to an additional proviso that the aggregate value of clearances of all excisable goods (other than specified goods exempted from duty) in the preceding financial year did not exceed Rs. 20 lakhs.

As per a notification dated 19 June 1980, from that date duty on first clearances upto a value of Rs. 5 lakhs in a year was exempt and on subsequent clearances upto a value of Rs. 10 lakhs, duty was reduced to 75 per cent of the duty otherwise leviable.

Where goods are produced by a manufacturer on behalf of another manufacturer (loan licensee) grant of exemption to the producer manufacturer is to be decided separately with reference to his own production exclusive of what he manufactures on behalf of the loan licensee who is the manufacturer in law of the products manufactured on his behalf. This view has also been since clarified by Ministry of Finance in consultation with Ministry of Law in their instructions issued on 14 May 1982. However, the production on behalf of loan licensee will count towards, computing the limit of Rs. 15 lakhs and Rs. 20 lakhs.

The Ministry of Finance clarified on 13 October 1977 that the value of job works done (*i.e.* job charges recovered and value of materials received from the customer) should also be taken into account in computing the value of clearances of specified or excisable goods.

(*i*) A manufacturer of containers for storage batteries was producing these specified goods on behalf of a manufacturer of storage batteries and to the latter's design, specifications and trademark embossed thereon. The manufacturer was allowed the benefit of exemption under the aforesaid notifications from the year 1979-80 onwards on the ground that the clearances by the manufacturer of containers did not exceed Rs. 15 lakhs during the preceding financial year. Since the battery manufacturer (loan licensee) on whose behalf the containers were manufactured, was not entitled to the exemption duty was leviable on the manufactures. Failure to levy duty on them resulted in duty being realised short by Rs. 3.04 lakhs during the years 1979-80 and 1980-81.

On the mistake being pointed out in audit (May 1980), the department stated (July 1981) that the loan licensee could not be considered to be the manufacturer of the containers. This

is contrary to the clarification in the Ministry's letter dated 14 May 1982.

The Ministry of Finance have admitted the facts as substantially correct.

(*ii*) A manufacturer of vacuum flasks and parts thereof, and articles made of plastic, availed of the benefit of the exemptions in respect of specified goods on the clearances of flasks and parts thereof (specified goods) made during the years 1979-80 to 1981-82 even though the value of clearances of excisable goods during the respective preceding years had in the aggregate exceeded the limit of Rs. 20 lakhs. This was because of the fact that articles made of plastic were excisable but not specified goods and therefore clearances of articles made of plastic were includible in computing the limit of Rs. 20 lakhs. The manufacturer was therefore not entitled to the benefit of the notification during the years 1979-80 to 1981-82 and the irregular grant of exemption resulted in duty being levied short by Rs. 2,56,316.

On the mistake being pointed out in audit (November 1981), the department (July 1982) accepted the mistake and intimated that a show cause-cum demand notice had since been issued to the manufacturer in December 1981. Report on confirmation of demand and collection is awaited.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*iii*) A manufacturer of synthetic detergents (specified goods) was also producing them on behalf of another company. He paid duty on the clearances made on behalf of the other company and availed of the exemption only on the clearances made on his own account during the years 1979-80 and 1980-81 on the ground that such clearances did not exceed Rs. 15 lakhs. However aggregate clearances including those made on behalf of the other company exceeded Rs. 15 lakhs and for the purposes of computing the limit the clearances had to be aggregated. The mistake resulted in duty amounting to Rs. 1,94,697 not being demanded.

On the omission being pointed out in audit (October 1979), the department stated that the goods cleared by the assessee on behalf of the other company could not be taken into account in computing the limit. This is however contrary to the clarification given by Ministry of Finance in its letter dated 14 May 1982.

The Ministry of Finance have confirmed the facts (November 1982).

(*iv*) A manufacturer of electrical stampings and laminations (specified goods) and electric transformers was allowed remission of duty amounting to Rs. 1.58 lakhs in respect of clearances of electrical stampings and laminations (limited to rupees five lakhs) made during the years 1979-80 and 1980-81. However the value of clearances of all excisable goods made by him exceeded Rs. 20 lakhs during each of the preceding years 1978-79 and 1979-80 and the remission was not admissible. This resulted in duty being levied short by Rs. 1.58 lakhs.

On the mistake being pointed out in audit (April 1981), the department stated (January 1982) that a show cause-cum demand notice had been issued to the manufacturer. Report on confirmation of demand and realisation of the duty is awaited (July 1982).

The Ministry of Finance have confirmed the facts (November 1982).

(*v*) A manufacturer of bolts and nuts and certain other goods was also doing job works on behalf of other manufacturers. On bolts and nuts of value of Rs. 4.89 lakhs, cleared during the year 1980-81, he availed of exemption in respect of specified goods. However, if the value of job works done was also taken into account, the value of clearances of goods made during the year 1979-80 would exceed Rs. 20 lakhs in the aggregate. Therefore the manufacturer was not entitled to the said exemption and in the result duty was levied short by Rs. 76,113.

On the mistake being pointed out in audit (May 1981), notwithstanding the Ministry's clarification, the department stated (November 1981) that the value of clearances for home consumption could not include the value of job work.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*vi*) A manufacturer of pressure cookers (specified goods) and utensils (falling under tariff item 68) cleared excisable goods (including value of the job work done) exceeding Rs. 20 lakhs in value in the aggregate during the preceding financial year and, therefore, the benefit of exemption on specified goods was not available to him. However he was allowed by the department to avail of the exemption, resulting in duty being levied short by Rs. 74,999 on his clearances made during the year 1979-80.

On the mistake being pointed out in audit (May 1982), the department stated that a show cause notice had since been issued to the manufacturer. But it related only to short levy of duty on utensils whereas the exemption allowed on pressure cookers was also to be disallowed, since the aggregate value of all excisable goods cleared had exceeded Rs. 20 lakhs.

The Ministry of Finance have confirmed the facts (November 1982).

(*vii*) A manufacturer of transistorised clocks and time pieces (specified goods) and parts thereof (falling under tariff item 68) was allowed to clear them without payment of duties by availing of the exemption in respect of specified goods. However the value of all the excisable goods cleared by him from his three factories exceeded Rs. 20 lakhs and, therefore, duty was levied short by Rs. 49,999 during the year 1979-80.

On the mistake being pointed out in audit (June 1982), the department stated (July 1982) that the value of excisable goods cleared from his three factories amounted to only Rs. 19,36,040 and the charges for job work done amounting to Rs. 1,35,975

were really rental charges for hiring machineries for a few hours to outside parties. The certified accounts, however, indicated that Rs. 1,35,975 had been realised as 'labour charges and machinery job work' indicating that the work was done by the manufacturer as job work and it was not a case of manufacturing activity belonging to a party other than the manufacturer.

The Ministry of Finance have stated (November 1982) that the matter is being looked into.

(*viii*) A manufacturer of electric meters and industrial exhaust fans (both specified goods) and cooling towers availed of the exemption in respect of specified goods even though the value of clearances of all excisable goods exceeded the limit of Rs. 20 lakhs. This resulted in duty being levied short by Rs. 26,809.

On the mistake being pointed out in audit (September 1981), the department stated that value of industrial fans stood included in the value of cooling towers and the limit of Rs. 20 lakhs was therefore not exceeded. The notifiction refers to 'value of clearance of all the excisable goods' and not to 'the value of goods cleared'. Therefore, the value of all excisable goods falling under each tariff item has to be included in computing the aggregate which thereby exceeded Rs. 20 lakhs. The value of excisable goods cleared or deemed cleared and captively used cannot be excluded in computing the aggregate. The reply of the department is, therefore, not correct.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

2.36 **Irregular grant of exemption to small scale units**

As per a notification dated 1 March 1979, on clearance of goods (falling under tariff item 68) of value not exceeding Rs. 15 lakhs in the aggregate, levy of duty was exempted, in respect of small scale units with investment on plant and machinery not exceeding Rs. 10 lakhs (Rs. 20 lakhs from 19 June 1980).

On clearances beyond the first clearance valuing Rs. 15 lakhs, duty in excess of 4 per cent *ad valorem* was exempted. As per another notification dated 19 June 1980 the limit of Rs. 15 lakhs for full exemption was raised to Rs. 30 lakhs with no exemption beyond that limit. However, if the total value of the said excisable and non exempted goods (falling under tariff item 68) cleared for home consumption by a manufacturer or on his behalf (but excluding clearances made to a primary manufacturer or loan licensee) from one or more factories in the preceding financial year exceeded Rs. 30 lakhs, the exemption was not available.

(*i*) A manufacturer of corrugated boxes and printed cartons (falling under tariff item 68) cleared them without payment of duty claiming exemption from duty on printed cartons (as being products of printing industry) under a notification issued on 1 March 1975. On corrugated boxes, exemption was claimed on account of value of clearances by a small scale unit being less than Rs. 30 lakhs.

The value of corrugated boxes cleared during the preceding year would not exceed Rs. 30 lakhs only if the value of cartons was excluded. The printed cartons being products of packaging industry and not that of printing industry, exemption was not available in respect of them under the notification dated 1 March 1975; as was also clarified by the Board on 3 January 1976, and further reiterated in a Tariff Advice issued on 27 August 1980. Accordingly the value of corrugated boxes and printed cartons cleared (taken together) exceeded Rs. 30 lakhs during each of the years 1978-79 and 1979-80 and the manufacturer was not entitled to the two exemptions. This resulted in duty amounting to Rs. 5,53,376 not being demanded by department.

On the mistakes being pointed out in audit (November and December 1980), the department stated (December 1981) that the duty had since been demanded, besides imposing a penalty of Rs. 2,00,000 on the manufacturer.

The Ministry of Finance have stated (July 1982) that the manufacturer has filed a revision petition against the order in appeal of the Central Board of Excise and Customs and recovery of penalty and duty amounting to Rs. 5,07,507 as per the Board's order in appeal on the case, has been stayed.

(*ii*) A unit converting plates, sheets, angles and channels into bellows, duct and silencers for captive use as well as for sale, claimed exemption from payment of duty on the value of the raw materials, under a notification dated 30 April 1975, on the plea that it was engaged on job work. This related to the period from April 1979 to March 1981. However, during the period from April 1979 to August 1980, it also availed of the exemption under the notification dated 1 March 1979, because the value of clearances in the previous financial year of the above goods falling under tariff item 68 was within the limit of rupees thirty lakhs. Since the conversion involved complete transformation of the plates, sheets etc., which lost their identity in the process, it was not a case of return of the same article after a process of manufacture. Therefore the unit was not covered by notification dated 30 April 1975 applicable to job works and the unit was required to pay duty amounting to Rs. 4,91,286 relating to the period April 1979 to March 1981. Further, the limit of rupees thirty lakhs was also exceeded, upon inclusion of the cost of raw materials recovered for job work and therefore the exemption availed of under the notification dated 1 March 1979 was also incorrect and this had resulted in duty being further levied short by Rs. 62,140 during the period from April 1979 to August 1980.

On the mistakes being pointed out in audit (November 1980), the department issued show cause notices in February 1981 and April 1981, demanding duty amounting in all to Rs. 5,53,426. Report on recovery is awaited (December 1981).

The Ministry of Finance have admitted the objection (August 1982).

(*iii*) A manufacturer of graphite crucibles and graphite powder did not pay duty on the powder cleared during the years

1979-80 and 1980-81 on the ground that it was natural black mineral which was exempt from duty under a notification dated 29 April 1955. However, the graphite powder was manufactured from graphite after processing it and further it had a distinct name, character and end use. As such it did not remain natural black mineral and was classifiable under tariff item 68. Further, the value of clearances of the two products (mentioned above) during the financial years 1978-79 and 1979-80 exceeded Rs. 30 lakhs and the manufacturer was therefore not entitled to exemption and was liable to pay duty at the rate of 8 per cent *ad valorem* in respect of all the goods cleared during the years 1979-80 and 1980-81. The incorrect grant of exemption to the manufacturer resulted in duty being levied short by Rs. 4.34 lakhs on the clearances made during the two years.

On the omission being pointed out in audit (February 1981), the department stated (January 1982) that a show cause-*cum*-demand notice had since been issued to the manufacturer. The department also agreed (June 1982) that the graphite powder having undergone a process of manufacture was not just purified ore and was, therefore, excisable. Report on recovery is awaited (June 1982).

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*iv*) A manufacturer of goods, falling under tariff item 68, availed of the benefit of the aforesaid notifications during the year 1980-81, even though the value of his clearances exceeded Rs. 30 lakhs. The term 'value' not having been clarified by any explanation in the notification, unlike in some other notifications, the application of the limit of Rs. 30 lakhs should have been done with reference to the value of the goods to the customers as understood in common parlance (as held by Supreme Court on 25 March 1981 in the case of Indo International Industries *Vs.* Commissioner of Sales Tax U.P.). The incorrect grant of the exemption resulted in duty being levied short by Rs. 2.40 lakhs during the year 1980-81.

On the mistake being pointed out in audit (September 1981), the department did not accept the objection.

The Ministry of Finance have stated (November 1982) that demand for Rs. 2.11 lakhs has been raised and is pending adjudication.

(*v*) A manufacturer of goods, falling under tariff item 68, also manufactured goods falling under the same tariff item on behalf of another manufacturer (primary manufacturer or loan licensee). Although the latter manufacturer was not eligible for the aforesaid exemption, but only the former, clearances on behalf of the latter effected by the former were allowed to be made without payment of duty. In the result duty was levied short by Rs. 1,03,426 on clearances made during the period from April 1979 to July 1981.

When the mistake was pointed out by Audit (August 1980), the department stated (March 1982) that the value of the clearances made by the former manufacturer on behalf of the latter amounted to Rs. 2,37,920 in the year 1979-80 and Rs. 9,74,865 in 1980-81 (upto July 1980) and the loan licensee had since paid (June 1981) duty amounting to Rs. 19,034 in respect of the year 1979-80. However no duty had been paid by either manufacturer on clearances made in 1980-81.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*vi*) As per a notification issued on 1 March 1978 and amended on 25 March 1981, duty leviable on pigments and varnishes (falling under tariff item 14) cleared by small scale units was reduced by 2 per cent *ad valorem* on clearances upto an aggregate value upto rupees one crore and subject to the condition that the aggregate value of first clearances of the said goods at reduced duty by or on behalf of the manufacturer from one or more factories for home consumption did not exceed Rs. 1 crore in any financial year. In some of the exemption notifications

issued under rule 8(1) of the Central Excise Rules, where value in relation to clearances is referred to, an explanation exists to clarify that value (in the context of total value or aggregate value) shall have the same meaning as in section 4 *ibid.* However, in the notification dated 1 March 1978 there is no such explanation.

Two manufacturers were allowed to clear paints and varnishes during the years 1979-80 and 1981-82 after reducing duty by 2 per cent *ad valorem* even though clearances in each of the two years valued more than Rs. 1 crore. The aggregate value of clearances excluding Central Excise duty, Sales Tax etc. did not, however, exceed Rs. 1 crore. It has been judicially held that value for the purpose of exemption notification is the market value inclusive of all duties and taxes, and not the deemed value as in section 4 of the Central Excises and Salt Act, 1944 where the term "value" is defined only in the context of charging duty and not in relation to aggregate value of clearances. Also any term not defined in an enactment must be understood in common parlance. The word "value" in common parlance would mean the price of the article which one has to pay to procure it inclusive of duties and taxes. In the result duty was levied short by Rs. 1,38,523 in respect of clearances made during the period from April 1979 to December 1981.

On the mistake being pointed out in audit (February 1982), the department confirmed the facts (July 1982); their reply on the acceptance of the objection is awaited.

The Ministry of Finance have stated (November 1982) that it is difficult to accept the proposition that in the scheme of Central Excise Law, the expression value (unless specifically defined otherwise) could mean anything else than the value determined under section 4 of the Central Excises and Salt Act, 1944. However, the concept of value in the Act is not a simple definition and the need for explanations in notifications has already been felt as aforesaid.

SHORT LEVY OF DUTY DUE TO IRREGULAR UTILISATION OF CREDIT ALLOWED FOR DUTY PAID ON INPUTS

Under rule 56A of the Central Excise Rules, 1944, credit is allowed for duty paid on material or component parts which are permitted to be brought into the factory as inputs in the manufacture of finished excisable products and the credit is allowed to be utilised towards payment of duty on such specified finished products and also for payment of duty on such material or component parts which are cleared from the factory as such.

2.37 **On clearance of waste or scrap**

Sub rule (3)(iv)(a) of rule 56A *ibid* lays down that any waste arising out of raw materials or component parts on which such credit has been allowed having become non-duty paid should be cleared only on payment of duty. The Ministry of Law, also advised in February 1979 that utilisation of such credit for payment of duty on waste was not allowed under the rule.

(*i*) A manufacturer was allowed credit for duty paid on "tin bars" (falling under tariff item 26AA) from which hot rolled steel sheets are manufactured and he utilised the credit in payment of duty on clearance of scrap (cut ends of tin bars) arising in course of cutting of tin bars into required sizes, which was not the finished product (hot rolled sheets). Scrap was also not the original raw material (tin bars) being cleared as such. The irregular utilisation of the credit resulted in duty being levied short by Rs. 9,54,940 on clearance of scrap made during the period from April 1978 to June 1979.

On the mistake being pointed out in audit (November 1979), the department stated (May 1980) that the scraps were nothing but tin bars in small pieces and hence, utilisation of proforma credit was in order. The scraps in question, however, were neither tin bars in commercial parlance, nor did they correspond to what was originally brought into the factory. The view of the department was not correct.

The Ministry of Finance have stated (November 1982) that the cuttings in question were 'waste' and not 'scrap' but still remained identifiable as the original tin bars and were classifiable as iron or steel products under tariff item 26AA. However, this is contrary to their clearance as scrap in commercial parlance.

(*ii*) A manufacturer permitted to bring in duty paid 'blooms and billets, (falling under tariff item 26AA) for use in the manufacture of iron or steel products (falling under same tariff item) was allowed credit on the duty paid, which he utilised on payment of duty on steel waste cleared. Such waste not being either the finished product or the input material, credit was not available towards duty payable on it. The irregular utilisation of credit resulted in duty being levied short by Rs 7,63,086 on clearance of 2,102 tonnes of waste during the period 1 August 1980 to 31 December 1981.

On the mistake being pointed out in audit (December 1981), the department recovered (February 1982) the duty.

The Ministry of Finance have not admitted the audit objection because the department was aware of the irregularity even before Audit raised the objection. However, the recovery was made only after audit raised the objection on the irregularity which had continued for over a year.

(*iii*) A manufacturer using duty paid steel billets and ingots for the manufacture of steel rods, cleared steel melting scraps arising in the process of manufacture as steel products and utilised the credit in respect of the duty paid on the billets towards such clearance. The irregular utilisation of credit resulted in duty being levied short by Rs. 69,074 on clearance of scrap during the period from July 1976 to February 1978.

On the mistake being pointed out in audit (April 1980), the department did not accept the mistake and stated (January 1982) that the scrap being cut ends of billets were not scraps but only billets. However, as per records, the cut ends were sold as 'melting scrap' which in some cases, were sold to electric arc furnace

units; and the manufcturer also confirmed that the cleared scrap (below 3 inches) could not be rerolled and is used only for melting purposes in electric arc furnace units.

The Ministry of Finance have stated (November 1982) that clearance of scrap and cut ends can be viewed as clearance of steel ingots and steel scrap which are the same goods in the scheme of Central Excise Law but billets are distinguishable and distinction between cash payment and by proforma credit is not material in practical terms. In the interest of revenue such distinction cannot be given up nor the distinction between the scrap and ingots.

(*iv*) A manufacturer was allowed credit for duty paid on cold rolled sheets used in the manufacture of cold rolled strips but was allowed to utilise the credit also for payment of duty on clearance of steel melting scrap. This resulted in duty being levied short by Rs. 1,64,528 on clearance of scrap during the period from July 1981 to December 1981.

On the mistake being pointed out in audit (January 1982), the department stated that the mistake had been detected in June 1981. However, the demand notice for Rs. 1,64,528 was issued only on 29 January 1982 after audit pointed out the mistake.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*v*) Two manufacturers were allowed credit for duty paid on steel sheets used in the manufacture of electrical stampings and laminations which they utilised in paying duty on clearance of steel scrap arising in the process of manufacture. This resulted in duty being levied short by Rs. 71.72 lakhs on clearances of scrap during the period from April 1979 to April 1981.

On the mistake being pointed out in audit (June 1981), the department accepted the mistake (August 1981) and stated (April 1982) that one assessee had paid Rs.4.5 lakhs on clearances made during the period not barred by limitation, the balance amount

of Rs. 7.9 lakhs has become a loss of revenue. In the other case demand for Rs. 93.33 lakhs has been raised on clearances made from August 1979 to May 1982.

The Ministry of Finance have confirmed the facts (November 1982).

(*vi*) A Public Sector unit manufacturing electrical stampings and laminations out of imported steel sheets availed of aforesaid credit in respect of the countervailing duty paid on the sheets at Rs. 325 per tonne. 45 per cent of the steel sheets became waste during manufacture and were sold as scrap without payment of duty or write back of credit for duty paid in respect of them. On clearances of 2,030 tonnes of waste sheets during the period from June 1980 to October 1981 duty was consequently levied short by Rs. 6,59,732.

The irregularity was reported in audit to the department in March 1982.

The Ministry of Finance have admitted the objection (November 1982).

2.38 **Inputs for exempted goods**

As per proviso (i) to rule 56A(2), no credit shall be allowed in respect of any material or component parts of the finished excisable goods which are exempt from the whole of the duty of excise leviable thereon or are chargeable to nil rate of duty.

(*i*) (*a*) A manufacturer was allowed credit for duty paid on electrical stampings and laminations brought into factory and used in the manufacture of electric motors; the credit was used towards payment of duty on the motors. He was again allowed credit for duty so paid on electric motors which were used in the production of electric fans and the credit was used towards payment of duty on the fans. A notification exempting such electric motors from whole of the duty payable having statutory force, the manufacturer had no option to avail of the credit for duty paid on the stampings and laminations under rule 56A. The duty

realised on such motors, and credit for the duty realised on such motors were extra legal acts. Consequently the benefit of a notification dated 14 August 1965, to the extent of duty paid on the motors (these were exempted from duty) under certain conditions, was also not available on clearance of the fans and full duty was leviable on the electric fans. The irregular allowance and utilisation of credit resulted in duty being levied short by Rs. 4,16,162 on clearances of fans made during the period from July 1979 to October 1979.

On the mistake being pointed out in audit (December 1979), the department stated that the manufacturer could choose to avail of the credit under rule 56A in respect of the duty paid on the stampings as well as on the motors. The reply is not correct since statutory exemption notification in respect of electric motors deprives him of credit for duty paid on stampings used in the manufacture of motors wholly exempt from duty, as per proviso (i) to rule 56A(2).

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*b*) Two manufacturers were allowed credit for duty paid on electrical stampings and they utilised it for payment of duty on electric fans. The electrical stampings were, however, used as inputs in the manufacture of electric motors (excisable products) which were used in the manufacture of electric fans in the same factory. The motors being exempt from payment of duty as per a notification the allowance and utilisation of credit was irregular and resulted in duty being levied short by Rs. 1.13 lakhs and Rs. 4.08 lakhs respectively on the clearances made by the two manufacturers during the period from December 1980 to March 1981 and from January 1981 to November 1981 respectively.

On the irregularity being pointed out in audit (August and December 1981), the department stated (January 1982 and May 1982) that according to a clarification issued by the Government of India 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 an intermediate product, towards payment of duty on specified finished product was permissible if the intermediate product has been manufactured and consumed within the factory manufacturing finished product. Such a clarification by the Ministry does not override the provisions of proviso (i) to rule 56A(2) referred to above.

The Ministry of Finance have accepted the facts as correct (November 1982).

(*ii*) A manufacturer was allowed credit for duty paid on billets used in the manufacture of round bars though round bars manufactured from duty paid billets were wholly exempt from duty as per a notification issued in November 1963. The manufacturer also produced steel ingots in electric furnace using scrap (including scrap arising out of the use of duty paid billets in the manufacture of round bars). He also used the ingots to produce round bars. He utilised the credit towards payment of duty on clearance of the steel ingots. The allowance and utilisation of credit were irregular and resulted in duty being levied short by Rs. 7.19 lakhs on clearances made during the period from January 1976 to 14 July 1977.

On the mistake being pointed out in audit (June 1981), the department did not accept the objection (May 1982).

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*iii*) Credit for duty paid on raw materials or component parts and its utilisation is accounted for separately in respect of basic duty, special duty and additional duty.

Credit for duty paid on steel sheets and plates used in the manufacture of safes and strong boxes was allowed to a manufacturer. However, he availed of credit for both basic excise duty and special excise duty paid on iron and steel sheets

towards payment of only basic excise duty on safes and strong boxes till 18 June 1980 when special excise duty became leviable on safes and strong boxes etc. This resulted in duty being levied short by Rs. 59,165 on clearances of safes and strong boxes prior to 18 June 1980.

On the mistake being pointed out in audit (April 1981), the department did not accept the objection.

The case was referred to Ministry of Finance in September 1982; their reply is awaited.

(*iv*) As per a notification dated 1 March 1969, electric motors were exempted from the whole of the duty payable thereon, provided such motors were used in the factory of production as component parts in the manufacture of electric fans on which the duty of excise was leviable whether in whole or in part.

A manufacturer was allowed credit for duty paid on copper strips and sheets used in the manufacture of brass barrels for making torch bodies. A portion of the copper strips and sheets were used in the manufacture of non-dutiable goods like torch switches and part of the credit relating to such use was not disallowed; instead it was also utilised towards payments of duty on brass barrels. The irregular utilisation of credit resulted in duty being levied short by Rs. 7,52,160 on the brass barrels cleared during the period from January to September 1981. However, on 1,17,408 kilogrammes of strips and sheets credit allowed during the period from August to December 1980, amounting to Rs. 90,404 was written back in September 1981.

On the mistake being pointed out in audit, the department stated (June 1982) that further credit amounting to Rs. 11,04,414 was withdrawn in December 1981 and March 1982.

The Ministry of Finance have confirmed the facts (November 1982).

(*v*) A manufacturer was allowed credit for duty paid on hard-pitch, coal tar pitch etc. (falling under tariff item 68)

which was used in the manufacture of anodes and cathodes which were excisable goods and were used in the electrolytic cells installed for the manufacture of aluminium. The anodes and cathodes were used in the same factory in electrolysing alumina to produce aluminium. The anodes and cathodes were exempt from the whole of duty leviable thereon as per a notification dated 30 April 1975. Therefore, no credit for duty paid on hard pitch, coal tar pitch etc. was to be allowed as per proviso in the notification dated 4 June 1979 (allowing exemption to the extent of duty paid on inputs falling under tariff item 68). Utilisation of the credit towards duty payable on the aluminium was, therefore, irregular. In the result duty was levied short by Rs. 7,72,146 on the clearances of aluminium made during the period from June 1981 to September 1981.

On the mistake being pointed out in audit (February 1982), the department stated (March 1982) that according to a clarification issued by the Central Board of Excise and Customs in June 1980, an intermediate product fully exempt from duty, coming into being during the process of manufacture of a finished product, will not be a bar to utilisation of credit towards payment of duty on the finished product, if the intermediate product has been consumed within the factory in the manufacture of finished product. This clarification is not relevant in this case since the anodes and cathodes did not come into being but were intended to be manufactured. Also they were not intermediate products in the process of manufacture of aluminium but were consumable components of the plant manufacturing aluminium.

The Ministry of Finance have stated (November 1982) that the anodes and cathodes were intermediate products and the utilisation of the credit was in order. The reply does not answer the point that manufacture of intended excisable products for use as consumable plant attachments are not intermediate products coming into existance in the process of manufacture of finished product.

2.39 **Utilisation in other than prescribed manner**

(*i*) As per a notification issued in March 1979 levy of duty on chlorine was exempted if it was used in the manufacture of hydrochloric acid on which duty was payable in whole or in part. If the manufacture of hydrochloric acid was elsewhere than in the factory of producton of chlorine, the procedure set out in Rule 56A was to be followed.

A manufacturer brought in chlorine into his factory under the aforesaid procedure for manufacture of hydrochloric acid which he supplied exclusively to a customer. The hydrochloric acid which remained after such supply was destroyed by him after dilution. Since the full quantity of acid manufactured was not cleared after payment of duty, credit for the duty paid on the chlorine which went into the manufacture of the destroyed acid should have been disallowed. Failure to do so resulted in duty being levied short by Rs. 6,21,078 on clearances of acid made during the period from January 1980 to March 1981.

On the omission being pointed out in audit (July 1981), the department accepted the objection and recovered Rs. 6,21,078 from the manufacturer (July 1981).

The Ministry of Finance have admitted the objection (October 1982).

(*ii*) A manufacturer of motor vehicles, its parts and internal combustion engines, declared marine gear boxes and power take-off as duty paid inputs brought into his factory for use in the manufacture of marine engines and availed of credit for duty paid on the inputs, which he irregularly utilised towards payment of duty on other types of internal combustion engines in which marine gear boxes were not used. This resulted in duty being levied short by Rs. 1,99,772 on clearances made during the period from August 1980 to March 1981. During audit, the department was apprised of it in June 1981 in discussions and through audit inspection report issued on 20 July 1981.

On the irregularity being pointed out in audit, the department stated (October 1981) that the amount had since been recovered from the assessee on 23 July 1981.

The Ministry have not accepted the audit objection (July 1982) because the department was aware of the misutilisation of credit before the audit. However, the recovery was made only after audit raised objection and the irregularity had continued for over a year.

(*iii*) A manufacturer of dry cell batteries availed of credit as aforesaid from 1 August 1979, for the duty paid on the inputs brought into his factory, but a part of every consignment was rejected. He did not keep any account of the rejections. In the result, credit was utilised in excess to the extent of duty paid on the rejected material not used in manufacture during the period 1 August 1979 to 31 December 1981. In the result duty was levied short by Rs. 98,119 on clearances made during the said period.

On the mistake being pointed out in audit (February 1981), the department stated (August 1981) that the instructions had since been issued to rectify recurrence of mistake. It was, however, noticed in audit, again in March 1982, that the manufacturer was not keeping any account of rejections and the mistake persisted.

The Ministry of Finance have accepted the objection (October 1982).

(*iv*) A leading manufacturer of tyre declared rayon and nylon tyre cord warp sheets (then classified under tariff item 68) as input materials to be used in the manufacture of tyres (falling under tariff item 16). He availed of credit, as aforesaid for duty paid on rayon and nylon tyre cord warp sheets, but utilised the credit towards payment of duty on rubber products (falling under tariff item 16A) cleared on 26 and 27 March 1980. The irregular utilisation of credit resulted in duty being levied short by Rs. 2,24,286 on the clearances made on 26 and 27 March, 1980.

The irregularity was pointed out in audit (February 1981) to the department.

The Ministry of Finance have not admitted the objection and have stated (August 1982) that before receipt of audit objection rectificatory action was taken. However, no action was taken between March 1980 and February 1981 and the recovery was barred by limitation; payment was made by the assessee voluntarily in June 1981.

(*v*) Under a notification dated 4 June 1979 all excisable goods on which duty of excise is leviable and 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 subject to a procedure laid down (similar to that in rule 56A) for allowance and utilisation of credit for duty paid on inputs being followed and after declaring the input goods and output products to the department.

(*a*) Two manufacturers of wireless receiving sets, tape recorders and electric fans were allowed credits amounting to Rs. 1,68,282 on duty paid input goods received in their factories on or after 4 June 1979, but before making declarations to the department on 17 August 1979 and 25 May 1980 respectively. The credits were utilised towards payment of duty on finished products.

The irregular utilisation of credit resulted in duty being levied short by Rs. 1,68,282 on clearances of the finished products.

The irregularity was pointed out in audit (April 1981 and March 1982) to the department; their reply is awaited.

The matter was referred to Ministry of Finance in July 1982; their reply is awaited.

(*b*) A factory manufacturing tyres utilised credit amounting to Rs. 7,26,500 allowed to it for duty paid on inputs received after 4 June 1979 but before the submission of requisite

declaration on 27 June 1979. The irregular utilisation of credit resulted in duty being levied short by Rs. 7,26,500.

The irregularity was pointed out in audit to the department in July 1981.

The Ministry of Finance have stated (July 1982) that the audit objections are not admitted because after addition of para 2A to the notification by an amendment dated 21 January 1981, the collector may, for reasons to be recorded in writing and subject to such terms, conditions and limitations as may be imposed in this regard, relax the provisions regarding giving of declaration for claiming credit of duty already paid on inputs. However, report on reasoned decision of Collector if since recorded, in the above two cases, is awaited.

(*c*) A public sector undertaking availed of credit for Rs. 6,80,342 on duty paid inputs, as aforesaid, received during the period from July 1979 to July 1981, but without submitting the requisite declaration.

On the irregularity being pointed out in audit (January 1982), the department stated (June 1982) that a show cause notice has been issued to the assessee. Report on rectification is awaited (August 1982).

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*d*) A manufacturer was allowed credit for Rs. 3,98,998 towards duty paid on the inputs (falling under tariff item 68) received between 4 June 1979 to 17 August 1980 and he utilised credit for Rs. 3,69,046 towards payment of duty on clearance of manufactured products made during the above period. But he had not furnished the requisite declaration to the department.

On the irregularity being pointed out in audit (December 1981), the department accepted the audit objection and raised

(January 1982) a demand for Rs. 3,99,998. Report on recovery is awaited (July 1982).

The Ministry of Finance have confirmed the facts (November 1982).

NON LEVY OF DUTY

2.40 **Suppression of production**

As per rules 55 and 173G of the Central Excise Rules, 1944, every manufactuer of excisable goods is required to maintain account of principal raw materials used in his manufacturing process and submit to the department, monthly, an account of the quantity of raw materials used, goods manufactured and raw materials wasted or destroyed.

A manufacturer of soap did not render such account. The quantity of raw materials purchased by him as per his accounts was in excess of what was needed for the quantity of soaps, on which duty was paid by him after exempting from duty 25,000 kilogrammes of soap per year under two notifications dated 13 July 1968 and 1 March 1973. His records did not show how the excess stock of raw materials was used or disposed of during the years 1973-74 to 1975-76 when the unexplained excess arose. On the value of the soap which should have been manufactured from such excess, duty amounting to Rs. 1,45,256 was leviable which was not demanded by the department during the years 1973-74 to 1975-76.

On the omission being pointed out in audit (December 1976), the department issued (July 1977) a show cause-*cum*-demand notice to the manufacturer. On the subsequent enquiry by audit (March 1980), the department stated (September 1980) that the opinion of the Chemical examiner was that process loss could account for the unexplained excess raw material. However, the notice was still being pursued in March 1982, on the basis of information collected from the manufacturer wherein the process loss between 1 to 47 kilogrammes reported by him as having

occured in manufacturing 23,000 to 23,800 kilogrammes of soap during the years 1973-74 to 1975-76 could hardly explain how the unexplained excess of 68,913 kilogrammes could have been process loss. No further report on action taken by the department had been received till September 1982.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

2.41 Wrongly cleared as non-excisable

(*i*) Under tariff item 68, on "All other goods not elsewhere specified" but excluding "alcohol, all sorts, including alcoholic liquors for human consumption" excise duty is leviable at 8 per cent *ad valorem*. 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 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.

A manufacturer of "Methanol" commercially understood to be an industrial chemical was allowed by the department to clear the product free of duty on the ground that, chemically and technically, methanol is methyl alcohol and "alcohols all sorts" are excluded from levy of duty under tariff item 68. The manufacturer was clearing and selling the product as industrial chemical and not as alcohol. Also it was not subjected to control by the Excise department of the State Government though such control is applied on all alcohols as are commercially understood and used as alcohols. Chemically alcohol is a generic name covering any chemical having the organic alcohol group in its chemical composition, but this technical fact has no relevance to commercial classification. Also the tariff excludes only alcohol and not alcohols. Therefore, failure to levy duty on the product resulted in non levy of duty amounting to Rs. 2.68 crores

*AIR 1973 SC 2440 and AIR 1973 SC 78.

**1981 ELT 432.

during the years 1979-80 and 1980-81. Similarly on clearances of the same product made by another manufacturer during the period from March 1975 to September 1981 duty amounting to Rs. 19.75 lakhs was not levied.

The omissions were pointed out in audit (November 1981); the department has not accepted the objection.

The Ministry of Finance have stated (November 1982) that the matter is under examintion.

(ii) Under tariff item 11(1) duty is leviable on "Asphalt and Bitumen (including cut back bitumen and asphalt) natural or produced from petroleum or shale." From 1982 the tariff item has been renumbered to 11(4). The Central Board of Excise and Customs came to the conclusion that 'blown grade bitumen' which is producad from "straight grade bitumen" does not fall under tariff item 11(1) because it is not produced from petroleum or shale and does not occur naturally. The Board thereupon issued a tariff advice in June 1979 stating that "blown grade bitumen" which is also a variety of bitumen and is produced from duty paid straight grade bitumen would not be liable to duty under tariff item 11. This reasoning applies equally to blown grade asphalt produced only from straight grade asphalt.

(a) A manufacturer of blown grade bitumen producing it from straight grade bitumen on which duty had been paid was allowed to clear the blown grade bitumen without payment of any duty. The description under tariff item 11(1) specifies only certain types of bitumen and, therefore, other types not covered therein were liable to levy of excise duty under tariff item 68. In the result, on 4218 tonnes of blown grade bitumen valuing Rs. 1.56 crores (at Rs. 3,700 per tonne) the duty leviable amounting to Rs. 12.48 lakhs was not demanded. Even if blown grade bitumen were classified under tariff item 11(1) as was done by the manufacturer and approved by the department, contrary to tariff advice issued by the Central Board of Excise and Customs,

the amount of duty leviable which was not demanded (at Rs. 200 per tonne) amounted to Rs. 8.85 lakhs (inclusive of special duty).

The failure to levy duty was pointed out in audit (July 1982) to the department; its reply is awaited (August 1982).

(*b*) Similarly, another manufacturer of blown grade asphalt producing it from straight grade asphalt on which duty had been paid, was allowed to clear the blown grade asphalt without payment of any duty. In the result, on 4427 tonnes of blown grade asphalt valuing Rs. 1.63 crores (at Rs. 3,700 per tonne), the duty leviable under tariff item 68 amounted to Rs. 13.04 lakhs. Even if blown grade asphalt was classified under tariff item 11(1) as was done by the manufacturer and approved by the department, contrary to tariff advice issued by the Central Board of Excise and Customs, the amount of duty leviable which was not demanded (at Rs. 200 per tonne) amounted to Rs. 9.30 lakhs (inclusive of special duty).

On the failure to levy duty being pointed out in audit (February 1980), the department stated (May 1981) that though blown grade asphalt was found to have superior quality, it remains essentially asphalt and that as the duty on straight grade asphalt was already paid, duty is again not payable on the blown grade asphalt. This view of the department is not correct in view of the elaborate manufacturing process involved in converting straight grade asphalt into blown grade asphalt which is an entirely different product technically and commercially with distinctly separate characteristics and uses.

The Ministry of Finance have stated (November 1982) that blown grade bitumen/asphalt would be classified along with straight grade bitumen and, therefore, duty cannot be charged on blown grade manufactured from straight grade. In the absence of a notification exempting the blown grade which is a different product from straight grade and is manufactured from straight grade, no set off has been authorised, there is no authority for not levying duty on blown grade bitumen/asphalt.

(*iii*) As per a notification issued on 1 March 1975, levy of duty on goods falling under tariff item 68 was exempted provided that they were used within the factory of production or any other factory of the same manufacturer as intermediate goods or component part of any goods. Though after amendment on 30 April 1975 the reference to intermediates and components was dropped, it was the intention that "the use of the goods" implied clearance of the goods after further manufacture. Further, as per amendment of 30 April 1975, on machinery retained in factory of production for production of other goods, duty was payable.

Coke oven gas (falling under tariff item 68) produced in a factory was partly used therein and partly supplied to another factory. Such gas not being intermediate goods but finished industrial product, on the entire production of gas duty was leviable upto 29 April 1975. Thereafter, at least on the supplies made to another manufacturer duty was leviable (even after giving a liberal meaning to the word used as including consumed and not necessarily cleared after further manufacture). Failure to levy duty on the gas so cleared during the period from March 1975 to March 1979 resulted in duty amounting to Rs. 13,36,481 not being demanded by the department for over four years.

On the failure being pointed out in audit to the department on 29 August 1979, demand for duty was raised by the department in September 1979. Demand for Rs. 9,93,252 was confirmed and realised, the balance duty amounting to Rs. 2,43,234 relating to the period 1 March 1975 to 17 June 1977 was barred by limitation. A personal penalty of rupees six lakhs was also imposed upon the manufacturer.

Report on recovery of the personal penalty is awaited (October 1982).

The Ministry of Finance have confirmed the facts (November 1982).

(*iv*) As per a notification dated 12 August 1977 levy of duty on the first 12 prints of a cinematograph feature film is exempt

and on subsequent prints duty is leviable at different rates on a graded basis. On films, dubbed into another language the prints in various languages are treated as pertaining to one feature film and the exemption from duty on first twelve prints is not to be allowed separately in respect of each language.

(*a*) Two films laboratories were allowed to clear films dubbed in different languages free of duty upto 12 prints per language, resulting in duty amounting to Rs. 3,91,875 not being realised on clearances made upto November 1980.

On the non levy of duty being pointed out in audit (between April and December 1981), the department stated (May 1982) that in the film, the language media had been dispensed with, and all the prints in the four different languages were identical except for the first few metres, where the names of cast were displayed in different languages. However, on clearances made from June 1977 to February 1981, show cause notices for Rs. 45.54 lakhs due from 9 laboratories were issued on 18 March 1982. Report on recovery or loss of revenue due to demand being barred by limitation is awaited.

(*b*) The department informed a manufacturer on 12 November 1980, that duty should be paid on the first 12 prints of dubbed films also and duty was paid under protest. Subsequently, on 8 December 1980, the department reversed their orders and levy of duty was stopped from that date. The decision was again reversed on 26 February 1981 and duty was paid again under protest from that date. The duty, irregularly exempted during the period from 8 December 1980 to 26 February 1981, amounted to Rs. 90,888.

On the mistake being pointed out in audit (December 1981), the department stated that the Board had on appeal set aside the Collector's orders of 13 October 1980 demanding duty on the dubbed films cleared. The case had been taken up for review by the Government of India and a show cause notice had been

issued on 14 May 1981 on which decision is awaited (July 1982).

The Ministry of Finance have stated (November 1982) that the matter is pending quasi-judicial determination.

(*v*) In an integrated steel plant molten iron was allowed to be removed for manufacture of ingot moulds and bottom steels in the ingot mould foundry, but without payment of duty even though molten iron is specifically indicated as excisable under tariff item 25. This resulted in duty amounting to Rs. 23,98,846 not being levied on clearances made during the period from April 1981 to December 1981.

On the omission being pointed out in audit (May 1982), the department stated (July 1982) that duty on molten iron was not paid in view of "later the better principle". However, there is no such principle enunciated in the Act or the rules made thereunder and the explanation below rule 9 does not allow of such a view to the detriment of revenue.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*vi*) Cotton yarn, in all forms including cones is chargeable to duty under tariff item 18A. As per a notification dated 18 June 1977, single yarn or multiple folded yarn in plain (straight) reel hanks is exempt from duty. No other form of yarn is exempt from duty.

Five manufacturers of yarn in cone form meant for further use within the factory (for manufacture of yarn in double fold plain reel hanks), cleared such cones without payment of duty. The yarn was chargeable to duty under tariff item 18A and duty not levied amounted to Rs. 20,20,731 in respect of clearances made during the period from April 1979 to July 1981.

On the mistake being pointed out in Audit, the department stated that the cones are produced in a continuous process of manufacture and that the cones manufactured and used within the factory are not finished excisable goods, not being of the

standard size in the market. In the light of the explanation introduced in the rules 9 and 49 of the Central Excise Rules as per a notification dated 20 February 1982, intermediate goods finding mention in the tariff as excisable goods and arising in the course of manufacture, whether continuous or not, are subject to levy of duty.

The Ministry of Finance have stated (November 1982) that conversion of yarn in cones into yarn in hank is not manufacture. However, as per explanation(2) below tariff item 18A read with section 2(f)(iv) of the Central Excises & Salt Act defining manufacture, such conversion is manufacture.

(*vii*) On pack sheets made of jute used for packing export consignments of jute, duty is leviable as on any other manufacture of jute.

In nine jute mills duty was not levied on pack sheets used for packing of export consignments, resulting in non-levy of duty amounting to Rs. 17.39 lakhs on clearances made during various periods between April 1974 to October 1979.

On the mistake being pointed out in audit (April and May 1981) the department stated (April 1982) that a demand for Rs. 1,34,967 had since been raised in respect of one mill on 12 May 1981. In respect of the other eight mills demand only on clearances made during the period from 24 February 1979 was raised as a result of audit objection, the duty for periods prior to that being barred by limitation. Loss of revenue on clearances made during the period from April 1974 to January 1979 amounted to Rs. 16.04 lakhs.

The Ministry of Finance while accepting the basic facts have stated (November 1982) that the matter requires further consultation with the Ministry of Law.

(*viii*) As per section 2(f)(i) of the Central Excises and Salt Act, 1944, manufacture in relation to tobacco includes the preparation of cigarettes, cigars, cheroots, biris, cigarette or

pipe or hookah tobacco, chewing tobacco or snuff and in relation to manufactured tobacco includes labelling or relabelling of containers and repacking from bulk pack to retail packs, or the adoption of any other treatment to render the product marketable. On unmanufactured tobacco levy of duty was exempted as per a notification dated 1 March 1979.

Two manufacturers (one a tobacco stores and another a zarda seller) brought in 2,72,520 kilogrammes of unmanufactured tobacco, cut them into pieces but cleared the product as manufactured tobacco during the period from April 1980 to March 1981. Duty was paid only on 50,125 kilogrammes. On the balance quantity department failed to collect duty amounting to Rs. 2.10 lakhs.

On the failure being pointed out in audit (September 1981), the department stated that the quantity of tobacco cleared without payment of duty was unmanufactured which was only cut and such cut tobacco sold in unpacked condition was unmanufactured tobacco on which levy of duty was exempt. In a tariff advice dated 11 December 1980 it was clarified by the Board that unmanufactured tobacco merely cut into pieces and packed with or without label is classifiable as manufactured chewing tobacco. In view of the very wide meaning given to the term 'manufacture' in relation to tobacco which is rendered marketable, the product in this case was manufactured chewing tobacco on which duty was leviable.

The Ministry of Finance have stated (November 1982) that evidence that the goods were taken as 'chewing tobacco' in commercial circles is necessary. However, it has not been indicated whether and if so, how this was verified in this case.

(ix) (a). In a public sector undertaking goods valuing Rs. 33,986 were cleared without payment of duty on the ground that they were not excisable. On scrutiny by reference to the available computerised records and gate passes, it was seen in audit that they were excisable. Further certain clearances recorded in computerised statements giving reference to blank gate passes, were on scrutiny

in audit seen to refer to clearance of excisable goods valuing Rs. 3,54,821 on which duty was not realised. In all, the amount of duty not realised in these cases amounted to Rs. 2,88,807 on clearances made during the period from April 1979 to June 1980.

The omission was pointed out in audit in August 1980; the department's reply is awaited (April 1982).

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*b*) Eleven Computers, valuing Rs. 6.05 lakhs, were cleared by a public sector undertaking for supply to a Government department during the period from December 1980 to August 1981. The peripherals of the computers were cleared on gate passes but no price was indicated on the invoices, nor any duty paid. Duty leviable amounted to Rs. 1,27,050.

On the omission to levy duty being pointed out in audit (August 1981) the department issued a show cause notice (October 1981) to the manufacturer. Report on confirmation of demand and recovery are awaited (August 1982).

The Ministry of Finance have accepted the facts (November 1982).

2.42 **Irregular duty free clearances**

(*i*) As per a notification dated 30 April 1975, goods manufactured in a factory and falling under tariff item 68 are exempt from levy of duty if they are intended for use in the same factory or in any other factory of the same manufacturer but no exemption is available in respect of complete machinery meant for producing or processing any goods even if they are intended for use by the manufacturer in the same factory or in any of his other factories.

(*a*) A leading manufacturer of cigarettes fabricated complete machinery items which were capable of producing and processing goods. However, they were marufactured without observing

Central excise formalities and also without paying duty thereon. In addition, brass discs falling under tariff item 26A were also manufactured and cleared without payment of duty. This resulted in duty amounting to Rs. 6,18,609 not being realised.

On the omissions to pay duty being pointed out in audit (December 1978), the department registered offence cases and demanded the duty, and stated (March 1982) that two offence cases had been decided and duty amounting to Rs. 1,55,615 in respect of the machines realised. Report on recovery of balance amount is awaited (April 1982).

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*b*) The annual report of a film company, for the year ended 31 March 1980 disclosed that it had manufactured "Hot process developing machine" valued at Rs. 3,57,125 and erected it at the company's sister concern. It had manufactured also other types of processing machines during the years 1974-75 to 1979-80. However, it had neither obtained excise licence to manufacture these machines falling under tariff item 68 nor paid the duty thereon. The omission by the department to levy duty had resulted in duty amounting to Rs. 1,11,613 not being demanded.

On the omissions being pointed out in audit (March 1982), the department accepted the objection and issued a show cause-*cum* demand notice for Rs. 1,11,613 for the years 1974 to 1980. The department reported (May 1982) that the amount had been paid by the assessee in April 1982 under protest.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*c*) On complete machineries like testing machine for overhead crane, valuing Rs. 9,84,636, manufactured during the years ending June 1976 and June 1977 and installed for producing goods within the same factory, duty was omitted to be levied.

Even the fact of their manufacture was not detected, resulting in non-levy of appropriate amount of duty, as also penalty which the manufacturer was liable to pay for non-declaration of the manufactures.

On the omission being pointed out in audit (March 1981), the department issued (July 1981) a show cause notice demanding payment of duty of Rs. 78,771 and penalty. Report on collection of demand is awaited (May 1982).

The Ministry of Finance have accepted the audit objection (July 1982).

(*ii*) In section 2(f) of the Central Excises and Salt Act, 1944,the term 'manufacturer is defined to include not only person who employed or hired 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.

A manufacturer of electric bulbs and tubes got 'vitrite glass' manufactured by small scale units on payment of only melting charges and the small scale manufacturers did not pay duty on the vitrite glass. The manufacturer supplied requisite raw material and also did the final melting of the vitrite glass in his factory for filling them in the caps of bulbs. The vitrite glass so manufactured was captively consumed by the assessee in the manufacture of bulbs but without payment of duty. It was pointed out in audit (July 1980) that the manufacturer getting the goods manufactured on his account is a manufacturer of vitrite glass in terms of section 2 (f) of the Central Excises and Salt Act, 1944, and duty on vitrite glass being payable from 1 March 1979 under tariff item 23A(4), he was liable to pay duty on the vitrite glass produced during the period from March 1979 to June 1980, which amounted to Rs. 4.66 lakhs. Thereupon the department issued show cause notices (August 1981 and October 1981) demanding duty amounting to Rs. 10.51 lakhs

for the period from March 1979 to July 1981. Report on confirmation of demand and recovery of duty is awaited (May 1982).

The Ministry of Finance have admitted the audit objection (September 1982).

(*iii*) On 'nitric, hydrochloric and sulphuric acids (including fuming acids and anhydrides thereof) all sorts' duty is leviable under item 14G of Central Excise Tariff.

An assessee manufactured hydrochloric acid and utilised a portion of the acid in the anhydrous form for the manufacture of ammonium chloride within the factory, without payment of duty, even though there was no exemption in this behalf.

On the omission being pointed out in audit (September 1980), the department accepted the objection, registered a case against the assessee and issued a notice to him in April 1981 to show cause against levy of duty amounting to Rs. 1,93,696 in respect of acid consumed during the period May 1979 to October 1980. Demands in respect of quantity consumed subsequent to October 1980 were reported to be under issue (February 1982).

The Ministry of Finance have accepted the objection and stated (July 1982) that the Collector is being asked to realise the duty involved.

(*iv*) As per a notification issued on 1 March 1978, electricity produced by generating stations and supplied to the auxiliary plants of such stations for generation purposes was exempted from levy of duty.

One of the 21 generating stations under a State Electricity Board drew electricity from external grid for running its auxiliary plants, but was allowed to deduct such electricity under the aforesaid notification dated 1 March 1978 even from its own generation for purpose of levy of duty. The incorrect deduction

resulted in duty not being levied on a part of the generation which amounted to Rs. 4,37,383 between March 1978 to December 1981.

On the mistake being pointed out in audit (between January and March 1979), demands were raised in December 1979 and the Electricity Board paid Rs. 4,37,383 on 15 June 1982.

Further in four generating stations, electricity drawn from external sources was used for running auxiliary plants but incorrectly shown as drawn from its own generation. In one station, two transformers supplying energy to certain auxiliary plants were connected to and were always fed from general grid even when the station was generating. As a result of similar incorrect deduction on a part of the generation, duty was not levied amounting to Rs. 8,10,120 during the period from April 1980 to June 1981 in respect of the one station. The duty not levied in respect of other three stations is still to be computed.

The mistakes were pointed out in audit (January 1982); the reply of the department is awaited (June 1982). However, the need for checking the correctness of the figures of generation reported by the generating stations having been felt as a result of facts reported by audit, the department issued instructions (March 1982) for the check of the monthly returns sent by the generating stations, by the officers having jurisdiction over the generating stations.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(v) As per rule 173H of the Central Excise Rules, 1944 excisable goods brought into a factory in accordance with the provisions of the rules may be removed without payment of duty if the goods are not subject to any process amounting to manufacture. The definition of 'manufacture' in section 2(f)(vii) of the Central Excise Act names certain processes, if carried out on man-made fabrics, as being manufacture. Even if the processes are carried out to remove manufacturing defects on returned goods the definition would apply.

(*a*) A factory cleared certain man-made fabrics as 'returned goods' without payment of duty thereon, which fabrics had initially been cleared on payment of duty, but were returned because of certain manufacturing defects in them. The defective fabrics were subjected to reprocessing like scouring, bleaching, dying, singeing, pedding, finishing etc. mentioned in section 2(f)(vii) referred to above. Since such reprocessing amounted to manufacture, on second clearances of 18,033 linear metres of such fabrics during the period from December 1979 to March 1981, duty amounting to Rs. 25,137 was leviable but was not levied.

On the mistake being pointed out in audit (September 1981), the department did not accept the objection (March 1982). The Central Board of Excise and Customs in February 1981 had clarified to field offices that duty paid fabrics should not be received under the provision of rule 173H of the Central Excise Rules, 1944 since processing amounted to manufacture. Reentry of defective goods will have to be permitted in terms of rule 173L, the provision of which were not followed in this case. Therefore the reply of the department is not in order.

The Ministry of Finance have admitted the objection (November 1982).

(*b*) Duty paid defective glass vials returned by a buyer (between April 1980 to March 1981) were reworked again into vials after melting them and the new manufactures removed during the period from May 1980 to April 1981 without payment of duty. In removing the reworked vials involving manufacture, the procedure set out in rules was not followed. Consequently this resulted in duty being levied short by Rs. 91,467.

The irregularity was reported in audit to the department in July 1981.

The Ministry of Finance have admitted the objection (August 1982).

(*vi*) A manufacturer of optical and survey instruments also manufactured infraxed equipment (classifiable under tariff item 68) for supply to a Government department. Out of 106 sets of equipment supplied during the period from March 1978 to August 1979, on 69 sets the assessee omitted to pay duty and also did not inform the department of the supplies either through the monthly excise returns or otherwise. The duty payable amounted to Rs. 8,06,400 and the omission to pay duty rendered the assessee also liable to penalty.

On the omission being pointed out in audit (February 1980), the department intimated (March 1982) that a show cause-cum demand notice for Rs. 8,06,400 had been issued to the assessee and the case was under adjudication.

The Ministry of Finance have confirmed the facts (July 1982). Report on finalisation of demand and recovery is awaited.

(*vii*) A factory engaged, mainly in the manufacture of common salt (sodium chloride) also manufactured mechanically crushed sodium sulphate, a portion of which was used within the factory for manufacture of sodium sulphide and anhydrous sodium sulphate. The resulting sodium sulphate was, however, cleared without payment of duty, though on crude sodium sulphate duty was leviable under tariff item 68 from 1 March 1975. This resulted in non levy of duty amounting to Rs. 3,44,968 on clearances made during the period from March 1975 to July 1981.

On the omission being pointed out in audit (May 1980), the department stated (August 1981) that a demand for Rs. 95,404 relating to the period from 1 March 1975 to 31 January 1980 had been raised. It was later intimated (January 1982) that another demand for Rs. 2,49,564 for the period from February 1980 to July 1981 had also been raised. Report on recovery of the duty is awaited.

The Ministry of Finance have admitted the audit objection (November 1982).

(*viii*) As per a notification dated 19 April 1979, parts and accessories of motor vehicles and tractors (falling under tariff item 68) if intended for use in manufacture of excisable goods were exempted from levy of duty, subject to the condition that they were removed to a factory of another manufacturer under the procedure set out in chapter X of the Central Excise Rules.

A manufacturer transferred parts and accessories of tractors as aforesaid but without observing the prescribed procedure and without payment of duty amounting to Rs. 31,19,396 during the period from May 1979 to December 1980. In addition he also cleared excisable products valuing Rs. 71,73,326 to private parties during the period March 1979 to December 1980, without payment of duty amounting to Rs. 8,23,418. The mistakes were not noticed by the department.

On the mistakes being pointed out in audit (April 1981), the department (January 1982) admitted the audit objection and intimated that a show cause notice had been issued to the manufacturer. Report on recovery is awaited (July 1982).

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*ix*) Two manufacturers of aluminium circles produced them from sheets out of which circles were cut out. However, they were allowed to clear the circles without payment of duty because aluminium sheets which they had manufactured were produced from aluminium scrap. On circles manufactured from aluminium scrap or sheets levy of duty was exempted under a notification issued on 1 March 1975. However, in this case the sheets were produced from the aluminium scrap and such sheets are specified as distinct excisable goods in the tariff. Therefore even before the use of the sheets for manufacture of circles the sheets had been manufactured and duty was leviable on them. The duty leviable on such sheets manufactured from aluminium scrap, which was not levied, amounted to Rs. 2,39,775 on clearances made during the period from June 1979 to December 1980.

On the omission being pointed out in audit (January 1981), the department stated that the sheets cannot be deemed to have been manufactured since the manufacturer did not clear the sheets as such. The explanation below rule 9 requiring levy of duty on excisable intermediate products does not admit of such a view.

The Ministry of Finance have stated (November 1982) that in their view as given out in a tariff advice dated 7 July 1981, on the sheets in question, being intermediate products duty is not leviable. However the explanation below rule 9 does not allow of such a view.

2.43 **Duty not levied on excisable goods lost**

(*i*) Under the instructions contained in paragraph 64A of the Commodity Manual (Motor Spirit) on losses of mineral oils occurring in refineries levy of excise may be condoned to the extent of the actual loss but upto the limits specified.

(*a*) A licensee calculated losses of finished petroleum products, on the basis of certified quantities only excluding the uncertified quantities, though losses of substantial quantities of differrent petroleum products took place every month, and in many cases, the losses of certified and uncertified quantities taken together exceeded the permissible limits. This resulted in short levy of duty amounting to Rs. 30,58,852 during the period May 1975 to December 1975.

On the mistake being pointed out in audit (February 1977), the department admitted the objection (August 1981).

The Ministry of Finance have admitted the audit objection and have stated (July 1982) that demand for the duty, to be realised, had since been raised and the case was under adjudication.

(*b*) On clearances of mineral oils from a refinery made during the period from November 1966 to March 1977, on 44 occasions, duty amounting to Rs. 35.62 lakhs leviable on the

quantity lost in excess of prescribed limits was not demanded, Necessary adjudication which would lead to demand for the amount being raised had not been completed till August 1982.

On the delay being pointed out in audit (January 1982), the department stated (June 1982) that in 10 cases involving duty amounting to Rs. 13.11 lakhs, documents are wanting from other formations. In the remaining 34 cases, involving duty amounting to Rs. 22.51 lakhs, no specific reasons were given.

The Ministry of Finance have stated (November 1982) that two cases have been adjudicated and remaining forty two cases are in the process of adjudication.

(*ii*) With effect from 1 March 1978 a new tariff item 11D was introduced to cover "Coal (including Lignite) and coke not elsewhere specified". The effective rate of duty on coal, other than coking coal was fixed at Rs. 5 per tonne.

In seven collieries coal raised in tubs was recorded reckoning the weight of 1 tub of coal as 1 tonne, wages to labourers were also paid on that basis. From March 1978 the collieries were allowed, at the end of each month, to deduct a certain quantity from the quantities initially recorded so as to arrive at what was termed as 'firm production' the difference being attributed to a so called 'tub factor'. The reduction in producton effected thereby resulted in duty being levied short by Rs. 1,77,318 on the production during the period from March to December 1978.

On the irregularity being pointed out in audit (June 1980), the department stated (April 1982) that show cause-*cum* demand notice for the amount of shortfall in duty had been raised against the collieries. Report on confirmation of demand and recovery is awaited (August 1982).

The Ministry of Finance have stated (November 1982) that system of accounting presently followed for calculating production of coal has since been approved by the Central Board of Excise and Customs in a letter issued in April 1980.

2.44 **Duty not levied on excisable scrap and waste**

(*i*) The Ministry of Finance in consultation with the Ministry of Law, clarified on 6 June 1975 that such waste products or by-products (arising during the manufacture of main products), which emerged as new and different articles having distinct name, character or use would be held to have been manufactured and on those waste products duty would be leviable. This view has also been upheld* by the Supreme Court.

In three rubber factories scraps arising during the manufacture of tyres and tubes were cleared and sold without payment of duty even though duty was leviable under tariff item 68 (all other goods not elsewhere specified).

Non levy of duty on the scrap and waste products cleared by the three factories was pointed out by Audit in December 1976, October 1977 and December 1977. In respect of one, the department, thereupon, took action to raise demand for Rs. 2.69 lakhs. But in respect of the other two, the department did not accept the objection and demand amounting to Rs. 93,486 on clearances made during the period from March 1975 to June 1977 had not been raised. Recovery in the case of two more tyre manufacturers was barred by limitation and duty forgone is being ascertained.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*ii*) Silver bearing sludge and furnace slag (arising in the process of manufacture of silver nitrate), perforation chips (arising in the manufacture of cinematograph films) and bromide paper ash residue (silver bearing), arising as by-products in a factory manufacturing cine films were allowed to be cleared without levy of duty.

The goods having characteristics different from that of the raw materials from which they were manufactured and being used also for different purposes were classifiable under tariff

*Union of India v DCM Mills Ltd.—1977 ELT (3199) SC.

item 68 and duty leviable at 8 per cent *ad valorem*. On their clearances during the period from September 1979 to June 1981 duty not levied amounted to Rs. 2,00,675.

The omission was pointed out in audit (September and November 1981) to the department; their reply is awaited (July 1982).

The Ministry of Finance have stated (November 1982) that the four products of waste have value only because of their silver contents but are otherwise waste products and not products obtained by a process of manufacture. However since the products have a distinct character, use, value different from the original material and are commercial products they would not be wastes, but products on which duty is leviable.

IRREGULAR REBATES AND REFUNDS

Under rule 12 (and also rule 12A) of the Central Excise Rules rebate of duty paid, can be granted on excisable goods if exported outside India and if notified by Government. Rule 13 provides that excisable goods may be exported in like manner (as in rule 12) from a warehouse or licensed factory, without payment of duty, after executing a bond and furnishing security. The rebates granted during the year 1981-82 amounted to Rs. 15 crores* and the duty not paid on exports made under bond amounted to Rs. 255.72 crores.**

2.45 **Irregular grant of rebate and deferment of duty on exports**

(*i*) Under rule 12 aforesaid read with a notification issued in September 1967 , rebate of excise duty paid on mineral oil products (falling under tariff items 6 to 11A) is admissible if they are exported as stores for consumption on board on aircraft on foreign run, subject to fulfilment of certain conditions

*The amount is provisional and do not include figures of Delhi Collectorate.

**The amount is provisional and do not include the figures of Delhi and Patna Collectorates.

stipulated in the aforesaid notification. One of the conditions is that the rabate is allowed in regard to only flights to two specified foreign countries having land frontiers with India.

(*a*) During the period December 1974 to November 1979 a public sector undertaking was erroneously allowed rebate of excise duty amounting to Rs. 28,01,819 being the duty paid by the undertaking on aviation turbine fuel (tariff item 7) removed from time to time for supply to aircrafts scheduled to fly to a third country, not being one of the two specified countries.

On being pointed out in audit (January 1980) that the rebate in question was not admissible the department stated (January 1982) that seven show cause-*cum* demand notices for recovering duty amounting to Rs. 5,81,096 had since been issued between February and September 1981 and four other demands had already been confirmed. On the balance amount due for recovery, further show cause-*cum* demand notices were under issue.

The Ministry of Finance have stated (July 1982) that the undertaking had filed a revision application to the Central Government.

(*b*) On superior kerosene (falling under tariff item 7) used as aviation turbine fuel issued to an aircraft, duty was levied after allowing the rebate referred to above, even though the aircraft proceeded to a third country not being one of the two specified countries having land frontiers with India. On 6,61,107 litres of kerosene issued by the warehousing agency during the year 1980-81, duty was levied short by Rs. 2,07,092.

On the mistake being pointed out in audit (October 1981), the department accepted the mistake. A demand for Rs. 2,60,233 has been raised and confirmed as stated by the Ministry of Finance (November 1982).

(*ii*) On exports of iron and steel products, a claim for rebate of duty paid thereon (under rule 12 aforesaid) was allowed in a Custom House. Under an exemption notification dated 1 March

1974, only net duty had been paid on the manufacture of the exported goods after exempting duty to the extent paid on input materials going into its manufacture. The exporter was, however, allowed rebate on the full amount of duty payable on the exported goods instead of the net amount paid on its manufacture. This resulted in excess rebate amounting to Rs. 97,596 being paid in December 1977 and January 1978 on sixteen export consignments.

On the mistake being pointed out in audit (February 1978), the department stated (January 1982) that show cause-*cum* demand notice for Rs. 97,596 was issued on receipt of audit objection and it was adjudicated in September 1978. However, the exporter had filed a revision application against order-in-appeal on which decision is awaited (July 1982).

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*iii*) As per explanation II below rule 13 the term 'goods' includes excisable goods used in the manufacture of the goods which are exported.

Export of processed cotton fabrics was allowed without payment of duty subject to removal under bond and (as per aforesaid explanation II) the goods used in the manufacture of such processed cotton fabrics were grey cotton fabrics. Therefore duty was payable on cotton yarn used in manufacture of the grey cotton fabrics. This was not demanded and it resulted in duty being levied short by Rs. 11.37 lakhs on the clearances made by three manufacturers during the period from May 1980 to August 1981.

On the mistake being pointed out in audit (between August 1981 and January 1982), the department stated (December 1981) that the words "excisable goods" would cover all excisable goods used in the manufacture of exported goods, though in one of the three cases the department had issued a show cause-*cum* demand notice for recovery of duty of Rs. 4.37 lakhs. The extension by

the department of the aforesaid explanation II by applying it to goods which are used in the manufacture of goods (which are in turn used in the manufacture of the goods which are exported) go beyond the plain reading of the rule.

The Ministry of Finance have stated (November 198 2) that the matter is under examination.

(*iv*) By a notification dated 13 December 1980, iron or steel products falling under tariff item 26AA were excluded from the purview of rule 13, with effect from 5 January 1981.

In August 1981, a public sector undertaking exporting iron and steel products, held in its bonded warehouse 4,734 tonnes of iron and steel products received from its factories, prior to 5 January 1981, which were meant for export. The facility of export under bond without payment of duty, having been withdrawn with effect from 5 January 1981 duty amounting to Rs. 33.85 lakhs which was payable had not been collected by the department.

On the mistake being pointed out in audit (August 1981), the department stated that the consignments were cleared from the factories prior to 5 January 1981 and the provisions of the notification dated 13 December 1980 are not applicable even if exports be made after 5 January 1981. This view is contrary to the decision of the Government to deny the deferment in collection of duty by recourse to bond, on iron and steel products not exported before 5 January 1981, and to allow only rebate after export.

The Ministry of Finance have admitted the facts (November 1982).

(*v*) A company manufacturing threads was permitted to bring duty paid cotton yarn from its own mills manufacturing yarn and export the manufactured thread claiming rebate of duty paid on the yarn content after following the procedure set out in rule 191A of the Central Excise Rules. The yarn brought from outside was first cleared as 'hank thread' and then exported in various forms, such as cones, balls, skeins, spools

etc. which were made from the hank thread so cleared. Rebate of duty paid on the hank thread going into the exported threads was allowed though the manufacturer was not eligible for any rebate, since he neither exported hank threads nor did he bring in hank thread into his factory from outside when alone rule 191A would apply.

On the irregularity being pointed out in audit (July 1980), the department stated that the stage of application of rule 191A in this case was the 'hank stage', that Government of India had relaxed the conditions in the rule in order to facilitate the refund of duty paid on the yarn used in the manufacture of thread exported by the assessee and that credit for the amount of duty paid on cotton yarn alone was utilised for payment of duty on hank thread and the rebate claimed and paid under rule 191A related to such duty paid on hank thread only.

When provisions exist in rule 56A to cover payment of duty even on the thread in the forms in which they were cleared for export with proper procedural checks and in rule 12 for grant of rebate of duty paid on exported goods the irregular application of rule 191A was not necessary, and was also imporper as it would not allow of checks on quantities brought in and exported visualised in the procedure prescribed in rule 191A. Further, the Central Excise Rules, 1944 do not contain any general provision which vests in Government or the Board power to relax any of the rules. Specific provision for relaxation by an authority specified as competent to exercise a power to relax, are required to be incorporated in individual rules as for example such provision in rules 53,55,56A, 97A, 173, 173B and 173M. The refund granted by relaxing provisions of rule 191A, without such power, instead of applying rules 56A and 12 was therefore irregular. The short levy of duty arising from the irregular application of rule 191A amounted to Rs. 29,54,741 during the period from 10 September 1974 to the end of March 1981.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

2.46 **Irregular refunds**

(*i*) As per a notification issued on 16 October 1976 levy of duty on nitrocellulose lacquer produced was exempted to the extent of remnants of lacquer left over unused after using for coating and recovered and reused for further manufacture of nitrocellulose lacquer. Duty was therefore leviable on quantity of production lost in coating process.

During the period September 1962 to September 1972 a manufacturer of nitrocellulose lacquer, paid duty on the difference between the quantity of nitrocellulose lacquer used internally for coating and the quantity of solvent recovered, which included the quantity reported lost due to evaporation in the process of coating. During the period 5 September 1972 to 4 January 1975 and in July 1975, he paid, under protest, duty on the difference between the quantity issued and quantity recovered and filed a revision application which was allowed by the Government. He thereafter preferred three refund claims for Rs. 38,35,467 covering the period 20 September 1962 to 31 December 1975 and the refunds were made by the department in the years 1980-81 and 1981-82.

The duty having been collected on quantity produced and consumed, excluding only the quantity recovered for reuse, even prior to clarification in the notification issued in October 1976 (requiring such levy and collection) duty had been correctly realised on the quantity lost in coating process. The refund of such duty collected during the years 1962 to 1975 was irregular. It also went against the principle laid down by the High Court of Kerala that grant of refund of duty at a later stage, when the full burden of such duty had been passed on to their customers, would manifestly result in an unjust enrichment of the manufacturer and that in such cases the benefit of refund to the manufacturer should be restricted to the actual tenable claims from the customers. This resulted in fortuitous benefit of Rs. 38.35 lakhs to the manufacturer.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(*ii*) As per a notification dated 1 March 1979 levy of duty on parts and accessories of motor vehicles and tractors (including trailors) was exempted, if they were used in the manufacture of specified products and provided further that in their use elsewhere than in the factory of production the procedure set out in Chapter X of the Central Excise Rules, 1944 is followed.

A manufacturer of "Crankshafts" cleared them without payment of duty as per the aforesaid notification. However he did not follow Chapter X procedure in regard to their use and demands for Rs. 2,45,983 on clearances made during the period from March to May 1979, were raised by the department in August and December 1979. Payment was made by the manufacturer in February 1980. However, a refund claim was preferred by the manufacturer in July 1980, on the ground that a show cause notice under rule 10 of the Central Excise Rules, had not been issued to him prior to raising the demand and thereby natural justice was denied to him. The claim was allowed by the department (September 1980) instead of giving him opportunity to show cause and Rs. 2,24,352 refunded.

On the mistake being pointed out in audit (February 1981), the department stated (April 1981) that the refund claim was allowed because the condition that the parts be used in specified products was fulfilled and the non-fulfilment of the condition for following Chapter X procedure was a condition which could be waived. The notification of 1 March 1979, was required to be interpreted strictly and it allowed no discretion to the department in regard to waiver of any of the conditions therein, to the detriment of revenue.

The Ministry of Finance have stated (November 1982) that deviation in procedure were minor.

(iii)(a) As per a notification dated 30 November 1963 levy of duty on bars, rods etc. manufactured from specified materials, was exempted. However, the exemption was withdrawn by another notification dated 1 March 1974 and duty at the prevailing rate of Rs. 65 per tonne became leviable.

A manufacturer used duty paid ingots in the manufacture of mild steel rods and tor steel falling under sub-item (ia) of Tariff item 26AA. He incorrectly claimed refund of duty paid on 5488 tonnes of rods and tor steel cleared during the period from 1 March 1974 to 17 June 1977, under the notification dated 30 November 1963 and refund for Rs. 11.03 lakhs was allowed (October 1981) on clearances made during the period from September 1973 to June 1980 though refund was admissible only for the period upto end of February 1974. In the result, Rs. 6.67 lakhs were erroneously refunded.

(iii)(b) As per a notification dated 18 June 1977 duty was leviable at a concessional rate of[Rs. 130 per tonne on iron or steel products, manufactured from steel ingots cleared from the factory prior to 18 June 1977 after payment of duty at appropriate rate.

On 796 tonnes of mild steel rods and tor steel manufactured from duty paid ingots procured prior to 18 June 1977 a manufacturer correctly paid duty of Rs. 1.04 lakhs (as per above notification) on clearances made during the period after 18 June 1977 and upto 30 June 1980. However, the duty was erroneously refunded to assessee.

On the above mistakes being pointed out in audit (November 1981), the department stated (July 1982) that a show cause-cum demand notice for Rs. 1.04 lakhs had since been issued to the assessee and action was being taken to issue another show cause-cum demand notice for Rs. 6.67 lakhs. Report on recovery is awaited.

The Ministry of Finance have stated (November 1982) that the matter is under examination.

(iv) Section 3(1) of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 provides for the levy and collection of duty, with effect from 4 October 1978, at the rate of 10 per cent of the total amount of duty chargeable under the Central

Excises and Salt Act 1944, on goods mentioned in the Schedule to the Act. Since this levy was not related either to the time of production or manufacture of goods, but was related to the point when goods chargeable to central excise duty are assessed to duty, the additional duty (being an addition to excise duty) was leviable in addition to excise duty even on goods held in stock from prior to 4 October 1978 alongwith levy of excise duty, on or after 4 October 1978.

A manufacturing unit was refunded a sum of Rs. 1,11,921 realised as additional excise duty on loose fabrics in fully manufactured condition and awaiting packing on the midnight of 3 & 4 October 1978 and assessed to central excise duty thereafter. Since the additional duty was leviable and had been correctly realised, the refund of the additional excise duty was not in order. Another manufacturing unit holding stock from prior to 4 October 1978 was allowed to clear it after that date without payment of additional duty amounting to Rs. 35,760.

On the mistakes being pointed out in audit (August 1980), the department did not accept the objection. A similar short levy of additional duty amounting to Rs. 40.52 lakhs on clearances made by nine mills was reported in paragraph 2.58 of Audit Report 1980-81, to which the Ministry had replied (December 1981), that the audit point was under examination.

The Ministry of Finance have stated (November 1982) that the matter is still under examination.

SHORT LEVY OF CESS

Cess on various commodities such as 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, crude oil are levied under various Acts of Parliament to provide for development and organisational expenditure a n

welfare of workers in the respective industries. The yield from cess in the last five years and the commodities which yielded revenue of more than rupees one crore are given below:—

Serial No.	Commodity	1977-78	1978-79	1979-80	1980-81	1981-82
						(In crores of rupees)
1.	Crude oil	37.94	67.18	66.46	58.74	111.19
2.	Coal & Coke	22.88	22.68	24.50	21.86	31.01
3.	Rubber	4.81	5.19	6.61	6.27	5.52
4.	*Handloom cess on cotton fabrics	5.04	5.83	5.55	6.02	5.45
5.	Tea	3.47	4.04	4.25	4.56	4.48
6.	Handloom cess on rayon artificial silk fabrics	1.64	1.86	1.94	2.00	1.28
7.	Salt	1.30	1.33	1.34	1.22	1.35
8.	Oil and oil seeds	..	0.70	1.23	1.10	1.04
9.	Paper	..	..	..	0.01	1.22
10.	Handloom cess on man)—(made fabrics	..	..	..	..	1.14

*Cess in respect of cotton, woollen, art silk textile etc. are collected by a textile committee from about 1100 manufacturers and an amount of Rs. 34.81 lakhs was in arrears for collection as at the end of March 1982.

2.47 Short levy of cess by Rubber Board

(*i*) Under the Rubber Act, 1947 a cess is leviable on all rubber produced in India, at such a rate as the Central Government may fix and is collected as a duty of excise. A rate of thirty paise per kilogramme was fixed with effect from 1 April 1961 and was raised to forty paise from 30 July 1975. Even though cess leviable as duty of excise on many commodities is collected by the Central Excise Department, the Rubber Board (referred to hereinafter as "The Board") constituted under the Rubber Act 1947 has been entrusted, under section 12 of the Act, with the duty of collection of cess from the owners of estates on which rubber is

produced or from manufacturers by whom such rubber is used. The legality of section 12 was challenged on the ground that the cess was a fee and not a tax or duty of excise. A High Court dismissed a writ petition filed on such a ground, but allowed leave for appeal and a petition is pending before the Supreme Court, (July 1982).

(*ii*) On 'sole crepe rubber' cess is levied and collected from producers, while cess on rubber other than 'sole crepe' is collected from manufacturers (who consume raw rubber) based on its purchase or acquisition by them. According to the Board the burden of paying cess was shifted partly on to manufacturers in order to minimise evasion by producers of rubber, there being a large number (over 1.44 lakhs) of small producers (holding 50 acres or less). Producers holding more than 50 acres submit monthly and annual returns of production while small producers submit returns only when required to do so. The Board has not so far required them to file returns and consequently cess is levied only on their estimated production arrived at on the basis of representative sample surveys.

(*iii*) The receipt of half yearly returns from large producers of sole crepe rubber is heavily in arrears. As on 10 June 1981, returns numbering 1,532 for the half year ended September 1980 and earlier half years were awaited. Of these 414 returns were pending for over 3 years. This would indicate that small growers are no more likely to be prone, to under-report or fail to submit returns than large producers. However, no demands were raised in respect of periods for which no returns were received. Board was of the view (June 1981) that it lacked powers to make best judgement assessments or to penalise producers refusing to comply with provisions of section 12 of the Act and the rules framed thereunder.

The Rubber Act provides for punishment by imprisonment upto one year or fine upto Rs. 1000 or both for contravention of section 12 or rules made under the Act. The act visualises non receipt of returns and section 12(5) provides for the

Board to make assessments in the manner prescribed in the rules with a right to the assessee to appeal to the District Judge under section 12(6). In rules 33, 33A, 33B, 33C, 33D, and 33E, the relevant manner and procedure for assessment and collection have been prescribed. No specific reference was made by Board to Government pointing out any limitations on its existing powers as per pronouncement of any District Judge. Neither the Act nor the rules take away power to assess on the basis of available information and even now in respect of small growers the Board is assessing only on the basis of estimates of production made by it in its best judgement.

(*iv*) The cess on manufacturers is assessed on the basis of audited accounts and reports received annually. As on 10 June 1981, 4,376 assessments (37.43 per cent of total number) relating to the years 1975-76 to 1979-80 were pending finalisation for want of audited accounts and reports. Details in respect of assessments relating to earlier years were not available with the Board. The Board stated (May 1980) that the small manufacturers had represented that they might be exempted from producing audited accounts and reports. Also due to paucity of staff the Board had not verified the accounts of small manufacturers.

In the case of two manufacturers, audited accounts and reports for the years 1970-71 to 1974-75 and 1976-77 respectively were still pending (October 1981) and production was provisionally assessed in the two cases at 22,331 tonnes involving a cess of Rs. 68.51 lakhs. The Board was still trying to obtain the wanting audited accounts and reports (October 1981).

(*v*) Cess is leviable on all rubber, as per definition in the Act, including scrap rubber having commercial value. On 815 tonnes of scrap rubber with two manufacturers cess amounting to Rs. 3.26 lakhs was not levied during the years 1976-77 to 1978-79. The Board was of the view (June 1981) that cess was not leviable on scrap rubber. It was pointed out in audit that levy under section 12(1) is related to production of rubber and

because of levy at stage of purchase or consumption by manufacturers, cess does not ceass to become leviable on rubber becoming scrap. The Board has not so far started collecting cess on scrap rubber (July 1982).

(*vi*) Cess amounting to Rs. 193.89 lakhs was outstanding in 6,087 cases relating to the years 1961-62 to 1978-79 as at the end of March 1980. However, assessee wise details as per figures in individual ledger accounts could not be reconciled in audit, with this amount.

The Board stated (June 1981) that in all these cases action for recovery as arrears of land revenue had been initiated. The Board stated (October 1981) that a draft of amendment to section 12 of the Act, seeking to levy interest at a rate not exceeding 18 per cent per annum on belated payments of cess was pending with Government. The penal interest leviable on the arrears to the extent of Rs. 193.84 lakhs would amount to Rs. 23.26 lakhs per annum even at a rate of twelve per cent (the rate in some tax enactments).

(*vii*) The Board did not levy cess on rubber produced which was exported during the years 1973 to 1977 (reported upon in paragraph 88 of the Audit Report for the year 1977-78). As per the advice of the Ministry of Law (June 1974) the cess was leviable on production, and it was not a customs duty to be levied on exporters of rubber. This makes it incumbent on the Board to so administer the Rubber Act that it does not postpone levy and collection of cess on production, to the point of export. The Ministry of Commerce stated (June 1979) that the Board had no power to exempt from cess any rubber produced, which was exported. However, no directions were given to the Board as to how they should set about levying cess on rubber produced which might be exported because it was felt (June 1979) that further export of rubber was unlikely. Since future exports cannot be ruled out, the need for such directions continues.

The above points were reported to Ministry of Commerce and Civil Supplies (August 1982), their reply is awaited.

2.48 **Non levy of cess on jute manufactures**

Under a notification dated 25 February 1976, cess was leviable on all jute manufactures, with effect from 1 March 1976. In their letter dated 19 April 1977, the Central Board of Excise and Customs clarified that cess should be levied also on jute yarn or twine consumed within the factory of production for the manufacture of jute goods since no exemption from levy of cess had been granted under the Industries (Development and Regulation) Act, 1951.

(*i*) In a factory manufacturing jute goods, whereas cess was paid on the quantities of jute goods cleared from the factory, no cess was paid on the quantity of jute yarn and jute twine consumed within the factory. On the omission being pointed out in audit (August 1979), the department issued a show cause notice (December 1981) demanding cess of Rs. 3,56,518 on the quantity of jute yarn and twine manufactured and consumed within the factory during the period from Octobr 1977 to February 1981. Report on confirmation of demand and recovery of the amount is awaited (April 1982).

The Ministry of Finance have stated that the demand raised for the period after 1 October 1977 is under challenge and has been stayed by the High Court.

(*ii*) A composite mill engaged in the manufacture of jute products paid cess on the clearances of jute fabrics but did not pay cess on the jute fabrics consumed within the mill, in the manufacture of gunny bags, though the two products were separate jute manufactures and cess was leviable on both. The cess not levied on the clearances during the period from 1 March 1980 to 30 June 1981 amounted to Rs. 2.49 lakhs.

On the omission being pointed out in audit in August 1981, the department issued show cause notices demanding cess

for the period from 1 March 1980 onwards. Report on recovery against demand raised is awaited (May 1982).

The Ministry of Finance have stated (November 1982), that show cause notice for Rs. 1,72,080 has been issued and is pending adjudication.

2.49 **Non levy of cess on processed fabrics**

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.

(*i*) Cotton fabrics manufactured in powerloom factories in which five or more powerlooms are installed were exempted from the 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 the levy of the 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 handloom cess even when the special procedure was not being followed. However, the Board reconsidered the matter further and issued instructions on 30 December 1978 stating that demands for the collection of handloom 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 the demands should not be enforced until further orders.

Handloom cess was not levied on fabrics manufactured in powerloom factories in a State 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). Demands for duty were not raised on the

clearances though they were required to be raised in compliance with the Board's instructions and only collection was not to be enforced.

On the omission to raise demand against a processing mill being pointed out in audit (July 1979 and September 1979) demands for a sum of Rs. 5,40,572 in the aggregate on the clearances made during the period from October 1979 to June 1980 were issued by the department between 29 May 1980 to 23 May 1981. Subsequent to the audit objection raised in March 1979, show cause notices demanding a sum of Rs. 17,86,656 in the aggregate were also issued to 24 other processing units, which demands are also pending collection since orders of the Central Board of Excise & Customs promised in December 1978 have not, still been received (July 1982).

The Ministry of Finance have stated (November 1982) that action was initiated to raise demands after December 1978. But it was not done till much later as indicated above and demands are not still being collected.

(*ii*) On cotton fabrics and embroidered cotton fabrics cleared from two power operated processing units excise duty was collected but not handloom cess. The two units cleared 94,49,104 and 25,40,601 square metres of cotton fabrics during the period from 18 June 1977 to February 1981 and from 18 June 1977 to 30 March 1980 respectively on which handloom cess not collected amounted to Rs. 2,27,804.

On the omission being pointed out in audit (June 1981), the department issued (August and September 1981) show cause notices in the two cases. Report on confirmation of demand and recovery is awaited (July 1982).

The Ministry of Finance have confirmed the facts (November 1982).

2.50 **Non levy of cess on paper**

As per an order issued on 27 October 1980 under the Industries (Development and Regulation) Act, 1951 and amended with effect from 3 February 1981, a duty of excise was levied (for collection as a cess) on "Paper and paper board all sorts" with effect from 1 November 1980.

A manufacturer of cellophane made out of wood pulp cleared cellophane after 1 November 1980 without payment of 'Cess' even though it was leviable with effect from 1 November 1980. This resulted in non levy of cess amounting to Rs. 92,055 on clearances made during the period 1 November 1980 to 31 July 1981.

On the omission being pointed out in audit (August 1981), the department stated (September 1981) that show cause-cum demand notice for the recovery of the cess had been issued.

The Ministry of Finance have stated (November 1982) that the demand stands confirmed. The assessee has filed a writ petition in a High Court and obtained an injunction against the collection of cess on cellophane.

OTHER TOPICS OF INTEREST

2.51 **Delay in moving for vacation of stay**

On all varieties of cotton fabrics and man-made fabrics, manufactured either wholly or partly from cotton and man-made fibre or yarn, duty is leviable under tariff items 19 and 22 respectively. On cotton fabrics getting subjected to the process of bleaching, mercerising, dyeing, printing, waterproofing, rubberising, shrink-proofing, organdie processing or any other process and on man-made fabrics undergoing similar processes duty was leviable on their further manufacture by such process and the liability to duty was ensured by issue of an ordinance on 24 November 1979 and subsequent amendment of the tariff.

A manufacturer of cotton and man-made fabrics was granted interim stay by a High Court in July 1979 from paying duty on the fabrics cleared by him subject to his furnishing bank guarantees for the duty that might become payable if the decision went against him. By the issue of the ordinance in November 1979 and amendment of the tariff in February 1980, the point of dispute on levy of duty on such fabrics was removed. However, the department did not move the Court (till August 1982) for vacation of the stay order and duty amounting to Rs. 39.72 lakhs, on clearances made during the period from July 1979 to December 1981 (which was secured by bank guarantees amounting to only Rs. 24.13 lakhs).

On the failure to effect recovery being pointed out in audit, the department stated that action was being taken. Report on action taken is awaited (August 1982).

The Ministry of Finance have stated (November 1982), that the matter is under examination.

2.52 **Waiver of duty**

As per a notification dated 1 March 1969 electric motors, rotors and stators were exempted from duty if used in the factory of production as component parts in the manufacture of electric fans on which duty of excise was leviable in full. From 17 March 1972, the Government allowed concessional rates of duty in respect of certain categories of electric fans and from 15 September 1973, levy of duty on motors, rotors and stators was exempted even if used in the manufacture of electric fans on which duty was leviable in whole or in part. Duty was, therefore, leviable on electric motors used in the fans on which only concessional rate of duty was levied during the period from 17 March 1972 to 14 September 1973.

In paragraph 81 of the Audit Report for the year 1975-76 instances of incorrect grant of exemption from duty in respect of electric motors used in the manufacture of fans cleared on concessional rate of duty prior to 15 September 1973 were reported.

Thereafter Government by issue of a circular dated 27 January 1978 waived the duty on fans cleared prior to 15 September 1973. Such waiver amounted to grant of exemption from duty with retrospective effect which is not available in exercise of the power of delegated legislation under rule 8(1) of Central Excise Rules.

In forty nine ceses of irregular waiver of duty on electric motors, which have since been noticed in audit, duty amounting to Rs. 1.72 crores was leviable.

The Ministry of Finance have stated (September 1981) that the intention of the Government all along was to allow exemption in such cases and accordingly the duty for the period prior to 15 September 1973 was waived. The reply does not comment on the legality or otherwise of the waiver nor indicate whether the Ministry of Law was consulted on the point. In effect revenue of Rs. 1.72 crores legally due to the Government has not been demanded or collected.

The Ministry of Finance have stated (November 1982) that the waiver was allowed after it was decided, as advised by Ministry of Law, not to appeal against a High Court Judgement in a case that duty was to be exempted even for the period prior to 15 September 1973.

2.53 **Duty on goods not re-warehoused**

Where goods removed under bond, without payment of duty, from one warehouse to another, on arrival at the warehouse of destination, the departmental officer in charge of that warehouse is required to record re-warehousing certificates and send copies to officer in-charge of the warehouse of removal and to the consignee for transmission to the consignor. The consignor is required to present it to the officer in-charge of the warehouse of removal within ninety days of issue of transport permit, which allowed the removal. On failure to do so, the rules require that duty be levied on such goods.

During the years from 1966 to 1981 re-warehousing certificates had not been presented by 20 consignors to the departmental officers of a collectorate but duty amounting to Rs. 2.22 crores which was leviable was not demanded, except for duty amounting to Rs. 77,354 in respect of two consignments removed in February 1976 which is also pending realisation. The failure to comply with the requirement of the rules in the above cases, to the detriment of revenue, was pointed out in audit (August 1982); the reply of the department is awaited.

The Ministry of Finance have stated (November 1982) that re-warehousing certificates have since been received in respect of 5 cases and the remaining 15 are being followed up.

2.54 Fortuitous benefit

By an order dated 12 September 1979 issued under Section 3 of the Essential Commodities Act, 1979 the Ministry of Agriculture fixed the ex-factory prices of Sugar (inclusive of basic excise duty and additional excise duty in lieu of sales tax). On 20 September 1979 the Ministry clarified that the prices were also inclusive of special excise duty.

In 46 factories special duty of excise amounting to Rs. 4,67,780 was realised over and above the prices fixed under the order dated 12 September 1979, before the clarification of 20 September 1979 came to notice. The additional amounts collected were retained by the manufacturers since duty was leviable only on a tariff value (based on the ex-factory prices) and not on the basis of the value realised. In the result unintended gratuitous benefit was derived by the factories to the extent of Rs. 4,67,780 because of the lapse in the original order dated 12 September 1979.

The effect of the lapse was brought to the notice of the Ministries of Agriculture and Finance (September 1982).

The Ministry of Finance have stated (November 1982) that on the question of unintended benefit due to late issue of clarification, it was for the Ministry of Agriculture which fixed the

maximum ex-factory prices for different zones to offer the comments. The latter Ministry have stated (December 1982) that they have no means to verify the amount overcharged which only Ministry of Finance could do. The Ministry of Agriculture are aware of overcharge of only Rs. 16,784 upto 20 September 1979. On overcharge after that date, it was for the purchasers to claim refund of overcharge. However, the order dated 12 September 1979 refers to penal and coercive action being taken if the orders on price fixation are contravened.

2.55 Job work on diamond tipped tools

Duty is leviable on manufacture of cutting tools (falling under tariff item 51A). The Central Board of Excise and Customs clarified in June 1981 that the so-called resetting of tool bits, using recovered diamonds was in effect manufacture of new diamond tool bits and even repairing of the old diamonds constituted 'manufacture' in that the old bit had outlived its utility. Accordingly, duty was leviable on the value of the tool bit manufactured.

A manufacturer of tools (falling under tariff item 51A) was allowed to pay duty based only on relapping charges incurred on shaped tools cleared by him which tools had been received for replacement of worn out diamond bits. In the absence of any exemption notified under sub-rule (1) of rule 8 of the Central Excise Rules, 1944 duty was leviable on the value of such tools, instead of duty being levied only on the lapping charges incurred. The duty short levied on 320 tools cleared by the manufacturer during the period from April 1979 to May 1980 amounted to Rs. 43,200.

The mistake was pointed out in audit (June 1981) to the department; their reply is awaited (August 1982).

The Ministry of Finance have stated (November 1982) that the matter is under examination.

2.56 Text **books and religious books**

As per a notification dated 16 March 1976 levy of duty was reduced from 40 per cent to 5 per cent *ad valorem* on white printing paper supplied for educational purposes (such as for text books, exercise books and university examinations).

A paper mill supplying white printing paper to a press, printing religious books, was allowed to pay duty at concessional rates as per above notification even though on 7 August 1979, Ministry of law had advised that paper supplied to the said press would not be eligible for duty at concessional rate since their publications were not for educational purpose as per the notification. This resulted in duty amounting to Rs. 55,260 not being realised on clearances made during March 1978.

On the irregular grant of exemption being pointed out in audit (March 1981), the department stated that the exemption was not limited to text books, exercise books and books for University examinations.

The Ministry of Finance while admitting the basic facts have stated that the refund was granted pursuant to an order-in-appeal passed by the Appellate Collector.

CHAPTER 3

RECEIPTS OF THE ADMINISTRATIONS OF THE UNION TERRITORIES

SECTION 'A' : UNION TERRITORY OF DELHI

3.01 Trend of revenue receipts

The revenue receipts of the Administration of the Union Territory of Delhi during the year 1981-82 were Rs. 299.05 crores, consisting of tax revenue amounting to Rs. 291.59 crores and non-tax revenue receipts amounting to Rs. 7.46 crores. The figures of collections of major tax revenues during the year, alongside corresponding figures for the preceding two years are given below :—

Tax revenue	1979-80	1980-81	1981-82 *
	in crores of rupees		
1. Sales tax	125.08	154.80	190.90
2. State excise	29.08	40.62	55.19
3. Taxes on goods and passengers	15.35	17.61	19.04
4. Stamp duty and registration fees	6.13	7.05	9.09
5. Taxes on vehicles	5.28	6.01	6.72
6. Land revenue	0.16	0.25	0.23
7. Other taxes and duties on commodities and services including entertainment taxes	6.35	8.17	10.42
A. Total tax revenue	187.43	234.51	291.59
B. Non-tax revenue	5.41	7.03	7.46
C. Total revenue receipts	192.84	241.54	299.05

*Figures furnished by Principal Pay and Accounts Officer, Delhi Administration.

S/22 C & AG/82.—14.

3.02 Collection of tax revenue vis-a-vis budget estimate

The figures of collection of major tax revenues during the year 1981-82 *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 . . .	1979-80	109.71	125.08	(+)14
	1980-81	126.71	154.80	(+)22
	1981-82	160.97	190.90	(+)19
2. State excise . . .	1979-80	10.62	29.08	(+)174
	1980-81	22.78	40.62	(+)79
	1981-82	32.14	55.19	(+)72
3. Taxes on goods and passengers	1979-80	12.25	15.35	(+)25
	1980-81	18.00	17.61	(—)2
	1981-82	35.00	19.04	(—)46
4. Stamp duty and registration fees	1979-80	4.48	6.13	(+)37
	1980-81	4.58	7.05	(+)54
	1981-82	8.06	9.09	(+)13
5. Taxes on vehicles . .	1979-80	5.05	5.28	(+)5
	1980-81	5.75	6.01	(+)5
	1981-82	7.45	6.72	(—)20
6. Land revenue . . .	1979-80	0.23	0.16	(—)30
	1980-81	0.18	0.25	(+)39
	1981-82	0.21	0.23	(+)10
7. Other taxes and duties on commodities and services including entertainment tax	1979-80	4.94	6.35	(+)29
	1980-81	6.00	8.17	(+)36
	1981-82	9.54	10.42	(+)9
Total tax revenues . . .	1979-80	147.28	187.43	(+)27.26
	1980-81	184.00	234.51	(+)27.4
	1981-82	253.37	291.59	(+)15.00

The budget estimates for revenue to be realised from Sales tax continue to be conservative and for revenue from State excise more conservative. The estimates under other tax revenue heads were relatively more realistic for 1981-82, but for taxes on goods and passengers.

3.03 Cost of collection of tax revenue

Cost of collection of tax revenue, where records are maintained to determine the same and as furnished by the departments are given below :—

Tax revenue	Year	Gross collection	Expenditure on collection	Cost of collection as percentage of collection
		(In crores of rupees)		
1. Sales tax	1979-80	125.08	1.20	0.96
	1980-81	154.80	1.31	0.85
	1981-82	190.90	1.53	0.80
2. State excise . . .	1979-80	29.08	0.20	0.69
	1980-81	40.62	0.34**	0.85
	1981-82	55.19	0.36**	0.65
3. Taxes on goods and passengers	1979-80	15.35	0.94	6.12
	1980-81	17.61	1.30	7.38
	1981-82	19.04	1.12	5.88
4. Stamp duty and Registration fee	1979-80	6.13	0.16	2.61
	1980-81	7.05	0.25	3.35
	1981-82	9.09	0.31	3.41
5. Taxes on vehicles . .	1979-80	5.28	0.28	5.30
	1980-81	6.01	0.32	5.32
	1981-82	6.72	0.36	5.36
6. Other taxes and duties on commodities and services .	1979-80	6.35	0.035	0.55
	1980-81	8.17	0.03	0.37
	1981-82	10.42	0.06 @	0.58

@The reason for increase in cost of collection of other taxes and duties on commodities and services are awaited (December 1982).

**The figures are provisional.

SALES TAX

3.04 Survey, registration and declaration forms

(i) General

As per the Delhi Sales Tax Act, 1975 a dealer is liable to pay tax if his gross turnover exceeds a prescribed figure (currently Rs. 1 lakh in the case of a trader, Rs. 30,000 in the case of a manufacturer and Rs. 75,000 in the case of a *halwai*) and he must get himself registered specifying the class of goods he deals in. Under the Central Sales Tax Act, 1956, he has to get himself registered, as soon as he makes an inter-State sale or purchase. A dealer, carrying on business without registering himself is liable to prosecution, if detected, during surveys conducted by the department or otherwise.

(ii) Number of registered dealers in Delhi

The number of dealers who were on the registers under the Delhi and the Central Sales Tax Acts, during the last three years is given below :

Year	Under the enactment	Number of dealers registered as at the beginning of the year	Number of dealers registered during the year	Number of dealers registered whose registrations were cancelled during the year	Number of dealers as at the end of the the year
197 80	Delhi Sales Tax Act, 1975	61,742	5,955	2,137	65,560
	Central Sales Tax Act, 1956	55,426	5,803	1,865	59,364
	Delhi Sales Tax Act, 1975	65,560	6,685	1,155	71,090
	Central Sales Tax Act, 1956	59,364	6,543	972	64,935
1981-82	Delhi Sales Tax Act 1975	71,090	7,503	932	77,661
	Central Sales Tax Act, 1956	64,995	7,295	807	71,483

The dealers are assessed in about 50 wards. Considerable number of dealers stand registered under both the Acts and their assessments under both the Acts are done simultaneously. Though the above figures indicate an increasing trend in the number of registered dealers, the following steady and downward trends were also noticed :

	As on 31 March, 1980		As on 31 March, 1981		As on 31 March, 1982	
	Local	Central	Local	Central	Local	Central
Number of registered dealers with annual turnover between Rs. 1 lakh and Rs. 3 lakhs . .	20,230	18,172	19,310	17,672	19,831	18,154
Number of registered dealers with annual turnover less than Rs. 1 lakh . .	13,634	12,472	15,613	13,730	14,849	13,581

(iii) Detection of dealers evading registration

In paragraph 5.8 of their 116th Report (1973-74), the Public Accounts Committee (fifth Lok Sabha) observed as under :

> "The number of cases of unregistered dealers detected during 1971-72 was 1,730 which came down to 764 during the year 1972-73 despite instructions issued to the Ward Officers for a thorough survey of their areas. The Committee have, however, been informed that in pursuance of the recommendations contained in paragraph 1.14 of their 74th Report, steps have been taken to streamline the survey programme in such a way that the entire area is exhaustively combed once a year so as to ensure that no unregistered dealer, who is otherwise liable for registration, escapes notice. The committee suggested that surprise checks should also be conducted frequently."

It was noticed (1982) in audit that in 10 out of 50 wards, only 22 out of the 262 dealers detected through surveys conducted in the three years 1979-80 to 1981-82 were brought on the register. The reasons for non-registration of the others were not on record. The annual rate of detection has, if anything, gone down as compared to the rate in 1971-72 or even 1972-73.

(*iv*) *Non-functional surveys*

The Commissioner, Sale Tax, issued instructions in October 1979, that routine surveys be carried out of all registered dealers once a year and the surveys be supervised to the extent of 10 and 20 per cent by Sales Tax Officers and Assistant Sales Tax Officers respectively.

In ten out of fifty wards checked in audit (1982) during the three years 1979-80 to 1981-82, the numbers of dealers registered were 12,303, 13,058 and 14,214 respectively. In all, 13,273 dealers were surveyed in the three years, duly supervised to the extent of 1 to 6 per cent. In all the fifty wards, against 77,661 dealers registered, 55,749 dealers were surveyed during the three years. No evaluation of any significant benefits accruing to revenue from such survey of dealers, already registered with the department was available on record.

(*v*) *Issue of declaration forms to registered dealers*

In respect of his sales to registered purchasers, a registered dealer has to enter them in declaration forms and get them duly signed by such purchasers, in order to claim exemption from tax in respect of such sales. Blank declaration forms duly numbered are issued and controlled by the department. If there is concealment of sales the assessing authority is empowered to withhold issue of blank declaration forms to the dealer. Prior to 1 February 1978, there was a monetary limit on sales to be entered in one form; and thereafter, control over issue of blank forms was relaxed along with the monetary limit. With effect from 10 November 1981 any number of transactions occurring in a financial year was allowed to be entered in a form subject to a

limit of Rs. 30,000 per form. Fresh forms were to be issued to a dealer only after he had rendered account of the forms issued to him earlier.

(*a*) A dealer registered, both under the local and the Central acts, with effect from 27 June 1981 did not file the return for the quarter ending 30 June 1981 and filed three differing returns in respect of the quarter ending 30 September 1981. He was issued declaration forms numbering 20, 40 and 40 on 29 July 1981, 5 December 1981 and 21 December 1981 respectively. The check underlying the system of issue of forms to a dealer only after he had rendered accounts of the forms (with limit of Rs. 30,000 per form) introduced from 10 November 1981, was not exercised. In all, 146 forms were issued to the dealer who furnished account for only 76 forms. Purchases valuing more than Rs. 10 lakhs were made by the dealer between December 1981 and January 1982 and on the assessing authority issuing notice (February 1982) to produce his records in order to settle discrepancies in his returns, the dealer surrendered his registration certificate (February 1982) and requested for its cancellation. His assessment has not so far been completed (December 1982).

(*b*) A dealer registered with effect from 10 August 1979 was issued 175 declaration forms by the Department during the months of September 1979 to May 1980, even though the dealer had not filed a single quarterly return. In July 1980, on survey, he was not traceable.

(*c*) Sale of watches valuing Rs. 18,24,858 made by one registered dealer to another was exempted from tax on the strength of declaration in form bearing No. G 807148, relating to the quarter ending 30 June 1979. The purchasing dealer who had been filing 'nil' sale returns, had closed his business prior to December 1980 and was untraceable in June 1981. However, he had been issued 25 declaration forms (bearing Nos. G 807126 to 807150) on 6 August 1979, which included the said form bearing number G 807148. On the sale of watches in question,

loss of sales tax revenue amounted to Rs. 1,82,485 notwithstanding the routine survey which had not covered the purchasing dealer. The Vigilance and Enforcement branch which started investigation on 27 June 1981 had not remedied the loss of revenue amounting to Rs. 1,82,485 in any way.

(*vi*) *Ineffective cancellation of registrations*

The sales tax law provides for cancellation of the dealer's registration certificate if he :

(*a*) discontinues or transfers his business or

(*b*) defaults in payment of tax or

(*c*) ceases to be liable to pay tax or

(*d*) furnishes or accepts false declaration with a view to obtaining tax exemptions or

(*e*) fails to furnish a security demanded or

(*f*) is convicted under the Sales Tax Act.

The threat of cancellation of registration, carrying with it the threat of the dealer being unable to do business thereafter, should normally be a powerful administrative instrument. However, the following cases, noticed in audit, indicate that in practice, it was a hollow threat.

(*a*) From a dealer registered in September 1961 no security was obtained. He failed to file quarterly returns and on 21 December 1973 the department asked him to furnish security of Rs. 5,000 but he did not comply. On 3 June 1975, the department ordered the dealer to furnish two sureties of Rs. 25,000 each under the local and Central Acts since he had not filed returns nor filed them in time during the years 1963-64 to 1970-71, 1972-73 and 1973-74 and also as he had not deposited the assessed tax during the years 1971-72 and 1972-73. Sureties not being furnished, the registration certificate was cancelled but only in September 1979 and that too, retrospectively from December

1978, when the firm had gone into liquidation. On his assessments to tax made upto the year 1977-78, demands amounting to Rs. 2,66,437 were still due for recovery from him.

(*b*) A registered dealer did not file return for the quarter ending September 1978 nor for subsequent quarters. The show cause notice issued to him for default in filing returns was not acknowledged. In August 1979 the dealer was not traceable at his business address. In November 1981, the dealer informed the assessing authority that he had closed down his business and asked for cancellation of his registration certificate which was cancelled on 17 November 1981. On his assessments upto 31 March 1978, tax amounting to Rs. 6,87,509 is still to be recovered from the dealer (December 1982).

(*vii*) *Summing up*

The nature and extent of survey, cancellation of registration and control exercised through issue of blank declaration forms to registered dealers revealed the following :—

(*a*) The number of dealers evading registration who were detected in surveys had gone down considerably in the last three years as compared to the number of detections during the year 1971-72 or even 1972-73.

(*b*) Survey of registered dealers had not been carried out with a view to detecting unregistered dealers and little benefit had been derived from routine surveys of dealers already registered.

(*c*) The exercise of checks through the instrument of control over declaration forms has not served the purpose.

(*d*) The provisions in the Sales Tax law for cancellation of the registration certificates were never used in time against defaulting traders and it remained merely a formality rather than a powerful administrative instrument designed to aid revenue.

3.05 Progress in assessment of sales tax dealers

(*i*) The progress of assessment of sales tax dealers in the last three years, under the local and Central Acts, furnished by the department is given below :

	1979-80		1980-81		1981-82	
	Local	Central	Local	Central	Local	Central
(*a*) Number of assessments pending at the beginning of the year.	1,55,611	1,39,087	1,66,670	1,50,428	1,82,709	1,67,117
(*b*) Number of assessments arising during the year.	61,092	54,744	70,865	64,989	73,030	66,769
(*c*) Number of assessments completed during the year	50,033	43,403	54,826	48,300	55,722	49,615
(*d*) Number of assessments pending at the end of the year	1,66,670	1,50,428	1,88,209	1,87,117	2,00,022	1,84,271
(*e*) Number of assessments out of (c) above which were current i.e. related to previous year.	946	762	883	707	661	554
(*f*) Number of assessments out of (c) which were liable to be barred by limitation at the end of the year.	41,446	37,997	50,218	44,995	52,089	46,553

Assessments numbering 1,05,337 completed during the year 1981-82, resulted in net demands being raised for tax amounting to Rs. 13.54 crores out of which Rs. 5.84 crores arose from 12,825 assessments completed during the month of March 1982. One of the reasons for the large number of cases, where dealers close down business and assessment is done long after, is that over ninety per cent of the assessments done in any year relate to sales that took place 3 to 4 years ago. All the assessing officers are most of the time engaged in preventing old pending assessments from becoming barred by limitation. In regard to assessments of Income Tax returns under the Central Government the limitation period for assessment was reduced from 4 years to 2 years resulting in assessing officers presently coping mostly with assessments only 2 years old or less, instead of assessments 4 years old.

(*ii*) The yearwise analysis of assessments pending as on 31st March 1982, furnished by the department is given below :

Pending assessments relating to year	Local	Central	Total
1980-81	72,374	66,215	1,38,589
1979-80	65,864	61,989	1,27,853
1978-79	61,784	56,067	1,17,851
TOTAL	2,00,022	1,84,271	3,84,293

As on 31st March 1981, the number of pending assessments relating to the years 1977-78 and 1978-79 were as under :—

Pending assessments relating to year .	Local	Central	Total
1978-79	56,617	51,797	1,08,414
1977-78	56,110	51,038	1,07,148

The reasons for allowing 4,021 (*viz.* 56,110 less 52,089) local assessments and 4,485 (*viz.* 51,038 less 46,553) Central assessments relating to the year 1977-78 to become barred by limitation instead of finalising them during 1981-82 have been asked for from the department.

The reasons for increase in the number of pending local and Central assessments relating to the year 1978-79 by 5,167 (*viz.* 61,784 less 56,617) and 4,270 (*viz.* 56,067 less 51,797) respectively during 1981-82 have been asked for from the department.

The replies from the department are awaited (December 1982).

3.06 **Searches and seizures under Sales Tax Act**

Information received from the department on searches and seizures during the year 1980-81* and the resulting revenue yield are given below:—

(*a*)	Number of search and seizure cases in which assessment was pending on 31 March 1980	1,332
(*b*)	Number of search and seizure cases during 1980-81	265
	TOTAL	1,597
(*c*)	Number of cases where assessments were completed during 1980-81 :	
	(*i*) Out of the cases arising prior to 1st April 1980	313
	(*ii*) Out of the cases arisen during 1980-81	114
	TOTAL	427
(*d*)	Number of cases in which assessment was pending on 31 March 1981	1,170
(*e*)	Number of cases in which prosecution was launched during 1980-81 or offences were compounded.	NIL
(*f*)	Amount of concealed turnover in the 265 cases detected during 1980-81	Rs. 507 lakhs
(*g*)	Tax demanded in the 427 cases assessed during 1980-81	Rs. 15 lakhs

*Information in respect of 1981-82 is still to be compiled by the department.

3.07 **Arrears in collection of Sales tax**

Sales tax demanded (net) as a result of assessment, but not collected, amounted to Rs. 51.70 crores as on 31 March 1981 as against Rs. 38.49 crores which were outstanding as on 31 March 1979 and Rs. 49.22 crores as on 31 March 1980 ; details are given below :—

	1978-79		1979-80		1980-81	
	Local	Central	Local	Central	Loal	Central
(*a*) Arrears of tax at the begining of the year .	24.45	7.97	28.09	10.40	34.38	14.84
(*b*) Net tax demands raised during the year . .	7.17	4.13	9.88	6.37	8.18	5.74
(*c*) Net tax collected during the year .	0.89	0.66	1.51	0.91	2.92	2.93
(*d*) Net tax adjusted on account of write off, reduction as also enhancement in appeal, revision etc. . . .	2.64	1.04	2.08	1.02	3.75	1.84
(*e*) Net tax outstanding at the end of the year . (a + b) — (c + d)	28.09	10.40	34.38	14.84	35.89	15.81

(*i*) Demands in excess of Rs. 50,000 each were outstanding from 353 assessees. The year-wise break up of the outstanding demands is given below :—

(In crores of rupees)

Demands outstanding from	Amount		
	Local	Central	Total
1972-73 and earlier years . . .	3.57	1.42	4.99
1973-74	1.66	0.43	2.09
1974-75	2.40	0.51	2.91
1975-76	3.10	0.55	3.65
1976-77	3.94	1.25	5.19
1977-78	4.03	1.88	5.91
1978-79	4.73	2.30	7.03
1979-80	6.91	4.46	11.37
1980-81	5.55	3.01	8.56
TOTAL	35.89	15.81	51.70

(*ii*) The outstanding demands have been classified by the department according to certain reasons as to why they are outstanding; which are given below:

	1978-79		1979-80		1980-81	
	Local	Central	Local	Central	Local	Central
					(In crores of rupees)	
(*a*) Demands under correspondence including amounts certified for recovery as arrears of land revenue .	14.04	5.73	18.48	8.96	16.90	8.13
(*b*) Recovery stayed by court .	1.45	0.51	2.67	0.80	2.36	1.02
(*c*) Recovery stayed by other authorities . .	3.29	1.02	2.27	1.41	2.12	1.45
(*d*) Recovery held up due to insolvency of dealers. .	0.72	0.24	1.18	0.27	0.93	0.21
(*e*) Recovery held up due to appeal, review, etc. .	3.99	2.26	4.22	2.29	7.01	3.34
(*f*) Demand likely to be written off .	3.24	0.48	3.08	0.61	2.67	1.04
(*g*) Other reasons .	1.36	0.16	2.48	0.50	3.90	0.62
TOTAL . .	28.09	10.40	34.38	14.84	35.89	15.81

(*iii*) The department has stated (May 1982) that demands amounting to Rs. 25.03 crores (local tax Rs. 16.90 crores and Central tax Rs. 8.13 crores) including amounts certified for recovery as arrears of land revenue are likely to be realised.

(*iv*) The collection of outstanding net demands during the years 1978-79 and 1979-80 was less than the amount of demands written off, reduced on appeal etc. However, in 1980-81, collection (Rs. 5.85 crores) was higher than reduction in demand (Rs. 5.59 crores) but the department has stated (May 1982) that sales tax demands amounting to Rs. 3.71 crores (Local tax Rs. 2.67 crores and Central tax Rs. 1.04 crores) were likely to be written off.

3.08 **Recovery certificates pending with Sales Tax Department**

(*i*) The number of recovery certificates pending with the Sales Tax Department for effecting recovery of sales tax, as on 31 March 1981 and 31 March 1982 are given below :—

	1980-81		1981-82	
	Number of certificates	Amount (in lakhs of rupees)	Number of certificates	Amount (in lakhs of rupees)
(*i*) Number of certificates pending from the previous year and the amount certified for recovery. . .	5,101	159	8,739	370
(*ii*) Number of certificates received during the year and the amount certified for recovery . . .	9,717	551	13,121	708
(*iii*) Number of certificates returned after making recovery of tax during the year and the amount of tax recovered . .	5,114	190	6,354	121
(*iv*) Number of certificates returned without effecting recovery of tax for various reasons and the amount of tax involved. . .	965	150	923	253
(*v*) Number of certificates pending at the close of the year, as on 31st March, and amount of tax involved	8,739	370	14,583	70-

Out of Rs. 370 lakhs due on 8,739 certificates as on 31 March 1982, Rs. 340 lakhs was due on 769 certificatses in each of which the tax due for recovery was in excess of Rs. 10,000. Of these, 199 certificates involving tax of Rs. 166 lakhs relate to 1978-79 and earlier years.

3.09 **Exemptions allowed despite discrepancies in records**

As per the Delhi Sales Tax Act, 1975, as also under the Bengal Finance (Sales Tax) Act 1941 applicable in Delhi upto 20 October 1975, value of goods sold by a registered dealer to another registered dealer is to be allowed as a deduction from the turnover

of the selling dealer on his furnishing along with his returns, a complete list of such sales, duly supported by a declaration in respect of the sale obtained from the purchasing dealer. If the Commissioner or any person appointed under the Act, in the course of any proceedings under the Act, 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 should 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 have been avoided. Under the Central Sales Tax Act, 1956, a dealer who sells goods to a registered dealer in the course of inter-State trade or commerce shall be liable to pay tax at 4 per cent, if the sales are supported by prescribed declaration; otherwise, at 10 per cent or at the rate applicable for the sale of such goods inside the appropriate State, which ever is higher.

(*i*) On sale of dry fruits and *kiryana* goods amounting to Rs. 20,81,851 made by a dealer to three registered dealers during the year 1974-75, he was allowed exemption from tax in the assessment done in March 1979. Two of the purchasing dealers, however, did not deal in resale of dry fruits and *kiryana* goods and the third was not being assessed in the jurisdiction of the assessing officer, though he should have been assessed there as per the registration number quoted and references in the record of the department. The exemption, was, therefore, given incorrectly without verification of facts. On sales amounting to Rs. 20,81,851 tax not levied amounted to Rs. 1,01,073.

The above discrepancies were pointed out (January 1980), in audit and the reasons for acceptance by the department of such declarations without verification were enquired in audit. Reply of the department is still awaited (December 1982).

(*ii*) A dealer claimed deduction from his turnover on account of sales made to local registered dealers during the year 1976-77 but the claim was in excess of sales so made, by Rs. 1,60,908. He also claimed benefit of the concessional rate of 4 per cent

on an amount of inter-State sales which was in excess of such sales, by Rs. 19,239. The excess claimed as per totals in the list of sales and amounts of bills was not supported by prescribed declarations. The claims were allowed (August 1980) by the department without verifying them. This resulted in tax being levied short by Rs. 16,091 under the Delhi Sales Tax Act and by Rs. 1,154 under the Central Sales Tax Act.

On the mistakes being pointed out in audit (July 1981), the department admitted the mistakes and intimated (February 1982) that additional demands for Rs. 16,091 under the local Act and Rs. 1,154 under the Central Act had been raised and penalty of Rs. 16,000 and Rs. 1,100 imposed under the two Acts, respectively for furnishing inaccurate particulars of sales. The demand for Rs. 1,154 has been collected also; report on recovery of other amounts is awaited (June 1982).

The cases were reported to the Ministry of Home Affairs in June 1982, who have accepted the facts (October 1982).

3.10 **Failure to disallow inadmissible exemptions**

As per Section 5 of the Delhi Sales Tax Act, 1975 and notification issued thereunder, on sale of certain goods which are notified, tax is levied at first point of sale within the State and exempted at the subsequent points of sale, provided subsequent sales are supported by declaration obtained from seller at earlier point to the effect that he is liable to pay sales tax.

(*i*) On resale in the year 1977-78 of medicines and cosmetic goods valuing Rs. 11,81,458 a dealer was allowed (February 1982) exemption from tax on such sale even though his claims to the effect that tax had been paid on the sale at first point were not supported by aforesaid declarations. This resulted in tax being levied short by Rs. 1,18,146 (at 10 per cent of Rs. 11,81,458).

On the omission being pointed out (June 1982) in audit, the department stated (October 1982) that demand of Rs. 61,480 had been raised in October 1982 after reexamining the nature of the goods. Report on recovery is awaited (December 1982).

(*ii*) On sales amounting to Rs. 54,15,023 made by two dealers during the year 1976-77 tax was not levied (April 1980) though only sales amounting to Rs. 35,92,177 were supported by aforesaid declarations from seller at first point of sale. This resulted in tax being levied short by Rs. 82,712.

On the irregularity being pointed out (December 1981 and February 1982) in audit, the department stated (June 1982) that in respect of one dealer, action to reassess the tax had been initiated and in respect of the other, action was under consideration. Report on rectification is awaited (December 1982).

(*iii*) In respect of his sales for the assessment year 1977-78, a dealer claimed and was allowed (August 1980) exemption on sales amounting to Rs. 94,700 on the ground that the tax had been paid already at first point of sale of these goods. The amount of sales shown in the declaration issued by the dealer from whom the goods were purchased were, however, seen to have been altered. Further, in respect of the assessment year 1978-79, the dealer claimed that sales amounting to Rs. 2,25,518 were made to a registered dealer, but it was seen that the amounts of sales shown in the declarations issued by the purchasing dealer had been altered.

On the alterations being pointed out (January 1982) in audit, the department accepted (April 1982) the factual position after checking and revised the assessments raising additional demands for Rs. 18,526 in respect of the two assessment years. Penalty of Rs. 46,315 at the maximum was leviable for falsification of records; however, a penalty of Rs. 18,000 was imposed (April 1982). The dealer has since deposited (October 1982) Rs. 36,525 including penalty of Rs. 18,000.

The cases were reported to the Ministry of Home Affairs (August 1982); their reply is awaited (December 1982).

3.11 **Sales deemed as transfer without requisite evidence**

Under Section 6A of the Central Sales Tax Act, 1956 the burden of proof that transfer of goods was otherwise than by way of sales, is on the dealer who claims exemption on the ground that there was no sale.

(*i*) On goods valuing Rs. 5,89,422 consigned to a place outside Delhi a dealer was not assessed to sales tax in respect of the assessment year 1975-76. However, evidence of despatch and prescribed declarations were not produced by the dealer. In the circumstances, the consignment of goods was required to be deemed as a sale and tax at 10 per cent, amounting to Rs. 58,942 was leviable.

On the mistake being pointed out in audit in May 1981, the department stated (April 1982) that the matter was under consideration.

(*ii*) A dealer claimed he had transferred oil valuing Rs. 12,04,845 on consignment basis to a place outside Delhi during the assessment year 1975-76, but without evidence of despatch and particulars of goods. However, tax amounting to Rs. 1,20,484 was not levied. Further, in the last quarter of the year on sale of oil seeds valuing Rs. 4,69,889 tax was wrongly levied at 2 per cent instead of at the correct rate of 3 per cent, effective from 21 October, 1975, resulting in short levy of tax by Rs. 4,699 (in addition to the non-levy).

On the mistakes being pointed out in audit, the department stated (April 1982) that the matter had been referred to the concerned authority. Acceptance of the audit objections is awaited (December 1982).

(*iii*) A dealer in rubber goods claimed he transferred goods valuing Rs. 7,63,666 during the year 1974-75 but could not produce a declaration from the transferee, in evidence and there was no reference to any other branch or office of business in the registration certificates issued to the dealer. However, the

assessing authority did not levy sales tax amounting to Rs. 38,183 on the transfer of goods valuing Rs. 7,63,666 by deeming it as sales.

The omission was pointed out in audit (January 1981), but no reply has been received from the department so far (December 1982).

The cases were reported to the Ministry of Home Affairs (August 1982); their reply is awaited (December 1982).

3.12 Application of incorrect rate of tax

Under the Central Sales Tax Act, 1956, on inter-State sales to registered dealers of goods, not specified in the First Schedule tax is leviable at a concessional rate of 2 per cent instead of 4 per cent (with effect from 21 October 1975) if sale is supported by prescribed declarations and if tax had already been paid on their sale in the course of import into the territory. The goods specified included "laminated sheets".

On inter-State sales of laminated sheets amounting to Rs. 1,13,31,223 made by two dealers between 21 October 1975 and 31 March 1977, tax was assessed (between April 1978 to May 1980) at concessional rate of 2 per cent as per claim made by the dealers in their returns, instead of at the rate of 4 per cent applicable to the sales. This resulted in tax being levied short by Rs. 2,26,683 in the two cases, besides non-recovery of interest amounting to Rs. 1,83,278 on the amount of tax.

On the mistake being pointed out (December 1980) in audit, the department revised the assessment (May 1981) of both the dealers in respect of the years 1975-76 and 1976-77 and raised additional demands amounting to Rs. 4,09,961 of which Rs. 2,34,906 had been realised (January 1982).

The case was reported to the Ministry of Home Affairs in June 1982; their reply is awaited (December 1982).

3.13 Patent mistakes in best judgment assessments

Under the Delhi Sales Tax Act, 1975, if a dealer fails to furnish a return for any period by the prescribed date, the Commissioner shall, after giving the dealer a reasonable opportunity of being heard, assess to the best of his judgment the amount of tax, if any, due from him.

(*i*) In the absence of relevant particulars a dealer was assessed to sales tax (February 1977) on best judgment basis on an estimated turnover of Rs. 16,45,277 for the year 1972-73. A survey report submitted to the assessing officer by the special Investigation Branch of the department in August 1973 had, however, revealed that the dealer had made purchases for Rs. 18,80,696 during the year 1972-73.

On the failure to take into account the investigation report being pointed out in audit (April 1977) the dealer was reassessed on a turnover of Rs. 19,74,731 on best judgment basis (after adding 5 per cent profit on the purchases) and additional demand for Rs. 33,604 (inclusive of surcharge) was raised (April 1982). Report on recovery of demand is awaited (December 1982).

The case was reported to the Ministry of Home Affairs in June 1982; their reply is awaited (December 1982).

(*ii*) The sales turnover of a dealer liable to tax under the local Act was determined by the assessing authority to the best of his judgment at Rs. 1,12,500 for each quarter of the assessment year 1976-77. But instead of calculating the tax at the rate of 7 per cent as 7,875, it was wrongly calculated as Rs. 4,500 per quarter. The computation mistake led to tax being levied short by Rs. 13,500.

On the mistake being pointed out (December 1981) in audit, the department raised an additional demand for Rs. 13,500 (March 1982). The appeal filed by the dealer is pending (June 1982).

The Ministry of Home Affairs have confirmed the facts.

3.14 Failure to levy penalty for unauthorised collection of tax

As per section 22(1) of Delhi Sales Tax Act, 1975, no registered dealer shall collect any amount by way of tax which is not in accordance with the Act and the rules made thereunder. Section 57 *ibid* further provides for levy of penalty not exceeding two and a half times the tax wrongly collected by any dealer.

A dealer should have realised on his sales, tax of only Rs. 42,137 in respect of his turnover for the years 1975-76 and 1976-77 as assessed (on 13 November 1979 and 19 May 1980) by the sales tax officer, but the dealer had actually realised Rs. 63,648 as tax during this period. The dealer retained the excess tax of Rs. 21,511 realised by him. No action was taken against the dealer, notwithstanding the requirement in law referred to above. The dealer was liable to penalty not exceeding Rs. 53,777 *i.e.* two and a half times the excess tax collected.

On the failure being pointed out (June 1981) in audit, the department intimated (July 1982) that a total penalty of Rs. 30,000 (Rs. 15,000 each in respect of the years 1975-76, 1976-77) under section 57 of the Act had since been imposed. The dealer had filed (1 December 1981) an appeal which was pending.

The Ministry of Home Affairs have confirmed the facts.

3.15 System defects in collection of tax and reconciliation of records

The collection of sales tax through cheques and bank drafts was centralised from April 1962 but, on the recommendations of a study team, decentralised from 1974. Thereupon, the sales tax rules were amended and the dealer could pay the tax due in the appropriate government treasury or bank, before furnishing his returns. The daily scrolls received in the department from treasury and banks, in support of the tax received, are noted in a control register and are posted in the control cell ward-wise, in daily collection registers maintained for each of the 50 wards in respect of Central and Local tax separately.

(*ii*) A test check of the daily collection registers of all the wards, done in April 1982, revealed that the amount booked in the daily collection register in December 1981 was less than the total receipts intimated by the treasury and banks.

	Local tax (Rupees)	Central tax (Rupees)
Tax collected as per treasury and bank figures. . .	6,39,02,735.26	3,79,15,248.37
Total of account figures posted in the daily collection register for the wards. . . .	5,87,31,645.42	4,11,97,527.15
Difference	(+)51,71,089.84	(—)32,82,278.78

(*iii*) After the posting in the ward-wise register, portions of the scroll/challans are sent to the respective ward officer for posting amounts of tax paid, in the respective demand and collection registers,which posting is to be watched by the control cell. It was seen in audit (June 1982) that the control cell in the collection branch did not receive back even a single confirmation during the year 1980-81 from the wards, in confirmtion of effecting postings in the demand and collection registers.

(*iv*) The payments of refunds authorised in the assessing wards are to be watched by the collection branch. During the three years ended March 1981, the collection branch monitored 1,693 refund advices in respect of refunds amounting to Rs. 60,61,417 authorised in various assessing wards. Whether all the refunds had been made by the banks could not be ascertained, in audit, since the payments are not being watched or noted in the collection branch.

The above facts were reported to the department (August 1982) and Ministry of Home Affairs (August 1982); their replies are awaited (December 1982).

STATE EXCISE

3.16 Irregular refund of duty

Under the Punjab Excise Act 1914, as extended to Delhi, on Indian made foreign liquor (including beer) imported into, exported from or transported in, Union Territory of Delhi, excise duty is payable. Neither the Act nor the Rules thereunder allow of rebate or refund of duty on export of duty-paid goods; they only provide for levy of duty on import, export or transport. Duty is leviable only on such liquor as is found to be fit for human consumption. As per the liquor licence Rules 1976, where the liquor has become sedimented due to passage of time or any other reason and is not fit for human consumption (based on chemical analysis) the stocks are to be destroyed and no compensation or refund of duty is admissible.

The Delhi Excise Office, in effect, allowed three licensees to export out of Delhi, 3,123 bottles of Indian made foreign liquor and 20,143 bottles of beer, which had become unfit for human consumption, long after they were imported into Delhi after payment of duty. Partly in lieu, replacement goods and partly reconditioned goods were allowed to be imported into Delhi duty-free. The non-levy of duty on import (of replacement of goods) or reimport (of reconditioned goods) resulted in loss of revenue to the department amounting to Rs. 45,669.

On the mistakes being pointed out in audit (May 1979) the department stated (in July 1979 and January 1980) that excise duty was payable only on potable liquor, implying that they were not potable on date of original import. The plea of the department that the liquor was *ab initio* unfit for human consumption could not be supported by inspection reports on the liquor required to be brought on record immediately on import and within a week.

The case was reported to the Ministry of Home Affairs in October 1979; their reply is awaited (December 1982).

STAMP DUTY AND REGISTRATION FEE

3.17 Short recovery of stamp duty

Under the Indian Registration Act, 1908 a power of attorney to sell immovable property for a consideration is required to be registered. Under the Indian Stamp Act, 1899, on an instrument of power of attorney, when given for consideration and authorising the attorney to sell any immovable property, stamp duty is leviable at the rate of 3 per cent of the amount of consideration. On a general power of attorney a stamp duty of only Rs. 10 is leviable. Failure to set down the consideration and all other facts and circumstances affecting the chargeability of any instrument to duty, fully and truly, renders the executant or any person employed or concerned in or about the preparation of the instrument, liable to a fine of upto Rs. 5,000.

On 145 instruments of general power of attorney authorising the holder of the power to sell the immovable property owned by the executant of the instrument, stamp duty was levied at Rs. 10 per instrument. Rs. 69,29,420, in the aggregate, were received by the executants in these 145 cases from persons related to the holders of the power of attorney. For such amounts receipts were given by the executants of the power of attorney and such receipts were registered by the registering authority on almost the same dates on which the instruments granting power of attorney were registered. Agreements to sell the immovable property for specified sums were also registered by the registering authorities on the same dates; stamp duty being levied thereon at nominal rates fixed for deeds of agreement, wills executed by the owners of immovable property, whereby the property would pass to the persons from whom the moneys (Rs. 69,29,420 in the aggregate) were received on the death of the executant of the powers of attorney, were also registered almost on the same dates by the registering authorities.

Had the registering authorities invoked the provisions of the Stamp Act referred to above, empowering them to get at the full details of the transanctions before registering the documents

in four parts, independently, on the same date, stamp duty amounting to Rs. 2.08 lakhs (at 3% of the consideration for conveyance or 3% of the consideration for giving power of attorney for selling immovable property) would have been realised instead of only Rs. 1,450 as stamp duty on deeds granting general powers of attorney. Further, under the penal provisions of the Stamp Act, 1899, fine of up to Rs. 5,000 leviable in each case would have yielded Rs. 7.25 lakhs in the aggregate in the 145 cases.

The administrative failure of the Registration authorities, resulting in loss of revenue, coming to the notice of audit in 1981-82, was pointed out to the department (August 1982); their reply is awaited (December 1982).

The cases were reported to Ministry of Home Affairs (September 1982); their reply is awaited. In paragraphs 125, 112 and 3.20 of the Reports of the Comptroller and Auditor General of India for the years 1976-77, 1978-79 and 1980-81 respectively, similar failures noticed in audit in earlier years were reported.

MOTOR VEHICLES TAX

3.18 Failure to recover renewal fee

Section 24(4) of the Motor Vehicle Act, 1939 was inserted by the Motor Vehicles (Amendment) Act, 1978. It provides that a certificate of registration issued before or after the date of the commencement of the amendment (16 January 1979) in respect of a motor vehicle other than a transport vehicle, is valid only for a period of fifteen years from the date of issue of such certificate. It is renewable on payment of a prescribed fee. The existing fee in respect of first registration as distinct from renewal of registration, is Rs. 5 in respect of motor cycles and scooters and Rs. 16 in respect of other vehicles. Consequent to the amendment, the Delhi Administration has not prescribed registration fee for renewal.

During the years 1961-62, to 1965-66, cars, jeeps and station wagons numbering 14,995 and motor cycles and scooters numbering 26,478 were registered under the Act. Registrations in respect of them, therefore, became due for renewal with effect from

16 January 1979 or 15 years from the date of registration whichever was later.

Vehicles in respect of which registration became due for renewal upto 31 March 1981, had not, however, been registered anew, because the department has not so far prescribed the renewal fee. A sum of Rs. 3.72 lakhs, which should have been realised as renewal fee (calculated at the existing rates for first registrations) has been lost to the Administration.

The failure to collect the fee was pointed out in audit (August 1981). The department stated (October 1982) that since the amendment to the Rules has not so far been made, renewal fee was not chargeable on the vehicles which have become more than 15 years old after the amendment of the Act. Necessary amendment to the Rules had already been moved in order to prescribe the renewal rates, but it has not been approved so far.

The case was reported to the Ministry of Home Affairs (August 1982); their reply is awaited (December 1982).

LAND REVENUE

3.19 Non-recovery of collection charges

Under Section 3 and 10 of the Revenue Recovery Act, 1890, where revenue authorities are required to recover dues on behalf of other Governments, as arrears of land revenue (on receipt of recovery certificates from other governments), they are to remit the collection to other governments after deduction of collection charges.

Water charges amounting to Rs. 14.96 lakhs were collected by the departmental revenue officers during the years 1975-76 to 1980-81 as arrears of land revenue on behalf of two other State Governments and were remitted to them in full without deducting any collection charges. Though 10 per cent is being so recovered by such other State Governments, collection charges is not recovered in Delhi, because of the failure of the Delhi Administration to prescribe the amount of collection charges to be deducted. Revenue of anywhere upto Rs. 1.5 lakhs (at 10 per cent as

per rates in other States) has been lost to Delhi Administration thereby.

The omission to lay down rates for realisation of collection charges was pointed out in audit (December 1981); the reply of the department is awaited (December 1982).

The omission was reported to the Ministry of Home Affairs (August 1982); their reply is awaited (December 1982).

3.20 Failure to carry forward demands outstanding

In the *Jamabandi* registers (demand and collection registers in respect of land revenue) of two Tehsils, demands for Rs. 16.87 lakhs for the years 1974-75 to 1980-81 as reflected in individual accounts had not been carried forward into the register for the year ending March 1981, with the result that instead of Rs. 27.96 lakhs being the outstanding demands to be carried forward, only demands for Rs. 11.09 laks had been carried forward, into the register for the year 1980-81.

The failure was pointed out in audit (December 1981) to the department; its reply is awaited (December 1982).

The case was reported to Ministry of Home Affairs (December 1982); their reply is awaited.

ENTERTAINMENT TAX

3.21 Some aspects of Entertainment Tax revenue

(i) General

Under Secton 3 of the U.P. Entertainment and Betting Tax Act, 1937, as extended to the Union Territory of Delhi, tax at a rate not exceeding 75 per cent, is leviable on the payments received for admission to any entertainment. The current rates of tax are 60 per cent on cinematograph performance, 25 per ent on other entertainments and 10 per cent on horse racing. The collections in the year 1981-82 and the two preceding years were, Rs. 10.23 crores, Rs. 8.31 crores and Rs. 6.21 crores respectively. The cost of collection averaged around Rs. 3.50 lakhs per year.

(ii) Tax not levied on video games

Entertainment is defined in the Act to include "any exhibition, performance, amusement, game or sport to which persons are admitted on payment for any purpose whatsoever connected with entertainment". On the advice of the legal department, the Finance Department informed the Commissioner of Entertainment Tax that the money inserted in the video game machine for operating it, is such a payment under the Act and tax is leviable thereon. On an estimated (October 1981) 500 machines installed in various games parlours in Delhi where such payment is generally charged at the rate of Re. one per game, the tax not levied on the collection at 25 per cent, amounted to Rs. 11.25 lakhs per annum.

The omission was pointed out in audit (August 1982) to the department; their reply is awaited (December 1982).

(iii) Failure to demand and recover entertainment tax due

Where, Government (in Delhi, the Administration) is satisfied that the whole of the takings arising from charging payment for admission to any entertainment, are devoted to philanthropic, religious or charitable purposes, without taking out anything for any expenses of the entertainment, it is empowered under the Act, to exempt the takings from tax. Failure to comply with any of the conditions attached to the grant of exemption makes the defaulter liable to penalty of Rs. 500 and the withdrawal of the exemption.

(*a*) In 1979-80 exemptions were granted in 50 cases, subject to the condition that the accounts should be received by the department within one month from the date of entertainment. But the accounts were received after delays ranging from a week to seven and a half months. On such defaults, entertainment tax amounting to Rs. 2,39,721 became leviable and penalty of Rs. 25,000 chargeable. However, exemption was allowed to be enjoyed and no penal action was taken.

The omissions were pointed out in audit (August 1982) to the department; their reply is awaited (December 1982).

(*b*) The recovery register maintained by the department revealed that in 96 cases, tax amounting to Rs. 8.22 lakhs was pending recovery (May 1982) for periods ranging from 2 years to 16 years. In 75 cases reported to the Collector, Delhi, for recovery as arrears of land revenue there was no record of the department having pursued the recovery with the Collector. Only in 3 cases stay had been granted by Courts.

The failure was pointed out in audit (August 1982) to the department; their reply is awaited (December 1982).

(*c*) Advance payment of the tax (received through bank draft) is required to be deposited into the Government account without delay, as required under the financial rules. During the period from August 1980 to January 1982 advance payment of tax received amounting to Rs. 4.36 lakhs was kept outside the Government account for periods ranging from 3 days to 5 months. Two demand drafts for Rs. 2 lakhs each were kept outside Government account for nearly two months (September/October to November 1981).

The omissions were pointed out in audit (August 1982) to the department; their reply is awaited.

The above cases were reported to the Ministry of Home Affairs (August 1982); their reply is awaited (December 1982).

SECTION B UNION TERRITORY OF CHANDIGARH

3.22 Loss of revenue due to concealment of purchases and sales

Under the Punjab General Sales Tax Act, 1948, as applicable to the Union Territory of Chandigarh, if a dealer has maintained false or incorrect accounts with a view to suppressing his sales or purchases, he is liable to pay by way of penalty, in addition to tax, a sum not less than one fourth but not exceeding one and a half times, the tax involved.

On his sales of tyres and tubes of motor vehicles in the Union Territory of Chandigarh, a dealer was assessed to sales tax on turnover amounting to Rs. 23.08 lakhs in 1977-78, Rs. 31.90 lakhs

in 1978-79 and Rs. 37.75 lakhs in 1979-80. The assessments were done in May 1980, September 1980 and January 1981 respectively. The sales were supported by his trading accounts which disclosed purchases of Rs. 22.92 lakhs, Rs. 32.04 lakhs, and Rs. 36.85 lakhs respectively, during the three years. However, the assessee had purchased goods valuing Rs. 26.39 lakhs, Rs. 37.40 lakhs and Rs. 41.41 lakhs during the three years 1977-78, 1978-79 and 1979-80 respectively, as shown in the declarations furnished by him to another dealer of Chandigarh from whom the goods were purchased, which were seen in audit in the assessment of the other dealer. The purchasing dealer had, therefore, suppressed his purchases by Rs. 13.39 lakhs (Rs. 3.47 lakhs in 1977-78, Rs. 5.36 lakhs in 1978-79 and Rs. 4.56 lakhs in 1979-80). On the suppressed sales, amounting to Rs. 13.72 lakhs (after adding 2.5 per cent profit element) tax amounting to Rs. 1.37 lakhs had not been levied, apart from the penalty leviable.

The omission was pointed out in audit to the Department in June 1982; their reply is awaited (December 1982).

The case was reported to the Ministry of Home Affairs (September 1982); their reply is also awaited (December 1982).

(R. S. GUPTA)
Director of Receipt Audit

New Delhi
The 1983
21-2-1983

Countersigned.

(GIAN PRAKASH)
Comptroller & Auditor General of India

New Delhi
The 1983
21-2-1983