



सत्यमेव जयते

REPORT
OF THE
COMPTROLLER
AND
AUDITOR GENERAL
OF INDIA

FOR THE YEAR

1978-79

UNION GOVERNMENT (CIVIL)

REVENUE RECEIPTS

VOLUME I

INDIRECT TAXES

ERRATA

Page No.	Para No.	Line	For	Read
(i)	—	4th from top	(iii)	(vii)
(ii)	—	9th from top	Avasion	Evasion
9	7	17th from top	exceeding	exceeded
53	46	16th from top	irregularly	irregularly
55	48	10th from bottom	1977	1976
60	50	11th from top	irregularly	irregularity
60	50	11th from top	is	in
68	63	3rd from bottom	retireved	retrieved
71	66	12th from top	Rs. 71,876	Rs. 71,876
71	66	16th from bottom	Recoverv	Recovery
72	67	5th from top	Rs. 71,780	Rs. 71,780
73	68	5th from top	Ministrv	Ministry
102	88(a)	17th from top	manufacture	manufacturer
105	94	Footnote**	Fiinance	Finance
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Report
of the
Comptroller
and
Auditor General
of India

For the year

1978-79

Union Government (Civil)
Revenue Receipts
Volume I
Indirect Taxes

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PREFATORY REMARKS

The Audit Report on Revenue Receipts (Civil) of the Union Government for the year 1978-79 is presented in two volumes—one relating to indirect taxes and the other relating to direct taxes

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

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

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

Chapter III—sets out the results of Audit of receipts relating to Sales Tax, State Excise and Stamp and Registration fees of the Union Territory of Delhi.

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

VOLUME I

CHAPTER I

CUSTOMS RECEIPTS

1. The total net receipts after deducting refunds and drawback under each minor head below the Major Head 037-Customs during the years 1977-78 and 1978-79 together with budget estimates for the year 1978-79 are given below :—

	Actuals for 1977-78	Budget Estimates for 1978-79	Actuals for 1978-79
(In crores of rupees)			
Customs Imports	1547.61	1602.25	2163.67
Customs Exports	214.83	219.28	139.70
Cess on Exports	12.50	8.86	8.86
Other Receipts	48.07	30.25	110.75
Net Revenue	1823.01	1860.64	2422.98
Refunds		40.00	56.14
Drawback		46.00	76.09

The realisation on "Customs Imports" exceeded the actuals of 1977-78 and the budget estimates for 1978-79. The Ministry of Finance have stated that this increase was on account of liberalisation in import policy and comfortable foreign exchange position. Higher realisation of revenue was recorded under petroleum products, chemicals, fertilizers, yarn of man-made fibres, iron and steel, copper, aluminium, machinery etc.

In the Budget of 1978-79 the revenue from export duties was estimated at Rs. 219.28 crores. The revised estimates for 1978-79 placed the receipts from export duties at Rs. 125.22 crores. The actual realisation, however, was Rs. 139.70 crores. The Ministry of Finance have stated that the revenue from export duties in 1978-79 recorded a fall because of the changes in

customs duty rates on coffee on account of the fluctuations in international markets and also because of reduction in duty on tea and its subsequent abolition.

The estimate for payment of drawback under the minor head "Imports" was placed at Rs. 46.00 crores in the budget estimates for 1978-79. This was revised to Rs. 43.00 crores in the revised estimates. However, the actual payment of drawback came to Rs. 76.09 crores during the year as against Rs. 50.35 crores paid during the year 1977-78. The Ministry of Finance have stated that the exact reasons for increase in drawback payments in 1978-79 are being ascertained from the Collectors of Customs.

2. Test Audit of records of various Custom Houses/Collectorates revealed under-assessments, overpayments and losses of revenue amounting in all to Rs. 909.43 lakhs. Over-assessments and short payments amounting to Rs. 20.69 lakhs were also noticed during audit.

3. The succeeding paragraphs deal with irregularities found in test audit, which fall under the following categories :—

- (a) Non levy/short levy of additional duty.
- (b) Short levy of auxiliary duty.
- (c) Short levy due to misclassification of goods.
- (d) Incorrect application of exemption notification.
- (e) Short-levy due to adoption of incorrect assessable value.
- (f) Excess payment of drawback.
- (g) Irregular refund.
- (h) Over-assessment.

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

In Paragraph 3.20 of their 212th Report (Fifth Lok Sabha) the Public Accounts Committee reiterated their earlier recommendations that cases of levy of additional (countervailing) duty should be subjected to careful scrutiny by the Internal Audit

Department and that the working of the Internal Audit Department should be gone into with a view to streamlining its procedure and functions. Despite the restructuring of the Internal Audit Department by Government pursuant to the aforesaid recommendations, non levy/short levy of additional duty amounting to Rs. 8.29 lakhs was noticed in test audit. This related to nineteen cases in each of which the short levy/non-levy exceeded Rs. 10,000. A few of these cases are detailed below

(i) A consignment of Nickel Silver strips imported in January 1977 was assessed to customs duty under heading 75.03 of the Customs Tariff Act, 1975 plus auxiliary duty without levy of additional duty under the Central Excise Tariff.

On being pointed out by Audit (September 1978) that the imported goods would be liable to additional duty under item 26A(2) of the Central Excise Tariff, the department recovered the short-levy of Rs. 1,29,345 (May 1979).

The Ministry of Finance have confirmed the facts.

(ii) A consignment of Sealastic Block, prestic sealing strip (sealing compound, adhesive) imported through a major port during November 1977 was assessed to basic customs duty at 100 per cent *ad valorem* and 20 per cent auxiliary duty under heading 32.04/12(1) of the Customs Tariff Act, 1975 without charging additional duty under item 14.I.(3)(ii) of the Central Excise Tariff.

The chemical test report indicated that the goods were in the form of black coloured thick pasty mass in a strip form in between two paper strips and were composed mainly of carbon black, inorganic filler (Calcium Carbonate) together with vegetable non-essential oil and rosin and found use as putty. According to Board's instruction issued in 1956 "Putty" is liable to additional duty under the Central Excise Tariff.

On this being pointed out by Audit (May 1978) the department contended that "Putty" being a sealing compound was not liable to additional duty as paint. However, when the Board's

specific order was pointed out the department intimated that the short-levy of Rs. 14,535 had been realised in June 1979.

It was also noticed by Audit that subsequent to the issue of the audit objection, an amount of Rs. 47,836 was realised as additional duty from the same importer in respect of two similar imports.

While confirming the facts, the Ministry of Finance have stated that the matter is under reconsideration.

(iii) Five consignments of Tape Deck Mechanism imported through a customs airport in January 1978 were assessed to basic customs duty but not to additional duty under item 37AA of the Central Excise Tariff resulting in short levy of duty of Rs. 1,49,677. On this being pointed out by Audit (July 1978), the department raised demands for the short levy.

While confirming the facts, the Ministry of Finance have stated that although the tape deck mechanism was found to fall within the meaning of item 37AA of the Central Excise Tariff, in terms of the earlier tariff advice issued in February 1978 it was found on reconsideration that tape deck mechanism, being only the mechanical component of the tape deck without the electronic circuitry, would fall outside the scope of item 37AA of the Central Excise Tariff, in terms of the tariff advice issued in April 1979.

The fact, however, remains that the goods in these cases were imported long before the issue of the revised tariff advice and non-enforcement of the demands raised on the basis of audit objections and the earlier tariff advice have resulted in loss of revenue.

(iv) A consignment of flash tubes valued at Rs. 39,964 imported in February 1977 through a major port was assessed to customs duty under the heading 25.18/27(4) of the Customs Tariff Act, 1975 without levy of additional duty.

On this being pointed out by Audit (July 1977) the department issued a notice of demand for Rs. 26,276 and have further issued a detention order as the importer did not respond to the demand notice.

The Ministry of Finance have confirmed the facts.

5. *Short levy of auxiliary duty*

Auxiliary duties of customs were imposed for the first time by the Finance Act, 1973 on all imported goods as new and straight forward revenue raising measures replacing the regulatory duties of customs.

Auxiliary duty is leviable on imported goods at rates varying from 5 per cent to 20 per cent *ad valorem* determined with reference to the rate of basic customs duty. In relation to any article liable to two or more different rates of basic customs duty the highest rate should be the basis for determining the rate of auxiliary duty.

The rate of basic customs duty for Urea is 60 per cent *ad valorem*. A notification issued in July 1963 exempted Urea meant for use as manure from the whole of basic customs duty leviable thereon. As the exemption was conditional on the use of Urea as manure, two rates of basic customs duty came into being. Auxiliary duty should, therefore, be levied at 10 per cent *ad valorem* relative to the higher rate of basic customs duty of 60 per cent *ad valorem*.

In an outport two consignments of Urea imported in February 1974 for use as manure were levied auxiliary duty at 5 per cent *ad valorem* instead of at 10 per cent *ad valorem*.

On this being pointed out by Audit (January 1979), the department recovered the short-levy of Rs. 1,25,503 (May 1979).

The Ministry of Finance have confirmed the facts.

6. Short levy due to misclassification of goods

Non-levy/short levy of duty amounting to Rs. 7.09 lakhs as a result of wrong classification of goods during assessment was noticed during the course of test audit. This related to seventeen cases each of which exceeds Rs. 10,000. Six cases are detailed below :

(i) Under a notification issued in March 1975 aluminium sheets and aluminium alloy sheets (containing more than 50 per cent of aluminium) assessable under item 27(b) of the Central Excise Tariff are exempted from Central Excise duty in excess of 30 per cent *ad valorem* plus Rs. 1500 per metric tonne.

In a major Custom House two consignments of aluminium sheets and aluminium alloy sheets imported in April 1975 were assessed to additional duty at 30 per cent *ad valorem*, instead of at 30 per cent *ad valorem* plus Rs. 1500 per metric tonne in terms of the notification mentioned above.

On this being pointed out by Audit (August 1978) the department raised a demand for the short levy of Rs. 1,33,195.

According to the proviso under item 70(1) of the Indian Customs Tariff, manufactures of metals and alloys containing more than 97 per cent of aluminium shall be deemed to be aluminium manufactures. If this condition is not fulfilled, they are assessable under item 70(1) as metals & alloys, not otherwise specified.

Aluminium sheets and aluminium alloy sheets imported in April 1975 mentioned above were assessed to customs duty as aluminium manufactures at the concessional rate of 27½ per cent *ad valorem* plus 5 per cent auxiliary duty under item 66(a) of the Indian Customs Tariff. The documents made available to Audit did not contain any information as to whether the content of aluminium metal exceeded 97 per cent or not. In the absence of this information, the goods should have been appropriately assessed to *ad valorem* Customs duty at 60 per cent with auxiliary duty at 15 per cent under item 70(1) of the Indian Customs Tariff.

While confirming the facts, the Ministry of Finance have stated that the total short-levy amounting to Rs. 1,93,251 has been realised

(ii) Ships, boats and floating structures are included in Chapter 89 of the Customs Tariff Act, 1975. According to the explanatory notes in that chapter, however, all parts of ships etc., separately imported, even if identifiable as for ships, are to be excluded from Chapter 89 and are to be classified according to their type or constituent material.

A consignment of 'Intermediate shafts-parts of frigates' imported in March 1977 by a public sector undertaking was assessed under heading 89.01/03 to customs duty at 40 per cent *ad valorem* plus auxiliary duty at 5 per cent *ad valorem*. Audit pointed out (September 1977) that according to the explanatory notes in the schedule the goods were correctly assessable under heading 84.63 at 60 per cent *ad valorem* plus auxiliary duty at 15 per cent *ad valorem*. The department, on re-examination, accepted the Audit view and recovered the short levy of Rs. 87,741.

The Ministry of Finance have confirmed the facts.

(iii) A lower rate of duty of 40 per cent *ad valorem* is prescribed by the Customs Tariff Act, 1975 specifically for insulators designed for use in an electrical transmission system of 400 volts and above. Other insulating fittings are classifiable under a different heading and assessable to duty at 75 per cent *ad valorem*.

In 1977 and 1978, a major Custom House assessed "Breaking Chamber Porcelain Insulators", which were only insulating fittings, at 40 per cent instead of at 75 per cent *ad valorem*. On this being pointed out by Audit (September and October 1978) the department recovered the differential duty of Rs. 72,066.

The Ministry of Finance have confirmed the facts.

(iv) Packing rings, made of asbestos coated with teflon, imported in September 1977 through a major Custom House were assessed under heading 84.64 of the Custom Tariff Act,

1975 with additional duty under item 22F of the Central Excise Tariff. On being pointed out by Audit (April 1978) that the items, being made of asbestos coated with teflon and not containing metal sheeting, should be assessed under heading 68.01/16(1) with additional duty under item 22F of the Central Excise Tariff, the department recovered the differential duty of Rs. 46,839.

The Ministry of Finance have confirmed the facts.

(v) A consignment of Radio Frequency Transistors, imported in January 1974 by a public sector undertaking, was assessed by a major Custom House to customs duty under item 73 of the Indian Customs Tariff at 60 per cent *ad valorem* plus auxiliary duty at 10 per cent *ad valorem*. The Internal Audit Department pointed out (August 1974) an excess levy due to incorrect adoption of the value of goods, and this was refunded in September 1977. After completion of action in the Internal Audit Department in March 1978 Audit pointed out (April 1978) that the Radio Frequency Transistors were capable of use in wireless reception instruments and would be assessable under item 73(11) of the Indian Customs Tariff at 100 per cent *ad valorem* plus auxiliary duty at 20 per cent *ad valorem*. The department, accepting the Audit view, intimated that the demand could not be realised as it was barred by time. Incorrect classification of the goods in this case resulted in loss of revenue of Rs. 43,988.

The Ministry of Finance have confirmed the facts.

(vi) A consignment of 206 bottles of "Cedar Wood Oil-Microscopic", 100 grams each, imported in June 1977 through a major port was assessed as laboratory chemical at 57½ per cent plus 15 per cent auxiliary duty under heading 29.01/45(19) of the Custom Tariff Act, 1975.

It was pointed out by Audit (November 1977) that Cedar Wood Oil was distilled from saw dust and was used in perfumes and soaps and hence the product was an essential oil assessable under heading. 33.01/06(1) at 100 per cent plus 20 per cent auxiliary duty. The department, however, justified the assessment indicating that the product was described as 'microscopic' grade

of helicopters for the purpose of extending the concession in terms of the aforesaid notification, the department assessed the goods under item 63(28) of the Indian Customs Tariff and item 46 of the Central Excise Tariff and agreed to recover the duty of Rs. 1.67 lakhs.

The Ministry of Finance have confirmed the facts.

(iii) A major Custom House assessed electronic receiving valves imported in March 1978 at 75 per cent *ad valorem* under heading 85.18/27(1) of the Customs Tariff Act, 1975. On being pointed out by Audit that electronic receiving valves are generally triodes, tetrodes, pentodes or any combination thereof and are, therefore, assessable to duty at 120 per cent *ad valorem* under a notification issued in August 1977, the department recovered the differential duty of Rs. 52,427.

The Ministry of Finance have confirmed the facts.

(iv) By a notification dated 19 August 1972 and another notification dated 11 May 1973, Government exempted fish from the whole of customs duty and auxiliary duty respectively, when imported from a particular country. On 26 May 1973, by issue of another notification Government restricted the scope of these exemptions to imports made only under a particular payment arrangement under a trade agreement with that country. The term of the said payment arrangement expired on 28 September 1973 and a revised payment agreement came into force from the same date. Imports of fish from that country under the revised agreement were, however, not covered by the exemption notification dated 26 May 1973.

In a major Central Excise & Customs Collectorate, imports of fish from that country, during the period October 1973 to August 1975 were allowed to be cleared duty free. On realising the inapplicability of the exemption notification of May 1973 to agreements other than those specifically mentioned in it, the Collectorate raised two demands totalling Rs. 1.84 crores of which the demand for Rs. 1.67 crores was already time-barred. Neither of the two demands has been paid by the importer (February 1980).

In respect of imports during the period September 1975 to December 1975, the payment of duty amounting to Rs. 41.32 lakhs was deferred under the rules and has not been paid so far (February 1980).

The Ministry of Finance have confirmed the facts.

8. *Short-levy due to adoption of incorrect assessable value*

Short-levy of duty of Rs. 3.31 lakhs, as a result of incorrect determination of assessable value was noticed during the course of test audit. This related to eleven cases where the short-levy exceeded Rs. 10,000 in each case. Two of these cases are detailed below :

(i) While assessing a consignment of 'Integrated circuits' imported in April 1978 through a major Custom House, the department had adopted the value of the goods as Japanese Yen 8,08,000 instead of the correct value of Japanese Yen 18,08,000 indicated in the invoice. Incorrect adoption of assessable value resulted in short-levy of Rs. 46,853.

On this being pointed out by Audit the department recovered the short levy.

The Ministry of Finance have confirmed the facts.

(ii) Insurance charges form part of assessable value under Section 14 of the Customs Act, 1962.

In respect of seven cases of imports of stainless steel by the same vessel the rate of insurance adopted for the declared value of goods in four cases was different from the rates adopted in three other cases. While pointing out the discrepancy in the insurance rates, Audit suggested a review of all such cases of import of similar goods by the same importer covered by the same Import Manifest. As a result, the department recovered a short collection of Rs. 58,398 in respect of five cases covered by the Import Manifest in question.

The Ministry of Finance have confirmed the facts.

9. *Excess payment of drawback*

Drawback in relation to any goods manufactured in India and exported outside India means the refund of duty chargeable on any imported materials or excisable materials used in the manufacture of such goods in India. The drawback rates are fixed by Government under Section 75 of the Customs Act, 1962 read with the Customs and Central Excise Duties Drawback Rules, 1971 framed thereunder.

The rates of drawback fixed by Government are of two kinds *viz.*, (i) All Industry rates and (ii) Brand rates. The All Industry rates are fixed on specific commodities, goods or classes of goods, applicable to all exporters who export such goods, whereas, the brand rates are applicable to specific products/goods manufactured by the exporters who in turn apply for a special rate for the products/goods exported by them.

Six cases of excess payment of drawback amounting to Rs. 3.03 lakhs were noticed in test audit. Two of these cases are detailed below :—

(i) A major Custom House allowed a drawback of Rs. 2,68,857 at the rate of 32 per cent of the F.O.B. value of Rs. 8,40,180 on the export of a consignment of "Power Cables, with aluminium conductors impregnated, paper insulated, lead sheathed, double steel tape armoured jute".

The F.O.B. value declared on the shipping bill was in respect of 84,018 kilograms of the goods packed in 20 drums. The shipping bill indicated the actual quantity shipped as eight drums (33,658.50 kilograms), indicating short shipment. The endorsement on the shipping bill recorded by the Manifest Clearance Department of the Custom House, however, showed that the goods were manifested in full. The Custom House paid drawback on the entire consignment without taking into account the short shipment, resulting in excess payment of drawback of Rs. 1,61,150.

On this being pointed out by Audit (July 1978), the department recovered the amount paid in excess by adjustment against another drawback claim of the exporter.

The Ministry of Finance have confirmed the facts.

(ii) During the review of closed Internal Audit objection files in a major Custom House, it was noticed that a sum of Rs. 40,632 representing part of the import duty collected on "24 Volts Axle driven Alternators" was refunded in August 1975, on the ground of mis-classification of goods. The imported alternators were fitted to Railway coaches which were exported between July 1971 and October 1971. On the drawback already paid in respect of these coaches being linked by Audit with the refund referred to above, the department recovered an amount of Rs. 40,632 towards drawback paid in excess.

The Ministry of Finance confirmed the facts.

10. *Irregular refund*

Irregular refunds amounting to Rs. 22.51 lakhs were noticed during the course of test audit. These related to eight cases where irregular refunds exceeded Rs. 10,000 in each case. Five cases are detailed below :—

(i) In respect of a consignment of "Muriate of Potash" imported in bulk in February 1974 through a major Custom House the freight was worked out as U.S. \$ 5,74,014 in the invoice attached to the bill of entry, but the same was indicated in the bill of entry itself as U.S. \$ 5,740. The assessable value was, however, correctly worked out as Rs. 96,24,697 in the invoice as well as in the bill of entry. Based on this assessable value, duty amounting to Rs. 25,50,544 was recovered.

The Internal Audit Department pointed out (July 1974) that the correct assessable value and duty in this case worked out to Rs. 46,46,116 and Rs. 12,31,220 respectively and hence there was an excess recovery of duty from the importers. The

Internal Audit Department had worked out the excess levy taking into account the freight as U.S. \$ 5,740 as shown in the bill of entry. The objection of the Internal Audit Department was accepted and a refund of Rs. 13,19,324 was paid to the importer in October 1977. On being pointed out by Audit (September 1978) that the correct amount of freight was U.S. \$ 5,74,014 and not U.S. \$ 5,740 as reckoned by Internal Audit, the department recovered the amount of Rs. 13,19,324.

The Ministry of Finance have confirmed the facts.

(ii) Under a notification issued in May 1961 "rubber tyres with metallic frame works" assessable under item 39 of the Indian Customs Tariff, were exempt from duty in excess of 31½ per cent *ad valorem*.

In a major Custom House, radial steel cord tyres with metallic frame works and tubes valued at Rs. 21,55,698 were assessed to duty at 100 per cent plus auxiliary duty at 20 per cent and additional duty at 50 per cent *ad valorem*. Based on the aforesaid notification, the importers lodged a claim for refund, computing the duty at 31½ per cent besides the other levies and arrived at a sum of Rs. 22,55,399 as against the duty of Rs. 49,58,105 paid by them. Though the claim was time-barred, Government ordered the reassessment and refund *ex-gratia* to the importers. However, the department refunded an amount of Rs. 27,08,096 instead of Rs. 22,55,399, resulting in excess refund.

On this being pointed out by Audit (August 1978) the department recovered the excess refund of Rs. 4,52,697.

The Ministry of Finance have confirmed the facts.

(iii) Artificial or synthetic resins and plastic materials were assessed to customs duty under item 82 (3) at 100 per cent *ad valorem* under the Indian Customs Tariff plus auxiliary duty. Additional duty at 40 per cent *ad valorem* was also leviable under item 15-A of the Central Excise Tariff on such imports. Under a notification issued in July 1973 concessional rate of 60 per cent *ad valorem* for import duty in respect of Polyvinyl chloride (P.V.C.) resins has been provided.

Eleven consignments described as "P.V.C. Compound" imported through a major Custom House were allowed a concessional rate of 60 per cent *ad valorem* in accordance with the aforesaid notification and additional duty at 40 per cent was also levied. On a revision petition filed by the importers against the levy of additional duty, Government ordered refund of the additional duty on the ground that P.V.C. compound imported was a modified form of resin and hence would not attract additional duty under item 15-A of the Central Excise Tariff.

While ordering refund of the additional duty the department, however, did not examine the question of applicability of concessional rate of customs duty. It was pointed out by Audit (July and October 1978) that the concessional rate is applicable only to "Polyvinyl chloride resins" and not to "P.V.C. Compounds". The department agreed to recover the short levy of Rs. 2,34,750.

The Ministry of Finance have confirmed the facts.

(iv) By a notification issued in May 1976 auxiliary duty of Central Excise was limited to 20 per cent of the value of the goods as determined in accordance with the provisions of Section 4 of the Central Excise and Salt Act, 1944.

In a major Custom House "epoxy phenolic bonded glass laminated sheets" valued at Rs. 6,09,756 imported in September 1976 were assessed to duty under heading 39.07 of the Customs Tariff Act, 1975 to basic customs duty at 100 per cent *ad valorem* with auxiliary duty of customs at 20 per cent and with additional duty under item 15-A (2) of the Central Excise Tariff at 40 per cent *ad valorem* and also with auxiliary duty of excise at 33 $\frac{1}{3}$ per cent of the basic excise duty. The importer applied for refund of Rs. 56,911 on the ground that auxiliary duty of excise on item 15-A (1) and (2) was 33 $\frac{1}{3}$ per cent of the basic excise duty subject to a maximum of 20 per cent of the value of the goods. Auxiliary duty of excise was accordingly restricted to 20 per cent of Rs. 6,09,756 and a refund of Rs. 56,911 was allowed.

The value for limitation of auxiliary duty of excise is the one adopted for assessment for additional duty. This implies addition of basic customs duty and auxiliary duty of customs to the invoiced price (cost, insurance and freight) to arrive at an assessable value of Rs. 13,41,463 in the present case. As 20 per cent of the value so arrived at is more than $33\frac{1}{3}$ per cent of the additional duty of Rs. 5,36,585, no refund was due as auxiliary duty of excise was correctly recovered at Rs. 1,78,862. There was thus an incorrect refund of Rs. 56,911.

On this being pointed out by Audit (June 1978) the amount refunded was recovered in October 1978.

The Ministry of Finance have confirmed the facts.

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

Under a notification dated 14 October 1978 soyabean meal and soyabean extraction exported out of India were exempted from the whole of the duty of customs.

Seven consignments of "Soyabean meal extraction" of total net weight of 689.92 metric tonnes were exported through a major port in October 1978, on which export duty of Rs. 86,240 was recovered. The exporters applied in November 1978 for refund of export duty on the ground that the ship carrying the goods actually sailed on 19 October 1978 itself and hence the goods were not liable to duty in view of the exemption notification. Accordingly a refund of Rs. 86,240 was made in January 1979 taking the date of sailing as the crucial date.

It was pointed out by Audit (May 1979) that since the vessel in this case was granted entry outwards on 3 October 1978, the exemption notification issued on 14 October 1978

was not applicable and hence the refund of export duty allowed was not in order.

While confirming the facts, the Ministry of Finance stated that demands issued for the recovery of Rs. 86,240 are pending realisation.

11. Over-assessment

Over-assessment amounting to Rs. 12.56 lakhs was noticed during the course of test audit. This related to seven cases where the over-assessment exceeded Rs. 10,000 in each case. Three of these cases are detailed below :—

(i) At the time of finalisation of the assessment of a consignment of urea in bulk, imported through a major port in April 1978, departmental charges at 1.5 per cent on the value of Rs. 2,28,74,667 (C.I.F.) were incorrectly worked out as Rs. 34,31,200 instead of Rs. 3,43,120 resulting in an excess collection of duty of Rs. 6,71,746.

The excess collection was accepted by the department, but the amount could not be refunded in terms of a departmental order issued in February 1979 stopping the grant of *suo motu* refunds.

The Ministry of Finance have confirmed the facts.

(ii) Five consignments of complete porcelain bushings and insulators imported through a major Custom House during September 1977 to December 1977 were charged to additional duty under item 23 B of the Central Excise Tariff treating them as porcelain ware. It was pointed out by Audit that as these goods contained metal fittings, these could not be described as porcelain ware and hence these were assessable to additional duty under item 68 of the Central Excise Tariff, which stood completely exempted by a notification issued by Government in August

1976. The department accepted the over-assessment and intimated that an amount of Rs. 2,80,051 was refunded *suo motu*.

The Ministry of Finance have confirmed the facts.

(iii) Value for the purpose of assessment to customs duty is determined under Section 14 of the Customs Act, 1962. For this purpose foreign currency is converted into Indian Rupees in accordance with Section 15 of the Act in respect of imported goods.

A consignment of 4 pieces of Microwave Radio Equipment (amplified as switching rack) imported through a major Custom House in September 1977 was assessed to customs duty under heading 85.15 of the Customs Tariff Act, 1975 at 60 per cent *ad valorem*. While assessing the consignment to duty, the department adopted the value at F.O.B. £ 32,000 instead of at F.O.B. Canadian \$ 32,000. On this being pointed out by Audit (January 1978), the department accepted the excess levy of Rs. 1,98,093.

The Ministry of Finance have confirmed the facts.

12. *Short adjustment of customs duty due from a Port Trust.*

Imported goods, remaining uncleared or abandoned, are periodically auctioned by the Port Trust. The customs dues on goods thus disposed of are required to be credited from the sale proceeds. In order to facilitate timely credit of customs dues, funds are placed by the Port Trust at the disposal of customs authorities for necessary adjustment.

(a) Customs duties aggregating Rs. 2,94,239 were assessed on auction sales effected by a Port Trust in January 1974. However, an amount of Rs. 29,439 only was adjusted in the accounts resulting in short realisation of Rs. 2,64,800. This was pointed out by Audit in November 1978.

(b) Similarly as against the customs duty of Rs. 93,851 in respect of auction sales effected in February 1974 by the Port Trust, necessary adjustment was carried out only for a sum of Rs. 9,385, resulting in a short adjustment of Rs. 84,466. This was pointed out by Audit in November 1978.

While confirming the facts mentioned above, the Ministry of Finance stated in reply that the short recoveries have been realised from the Port Trust by adjustment.

(c) In a major Port 278 metric tonnes of tea, being Pakistan bound cargo, was impounded on a ship while in an Indian harbour in December 1971, when hostilities broke out. This was sold by the Port Trust in auction in March 1972 for Rs. 8,32,740. The goods were assessed to customs duty at 100 per cent *ad valorem* and additional duty at 66 paise per Kg. Audit pointed out that the subject goods attracted regulatory duty at 10 per cent *ad valorem*. The rate of additional duty was also questioned in audit. The goods were then reassessed to customs duty at 100 per cent plus regulatory duty at 10 per cent and additional duty at Rs. 2 per Kg. in March 1979 and a demand for Rs. 1,92,588 was issued to the port authorities, who refused to honour the demand as it was raised long after the sale. Action for recovery is, however, still being pursued by the Custom House with the Port Trust authorities.

The Ministry of Finance have confirmed the facts.

13. *Bonds not obtained for transshipment of goods by Air*

Under the Imported Goods (Transshipment by Air) Regulations, 1963, transshipment of imported goods other than those imported by post, by an aircraft other than a foreign going aircraft, is allowed only after the owners of the aircraft execute a bond in such form and with or without surety as the proper officer of Customs may require binding themselves to produce to such officer within fifteen days or such extended period as the proper officer may allow, a certificate issued by the Customs Officers of the destination station that the goods have been

produced at that station, failing which an amount equal to the value or as the case may be, the market price of the goods in respect of which the said certificate is not produced, shall stand forfeited.

During the course of local audit of the customs records of a major customs Airport it was noticed that the department failed to obtain the proper bond till October 1974 and allowed transshipment of imported goods by Indian Airlines to other destinations in India without the execution of any bond by the Airlines. The Indian Airlines executed a general bond in October 1974 for an amount of Rupees 10 lakhs valid for a period of five years. A test check of the Transshipment Registers for the years 1977 and 1978 revealed that 12,427 packages of imported air cargo were transhipped by the Indian Airlines at other airports in India but no proof of delivery to the customs airports of destination was obtained by the department from the airlines. It was further noticed that out of 12,427 packages transhipped during the two years, only 830 packages valued at Rs. 99.70 lakhs approximately were recorded in the Transshipment Registers. As the penalty leviable under the bond for non-submission of proof of delivery within the specified period is to be regulated by an amount equal to the value or the market price of the goods, it was obligatory on the part of the department to keep records of such values in the Transshipment Registers.

It was further seen that the department did not initiate any action to invoke the conditions of the bond as the requisite acknowledgements were not received in respect of any of the packages transhipped by the Indian Airlines.

The Ministry of Finance have stated that on a scrutiny of their transshipment registers for the years 1977 and 1978 by the Collectorate, 18,389 packages were found to have been transhipped, in respect of which certificates from the airlines are awaited. The Ministry have added that the Indian Airlines have obtained all the relevant details from the out stations and are reconciling the deficiencies.

14. *Non-revision of rates of landing charges resulting in collection of less revenue*

Landing charges form part of the value of the goods under Section 14 of the Customs Act, 1962. According to the Board's instructions issued in July 1972 these charges are required to be reviewed at least once in three years and even at shorter intervals, if changes in the rates prescribed by the Port Trust authorities warrant the same.

In a Collectorate the rate of landing charges of 0.625 per cent on the total value fixed in 1973 was continued without any review till May 1979, even though three divisions had proposed to increase the rate from 0.625 per cent to 0.75 per cent and 1 per cent in 1976 and 1978 in view of substantial increase in the rates of the landing fees levied on the goods landed during these six years. The non-revision of the landing charges even to 0.75 per cent proposed by two divisions and to 1 per cent proposed by the third division resulted in less revenue to the extent of Rs. 3,65,846 (approximately) in respect of forty test cases of consignments of goods assessed by the department and test checked in audit during the period May 1977 to February 1979.

The matter was reported to the Ministry of Finance in September 1979; reply is awaited (February 1980).

15. *Delay in disposal of perishable goods*

Under executive instructions, perishable goods seized under the Customs Act, 1962 can be disposed of even before adjudication of the relevant seizure cases.

In a minor port, 231 Kgs. of chemical powder valued at Rs. 1,50,150 which was later analysed as "tetra-cycline hydrochloride", were seized in August 1974 and sent to the departmental godown for storage in January 1975. Orders of confiscation of the goods were passed in November 1975. After obtaining permission from the Court in which prosecution proceedings were launched and after keeping representative

samples, orders for disposal of the goods were communicated to the officer-in-charge of the godown in May 1977. The issue regarding potency or otherwise of the chemical was under correspondence between the department and the various officers dealing with drugs. The technical opinion obtained in January 1978 was that the chemical powder was anti-biotic having a life period of 3 years from the date of its manufacture. Since the chemical was seized in 1974, it had outlived its life span and hence orders were passed in July 1978 for destruction of the chemical. The powder was ultimately destroyed in August 1978 by dumping it into the sea.

The Ministry of Finance stated in reply that at the time of seizure neither the description nor the date of manufacture of the chemical/drug was available and that it was identified by chemical analysis by the Drug Control authorities when an initial reference was made to them by sending a representative sample. The Ministry added that at the time of adjudication when the order for disposal was sought for the question of date of expiry was raised and that after protracted correspondence with various Drug Control authorities, the drug was reported to have potency of three years only which had elapsed from the date of seizure. The drug had, therefore, to be destroyed.

The fact, however, remains that the goods were identified by chemical analysis as early as December 1974 and the question of date of expiry was raised only after adjudication of the case in November 1975. The loss of revenue in this case can, therefore, be attributed to non-observance of executive instructions referred to above.

16. *Objections of the Internal Audit Department*

(a) *Not raised within the time prescribed.*

According to the instructions issued by Government in February 1975, on a suggestion from Audit, the original bills of entry should be forwarded to the Customs Revenue Audit for audit purposes well within a maximum period of 120 days from the date of payment of duty. The local formations were also

requested to fix certain time limits for movements of the bills of entry through the various processes in different departments and also to devise some checks to ensure that the time limits referred to above were strictly adhered to. This period of 120 days has an added relevance in the light of Section 28 of the Customs Act, 1962 which lays down a period of 6 months within which a notice may be issued for any duty not levied or short levied or erroneously refunded.

The Internal Audit Department of the Custom House is, *a fortiori* required to complete their checks well within this period of 120 days so that the chances of any demand becoming time barred are avoided. In the following cases, however, it was seen in audit that the demands were time barred for the reason that the necessary checks were not carried out by the Internal Audit Department well in time.

(i) A consignment of magnetic disc drives and signal cables with accessories imported through a major Custom House in September 1974 was assessed under items 73 and 73(1) of the Indian Customs Tariff and the basic duty of Customs was paid by the importer in November 1974. Additional duty under items 33D and 33B(i) of the Central Excise Tariff respectively, was, however, not levied. The bill of entry was received in the Internal Audit Department of the Custom House in February 1975 which detected non-levy of additional duty only in April 1976. A request for voluntary payment of the short levy was consequently made in August 1976. The importer, however, refused to honour the request on the ground that it was time-barred. This resulted in loss of revenue of Rs. 1,42,685.

The Ministry of Finance have confirmed the facts.

(ii) A consignment of Tractor parts, nuts and bolts, hardware circlips and locking rings imported through a major Custom House was deposited in the bonded warehouse. The goods were cleared for home consumption in January 1972 and were assessed to duty.

The Internal Audit Department of the Custom House pointed out in June 1975 a short levy of duty due to application of incorrect rate of exchange of £ 5.314 for every Rs. 100 instead of the correct rate of exchange of £5.239 for every Rs. 100 prevailing on the date of clearance. A request for voluntary payment representing the difference due to adoption of incorrect rate of exchange and mistake in the working of the duty recovered initially was consequently made in August 1975. The importer rejected it as time barred (January 1978). Thereupon the Custom House closed the case (August 1978).

This resulted in loss of revenue of Rs. 35,245.

The Ministry of Finance have confirmed the facts.

(iii) A consignment of 29 drums of "Para Cresidine" imported through a major Custom House (April/May 1974) was assessed to duty by the department under item 28 of the Indian Customs Tariff at 60 per cent plus auxiliary duty at 15 per cent *ad valorem*. Additional duty at 24 per cent under item 14-D of the Central Excise Tariff was not levied. The bill of entry was received in October 1974 in the Internal Audit Department of the Custom House which detected non-levy of the additional duty only in December 1975. A request for voluntary payment, consequently made in May 1976, was refused to be honoured by the importer on the ground that it was time-barred. This resulted in loss of revenue of Rs. 31,736.

The Ministry of Finance have confirmed the facts.

(b) *Incorrect closure of objections raised within the time limit*

In the following instances, it was noticed that even though the objections were raised by the Internal Audit Department well within the time limit and demands were issued by the department wherever necessary, the Internal Audit Department had dropped the objections incorrectly.

(i) A consignment of "parts of air conditioning equipment" was imported by a Government Department in July 1976 and

assessed to basic customs duty at 60 per cent *ad valorem* and auxiliary duty at 15 per cent *ad valorem* under heading 84.12 of the Customs Tariff Act, 1975 without levy of any additional duty. Internal Audit Department pointed out (June 1977) that the description and classification of the goods was not clear. On receipt of the invoices in July 1978 the Internal Audit Department observed that the Customs House could assess the goods at higher rates and pointed out a short levy of Rs. 3,23,753. Less charge demand for this amount issued in July 1978 was not honoured by the importer on the ground that it was time-barred. Internal Audit Department thereafter closed the objection (April 1979).

Audit pointed out (May 1979) that the closure of the objection was not correct as the objection by the Internal Audit Department calling for clarification in June 1977 with reference to the assessment was issued well within time.

The department admitted the audit objection and recovered the short levy in July 1979.

The Ministry of Finance have confirmed the facts.

(ii) Under a notification issued in 1962 Thermostats and valves are liable to additional duty as parts of Refrigerating and Air conditioning appliances.

In a major Custom House Thermostats and Motorised Valves imported in February 1975 were not subjected to additional duty. At the instance of the Internal Audit Department a demand was raised (August 1975) on the importer for a sum of Rs. 72,019 towards additional duty. However, on the ground that the goods would attract additional duty only if they are identifiable as parts of refrigerating and air conditioning appliances by virtue of their special design, the objection was dropped and the demand withdrawn in August 1977.

Audit suggested (November 1978) to the department to reconsider their earlier decision with reference to technical opinion that Thermostats need not have any special design for

use in Refrigerators/Air conditioning appliances and on importer's own declaration that they were intended for controlling the room temperature.

The department accepted the objection and stated that the importers expressed their inability to pay the short levy voluntarily after the demand had already been withdrawn.

The Ministry of Finance have confirmed the facts.

17. Exemption orders issued under the Customs Act, 1962

Section 25(2) of the Customs Act, 1962 empowers the Central Government to exempt in the public interest, and under circumstances of an exceptional nature to be stated in such order, from the payment of customs duty, any goods on which duty is leviable. The number of exemptions issued and acted on during the past four years is indicated below :

	1975-76	1976-77	1977-78	1978-79
(i) Number of exemptions issued and acted upon	240	248	301	198
(ii) Total duty involved (in crores of rupees)	11.68	9.44	15.52	59.98
(iii) Number of cases having a duty effect above Rs. 10,000	109	138	191	125
(iv) Duty involved in the cases at (iii) above (in crores of rupees)	11.64	9.35	15.48	59.95

18. Remissions and abandonments of Customs Revenue

The total amount of customs duties written off, penalties abandoned and *ex-gratia* payments made during the year 1978-79 is Rs. 27.62 lakhs.

The corresponding amounts during the last three years were as follows.

Year	Amount (in lakhs of rupees)
1975-76	3.12
1976-77	18.04
1977-78	4.61

19. *Arrears of customs duty**

The total amount of customs duty remaining unrealised during the period upto 31st March, 1979 was Rs. 747.85 lakhs on 31st October, 1979 as against Rs. 762.51 lakhs for the corresponding period in the previous year. Out of this, an amount of Rs. 650.63 lakhs has been outstanding for more than one year.

20. *Time-barred demands**

Time-barred demands where voluntary payments have been asked for by the department upto 31st March, 1979 but pending realisation as on 31st October, 1979 amounted to Rs. 277.82 lakhs in respect of nine Custom Houses/Collectorates.

*Figures furnished by the Ministry of Finance.

CHAPTER II

UNION EXCISE DUTIES

21. The receipts under Union Excise duties during the year 1978-79 were Rs. 5367.18* crores. The receipts for the last five years along with corresponding number of commodities on which excise duty was leviable under the Central Excises and Salt Act 1944, are given below :—

Year	Receipts under union excise duties	Number of commodities subject to excise levy
	(In crores of rupees)	
1974-75	3,230.51	128
1975-76	3,844.78	130
1976-77	4,221.35	132
1977-78	4,447.51	136
1978-79	5,367.18*	138

22. The break up of the receipts for the year 1978-79 with the corresponding figures for 1977-78 is given below :—

	1977-78 Rs.	Actuals 1978-79 Rs.
038-Union Excise Duties :		
A. Shareable duties :		
Basic excise duties	38,82,96,38,675	46,96,68,65,710
Auxiliary duties of excise	45,22,65,173	50,62,699
Special excise duties . . . . .	..	2,05,59,84,044
Additional excise duties on mineral products.	98,73,06,120	(—)42,51,889
TOTAL (A)	40,26,92,09,968	49,02,36,60,564
B. Duties assigned to States :		
Additional excise duties in lieu of Sales Tax	2,92,75,59,907	3,20,27,40,576
TOTAL (B)	2,92,75,59,907	3,20,27,40,576

*Figures intimated by the Controller General of Accounts, New Delhi in March 1980.

	Rs.	Rs.
C. Non-Shareable duties :		
Regulatory excise duties	1,22,88,003	26,12,468
Auxiliary duties of excise . . . . .	..	1,18,747
Special excise duties	11,36,78,708	(—)45,90,486
Additional excise duties on textiles and textile articles . . . . .	..	20,21,63,261
Other duties	1,25,22,341	2,35,05,096
TOTAL (C)	13,84,89,052	22,38,09,086
D. Cess on commodities	1,08,82,00,986	1,20,53,08,269
E. Other receipts	5,16,84,243	1,62,37,459
TOTAL—Major Head	44,47,51,44,156	53,67,17,55,954

23. Salient features of the budget for 1978-79

In the budget proposals for 1978-79, based on some of the important recommendations made by a high powered committee appointed by Government on 20th July 1976, the need to protect small scale industry and to minimise hardship to the poor and the middle class consumers was also kept in view. Two new items *viz.*, 11D Coal (excluding lignite) and Coke, not elsewhere specified, and 11E Electricity, were brought under excise levy for the first time. Other major changes introduced with a view to mobilising resources for development as also for providing relief on certain commodities, included :

- (i) raising of duty on all other goods not elsewhere specified from 2 per cent to 5 per cent *ad valorem* ;
- (ii) levy of special duty at the rate of 5 per cent of the basic excise duty on all commodities except coal, electricity and goods falling under item 68 ;
- (iii) upward revision in the rates of duty on some of the items like coated fabrics, cigars, vegetable products, etc.;
- (iv) exemption on power driven pumps used in agriculture;
- (v) concessional rate of duty applicable to parts of refrigeration and air conditioning appliances and

machinery intended to be used for specific purposes has been extended to air conditioners of the type known as package type and window type units; and

- (vi) to certain category of prints of black and white/coloured feature films not exceeding 4000 metres in length.

24. The following twenty five commodities fetched revenue in excess of Rs. 50 crores each during the year 1978-79. Collectively these duties account for about 81 per cent of the net receipts :—

	In crores of rupees
1. Motor spirit	497.85
2. Cigarettes	468.87
3. Refined diesel oil	366.24
4. Man-made fibre and yarn	356.69
5. Iron or steel products	264.91
6. All other goods not elsewhere specified	202.20
7. Petroleum products not otherwise specified	186.63
8. Sugar including khandsari	186.70
9. Tyres and tubes	177.07
10. Kerosene	157.30
11. Cotton fabrics	132.61
12. Cement	128.92
13. Electricity	123.54
14. Aluminium	118.62
15. Fertilisers	113.48
16. Unmanufactured tobacco	111.82
17. Motor vehicles	110.84
18. Paper	109.29
19. Cotton yarn all sorts	91.67
20. Plastics	90.53
21. Non cellulosic spun yarn	80.11
22. Man made fabrics	78.51
23. Biri, chewing tobacco and snuff	72.24
24. Tea	68.30
25. Patent or proprietary medicines	65.22
	4,360.16*

*Figures intimated by the Ministry of Finance in February 1980.

25. Variations between the budget estimates and actuals

The budget estimates, actual realisation and variations for the year 1978-79 together with the corresponding figures for the last three years are given below :—

Year	Budget estimates (In crores of rupees)	Actuals	Variations	Percentage
1975-76	3823.62	3844.78	(+)21.16	(+)0.55
1976-77	4093.30	4221.35	(+)128.05	(+)3.10
1977-78	4593.24	4447.51	(-)145.73	(-)3.17
1978-79	5299.06	5367.18*	(+)68.12	(+)1.29

26. Cost of collection

The expenditure incurred in collecting revenue on account of Union Excise duties during the year 1978-79 along with the corresponding figures for the preceding three years are furnished below :—

Year	Collection	Expenditure on collection (In crores of rupees)
1975-76	3844.78	30.63
1976-77	4221.35	30.41
1977-78	4447.51	33.10
1978-79	5367.18*	35.35

27. Exemption to small scale manufacturers

As a measure of rationalisation of the existing pattern of granting partial/full exemptions as also to do away with the varying principles of giving *ad hoc* relief/concession in duty, a scheme of duty exemption to small scale manufacturers of specified commodities was introduced with effect from 1st April 1978 by virtue of a notification issued on 1st March 1978. The scheme originally covering 69 excisable goods, envisages complete exemption from duty on the first clearances upto a value not exceeding Rs. 5 lakhs in any financial year subject to the conditions laid down in the said notification as amended. Subsequently, the scheme was extended to asbestos fibre and yarn from 1st March 1979.

*Figures intimated by the Controller General of Accounts, New Delhi in March 1980.

28. Test audit results

Test audit of the records maintained in the offices of all the central excise collectorates and basic excise records of licensees revealed underassessments and losses of revenue to the extent of Rs. 28.00 crores.

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

- (a) Evasion/avoidance of duty
- (b) Incorrect application of exemption notifications
- (c) Short levy/non levy of duty owing to misclassification of commodities
- (d) Incorrect grant of exemption
- (e) Irregular refunds
- (f) Non receipt of proof of export
- (g) Fortuitous benefits
- (h) Other topics of interest

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

29. Tyres

'Tyres' have been subject to an *ad valorem* duty of excise since 1941. The amount of duty collected on tyres during the year 1978-79 was Rs. 177.07 crores.

A review of the assessments of some of the tyre manufacturers in two collectorates, has revealed an underassessment of duty of Rs. 42.56 lakhs as brought out in the succeeding paragraphs :

- (a) In September 1968, Government clarified that tyres designed to be fitted to any equipment falling within the meaning of the term 'motor vehicles' under tariff item 34, would be assessable to duty under tariff item 16(1).

Prior to 18th June 1977, tariff item 34 had the caption 'motor vehicles'. The description covered tractors and trailers also. With effect from 18th June 1977, tariff item 34 was revised to read as under :—

I. Motor vehicles

- II. Tractors, including agricultural tractors

According to explanation I below tariff item 34, motor vehicles and tractors included trailers.

Thus, the position was that till 17th June 1977 trailers of tractors came within the meaning of motor vehicles and consequently, tyres meant for such trailers were assessable to duty at 55 per cent *ad valorem* under tariff item 16(1)—tyres for motor vehicles. From 18th June 1977 trailers of tractors being not motor vehicles, their tyres became eligible to assessment at a lower rate of duty at 25 per cent *ad valorem* under tariff item 16(3)—all other tyres.

(i) Two manufacturers who cleared tyres and tubes for trailers of tractors prior to 18th June 1977, classified them as 'all other tyres' and paid duty at 25 per cent *ad valorem* instead of classifying them as 'tyres for motor vehicles' dutiable at 55 per cent *ad valorem*. The incorrect classification resulted in underassessment of duty of Rs. 28.58 lakhs during the period 1st January 1976 to 17th June 1977.

The Ministry of Finance have stated (February 1980) that the matter is under examination.

(ii) One of the above manufacturers cleared after 17th June 1977, tyres designed for use on trucks to a manufacturer of tractors and paid duty at 25 per cent *ad valorem* after classifying them under tariff item 16(3)—all other tyres. It was noticed in audit that these tractors were attached to haulers to be used as trailer buses, trailer tankers and trailer trucks. Since the haulers were motor vehicles, trailers attached to them were classifiable as motor vehicles and the tyres cleared for use in such trailers would attract duty at 55 per cent *ad valorem* instead of 25 per

cent *ad valorem* paid by the manufacturer. The incorrect classification resulted in underassessment of Rs. 3.74 lakhs during the period 1st July 1977 to 28th February 1978.

The Ministry of Finance have stated (February 1980) that the factual position is being ascertained from the Collector concerned.

(b) Under a notification of June 1972, samples of tyres falling under tariff item 16 drawn for test within the factory of production are exempt from duty subject, *inter alia*, to the condition that not more than one tyre of any one sort is drawn for test at any time and proper accounts of the tyres so drawn are kept.

It was noticed in audit (November 1977) that a manufacturer had cleared 2,548 numbers of tyres and tubes as duty free samples for test within the factory during the period October 1973 to June 1977 without observing the prescribed conditions on the ground that these samples were drawn from the mould shop before final inspection and hence were to be considered as not fully manufactured.

According to the departmental instructions contained in the 'tyre supplement', excise control over tyres has to be enforced from the stage at which the tyres come out of the mould and a strict account of the tyres that are moulded each day is essential to ensure that they are properly accounted for at subsequent stage and appropriate duty is paid. Further, tyres coming out of the mould do not require any further processing and should, therefore, be considered to be in a fully manufactured condition and brought to account immediately.

Drawal of tyres as samples for test within the factory without entering them in the accounts of production and without observing the excise formalities was, therefore, irregular. Since the conditions prescribed in the aforesaid notification were not fulfilled, they were not entitled to exemption. An underassessment of Rs. 10.24 lakhs on this account was pointed to the department in December 1977. The view taken by Audit was

subsequently upheld in a clarification issued by Government in June 1978.

The department replied (June 1979) that a case had been registered and a show cause notice issued to the company in January 1979 and that the adjudication proceedings were pending finalisation. The department also contended that they had already taken up the issue in August 1977 even before Audit pointed it out. The department called for the particulars of tyres cleared for test within the factory from the assessee in August 1977, but the matter was not followed up even after the receipt of clarificatory instructions from Government in June 1978. Show cause notice was issued one year after the question was raised in audit. There was thus avoidable delay in initiating action to realise duty.

The Ministry of Finance have accepted the facts as substantially correct (January 1980).

30. *Intercom devices*

Intercom devices are assessable to duty *ad valorem* under tariff item 33D.

A telephone manufacturer in a collectorate, also manufactured internal communication devices meant exclusively for internal communications within the premises of offices, factories and other establishments without a valid central excise licence and cleared them without payment of duty.

The matter was brought to the notice of the department in December 1975. After a detailed examination the Collector adjudicated the case in December 1978 and held that such of these devices as were cleared to customers other than the Posts and Telegraphs Department, were dutiable under tariff item 33D right from 1st March 1970 and accordingly ordered that the licensee should pay duty. The non levy is stated to be Rs. 1.32 crores for the period 1st March 1970 to 30th June 1976.

Particulars of demand raised and its recovery are awaited (August 1979).

The Ministry of Finance have stated (February 1980) that the matter is under examination.

EVASION/AVOIDANCE OF DUTY

31. *Synthetic resins and laminated sheets*

Synthetic resins and laminated sheets manufactured therefrom fall under different sub items of tariff item 15A. In an integrated factory manufacturing both resins and laminated sheets, assessment is done at the stage of clearance of the laminated sheets on the 'later the better' principle.

In the case of five licensees manufacturing resins and laminated sheets where resins were cleared without payment of duty on the basis of the aforesaid principle, it was noticed by Audit that synthetic resins had escaped payment of duty of Rs. 9.73 lakhs during various periods between October 1974 to June 1977 because of the following reasons :

(a) Samples of laminated sheets upto the prescribed limit were exempt under a notification of November 1970. Synthetic resins contained in such samples escaped duty; there being no notification exempting these resins from duty.

(b) The process of manufacture of laminated sheets involved shearing and cutting away of the edges of the sheets. The resins contained in such cut out portion escaped payment of duty since no duty is paid on the cut outs.

When this was pointed out, the department issued (November 1978) two show cause notices to one of the assesseees for recovery of Rs. 1,57,768. Further progress in this case and the department's reply in the other four cases are awaited.

The Ministry of Finance have stated (February 1980) that the matter is under examination.

32. *Doubled yarn*

Yarn is assessable under different tariff items depending on its fibre contents. In September 1974, Government clarified that yarn obtained by doubling of duty paid yarn falling under two different tariff items would constitute a distinct yarn different from its constituents. If the resultant yarn fell under a third tariff item, because of its changed fibre characteristics and if it was a new commodity known to the market as such, it would be liable to duty as a new product.

A licensee in a collectorate, manufactured doubled yarn by using duty paid polyester/nylon filament yarn (tariff item 18) and duty paid cotton yarn (tariff item 18 A). The composition of the doubled yarn was such that it fell under tariff item 18 E as it stood prior to 18th June 1977. The doubled yarn ought to have been assessed under tariff item 18 E till 17th June 1977.

It was seen in audit (October 1978) that a mill cleared such doubled yarn without payment of duty. In May 1978, the department intimated to the assessee that the yarn would be chargeable to duty at one per cent *ad valorem* under tariff item 68 (introduced with effect from 1st March 1975). This was also not correct, because the doubled yarn satisfied the description of tariff item 18 E and was chargeable to duty at Rs. 24 per kilogram. The amount of duty not levied during the period 1st January 1975 to 17th June 1977 worked out to Rs. 9,31,180.

While admitting the audit objection, the Ministry of Finance have stated (December 1979) that a show cause-cum-demand notice for an amount of Rs. 16,48,272 for the period 16th March 1972 to 17th June 1977, has been issued and the matter is under the process of adjudication.

33. *Steel Slabs*

Rule 53 of the Central Excise Rules 1944, requires every manufacturer to maintain a daily stock account (R.G. 1) and

to enter therein the description and quantity of excisable goods manufactured and cleared by him.

A factory did not enter in its daily stock account 1,646.500 metric tonnes of steel slabs (tariff item 26 AA) produced during September 1975 and December 1975 and evaded payment of duty of Rs. 5,43,345 calculated at the rate of Rs. 330 per metric tonne. The omission was not detected even at the time of annual stock taking of goods in as much as the connected reports did not show any discrepancy between the book balance and the ground balance.

When this was pointed out by Audit, the collectorate accepted the objection and intimated that the aforesaid quantity had been taken in R.G. 1 in October 1978 and action for the non accountal of the products was being taken against the factory.

The Ministry of Finance have stated (February 1980) that the matter is under examination.

34. *Yarn*

In paragraph 44 of the report of the Comptroller and Auditor General of India for the year 1977-78; six cases of non levy of duty on yarn lying in stock on 15th July 1977 were reported.

Another case of a textile mill, which did not declare the quantity of yarn held by it in its various departments on the crucial date and did not pay duty on such quantity of yarn was noticed by Audit. When this was pointed out (March 1978) to the department, the objection was accepted and demand notice for Rs. 1,86,909 was issued.

While accepting the facts as substantially correct, the Ministry of Finance have stated (November 1979) that the issue regarding enforcing the demand is not being pursued for the present in view of the interim injunction granted by the Court,

restraining the department from proceeding further in the matter.

35. *Rubber products*

The Central Excise Rules provide that excisable goods shall not be removed from the place of manufacture, unless duty has been paid and gate passes for the delivery of goods issued. Under the self removal procedure, the inspection groups of the department are required to carry out once every half year, a detailed scrutiny of assessee's accounts to ensure that all excisable goods produced have been duly accounted for and appropriate duty has been paid on all such goods removed from the factory.

It was noticed during three successive audits conducted in July 1974, August 1975 and September 1976 that a Government owned unit in one collectorate, engaged in the manufacture of rubber products and parts of footwear falling under tariff items 16A and 36 respectively removed goods produced by it in contravention of these rules. Several specific instances of removals without payment of duty and belated payment of duty were pointed out. The department, however, did not conduct detailed investigation of the transactions of the company excepting those pointed out by Audit. The department became aware of the seriousness of the irregularity when they seized a lorry load of tread rubber and camel back weighing 10,029.100 kilograms and valued at Rs. 98,786.64 transported by the unit without proper gate passes on 1st December 1976. Subsequently, detailed investigation conducted by the department in respect of entire transactions of the unit for the period 1st April 1974 to 30th November 1976, disclosed unaccounted stock of 54,631.900 kilograms of tread rubber and camel back and incriminating documents revealing removal of goods without payment of duty. The total evasion on unauthorised removals during the period 1st April 1974 to 1st December 1976 was worked out by the department at Rs. 28,27,414 out of which Rs. 26,81,028 were remitted by the unit. The case registered against the unit was adjudicated

by the Collector forfeiting the security deposits of Rs. 15,000 and Rs. 1,000 in lieu of confiscation of the goods seized and the lorry used for transporting the goods and demanding balance of Rs. 1,46,386 on account of duty and Rs. 1,00,000 as penalty which are pending realisation.

The Ministry of Finance have confirmed the facts (September 1979).

36. *Transformer oil and white oil*

Till 28th February 1978, transformer oil, transformer oil feed stock, white oil, HVI spindle oil and naphthonic feed stock derived from the refining of crude petroleum were classifiable under tariff item 8. With the restructuring of Tariff with effect from 1st March 1978, transformer oil and white oil continued to fall under tariff item 8, but the base mineral oils such as transformer oil feed stock, naphthonic feed stock and HVI spindle oil became classifiable under tariff item 11A. Prior to 1st March 1978, transformer oil produced out of duty paid transformer oil feed stock as well as white oil produced out of naphthonic feed stock did not attract further duty since all the products were classifiable under the same tariff item. However, from that date transformer oil and white oil produced out of duty paid base oils/spindle oil attracted duty under tariff item 8, as the raw materials and finished products fell under different tariff items.

(a) In a collectorate, an assessee producing transformer oil out of duty paid transformer oil feed stock, did not pay duty of Rs. 1,31,762 on 299.852 kilolitres of transformer oil cleared during the period 1st to 13th March 1978, though duty had been charged in the invoices and collected from the buyers.

(b) The same assessee was also producing white oil out of duty paid HVI spindle oil and imported naphthonic feed stock, a portion of which was captively consumed in the manufacture of petroleum jelly falling under tariff item 68 and the balance was sold out. While white oil sold outside was assessed, no duty was levied on 131.323 kilolitres of such oil captively consumed

during the period 1st March 1978 to 31st December 1978. This resulted in non levy of duty of Rs. 57,707.

The escapement came to the notice of Audit in January 1979 and the department was requested (March 1979) to take suitable remedial action. Thereupon, the department booked a case against the assessee for illicit removal and suppression of facts and also issued a show cause notice (August 1979).

The Ministry of Finance have admitted the facts as substantially correct (January 1980).

37. *Polyvinyl chloride compound*

Polyvinyl chloride compound became liable to duty at 40 per cent *ad valorem* under tariff item 15A with effect from 18th June 1977. Such compound was, however, exempt under a notification issued on 29th June 1977. Polyvinyl chloride compound, therefore, attracted duty during the intervening period 18th June 1977 to 28th June 1977.

A footwear company manufactured polyvinyl chloride compound for use within their factory as well as for outside sale. During the period 18th June 1977 to 28th June 1977, the company paid duty at 2 per cent *ad valorem* under tariff item 68 on the quantity of polyvinyl chloride compound sold outside, but did not pay any duty on the quantity used internally.

When the non levy was pointed out by Audit in January 1978, the department issued a show cause notice (February 1979) for Rs. 1,33,100.

The Ministry of Finance, while confirming the facts, have stated (November 1979) that a show cause-cum-demand notice is under the process of adjudication.

38. *Dipping solution*

A tyre factory manufactured 'dipping solution' and used it internally without payment of duty. The factory did not obtain

a central excise licence for manufacturing the product nor did the department chemically test its sample to ascertain its duty liability as synthetic resin falling under tariff item 15A(1). On this being pointed out in audit (March 1977), the department drew a sample of the product (June 1977) for chemical examination. According to the chemical report, the sample was in the form of an aqueous emulsion containing phenol formaldehyde synthetic resin (resorcinol formaldehyde condensate) blended with vinyl resin latex. On subsequent verification it was found that the department after classifying the product as falling under tariff item 15A(1)(i), required the manufacturer in May 1978 to take out a central excise licence and to furnish particulars of quantity of the product manufactured and consumed. According to Audit, duty leviable worked out to Rs. 1,20,432 in respect of internal consumption of 16,219 kilograms of the product during the period July 1975 to June 1976.

While admitting the paragraph as substantially correct, the Ministry of Finance have stated that the exact amount of short levy is being worked out (December 1979).

39. *Unauthorised powerlooms*

Under a notification issued in June 1977, unprocessed cotton fabrics falling under tariff item 19 I, manufactured on powerlooms (without spinning or processing plants), were exempt from duty. The said notification was rescinded on 15th July 1977 and simultaneously another notification was issued, whereby exemption was continued to powerlooms for the installation and working of which written permission of the Textile Commissioner had been obtained. Another notification of 14th January 1978, exempted such authorised powerlooms from licensing control subject to the conditions specified therein. Thus, only the unauthorised powerlooms were required to pay duty and also were to remain under licensing control until they could produce the permit of the Textile Commissioner within 31st March 1979 in terms of provisions of rule 174 of the Central Excise Rules 1944.

Under a special procedure prescribed in rule 96J as amended, duty liability on unprocessed cotton fabrics produced on 'unauthorised' powerlooms could be compounded at the rate of Rs. 100 per powerloom per quarter or part thereof fixed by Government under another notification of 15th July 1977.

It was noticed (January 1978) that in respect of 68 powerlooms working without Textile Commissioner's permit, duty due for the period from 1st March 1977 onwards as also the duty which was in arrears in some cases even prior to 1st March 1977 had neither been demanded nor collected.

On this being pointed out in audit (February 1978), the department issued demands for Rs. 94,028 in August 1978.

While admitting the objection, the Ministry of Finance have stated (November 1979) that an amount of Rs. 18,510, out of short levy of Rs. 93,126 for the period 1st March 1977 to September 1978, has already been realised.

40. *Roll spoils*

Iron or steel products namely bars, rods and all other rolled forged or extruded shapes and sections not otherwise specified, are assessable under tariff item 26AA(ia).

In the course of audit, it was noticed (May 1976) that a factory manufacturing bars of iron or steel, also obtained roll spoils falling under tariff item 26AA(ia) and cleared them without payment of duty.

On this being pointed out by Audit (May 1976), the department issued a show cause-cum-demand notice (November 1977) for Rs. 93,600 for the clearance of 728.676 metric tonnes of roll spoils during the period March 1974 to April 1976. Particulars of realisation are awaited.

The Ministry of Finance have admitted the objection (October 1979).

41. *Graphite electrodes*

According to section 2(f) of the Central Excises and Salt Act 1944, the term 'manufacture' includes any process incidental or ancillary to the completion of a manufactured product.

A licensee in a collectorate, manufacturing graphite electrodes received during the period December 1976 to January 1977, unmachined graphite anode plates from a factory in another collectorate, which were imported by the said factory for machining, grooving and threading. After the completion of these processes, the licensee cleared them in May 1977 without payment of duty. These processes to which the unmachined anodes were subjected in the licensee's premises were incidental or ancillary to the completion of graphite anodes and without such processes they could not have been put to use as anodes. These were, therefore, required to pay duty under tariff item 67. The omission resulted in non levy of duty of Rs. 93,185.

The Ministry of Finance have stated (February 1980) that the matter is under examination.

42. *Spider cloth*

Cotton fabrics impregnated, coated or laminated with preparations of cellulosic derivatives or other plastic materials are assessable under tariff item 19 III.

In a collectorate, a licensee manufactured 'spider cloth' by impregnating cotton fabric with a solution containing hylac resin. The impregnated cloth was not assessed to duty by the department on the ground that it was an intermediate product for the manufacture of a component namely, 'spider', and was also not marketed as such. This was not correct as the product manufactured conformed to the description of tariff item 19 III and was, therefore, assessable to duty.

Failure to assess the product under tariff item 19 III, resulted in an escapement of duty of Rs. 62,000, during the period January 1977 to December 1977.

The Ministry of Finance have accepted the objection as substantially correct (November 1979).

43. *Ammonia*

Liquid ammonia is assessable under tariff item 14H(iii).

A fertiliser factory in a collectorate, used liquid ammonia falling under tariff item 14H(iii) in the manufacture of technical grade urea and industrial grade ammonium sulphate without payment of duty. No record of the quantity of liquid ammonia so used, was maintained. It was noticed in audit (November 1977) that 263 metric tonnes of industrial grade urea and 462 metric tonnes of industrial grade ammonium sulphate were manufactured and cleared by the factory during the period 1st July 1977 to 31st October 1977. Calculated at the norm of 0.650 and 0.270 metric tonnes of liquid ammonia per metric tonne of technical grade urea and industrial grade ammonium sulphate respectively, a total quantity of 295.690 metric tonnes of liquid ammonia was consumed during the said period in the manufacture of these two products without payment of duty. As liquid ammonia consumed for such purposes was not exempt, there was a non levy of duty of Rs. 58,901 worked out at the rate of 12 per cent *ad valorem* on the assessable value of Rs. 1,660 per metric tonne during the period 1st July 1977 to 31st October 1977.

While admitting the objection, the Ministry of Finance have stated (August 1979) that the amount of duty (namely Rs. 58,911) evaded, has been recovered.

44. *Mixed fabrics*

A textile factory manufactured and marketed without payment of duty, a variety of mixed fabrics having a composition of 70 per cent flax fibre and 30 per cent staple fibre liable to duty at the rate of 15 per cent *ad valorem* under tariff item 22 AA. No central excise record of the goods thus manufactured was maintained at any stage by the assessee. The relevant sales invoices, however, disclosed that the assessee had cleared at least

44,121 metres of said fabrics without payment of duty of Rs. 46,327 during the period October 1974 to January 1977.

On this being pointed out in audit (April 1977), the department intimated that a show cause-*cum*-demand notice for the said amount had been issued (February 1978). Realisation particulars are awaited.

The Ministry of Finance have accepted the facts as substantially correct (August 1979).

INCORRECT APPLICATION OF EXEMPTION NOTIFICATIONS

45. Scheme of duty relief to encourage higher production

In paragraph 34 of the report of the Comptroller and Auditor General of India for the year 1977-78 (Revenue Receipts, Volume I), certain irregularities in the implementation of the scheme of duty relief to encourage higher production were commented upon.

More cases of loss/underassessment have subsequently, been noticed in the implementation of the scheme. These are enumerated in the succeeding paragraphs :

(i) The scheme of duty relief which was in force during the period 1st July 1976 to 31st March 1979, envisaged exemption of 25 per cent of duty on specified goods cleared in excess of the clearances made during the base period ; the base clearance being determinable as under :—

- (a) if such a date happened to be a date prior to 1st April 1973, the year amongst the financial years 1973-74, 1974-75 and 1975-76 during which the clearances were the highest, would be reckoned as the base year and the aggregate of clearances of the specified goods during that year would be taken as the base clearance.

- (b) if such a date fell during the period 1st April 1973 to 31st March 1976, one-third of the aggregate of the clearances during the base period 1st April 1973 to 31st March 1976 would constitute the base clearance.
- (c) if such a date fell on or after 1st April 1976, the base period will be 1975-76 and the base clearance will be taken as zero.

(1) Provision at (b) above, would imply that the base clearance was fixed at one third of aggregate of the clearances during the base periods mentioned therein irrespective of whether there was actual clearance or not.

In the case of seventeen factories from which specified goods were cleared for the first time after March 1974, the base clearance was fixed as in (b) above even though there was no production during the year 1973-74. According to the opinion given by the Law Ministry in the case of sugar rebate scheme, incentive rebate for higher production contemplated some positive figure of production in the base year and 'nil' production in the base period would not entitle the factory for concession.

Inclusion of the periods of non production for calculating the base clearance under the scheme led to grant of irregular rebate of Rs. 65.32 lakhs during 1976-77 to 1978-79.

The Ministry of Finance have stated (November 1979) that the fixation of base period and base clearance in the scheme of duty relief was a conscious decision and it cannot be said that there is a defect in the notification. The fact, however, remains that the decision to work out the base clearance in this case was contrary to the opinion of the Law Ministry and has eventually resulted in substantial loss of revenue.

(2) It was clarified by the Central Board of Excise and Customs on 6th December 1977 that the relevant date for determining the base period and base clearance, was the date on

which the specified goods were cleared from the factory for the first time irrespective of the fact whether such goods were excisable or not.

Iron or steel products were exempt prior to 1st April 1973, whereas cutting tools were not excisable till 28th February 1974. These were also eligible for duty relief under the scheme. In the case of three licensees manufacturing iron or steel products and three other licensees producing cutting tools, the base clearances were fixed as in (b) instead of (a) above, treating the date of first duty paid clearance as the date on which the specified goods were cleared for the first time. This was against the aforesaid clarification of 6th December 1977 as each of the six assesseees was clearing goods prior to April 1973 as well and resulted in grant of excess relief of Rs. 12.58 lakhs during the years 1976-77 to 1978-79.

The Ministry of Finance have admitted the facts as substantially correct (December 1979 and January 1980).

(3) In the case of a licensee manufacturing iron or steel products, it was noticed that while computing the clearances for the base period under (b) above, the goods cleared under nil rate of duty under the provisions of a notification issued in 1967 which allowed set off of duty paid on the product at the earlier stage were incorrectly excluded, resulting in grant of excess relief of Rs. 1,24,650.

While admitting the objection, the Ministry of Finance have stated (December 1979) that the demand for Rs. 1,24,650 is pending confirmation with the jurisdictional Assistant Collector.

(ii) Some other irregularities noticed are given below :

(1) The prices of urea, ammonium sulphate and calcium ammonium nitrate are statutorily fixed by the Ministry of Agriculture under the Essential Commodities Act 1955. Break up of the retail prices fixed is also indicated by them. Fertiliser

pool equalisation charges required to be collected from buyers by the manufacturers and remitted to the Pool Equalisation Fund is an element of the price so fixed.

Under a notification issued in June 1974, exemption to the extent of duty due on pool equalisation charges has been allowed subject to the condition that the amount is remitted to the Pool Equalisation Fund within two months from the date of clearance or the manufacturer is specifically exempted from remitting it in writing.

A public sector undertaking manufacturing urea, enjoyed the benefit of the above exemption in respect of pool equalisation charges with effect from 1st December 1974. But it did not remit the pool equalisation charges collected from the dealers to the Pool Equalisation Fund. The retention of the amount by the manufacturer was ratified *post facto* by the Ministry of Agriculture on 27th January 1977. As this had the effect of granting exemption from duty, it cannot be given retrospective effect. Accordingly, the manufacturer was not entitled to the aforesaid exemption during the period 1st December 1974 to 26th January 1977 and was liable to pay duty on the pool equalisation charges also. The department issued demands for a total sum of Rs. 64,92,347 towards duty on pool equalisation charges retained by the undertaking during the period December 1974 to October 1977. The enforcement of the demand was stayed by Government in its orders dated 17th July 1976. The undertaking began remitting the amount to the Pool Equalisation Fund from 1st November 1977.

Under the scheme of duty relief, the undertaking was entitled to a reduction of 25 per cent in duty on clearances during 1976-77 in excess of the clearances during the base year (1975-76). While computing the total amount of duty refundable on such excess clearances according to the formula prescribed for the purpose, the department did not include in the assessable value fertiliser pool equalisation charges and refunded Rs. 31,65,530 in May 1978. As the pool equalisation charges not remitted to the Fund were to be included in the assessable

value till 26th January 1977, the amount of incentive rebate refundable was incorrectly calculated. This omission resulted in excess payment of rebate of Rs. 9,71,842 on 58,229 metric tonnes of fertilisers cleared upto 26th January 1977.

When this was pointed out, the department contended that the prices of urea statutorily fixed, would be the value for purposes of assessment and that since the enforcement of the demands for differential duty due on account of non remittance of pool equalisation charges had been stayed by Government, the question of recalculation of assessable value for purposes of granting rebate in duty did not arise.

The contention of the department is not acceptable, since Government is not competent to issue exemption orders/ notifications with retrospective effect.

The Ministry of Finance have stated (December 1979) that the matter is under examination.

(2) The scheme of duty relief was not extended to auxiliary duty which was levied in addition to basic duty. A primary producer of aluminium having factories in more than one State, availed of exemption on auxiliary duty as well from 9th February 1977, the date from which the total clearances from his factories exceeded the base clearance. The loss of revenue on account of irregular exemption availed of by the manufacturer during 9th February 1977 to 31st March 1977 in one unit alone, amounted to Rs. 7,69,733.

Scrutiny of the records relating to procurement of aluminium in crude form by a secondary manufacturer in the same collectorate, revealed that the secondary manufacturer had procured levy aluminium from another unit of the primary producer and also from another primary producer and that in respect of such supplies also exemption on auxiliary duty had been availed. The inadmissible exemption on such supplies amounted to Rs. 1,97,211.

The Ministry of Finance have accepted the facts as substantially correct (January 1980).

(3) An assessee manufacturing fertilisers availed of the concession in duty, but recovered full duty from the customers. The amount of duty recovered from the customers over and above the duty actually paid by the assessee resulted in an increase in the assessable value, on which differential duty at the concessional rate was leviable. On this being pointed out by Audit, the department recovered an amount of Rs. 5,57,659 towards differential duty on clearances during the period 1st October 1976 to 31st March 1977.

The Ministry of Finance have not given any specific comment on the ground that the revision of assessable value in two other cases where the duty relief was not passed on to the consumers, has not been accepted by a High Court and an appeal has been filed against the said judgements (January 1980).

(4) Iron or steel products (tariff item 26AA) and not steel ingots (tariff item 26) were covered under the scheme of duty relief. According to the tariff structure of item 26AA and the notifications issued thereunder, the ingot stage duty leviable on iron or steel products is leviable at the product stage by prescribing combined higher rates of duty for such items on which appropriate ingot stage duty has not already been paid. The duty relief thus accrued only to the product stage duty and not to the ingot stage duty included in the combined higher rates of duty prescribed. This was also made clear by the Ministry on 6th December 1977.

A licensee manufacturing steel billets from old iron or steel melting scrap with the aid of electric furnace, availed of the duty relief on the total duty paid on billets which included the ingot stage duty also. It was noticed in audit (November 1977) that 16,801.578 metric tonnes of billets were cleared during the period 1st July 1976 to 14th July 1977 and the excess relief granted worked out to Rs. 2,46,929. On this being pointed

out, the department issued a show cause notice for Rs. 2,10,860 on 15th February 1978.

Subsequently, the department viewed in September 1979 that the notification dated 16th June 1976 introducing the scheme, suffered from certain lacuna in not making the intention quite clear.

The Ministry of Finance have stated (February 1980) that the matter is under examination.

46. Paper

By a notification dated 10th June 1977, certain categories of paper containing not less than 50 per cent by weight of pulp made from bagasse, jute stalks, cereal straw or waste paper, was exempt from 50 to 75 per cent of duty depending upon the annual installed capacity of the mill. No exemption was admissible, if such capacity exceeded 10,000 tonnes.

A paper mill in a collectorate, irregularly availed of the aforesaid concession as the pulp from which paper was made, contained less than 50 per cent by weight of the aforesaid raw materials.

The mill also recovered from its customers full duty against concessional duty paid by it. As under section 4 of the Central Excises and Salt Act 1944, abatement on account of duty payable is only permissible, the amount of duty retained by the assessee also formed part of the assessable value.

When these irregularities were pointed out by Audit in December 1978, the department issued (July 1979) a show cause-cum-demand notice for Rs 6.75 lakhs.

While admitting the facts as substantially correct, the Ministry of Finance have stated (December 1979) that the show cause-cum-demand notice is under process of adjudication.

47. Footwear

By virtue of a notification issued in December 1967, footwear and its parts falling under tariff item 36 are exempt, if manufactured from artificial or synthetic resins or plastic materials or both which had borne duty under tariff item 15A. By a subsequent amendment issued in June 1976, the concession was confined to cases where the weight of artificial or synthetic resins or plastic materials so used, is not less than 50 per cent of the total weight of such footwear or its parts.

In February 1965, the Central Board of Excise and Customs had clarified that polyvinyl chloride compound being a modified form of polyvinyl chloride resin was not excisable under tariff item 15A. This position continued till 18th June 1977 when polyvinyl chloride compound was brought within the scope of the said tariff item.

A leading footwear company obtained duty paid polyvinyl chloride resin from outside and by using it with other ingredients like plasticisers, stabilisers, fillers, blowing agents and colours, etc., manufactured polyvinyl chloride compound in which duty paid polyvinyl chloride resin constituted 60 per cent only. Polyvinyl chloride compound so produced, was used in the manufacture of footwear in which the weight of polyvinyl chloride compound content varied from 55.7 to 78 per cent of the total weight of footwear.

It was noticed in audit that the company was allowed duty free clearance of footwear manufactured out of polyvinyl chloride compound under the aforesaid notification of December 1967 on the plea that the weight of compound used in the manufacture of footwear was more than 50 per cent of the weight of footwear. It was pointed out by Audit in January 1978 that as the entire polyvinyl chloride compound content of footwear was not duty paid, the weight of the duty paid resin used in the manufacture of footwear fell short of 50 per cent of the total weight of footwear even in the case of footwear manufactured with the highest percentage of polyvinyl chloride compound, namely

78 per cent. Consequently, such footwear was not eligible for concession. This resulted in an underassessment of duty of Rs. 5,31,449 on 3,04,122 pairs of footwear cleared during the period 28th December 1976 to 17th June 1977.

The Ministry of Finance have admitted the audit objection (February 1980).

48. Sugar

(a) Sugar is assessable to duty *ad valorem* under tariff item 1. By virtue of a notification dated 3rd August 1976, the following concessional rates of duty were prescribed for levy sugar :

- (i) basic—10 per cent; and
- (ii) additional—5 per cent.

By a superseding notification of 6th August 1976 as amended on 31st August 1976, the application of aforesaid concessional rates was restricted to levy sugar produced in 1975-76 season only. Under another notification issued on 21st September 1976, the concessional rates of 15 per cent (basic) plus 5 per cent (additional) *ad valorem* were made applicable to all levy sugar irrespective of the year of its production. Thus, during the period 6th August 1977 to 20th September 1976 no concessional rates of basic and additional duties for levy sugar other than those of 1975-76 season, were available.

It was noticed by Audit that two sugar factories in a collectorate, cleared levy sugar of 1974-75 season between 6th August 1976 to 20th August 1976 on payment of duty at concessional rate instead of tariff rate, resulting in short assessment of Rs. 66,669.

While accepting the facts, the Ministry of Finance have stated (February 1979) that the differential duty has been remitted.

(b) In paragraphs 40 and 92(i) of the reports of the Comptroller and Auditor General of India on Revenue Receipts (Indirect Taxes) for the years 1975-76 and 1977-78 respectively, cases of erroneous grant of rebate to sugar factories in respect of sugar produced in 1973-74 and 1974-75 and exported under bond without payment of duty, were reported.

Cases of four more factories in two collectorates, have subsequently been noticed, wherein erroneous rebate of Rs. 2.12 lakhs was allowed on 10,563 quintals of sugar exported under bond without payment of duty out of excess production of sugar during 1974-75 and 1976-77.

The Ministry of Finance have admitted the audit objection (February 1980).

49. *Light diesel oil*

By virtue of a notification issued in May 1974 as amended, light diesel oil (tariff item 9) produced in Assam or Bihar, having certain relaxed specifications is eligible for assessment at concessional rate of duty applicable to furnace oil (tariff item 10). From 16th December 1977, the effective rates of duty applicable to low sulphur fuel oil and furnace oil other than low sulphur fuel oil are Rs. 138.75 and Rs. 121.05 per kilolitre at 15°C thermometer respectively. Under another notification dated 10th June 1976 as amended, furnace oil falling under tariff item 10 and used otherwise than as feed stock in the manufacture of fertilisers, is assessable at a still lower rate of Rs. 61.05 per kilolitre at 15°C thermometer.

It was noticed in audit that an oil installation supplied 5,851.314 kilolitres of light diesel oil (relaxed) of Assam origin at 15°C thermometer to a manufacturer of fertilisers on payment of duty at Rs. 61.05 per kilolitre at 15°C thermometer. Since, light diesel oil (relaxed) is classifiable under tariff item 9, it was not entitled to concessional assessment at Rs. 61.05 per kilolitre at 15°C thermometer.

On this being pointed out in audit in May 1978, the department raised (November 1978) a demand for Rs. 3,61,518. Recovery particulars are awaited (August 1979).

The Ministry of Finance have admitted the facts (September 1979).

50. *Small scale units*

(a) Under a notification dated 1st March 1978, the first clearances of specified goods upto an aggregate value not exceeding Rs. 5 lakhs cleared for home consumption during a financial year by or on behalf of a manufacturer from one or more factories, are exempt from duty with effect from 1st April 1978 subject to certain conditions.

A test check of records of three manufacturers in three collectorates, availing of the benefit of the aforesaid exemption revealed an underassessment of Rs. 1,87,996 as detailed below :

(i) A manufacturer of rubber products who availed of the concession in the year 1978-79, collected from the buyers the value declared to the central excise officers and also additional amounts purporting to be duty payable, although it was not payable and was also not actually paid. The aggregate value of the clearances upto the end of December 1978 as shown in the licensee's accounts was Rs. 4.22 lakhs, while the actual amount collected from the buyers was about Rs. 6.43 lakhs.

When the non payment of duty was pointed out by Audit in January 1979, the department stated (August 1979) that a case for non payment of duty of Rs. 90,648 had been registered against the licensee.

While admitting the facts as substantially correct, the Ministry of Finance have stated (December 1979) that the demand is under the process of adjudication by the concerned Collector.

(ii) The concession was available to a manufacturer during the financial year 1978-79, if the aggregate value of specified

goods cleared by him or on his behalf for home consumption during the period 1st April 1977 to 28th February 1978 did not exceed Rs. 13.75 lakhs.

A factory manufacturing butter falling under tariff item IC, was allowed the benefit of the aforesaid exemption from payment of duty with effect from 1st April 1978 on the ground that the total value of goods cleared for home consumption during the period 1st April 1977 to 28th February 1978 was Rs. 8.32 lakhs and did not exceed Rs. 13.75 lakhs. But the value of butter (namely Rs. 11.75 lakhs) cleared for captive consumption in the manufacture of ghee within the factory, was not taken into account while calculating the total value of clearances for home consumption. As the total value of clearances for home consumption including the value of goods cleared for captive consumption exceeded Rs. 13.75 lakhs, the aforesaid exemption was not admissible to the factory.

On the irregularity being pointed out by Audit in September 1978, the department issued two show cause notices (October 1978 and January 1979) for payment of duty of Rs. 61,092 for the period April 1978 to December 1978.

While admitting the objection, the Ministry of Finance have stated (October 1979) that the short levy of Rs. 39,772 has been confirmed by the jurisdictional Assistant Collector, but the amount has not yet been realised.

(iii) The expression 'value' mentioned in the aforesaid notification of 1st March 1978, is the value as determined under section 4 or the tariff value fixed under section 3 of the Central Excises and Salt Act 1944, as the case may be.

A unit manufacturing synthetic organic dyes, availed of the concession for the period 1st April 1978 to 23rd August 1978. From 24th August 1978, it started paying duty on clearances of such dyes as the limit of Rs. 5 lakhs was reached. It was noticed that the limit of Rs. 5 lakhs was worked out on the basis of the

approved assessable value of Rs. 20 per kilogram. The price charged by the licensee in his sale invoices was, however, Rs. 26 per kilogram inclusive of duty. Section 4 (4)(d)(ii) of Central Excises and Salt Act 1944, permits deduction of duty, if payable. Since the unit did not pay duty on clearances upto the first Rs. 5 lakhs and since the duty was also not payable on these clearances, the assessable value should have been fixed at Rs. 26 per kilogram without giving abatement of duty. On the basis of Rs. 26 per kilogram, the limit of Rs. 5 lakhs was reached on 1st August 1978 instead of 23rd August 1978. On this being pointed out in audit (February 1979), the department recovered an amount of Rs. 36,256 (March 1979) on account of differential duty for the period 1st August 1978 to 23rd August 1978.

The Ministry of Finance have admitted the facts (November 1979) as substantially correct.

(b) According to a notification dated 18th June 1977, clearances upto Rs. 30 lakhs during a financial year of goods falling under tariff item 68 were exempt, if the total value of the capital investment made from time to time on plant and machinery installed in the industrial unit in which the said goods are produced is not more than Rs. 10 lakhs and whose clearances during the preceding financial year had not exceeded Rs. 30 lakhs.

(i) A unit manufacturing goods falling under tariff items 52 and 68, availed of concession on the latter goods, namely components of instruments/ machinery even though the investment on plant and machinery was Rs. 11.27 lakhs. When the irregularity was pointed out by Audit in October 1978, the department issued a show cause notice demanding Rs. 28,978 on account of differential duty for the period 18th June 1977 to 3rd November 1978. The demand has since been confirmed, but recovery particulars are awaited (June 1979).

The Ministry of Finance have admitted (December 1979) the facts as substantially correct.

(ii) Another unit manufacturing goods falling under tariff items 26AA, 27 and 68, did not pay duty of Rs. 17,785 on goods falling under tariff item 68 during the period June 1977 to March 1978 on the ground that the value of such goods cleared by it in the preceding financial year had not exceeded Rs. 30 lakhs.

Audit, however, noticed that the total value of clearances of all excisable goods falling under the aforesaid three tariff items taken together during the preceding financial year had actually amounted to Rs. 55 lakhs.

When the irregularity was pointed out by Audit in June 1978, the department issued a show cause-cum-demand notice on 21st August 1978. Particulars of realisation are awaited (April 1979).

The Ministry of Finance have confirmed the facts as substantially correct (December 1979).

51. *Handloom fabrics*

Under a notification dated 15th July 1977 as amended, duty on handloom fabrics when processed by an independent processor approved in this behalf by Government on the recommendation of the Handloom Development Commissioner is to be reduced by sixty per cent, subject to certain conditions.

An assessee engaged in the processing of handloom fabrics falling under tariff item 19, availed of the above concession during the period 25th November 1977 to 31st October 1978 even though he was not an approved independent processor. This resulted in underassessment of duty of Rs. 1,59,755 on 7,22,614 square metres of processed handloom fabrics. On this being pointed out in audit in February 1979, the department issued a show cause notice to the assessee for recovery.

The Ministry of Finance have stated (February 1980) that the matter is under examination.

52. Aerated waters

According to a notification dated 4th July 1977, aerated waters not containing extracts of cola nuts and falling under tariff item 1D(2) are assessable at concessional rate of 25 per cent *ad valorem*, provided that the said concession shall apply only to the first clearances for home consumption not exceeding 37 lakhs of bottles by or on behalf of a manufacturer from one or more factories during the year 1977-78.

A unit 'X' producing aerated waters not containing extracts of cola nuts and situated at station 'A' was getting part of its supplies from unit 'Y' situated at another station 'B'. It was noticed (June 1978) in audit that :

- (i) the units 'X' and 'Y' availed of the concessional rate of duty in terms of aforesaid notification of 4th July 1977 on the clearances from their factories individually instead of on the total clearances from the two factories ; and
- (ii) the assessable value of the product fixed at station 'B' was found lower than that fixed at station 'A'.

On this being pointed out by Audit in October 1978, the department accepted the objection and issued (November 1978) to unit 'Y' show cause-*cum*-demand notice for Rs. 1,08,382 on account of differential duty for the period July 1977 to January 1978. The demand has since been confirmed (April 1979), but the party is stated to have gone in appeal. The amount of under-assessment for subsequent period is awaited (July 1979).

The Ministry of Finance have stated (February 1980) that the matter is under examination.

53. Steel skull scraps

Steel ingots including steel melting scrap are assessable under tariff item 26, the effective rate of duty being Rs. 330 per metric tonne. Under a notification issued in December 1975 as amended,

steel ingots manufactured with the aid of electric furnace from any of the following materials are exempt :

- (a) old iron or steel melting scrap,
- (b) a combination of the material at (a) with fresh unused steel melting scrap on which the appropriate duty of excise has been paid, and
- (c) iron in any crude form falling under tariff item 25 on which the appropriate duty has been paid, in combination with the material at (a) and (b).

In a factory, in the process of manufacture of steel ingots with the aid of electric furnace and in open-hearth furnace, steel skull scraps (*i.e.* steel melting scraps) were obtained. During February and March 1978, the factory sold 300 metric tonnes of such scrap without payment of duty on the advice of the department. Audit held that under the above notification, only steel ingots manufactured with the aid of electric furnace in scrap based units and not the steel melting scrap, were eligible for exemption and that the scraps cleared by the factory were, therefore, liable to duty.

On this being pointed out in audit (April 1978), the department raised a demand for Rs. 1,00,650 in August 1978.

The Ministry of Finance have admitted the audit objection (January 1980).

54. *Electric motors*

Under a notification issued in March 1972 as amended, 'electric motors designed for use in circuits at a pressure exceeding 400 volts and with a rated capacity exceeding 7.5 kilowatts', falling under tariff items 30A(2) (ii) and B(ii), were eligible for concessional rate of duty of 7.5 per cent as against the tariff rate of 10 per cent *ad valorem*. The Central Board of Excise and Customs clarified in consultation with the Indian Standards Institution that in the case of electric motors marked with single

rated voltage; a variation of 5 per cent is applicable and in cases where a range of voltage is declared no further tolerance limit is to be applied. Accordingly, a motor marked with 380 volts cannot be used in circuits at a pressure exceeding 400 volts as its maximum tolerance limit would be 399 volts.

A licensee in a collectorate, manufactured electric motors designed for use in circuits at 380 volts and cleared them at the concessional rate of duty. As these motors were not designed for use in circuits at a pressure exceeding 400 volts, the clearance of 173 motors at concessional rate resulted in short levy of duty of Rs. 74,092 during the period 7th May 1976 to 28th April 1978.

While admitting the facts as substantially correct, the Ministry of Finance have stated (January 1980) that a demand-cum-show cause notice for Rs. 74,092 has been issued.

55. *Iron or steel products*

By two notifications issued on 18th June 1977, iron or steel products falling under tariff items 26AA(ia) and 26AA(iii) made from steel ingots (tariff item 26) which had been cleared from the factory prior to that date on payment of duty, were entitled to a set off of Rs. 200 per metric tonne. Such products made from steel ingots which had been cleared from the factory thereafter on payment of duty were, however, entitled to a set off of Rs. 330 per metric tonne.

It was noticed in audit that six units in a collectorate, cleared 534.004 metric tonnes of iron and steel products made from steel ingots cleared prior to 18th June 1977 after availing of set off at Rs. 330 instead of Rs. 200 per metric tonne. This resulted in underassessment of duty of Rs. 64,098.

On the irregularity being pointed out in audit (December 1978 and February 1979), the department recovered Rs. 9,399 from three assessees. Report in respect of other three assessees is awaited (August 1979).

The Ministry of Finance have accepted the facts as substantially correct (January 1980).

56. *Corrugated board*

Under a notification issued in April 1971 as amended, corrugated board manufactured out of kraft paper or out of kraft liner or a corrugating medium of certain specifications on which duty at 37.5 per cent *ad valorem* had been paid, was exempt.

A unit manufactured corrugated board out of kraft paper on which duty was paid at rates lower than 37.5 per cent *ad valorem* and cleared it without payment of duty.

It was pointed out in audit in December 1978 that the exemption would not be admissible in this case as duty at 37.5 per cent *ad valorem* was not paid on the kraft paper from which corrugated board was produced. The department accepted the objection and issued (January 1979) a demand for Rs. 64,010 for the period 24th January 1978 to 25th August 1978.

The Ministry of Finance have admitted (August 1979) the facts as substantially correct.

57. *Yarn*

Section 3(1) of the Additional Duties of Excise (Textiles and Textile Articles) Act 1978, provides for levy and collection of duty from 4th 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, *inter alia*, cotton yarn and cotton fabrics. By a notification dated 4th October 1978, fabrics which answer to the description of dhoti, saree, long cloth, shirting or drill as defined from time to time by the Textile Commissioner under the Cotton Textile (Control) Order 1948, are exempted from additional duty. However, yarn contained in such varieties of controlled fabrics, is not exempt from additional duty and hence such yarn is liable to pay additional duty.

It was noticed by Audit (April 1979) that three textile mills did not pay additional duty of Rs. 51,606 on yarn contained in the controlled fabrics during the period 4th October 1978 to 31st March 1979. On the non levy being pointed out in audit, the department recovered the entire amount in April-May 1979.

The Ministry of Finance have admitted the facts as substantially correct (December 1979).

58. *Motor vehicle parts*

According to a notification issued in May 1971, parts of motor vehicles other than those specified in the schedule thereto were exempt. Filter elements which were mentioned in the said schedule, were, therefore, liable to duty.

A factory in a collectorate, manufactured and cleared a product shown by it as 'air cleaner' without payment of duty. It was noticed in audit that the 'air cleaner' was actually an air filter containing filter element in a can housed in a housing fitted with lids, clamps, rods and nuts. As filter elements were not exempt, their duty free clearance resulted in non levy of duty of Rs. 39,632 during December 1977 to June 1978.

While admitting the objection, the Ministry of Finance have stated (November 1979) that a show cause-cum-demand notice for Rs. 39,222 has been issued.

59. *Embroidered fabrics*

By Finance Act 1978, special duty at five per cent of basic duty was levied on all excisable goods from 1st March 1978. Exemption from special duty was, however, allowed to coal, electricity and goods falling under tariff item 68 under a notification dated 1st March 1978.

Four units in a collectorate, manufactured embroidered fabrics falling under tariff item 19 II and paid duty on the basis

of compounded levy under the special procedure laid down in the Central Excise Rules 1944. They, however, did not pay newly levied special duty with effect from 1st March 1978.

On this being pointed out in audit in August 1978, the department realised (November 1978) Rs. 31,955 on account of special duty for the period March 1978 to September 1978.

The Ministry of Finance have admitted the facts (September 1979).

SHORT LEVY/NON LEVY OF DUTY OWING TO MISCLASSIFICATION OF COMMODITIES.

60. Ion exchange resins

The Central Board of Excise and Customs clarified in March 1965 that 'ion exchange resins' were modified forms of copolymerisation product and would, therefore, not attract duty under tariff item 15A. Duty was payable on the copolymerisation product under tariff item 15A before its modification. Ion exchange resin was, therefore, treated as non excisable till 28th February 1975 and became excisable under tariff item 68 thereafter.

In the budget proposals presented in June 1977, the description of item 15A was amended so as to bring modified resins also within its scope. Accordingly, 'ion exchange resins' which are modified copolymerisation products attract duty under tariff item 15A with effect from 18th June 1977.

Two licensees manufacturing 'ion exchange resins', paid duty after classifying such resins, under tariff item 68 instead of 15A even after 17th June 1977. The misclassification of the product resulted in underassessment of duty of Rs. 48.02 lakhs for the period 18th June 1977 to 30th June 1979.

On this being pointed out by Audit, the department issued show cause- *cum*-demand notices for Rs. 29,46,446 in one case.

Recovery particulars in this case and report of the action taken in the other case are awaited (August 1979).

The Ministry of Finance have admitted the audit objection (February 1980).

61. *Polyvinyl chloride compound*

According to a clarification issued by the Central Board of Excise and Customs on 30th August 1977, polyvinyl chloride compounds were not liable to duty prior to 18th June 1977. These were, however, covered under tariff item 15 A with effect from 18th June 1977 and were subsequently exempted from duty under a notification dated 29th June 1977.

In a collectorate, an assessee engaged in the manufacture of polyvinyl chloride compounds, cleared these goods by classifying them under tariff item 68 instead of item 15A during the period 18th June 1977 to 28th June 1977. This resulted in underassessment of duty of Rs. 1,85,600.

On this being pointed out by Audit in January 1979, the department issued a show cause notice to the assessee for the recovery of the said amount (July 1979).

While admitting the facts, the Ministry of Finance have stated (December 1979) that the differential duty works out to Rs. 1,32,942 and the case is under the process of adjudication by the jurisdictional Assistant Collector.

62. *Sodium silicate*

Sodium silicate is assessable under tariff item 14BB.

The Central Board of Excise and Customs clarified in August 1964 that soluble glass was chemically known as sodium silicate. Again, in a tariff advice issued in March 1978 it was stated that sodium silicate glass lumps would appropriately be classifiable as sodium silicate under tariff item 14BB. Sodium

silicate glass lumps are also known as soluble glass or water glass.

(a) A manufacturer of sodium silicate, classified alkaline soda glass lumps under tariff item 68 on the ground that it was an intermediate product. The classification was not correct because according to the aforesaid clarification of August 1964 and the tariff advice of March 1978, soluble glass was chemically known as sodium silicate and was, therefore, correctly classifiable under tariff item 14BB. The misclassification resulted in a short levy of duty of Rs. 83,000 for the period March 1977 to November 1977.

(b) Sodium silicate glass lumps manufactured by another manufacturer were also assessed under tariff item 68 from 1st March 1978. The department later on rectified the misclassification on the basis of the aforesaid tariff advice with effect from 23rd March 1978 on the assumption that the tariff advices take effect from a prospective date. It was pointed out in audit that the tariff advices are clarificatory in nature and should be given effect retrospectively except in time barred cases. The department accepted the objection and issued a demand notice for Rs. 97,451 on account of differential duty for pre 23rd March 1978 period.

The Ministry of Finance have accepted the facts as substantially correct (December 1979).

63. Yarn

Under a notification dated 1st March 1975, shoddy yarn (*i.e.*, yarn containing not less than 60 per cent of wool and not more than 5 per cent of virgin wool) was assessable at concessional rate under tariff item 18E. In June 1962, the Central Board of Excise and Customs clarified that shoddy wool meant wool retrieved from woollen rags, cuttings, etc. The Board, further, clarified in August 1969 "that soft wool wastes do not require any pulling and as such cannot be termed

as shoddy wool. But, in case admixture of soft wool wastes in shoddy wool is below 15 per cent the yarn produced out of such admixture can be termed as shoddy yarn."

A unit manufacturing yarn, all sorts, not elsewhere specified (tariff item 18E), cleared such yarn at the concessional rate of duty classifying it as shoddy yarn. It was noticed by Audit (January 1978) that certain lots of yarn manufactured during the period May 1976 to August 1976, in which the admixture of soft wool waste was more than 15 per cent, were also classified as 'shoddy yarn' instead of 'yarn, all sorts, not elsewhere specified-all others'. This resulted in short levy of Rs. 1,35,096 on 56,290 kilograms of such yarn cleared during the period May 1976 to September 1976.

On the irregularity being pointed out in audit (January 1978), the department issued a show cause notice (December 1978) demanding differential duty.

The Ministry of Finance have accepted the facts as substantially correct (January 1980).

64. *Cellulosic spun yarn*

Consequent upon the restructuring of yarn tariffs in the budget 1977, spun yarns have been classified on the basis of the fibre which predominates in weight. Cellulosic spun yarn classifiable under tariff item 18 III has been divided into the following two categories :—

- (i) not containing or containing not more than one sixth by weight of non cellulosic fibre calculated on the total fibre content attracting basic duty ranging from 1.5 to 5.5 paise per English count per kilogram.
- (ii) containing more than one sixth by weight of non cellulosic fibre calculated on the total fibre content attracting basic duty at Rs. 18 per kilogram.

Cellulosic spun yarn containing polyester, acrylic and viscose fibres in the ratio of 15 : 33 : 52 manufactured by a unit, was
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classified under tariff item 18 III(i) as cellulosic spun yarn containing not more than one sixth by weight of non cellulosic fibre calculated on the total fibre content and cleared on payment of duty accordingly. As both polyester and acrylic fibres are man made fibres of non cellulosic origin, yarn in question contained 48 per cent of non cellulosic fibre, *i.e.* more than one sixth by weight of the fibre content and would be classified under tariff item 18 III(ii) and cleared on payment of duty at Rs. 18 per kilogram.

The incorrect classification of the above yarn and the consequent short levy were pointed out by Audit in July 1978. The objection was accepted by the department and three show cause notices were issued in September, October and November 1978 for the differential duty of Rs. 1,00,671 on 5,756.600 kilograms of such yarn cleared between December 1977 and September 1978. One demand for Rs. 18,108 was confirmed in March 1979. Confirmation of the remaining two demands for Rs. 82,563 and details of realisation of the demand already confirmed are awaited (June 1979).

The Ministry of Finance have admitted the facts as substantially correct (November 1979).

65. Bolts, nuts and screws

Bolts and nuts, threaded or tapped, and screws of base metal or alloys thereof are assessable under tariff item 52, the rate of duty being *ad valorem*.

A factory manufactured bolts, nuts and screws and classified them under tariff item 68 instead of 52 which led to an under-assessment of Rs. 90,783 during the months May 1975, June 1976, October 1976, November 1976, February 1977 and March 1977.

The Ministry of Finance have stated that the matter is under examination (December 1979).

66. *Car washers*

Power driven pumps primarily designed for handling water are assessable to duty *ad valorem* under tariff item 30A; the rate of duty being 10 per cent till 17th June 1977 and 5 per cent thereafter under notifications of 17th March 1972 and 18h June 1977 respectively.

In a collectorate, an assessee manufacturing car washers falling under tariff item 30A, cleared them without payment of duty upto February 1975, after paying duty under tariff item 68 during the period March 1975 to July 1977 and under tariff item 30A thereafter. This resulted in a short levy of duty of Rs. 71,876 owing to misclassification of goods under tariff item 68 during the period October 1975 to July 1977. The records prior to October 1975 were not made available to audit.

On this being pointed out by Audit in July 1978, it was intimated by the department (May 1979) that a show cause notice for the recovery of the amount has been issued. Recovery particulars are awaited (June 1979).

The Ministry of Finance have stated (January 1980) that the matter is under examination.

67. *Chemicals*

A manufacturer of chemicals, declared three of his products as surface active preparations/washing preparations (tariff item 15AA) containing less than 5 per cent by weight of the principal active ingredients and cleared them duty free under a notification issued in June 1966. Out of the three products, two were pre treatment chemicals and the third one was an insecticide. All products containing surface active agents or ingredients do not automatically fall under tariff item 15AA; the products should also be known to be ordinarily used as a surface active preparation/washing preparation. The Ministry of Finance also issued a clarification to this effect in June 1966.

Since the aforesaid products were meant for use as pre treatment chemicals or insecticides as the case may be, they were classifiable under tariff item 68. Incorrect classification of the three products under tariff item 15AA, resulted in an under-assessment to the extent of Rs. 71.780 during the period March 1975 to August 1976.

When this was pointed out in audit (November 1976), the department stated (May 1977) that the duty liability of two products under tariff item 68 was under examination and in respect of the third product necessary action had been initiated to raise demands.

The Ministry of Finance have stated (January 1980) that the matter is under examination in consultation with Chief Chemist.

68. *Yarn, not elsewhere specified*

Woollen yarn containing not less than 90 per cent by weight of wool on the total fibre contents was assessable *ad valorem* under tariff item 18B. In case the yarn contained more than 50 per cent but less than 90 per cent of wool, and more than 10 per cent but less than 50 per cent of viscose fibre in weight or *vice versa*, the same was dutiable under tariff item 18E by virtue of a notification dated 1st March 1975 as amended on 16th March 1976.

In a collectorate, one unit manufactured yarn of 22s (18.63 NF) and 24s (20.32 NF) containing wool and viscose in the ratio of 58.3 : 41.7, and another unit manufactured yarn of 22s (18.63 NF) having wool and viscose fibre contents in the ratio of 49:51. These units cleared 7,434 kilograms of such yarn on payment of duty specified under tariff item 18B during the period August 1975 to December 1976.

As these yarns contained less than 90 per cent of wool in weight, they were not covered under tariff item 18B but were dutiable at higher rates under tariff item 18E in terms of the

aforesaid notifications resulting in short levy of Rs. 38,017. On these cases being pointed out by Audit in April 1977, the department served (August 1977 and February 1978) show cause notices against the units for recovery.

While accepting the objection, the Ministry of Finance have stated (August 1979) that in one case the demand of Rs. 17,488 has been realised and in the other case the demand for Rs. 24,346 has been confirmed.

69. *Heat exchangers*

According to a tariff advice issued on 15th May 1970, heat exchangers are liable to duty under tariff item 29A(3) as parts of refrigerating and air conditioning appliances, if they are designed and manufactured for use in the refrigerating and air conditioning appliances and machinery.

A unit in a collectorate, obtained raw material from a customer, fabricated it into two heat exchangers and supplied them back to the customer on 27th September 1975 after payment of duty of Rs. 33,385 at one per cent on the fabrication charges under tariff item 68.

On a query by Audit regarding the end use of the two heat exchangers, the department ascertained that they were utilised for the purpose of air conditioning. Thereupon, the department issued on 1st December 1978, a show cause notice demanding differential duty of Rs. 66,321 under tariff item 29A. Particulars of recovery are awaited (August 1979).

The Ministry of Finance have admitted the facts as substantially correct (December 1979).

INCORRECT GRANT OF EXEMPTION

70. *Sugar*

Under a notification dated 25th February 1976, if a sugar factory commenced production for the first time on or after

1st April 1974, its production in excess of thirty five per cent in a sugar year was exempt from payment of duty of excise and additional duty of excise in excess of the duty calculated at 15 per cent and 5 per cent respectively on the basis of the price fixed by Government under sub section 3C of section 3 of the Essential Commodities Act 1955 subject to the production of a certificate from the Directorate of Sugar and Vanaspati regarding eligibility of the mill to avail of the said exemption. Under proviso to the aforesaid notification, a mill entitled for the said exemption was not eligible to the benefits of the concessional rate of duty on levy sugar prescribed in a notification of 15th December 1973.

A mill in a collectorate, which started production for the first time in December 1975 was allowed to avail of the above concession on the basis of the eligibility certificate issued by the Directorate of Sugar and Vanaspati. The Directorate fixed the quota of free sale and levy sugar for the factory in the ratio of 73 : 27. In the course of audit it was noticed that out of 65 per cent of excess sugar produced by the mill during sugar years 1975-76 and 1976-77 on which the concessional rate of duty was applicable, 38 per cent of sugar against free sale quota was correctly assessed to duty at 15 per cent (basic) plus 5 per cent (additional), but the remaining 27 per cent of sugar against levy quota was assessed to duty at a lower levy rate (namely at the rate of 10 per cent, $7\frac{1}{2}$ per cent and 6 per cent basic) instead of at 15 per cent (basic); the rate of additional duty remaining at 5 per cent throughout. This resulted in underassessment of duty of Rs. 4,77,368 during the period 1st October 1976 to 26th June 1978. On the irregularity being pointed out by Audit (November 1978), the department accepted the mistake and intimated (March 1979) that steps for realisation of differential duty were being taken.

While accepting the facts as substantially correct, the Ministry of Finance have stated (January 1980) that the demand for Rs. 4,42,181 is pending realisation.

71. *Job work*

Under a notification dated 30th April 1975, duty on goods falling under tariff item 68, if manufactured in a factory on the basis of job work, is restricted to the duty calculated with reference to the amount charged for the job work. According to the explanation appended to the aforesaid notification the term "Job work" is defined as an item of 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, after charging for the job work done. The Ministry of Law also advised in December 1976, that the said notification would not apply to cases, where the job worker gets the raw material/components for conversion into other products, since in such cases the same article is not returned to the supplier after conversion.

(a) Three units in two collectorates, obtained raw materials, converted them into new products having specifications and names different from the base materials and paid duty on job charges only. These processes of manufacture were not covered by the definition of the term 'job work' as envisaged in the aforesaid notification. The duty ought to have, therefore, been charged on the value of the new products instead of on the conversion charges. The erroneous assessments resulted in short levy of duty of Rs. 1,98,756 for the period 1st March 1975 to 28th February 1979.

The Ministry of Finance have stated that show cause-cum-demand notices for Rs. 2,06,612 have been issued in all the three cases. The Ministry have added that a High Court has not accepted the clarification issued by the Board in December 1976 on the advice of the Law Ministry and that they have filed special leave application as well as an application for stay in Supreme Court.

(b) In a collectorate, an assessee manufacturing tractors also executed job work of hardening, grinding, reshaping of parts and

machining work of various outside agencies and cleared such goods without issuing gate passes and without paying duty under tariff item 68. The assessee also did not apply for the central excise licence for these items of work. He, however, recovered Rs. 7,74,798 on account of job work charges during the period 1st March 1975 to 31st December 1978. The duty recoverable from the assessee under rule 9A(5) of Central Excise Rules 1944, at the rate of 5 per cent *ad valorem* worked out to Rs. 38,740.

On this being pointed out in audit in March 1979, the department issued (May 1979) a show cause notice for recovery. Particulars of realisation are awaited.

The Ministry of Finance have stated (February 1980) that the matter is under examination.

72. *High density polyethelene tapes*

According to a notification issued in July 1972, high density polyethelene tapes falling under tariff item 18, captively consumed in the manufacture of high density polyethelene woven fabrics are exempt. If, however, they are used for the manufacture of fabrics in another factory, the procedure set out in chapter X of the Central Excise Rules 1944, shall be followed.

A licensee in a collectorate, cleared 44,225.6 kilograms of high density polyethelene tapes without payment of duty during the period 1st April 1976 to 24th June 1978. During the same period, the licensee cleared an additional quantity of 6,409.2 kilograms of high density polyethelene tapes without payment of duty for the manufacture of braided tapes and twines.

It was pointed out in audit (March 1978) that the licensee was not entitled to the said exemption because in the first case he did not follow the procedure set forth in chapter X of the Central Excise Rules 1944 and in the second case the high density polyethelene tapes were cleared for the manufacture of braided tapes and twines and not for the manufacture of high density polyethelene woven fabrics. The department issued

(August 1978) a show cause-cum-demand notice for Rs. 2,53,902.

The Ministry of Finance have accepted the facts as substantially correct (January 1980).

73. *Dry oxide powders*

All mixtures of the nature of pigments or dry colours falling under tariff item 14, are exempt from duty under notifications issued on 3rd December 1955 and 30th April 1973, subject to fulfilment of the conditions that the products are manufactured by the admixture of certain goods specified in the notifications and they do not contain any binding agent or oil. By an amending notification issued on 13th September 1975, the benefit of the aforesaid exemption was extended to such mixtures and dry colours which contain mineral oil to the extent of 4 per cent by weight. Mixtures or dry colours containing any binding agent are not eligible for the benefit of exemption.

A manufacturer of dry oxide powders, *inter alia*, was enjoying the benefit of exemption in terms of the aforesaid notifications. No sample of the products was drawn after 1963 till it was pointed out by Audit in August 1977. Chemical analysis of samples of three different varieties of dry oxide powders drawn in August 1977, revealed that they were composed of, among others, a small amount of 'wetting agent' acting as a binding agent. Since the analysis indicated the presence of some binding agent, the clearance of dry oxide powders by availing of the exemption was irregular.

Non levy of duty on 4,120 quintals of dry oxide powders cleared during the period January 1975 to May 1977, resulted in loss of Rs. 2,23,282.

The Ministry of Finance have stated (February 1980) that the matter is under examination.

74. *Patent or proprietary medicines*

Under a notification issued on 1st April 1977, clinical samples of patent or proprietary medicines are entitled to duty free clearance subject to the condition, *inter alia*, that the exemption is available only for a period of three years from the date of first clearance of the medicine from any factory of the manufacturer.

It was noticed in audit that two units in a collectorate, had availed of the exemption on samples of medicines even beyond the period of three years from the date of first clearance of the concerned medicine. While short levy of Rs. 36,650 for the period April 1977 to July 1977 was recovered from one unit immediately on being pointed out in audit, the department reported that the exact amount of duty involved in the case of other unit was being worked out (April 1979). The approximate amount of duty not levied in the second case amounted to Rs. 45,455 during the period April 1977 to June 1977.

The Ministry of Finance have accepted the objection (November 1979).

IRREGULAR REFUND

75. *Steel products*

Rule 11 read with rule 173J of the Central Excise Rules 1944 (as they stood prior to 6th August 1977) provided that no duties or charges paid through inadvertance, error or misconstruction shall be refunded unless the claim is presented to the appropriate officer within a period of one year from the date of such payment.

An assessee manufacturing steel products falling under tariff item 26AA(ia), was granted in August 1976 a refund of Rs. 4,86,611 in respect of duty paid on such products during the period 29th May 1972 to 28th February 1974 on the ground that these products were exempt under a notification dated 30th November 1963 as amended. The refund claim was,

however, shown by the assessee as pertaining to the period 25th September 1972 to 28th February 1974 and was received by the department on 29th April 1974. The grant of refund of Rs. 3,12,976 in respect of duty paid for the period 29th May 1972 to 29th April 1973, being more than one year old, was barred by limitation.

On this being pointed out by Audit in February 1977, the department intimated (December 1977) that the case had been referred to the Central Board of Excise and Customs.

The Ministry of Finance have admitted the facts (February 1980).

STORAGE-CUM-TRANSIT LOSSES

76. *Aviation turbine fuel*

Deficiencies noticed in the quantity of aviation turbine fuel in tanks, pipe lines and tankers in the course of physical verification at the close of each month, are required to be adjusted immediately by discharging duty on losses at appropriate rates.

An oil company received consignments of aviation turbine fuel under bond on A.R. 3, which was excisable under tariff item 7 on its final clearance. The assessee maintained non duty paid tanks and tankers at the airport, supplied aviation turbine fuel to the air crafts and paid duty at appropriate rates at the end of each day. At the close of each month, the assessee conducted physical verification of the quantity of aviation turbine fuel present in storage tanks, pipe lines and tankers *vis-a-vis* book balances in the stock registers, but did not pay duty on deficiencies noticed during such verifications. This resulted in non payment of duty of Rs. 1,53,784 on storage losses of aviation turbine fuel for different periods in the years 1976-77, 1977-78 and 1978-79 (upto June 1978). On this being pointed out in audit (September 1977 and June 1978), the department raised demands of Rs. 1,53,784, out of which a sum of Rs. 56,445 was paid by the assessee on 16th December 1978.

The confirmation/realisation of the balance demand of Rs. 97,339 is still awaited (July 1979).

While admitting the facts as substantially correct, the Ministry of Finance have stated (February 1980) that the total amount of short levy for the period June 1976 to July 1979 amounts to Rs. 2,77,828, out of which Rs. 1,54,370 have been realised and the balance amount of Rs. 1,23,458 is pending realisation.

OTHER TOPICS OF INTEREST

77. Packing charges

According to section 4(4)(d)(i) of the Central Excises and Salt Act 1944, value in relation to any excisable goods where such goods are delivered at the time of removal in a packed condition, includes the cost of packing except where the packing is of durable nature and is returnable to the assessee. According to the explanation contained therein 'packing' means the wrapper, container, bobbin, pirn, spool, reel or warp beam or any other thing in which or on which the excisable goods are wrapped, contained or wound.

(a) Cigarettes are assessable to duty *ad valorem* under tariff item 4 II(2). These are first packed in paper/card board cartons to hold 10, 20, 50 or 100 and then these cartons are covered by paper/card board outers to hold 200, 250 or 500 cigarettes, which are thereafter placed in corrugated fibre board containers.

The assessable value of cigarettes produced by a factory was determined after excluding the cost of corrugated fibre board containers on the ground that these were purchased/supplied by customers and were not essential for the sale of cigarettes.

This was irregular because :

- (i) the Ministry of Law, Justice and Company Affairs had clarified in November 1975 that the value should

parties. It was noticed that outside sales (i) were to one party only, (ii) were about 0.9 and 0.3 per cent of the total clearances for the years 1974-75 and 1975-76 and (iii) were not at arm's length as the party supplied to the assessee one of the raw materials.

Further, as there were no outside sales after August 1975, the department re-fixed the assessable value under section 4(1)(b) but made it effective from 29th December 1975 only. In doing so it did not, however, take into account the steep rise in the prices of raw materials during June 1975 and December 1975.

On these irregularities being pointed out by Audit in September 1976, the department issued show cause-cum-demand notices for Rs. 7,62,834 for the period January 1975 to 25th December 1976 and stated that revision of the assessable value for the period 20th May 1974 to December 1974 was under examination (February 1979).

The Ministry of Finance have accepted the facts as substantially correct (February 1980).

(ii) Two manufacturers in two collectorates, used captively part of their production for further manufacture of goods within their factory and sold the other part outside. The assessable value in these cases was fixed on the basis of cost of production plus a reasonable margin of profit under section 4(1)(b) instead of the normal price under section 4(1)(a). This led to a short levy of Rs. 2,06,697 for the period 16th March 1976 to 31st August 1978. The department has issued (January and July 1979) show cause notices in both the cases.

The Ministry of Finance have accepted the facts (December 1979 and January 1980).

(b) Four units in three collectorates, consumed their entire production internally for manufacture of other goods and paid duty on the basis of assessable values ascertained under section 4(1)(b). It was noticed that assessable values so fixed were understated owing to adoption of nil/lower margin of profit

and deduction of inadmissible quantity discounts. This resulted in short levy of duty of Rs. 4,10,245 for the periods January 1975 to February 1978 and 15th May 1978 to 31st October 1978. The department has issued show cause notices in all the cases.

The Ministry of Finance have admitted the audit objection (January 1980).

80. *Tariff item 68*

A new tariff item 68 to cover 'all other goods not elsewhere specified', was introduced with effect from 1st March 1975, the rate of duty being 1 per cent upto 17th June 1977, 2 per cent during the period 18th June 1977 to 28th February 1978, 5 per cent during the period 1st March 1978 to 28th February 1979 and 8 per cent thereafter.

Certain irregularities noticed during test check of assessments under tariff item 68, are detailed below :—

(a) According to rule 173-PP of the Central Excise Rules 1944 as it existed till 31st July 1979, assessee manufacturing goods falling under tariff item 68 were required to furnish within 10 days of close of each month a simple return showing, *inter alia*, the description of goods manufactured and removed during the month together with value thereof and the duty paid thereon. These returns were subjected to an arithmetical check by the department. Assessments were, however, required to be finalised within six months of the close of the accounting year followed by the assessee.

In six collectorates, annual assessments had not been finalised in 209 cases relating to 1975-76, 249 cases relating to 1976-77 and 128 cases relating to 1977-78.

The Ministry of Finance have stated (February 1980) that the matter is under examination.

(b) It was noticed in test audit that commodities falling under tariff item 68 were omitted to be assessed to duty in

six units in four collectorates. The escapement of duty in these cases, worked out to Rs. 35,35,894 during the period March 1975 to June 1979.

Of this amount, Rs. 22,989 on account of duty and Rs. 1,000 as penalty have been recovered in two cases; show cause notices for Rs. 4,75,246 have been issued in three cases and department's reply is awaited in one case.

The Ministry of Finance have accepted the facts in two cases. The other cases are stated to be under examination (February 1980).

(c) By virtue of a notification dated 1st March 1975, goods falling under tariff item 68 are exempt from duty if they are manufactured by Government factories and are intended for use by Government departments.

A Government factory manufacturing diesel shunters, supplied a few shunters also to Public Sector Undertakings without payment of duty. As Public Sector Undertakings were not Government departments, shunters sold to such undertakings were liable to duty.

The non levy of duty was taken up by Audit first in December 1975 and again in July 1977 when it was also pointed out that although the factory had realised Rs. 5,57,070 on account of duty from the Public Sector Undertakings, it did not pay the same to Government.

The department, *inter alia*, stated (March 1979) that though the factory had taken out a central excise licence for manufacture of goods falling under tariff item 68, it did not maintain any account of production and disposal in prescribed forms. It had opened an account current but deposit and/or debit of duty in the said account were made spasmodically. Introduction of Central Excise Law and procedure in the factory was yet to be done. The department further intimated that show cause notices had been issued and the cases are in the process of adjudication. The department also furnished the particulars of the payment of

duty by the factory. An analysis of such payments revealed that out of Rs. 10,48,346 payable in respect of 25 diesel shunters cleared for sale during the period March 1975 to February 1978, it paid Rs. 6,37,759 during the months of November 1977, January, February and April 1978.

The duty not paid in respect of 10 shunters worked out to Rs. 3,38,675, while the short payment of duty in respect of four shunters amounted to Rs. 71,912.

The Ministry of Finance have accepted the facts as substantially correct (December 1979).

(d) A refinery in a collectorate, produced hydrogen gas and utilised its major portion internally in the catalytic reforming unit as fuel gas in order to improve octane specification of the raw naphtha, which is produced in the atmospheric units by fractional distillation of the crude petroleum. The refinery filed the classification list in August 1973, describing hydrogen gas as non excisable. The department, however, approved the same on 17th May 1975 classifying the gas under tariff item 11A.

Audit contended that the hydrogen gas produced by the refinery would more appropriately fall under tariff item 68 from 1st March 1975. Further, hydrogen gas produced by the refinery was a byproduct arising during the manufacture of petroleum products. The Central Board of Excise and Customs had also stated on 18th July 1975 that hydrogen gas produced by the refineries processing petroleum crude was not classifiable under tariff item 11A, since it was not directly derived from the refining of crude petroleum. The 8th West Zone Tariff conference held in June 1979, discussed the question of classification of hydrogen gas produced by the refinery and decided that it should be classified under tariff item 68.

Misclassification of hydrogen gas produced by the refinery and used captively under tariff item 11A instead of tariff item 68, resulted in non levy of Rs. 9,97,032 during the period 1st March 1975 to 29th April 1975.

The Ministry of Finance have stated that the question of classification of hydrogen gas produced in refinery is under examination (December 1979).

(e) Coffee blended with chicory powder is assessable to duty under tariff item 68.

A unit manufacturing blended coffee, cleared the same under the brand name 'royal french coffee' without payment of duty on the plea that coffee being a food product was exempt from duty under a notification dated 1st March 1975 as amended. This was irregular as coffee is a beverage and not a food product and resulted in non levy of duty of about Rs. 4,72,369 during the period 18th June 1977 to 31st August 1979.

The Ministry of Finance have stated that the matter is under examination (December 1979). On an earlier occasion the Ministry had, however, confirmed the facts on the same point raised in paragraph 93(iii) of the report of the Comptroller and Auditor General of India for the year 1975-76 (Revenue Receipts, Volume I).

(f) Under a notification dated 30th April 1975, an assessee is given an option to pay duty on goods falling under tariff item 68 on the basis of the invoice price provided, *inter alia*, the sale is at arm's length.

A unit manufactured and cleared cine films falling under tariff item 37 as well as goods classifiable under tariff item 68 like photo films, diapositive films, graphic arts films, roll films, etc. The products manufactured by the unit were marketed through distributors, who in turn marketed them through dealers. The department held that the distributors were to be treated as 'related persons' and accordingly assessed the products falling under tariff item 37 to duty on the basis of the prices charged by the distributors to dealers.

It was noticed in audit (September 1978) that assessment of duty on goods falling under tariff item 68, was done on the basis of the invoice price of the manufacturer. This was irregular

as the sale was not at arm's length; the manufacturer and distributors having already been held as 'related persons'.

Assessment ought to have, therefore, been done under section 4 of the Central Excises and Salt Act 1944 as was done in the case of goods falling under tariff item 37.

The differential duty due to incorrect assessment in respect of clearances during the period 1st April 1977 to 30th June 1978, amounted to Rs. 4,26,197. The short levy for pre April 1977 period is to be ascertained. On this being pointed out in audit (September 1978), the department accepted the mistake (November 1978) and raised a demand for the said amount in January 1979. Particulars of realisation are awaited (March 1979).

The Ministry of Finance have accepted the facts as substantially correct (January 1980).

81. *Incorrect application of section 4*

In paragraphs 95 and 82 of the reports of the Comptroller and Auditor General of India on Revenue Receipts (Indirect Taxes) for the years 1976-77 and 1977-78 respectively cases of under-assessment of duty resulting from incorrect determination of assessable value under section 4 of the Central Excises and Salt Act 1944 and the rules framed/ instructions issued thereunder were commented upon.

A few other cases noticed in test audit involving underassessment of duty of Rs. 17,26,881 on this account are given below:—

(a) Excise duty, sales tax and other taxes, if any, payable on excisable goods, are abated from the assessable value of such goods under section 4(4)(d)(ii).

A manufacturer of 'cosmetics and toilet preparations' and 'tooth paste' assessable to duty *ad valorem* under tariff item 14F and 14FF respectively, cleared the goods for sale through his authorised distributors. The assessable value was based on prices charged by the distributors during the course of wholesale trade.

It was noticed by Audit that assessable value was determined by allowing abatement towards local and general sales tax from the price of the product and the same was adopted even in respect of sales effected outside the State, where no local or general sales tax was actually paid or was payable either by the manufacturer or by the distributor. This led to a short levy of about Rs. 11.89 lakhs for the period 1st January 1976 to 31st March 1978.

The Ministry of Finance have stated (February 1980) that the matter is under examination.

(b) An assessee manufactured glass bottles and vials assessable to duty *ad valorem* under tariff item 23A. A scrutiny of the sale invoices and the approved assessable values of these goods revealed that the assessee recovered from his customers mould development charges separately by issue of debit notes. These charges were, however, not considered for the purpose of assessable value. As these charges were an essential part of the manufacturing cost, they ought to have been taken into account while determining the assessable value.

When this was pointed out in audit, the department issued (June 1979) show cause notices demanding Rs. 2,23,113 for the period April 1977 to April 1979.

The Ministry of Finance have stated (February 1980) that the matter is under examination.

(c) A unit in a collectorate, engaged in the manufacture of coolers, vault dryers, etc., falling under tariff item 29A, entered into a contract with a purchaser. In terms of the contract the unit was to design, manufacture, inspect, test and give delivery at site. The purchase order also stipulated free issue by the purchaser to the unit of S.S. 304 tubings and 1/4" thick plates of header material for use as raw materials.

It was seen in audit that the value of raw materials costing about Rs. 66,000 supplied free by the purchaser to the unit and the additional lump sum amount of Rs. 13,350 charged for

tests by the unit, were not included in the assessable value of goods. This resulted in short levy of Rs. 79,350. The collectorate accepted the audit objection and issued (October 1978) a show cause notice for Rs. 79,350. Recovery particulars are awaited (July 1979).

The Ministry of Finance have accepted the facts as substantially correct (January 1980).

(d) A firm manufacturing oleum, supplied the entire product to a sole customer at a price fixed by mutual agreement and mainly dependent on ex-godown cost of sulphur for non-fertilizer usages subject to revision on yearly basis. Under the last such agreement valid upto 30th April 1976, the assessee had declared and got the price of his product approved (18th February 1977) at Rs. 473.36 per metric tonne. Thereafter, the assessee did not get the revised price list approved till January 1978, although he cleared the goods at the higher price of Rs. 527.36 per metric tonne from 1st May 1976 onwards.

According to rule 173C(2A) of Central Excise Rules 1944, all clearances would, ordinarily, be made only after the approval of prices by the department and in cases of likely delay recourse to provisional assessment could be taken under rule 9B. But this was not done and the assessee continued to clear the goods after paying duty on the basis of lower values of Rs. 371.26 per metric tonne during the period May 1976 to February 1977 and Rs. 473.36 per metric tonne thereafter. Subsequently, on 18th January 1978, the assessee submitted four price lists in respect of the following clearances :

- (i) Rs. 511.67 per metric tonne for the period May 1976 to October 1976 ;
- (ii) Rs. 464.95 per metric tonne for the period November 1976 to April 1977 ;
- (iii) Rs. 473.36 per metric tonne for the period May 1977 to October 1977; and

- (iv) Rs. 448.38 per metric tonne for the period November 1977 to April 1978.

These prices were approved by the department on 31st January 1978 without verifying the actual prices charged by the assessee to his customer, though this fact had been brought to the notice of the department by Audit in July 1977. The approval of the prices at lower rates in January 1978 resulted in underassessment of Rs. 73,285 for the period 1st May 1976 to 14th June 1977.

On this being pointed out by Audit, the department stated (July 1978) that the assessee had paid Rs. 43,869 on 10th May 1978. The department also issued a show cause-cum-demand notice for the balance of Rs. 29,416 on 14th February 1979. The demand for the post 15th June 1977 period has not been raised (June 1979).

The Ministry of Finance have admitted the facts (November 1979).

(e) Another assessee sold dehumidifiers (tariff item 29A) in wholesale trade to dealers and industrial consumers, the prices charged to dealers being lower than those charged to industrial consumers. Although the prices charged to industrial consumers were higher, the assessable value for clearances to industrial consumers was fixed with reference to the lower prices charged to dealers. This resulted in underassessment of Rs. 1,62,133 during the period December 1975 to March 1978.

While admitting the facts as substantially correct, the Ministry of Finance have stated that jurisdictional Assistant Collector has been directed to recover the differential duty (December 1979).

82. *Fortuitous benefits*

Manufacturers of excisable goods may become entitled to refunds of duty paid, if such goods are subsequently :

- (i) held to be non excisable ; or

(ii) found eligible to concessional rate of duty with reference to :

- (a) production within the prescribed limits, or
- (b) clearances during specified periods, or
- (c) production in small scale units.

In such cases the refunds allowed to the manufacturers are retained by them and not returned to the buyers of the products in question from whom the duty element would have been collected at the time of sale.

Instances of such fortuitous benefits accruing to manufacturers were commented upon in various reports of the Comptroller and Auditor General of India on Revenue Receipts (Indirect Taxes); the latest being paragraph 87 of Audit Report 1977-78. The point engaged the attention of the Public Accounts Committee on a number of occasions. In paragraph 1.25 of their 95th Report (Fourth Lok Sabha), the Public Accounts Committee recommended that Government may consider whether it would be possible to incorporate a suitable provision in the Central Excise Law on the lines of section 37(1) of Bombay Sales Tax Act, which permits forfeiture of the tax collected in excess by a dealer in contravention of the provisions of that Act.

Government did not find it feasible to modify the Central Excise Law on the said lines, as according to the Ministry of Law such provision was not incidental to the power of levying duty. The Committee in paragraph 11.37 (13th Report-Sixth Lok Sabha) reiterated their view that the Government should re-examine the matter so that the benefit of duty already recovered from the consumers is not fortuitously enjoyed by the producers due to deficiencies of law, rules and regulations. Government again expressed their inability for the same reasons to amend the act on the lines suggested.

The aforesaid provisions of the Bombay Sales Tax Act came up before the Supreme Court in the case of Sales Tax Officer

Gujarat vs. Ajit Mills Limited and another. In upholding the provisions (August 1977) the Court observed, *inter alia* :

“(i) A welfare State has with its logos and legend as social justice, a sacred duty while it exercises its power of taxation to police the operation of the law in such manner as to protect the public from any extra burden thrown on it by merchants under cover of the statute.

(ii) All real punitive measures, including the dissuasive penalty of confiscating the excess collections, are valid, being within the range of ancillary powers of the legislature competent to exact a sales tax levy.

(iii) In a developing country, with the mass of the people illiterate and below the poverty line and most of the commodities concerned constitute their daily requirements, there is sufficient nexus between the power to tax and the incidental power to protect purchasers from being subjected to an unlawful burden. Social justice clauses, integrally connected with the taxing provisions, cannot be viewed as a mere device or wanting in incidentality

(iv) The meaning of the expression “shall be forfeited” should be limited to “shall be liable to be forfeited”. The forfeiture should operate only to the extent, and not in excess of, the total collections less what has been returned to the purchasers”.

Such cases of unintended/fortuitous benefits continue to occur and some instances noticed in audit are given below :

(i) A manufacturer of wires and cables got in January 1978, a refund of Rs. 1,47,308 representing the duty paid during the period April 1976 to March 1977 on account of inclusion of transportation charges in the value of goods supplied to the customers including Government undertakings in different parts of the country on contract basis.

(ii) (a) Under a notification dated 13th December 1973, chinaware and porcelainware cleared by a manufacturer for home consumption upto a value of rupees three lakhs during the financial year were exempt.

A manufacturer of chinaware and porcelainware, initially collected duty of Rs. 66,234 from the dealers on the ground that the value of clearances would exceed the aforesaid limit and paid it to Government during the year 1974-75. As the actual clearances did not exceed the prescribed limit, the manufacturer got refund in August 1976.

(b) Under another notification dated 1st March 1975, chinaware and porcelainware upto a value of rupees one lakh cleared on or after the 1st April during a financial year were exempt from duty, provided the value of clearances made during the financial year did not exceed rupees five lakhs.

A factory manufacturing chinaware and porcelainware did not avail of the concession during the year 1976-77 on the plea that the value of clearances would exceed rupees five lakhs. Subsequently, the unit got a refund of Rs. 30,000 in June 1978 as the clearances during the year were actually within the prescribed limits.

(c) According to a notification dated 1st May 1970, metal containers upto a value not exceeding rupees one lakh cleared during any financial year were exempt from duty, provided the total value of the clearances did not exceed rupees two lakhs. A manufacturer paid duty on the entire clearances of Rs. 31,905 and Rs. 1,97,390 during the years 1974-75 and 1975-76 respectively, but later obtained refunds of Rs. 19,664 in respect of duty paid on clearances during these two years as clearances in each of these years did not exceed the said limits.

(iii) Under a notification dated 15th July 1977, Government exempted steel ingots manufactured from duty paid unused melting scrap or old iron scrap and steel castings made from steel ingots cleared from the factory on payment of duty at the appropriate rate, from the whole of the duty leviable thereon.

Three manufacturers of steel ingots/steel castings, continued payment of duty on the goods cleared by them during the period 15th July 1977 to 31st August 1977. They subsequently got refunds of Rs. 39,318 on account of duty paid after 15th July 1977.

83. *Irregular utilisation of proforma credit*

Rule 56 A of the Central Excise Rules 1944, lays down a special procedure enabling assesseees to claim credit for duty already paid on raw materials or component parts used in the manufacture of specified excisable goods. Such credit is allowed to be utilised towards duty payable on the finished excisable goods and can be availed of only after permission is granted by the Collector. No credit is, however, allowed in respect of any material or component part used in the manufacture of finished excisable goods which is exempted from the whole of duty leviable thereon or is not excisable. A number of cases of irregular availment of proforma credit have been pointed out in the earlier Audit Reports of the Comptroller and Auditor General of India (Revenue Receipts, Volume I), latest being para 83 of Audit Report 1977-78.

Similar cases of irregular availment/utilisation of proforma credit continue to occur. Some instances subsequently noticed in audit are given below :

(a) Six manufacturers of electric wires and cables, supplied aluminium ingots to a principal manufacturer who converted them into aluminium wire rods falling under tariff item 27 and recovered conversion charges. Under section 2(f) of the Central Excises and Salt Act 1944, these six parties would be construed as manufacturers of aluminium wire rods. These units neither obtained any licence under rule 174, nor had permission to avail of the proforma credit on the duty paid on aluminium ingots till 4th November 1977. After that date a manufacturer who got the goods manufactured on his account, was exempt from licensing control under a notification dated 5th November 1977. It was, however, noticed that the principal manufacturer

utilised such credit on behalf of sub manufacturers for payment of duty on the finished goods resulting in irregular availment of proforma credit of Rs. 8.51 crores during the period October 1970 to 4th November 1977.

On this being pointed out (January 1978), the department agreed with the view held by Audit that the six parties were manufacturers and required licence for the intervening period. So far as the availment of proforma credit is concerned, the Collector contended that the principal manufacturer was entitled to take credit since the job work was undertaken in his premises.

The Ministry of Finance have reiterated the views of the Collector (December 1979). That, however, would leave no justification for a notification issued on 5th November 1977 exempting the principal manufacturer under certain conditions to comply with all the procedural formalities under the Central Excises and Salt Act 1944 and the rules made thereunder.

(b) A licensee who manufactured paper and used it in the production of other excisable goods, was allowed a refund of Rs. 38,89,823 on 26th October 1978 as a result of an order in appeal passed on 30th March 1978. On being pointed out by Audit (March 1979) that the proforma credit availed of by the industrial consumers of this paper was required to be withdrawn on account of the reduction of duty allowed in appeal, the collectorate agreed to initiate action for withdrawal of the credit from the consumers and as a precautionary measure issued a show cause notice demanding Rs. 4.23 lakhs on 16th April 1979.

The Ministry of Finance have confirmed the facts (November 1979).

(c) According to clause 3(a) of sub rule 3 of rule 56A, the credit of duty paid on raw materials or component parts is allowed to be utilised towards payment of duty on any finished excisable goods for the manufacture of which such materials/component parts were permitted to be brought into the factory.

Clause 3(b) of the sub rule *ibid* provides that no part of the credit can be utilised in any other manner nor can it be refunded. Thus there is an inbuilt system to ensure that the credit allowed for duty paid on components does not exceed the duty paid on the finished product.

Two manufacturers in a collectorate, obtained duty paid parts of refrigerators, air conditioning appliances and electric motors from outside and utilised the proforma credit for payment of duty on finished goods namely; refrigerators, air cooling appliances, water coolers, etc. Since the duty paid on components brought for the manufacture of water coolers was higher than that payable on such water coolers, a portion of the proforma credit was left unutilised, which was availed of by the manufacturers towards payment of duty on other goods namely; refrigerators and air conditioning appliances. This resulted in irregular utilisation of proforma credit of Rs. 1,10,940 for the period 18th June 1977 to 31st December 1977.

The Ministry of Finance have stated that water coolers, refrigerators and air conditioning appliances, etc., are all covered by the same item of Tariff and the utilisation of credit in this case was in order. The fact remains that such utilisation of proforma credit in respect of parts of water coolers left over after paying duty on water coolers amounted to indirectly subsidising the production of water coolers.

84. *Delay in issue of notification*

White printing paper falling under tariff item 17 and supplied to Director General, Supplies and Disposals or for various educational purposes, is assessable at concessional rate under notifications issued from time to time. To distinguish such paper, the Ministry of Industries and Civil Supplies stipulated on 12th February 1976 that white printing paper should be tinted with 0.05 kilogram of brilliant green dye per tonne. This statutory requirement was made effective from 1st March 1976. The Indian Standards Institution also amended the specifications of white

printing paper accordingly. But the Ministry of Finance did not issue the amending notification incorporating the above change till 16th September 1976.

The time lag in issue of amending notification incorporating the statutory requirement resulted in loss of Rs. 46.62 lakhs in the case of five assessees in three collectorates, during the period 1st March 1976 to 15th September 1976.

The Ministry of Finance observed (February 1979) that since the duty had been correctly paid at the rates applicable to such varieties in terms of notifications then in force during the relevant periods, there had been no short levy and consequent loss of revenue as stated. It was pointed out to the Ministry in August 1979 that but for the non synchronisation of the issue of notification by them with the orders issued by the Ministry of Industries and Civil Supplies duty to the extent of the aforesaid amount would have been realised.

The Ministry of Finance have replied (January 1980) that the matter is under examination.

85. *Discounts*

Under section 4(4)(d)(ii) of the Central Excises and Salt Act 1944, where goods are assessable on the basis of value, such value does not include trade discount allowed in accordance with the normal practice of the wholesale trade.

A licensee manufacturing cosmetics falling under tariff item 14F, declared the sale price per unit of dozen pieces of his products. He claimed from the price so declared abatement, *inter alia*, of the price of two pieces of the products which were being given free with every dozen pieces. The department allowed abatement and approved the price lists.

It was pointed out by Audit (February 1977) that discount in kind was not in the nature of a trade discount and as such did not qualify for abatement from the sale price for arriving

at the assessable value under section 4. Thereupon the department issued show-cum-demand notice (December 1977) for Rs. 14,89,260 for the period 1st October 1975 to 31st March 1977.

The Ministry of Finance have stated (February 1980) that the matter is under examination.

86. *Related person*

According to instructions issued by Government in November 1968, in cases where a manufacturer sells his entire output to related persons, assessable value is to be determined on the basis of price charged by such related persons to dealers. Consequent upon the amendment of section 4 of the Central Excises and Salt Act 1944 with effect from 1st October 1975, these instructions were incorporated in Central Excise (Valuation) Rules 1975.

In the following two cases, these instructions were not adhered to at the time of determination of assessable value leading to short levy of Rs. 5,85,760.

(a) A unit manufacturing branded chewing tobacco assessable to duty *ad valorem* under tariff item 4 II(5), sold the entire goods through its sole distributor. The assessable value was declared by the assessee on the basis of the price of the sole distributor after allowing 15 per cent discount. The same was approved by the department without verifying the prices charged and the discount actually allowed to the dealers.

On this being pointed out by Audit, the department found that no discount was allowed by the distributor and consequently the assessable value was understated. A show cause notice demanding Rs. 3,57,767 for the period March 1975 to March 1978 was issued in April 1978. The demand has been confirmed (December 1978). Report of recovery is awaited (January 1979).

The Ministry of Finance have admitted the objection (September 1979).

(b) A manufacturer of electric fans marketed his goods through various distributors and sales depots. It was noticed that these distributors and sales depots sold goods during the period 10th June 1976 to 31st March 1977 at prices higher than those approved for the purpose of assessment, resulting in short levy of Rs. 2,27,993.

On this being pointed out in audit in May 1978, the department issued (August 1978) a show cause notice for the said amount.

While admitting the paragraph as substantially correct, the Ministry of Finance have stated (January 1980) that the short levy works out to Rs. 20,101 only.

87. Invoice price

Under a notification dated 30th April 1975, manufacturers of goods assessable to duty *ad valorem* under tariff item 68, have an option to pay duty on the basis of the invoice price charged by them for the sale of such goods subject to certain conditions.

(a) Three factories manufacturing goods falling under tariff item 68, opted to pay duty on the basis of invoice price. It was noticed by Audit that :

- (i) one factory paid duty on a turn over lower than that shown in its final accounts ;
- (ii) the second factory did not pay duty on the supplemental payments received by it under the price escalation clause of the contract ; and
- (iii) the third factory excluded, for purpose of payment of duty, the cost of inputs used in the manufacture of machinery and charged for in the invoices.

These omissions resulted in short levy of duty of Rs. 4,28,716 during the period 1st March 1975 to 31st December 1978, out of

which Rs. 90,572 have been recovered in one case (January 1979).

The Ministry of Finance have admitted (December 1979) the facts in two cases. The third case is stated to be under examination by the jurisdictional Assistant Collector (February 1980).

(b) A licensee supplied graphite baked blanks and nipple stock (intermediaries of graphite electrodes) to another manufacturer of graphite electrodes (tariff item 67) at cost plus ten per cent profit and paid duty on invoice value. It was, however, noticed in audit (March 1979) that the licensee had entered into an agreement with the buyer for transfer of sophisticated technology and technical know-how for the manufacture of graphite electrodes and in consideration therefor had received Rs. 15 lakhs. The licensee was also entitled to a royalty of 2 per cent on the sale of graphite electrodes by the buyer. This mutual interest in business had an effect of influencing the invoice price and hence duty ought to have been paid on the basis of assessable value under section 4 of the Central Excises and Salt Act 1944.

Taking the assessable value as manufacturing cost plus a gross profit of 20.7 per cent earned by the assessee during 1977 and adopted by him for valuation of stock transfers, the short levy worked out to Rs. 1.39 lakhs in respect of supplies made during the period August 1977 to February 1979.

The matter was reported to department in May 1979 ; reply is awaited (August 1979).

The Ministry of Finance have stated (February 1980) that the matter is under examination.

88. *Compounded levy*

(a) In paragraph 41 of the report of the Comptroller and Auditor General of India for the year 1971-72 (Revenue Receipts, Volume I), a case of less realisation of revenue, due to fixation

of low rate of compounded duty as compared to what would have been realised under the normal procedure was commented upon. The point engaged the attention of the Public Accounts Committee also. In paragraph 13.13 of their 177th Report (5th Lok Sabha) the Committee expressed concern on the delay on the part of Government to decide the question whether units which employ hand operated hydraulic presses should, as a class, be excluded from the purview of the compounded levy scheme for coarse grain plywood.

On 15th November 1974, Government issued a notification by which the units manufacturing coarse grain plywood employing hand press operated with hydraulic jacks, were excluded from the scheme. However, the relevant rules were not amended, so that the notification of 1974 making the statutory provisions inapplicable to a particular type of hand press, conflicted with the rules and was invalid in law.

A manufacture producing coarse grain plywood using hand press operated with hydraulic jacks, challenged the validity of the notification of 1974 in a High Court and the Court held (29th March 1977) the said notification invalid in law and of no effect. The Government, however, took more than two years in taking necessary action after the said decision. It was noticed that loss of revenue in respect of one assessee alone was Rs. 1,03,076 for the period 15th November 1974 to 31st March 1976. The manufacturer started paying duty under the normal procedure with effect from 1st April 1976.

While admitting the facts, the Ministry of Finance have stated (September 1979) that the scheme has been withdrawn from 18th June 1979.

(b) Central Excise Rules 1944, provide for a special procedure under which manufacturers of the parts of electric storage batteries, who employ not more than five workers in their factory at any time during the calendar year preceding the date of presentation of application, can clear the goods manufactured by

them by discharging concessional/fixed duty liability from time to time.

A manufacturer of electric battery plates in a collectorate who employed more than 5 workers in his factory, cleared goods at concessional rates of duty. This resulted in short levy of Rs. 46,071 during the period March 1967 to November 1968.

The audit of the records of the assessee for the year 1967-68 was conducted in January 1969 and the irregularity was pointed out through the local audit report on 27th February 1969 with a request to recover the short levy. Thereupon, the department raised demand for Rs. 46,071 on 26th March 1969. The party, however, went in appeal which was dismissed by the Court on 24th January 1978 with costs. Consequently, the department approached the District Collector to recover the amount from the assessee as arrears of land revenue. The particulars of recovery are awaited (August 1979).

The Ministry of Finance have admitted the facts as substantially correct (December 1979).

89. *Steel castings*

Steel castings, not otherwise specified are assessable under tariff item 26AA(v) on the basis of the weight in their crude form itself and if any identifiable machine parts are formed by subsequent grinding, machining, polishing etc., of such steel castings, they attract further duty under tariff item 68. This was also clarified by the Central Board of Excise and Customs in September 1975.

A factory manufactured steel castings with the aid of electric arc furnace and after finishing such castings by grinding, machining and polishing, cleared them as machine parts. It paid casting stage duty under tariff item 26 AA(v) on the basis of the weight of machine parts at the finished stage.

Although the department raised demands in September 1976 and thereafter, for duty payable on machine parts under tariff item 68 with effect from 1st March 1975, it did not take steps

to realise the differential duty payable under tariff item 26AA(v) on the difference between the weight of the steel castings in their crude form and that of the machine parts at the finished stage.

It was pointed out in audit (October 1977) that by paying duty on steel castings on the basis of the weight of the machine parts at the finished stage, the factory had evaded duty of Rs. 1,16,994 during the period 1st March 1973 to February 1975. Audit also asked the department to work out the evasion on this account from 1st March 1975 onwards.

The Ministry of Finance have stated (February 1980) that the matter is under examination.

90. *Simplified procedure*

With effect from 1st March 1976, manufacturers of specified goods with annual production of Rs. 5 lakhs and less were permitted to clear goods after paying a fixed monthly amount. The concession was not admissible to manufacturers producing specified and other goods, if their annual production exceeded Rs. 10 lakhs. In cases of removal of goods without the cover of a gate pass or incorrect maintenance or submission of any accounts or returns, the concession was liable to be forfeited and the assessee would be required to pay duty under the normal procedure.

A unit manufacturing specified as well as other goods, was allowed duty relief of Rs. 41,540 during the period April 1976 to September 1977 although his annual production exceeded Rs. 10 lakhs. On the omission being pointed out in audit in October 1978, the department confirmed the demand. Recovery particulars are awaited (November 1979).

The Ministry of Finance have accepted the facts (December 1979).

91. *Soap*

In paragraph 62 of the report of the Comptroller and Auditor General of India for the year 1976-77 (Revenue Receipts,

Volume I), cases of reduction in duty owing to irregular grant of rebate on fractional percentage point increase in use of oil in five soap factories were reported.

Another case of a soap factory has subsequently been noticed, wherein an erroneous reduction of Rs. 75,121 in duty was allowed. On the omission being pointed out in audit (January 1979), the department issued a demand for the said amount in March 1979.

While admitting the objection, the Ministry of Finance have stated (January 1980) that the demand is under the process of adjudication.

92. *Vanaspati*

In the case of *ad valorem* assessments, manufacturers are required to file price lists showing the sale price of excisable goods for approval by the department. However, if the price of such goods is subject to frequent market fluctuations, the Collector may permit the manufacturers to declare prices on the gate passes and assess the goods accordingly. This special procedure envisages reassessment of the goods, if the prices declared on the gate passes are, subsequently, found not representing value as determined under section 4 of the Central Excises and Salt Act 1944.

An assessee manufacturing vanaspati falling under tariff item 13, was permitted to pay duty on prices shown on the gate passes. He cleared some quantity of vanaspati to his own godown outside the factory after paying duty on such price. From that godown the goods were sent to the distributors at various places for eventual sale. As the sale invoices of the distributors were not made available for scrutiny during audit, the department was asked to examine the correctness of duty paid on the basis of the value shown on gate passes. Initially the department did not agree with the suggestion of audit. Audit then pointed out (October 1976) that under proviso to rule 173-C(4) a review of the prices shown on the gate passes was required to be conducted to see whether the values shown thereon

represented the value as determined under section 4. Thereupon the department conducted the review, reassessed the clearance and recovered Rs. 47,249 on account of differential duty for the period April 1975 to September 1977.

The Ministry of Finance have accepted the facts as substantially correct (December 1979).

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

The total amount of revenue forgone by Government owing to non issue of demands before the prescribed time limit in respect of assessments during 1978-79 was Rs. 71,58,527 as detailed below :—

	No. of cases	Loss of revenue Rs.
(a) demands not issued due to operation of time bar	3	34,99,789
(b) demands withdrawn due to operation of time bar	14	36,58,738

94. Arrears of Union Excise duties**

The total amount of demands outstanding without recovery on 31st March 1979 in respect of Union Excise duties as reported by the Ministry of Finance was Rs. 13,545.26 lakhs as per details given below :—

Commodity	Amount (In lakhs of rupees)
Unmanufactured tobacco	702.25
Motor spirit including raw naphtha	1,083.00
Refined diesel oil	18.65
Paper	254.55
Rayon yarn	330.48
Cotton fabrics	397.29
Iron or steel products	590.75
Tin plates	23.85
Refrigerating and air conditioning appliances	392.06
All other items	9,752.38
TOTAL	13,545.26

*Figures (provisional) intimated by the Ministry of Finance in January 1980.

**Figures (provisional) intimated by the Ministry of Finance in February 1980.

95. *Remissions and abandonment of claims to revenue**

The total amount remitted, abandoned or written off during 1978-79 was stated by the Ministry of Finance to be Rs. 52,27,772. The reasons for remissions and writes off were stated to be as follows :—

I. Remissions of revenue due to loss by :

	Number of cases	Amount Rs.
(a) Fire	44	6,42,054
(b) Flood	8	13,200
(c) Theft	1	810
(d) Other reasons	1,476	33,28,054

II. Abandoned or written off on account of :

(a) Assessee having died leaving behind no assets	59	46,124
(b) Assessee being untraceable	77	11,548
(c) Assessee having left India	1	250
(d) Assessee being alive but incapable of payment of duty	143	3,70,962
(e) Other reasons	157	8,14,770

96. *Frauds and evasions**

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

1. Number of offences under the Central Excise Law prosecuted in courts	190
2. Number of cases resulting in convictions	89
	Rs.
3. Value of goods seized including value of transportation	4,85,07,063
4. Value of goods confiscated	1,44,67,304
5. Value of penalties imposed	82,41,575
6. Amount of duty assessed to be paid in respect of goods confiscated	1,38,25,114
7. Amount of fine adjudged in lieu of confiscation	20,94,152
8. Amount settled in composition	78,608
9. Value of goods destroyed after confiscation	1,06,439
10. Value of goods sold after confiscation	2,42,976

*Figures (provisional) intimated by the Ministry of Finance in January 1980.

CHAPTER III
OTHER REVENUE RECEIPTS
MINISTRY OF HOME AFFAIRS
Receipts of the Union Territory of Delhi
SECTION 'A'
GENERAL

97. *Variations between the Budget estimates and actuals*

The figures of Budget estimates and actuals for the three years 1976-77 to 1978-79 in respect of some of the principal sources of revenue receipts are given below to show the variation and its magnitude in each case :—

Principal source of revenue	Year	Budget estimates	Actuals	Variation (+)Increase (-)Decrease	Percentage of variation
Sales Tax	1976-77	89.85	87.55	(-)2.30	2.56
	1977-78	94.85	95.25	(+)0.40	0.42
	1978-79	106.01	106.29	(+)0.28	0.26
State Excise	1976-77	17.22	18.49	(+)1.27	7.37
	1977-78	18.25	23.15	(+)4.90	26.85
	1978-79	22.71	19.75	(-)2.96	13.00
Taxes on Vehicles	1976-77	4.42	4.02	(-)0.40	9.05
	1977-78	4.55	4.39	(-)0.16	3.51
	1978-79	4.55	4.94	(+)0.39	8.57
Stamps and Registration Fees	1976-77	3.59	4.04	(+)0.45	12.53
	1977-78	3.59	4.49	(+)0.90	25.00
	1978-79	4.62	3.11	(-)1.51	32.68
Entertainment Tax	1976-77	4.61	4.46	(-)0.15	3.25
	1977-78	4.61	4.70	(+)0.09	1.95
	1978-79	4.86	4.98	(+)0.12	2.47

(Figures are as furnished by the departments)

Reasons for the variations in respect of State Excise and Stamps & Registration Fees are as under :—

State Excise—Less collection due to grant of stay orders to some licensees of recovery of licence fees and assessment fees by the Delhi High Court. The department has, however, obtained bank guarantees in respect of these assessees pending disposal of cases.

Stamps & Registration Fees—Due to fall in the number of registration of documents under the Land Ceiling Registration Act, 1976.

98. *Arrears in Assessment (Sales Tax)*

On 31st March, 1979, the number of cases pending both under the local and Central Sales Tax Acts was 2,94,698 as against 2,14,781 cases at the end of 1976-77 and 2,51,578 cases at the end of 1977-78. The position regarding pendency of assessments for the three years ending March 1979 is indicated below :—

Year	As on 31-3-1977			As on 31-3-1978			As on 31-3-1979		
	Local	Central	Total	Local	Central	Total	Local	Central	Total
1973-74 . . .	23,135	20,389	43,524	—	—	—	—	—	—
1974-75 . . .	39,111	34,759	73,870	28,703	26,054	54,757			
1975-76 . . .	51,961	45,426	97,387	48,893	43,797	92,690	41,446	37,997	79,443
1976-77 . . .	..	—	—	55,569	48,562	1,04,131	51,802	46,035	97,837
1977-78 . . .	—	—	—	—	—	—	62,363	55,055	1,17,418
TOTAL . . .	1,14,207	1,00,574	2,14,781	1,33,165	1,18,413	2,51,578	1,55,611	1,39,087	2,94,698

The number of assessments completed out of arrear and current cases during the three years ending March 1979 is given below :—

Year	Total number of assessments for disposal			Total number of assessments completed			Percentage of disposal	Total number of assessments pending at the end of the year
	Arrear	Current	Total	Arrear	Current	Total		
1976-77								
Local	95,532	57,574	1,53,106	37,318	1,581	38,899	25.40	1,14,207
Central	83,036	48,434	1,31,470	29,935	961	30,896	23.50	1,00,574
								2,14,781
1977-78								
Local	1,14,207	59,287	1,73,494	39,038	1,291	40,329	23.24	1,33,165
Central	1,00,574	51,641	1,52,215	32,831	971	33,802	22.20	1,18,413
								2,51,578
1978-79								
Local	1,33,165	63,614	1,96,779	39,917	1,251	41,168	20.92	1,55,611
Central	1,18,413	56,069	1,74,482	34,381	1,014	35,395	20.29	1,39,087
								2,94,698

(Figures are as furnished by the department)

While the percentage of completion of assessments has been sliding down, the pending assessments at the end of the year have been increasing at the rate of over 17 per cent every year. Information regarding special steps, if any, taken by the department for the expeditious disposal of pending assessments is awaited (February 1980).

99. *Frauds and evasions (Sales Tax) during 1978-79*

	Non-regis- tration of dealers	Conceal- ments/ evasions by registered dealers	Total
(a) Number of cases pending on 31st March 1978	8,168	11	8,179
(b) Number of cases detected during the year 1978-79	2,167	..	2,167
TOTAL	10,335	11	10,346
(c) Number of cases in which assessments were completed			
(i) Out of cases prior to 1st April 1978	1,582	11	1,593
(ii) Out of cases detected during 1st April 1978 to 31st March 1979	209	..	209
TOTAL	1,791	11	1,802
(d) Number of cases pending on 31st March 1979	8,544	..	8,544
(e) Amount of concealed turnover and amount of tax raised in cases mentioned at (c) above :			
Concealed turnover (Rs. in lakhs)	579.38	1.12	580.50
Tax demand raised (Rs. in lakhs)	24.36	0.01	24.37
(f) Number of cases in which			
(i) Penalties imposed in lieu of prosecution	198	11	209
(ii) Prosecutions were launched for non-registration	16	..	16
(iii) Offences were compounded	8	..	8

100. *Searches and Seizures (Sales Tax) during 1st April 1978 to 31st March 1979*

(a) Number of cases pending on 31st March 1978	1,820
(b) Number of cases detected during the year 1978-79	385
	2,205
(c) Number of cases in which assessments were completed	
(i) Out of cases detected prior to 1st April 1978	502
(ii) Out of cases detected during the year 1978-79	40
	542

(Figures are as furnished by the department)

(d) Number of cases pending on 31st March 1979	1,663
(e) Number of cases in which prosecutions were launched or offences were compounded	16
(i) Amount of concealed turnover detected in cases mentioned at (c) above (Rs. in lakhs)	612.99
(ii) Demands raised for tax out of cases mentioned at (c) above (Rs. in lakhs)	47.15

101. *Appeals pending with the Sales Tax Department on 31st March 1979*

The extent of pending appeals/review applications/revision petitions as on 31st March 1979 under Sales Tax is given below :—

(a) Number of appeals/revision petitions/review applications on 31st March 1978	4,471
(b) Number of appeals/revision petitions/review applications instituted during the year 1978-79	5,695
TOTAL	10,166
(c) The number of cases in which tax demands were reduced/enhanced or which were remanded for fresh assessment during the year 1978-79 is indicated below :—	
Number of cases in which demands were reduced	1,579
Number of cases in which demands were enhanced	9
Number of cases remanded	1,943
Number of cases rejected/dissmised	1,679
Number of cases disposed of	5,210
(d) Number of appeals/revision petitions/review applications pending on 31st March 1979	4,956

The yearwise break-up of the pending appeals/revision petitions/review applications is given below :—

Year	Appeals, review applications and revision petitions pending
1973-74	4
1974-75	6
1975-76	19
1976-77	117
1977-78	1,014
1978-79	3,796
TOTAL	4,956

(Figures are as furnished by the department)

102. *Recovery certificates pending with the Sales Tax Department as on 31st March 1979*

(a) The position of recovery certificates pending with the Sales Tax Department as on 31st March 1979 is indicated below :—

	No. of cases	Amount (Rupees in lakhs)
(i) No. of cases pending as on 1st April 1978	1,334	68.00
(ii) No. of cases received during the period 1st April 1978 to 31st March 1979	8,644	515.38
(iii) No. of cases returned after recovery of tax during 1978-79	4,647	171.95
(iv) No. of cases returned without effecting recovery of tax for various reasons	2,019	270.95
(v) Total number of cases pending on 31st March 1979	3,312	140.48

(b) Out of 3,312 cases pending recovery on 31st March 1979, in respect of 256 cases the amount involved in each case was Rs. 10,000 or more. The break-up of these 256 cases is as follows :—

Year	No. of cases	Amount (Rupees in lakhs)
Upto 1971-72	7	1.07
1972-73	7	1.76
1973-74	10	3.13
1974-75	13	2.08
1975-76	13	2.62
1976-77	23	4.47
1977-78	51	14.00
1978-79	132	61.10
	256	90.23

(Figures are as furnished by the department)

SECTION 'B'

SALES TAX

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

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

Mention was made in paragraph 112 of the report of the Comptroller and Auditor General of India, Union Govt. (Civil) Revenue Receipts, Vol. I, for the year 1976-77 that sales of goods by Indian dealers to the State Trading Corporation of India for export out of India, were not sales in the course of export out of India, although they may have been intended for export sale eventually by the State Trading Corporation. It is only the sales by the State Trading Corporation to the foreign buyers which will be deemed as sales in the course of export out of India, as there was privity of contract between the State Trading Corporation and the foreign buyer.

It was again noticed in audit that a locally registered dealer sold goods worth Rs. 46,62,950 to the State Trading Corporation during the years 1969-70 to 1972-73 which were exempted from tax treating them as sales in the course of export of goods

out of India. However, these sales were not in the course of export out of India as—

- (i) the sales were not the immediate cause of export, and
- (ii) there were two independent sales, the first between the dealer and the State Trading Corporation of India, and the second between the State Trading Corporation of India and the foreign buyer, and prior to the amendment of the Act only sales to the foreign buyers were exempted.

The sales made by the dealer, thus, not being in the course of export out of India were not eligible for exemption. This incorrect exemption resulted in under-assessment of tax of Rs. 2,34,436.

On this being pointed out in audit (January 1978) the department revised the assessment of the dealer in December 1978 and raised additional demand of Rs. 2,34,436. Particulars of recovery are awaited (February 1980).

The matter was reported to the Ministry (May 1978) who accepted the facts of the case (September 1979).

104. *Under-assessment due to the application of incorrect rate of tax*

Steel tubes and fittings were included in the list of "declared goods" within the meaning of section 14 of Central Sales Tax Act, 1956, (declared goods are eligible for the concessional rate of tax in respect of local sales and inter-State sales) with effect from 1st April 1973. Prior to this date, the sales of these items were taxable at the general rate of 5 per cent as they were not declared goods. It was, however, noticed in the case of two dealers that the assessing authority taxed sales of steel tubes and fittings amounting to Rs. 3,71,657 under the local Act and Rs. 3,71,074 under the Central Act during the years 1971-72

and 1972-73 at 2 per cent treating them as "declared goods". This resulted in under-assessment of tax of Rs. 15,158.

On this being pointed out in audit (August 1977), the department rectified the assessment orders and created additional tax demand of Rs. 15,158 (Rs. 11,295 including surcharge under the local Act and Rs. 3,863 under the Central Act) against the dealers (September 1977).

On an appeal by the dealers, the Asstt. Commissioner (Sales Tax) vacated (March 1978) the rectified assessment order on the plea that the effect of amending clause IV under Section 14 of the Central Sales Tax Act, 1956, was explanatory and elaborative rather than addition or deletion of items in the list of declared goods. This view was, however, not in accordance with a decision of the Supreme Court on this subject. On this being pointed out by Audit (May 1978), the department *suo motu* revised (February 1979) the orders and upheld the additional demands created in September 1977 under the rectified orders. The tax short levied was recovered partly by adjustment of tax paid in excess and partly by recovery in cash.

The matter was reported to the Ministry in April 1978, who have confirmed the facts (March 1979).

105. *Exemption from tax on false declarations*

Sales by registered dealers to other locally registered dealers are exempt from tax only when the purchasing dealers give a declaration that the goods purchased by them are specified in their Registration Certificates.

In November 1973, the Special Investigation Branch of the Sales Tax Department detected that a registered dealer had accounted for in his books during the assessment year 1973-74, sales aggregating Rs. 2,00,967 to the dealers, whose registration certificates stood cancelled. In some cases the sales were made after the dates of cancellation of the registration certificates of the purchasing dealers while in others the purchasing dealers

denied having purchased the goods on the strength of their registration certificates on or before the dates of their cancellation. In December 1973 these facts were reported to the assessing authority with the direction to complete the assessment of the dealer on priority basis after taking them into account.

In the course of audit it was noticed that notwithstanding the aforesaid direction, the assessing authority completed the assessment of the dealer only in February 1978, and that too without taking into account the unauthorised sales reported by the Special Investigation Branch, with the result that all these sales were irregularly exempted from tax as sales to registered dealers.

On this being pointed out in audit (July 1978), the department revised the assessment (August 1978) and created an additional tax demand of Rs. 18,684 against the dealer and also initiated penal action for furnishing incorrect particulars.

Particulars of recovery and further progress made in penalty proceedings are awaited.

The matter was reported to the Ministry in May 1979 ; final reply is awaited (February 1980).

106. *Under assessment of tax due to irregular exemption*

Under a notification issued in December 1964, sale of medicines, drugs and pharmaceutical preparations after having been imported from outside the Union Territory of Delhi or having been manufactured in the Union Territory of Delhi as the case may be, became liable to tax at the first point from 1-1-1965. It was, however, noticed that a dealer who had imported the said goods from other States claimed and was allowed by the assessing authority exemption from tax on the sales of drugs, etc., worth Rs. 14,41,891 made by him to other local registered dealers in the assessment year 1973-74.

On the mistake being pointed out in audit (April 1978), the department *suo motu* revised the assessment (January 1979) and created an additional demand of Rs. 72,095.

The matter was reported to the Ministry in May 1979 ; final reply is awaited (February 1980).

107. *Tax free purchases by making false representation*

A dealer was allowed to purchase on his registration certificate wood, pipes, nuts, bolts, etc., for use in manufacturing steel furniture for sale. In the course of audit it was, however, noticed that the dealer purchased wooden frames and furniture also (not specified in his registration certificate) from another locally registered dealer, tax free, in the assessment years 1971-72, 1972-73 and 1973-74 by representing that these goods were covered by his registration certificate.

On this being pointed out in audit (December 1978), the department determined the unauthorised purchases so made by the dealer as Rs. 20 lakhs and imposed a penalty of Rs. 1.5 lakhs (February 1979). Particulars of recovery are awaited.

The matter was reported to the Ministry in May 1979. The Ministry endorsed the action of the department (July 1979).

108. *Loss of revenue due to concealment of sales*

A registered dealer was assessed to sales tax *ex parte* for the year 1972-73 on gross turnover of Rs. 24 lakhs. On cross verification, it was, however, found in audit that the dealer made purchases worth Rs. 30,45,486 in that year from other seven registered dealers, tax free, on the strength of his local registration certificate, for re-sale. Thus the purchases of Rs. 6,45,486 were not taken into account while determining the taxable turnover.

On this being pointed out in audit (March 1977), the department revised the assessment, determined the turnover at Rs. 31 lakhs after adding the margin of profit and created an additional demand of Rs. 35,600 (including surcharge of Rs. 3100) against the dealer (November 1978).

Penal action for concealment of sales was under consideration of the department.

On the failure of the dealer to deposit the said demand, a recovery certificate was issued on 13th February 1979.

The matter was reported to the Ministry in June 1979. The Ministry endorsed the action of the department (November 1979).

SECTION 'C'

STATE EXCISE

109. *Irregular issue of rectified spirit duty free or at concessional rate*

Under the Delhi Excise Rules, the Excise Commissioner can permit the issue of rectified spirit/absolute alcohol from the bonded warehouse established in Delhi for scientific research, educational purposes and hospital use on payment of concessional rate of duty at Rs. 2 per proof litre or duty free as he may direct in each case.

(a) In the course of audit, it was noticed that 3400 bulk litres of rectified spirit was issued to an institution between April 1972 and December 1977 at a concessional rate of Rs. 2 per London Proof Litre. The institution carried out tests on behalf of the drugs manufacturers and other agencies on payment of fee. The issue of spirit at the concessional rate for this purpose was not in accordance with the provisions of the Excise Rules. The irregular concession allowed in this case resulted in a loss of Rs. 64,736 to the Delhi Administration.

On this being pointed out in audit (May 1979), the department stated (August 1979) that the concession allowed in this case had been withdrawn with effect from 21st May 1979 and that the question regarding withdrawal of concession for the earlier period was under consideration in consultation with Law Department of Delhi Administration.

(b) Duty free permits for issue of 2340 bulk litres of rectified spirit and absolute alcohol were issued to another institution between 7th November 1970 and 7th March 1978. The institution made a request for the issue of duty free spirit on 12th November 1970; but no order of the Commissioner of Excise, the authority competent to issue spirit duty free, was obtained on this request. In January, 1975 when the case was reviewed, the Collector observed that in the absence of any specific request having been made by the applicant in its application dated 22nd October 1974, the institution might be asked to deposit full duty before issue of permit of the rectified spirit. But these orders were also not complied with and the duty free permits were continued to be issued even thereafter. Thus the entire issue of spirit duty free in this case, did not have the sanction of the competent authority and was irregular. The total amount of duty forgone in this case works out to Rs. 53,046.

On this being pointed out in audit (May 1979), the department stated (August 1979) that it had now been decided to issue the spirit at the concessional rate of Rs. 2 per London proof litre and that the question of withdrawing the concession of duty free permits with retrospective effect and effecting recoveries was under their consideration. Further reply is awaited (February 1980).

The matter was reported to the Ministry in October 1979; reply is awaited (February 1980).

110. *Accumulation of arrears due to delay in taking action on breach of licence conditions*

Under the Delhi Liquor Licence Rules read with the conditions for auction of foreign liquor retail vend licences for the year 1977-78, the highest bidder was to pay a sum equal to one tenth of the bid money (licence fee) immediately on the conclusion of the auction and the balance in monthly instalments payable by 7th of each month following the month in which the licence was granted to him. In addition, he was to deposit the

assessed fee at the prescribed rate on the sale of foreign liquor made by him during a month by 10th of the following month. On his failure to make the payments as above on or before due dates, the licence of the shop should be re-auctioned for non-payment of licence fee and the loss occurred to the Government on account of re-sale, if any, together with interest at the rate of 1.5% per month for the period of default should be recovered from the defaulter as arrears of land revenue. Besides, penalty upto a sum not exceeding Rs. 2000 could be imposed for each default made in the payment of assessed fee.

It was noticed in audit that one licensee defaulted in making payment of both the licence fee and assessed fee immediately after the grant of licence. The period of default in making payments of licence fee due in the months of May 1977 to October 1977 and of assessed fee due for the months of April to November 1977 ranged between 2 days to 154 days. The licence fee due in the months of November 1977 to January 1978 and the assessed fee due for the months of December 1977 to March 1978 had not been paid at all.

The department did not, however, initiate any action either to re-auction the shop on breach of the licence conditions and/or to stop the supply of foreign liquor to the defaulting licensee. The action to impose penalty for delay in payments of assessed fee was also not initiated. The total amount recoverable from him worked out to Rs. 4,47,984 (Rs. 2,22,800 on account of licence fee, Rs. 1,45,866 on account of assessed fee and Rs. 79,318 on account of interest for belated payments upto August 1979).

On this being pointed out in audit (May 1979), the department stated (July 1979) that recovery notices against the partners of the licensee firm were being issued to the District Excise Officer who had been made personally responsible to ensure speedy recovery and that pending recovery, the securities of Rs. 2,67,000 deposited by the partners of the licensee firm had been withheld. It further added that penalty would be imposed

at the time of issue of assessment order which was yet to be finalised.

The matter was reported to the Ministry in October 1979; reply is awaited (February 1980).

111. *Credits for duty not traceable in treasury records*

The licensees intending to import liquor/denatured spirit into the Union Territory of Delhi outside the bond are required to deposit the duty and/or the permit fee, as the cases may be, at the prescribed rate into the treasury or bank and to furnish the copies of challans to the Excise Officer in support of the amount of duty having been so paid, alongwith a request that they may be permitted to import the quantity of liquor/denatured spirit for which the duty/fee had been paid by them. Thereafter Delhi Excise Office issues the import permits of the required quantity on the basis of the licensees' copies of the challans in anticipation of the receipt of departmental copies of challans from the treasury/bank. The amounts of duty/fee deposited as per office copies of the licensees' challans available with the Delhi Excise Office are linked with the departmental copies of the challans on their receipt from the treasury to ensure actual deposit of money as well as proper accountal of credits.

A test check conducted by Audit of these treasury challans revealed that in nine cases of deposits aggregating Rs. 81,352 pertaining to the period from August 1976 to November 1977, the linking of licensees' copies of challans with the departmental copies was not done with the result that neither the departmental copies of the challans were available nor could the credits be traced in the treasury records.

On this being pointed out in audit (August 1977), the department stated (August 1979) that efforts were being made to get the old records traced. Further reply is awaited (February 1980).

The matter was reported to the Ministry in October 1979; reply is awaited (February 1980).

SECTION 'D'

STAMP DUTY AND REGISTRATION FEES

112. Short levy of Stamp duty on Power of Attorney

Under the Delhi Land (Restriction on Transfer) Act, 1972, no person shall, except with the specific permission in writing of the competent authority, transfer or purport to transfer by sale, mortgage, gift, lease or otherwise, any land or part thereof situated in the Union Territory of Delhi which is proposed to be acquired under the Land Acquisition Act, 1883, for public purpose. The Act also prohibits registration of any document of transfer by sale, etc., of such land under the Indian Registration Act, 1908, unless the transferor produces before the Registering Officer, permission in writing of the competent authority for such transfer.

During the course of audit of four Sub-Registrar's offices, it was noticed that in 561 cases, the vendors instead of executing regular transfer deeds, had taken recourse to the execution of general power of attorney in favour of the purchasers, apparently with a view to avoiding compliance with the provisions of the Delhi Land (Restriction on Transfer) Act, 1972 or of the Urban Land (Ceiling and Regulations) Act, 1972, or to circumvent restrictions on transfer of property sold by the Delhi Development Authority.

The *modus operandi* followed in such cases is that the vendors execute a general power of attorney in favour of the vendees without mentioning the sale or the consideration received. They also register simultaneously, before the Sub-Registrar, a receipt for the amounts received from some close relatives of the vendees as consideration for the sale without mentioning the details of the property and the consideration. They are also stated to execute an agreement to sell which is not produced before the Sub-Registrar for registration and no mention of the agreement to sell is made either in the power of

attorney or in the receipt. A 'Will' is also executed by the vendor in favour of the vendee bequeathing his property in favour of the latter (vendee) after his death.

In the 561 cases noticed in audit, the vendors executed general power of attorney authorising the vendees (attorneys) to sell, etc., the immovable properties, on non-judicial stamp of Rs. 10 each, and in turn received cash consideration from the close relatives of the vendees. No mention about the sale or cash consideration received was made in the instrument of power of attorney. However, the acknowledgements of the executant vendors for having received the cash consideration from the close relatives of attorneys were presented at the time of registration of power of attorney.

Under the Indian Stamp Act, 1899 (as applicable to the Union Territory of Delhi), a power of attorney when given for consideration and authorising the attorney to sell any immovable property is liable to stamp duty at the rate of 3 per cent of the amount of consideration. A general power of attorney, when given without consideration, is chargeable with a fixed stamp duty of Rs. 10 only.

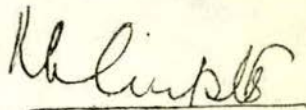
In these 561 cases, the power of attorney, having been executed after receiving a consideration of Rs. 99,53,500 the acknowledgements of which were also presented, stamp duty (calculated at 3 per cent) of Rs. 2,98,605 became leviable against which a sum of Rs. 5,610 only was levied, treating the instruments as general power of attorney without consideration. This resulted in short levy of duty of Rs. 2,92,995.

On this being pointed out in audit, the department stated (October 1977) that as the consideration in these cases flew not from the attorneys directly, but from third parties, the instruments were correctly charged with a stamp duty of Rs. 10 each. However, the Act does not stipulate that the consideration should move directly from the attorney. The consideration given by a third party on behalf of the beneficiary should be as

good as moving directly from the beneficiary. Treatment of such a power of attorney as a general one is, therefore, not justified.

The department have also expressed (October 1979) helplessness in the matter in view of "inherent lacuna" in the existing provisions of Article 48 of Schedule 1-A to the Indian Stamp Act 1899, and have stated that since they are applicable to the entire country, a general amendment of the provisions of the Act is called for to check such tax evasion.

The Ministry to whom the matter was reported in October 1979, agreed (November 1979) with the views of the department.

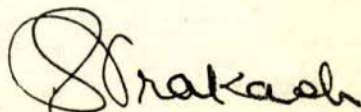


New Delhi,
The _____, 1980.

(R. S. GUPTA)
Director of Receipt Audit

3rd April, 1980.

Countersigned.



New Delhi,
The _____, 1980. *Comptroller and Auditor General of India*

3rd April, 1980.

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