

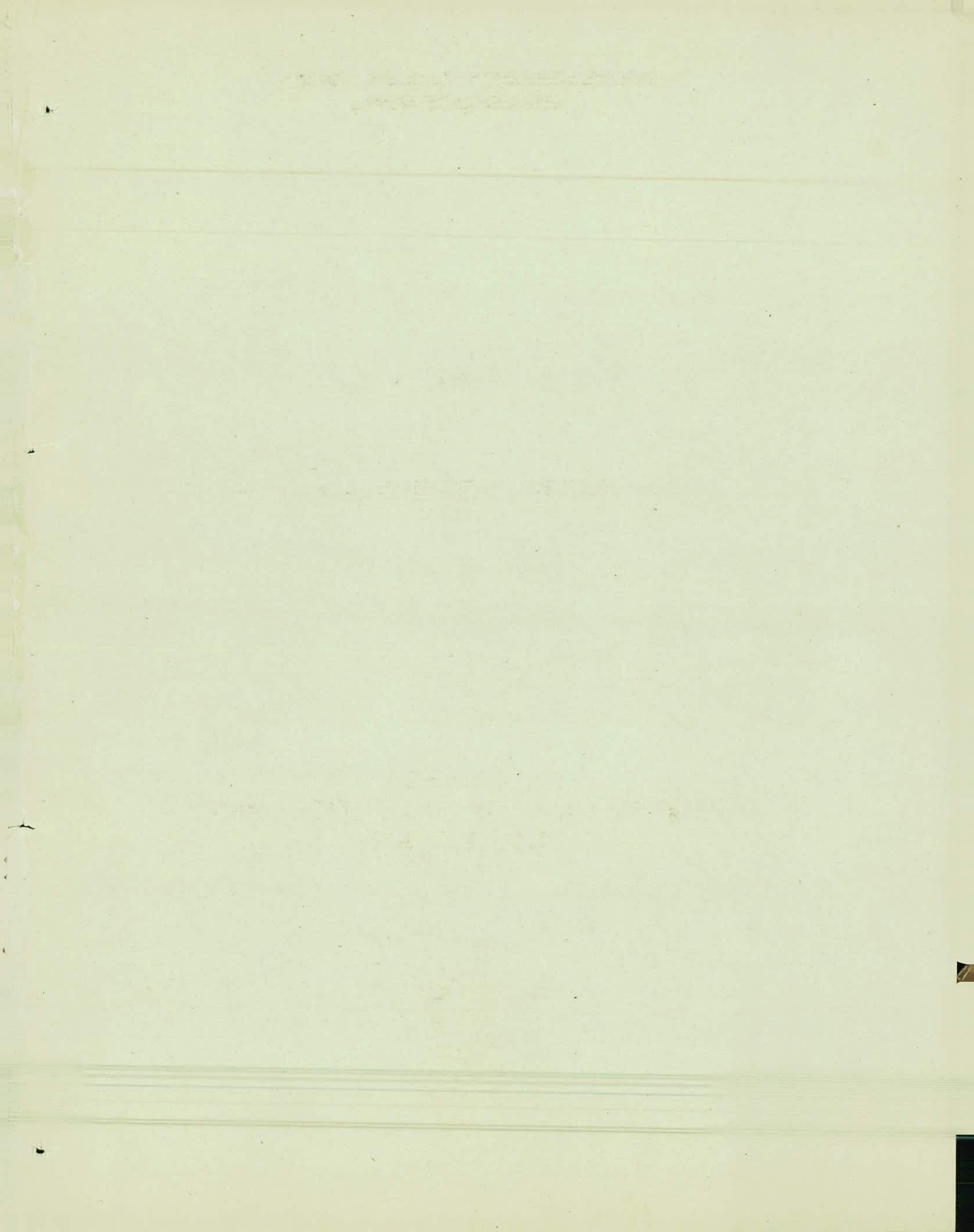


**REPORT OF THE  
COMPTROLLER AND AUDITOR GENERAL  
OF INDIA**

**FOR THE YEAR ENDED 31 MARCH 1994**

**No. 4 of 1995**

**UNION GOVERNMENT  
(REVENUE RECEIPTS - INDIRECT TAXES)**





सत्यमेव जयते

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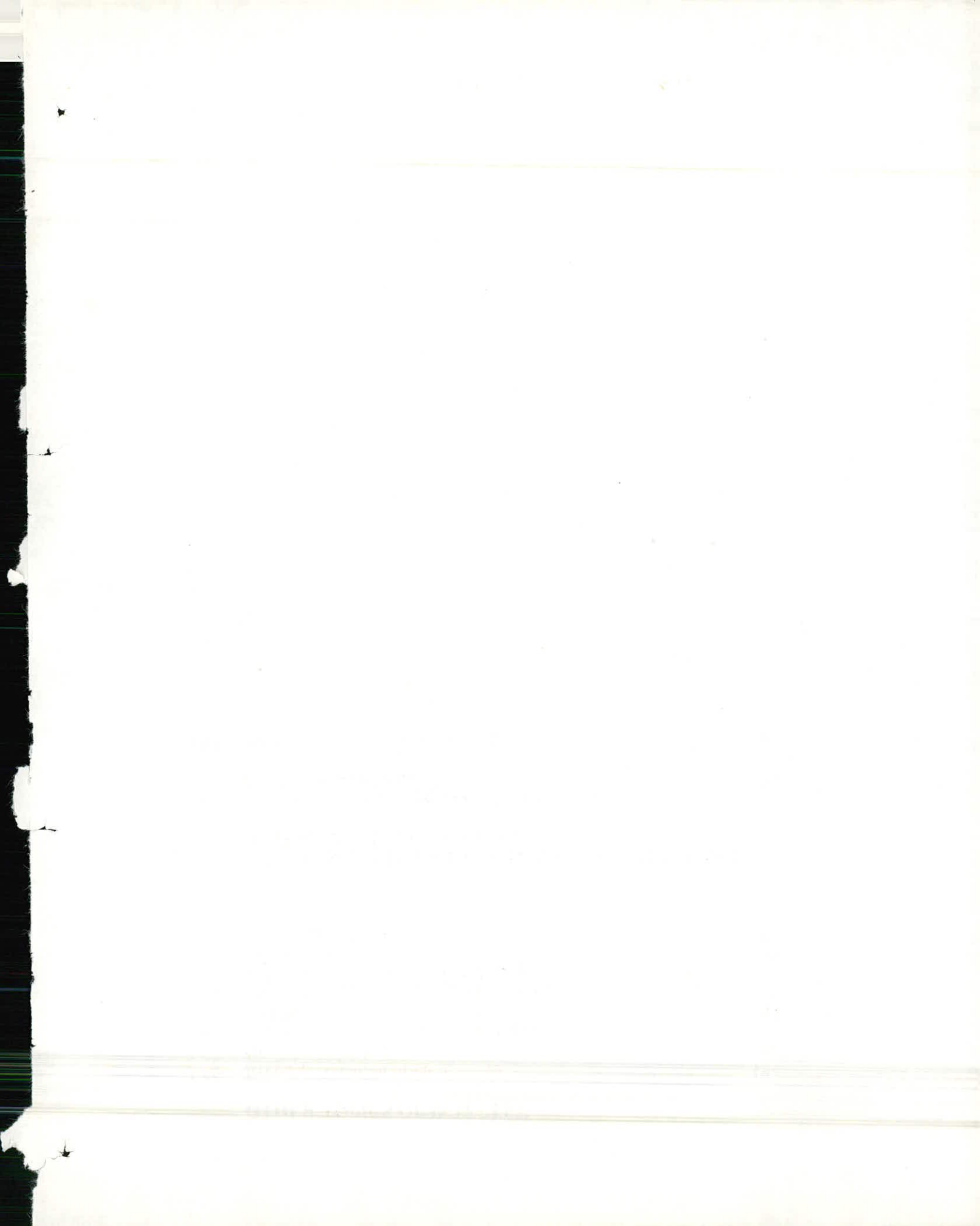


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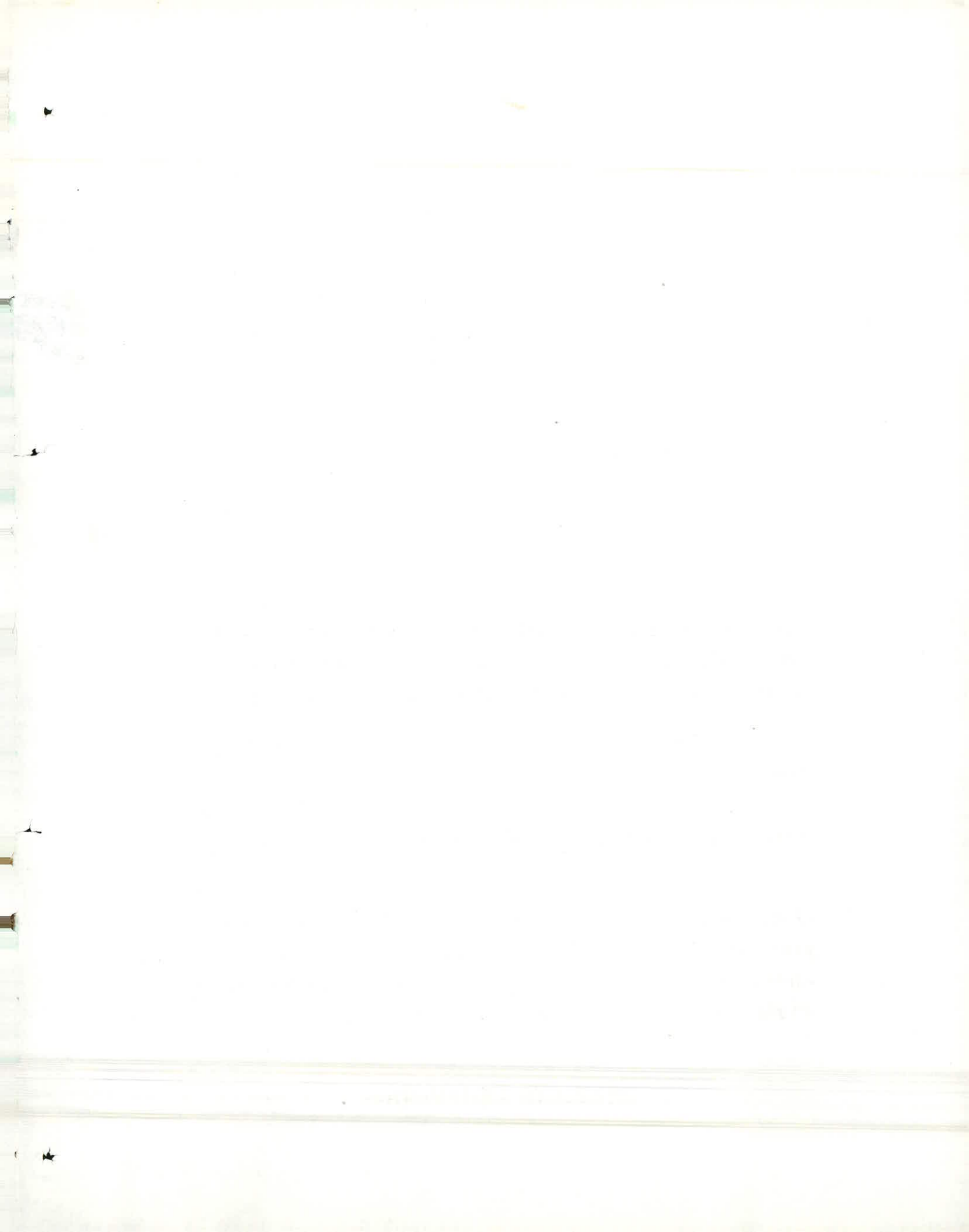


## **PREFATORY REMARKS**

This Report for the year ended 31 March 1994 has been prepared for submission to the President under Article 151 of the Constitution based on the audit of Indirect Tax Receipts of the Union of India in terms of Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act 1971.

The report contains the results of test audit of Indirect Tax Receipts (mainly Customs and Central Excise) conducted in order to see if the rules and procedures are designed to secure an effective check over assessment, collection and proper allocation of revenue and are being duly observed.

The cases mentioned in this Report are among those which came to notice in the course of audit during 1993-94 and early part of 1994-95 as well as those which came to notice in earlier years but could not be covered in the previous Reports.



## OVERVIEW

### I TREND OF RECEIPTS

The gross receipts from Customs and Excise duties during the year 1993-94 amounted to Rs.53,740 crores against budget estimates of Rs.61,478 crores. The actual receipts were Rs.54,608 crores in 1992-93.

An aggregate amount of Rs.21,655 crores was realised during 1993-94 on account of import duties on imports of Rs.72,806 crores. In 1992-93, Rs.23,243 crores was realised as import duties with the value of imports being Rs.62,923 crores. In addition, Rs.369 crores were realised during 1993-94 on account of duties on export and cess etc. As many as 852 exemption notifications were in force as a result of which Customs duty amounting to Rs.3,677 crores (16.5 per cent of total receipts) was forgone. In the previous year, the corresponding amount of revenue forgone was Rs.2,689 crores. The receipts from sales of confiscated goods were estimated at Rs.1,000 crores during 1993-94 against the actual receipts of Rs.26 crores during 1992-93. However, only Rs.168 crores were realised during 1993-94.

Excise duties amounting to Rs.31,548 crores were realised in 1993-94 against the budget estimates of Rs.33,751 crores. The actual receipts in 1992-93 were Rs.30,832 crores. There were 646 exemption notifications in force during the year 1993-94 as against 583 in the previous year. The revenue forgone in 1992-93 was Rs.1,845 crores; the Ministry of Finance did not furnish the confirmed corresponding figures for 1993-94.

**(Paragraphs 2.01, 2.02, 2.06, 3.01 and 3.04)**

### II RESULTS OF AUDIT

Including the cases detailed in the Report, test check of records conducted in audit during the year 1993-94 revealed short levies/underassessments of revenue amounting to Rs.11.44 crores in Customs Receipts and Rs.108.55 crores in Central Excise duties. Underassessment and losses of revenue amounting to Rs.84.23 crores (Customs: Rs.9.20 crores;

## OVERVIEW

Central Excise: Rs.75.03 crores) have been accepted by the Ministry/department out of which Rs.23.72 crores had been recovered.

(Paragraphs 2.15 and 3.11)

### III SYSTEMS APPRAISAL

#### **Delay in vacation of stay orders in Customs cases**

The Public Accounts Committee had stressed the need to pursue and keep a watch on all cases of litigation relating to Excise and Customs to ensure that the departmental cases are not allowed to fall through because of default or inadequate pursuance. In 1985, the Supreme Court had also observed that the recovery of tax should not be stayed save under exceptional circumstances as majority of the cases were filed solely for the purpose of obtaining interim orders and delaying the proceedings thereafter. Although a legal cell was functioning in the Ministry of Finance, 2591 cases where interim/permanent stay had been granted by Supreme Court/High Courts/CEGAT were pending as on 31 March 1993 in 22 Custom Houses/Collectorates. Test check indicated that revenue amounting to Rs.30.64 crores could not be recovered in 39 cases owing to failure of the department to take timely, expeditious and effective action for vacation of the stay orders. The department did not move the Court for vacation of the stay orders even where the Supreme Court had passed orders favourable to the department in similar other cases. Cases where the department did not ensure valid bank guarantees to safeguard the interest of revenue during the pendency of the stay orders, were also noticed.

(Paragraph 1.01)

#### **Mid-term Appraisal of Scheme of import of capital goods with export obligations under para 197 of the Import Export Policy 1990-93**

In order to encourage exports, Government of India, allowed import of capital goods at concessional rates of Customs duty (25 per cent duty irrespective of the actual rate) under para 197 of the Import Export Policy

## OVERVIEW

1990-93, subject to fulfilment of certain export obligations and other conditions. Test check of 47 out of 240 cases of importers who had availed of the benefit of the Scheme upto December 1993, indicated that the export obligations might not be fulfilled in many cases within the periods prescribed. In two cases test checked, where the export obligations were required to be met by various dates during 1994, no exports whatsoever had materialised till March 1994. In other cases, the exports actually effected were disproportionately low vis a vis the obligations and also did not keep pace with production. In one case, the exports fell from even the existing level after import of machinery on payment of concessional rate of customs duty. Cases were also noticed where the export obligations were incorrectly fixed. Another Scheme of import of capital goods, providing for higher concession in Customs duty but with higher export obligation, was introduced under the Export Import Policy 1992-97 in April 1992. Although a number of importers switched over to the latter scheme, the obligations were not properly fixed for the two schemes. Procedures to watch the fulfilment of the conditions were not established and there was evidence of lack of coordination between the Director General of Foreign Trade, the implementing agency, and the Customs department overseeing the imports and exports.

(Paragraph 1.02)

### **Modified Value Added Tax (MODVAT) Scheme**

An appraisal on the efficacy of the Modvat scheme and its impact on revenue collection was conducted and the results of appraisal featured in the Report of the Comptroller and Auditor General of India on Indirect Taxes for the year 1987-88 (No.11 of 1989). Following this, a working group was constituted by the Ministry of Finance to suggest simplification and rationalisation of the procedures for availment of the Modvat credit. Subsequently, a series of notifications/instructions were issued from time to time. A further review of the scheme was conducted in audit, the test check covering the period April 1991 to March 1994.

## OVERVIEW

Irregularities with revenue effect of Rs.25.25 crores were noticed of which the department accepted availment of excess' credits amounting to Rs.8.09 crores. Of these, Rs.2.42 crores has been recovered/adjusted so far. The irregularities were indicative of system failures.

Absence of a provision in the Modvat rules regarding suitable format for declaration of inputs/outputs led to irregular utilisation of credits amounting to Rs.3.42 crores in 41 cases. Non defining the term 'inputs used in or in relation to manufacture' resulted in irregular availment of credits amounting to Rs.2.11 crores in 26 cases. Credits amounting to Rs.5.18 crores were availed by forty seven assesseees on the basis of invalid documents, credits other than central excise and countervailing duties, credits on goods not covered by Modvat scheme etc. Modvat credit of Rs.2.15 crores was availed in excess of the rate prescribed for specified goods in 20 cases. Credit of Rs.4.15 crores availed by 41 manufacturers on inputs not used in exempted finished products, was not recovered/reversed as prescribed in the rules. Payment of duties in excess of the prescribed rates, with the intention of transferring Modvat credits to buyer units were noticed in nine cases involving Rs.2.33 crores. Duty amounting to Rs.2.66 crores was not paid on clearance of waste and scrap generated from inputs on which Modvat credits were availed. 9113 Modvat cases involving duty of Rs.3,501 crores were pending adjudication in 35 Collectorates as on 31 March 1994. Of these, 1052 cases involving Rs.481.49 crores were pending for over five years.

(Paragraph 1.03)

## IV CUSTOMS RECEIPTS

The rates of duty leviable on imported goods are prescribed under various headings in the First Schedule to the Customs Tariff Act, 1975, read with the notifications in force during the relevant period. Different rates may be applicable to goods falling under different headings.

Short levy/underassessment of customs duties amounting to Rs.11.44 crores were noticed during test check. The Ministry/department accepted short



## OVERVIEW

levies/loss of revenue of Rs.9.20 crores, of which Rs.4.83 crores had been recovered.

**(Paragraph 2.15)**

- Grant of exemptions where not admissible, for example, to hospital equipments, apparatus and accessories, welding rods and plastic coating material, electrostatic precipitator, components for machine tools and heat exchangers etc. led to short recovery of Rs.4.42 crores.

**(Paragraphs 2.16 to 2.22)**

- In twenty seven cases, mistakes in assessment such as non levy of additional duty on account of availment of inapplicable notifications or notifications already withdrawn etc. resulted in short levy of duty of Rs.2.07 crores.

**(Paragraphs 2.23 to 2.28)**

- Imported goods like turbo chargers, photo dispenser booth, insulating and impregnating oil for condensor and alloy steel wire rods etc. were incorrectly classified leading to short levy of duty of Rs.1.13 crores.

**(Paragraphs 2.29 to 2.38)**

- Undervaluation of goods liable for customs duty resulted in short collection by Rs.0.41 crore in eleven cases.

**(Paragraphs 2.39 to 2.44)**

- Drawback of Rs.0.18 crore was paid in excess due to adoption of higher rates than admissible in three cases.

**(Paragraphs 2.45 to 2.47)**

- Customs duty amounting to Rs.0.81 crore was not collected from State Trading Corporation in respect of purchase of cars from foreign privileged persons.

**(Paragraph 2.49)**

- In twelve consignments of electronic goods, revenue amounting to Rs.0.39 crore was yet to be realised despite the expiry of warehousing period.

**(Paragraph 2.50)**

## OVERVIEW

### V CENTRAL EXCISE DUTIES

The rates of duty leviable on excisable goods are prescribed under various headings in the Schedule to the Central Excise Tariff Act, 1985, read with the notifications in force during the relevant period. Different rates may be applicable to goods falling under different headings.

Short levy/underassessment of central excise duties amounting to Rs.83.30 crores (excluding the system appraisal on Modvat) were noticed during test check. The Ministry/department accepted the short levy/loss of revenue of Rs.66.94 crores of which Rs.16.47 crores had been recovered.

(Paragraph 3.11)

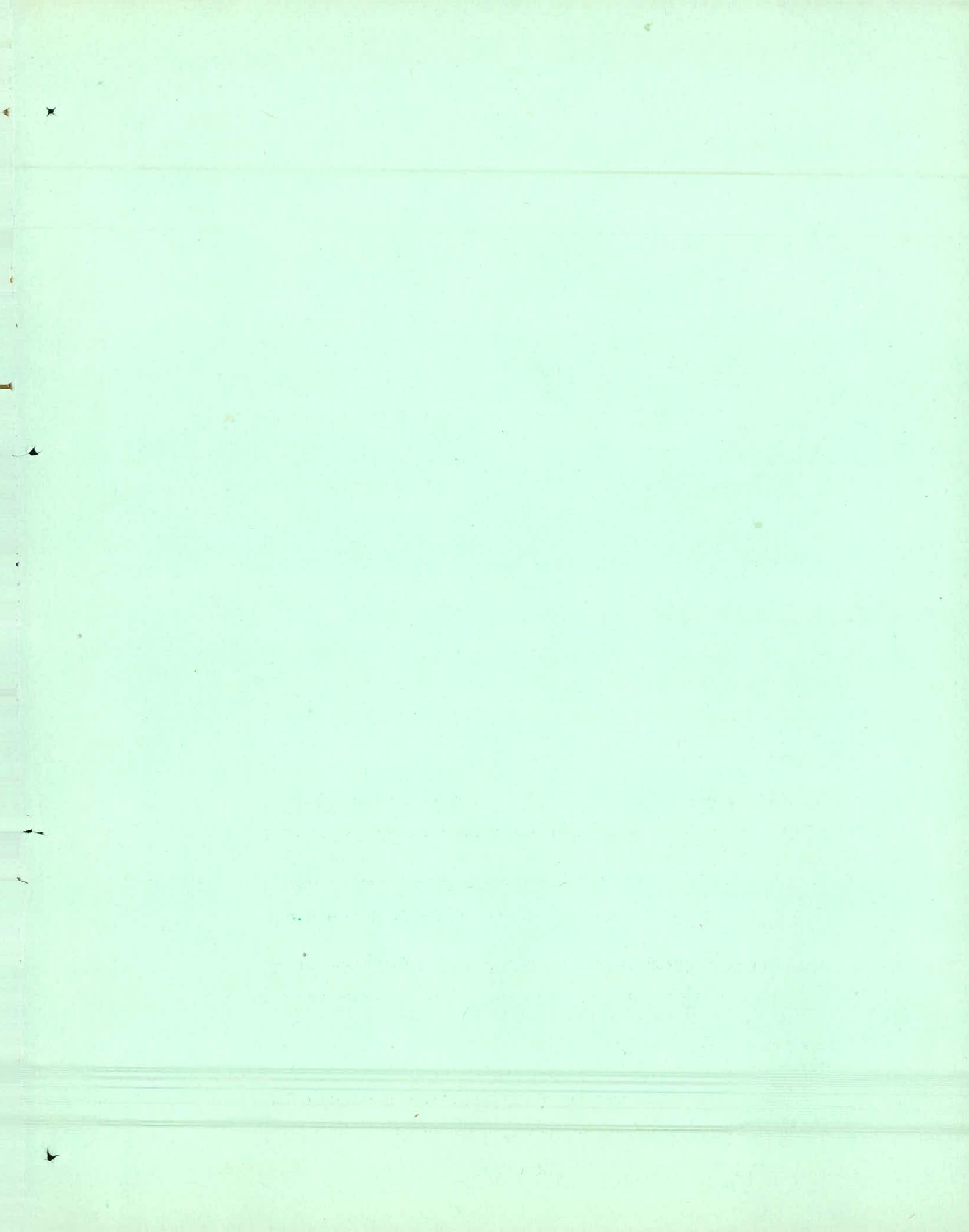
- Excisable goods such as optical fibre cables, crane lorries, poly coated papers, sanitary napkins, talcum powder, poly propylene and carpets of acrylic yarn were incorrectly classified leading to short levy of duty of Rs.20.01 crores. (Paragraphs 3.12 to 3.19)
- Undervaluation of excisable goods as a result of non inclusion of interest accrued on advance deposits, non revision of price lists, adoption of reduced value of goods cleared to sister unit, incorrect adoption of lower assessable value of branded goods etc. led to short levy of duty of Rs.15.60 crores. (Paragraphs 3.20 to 3.28)
- Application of exemption notifications on goods which were not entitled to such exemptions resulted in short realisation of duty of Rs.23.53 crores in thirty five cases. (Paragraphs 3.29 to 3.38)
- Duty not levied on production suppressed in two cases amounted to Rs.2.44 crores. (Paragraph 3.39)
- Small scale industry concessions were granted in cases where not due resulting in short levy of duty of Rs.3.05 crores in twenty cases. These include cases of availing of concessions by units not registered as

## OVERVIEW

small scale manufacturers, conditions not being fulfilled and deliberate fragmentation of units to avail of the concession etc.

**(Paragraphs 3.47 to 3.52)**

- Cess amounting to Rs.0.93 crore was not levied in six cases involving jute products/body built on chassis. **(Paragraphs 3.53 and 3.54)**
- Non pursuance to get the stay orders vacated resulted in blocking of revenue of Rs.5.6 crores in one case. **(Paragraph 3.55)**
- Duty of Rs.2.03 crores was collected by four assesseees but not credited to the Government account. **(Paragraph 3.56)**



## CHAPTER 1

### SYSTEMS APPRAISAL

#### 1.01 Delay in Vacation of Stay Orders in Customs cases

##### Introduction

Under the Customs Act, 1962, any decision or order passed under the Act by an officer of Customs lower in rank than a Collector of Customs, may be appealed to the Collector (Appeals) and any person aggrieved by the order passed by the Collector of Customs (as an adjudication authority) or Collector (Appeals) may appeal to the Appellate Tribunal against such orders.

Against the orders of the Customs Excise and Gold Control Appellate Tribunal (CEGAT), the Collector of Customs or the other party may, by an application, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order. Lastly, an appeal shall be to the Supreme Court in respect of any judgement of the High Court.

In para 1.37 of their 170th Report (Seventh Lok Sabha), PAC had recommended that there should be a separate Directorate in the Central Board of Excise and Customs (CBEC) to pursue and keep a watch on all cases of litigation relating to Excise and Customs to ensure that the departmental cases are not allowed to fall through because of default or inadequate presentation. While suggesting the setting up of similar cells in all the major Custom Houses/Collectorates like Bombay, Ahmedabad, Madras and Calcutta to deal with such Court/CEGAT appeal cases, the Committee desired that Government should review all cases pending in the Courts/CEGAT and take all steps to get the stay orders vacated and the dues collected immediately.

In response to this recommendation of the PAC, the Ministry of Finance (Department of Revenue) intimated that the Cabinet's approval for the creation of a Legal Cell was received in December 1985 and the Cell started functioning under a Joint Secretary thereafter. As on 31 March 1994 this cell

had one Joint Secretary, one Director, one Under Secretary and Senior Technical Officers and supporting staff. The Custom Houses/Collectorates have also set up Legal Cells at their headquarters.

The Supreme Court has [in the case Asst. Collector of Central Excise Vs. Dunlop India {1985 (19) ELT 22 ECR 1985 (4)(SC)}] commented on the practice of granting interim stay orders as soon as application was filed and noted that the grant of stay of recovery of tax should not be issued save under exceptional circumstances. The Court also remarked that in majority of Court petitions, the cases were filed solely for the purpose of obtaining interim orders and thereafter, prolong the proceedings by one device or other and that this practice needed to be strongly discouraged.

The department should, taking advantage of this observation of the Supreme Court, oppose grant of stay vigorously and get the stay, wherever granted, vacated expeditiously.

## **2. Scope of Audit**

A review of the court cases (Customs) pending as on 31 March 1993 in 22 Custom Houses/Collectorates dealing with Customs cases was conducted between November 1993 and May 1994 with a view to ascertain if there existed an effective control over pursuance of court cases before various Appellate Authorities and timely and effective steps were taken for getting the stay orders vacated in the interest of revenue.

## **3. Highlights**

**The results of the appraisal conducted by test check are contained in the following paragraphs which highlight-**

- i) Revenue amounting to Rs.3063.63 lakhs could not be recovered in 39 cases owing to failure of the department to take timely, expeditious and effective action for vacation of stay orders by the various courts.**

**(para 5)**

- ii) Duty amounting to Rs. 434.60 lakhs involved in 11 cases was not realised due to failure to take timely action in consultation with the legal counsel and delay in filing of counter affidavits.

(para 6)

- iii) Failure to review and ensure the validity of bank guarantees during the pendency of interim stay/final stay orders resulted in revenue of Rs.198.52 lakhs in 12 cases remaining unprotected.

(para 8)

#### 4. Statistical data

The following statistical data has been compiled from the information made available by the Customs Department in respect of the stays granted by CEGAT/High Court/Supreme Court upto 1992-93 outstanding at the time of audit.

Courts/Appellate Authorities involved	Prior to 1990-91	1990-91	1991-92	1992-93	Total
I. Number of cases filed in					
a) Supreme Court	297	25	59	23	404
b) High Court	4480	1199	763	673	7115
c) CEGAT	707	1186	1211	1012	4116
II. Number of cases where interim stay has been granted by					
a) Supreme Court	149 (2170)	1 (1)	1 (2)	Nil (Nil)	151 (2173)
b) High Court	1859 *(5705)	85 **(1042)	70 (530)	17 (109)	2031 (7386)
c) CEGAT	35 (449)	73 @(370)	110 @(240)	73 @(452)	291 (1511)
III. Number of cases where permanent stay has been granted by					
a) Supreme Court	13 (88)	Nil (Nil)	Nil (Nil)	Nil (Nil)	13 (88)
b) High Court	22 (532)	12 (326)	19 (313)	1 (0.41)	54 (1171.41)
c) CEGAT	19 (12)	11 (126)	17 (108)	4 (6)	51 (252)

(Figures in brackets give amounts involved in lakhs of rupees)

\* Rajkot and Trichy collectorates excluded.

\*\* Trichy collectorate excluded

@ Madras collectorate excluded

In Madras collectorate, information was not separately available regarding cases pending in High Court/Supreme Court; these have been exhibited under High Court.

### 5. Failure to take timely and expeditious action to get the interim injunction/stay orders vacated

In para 4 of the 53rd report of PAC 1993-94 (10th Lok Sabha), the Committee reiterated that there should be no let up in taking effective and timely steps in securing early vacation of stay orders and collection of substantial revenues that have been blocked so far.

In the following cases involving a duty of Rs.3063.63 lakhs noticed in test check the department failed to take timely, expeditious and effective action for vacation of interim injunctions/stay orders.

Sl. No.	Name of commodity	No. of cases	Month of Supreme/ High Court/ CEGAT stay order	Amount of duty involved (Rs. in lakhs)
Madras Custom House				
1.	Asbestos fibre	2	July 1980 September 1982	58.47 112.79
2.	Ivory Board	1	December 1985	7.70
3.	Leather Chemical	1	September 1988	126.74
Trichy Custom House				
4.	Seizure of Gold Biscuits	1	July 1990, August 1990	38.10 (penalty)
Gujarat Custom House				
5.	Asbestos fibre	2	July 1980 October 1983	9.19 436.25
6.	Soda ash	1	February 1982	105.62
7.	Polyester staple fibre	3	October 1986 December 1988	1690.55
8.	Import of Palm Stearic Acid in violation of ITC	2	June 1986 August 1986 and January 1987	110.00 (Penalty)
9.	Roller Bearings	1	March/April 1989	33.85
10.	Misdeclaration of goods	1	October 1991	34.16



Sl. No.	Name of commodity	No. of cases	Month of Supreme/ High Court/ CEGAT stay order	Amount of duty involved (Rs. in lakhs)
Cochin Custom House				
11.	Viscose staple fibre	2	August 1982 but stay vacated in October 1982	15.35
12.	Autoconer machine	1	November 1989	40.70
13.	Polyethylene	2	March 1992	26.66
			January 1992	1.41
14.	Import of Tallow fatty acid	14	November 1983	*963.41 (value)
Bombay Custom House				
15.	Sugar of Milk	1	January 1991	11.18
16.	Wrapper & Air conditioning parts	1	January 1991	16.93
Bangalore Custom House				
17.	G.P.Chucks	1	April 1992	49.39 10.00 (penalty)
18.	Aluminium	1	November 1989	96.70
19.	Computer components	1	January 1991	31.89
Total		39		3063.63
			excluding value	963.41
* amount of duty not known			(Sl.No.14)	

A few illustrative cases are given below:

**i) Madras**

(a) The Supreme Court granted stay (July 1980 and September 1982) in 2 cases (Sl.No.1) involving countervailing duty on Asbestos fibre. The Supreme Court had upheld the levy of countervailing duty on Asbestos fibre in another case on 24 October 1983. This was, however, not brought to the notice of the Supreme Court even after ten years of the verdict for obtaining vacation of stay in the two cases. In one case the bank guarantee was valid only upto 31 March 1991; it could not be confirmed whether the bank guarantee continued to be valid in the second case.

(b) In a case of 'Ivory Board' (Sl.No.2) sought to be cleared at Madras as 'white card board' duty free under Duty Exemption Entitlement Scheme (DEEC), while the Madras High Court stayed the adjudication proceedings taken under section 111(d), 111(m) and 112 of Customs Act, 1962 in December 1985, the department neither moved the High Court for vacating the stay order nor sought disposal of the goods which were deteriorating due to prolonged storage. The counter affidavit in the case was filed only in 1992 after six years.

(c) In a case of import of leather chemical (Sl.No.3), a stay order was issued by the High Court in September 1988, but the department filed a counter affidavit only in December 1990. The stay has not been got vacated. The department intimated that the counsel was last reminded on 28 September 1993 to move the High Court for early hearing.

## ii) Trichy

In a case of seizure of gold biscuits (Sl.No.4), penalties of Rs.28 lakhs under the Customs Act, 1962 and Rs.10.10 lakhs under the Gold Control Act were imposed on two accused persons at the adjudication stage in November 1989. The persons subsequently obtained stay orders in July 1990 and August 1990 respectively from the High Court against the collection of the penalties.

The department had not moved the Court for vacating the stay orders. The department stated (October 1994) that on receipt of the High Court's orders of August 1990 granting the stay order, the legal branch of Madras Custom House and Branch Secretariat of Law Ministry at Madras were requested to initiate appropriate action and further developments were not known.

## iii) Gujarat

(a) In two cases involving stay on levy of countervailing duty on asbestos fibre (Sl.No.5) granted in July 1980 and October 1983, the fact that Supreme Court upheld levy of countervailing duty in a similar case in October 1983 was

not pleaded at a later date to get the stay vacated. In one of those two cases, the department has stated (October 1994) that Deputy Government Advocate and Senior Analyst (Legal) had been reminded for early vacation of the stay order.

(b) In a case of Soda ash import (Sl.No.6), it was noticed that while no action was taken for vacation of the stay order issued by the High Court in February 1982, the bank guarantee for Rs.52.82 lakhs had lapsed in March 1989.

(c) In a case pertaining to misdeclarations of goods (Sl.No.10), the CEGAT, Bombay had directed the importer in October 1991 to deposit Rs.15 lakhs as penalty and on its compliance by the importer, the recovery of duty amounting to Rs.34.16 lakhs was not to be enforced till the final disposal of the case. Although the importer did not deposit the penalty as per orders of CEGAT, the department neither enforced recovery of duty nor moved the CEGAT any further in the case.

**iv) Cochin**

(a) In two staple fibre cases (Sl.No.11), although the stay was vacated by the High Court in 1982, the department had not taken action for enforcing recovery.

(b) In respect of a case of autoconer machine (Sl.No.12), although the High Court had, while granting an interim stay issued orders in November 1989 to file a detailed counter affidavit, the counter affidavit was forwarded to the legal counsel by the department for filing in September 1992. It was ultimately filed only in April 1994.

(c) In two cases pertaining to polyethylene (Sl.No.13), although Kerala High Court granted interim stay of all the proceedings including public auction of goods, in January and March 1992, counter affidavits were not filed till April 1994. Stay has also not been got vacated.

**v) Bombay**

In a case of import of Sugar of milk (Sl.No.15) the High Court allowed clearance during 1991 subject to execution of bank guarantee for the differential duty, while directing the Additional Collector to pass orders after hearing the party. This was not done.

**vi) Bangalore (Air Cargo)**

In a case of import of Aluminium (Sl.No.18), the Karnataka High Court granted stay order in November 1989 subject to certain conditions. While the Ministry directed the department to file an appeal against the High court order by a telex message on 22 January 1990, no appeal was filed. The Law Ministry advised the department to move the Court for early hearing (31 August 1994), but necessary action has not been taken. The bank guarantees have since been obtained but the bonds are yet to be executed.

**6. Failure to take timely and effective action in pursuing cases through legal counsels**

The following are a few illustrative cases where failure of the department to take timely action including briefing of legal counsels for pursuance of such cases and for filing counter affidavits was noticed in audit in test check.

Sl. No.	Custom House	Subject/case No.	No. of cases	Month and year of CEGAT/ HC/SC order	Amount involved (Rs.in lakhs)
1.	Madras	Unauthorised removal of warehoused goods viz. "insecticidal technical"	1	April 1989	28.87 (including bond interest)
2.	Madras and Trichy	Demand of duty on pulses (Increased rate of duty was not published on the date of entry inwards of the vessel, in the gazette and hence not leviable)	1 1	July 1991 April 1992	9.54 9.07

Sl. No.	Custom House	Subject/case No.	No. of cases	Month and year of CEGAT/ HC/SC order	Amount involved (Rs.in lakhs)
3.	Calcutta	(a) Non filing of appeal due to non availability of certified copy of the High Court judgement	1	January 1979	7.60
		(b) Delay in completing adjudication proceedings as per orders of the High Court resulting in discharge of bank guarantee	1	July 1988	9.00
		(c) Delay in completion of assessment on ships imported for breaking up as ordered by High Court	1	March 1993	5.00
		(d) Non appearance of departmental counsel in the High Court resulting in imposition of fine	1	June 1992	4.82
4.	Bangalore	(a) Levy of duty by taking 1% of CIF value as handling charges instead of actuals	1	February 1991	10.00
		(b) Levy of Additional duty on ships imported for breaking	1	November 1993	93.08
5.	Jaipur	(a) Short levy of duty on import of caprolactum	1	August 1980 and May 1981	30.62
		(b) levy of duty on textile grade polyester chips	1	May 1982	227.00
Total			11		434.60

i) In the case at Sl. No.1, the department initiated action for recovering the short levied amount (Rs.28.87 lakhs) under Section 142(c) of Customs Act, 1962 and requested the Collector of the District in which the company was located to recover the amount as if it were arrears of land revenue.

When the recovery proceedings were initiated by the Collector of the District (District Revenue Authority), the parties moved the High Court (December 1988) without impleading the Collector of Customs. On receipt of information from the District Collector, Madras in December 1988, the

department prepared a draft affidavit impleading itself as one of the parties to the litigation. On 28 April 1989, the High Court adjourned the case to 14 June 1989 to enable the Customs department to implead themselves as one of the respondents. On 10 August 1989 the department was given 3 weeks for filing counter affidavit to the original petition of the petitioners. Further developments were not clear from the records made available to audit; however, in March 1994, the department wrote to the Law Ministry (with copy to counsel) inquiring the latest developments in the case including the filing of counter affidavit.

ii) In the second case referred to in Sl.No.2, the counsel of the department did not appear at the hearing in the Supreme Court although the case was listed for hearing on 27 July 1992. The Supreme Court conveyed its displeasure. It was noticed that the brief was sent by the department to Law Ministry only in December 1992. Details of further developments are not known.

iii) In the case at Sl. No. 3(b) the High Court had asked the department in 1988 to complete the adjudication proceedings within a period of 4 weeks but this was not done. Thereafter, in April 1993 in the absence of the legal counsel, the Court ordered the release of the bank guarantee for Rs.9 lakhs.

iv) In the case at Sl. No. 3(c) the High Court had ordered in March 1993 that the department should finalise the assessment of ships imported for breaking within 2 months. But this was not done. No extension was also sought by the department in this regard. The High Court ordered the bank gurantee of Rs.5 lakhs which had been obtained from the party to be released resulting in revenue remaining unprotected.

v) In the case of short levy of duty on import of caprolactum at Sl. No.5(a) the department did not pursue the issue of vacation of stay order of the court till August 1992; till over a decade after the court had passed the orders. When contacted the standing counsel intimated in September 1992 that no papers were available with him in respect of this case which were then sent. Further progress in the case is not known.

vi) In the case of levy of duty on textile grade polyester chips at Sl. No.5(b), the Collectorate decided to file an urgency petition/stay vacation petition in June 1988 after a period of six years of the stay order. The relevant papers were sent to the counsel in Delhi in July 1988. However, the urgency writ petition/stay vacation petition was sent to Assistant Collector (Legal) at Delhi Collectorate, who was to liaise with the counsel, only in August 1992 after 4 years for filing in the court. Further developments in the case are not known.

**7. Low rate of success in getting stay ordered by Courts/CEGAT vacated**

Test check of records indicated that the department has not been successful in getting the stay vacated in majority of the cases where it moved the Courts/CEGAT for such vacation as illustrated in the table given below:

	1990-91	1991-92	1992-93	Total
No. of cases in which the department moved for vacation of stay	29	24	20	73
No. of cases in which the stay was vacated by the Courts/CEGAT	2	Nil	1	3

**8. Failure to review and ensure the validity of bank guarantees during the pendency of interim/final stay upto the date of recovery**

In respect of interim or final stay granted by appellate authorities (including courts) subject to execution of bank guarantees, the department should ensure that the bank guarantees remain valid in order to protect the revenue interests. Illustrative cases where validity period of the bank guarantees expired and the guarantees were not renewed are mentioned below:

Sl. No.	No. of cases	Description of goods	Month of H.C./S.C stay	Amount of bank guarantee (Rs. in lakhs)	Validity expired in
<b>1. Calcutta Custom House</b>					
	5	Miscellaneous goods	Between 1981 & 1982	28.94	May 1982 - May 1986
	1	Miscellaneous goods	October 1982	13.02	April 1984
<b>2. Gujarat Custom House</b>					
	1	Asbestos fibre	July 1980	21.07; 5.17 & 6.65	December 1993
	1	Pig iron foundry	April 1982	11.51	April 1984
	1	Palm stearic fatty acid	September 1984	56.06 8.30	July 1988
	2	H.D. Moulding Powder	September 1984 February 1985	25.33 21.47	December 1990 August 1991
<b>3. Karnataka Custom House</b>					
	1	Disputed classification	January 1991	1.00	Not executed at all
<b>Total 12</b>				<b>198.52</b>	

## 9. Other points of interest

### (a) Litigation cases pending settlement between Customs department/public sector undertakings, corporations etc.

In a case pertaining to import of "colour film in Jumbo rolls" (1981 to 1984) made by a Public Sector Undertaking, the Customs authorities assessed the goods to countervailing duty under item 68 of the erstwhile Central Excise Tariff but the importer claimed the classification of goods under item 37(i) of Central Excise Tariff under which the subject goods were leviable to countervailing duty at a lower rate than that of Tariff item 68. Following an appeal filed by the importer, CEGAT allowed the refund of Rs.88.34 lakhs in favour of the importer. On an appeal filed by the department the Supreme Court ordered (20 September 1991) that if the department succeeded in the appeal



finally, the importer should pay the amount to the department with interest at 15 per cent from the date of refund to the date of repayment. Nothing is on record to indicate further developments in the case.

**(b) Other pending cases**

i) In a case of assessment of ship "M.V. Uma" imported for breaking up, a private buyer claimed assessment with initial value of similar scrap ship as on 1964 with rate of duty prevailing on the date of maiden entry of vessel and filed a writ in the Bombay High Court against the assessment order of the department for valuation as in 1985.

In view of Bombay High Court's interim order of 5 August 1985, the buyer cleared the ship on payment of duty of Rs.1.64 lakhs with personal bond executed for Rs.15.60 lakhs on 12 December 1985. Subsequently, the writ petition was dismissed in favour of the department on 5 February 1992 but the demand notices issued during June 1992 to August 1992 for payment of duty difference of Rs.15.60 lakhs were not honoured by the importer.

A detention notice under Additional Collector's orders dated 20 December 1993 does not appear to have been issued. The recovery of Rs.15.60 lakhs is still pending. Details of recovery in 22 similar cases decided along with this case were not available.

ii) In a case of assessment of polyester filament yarn, an importer challenged the levy of auxiliary and additional duties in a writ petition filed in Delhi High Court. In its interim order of 14 July 1982, the High Court allowed clearance of the goods subject to furnishing bank guarantee for 50 per cent of the disputed amount and personal bond for the entire duty. While the importer furnished bank guarantees for Rs.1.10 crores from M/s New Bank of India (Rs.23.01 lakhs); M/s Metropolitan Co-operative Bank (Rs.44.53 lakhs); and Canara Bank (Rs.42.81 lakhs), personal bond was obtained from the firm for Rs.2.21 crores.

The department approached the Ministry for filing application for vacation of stay orders at an early date on the basis of the Supreme Court's judgement dated 12 September 1984 in the case of M/s Kathayee Cotton Mills, which entitled the department to recover the amount due with interest at the rate of 17.5 per cent per annum from petitioners from the date of stay order till recovery. Though the Ministry did not take any decision, the case was finally dismissed by the High Court on 7 April 1992 in favour of the department.

However, by the time the case was dismissed, one of the guarantor banks i.e. M/s Metropolitan Cooperative bank which had executed a guarantee for Rs.44.53 lakhs went into liquidation. The manufacturer had stopped the manufacturing activity and the directors joined different firms. Thus, the recovery of dues amounting to Rs.1.55 crores plus 17.5 per cent interest could not be effected so far.

The present position of 29 cases dismissed alongwith the case and 34 other cases referred to the Ministry of Finance by Customs department under their letter of 9 February 1990 is awaited from the department.

iii) In a case of import of Palmolein by an importer during October 1981, as per interim order of Supreme Court dated 6 October 1981, the goods were cleared on payment of duty of Rs.5.47 lakhs and execution of bank guarantee for Rs.6.21 lakhs and personal bonds for Rs.16.95 lakhs.

The case was finally decided (May 1989) in favour of the department. On 29 September 1989, the department served notices on the importer as well as the guarantor bank namely, Andhra Bank, Bombay for payment of the amount. The bank refused to pay the amount as the guarantee was not renewed after the expiry of one year. The importer company was also taken over by another company.

Failure of the department to get the guarantee renewed on time and getting the bond amount realised resulted in loss of revenue of Rs.6.21 lakhs and notional interest thereon.

10. The appraisal was referred to the Ministry of Finance in October 1994; reply has not been received (December 1994).

### **1.02 Midterm Appraisal of the Scheme of Import of Capital Goods with export obligations-under para 197 of Import Export Policy 1990-93**

#### **Introduction**

The Government of India allowed import of capital goods at concessional rate of customs duty under Para 197 of the Import Export Policy 1990-93, subject to fulfilment of export obligations and other conditions, with a view to reducing the incidence of high capital cost on export prices thereby making Indian exports competitive in the international market. Customs notification no. 169/90-Cus dated 3 May 1990 issued under section 25(1) of Customs Act, 1962 governed the operation of the scheme.

The salient features of the scheme were as under:

- i) Import of capital goods upto a maximum CIF value of Rs.10 crores was permitted at concessional rate of customs duty at 25 per cent of the CIF value of the capital goods imported and full exemption from additional duty.
- ii) The importer was required to undertake an export obligation equivalent to three times the CIF value of the capital goods permitted for import within four years from the date of such import. The export obligation was to be enhanced pro rata if the actual CIF value of imports exceeded the value of licence by more than 15 per cent. This export obligation was independent of any other obligations undertaken by the importer separately and was to be an additionality over the average level of exports in the preceding three licencing years or the annual average value of exports during the best two years in the preceding three licensing years, whichever was higher.
- iii) The Scheme which was initially available only to registered manufacturers/exporters who had been regularly exporting for a period

of not less than three years was extended to all manufacturers from 7th September 1990, irrespective of the past export performance.

- iv) Before the clearance of the imported capital goods, the importer was required to execute an Indemnity-cum-Surety bond either with the Export Obligation Cell, of the Director General of Foreign Trade, New Delhi or the Regional Licensing Authority concerned who would transfer the original documents, after acceptance, to the Export Obligation Cell for monitoring the progress made towards fulfilment of export obligations.
- v) At the time of clearance, the importer was required to make a declaration before the Assistant Collector of Customs in a prescribed form binding himself to pay, on demand, an amount equal to duty leviable on such capital goods but for the exemption contained therein, in respect of which the conditions specified under para 197 were not complied with.

## 2. Scope of Audit

A total number of 240 units/importers had availed benefit of the scheme upto December 1993; of these, 166 units were under the jurisdiction of Madras, Trichy, Coimbatore and Madurai collectorates (71 units) and Bombay, Goa including Nhavasheva port (95).

Though the period of four years is not over in majority of the cases of imports under the scheme, the operation of the scheme was reviewed by test check of records during the period April to June 1994 to examine if it was being implemented in the manner prescribed and especially to ascertain:

- i) whether the export obligations were properly fixed and the trend of exports indicated that these obligations were likely to be fulfilled;
- ii) whether bank guarantees were obtained for the required amounts and augmented wherever there was increase in the CIF value of imports and

- iii) whether there existed an effective co-ordination between the Customs Authorities and the Director General of Foreign Trade for watching timely fulfilment of export obligations.

### **3. Highlights**

**The results of the appraisal conducted through test check are contained in the following paragraphs which highlight as under :**

- i) **The trend of exports indicates that the export obligations under the scheme might not be fulfilled. Even in cases where export obligations were to be fulfilled during the years 1994 and 1995 the percentage of exports to the obligations was disproportionately low.**

**(Para 4)**

- ii) **Incorrect fixation of export obligations by Export Obligations Cell in respect of seven exporters resulted in short fall of the obligations by Rs.83.58 crores.**

**(Para 5)**

- iii) **Non fixation of export obligations at the time of switching over from one scheme to another and availment of multiple benefits under different Export Schemes simultaneously by 20 units were noticed.**

**(Para 6)**

- iv) **Incorrect grant of benefit of the Scheme resulted in short levy of duty of Rs.6.94 lakhs.**

**(Para 7)**

## 4. Trend Analysis

The following tables indicate cases noticed during test check where (a) no exports were made at all; (b) where partial exports were made, in fulfilment of export obligations.

**(a) NO EXPORTS MADE**

Year of Imports	Collectorate	Number of cases	Total Export obligations (Rupees in lakhs)	Export obligations to be completed by various dates during the year	No Exports till
1990	Delhi	1	167.91	1994	March 1994
	Bombay	1	1045.04	1994	March 1994
	<b>Total</b>	<b>2</b>	<b>1212.95</b>		
1991	Bombay	4	621.06	1995	March 1994
			US\$26112394		
	Coimbatore	2	562.46	1995	January 1994 and May 1994
	Ahmedabad	1	156.00	1995	March 1994
	<b>Total</b>	<b>7</b>	<b>1340.52</b>		
			US\$26112394		
1992	Bombay	3	US\$836462	1996	March 1994
	Indore	2	232.80	1996	March 1994
	<b>Total</b>	<b>5</b>	<b>232.80</b>		
			US\$836462		
<b>Grand Total</b>		<b>14</b>	<b>2785.27</b>		
			<b>*US\$26948856</b>		

\* Amount in US \$ in addition to the amount in rupees.

## (b) PARTIAL EXPORTS MADE

Year of Imports	Collectorate	Number of cases	Total Export obligations (Rupees in lakhs)	Export obligations to be completed by various dates during the year	Exports actually made till (Rupees in lakhs)	Percentage of export obligations fulfilled
1990	Delhi	1	1713.23	1994	928.10	(March 1994) 54.2
	Coimbatore	1	446.55	1994	211.13	(January 1994) 47.2
	Bombay	3	3532.56	1994	100.80	(March 1994) 2.9
	<b>Total</b>	<b>5</b>	<b>5692.34</b>		<b>1240.03</b>	<b>21.8</b>
1991	Delhi	3	3008.84	1995	1361.97	(March 1994) 45.2
			US\$13746513		US\$5497458	(December 1993 & March 1994) 40.0
	Coimbatore	2	1456.02	1995	339.66	(January 1994 & March 1994) 23.3
	Bombay	9	15894.32	1995	2508.05	(March 1994) 15.6
	Madras	2	5868.00	1995	1360.07	(September 1993 & February 1994) 23.2
	Madurai	1	356.26	1995	76.63	(March 1994) 21.5
	<b>Total</b>	<b>17</b>	<b>26583.44</b>		<b>5646.38</b>	<b>21.1</b>
		US\$13746513		US\$5497458	40.0	
1992	Delhi	2	US\$34176906	1996	US\$3491888	(March 1994) 10.2
	Madras	3	15968.06	1996	1660.26	(March 1994 & May 1994) 10.4
	<b>Total</b>	<b>5</b>	<b>15968.06</b>		<b>1660.26</b>	<b>10.4</b>
		US\$34176906		US\$3491888	10.2	
<b>Grand Total</b>	<b>27</b>	<b>48243.84</b>		<b>8546.67</b>	<b>17.7</b>	
		*US\$47923419		US\$8989346	18.8	

\*Amount in US \$ in addition to the amount in rupees

The above indicates that even in cases where the export obligations were to be fulfilled by various dates in the years 1994 and 1995, the exports made so far were substantially low and the export obligations might not be fulfilled in a number of cases.

In the following cases the exports had not kept pace with the productions achieved.

(Amounts Rupees in lakhs)

Sl. No.	Collectorate/ Custom House	Description of goods	CIF value of imports	Value of export obligation to be fulfilled	Value of goods manufactured (till March 1994 unless otherwise specified)	Value of goods actually exported
1.	Ahmedabad	Granite Garg saw machine	50.90	156.00 (by end of July 1995)	142.00 (April 1991 to February 1994)	Nil
2.	Indore	2 open end spinning machines with 192 rotors	N.A.	\$496328 (by end of July 1996)	388.64	Nil
3.	-do-	-do-	N.A.	\$248164 (by end of July 1996)	270.83	Nil
4.	Madras	Fluorescent tubes	880.00	2640.00 (by end of April 1996)	440.77	4.49 (till February 1994)
5.	Coimbatore	Open end spinning machines	152.00	1096.00 (by end of February 1995)	20,683 (till December 1993)	248.00 (till January 1994)
6.	Madurai	Autoconer	57.77	356.00 (before April 1995)	802.00	76.63

In Coimbatore collectorate, a spinning mill had imported (June 1991) Autoconers and testing equipments valued at Rs.61.25 lakhs with export obligation of Rs.3.94 crores to be completed before the end of May'1995. However, no exports were made till May 1994. The importer intimated the department that the yarn produced upto May 1994 amounting to Rs.7.61 crores was being sold/supplied to its sister concern for conversion into cloth and eventual export by the latter could be counted against the unit's export



obligation. The contention of the unit is not acceptable as the Import-Export Policy provisions specifically stipulated that only direct export of the products manufactured out of capital goods imported could be counted towards fulfilment of export obligation. Further the export product as per Export Promotion Capital Goods (EPCG) licence issued to this unit was only cotton yarn/blended yarn and not cloth.

#### **5. Incorrect fixation of export obligation**

(a) An EPCG licence in Madras collectorate was granted to an importer in December 1991 for import of a total C.I.F. value of Rs. 9.97 crores. While additional export obligation was fixed at U.S.\$ 11.5 million (Rs.29.93 crores) in four years, the total export obligation was not fixed. Since the export obligations under the scheme are in addition to the average of best two of the preceding three licensing years' export performance, the non fixation of the total export obligation, while issuing the EPCG licence was not in order.

The total export obligation for this licence after taking into account the export performance of the best two preceding years worked out to Rs. 98.82 crores in four years. Thus, export obligation was incorrectly fixed short by Rs.68.89 crores. The total actual exports upto May 1994 were of the value of Rs.14.89 crores.

(b) In Chandigarh collectorate, in respect of EPCG licence issued on 19 December 1990 to an importer, it was noticed that capital goods were imported at a CIF value of Rs.4.29 crores. Export obligation of Rs.57.8 crores was worked out incorrectly against a total obligation of Rs.63.01 crores based on the average export performance in the past three years.

(c) In Jaipur collectorate, in five cases, although the value of imports effected by the importers had gone up by more than 15 per cent, the value of export obligation was not re-fixed proportionately leading to short computation of export obligation by Rs.9.48 crores.

**6. Non fixation of export obligations while switching to another scheme and availment of benefits under different schemes simultaneously**

While the scheme of Export Promotion Capital Goods notified under para 197 of the Import Export policy 1990-93 (Governed by notification no.169/90-Cus dated 3 May 1990) was in vogue, another scheme vide para 37 and 38 of Export and Import Policy 1992-97 (governed by notification no.160/92-Cus dated 20 April 1992) was announced. The latter scheme provided for import of capital goods without limit either at concessional rate of duty of 25 per cent ad valorem with the export obligation equivalent to three times the CIF value of the said capital goods over a period of four years or payment of concessional rate of duty of 15 per cent ad valorem with the export obligation equivalent to four times the CIF value over a period of five years. If an importer desired to switch over from the earlier scheme to the later scheme involving payment of 15 per cent concessional duty, the licence already issued had to be either terminated and a fresh licence issued or substantially amended. The export obligation under the two schemes should be separately fixed as the quantum and the period of the obligation were different. Procedures to watch the obligations independently, needed to be established.

In a number of cases, however, importers were permitted to switch from the former to the latter scheme without the export obligations being refixed. Procedures were also not put in place to watch the fulfilment of the export obligations under the two schemes separately.

A few illustrative cases are given below:-

(a) In Bombay Collectorate two units to which licences were issued for availment of concessional rate of 25 per cent ad valorem under notification no.169/90-Cus, availed of the concessional rate of 15 per cent under notification no.160/92-Cus though no amendments to the licences were issued. This resulted in irregular concession of Rs.67.11 lakhs.

(b) In four other cases in Bombay collectorate, after clearance of first consignment on payment of duty at the rate of 25 per cent of CIF value in terms of notification no.169/90-Cus the importers got their licences endorsed under para 38 of Import Export Policy 1992-97. All the subsequent clearances effected by the four importers were cleared at 15 per cent in terms of notification no.160/92-Cus dated 20 April 1992. Export obligations under two schemes, however, were not separately indicated.

(c) In Delhi collectorate, the licence of a unit was issued initially under para 197 of the Import Export Policy 1990-93 for an import of capital goods of CIF value Rs.9.65 crores. After the unit had made imports of CIF value of Rs.8.27 crores the licensee was permitted to avail of the concessional rate of 15 per cent under the new policy 1992-97. However, amendment to the licence stated to have been issued was not available on record with the Director General of Foreign Trade, New Delhi.

(d) In Delhi collectorate, 12 units had submitted same set of documents in support of fulfilment of export obligation under notification no.169/90-Cus as well as under other schemes of export promotion i.e. DEEC/Advance licences etc. In one case, three different DEEC Book numbers were recorded on the shipping bills for which export obligation was shown as having been fulfilled under this scheme.

#### **7. Short levy of duty due to incorrect extension of EPCG benefit**

In the case of a unit of a Corporation functioning in Coimbatore collectorate, EPCG licence was granted for import of one number Murata Autoconer and one number Uster Polymatic Electronic Yarn cleaner for CIF value of Rs. 59.97 lakhs. However, in addition to the Autoconer machine the importer also imported one 'Uster 3 model B/M with Digital Testing and Analysing Installation for Quality Assurance' of yarns, rovings and slivers for Rs.18.76 lakhs instead of Uster Polymatic Electronic Yarn cleaner as licensed and availed of the concession under notification no.169/90-Cus. As the imported goods were not the same for which the licence had been granted, the equipment would merit assessment under sub heading 9024.80 with levy of

appropriate duties. The short levy worked out to Rs.6.94 lakhs. The department stated that EPCG licence specifies capital goods by giving their name in common trade parlance with model details or by giving functional description. Therefore, the assessment was in order. The reply is not acceptable since neither the description nor the functions of the imported machine tallied with the description and functions specified in the licence.

## **8. Bank Guarantees**

In terms of Para 197(3) of Import-Export Policy 1990-93, notification no.169/90-Cus read with sub para 314(A)(4) of Hand Book of Procedures 1990-93, the importer before clearance of capital goods, was required to execute an indemnity cum surety bond backed by a bank guarantee for the full amount of duty payable but for the exemption with the regional licensing authorities or Export Obligations Cell, of DGFT, New Delhi.

A few illustrative cases where suitable bank guarantees were not ensured are given below:-

(a) In two cases relating to Cochin Custom House the actual value of the imports of capital goods was Rs.277.40 lakhs against the licence issued for Rs.244.87 lakhs and Rs.50.31 lakhs against the licence issued for Rs.40.42 lakhs. However, the bank guarantees were given for the differential duty based on the value of capital goods as per the licences issued and additional bank guarantees due to increases in value of imports were not obtained. This rendered the bank guarantees insufficient to cover the actual amounts of differential duty involved.

(b) In one case of importation effected at Calcutta Custom House, indemnity cum guarantee bond for Rs. 2.82 lakhs submitted by the importer to the Director General of Foreign Trade was returned for rectification of some deficiency. But the same was not received back (July 1994). Meanwhile, the imports took place on 28 October 1993. There was no valid bond and bank guarantee held by the department.

**9. Ineffective monitoring by the Export Obligation Cell and lack of coordination between Director General Foreign Trade and the Customs Department**

In terms of para 197 of the Import and Export Policy 1990-93 read with notification no.169/90-Cus dated 3 May 1990, the bond and the bank guarantee given by the importer should be transferred to the Export Obligation Cell of the Director General of Foreign Trade who will monitor export obligations being fulfilled. However, no mechanism had been evolved to maintain the record of actual imports taking place and the corresponding export obligations being fulfilled. The Customs Department only watched that the requisite certificate from the office of the Director General of Foreign Trade had been obtained by the importer and the imports were as per the licence. Details of imports actually made were not centrally kept and intimated to the Export Obligation Cell periodically. The prescribed six monthly returns of exports by the importers were also not regularly received by the Export Obligation Cell. As the exports can also take place from places other than the place of import, unless these returns are received and records properly maintained, it may be difficult ultimately to ascertain if the export obligations are fulfilled or not. The lack of coordination and the absence of suitable mechanism to watch the imports and the fulfilment of export obligations under the Scheme can be seen as mentioned below:

(a) The bonds and bank guarantees registered (May 1991 to June 1992) by eight importers with the Joint Director General Foreign Trade, Ahmedabad and by one importer (May 1991) with the regional licensing authority, Ludhiana were not transferred to the Export Obligation Cell of the Director General Foreign Trade, New Delhi for monitoring the export obligations.

(b) Bombay Custom House did not forward details of imports by the licencees to the Export Obligation Cell. 16 importers who had imported capital goods under the Scheme during the period December 1990 to November 1992 from Bombay Port had not submitted the half-yearly statements of exports.

(c) Calcutta Custom House had neither maintained records relating to the imports under the scheme nor sent the details of such imports to the Regional Licensing Authority/Export Obligation Cell. Out of 6 cases of imports only one importer had submitted one combined statement of export for 1991-92 and 1992-93.

(d) Madras Custom House had not maintained separate records for exports under EPCG scheme and DEEC scheme. Information on imports/exports was also not sent to Export Obligation Cell. The importers from Madras Port were also not intimating the Export Obligation Cell on their export performance on a regular six monthly basis as seen from the 46 cases checked.

(e) Cochin Custom House was not insisting on any bond or letter of guarantee for watching the fulfilment of the Export Obligations. Record of such cases was also not being maintained at the Custom House.

(f) Delay in submission of the half-yearly statements of exports ranged from 1 to 20 months in nine cases of importers based in Punjab under the Chandigarh collectorate (imports between December 1990 and February 1993). In one case no statement had been sent at all though the import had taken place in August 1992.

(g) In Gujarat the only importer (import in July 1991) availing the benefit under the scheme had not submitted the half-yearly statements of exports. Ahmedabad Regional Office issued a show cause notice in December 1993.

Thus there is an urgent need for the Customs Department and the Director General of Foreign Trade to establish procedures to watch the imports under the scheme and fulfilment of the export obligations to avoid the likelihood of loss of revenue in the event of export obligations not being fulfilled and the bank guarantees expiring. The Public Accounts Committee had also in their Fifth Report (Tenth Lok Sabha) on 'Customs Receipts - Non-verification of end-use' reiterated their earlier recommendation that a monitoring system should be evolved to review periodically how far the

objectives behind the grant of exemptions have been achieved and there was no misuse of exemption.

10. The appraisal was referred to the Ministry of Finance in October 1994; reply has not been received (December 1994).

### **1.03 Modified Value Added Tax (MODVAT) Scheme**

#### **Introduction**

The Modified Value Added Tax (Modvat) Scheme was introduced with effect from 1 March 1986 with a view "to progressively relieve inputs from excise and countervailing duties" so as to mitigate the cascading effect of duties and to provide "a transparency which discloses full taxation of the product". The Scheme provides for taking instant credit of duty paid on specified inputs and its utilisation towards payment of duty on specified final products. Initially, inputs falling under specified 38 Chapters and outputs falling under 37 Chapters of the Schedule to the Central Excise Tariff Act, 1985, were covered by the Scheme. The Scheme was further extended to a few more Chapters of the Tariff and as on 28 February 1994, all commodities except tobacco, petroleum products, matches and textiles were covered under the Scheme. From 1 March 1994, petroleum products excluding motor spirits and high speed diesel oil and inputs used in the manufacture of spun yarn have also been brought under the Scheme. The Scheme has also been extended to capital goods.

The provisions of the Scheme are contained in Rules 57A to 57J of the Central Excise Rules, 1944. Application of the Rules is guided by issue of notifications by the Government and instructions by the Central Board of Excise and Customs (CBEC).

## **2. Scope of Audit**

An appraisal on the efficacy of the Scheme in the Central Excise Collectorates and its impact on revenue collection was made in 1989 and featured in the Report of the Comptroller and Auditor General on Indirect

Taxes for the year 1987-88 (No 11 of 1989). Following this, a Working group constituted by the Ministry of Finance presented a report suggesting simplification and rationalisation of procedures for availment of the Modvat credit. As a result, the Ministry of Finance and the Central Board of Excise and Customs issued a series of notifications/instructions from time to time for smooth working of the Scheme.

The present system appraisal was attempted with a view to further evaluating the efficacy of the operation of the Scheme in the Central Excise Collectorates and also ascertaining whether availment of benefits has been in accordance with the amended provisions of the Modvat Rules. Test checks in audit covered 36 Central Excise Collectorates for the three years 1991-92, 1992-93 and 1993-94 and the findings were based on the verification of the central excise records maintained by the manufacturing units, central excise ranges and divisions. Changes made in the rules with effect from 1 March 1994, were not covered in the Review.

### **3. Highlights**

- i) **Absence of provision in the rules regarding suitable format for declaration of inputs/outputs under rule 57G led to irregular availment of credits of Rs.3.42 crores in 41 cases.**

{Para 5}

- ii) **Non defining the term 'inputs used in or in relation to manufacture' in rule 57A, resulted in irregular availment of Modvat credits amounting to Rs.2.11 crores in 26 cases.**

{Para 6}.

- iii) **In 47 cases credits amounting to Rs.5.18 crores were availed on goods not covered under Modvat Scheme, on the basis of invalid documents, other than central excise and countervailing duties, etc.**

{Para 7}



- iv) **Deemed credit amounting to Rs.18.60 lakhs in 7 cases was availed on inadmissible products, non duty paid inputs and exempted goods.**

**{Para 8}.**

- v) **Modvat credit of Rs.2.15 crores was availed in excess of the rates prescribed for specified goods in 20 cases.**

**{Para 9}**

- vi) **Credit of Rs.4.15 crores was irregularly availed by 41 manufacturers on inputs used in exempted finished products.**

**{Para 11}**

- vii) **Payment of duties on own volition, in excess of the prescribed rates, with the intention of transferring the Modvat credits to buyer units, was noticed in 9 cases involving Rs.2.33 crores.**

**{Para 12}**

- viii) **In 8 cases the input goods were cleared as such at lesser duty than credit availed resulting in excess availment of credit of Rs.42.37 lakhs.**

**{Para 13}.**

- ix) **Credit of Rs.81.37 lakhs was not reversed in 16 units, on material not received back from the job workers.**

**{Para 14}**

- x) **Duty amounting to Rs.2.66 crores was not paid on waste and scraps generated during manufacture and cleared in 9 cases.**

**{Para 15}**

- xi) Fraudulent/excess availments of credit noticed amounted to Rs.28.52 lakhs in 11 cases.**

{Para 16}

- xii) Modvat credit, amounting to Rs.96.03 lakhs from goods other than inputs was utilised by 18 manufacturers for clearance of manufactured items.**

{Para 17 (i)}

- xiii) 9113 Modvat cases involving Rs.3501 crores were pending adjudication/litigation in 35 collectorates as on 31.03.1994. Of those 1052 cases involving Rs.481.49 crores were more than 5 years old.**

#### **4. Units availing Modvat and collection of duty**

- i) During 1993-94, 28617 units were availing Modvat in 35 collectorates other than Aurangabad for which information was not available.
- ii) Under rule 9 of the Central Excise Rules, 1944, no excisable goods can be removed from the factory of production without payment of central excise duty. The payment can be made either through Personal Ledger Account (PLA) or through adjustment in RG23A part II account (Modvat). The table below gives the duty paid through PLA and RG23A part II.

(Amount in crores of rupees)

Year	P.L.A.*	RG23A Part II (Modvat credit)	Total	Percentage share	
				PLA	RG 23A
1991-92	23137.80	8347.48	31485.28	73	27
1992-93	25231.09	11444.31	36675.40	69	31
1993-94	22042.13	10891.29	32933.42	67	33

The above data do not include the figures of Aurangabad collectorate.

\* The P.L.A. figures represent the payment of duty by units availing Modvat only.

**5. Non-introduction of a proper system for declaration under rule 57G**

In terms of rule 57G of the Central Excise Rules, 1944, a manufacturer intending to avail credit of the duty paid on inputs under rule 57 A shall file a declaration with the proper officer of the Central Excise department indicating the description of the final products manufactured in his factory and the inputs intended to be used in each of the said final products. The Central Board of Excise and Customs clarified in their letter dated 9 February 1988 that declaration of description and sub-headings of both the inputs and final products is essential for availment of credit and this requirement cannot be dispensed with. However, different proformae for the declaration have been prescribed only by way of executive instructions by different collectorates.

During test check of records 41 cases (in 15 collectorates) involving irregular availment of credit of Rs.3.42 crores of duty paid on inputs without filing proper declaration were noticed and reported. An amount of Rs.11.55 lakhs in 7 cases was reported to have been recovered.

An illustrative case is mentioned below:

An assessee engaged in manufacture of 'explosives' in Bhubaneswar collectorate availed Modvat credit of duty amounting to Rs.101.00 lakhs on inputs 'plastic granules' (polymers of ethylene) falling under sub headings 3901.10 and 3901.20, which was not declared. The declaration filed by the assessee specified only plastic granules of heading 39.07 covering 'polyacetals', 'other polyethers', 'epoxide resins', 'polycarbonates' etc.

The department justified the extension of credit stating that (i) according to CBEC letter dated 9 February 1988 and clarification thereon dated 18 February 1991, Modvat credit should not be disallowed so long as the description and its classification in the relevant 'chapter' is correct; (ii) as per the legal provision for declaration provided under rule 57G of Central Excise Rules, 1944, only description of inputs and final products are to be declared; (iii) notification No.177/86 - CE dated 1 March 1986 mentions Chapter

number only and not headings and sub-headings; and (iv) CEGAT had decided in case of M/s Aluminium Industries Ltd. Vs Collector, Central Excise, Madras {1990 (47) ELT 28} that although sub-headings are different, if all headings are eligible inputs in terms of notification 177/86-CE, availment of credit was justified.

The department's contention is not acceptable in view of the following: (i) as per rule 57 G(I) the declaration should contain such other information as the Asstt. Collector may require' and accordingly, the proforma prescribed by the collectorate required the assessee to declare the description of inputs/ final products alongwith chapter sub-heading, which is a legal requirement; (ii) classification of a product is not decided by the chapter heading, but the sub-heading; (iii) notification 177/86-CE dated 1 March 1986 not only refers to chapter number of inputs but also refers to headings/sub-headings in the table below the notification; and (iv) the decisions of CEGAT in cases of S. Subramanyan & Company Vs Collector of Central Excise & Customs {1992 (62) ELT (Bom. CEGAT)} and Collector of Central Excise Vs Ganesh Steel Industries {1992 (60) ELT (New Delhi CEGAT)}, emphasise the need to file proper declaration under rule 57-G covering all the inputs falling under different headings. Declaration of some other input falling under the same Tariff heading will not suffice to meet the statutory requirement.

The CEGATs have given various decisions from time to time on the admissibility or otherwise of 'inputs' based on the facts presented to them, and some of them are at variance with each other. Uniformity in the procedure could be ensured only by making provision in the Rules/issue of notifications for a suitable format for declaration of inputs/outputs.

#### **6. Availment of credit on goods other than inputs**

As per notification No.177/86-CE issued on 1 March 1986 under rule 57A of the Central Excise Rules, 1944, credit of duty paid on specified inputs 'used in or in relation to manufacture of specific final products' is allowed to the manufacturer of such final products for payment of duty of excise leviable on the final product after he has filed a declaration for the same as per rule

57G. The term 'used in or in relation to the manufacture' has not been defined and has led to several disputes and litigations.

During test check of records, 26 cases (in 13 collectorates) involving incorrect availment of credit of Rs.2.11 crores, being the duty paid on goods which were not specified inputs were noticed and reported. Of these 8 cases involving Rs.27.60 lakhs were accepted by the department and the recovery of an amount of Rs.15.15 lakhs in 6 cases has been reported.

A few illustrative cases are given below:-

**i) Graphite electrodes**

As per the explanation to rule 57A and CEGAT's decision dated 29 August 1985 in the case of Collector of Central Excise Madras Vs. Muthu Chemicals Industries {1986 (26) ELT 581 (T)} 'electrode' is merely a device for delivery of current into the material for reaction and it is not a raw material for availing of Modvat credit.

Eleven assesseees in four collectorates, manufacturing iron castings and aluminium castings falling under chapters 84 and 87 brought into their factories duty paid 'graphite electrodes' for use in running electric 'Arc furnaces' and took credit of duty paid thereon to the extent of Rs.138.17 lakhs for the period between September 1989 and January 1994.

The department justified the availments of credits stating that graphite electrodes are consumables. In a similar case reported earlier by Audit, the Ministry of Finance was requested (January 1991) to get a technical opinion on the issue which has not been received (December 1994).

**ii) Foundry chemicals**

Three assesseees in Hyderabad and Jamshedpur collectorates availed Modvat credit of Rs.21.17 lakhs on the foundry grade chemicals used in the manufacture of moulds/cast products which were subsequently used for steel castings during the period from May 1991 to January 1994 even though the

Ministry of Finance clarified on 22 July 1987 that credits of Modvat were not admissible on foundry chemicals.

The department accepted the objection pointed out in one case involving credit of Rs.10.20 lakhs. Replies in respect of the other two cases have not been received.

### iii) Paper industry inputs

Two manufacturers of paper in Madras and Delhi collectorates availed Modvat credit of Rs.21.83 lakhs on felts used in paper making machines treating them as inputs for paper. These felts were, however, only parts of the machinery.

The department justified the extension of credit on the strength of decisions of CEGAT in case of Collector of Central Excise Vs. Emami Paper Mills Limited {1992 (61) ELT 489}, Straw Products Limited Vs. Central Excise and Customs {1992 (59) ELT 572} . However, the CEGAT's decisions in cases of Collector of Central Excise Vs. Ashim Paper Product Private Limited {1990 (50) ELT 120 CEGAT}, and Andhra Pradesh Paper Mills Vs. Collector of Central Excise {1990 (50) ELT 252} favoured the audit view that the products are not 'inputs' eligible for the Modvat credit. The divergent stands taken by different Tribunals on the same issue need reference to higher judicial authority for bringing about uniformity.

## 7. Irregular availment of credits

In 47 cases (in 20 collectorates) irregular availment of credits of Rs.5.18 crores on account of (i) duty paid on goods not covered under Modvat scheme; (ii) availment of credit of duty other than central excise and countervailing duties; and (iii) availment of credit without valid duty paying documents; were noticed and reported. The department accepted the irregular availments of Rs.81.79 lakhs in 22 cases and reported recovery of Rs.18.58 lakhs in 11 cases.

A few illustrative cases are given below:-

**i) On goods not covered under Modvat Scheme - Petroleum products**

Products falling under Chapter 27 were excluded as inputs from the purview of Modvat credit upto 28 February 1994.

Three assessees in Bombay III and Hyderabad collectorates availing Modvat credits received inputs viz., 'petroleum products' falling under Chapter 27 of the Central Excise Tariff and availed credits amounting to Rs.6.87 lakhs thereon. On this being pointed out, the department reversed credits amounting to Rs.4.08 lakhs in two cases and justified the availment in the third case stating that the goods 'mineral wax' were classified under chapter 34 in the bill of entry by the Customs authorities. The above contention of the department is not acceptable because as per Central Excise Tariff, the product 'mineral wax' was correctly classifiable under sub heading 2712.90.

**ii) Credit of duty other than Central Excise and Countervailing duties**

The Modvat Scheme provides for taking credit of Central Excise duty, Special excise duty and Additional duty under Section 3 of the Customs Act (Countervailing duty) paid on inputs. No Modvat credit is allowed on any other duties paid on inputs. In the following cases, the Modvat credit was incorrectly allowed on duties not covered in the Scheme.

(a) On refund of customs duty (Rs.13.86 lakhs) in Coimbatore collectorate; the department accepted the audit observation in principle, but stated that the recovery of irregular credit was hit by time bar;

(b) On basic customs duty (Rs.9.01 lakhs) on imported goods in five cases in Baroda, Bombay III, Delhi, Rajkot and Surat collectorates; the department accepted this audit observation in all these cases and recovered the irregular credits in four cases (Rs.8.01 lakhs).

**iii) Availment of credit without valid documents**

As per rule 57G of the Central Excise Rules, 1944, credit of Modvat duty is admissible, only if the inputs are received under the cover of duty

paying documents evidencing payment of duty. Such documents have to be submitted to the Superintendent of Central Excise every month for verification. It, therefore, follows that the duty paying documents evidencing payment of duty shall be original documents issued in the name of the assessee or endorsed in his favour. The Central Board of Excise and Customs in their letter dated 25 December 1992 have clarified that no Modvat credit of duty would be allowed based on the 'certified copy' or 'authenticated copy' of the original Gatepass I (GP.I).

(a) Nineteen assessees in ten collectorates availed of Modvat credit of Rs.391.52 lakhs during the period from October 1989 to December 1993 on the basis of photocopies of gatepasses.

The department accepted the irregular credits of Rs.29.74 lakhs in eight cases and intimated recovery of Rs.4.62 lakhs in four cases.

(b) Two assessees in Hyderabad and Delhi collectorates engaged in the manufacture of steel products (chapter 72) and T.V. parts (heading 85.29) took Modvat credit of Rs.13.69 lakhs towards basic excise duty and special excise duty on inputs during the period between July 1991 and March 1992 without supporting input gate passes evidencing payment of duty.

The department (June 1993) accepted the objection and realised the amount of Rs.1.87 lakhs in one case and confirmed demand of Rs.7.05 lakhs in the second case.

(c) Six assessees in five collectorates took Modvat credit of Rs.29.37 lakhs on the basis of defective duty paying documents during the period between May 1989 and December 1993. The duty paying documents were either endorsed more than two times or were issued by the traders not authorised to issue such documents.

The department accepted the objection in one case but held the demand as time barred.



(d) Two assessees in two collectorates manufacturing telephones and telephone parts (heading 85.17) and aluminium goods (chapter 76) took Modvat credit of Rs.7.80 lakhs of the duty paid on inputs (June 1991 and March 1992). Gate passes accompanying such inputs were neither in the name of the units nor were endorsed in their favour and thus were not valid duty paying documents for taking such credits.

The department stated (September 1993) that show cause-cum demand notices for Rs.7.99 lakhs and Rs.2.82 lakhs have been issued in these cases.

(e) Contrary to Board's instructions dated 23 January 1989, an assessee was allowed credit on the strength of delivery challans of the inputs supplied which were endorsed more than once leading to irregular availment of Modvat credit amounting to Rs.5.56 lakhs during September 1992 to August 1993.

The department admitted the audit observation and raised demand for Rs.2.59 lakhs for the period from June to October 1993.

(f) An assessee manufacturing colour TV sets in Cochin collectorate availed of a credit of Rs.9.55 lakhs, based on a certificate, issued in lieu of gate pass, which was not a valid duty paying document.

The department's reply on the audit observations has not been received.

#### **8. Availment of deemed credit**

In 7 cases (5 collectorates) incorrect availment of deemed credit of Rs.18.60 lakhs was noticed in Audit on inadmissible products, inputs clearly recognisable as non duty paid, wholly exempted from duty etc. Of these, in 3 cases involving Rs.12.38 lakhs, the department accepted the Audit observation and recovered Rs.10.68 lakhs in two cases.

A few illustrative cases are given below:-

i) Three assessees in Delhi and Madras collectorates availed deemed credit of Rs.5.87 lakhs in respect of inputs falling under Central Excise Tariff

heading not specified in the Government of India's orders. The department reported recovery of Rs.5.66 lakhs in one case.

ii) Two assesseees in Delhi and Chandigarh collectorates availed of deemed credits of Rs.8.95 lakhs on inputs clearly recognisable as non duty paid. The department accepted the objection in respect of one case and recovered an amount of Rs.5.02 lakhs.

#### **9. Availment of Modvat credit in excess of the restricted limits**

As per proviso (3) to notification No.177/86-CE, dated 1 March 1986 issued under Rule 57A and amended from time to time the grant of credit of duty paid on certain items viz., paper and paper boards, iron and steel products obtained from breaking of ships etc, are restricted to the rates mentioned therein irrespective of the higher amount of duty paid.

During test check of records, 20 cases (11 collectorates) of excess availment of credit amounting to Rs.2.15 crores were noticed and reported. The department accepted Rs.2.43 lakhs in one case and reported recovery for the same. The details are given below:-

#### **Paper and paper boards**

As per the aforesaid notification the grant of credit of duty paid on paper and paper board falling under Chapter 48 other than headings 48.03, 48.06, 48.09, 48.10 and sub headings 4802.91, 4811.30, 4805.20 and 4811.40 shall not exceed Rs.800 per tonne or the actual amount of duty paid whichever is less. This monetary restriction has been removed with effect from 1 March.1994.

Twenty assesseees in eleven Collectorates engaged in manufacture of different excisable goods used printed paper and paper board cartons, (sub-heading 4819.12) printed wrappers (sub-headings 4818.13, 4818.90 or 4823.19) and imported casting paper (release paper - sub heading 4811.90) etc. for packing purposes. Assesseees were allowed to avail credits in excess of the limit of Rs.800 per tonne prescribed under the aforesaid notification. Non-

restriction of Modvat credit to Rs.800 per tonne resulted in excess availment of credit of Rs.215.22 lakhs during different periods between October 1989 and February 1994.

The department in one case of printed wrappers (sub-headings 4818.13, 4818.90 and 4823.90) used for food products, accepted the objection and directed the assessee to reverse the credit. In the remaining cases, the department did not accept the objections and stated (January, March, April and May 1994) that as per Board's circular issued on 6 March 1991, restriction of Rs.800 per tonne was to be applied only on paper and paper board and not on articles thereof.

The above contention of the department is not acceptable because the notification restricted the credit on paper and paper board falling under Chapter 48 excluding headings 48.03, 48.06, 48.09, 48.10, or sub headings 4811.30, 4802.91, 4805.20 or 4811.40. Since the notification did not exclude cartons and other packing containers of paper and paper boards falling under sub headings 4819.12, 4811.20, 4818.13, 4818.90, 4819.12, 4823.18, and 4823.90 the Modvat credit was to be restricted to Rs.800 per tonne in all these cases.

#### **10. Higher notional credit on inputs obtained from small scale manufacturers**

As per rule 57B, where duty on goods has been paid under a notification exempting them from a part of duty on the basis of value of clearances of such goods during any specified period, credit (higher notional credit) shall be allowed at a rate otherwise applicable to such goods when brought in as inputs. As per notification issued on 1 March 1986, as amended, the credit in respect of inputs received in a factory from 1 April 1988, shall be allowed under rule 57B at the rate of duty applicable under the said notification plus an amount calculated at 5 per cent ad valorem or at the rate of duty otherwise applicable whichever is less. Though the Scheme was withdrawn with effect from 1 March 1993, 10 cases (in 5 collectorates) of incorrect availment involving Rs.17.81 lakhs were noticed in audit. The department

accepted two cases involving Rs.3.66 lakhs and reported recovery of Rs.1.21 lakhs in one case.

**11. Availment of modvat credit on inputs used in exempted output goods**

As per rule 57 C of the Central Excise Rules, 1944, no credit of duty paid on the inputs used in the manufacture of final product shall be allowed if the final product is exempt from whole of the duty of excise leviable thereon or chargeable to nil rate of duty. Where it is not possible to segregate the inputs used in the manufacture of duty free and dutiable goods, the manufacturer is allowed to take credit of duty paid on all inputs initially and as and when duty free goods are cleared the credit relating to the inputs used in duty free products is recovered/reversed.

During test check of records, it was noticed that 41 manufacturers (in 19 collectorates) producing different commodities, irregularly availed Modvat credit of Rs.4.15 crores of the duty paid on inputs, used in the manufacture of final products exempted from the whole of the duty or chargeable to 'nil' rate of duty. The department accepted the incorrect availment of Rs.1.89 crores in 32 cases and reported recovery of Rs.1.03 crores in 21 cases.

A few cases are given below:-

i) In Bangalore collectorate, four assesseees engaged in manufacture of fruit slices, automobile parts, special purpose machines, telecommunication equipments etc., availed of the credits on inputs amounting to Rs.81.83 lakhs between August 1991 and October 1993, which was not admissible since the final products in which the inputs were used, were exempted from duty.

The department accepted the objection in respect of three assesseees amounting to Rs.57.62 lakhs and reversed the amount of Rs.36.87 lakhs pertaining to two cases. The reply of the department in the other case has not been received.

ii) Four manufacturers of tractors (chapter 87) in Delhi collectorate used inputs on which Modvat credit of Rs.50.36 lakhs was taken in the manufacture of tractors below 1800 cc cleared at 'nil' rate of duty without reversing the credit availed.

The department admitted the objections in respect of three cases and reversed credits of Rs.9.40 lakhs.

iii) An assessee in Jamshedpur collectorate manufacturing Motor vehicles (chapter 87) and other products availed credit of duty paid on prepared binders, catalysts, thinners, shell resins, dextrans etc., amounting to Rs.107.59 lakhs and used them towards payment of duty on Motor vehicles. The inputs were being used in 'sand moulds and cores' an exempted product which were used within the factory for the purpose of steel castings and therefore the availment of the credit was irregular.

The department stated (June 1993) that show cause notice is under process of issue.

## **12. Misuse of Modvat credit of duty paid on own volition**

According to the clarificatory orders issued by the Central Board of Excise and Customs on 4 January 1991 the assessee does not have the option to pay duty on his own volition in case the goods are exempted from whole of duty of excise leviable thereon. In case the assessee pays duty on the goods which are exempted it will not be treated as duty but will be treated as deposit with the government and equivalent credit availed thereof is required to be reversed. The Central Excise rules, 1944, also do not permit transfer of unutilised Modvat credit to another factory/unit of the same manufacturer or to any other unit.

During test check of records, 9 cases (in 6 collectorates) in which the assessee paid duties in excess of the prescribed limits to transfer the unutilised Modvat credit to the buyer units were noticed. Of the Rs.2.33 crores pointed out in these cases, the department accepted 6 cases involving Rs.1.93 crores.

A few illustrative cases are given below:-

i) Under an exemption notification bulk drugs when manufactured and cleared are liable to duty at the rate of 5 per cent ad valorem.

a) An assessee manufacturing Bulk drugs (Chapter 29) in Bombay III collectorate, availed Modvat credits on the inputs used in the manufacture and cleared the final products to a sister concern. The goods were cleared on payment of duty at 15 per cent ad valorem by debit to RG23A part II Account (Modvat) whereas the duty leviable was only 5 per cent, as exempted. The payment of duty at higher rate enabled the assessee to transfer the accumulated credits to the extent of Rs.1.58 crores being the duty excess paid (difference of 15 per cent and 5 per cent) to his sister concern. On this being pointed in Audit (January 1994), the department reported (February 1994) issue of show cause notices to both the units as to (i) why the duty paid in excess should not be treated as deposit (ii) why the excess credits availed should not be reversed, respectively.

b) Another assessee in Bombay I collectorate engaged in manufacture of goods falling under chapters 29 and 30 of the schedule to the Central Excise Tariff Act, 1985, had filed price lists from 1 June 1992 for clearance of a bulk drug (Metformine HCL/IP) at Rs.406.40 per kg. to the assessee's sister unit as against Rs.200 per kg. for others. The adoption of higher value for clearance to the sister unit inflated the amount of duty/Modvat credit as the duty in this regard was debited in RG23A part II. It was further noticed that 85 per cent of the duty was paid from Modvat credit account. The assessee during the period from June 1992 to December 1993 paid duty of Rs.8.44 lakhs on the bulk drug cleared to the sister unit involving excess utilisation/transfer of Modvat credit of Rs.7.17 lakhs.

ii) Three assessees in Ahmedabad collectorate engaged in manufacture of exempted goods (LDPE bags, printed carton boxes) cleared the finished products on payment of duty amounting to Rs.41.08 lakhs during the period January and February 1991 so that the buyer manufacturer could avail of the Modvat credit.

The department stated that the Board's circular dated 4 January 1991 about the withdrawal of payment of duty on own volition was received late and that two show cause-cum demand notices for Rs.6.24 lakhs in two cases for the Modvat credits availed by them had been issued.

iii) An assessee in Cochin collectorate availing Modvat credits and manufacturing electrical switches and relays brought in silver strips, on which no credit was available being an exempted product. The required components were punched out from these strips, and the remnant was cleared as scrap on payment of duty to a job worker for conversion back to silver strips. Under rule 57G, credit of the duty on scrap cleared was granted by the department to the assessee. The payment of duty on scrap amounting to Rs.10.54 lakhs was made by the assessee on his own volition and hence no Modvat credit thereof was permissible. The irregular availment of credit was confirmed by the department.

### **13. Input goods cleared without payment of duty**

As per Rule 57F(1)(ii) of the Central Excise Rules, 1944, the inputs in respect of which credit of duty has been allowed under Rule 57A, may be removed as such, subject to the prior permission of Collector of Central Excise from the factory for home consumption or for export, on payment of appropriate duty of excise or for export under bond, as if such inputs have been manufactured in the said factory. Accordingly, when some inputs which are not found suitable or rejected, on their return to the supplier shall have to be cleared on payment of appropriate rate of duty prevalent at the time of clearance. Such duty shall in no case be less than the amount of credit allowed on such inputs under rule 57A.

During test check of records it was noticed that 8 assesseees (in 8 collectorates) cleared the inputs at lesser duty than the amount of credit availed. The amount of excess credit availed was Rs.42.37 lakhs. The department accepted 3 cases involving Rs.7.51 lakhs and reported recovery of Rs.1.42 lakhs in one case.

A few illustrative cases are given below:-

i) A cosmetics manufacturer in Calcutta I collectorate brought empty aluminium and multi-layer laminated plastic tubes on payment of duty and availed of Modvat credit for utilisation in manufacture of final goods. A portion of such inputs considered as rejected was disposed of as such treating it as scrap at a value less than the value shown in the original incoming gate passes. This resulted in excess availment of Modvat credit of Rs.10.33 lakhs during the period from April 1990 to April 1993.

ii) An assessee in Chandigarh collectorate engaged in manufacture of cold rolled coils (heading 72.09) availed Modvat credits on hot rolled coils. Defective HR coils which could not be converted into CR coils were cleared at lower invoice value as compared to the value of purchase. This resulted in excess availment of Modvat credit of Rs.10.33 lakhs on clearances made from 1 April 1992 to 14 December 1992.

The department stated (April 1993) that though defective hot rolled coils (inputs) were cleared at lower value, the clearances of cold rolled coils (output) manufactured from these inputs was made at higher value due to value addition and overall impact of duty was nil.

Departments reply is not acceptable as the payment of duty on manufactured items has to be made by the assessee at the rates prescribed in the tariff irrespective of the credits of Modvat availed on the inputs. Clearing of inputs as such, at a duty lesser than the amount of credit availed on them resulted in excess availment of credits as pointed out.

iii) Another assessee manufacturing biscuits (sub heading 1905.11) in Madras collectorate availed Modvat credit on certain paper and paper boards falling under chapter 48 and cleared the same to job workers under rule 57F(2) for conversion as waxed/corrugated paper, for use as packaging materials. Part of the converted materials were sent to their own packaging units without payment of duty. Duty on the raw material content of the converted material was, however, paid treating the clearances as clearances under rule 57F(1)(ii).



As the goods cleared from the factory were not raw material on which credit was availed but a different commodity falling under a different heading, it was liable to excise duty at the rate appropriate to it. The irregular procedure resulted in non payment of differential duties amounting to Rs.5.20 lakhs on the clearances made from April 1992 to January 1993.

The department stated (August 1993) that the procedure adopted was with reference to the permission given by the Collector based on Board's instructions dated 7 January 1987. However, as credit of duty was to be expunged instead of payment of duty under rule 57F(1)(ii), action was initiated at the buyers end to deny the credit availed by them.

The contention of the department is not acceptable since Board's instructions quoted were applicable only to the declared final product cleared without payment of duty under certain circumstances and not to the clearances of processed Modvat inputs.

**14. Non reversal of credits availed on material not received back from job workers**

As per rule 57F(2), a manufacturer may remove the inputs obtained by him and on which Modvat credit was availed as such to a place outside his factory for the purpose of manufacture of intermediate products and get back the intermediate products in his factory for further manufacture of final products. If the intermediate products are not received back within the stipulated period, the credit of duty availed thereon has to be reversed.

During test check of records, 16 cases (in 7 collectorates) where the materials on which credits were availed were transferred to job workers and not received back, were noticed in audit. The amount of non reversal of credits involved in these cases was Rs.81.37 lakhs. The department accepted the audit comments in 10 cases involving Rs.20.13 lakhs and reported recovery of Rs.9.27 lakhs in 5 cases.

A few illustrative cases are given below:-

i) A public sector undertaking in Indore collectorate manufacturing goods falling under Chapters 84 and 85 obtained various inputs on which credit was taken in Modvat account. The inputs were being supplied to job workers under rule 57F(2) regularly for manufacture of intermediate products. The credit availed by the assessee on the material transferred and not received back during the years 1989-90 to 1992-93 worked out to Rs.33.19 lakhs.

ii) Five assessees in three collectorates (Bombay II, III and Aurangabad) had cleared Modvat goods to the job workers during the periods between April 1991 and July 1993. The goods were neither received back within the stipulated period nor permissions for extension of duration for processing were granted. The amount of duty which was not reversed in these cases was Rs.21.44 lakhs.

**15. Non payment of duty on waste and scrap generated during manufacture, and clearance thereof under rule 57F(2)**

As per rule 57F(4) any waste arising from the processing of inputs in respect of which credit has been taken, may be removed on payment of duty as if such waste is manufactured in the factory and clearance of such waste under 57F(2) for reprocessing is not provided. The Board in its circular dated 12 January 1993 clarified that removal of waste and scrap of any inputs outside the factory is to be allowed only under provisions of rule 57F(4) and not 57F(2).

During test check of records 9 cases (in 5 collectorates) involving short levy of duty of Rs.2.66 crores on clearance of waste generated during process of inputs were noticed. The department accepted 3 cases involving Rs.1.25 crores.

The details of the cases are given below:-

**i) Wastes of base metals**

(a) An assessee in Bangalore Collectorate engaged in manufacture of Automobile tyre table valves falling under sub heading 8481.00 brought in duty

paid base metals namely copper, zinc and lead and took credits of duty paid thereon. The waste and scrap arising from processing of these inputs were removed to job workers without payment of duty under permission granted by the department under rule 57F(2) for conversion into copper alloy (brass) for further use in the manufacture of final products in the assessee's factory. The irregular clearance made between the period April 1987 and March 1993 resulted in non levy of duty to the extent of Rs.95.13 lakhs.

The department accepted the audit objection and stated that demand for duty amounting to Rs.95.13 lakhs had been raised.

(b) Three assessees in Bangalore Collectorate engaged in manufacture of electrical accumulators, batteries (Chapter 85) and aluminium containers (Chapter 76) availed of credit of duty paid on inputs and utilised the same towards payment of duty on the finished products. The waste and scrap arising in the manufacture of finished goods were removed without payment of duty under rule 57F(2) of Central Excise Rules, 1944. The irregular clearance made between the period August 1992 and July 1993 resulted in non levy of duty of Rs.51.24 lakhs. The department contended that the procedure followed under rule 57F(2) was in order in these cases. The reply of the department is not in conformity with the provision of rule 57F(4) and the Board's instructions issued on 12 January 1993.

(c) An assessee in Madras Collectorate manufacturing pistons falling under heading 84.09 of Central Excise Tariff Act, 1985, cleared aluminium scrap, arising from the processing of Modvat input for conversion as aluminium ingots, under rule 57F(2). The department demanded duty by issuing show cause-cum demand notice for the period from January 1993 based on a clarification issued by the Board in January 1993. No demand was made for the period from July to December 1992 involving an amount of Rs.21.58 lakhs though there was no provision in the Modvat rules to clear waste and scrap under rule 57F(2). The department stated that (April 1994) the clearance of waste and scrap of aluminium under rule 57F(2) for the period pertaining to July to December 1992 was in order as the clarification was issued only in

January 1993. The reply of the department is not correct in view of the provisions of rule 57F(4) cited.

(d) An assessee in Hyderabad Collectorate engaged in manufacture of electrical fans and parts thereof falling under chapter 84 of the schedule to the Central Excise Tariff Act, 1985, supplied aluminium sheets to several job workers' for manufacturing fan blades. In some cases the aluminium scrap generated during the course of manufacture of the fan blades at the job workers end was transferred to other job workers for reprocessing into aluminium ingots to be supplied back to the former for utilisation. It was noticed in audit (February 1990) that neither duty on the scrap generated and cleared was paid by the assessee nor any account of the quantities of blades, ingots, scrap generated and utilised was being maintained. In the absence of proper maintenance of records, the exact amount could not be worked out.

The department accepted the audit observations and stated that a demand for duty of Rs.8.74 lakhs was raised and a penalty of Rs.1 lakh was imposed in April 1993.

(e) An assessee in Cochin collectorate engaged in manufacture of zinc falling under sub heading 7901.10 used unwrought lead silver anodes (sub heading 7801.90) in manufacture of zinc. Due to continuous use these anodes became defective and were scrapped and removed to job workers without payment of duty for conversion into new unwrought lead silver anode. Permission by the proper officer under rule 57F(2) read with notification 214/86 dated 25 March 1986 was granted for the removal of the scrap metal without payment of duty and also for bringing back of the new LS anode. This resulted in non levy of duty of Rs.20.72 lakhs on clearances of waste during the period from October 1991 to February 1993.

The department while admitting the objection stated that duty was demanded only from 26 September 1992 due to limitation of time. The total non levy of duty on scrap anode from October 1991 to September 1993 worked out to Rs.40.99 lakhs.

**ii) Catalysts**

Two assessees in Bombay III collectorate had declared 'platinum oxide' and 'platinum' as input catalyst for the manufacture of their final excisable goods. Assesseees were availing Modvat credits on these inputs. After use, these inputs were sent to the job workers under rule 57F(2) without payment of duty which worked out to Rs.69 lakhs during the period from April 1991 to August 1993.

The department stated (March 1994) that in view of Board's clarificatory order of 12 January 1993 and Tribunal's decision in the case of M/s. Chloride Industries Limited Vs. Collector Central Excise, Bombay {1993 (63) ELT 633 (T)} the removal of waste for recovery of platinum was in order and objections were not acceptable till the date of issue of Board's order.

The departmental contention is not correct since rules do not permit clearance of waste without duty.

**16. Fraudulent/excess availment of Modvat credit**

According to rule 57G(4) of Central Excise Rules, 1944, a manufacturer of the final product is required to submit to the Superintendent of Central Excise the original documents evidencing payment of duty alongwith extracts of RG23A part I and II every month and the Superintendent of Central Excise shall after verifying the genuineness, deface such documents and return the same to the manufacturer.

During test check of records, 11 cases (in 6 collectorates) of excess availment of Modvat credits of Rs.28.52 lakhs, were noticed. The department accepted the irregular availments in 10 cases involving credits of Rs.26.46 lakhs and reported recovery in 8 cases of Rs.22.49 lakhs.

A few illustrative cases are given below:-

i) An assessee in Hyderabad collectorate engaged in manufacture of 'Talcum powder' (chapter 33) took Modvat credit of Rs.1.51 lakhs towards

basic excise duty on round metal container tops as against Rs.1508 actually paid as per duty paying document resulting in excess availment of Modvat credit of Rs.1.49 lakhs in RG 23A part II.

The department stated that the excess credit availed had since been reversed (March 1993).

ii) Double availments where four assessees (in 3 collectorates) took credits twice on the same documents on different dates resulting in excess availment of credit of Rs.8.25 lakhs were noticed in audit. The department accepted the double availment pointed out in all cases and reported reversal of credits in 3 cases for an amount of Rs.6.88 lakhs.

iii) Two public sector undertakings in Bangalore collectorate engaged in manufacture of electronic goods and telecommunication equipments falling under chapter 85 were availing Modvat credit in respect of certain inputs. A test check of bills of entry and gate passes revealed that the assessee had taken excess credit vis a vis the amount shown as duty paid in relevant bills of entry/gate passes. The excess availment during the period from November 1992 to June 1993 amounted to Rs.8.14 lakhs.

The department accepted the objection (April 1994) and recovered an amount of Rs.7.59 lakhs (December 1993 and March 1994).

iv) Two cases in Baroda and Delhi collectorates where the assessees received less quantity of inputs than those mentioned in the input gate passes, but availed credit on full quantity mentioned in the gate passes were noticed. On the excess availments of Rs.7.56 lakhs being pointed out, the department accepted and reported recovery of Rs.4.84 lakhs in one case.

## 17. Other irregularities

## i) Utilisation of Modvat credit on inputs not used in the manufacture of outputs

The Central Board of Excise and Customs in their letter dated 20 April 1987 instructed that a monthly statement indicating separately for each final product the details of input credit availed should be submitted by the assessee to the department to ensure that there is no misuse of Modvat credit.

18 cases of misutilisation of credit of Rs.96.03 lakhs on account of inputs not used in the final products were noticed in 8 collectorates. Department accepted 14 cases involving Rs.45.73 lakhs and reported recovery of Rs.29.28 lakhs in 12 cases.

A few illustrative cases are given below:-

(a) Two manufacturers of excisable goods namely 'internal combustion engines' and 'transmission shafts' etc., in Aurangabad and Madras collectorates declared inputs and final products and took credit of duty paid on the inputs in RG23A part II. One of the final products 'Camshafts' was cleared to their sister units on payment of duty through RG23A part II. The credits taken on the inputs going into these products were negligible compared to the duty paid on them by debiting in RG23A part II as shown below:-

Unit	Credit taken per piece (in Rs.)	Modvat debited per piece (in Rs.)
I Aurangabad	58.82	162.19
II Aurangabad	124.33	724.37
Madras	3.30	120.00

The balance amount was met from unutilised accumulated credits from other inputs not used in the manufacture of these products. The amount of credit irregularly utilised worked out to Rs.40.91 lakhs during 1992-93 and 1993-94.

The department did not accept the objections and stated that there is no one to one correlation and there was no apparent loss of revenue.

The department's view is not tenable as rule 57F(3)(i) provides for utilisation of credits on inputs towards payment of duty on final products in or in relation to which the inputs are intended to be used only. There were no other inputs going into the product 'camshaft' other than those on which the credits were taken.

(b) Three assessees in Belgaum and Bangalore collectorates engaged in manufacture of resin coated sand (Chapter 68), castings (Chapter 73), machineries (Chapter 84), LPG cylinders (heading 73.11) and dock leveller (heading 84.28) were availing facility of Modvat Scheme after filing declarations from time to time. The department allowed the assessees to maintain the account of credits chapter wise in terms of the instructions of the Ministry dated 20 April 1987. The department had, however, not insisted upon the assessees to submit a monthly statement alongwith RT12 returns indicating separately for each final product, the details of input credit availed of. A review of records revealed that Modvat credit taken on inputs which were intended to be utilised on the clearance of final products, was utilised on the clearance of other final products, in the manufacture of which these inputs were not used. This resulted in misutilisation of Modvat credit of Rs.9.11 lakhs between the period September 1992 and October 1993.

The department replied (October, December 1993 and April 1994) that an amount of Rs.6.95 lakhs has been reversed; for the balance amount of Rs.2.16 lakhs reply is awaited.

**ii) Credit not expunged on opting out of Modvat Scheme**

As per clarification issued by the Board on 10 April 1986, a small scale unit which has been availing of the benefit of Modvat scheme can opt out of Modvat, and seek full exemption upto the permissible limit of the first slab of small scale exemption, in the next financial year subject to the conditions that



the credit balance available in the Modvat account would lapse and the credits of duty availed on the goods cleared on full exemption would be expunged.

During the course of test audit, 8 cases involving duty of Rs.13.81 lakhs were noticed in 7 Collectorates where the assesseees who had opted out of the modvat scheme, availed of the credits of inputs lying in stock without expunging them.

The irregular availment of credits in all the cases was admitted by the department and action initiated for recovery/reversal.

**iii) Belated reversal of excess credits**

According to a clarification issued by the Ministry of Finance in April 1986, where a manufacturer produced dutiable and exempted goods and when it is not possible to segregate the inputs, the manufacturer may be allowed to take credit of duty paid on all the inputs used in the manufacture of final products, provided the credit of duty paid on inputs used in the fully exempted goods is reversed before removal of those exempted goods.

An assessee in Bangalore collectorate, engaged in manufacture of medicines manufactured both dutiable and non-dutiable medicaments. The dutiable goods constituted less than 50 per cent of the total clearance by the assessee. It was, however, noticed in audit that the inadmissible credits on inputs relating to exempted final products were not being reversed before clearance of the exempted goods, but were utilised for payment of duty on other goods in the normal course. This resulted in belated reversal of excess credits. It was also seen that the aggregate balance amount at the end of the month in PLA and RG23A part II put together was not sufficient to reverse the excess credit availed by the assessee at least on 11 occasions in respect of Basic Excise Duty and on four occasions in respect of Special Excise Duty. The irregular observance of the procedure resulted in overdrawals of credits aggregating Rs.21.54 lakhs during the period from March 1991 to August 1992. The amount of overdrawal on each occasion varied from Rs.0.66 lakh to 4.06 lakhs in respect of BED.

**iv) Credit taken on rejected/defective final products received back after two years**

An assessee in Chandigarh collectorate engaged in manufacture of detergents, cleared 'surf powder' consignments for repacking in 40 gm satchets after payment of duty in June, July and October 1990 and May and December 1991. These consignments being defective were rejected and received back in the factory after a lapse of two years. The assessee took Modvat credit of duty amounting to Rs.4.57 lakhs on these defective/rejected final products in August and October 1992. These being not inputs for the final product, such credit is irregular.

The department stated (February 1994) that the unit had cleared the material, after reprocessing the same, after payment of duty. This does not, however, alter the fact that rejected material received back after lapse of more than two years was treated as 'input' for the purpose of availing Modvat credit.

**v) Credit not expunged on damaged/written off goods**

(a) Three assesseees in Meerut collectorate engaged in manufacture of colour TVs and picture tubes took credit of duty paid on picture tubes and other parts/components. Some of these parts (picture tubes, masks, frame, inner shield etc) were damaged and became unfit for use in the manufacture of the final product. The credit taken on the regulated/destroyed goods not reversed as required under rule 57F worked out to Rs.18.68 lakhs for the period from October 1990 to November 1992.

The department reported recovery of Rs.12.22 lakhs.

(b) A public sector undertaking in Bolpur collectorate manufacturing different tailor made 'material handling equipment' and 'parts thereof' (Chapter 84) brought different inputs and availed Modvat credit for the manufacture of final products. The audited annual accounts of the company for the years 1990-91 and 1991-92 disclosed that the assessee had discarded a large quantity of stores, spares and other raw materials worth Rs.55.56 lakhs as damaged and

unserviceable and the same was written off in the account. But, no corresponding credit was expunged from the Modvat account and the same was utilised towards the payment of duty on other final products where such inputs were not used. This resulted in an irregular availment of Modvat credit of Rs.6.99 lakhs.

The department admitted the audit objection and stated (November 1993) that the amount was required to be expunged.

**vi) Delay in finalisation of show cause-cum demand notices**

According to the instructions issued by the Board (17 January 1983 and March 1986) demand cases should be adjudicated within a maximum period of six months from the date of issue of show cause-cum demand notices and delays beyond that period should be brought to the notice of the Collector who would discuss the matter with adjudication officers to examine the possibility of their expeditious disposal.

The Modvat cases pending adjudication/litigation in the various collectorates are given below :-

(as on 31 March 1994)

Modvat cases under adjudication/litigation	Number of cases	Total amount of credit involved (Rupees in crores)
More than five years	1052	481.49
Two to five years	2330	2019.56
Less than two years	5731	1000.27
<b>Total</b>	<b>9113</b>	<b>3501.32</b>

(The above figures do not include the figures of Aurangabad collectorate)

A few illustrative cases are given below :-

(a) An assessee in Baroda collectorate availed benefit of input credit of duty of excise paid on 'Grinding wheel' and 'Honing stick' used as an abrasive

under Modvat scheme. A first show cause-cum demand notice for Rs.3.49 lakhs was issued in December 1989 for disallowing such Modvat credit availed incorrectly. A series of such show cause-cum demand notices (thirteen in number) from December 1989 to August 1993 were issued for disallowing credit of Rs.106.66 lakhs availed incorrectly and utilised for clearance of final product. Besides, two more show cause-cum demand notices for Rs.23.10 lakhs were under process of issue in December 1993. Even the first hearing in respect of the first show cause-cum demand notice issued in December 1989 did not start till December 1993.

The inordinate delay over four years in finalisation of show cause-cum demand notices resulting in blocking of Government revenue of Rs.129.76 lakhs was reported to the department in February 1994.

(b) Another assessee in Surat collectorate was issued a show cause-cum demand notice in February 1991 for irregular availment of Modvat credit amounting to Rs.7.22 lakhs for the period from March 1986 to June 1990 and thereafter, eight more show cause notices amounting to Rs.3.50 lakhs for later period were issued, the last notice having been issued in December 1993. The show cause notices have not been adjudicated so far (June 1994).

18. The above points were brought to the notice of Ministry in October 1994; reply has not been received (December 1994).

## CHAPTER 2

## CUSTOMS RECEIPTS

## 2.01 Customs receipts

The receipts from customs duties during the year 1993-94 (after deducting refunds and drawback paid), the corresponding figures for the previous year and the budget and revised estimates of receipts for 1993-94 are given below as per information furnished by Controller General of Accounts of the Ministry of Finance.

Customs Receipts from	(Amount in crores of rupees)			
	Actual Receipts 1992-93	Budget estimates 1993-94	Revised estimates 1993-94	Actual Receipts 1993-94
Imports	23243	26340	22056	21655
Exports	126	103	39	42
Cess on exports	65	64	69	73
Sale proceeds of confiscated goods	26	1000	114	168
Other receipts	316	220	222	254
<b>Net receipts</b>	<b>23776</b>	<b>27727</b>	<b>22500</b>	<b>22192</b>

The estimated decrease in gross revenue is mainly on account of lower revenue realisation from plastics, machinery including project imports, ferrous metals, baggage, chemicals, rubber products, air crafts and vessels, paper and mineral substances etc. This decrease in estimated revenue realisations has partly been balanced by higher collection of import duties from crude oil and other petroleum products, parts of motor vehicles and vegetable oils etc.

The receipts from sale of confiscated goods were estimated at Rs.1000 crores during 1993-94 against the actual receipts of Rs.26 crores during 1992-93. Only Rs.168 crores were received during 1993-94.

**2.02 Port wise details of customs receipts**

(i) The gross import duty collected during the years 1992-93 and 1993-94 is given below portwise as per information furnished by the Ministry of Finance.

Port of Entry	Number of Bills of entry (In hundreds)		Value of imports (In crores of rupees)		Import duty (In crores of rupees)	
	1992-93	1993-94	1992-93	1993-94	1992-93	1993-94
Bombay	1090	1256	20801	26907	7821	7441
Calcutta	579	462	4008	3888	2794	2195
Madras	968	1134	6995	7016	3180	2842
Kochi	26	40	793	684	348	327
Goa	22	21	537	186	92	94
Kandla	107	N.A.	2076	2171	1063	1166
Visakhapatnam	27	24	1868	1764	1002	856
Delhi	1170	1270	2201	2811	1220	1496
Others	2646	677	23644	27379	5803	6078
<b>Total</b>	<b>6635</b>	<b>4884</b>	<b>62923</b>	<b>72806</b>	<b>*23323</b>	<b>*22495</b>

\* Figures differ from those furnished by Controller General of Accounts.  
N.A. : Not available

(ii) The value of exports, export duty collected and amount of drawback paid during the years 1992-93 and 1993-94 are given below portwise as per information furnished by the Ministry of Finance.

Port of Export	No. of shipping bills (In hundreds)		Value of exports (In crores of rupees)	
	1992-93	1993-94	1992-93	1993-94
Bombay	2827	3433	20842	28884
Calcutta	897	950	2912	2953
Madras	1944	2320	5689	7370
Kochi	317	360	1776	2481
Goa	21	25	586	778
Kandla	120	N.A.	1583	2969
Visakhapatnam	67	82	1422	2348
Delhi	3184	3869	5147	4818
Others	14420	1242	13394	16946
<b>Total</b>	<b>23797</b>	<b>12281</b>	<b>53351</b>	<b>69547</b>

**CUSTOMS RECEIPTS**

**2.03**

(Amount in crores of rupees)

Port of Export	Export duty collected		Amount of drawback paid	
	1992-93	1993-94	1992-93	1993-94
Bombay	3	3	230	224
Calcutta	2	2	32	36
Madras	55	34	74	88
Kochi	Nil	Nil	12	10
Goa	24	Nil	3	1
Kandla	Nil	Nil	16	6
Visakhapatnam	11	Nil	Nil	Nil
Delhi	Nil	3	140	169
Others	33	Nil	195	226
<b>Total</b>	<b>128</b>	<b>42</b>	<b>702</b>	<b>760</b>

**2.03 Commodity wise details of customs receipts**

The value of imports and exports and duty therefrom during the financial year 1993-94 and the previous year 1992-93 are given below major commodity wise:

IMPORTS		(In crores of rupees)			
Sl.No	Commodities	Value of Imports		Import duties	
		1992-93	1993-94	1992-93	1993-94
1.	Food and live animals chiefly for food	1575	983	208	262
2.	Mineral, fuels, lubricant and related materials	17142	18055	5891	6914
3.	Crude materials inedible except fuel	3810	2998		
4.	Chemicals and related products not elsewhere specified	8387	8742	3667	2818
5.	Manufactured goods	10551	12740		
6.	Machinery and transport equipment	9971	14884		
7.	Professional, scientific controlling instruments etc.	1452	1548	3813	2992
8.	Others	10487	12856	9744	9509
<b>TOTAL :</b>		<b>*63375</b>	<b>72806</b>	<b>23323</b>	<b>22495</b>

\*The figure of Rs.62923 crores indicated last year was updated by the Ministry of Commerce.

## 2.03

## CUSTOMS RECEIPTS

## EXPORTS

(In crores of rupees)

Sl. No.	Commodities	Value of exports		Export duty and cess	
		1992-93	1993-94	1992-93	1993-94
1.	Food Items	6826	9097		
2.	Beverages and tobacco	516	506	27	37
3.	Crude materials inedible except fuels (including mica)	2601	4019	9	1
4.	Mineral, fuels, lubricant and related materials	1379	1248	3	5
5.	Chemicals and related products	3787	4779		
6.	Manufactured goods classified according to materials except pearls, precious, semi-precious stones and carpets, hand made leather and leather manufactures including readymade garments and clothing accessories	13129	15629		
7.	Engineering goods	6476	8405		
8.	Miscellaneous manufactured articles including handicrafts, gems and jewellery	13597	17803	133	55
9.	Others	5377	8061	20	17
Total of exports and import based exports		*53688	69547	192	115

\*The figure of Rs.53351 crores indicated last year was updated by the Ministry of Commerce.

## 2.04 Cost of collection of customs receipts

The expenditure incurred on collection of customs duties during the year 1993-94 alongside the figures for previous year are given below:

Head of Account	Cost of collection	(Amount in crores of rupees)	
		1992-93	1993-94
2037-101	Revenue cum import export and trade control functions	33.60	36.26
2037-102	Preventive and other functions	115.78	118.25
	Total	149.38	154.51
	cost of collection as percentage of customs receipts	0.61	0.67



**2.05 Searches, seizures and confiscations**

The details of searches conducted and seizures effected by the Customs officers as given by the Ministry of Finance are given below:

**Searches and seizures**

Sl.No.	Description	1992-93		1993-94	
		Coastal	Town	Coastal	Town
1.	Number of searches	304	3060	688	277
2.	Value of goods seized (Rs.in crores)	53.11	95.37	33.91	39.54
3.	Number of seizure cases adjudicated	324	879	750	268

**Confiscation**

Sl.No.	Description	Number	Value
			(in lakhs of rupees)
1.	Motor Vehicles		
	(a) Confiscated during 1993-94	70	6924
	(b) Pending disposal on 31 March 1993	37	92
	(c) Cleared during 1993-94	50	6870
	(d) Balance on 31 March 1994	57	146
2.	Trade goods		
	(a) Confiscated during 1993-94	2094	3408
	(b) Pending disposal on 31 March 1993	2152	1915
	(c) Cleared during 1993-94	2110	2299
	(d) Balance on 31 March 1994	2136	3024

**2.06 Exemption notifications issued in exercise of powers of delegated legislation under section 25(1) of the Customs Act, 1962**

The number of exemption notifications issued and amount of revenue forgone are given below:

(i)	Number of notifications issued in the years prior to 1993-94 which were still in force	669
(ii)	Number of notifications issued during the year 1993-94	183

- (iii) Amount of revenue forgone in 1993-94 under all the notifications in force during the year (Rupees in crores) 3676.77
- (iv) Corresponding figures of revenue forgone in the previous two years:- (Rupees in crores)
- |         |         |
|---------|---------|
| 1992-93 | 2689.00 |
| 1991-92 | 1582.00 |
- (v) The number of exemptions in force covering the following goods were comparatively large--

Sl. No.	Chapter	Description	Number of exemption notifications in force during	
			1992-93	1993-94
1.	84	Machinery and mechanical appliances	133	103
2.	85	Electrical/electronic machinery & equipment	116	83
3.	90	Photographic, medical, measuring etc., instruments	87	72

### 2.07 Orders under section 25(2) of the Customs Act, 1962

Under Section 25(2) of the Customs Act, 1962, the Central Government may, if it is satisfied that it is necessary in the public interest so to do, by special order in each case, exempt, under circumstances of an exceptional nature to be stated in the order, any goods from the payment of customs duty, where such duty is leviable. The number of such exemption notifications issued and exemption availed of during the year 1993-94 and the preceding two years are given below:

		(Amount in crores of rupees)		
		1991-92	1992-93	1993-94
i)	Number of exemption orders issued and availed of	232	220	180
ii)	Total duty involved	1150.30	1617.50	*539
iii)	Number of cases having a duty effect of Rs.10,000 and above	84	220	180
iv)	Duty involved in cases at (iii) above	1150.29	1617.50	*539

\*Figure of Delhi Custom House not received.

**2.08 Conditional exemption from duty requiring verification of end use**

In 140 of the notifications issued under section 25(1) of Customs Act, 1962, the Central Government has imposed end use conditions. A bond is obtained from the importer which is to be invoked for recovery of duty in case the end use condition is not fulfilled.

(Amount in crores of rupees)

Sl.No.	Description	1992-93	1993-94
1	Value of goods imported with end use condition	1499	1021
2	Amount of duty forgone	774	622
3	Value for which bond was taken by Custom House	599	345
4	Number of bonds in respect of which end use condition was verified during the year	3225	5339
5	Value of bonds brought forward from previous year for verification of end use condition	246	537
6	Value of bonds carried forward to next year for verification of end use condition	490	498
7	Number of bonds pending cancellation	2104	3997
8	Number of adjudications or appeals to department pending	116	129
9	Number of appeals pending in Courts	9	9

**2.09 Arrears of customs duty for recovery**

The amount of customs duty assessed upto 31 March 1994 which was still to be realised on 30 June 1994 was Rs.117.61 crores in 38 Custom Houses and Collectorates. In the previous year the amount was Rs.106 crores in 23 Custom Houses and Collectorates.

**2.10 Demands of duty barred by limitation**

Demands raised by the department up to 31 March 1994 which were pending realisation as on 30 June 1994 and where recovery was barred by limitation amounted to Rs.90 crores in 38 Custom Houses and Collectorates. In the previous year the amount was Rs.5.63 crores in 24 Custom Houses and Collectorates.

**2.11 Duty written off**

Customs duties written off, penalties waived and exgratia payments made during the year 1993-94 and the preceding two years are given below:

Year	(In lakhs of rupees) Amount
1993-94	14.04*
1992-93	71.42
1991-92	28.76

\* Excluding Bombay Custom House figures.

**2.12 Cases pending with CEGAT**

The number of cases pending in the tribunal at the end of 1992-93 and 1993-94 as indicated by the Ministry of Finance is given below:

(Amount in lakhs of rupees)

Sl. No.	Description	*1992-93		1993-94	
		No.	Amount of duty under dispute	No.	Amount of duty under dispute
1.	No. of cases pending in CEGAT	953	3311	1197	5098
2.	No. of cases filed during the year before the Tribunal	399	2572	239	3748
3.	No. of cases decided by the Tribunal during the year	155	785	245	543
(a)	No. of cases decided in favour of the department	106	451	175	351
(b)	No. of cases decided against the department	49	334	70	192
4.	No. of cases pending with Tribunal at the end of the year	1197	5098	1191	8303

\* The Ministry of Finance gave different figures for 1992-93 while furnishing the information last year.

## 2.13 Outstanding audit objections

The number of audit objections raised in audit upto 31 March 1994 and the number pending settlement as on 30 September 1994 in the various Custom Houses and combined Collectorates of Customs are given below:

(Amount in crores of rupees)

Sl. No.	Name of Custom House or Collectorate	Raised upto end of 1992-93		Raised in 1993-94		Total	
		Number	Amount	Number	Amount	Number	Amount
1.	Delhi	50	0.57	33	1.00	83	1.57
2.	Hyderabad	92	0.62	49	4.80	141	5.42
3.	Guntur (A.P & T.N)	7	0.67	--	--	7	0.67
4.	Visakhapatnam	20	2.18	24	0.22	44	2.40
5.	Patna (Prev.)	14	3.27	13	7.71	27	10.98
6.	Ahmedabad,	17	6.51	6	4.86	23	11.37
7.	Ahmedabad (Prev.)	36	2.63	20	1.62	56	4.25
8.	Baroda	1	0.01	6	0.95	7	0.96
9.	Kandla	34	5.03	16	3.18	50	8.21
10.	Rajkot	--	--	4	4.52	4	4.52
11.	Surat	10	0.35	2	0.03	12	0.38
12.	Madras	800	9.82	494	10.28	1294	20.10
13.	Tiruchirapalli	17	--	43	--	60	--
14.	Coimbatore	4	--	6	--	10	--
15.	Kanpur	22	0.10	--	--	22	0.10
16.	Allahabad	66	2.09	--	--	66	2.09
17.	Meerut	35	2.10	1	0.01	36	2.11
18.	Calcutta	476	47.41	191	10.84	667	58.25
19.	West Bengal (Prev.)	76	16.17	41	3.93	117	20.10
20.	Shillong	28	2.17	13	1.54	41	3.71
21.	Bhubaneshwar	2	0.13	1	3.07	3	3.20
22.	Cochin Custom House	25	0.32	15	0.47	40	0.79
23.	Cochin Collectorate of Central Excise	12	0.08	8	8.28	20	8.36
24.	Bombay (Sea)	126	35.46	13	0.40	139	35.86
25.	Bombay (Air)	96	9.33	13	0.91	109	10.24
26.	Nhava Sheva	8	0.35	7	0.68	15	1.03
27.	Jaipur	52	0.48	25	0.51	77	0.99
28.	Chandigarh	9	0.91	--	--	9	0.91
29.	Karnataka	352	10.60	204	3.64	556	14.24
	Total	2487	159.36	1248	73.45	3735	232.81

**2.14 Categories of outstanding audit objections**

Sl. No.	Categories of objections	No. of objections	Amount (In crores of rupees)
1.	Short levy due to misclassification	770	26.12
2.	Short levy due to incorrect grant of exemption	741	42.45
3.	Non levy of import duties	286	12.02
4.	Short levy due to undervaluation	172	10.05
5.	Irregularities in grant of drawback	197	0.81
6.	Irregularities in grant of refunds	111	5.38
7.	Irregularities in levy and collection of export duty	14	0.56
8.	Other irregularities	1390	131.45
9.	Overassessment	44	3.97
	<b>Total</b>	<b>3735</b>	<b>232.81</b>

**2.15 Results of audit**

Test check of records in Customs Houses/Collectorates conducted in audit during the year 1993-94 revealed short levy of duties, irregularities in the fixation and payments of drawback and loss of revenue amounting to Rs.11.44 crores. The department has accepted short levies and irregularities in the payments of drawback amounting to Rs.9.20 crores. Of these, the department has recovered short levies, excess payment amounting to Rs.4.83 crores. Over assessment and short payments by department detected in audit and pointed out to the department also amounted to Rs.38.60 lakhs.

The irregularities, noticed in audit, are given in the following paragraphs categorised as follows:

- a) Short levy due to incorrect grant of exemption
- b) Mistakes in assessment of Customs duties
- c) Short levy due to misclassification

- d) Short levy due to under valuation
- e) Irregularities in the fixation and payment of drawback
- f) Irregular grant of refunds
- g) Other topics of interest

Systems studies on 'Delay in vacation of stay orders' and 'Scheme of Import of capital goods with export obligations under para 197 of Import Export Policy 1990-93' were also conducted. The results of studies are contained in paras 1.01 and 1.02 of this Report.

### SHORT LEVY DUE TO INCORRECT GRANT OF EXEMPTION

#### 2.16 Hospital equipment

In terms of customs notification no. 64/88 dated 1 March 1988, all equipments, apparatus and appliances including spare parts and accessories thereof imported for use in any hospital of the types described therein were totally exempt from customs duty subject to certain specified conditions.

- a) One of the conditions prescribed in the notification was that the institution should provide free treatment to all indoor patients belonging to families with an income of less than Rs.500 per month.

In one major Custom House, it was observed that two consignments consisting of one CT Scanner and its spare parts were imported by a private diagnostic and research centre in June and August 1992 and were cleared free of duty under the aforesaid notification despite the fact that the centre did not possess the facility for providing indoor treatment to patients. This had resulted in non-levy of customs duty amounting to Rs.156.38 lakhs.

This was pointed out in audit (October 1992/December 1992).

The Custom House issued a demand notice for the non-levied duty. Report on recovery is awaited.

The Ministry of Finance have confirmed the facts (December 1994).

b) In terms of the notification dated 1 March 1988, exemption from customs duty can be granted for import of equipment for a hospital which, the Ministry of Health and Family Welfare certifies would be in a position to start functioning within a period of two years (category 4 of the notification), provided such a hospital belongs to one of the eligible categories specified therein.

i) In one collectorate, the benefit of the said notification was granted to an importer who produced a NMI (not manufactured in India) certificate from the D.G.H.S. for clearance of imports (February 1993) along with an endorsement on the application form by D.G.H.S. to the effect that the importing hospital fell in category 4 of notification 64/88. The amount of duty exempted was Rs.69.22 lakhs. This was irregular since D.G.H.S. had also stated that the NMI certificate was for the purpose of indigenous clearance only and the eligibility and charitable status of the hospital would be looked into later.

The department contended that as the essentiality of the above equipment was certified by D.G.H.S., the conditions of the notification were fully met and Transitory certificate under category 4 of the table itself would become final. The reply is not correct in view of the remarks of the D.G.H.S. regarding the eligibility and charitable status of the hospital already cited.

ii) In the same collectorate, another importer furnished a certificate from D.G.H.S., issued on 22 December 1989, certifying that the importing hospital fell under category 4 of the table to the aforesaid notification. The imports were made in July and September 1992. As the hospital had not started functioning within the period of two years, the grant of benefit of exemption was irregular.

Audit pointed out the short levy of duty amounting to Rs.2.64 lakhs in this case in April and September 1993. Reply of the department has not been received.



The above two cases were referred to the Ministry of Finance in August 1994; reply has not been received (December 1994).

### **2.17 Plastic coating materials and welding rods**

One consignment of 'Plastic coating material' and another of 'welding rods' imported during May 1993 and July 1993 was assessed to basic customs duty at a concessional rate of 20 per cent ad valorem with full exemption from levy of additional duty under sub headings 3926.90 and 8311.30 respectively, in terms of notification no.86/93-Cus dated 28 February 1993. However, the above notification was applicable to goods falling only under chapters 84,85 and 90 of the Customs Tariff, when imported for renovation and modernisation of power plants. The subject goods therefore, were not covered by the aforecited notification and basic customs duty was leviable at 85 per cent ad valorem in both the cases with additional duty at 35 per cent ad valorem in the case of plastic coating material and 20 per cent in the case of welding rods.. The irregular grant of exemption resulted in duty being levied short by Rs.61.33 lakhs.

This was pointed out in audit in November and December 1993.

The Ministry of Finance have confirmed the facts. The amount short levied has since been realised.

### **2.18 Dead burnt magnesite**

Three consignments of 'dead burnt magnesite' imported in May/June 1993, were assessed to basic duty at 30 per cent ad valorem in terms of notification no.14/93 dated 28 February 1993. However, the basic customs duty for the subject goods was enhanced to 50 per cent ad valorem by notification no.111/93 dated 4 May 1993 and the goods were imported after 4 May 1993. Thus duty was levied short by Rs.24.72 lakhs.

This was pointed out in audit in November and December 1993.

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

### **2.19 Parts of electrostatic precipitator**

By virtue of a proviso to a customs notification no.172/89 dated 29 May 1989, concessional rate of basic customs duty at 35 per cent ad valorem permitted under the said notification was not available to parts containing thermionic valves or transistor or similar semi-conductor devices or light emitting diodes or electronic micro-circuits.

A consignment of parts of electrostatic precipitator comprising coromatic controller flashover detection system and keyboard imported (July 1993) through a major Custom House, was granted the benefit of the aforecited concessional rate of duty.

As the literature revealed that the 'parts' in question contained among other things, microprocessors and light emitting diodes, and therefore, did not come within the purview of the said notification, audit suggested (January 1994) levy of basic customs duty on merits at 80 per cent ad valorem under sub heading 8421.99 of the Customs Tariff.

The Ministry of Finance have confirmed the facts. The short levied duty of Rs.15.90 lakhs has since been realised.

### **2.20 Components for machine tools**

Component parts of machine tools for working on metals are chargeable to basic customs duty at concessional rate of 35 per cent ad valorem under notification no.156/86-Cus dated 1 March 1986 as amended. The goods covered by this notification were also exempted from auxiliary duty by notification no.140/90 dated 20 March 1990.

A consignment of accessories and components falling under sub heading 8466.93, for a machine tool for working on metal was imported in June 1990 and assessed to duty in terms of the above notification.

It was pointed out in audit (September 1991) that as accessories could not be considered as component parts the subject goods were not entitled to the exemption in terms of the said notifications. The incorrect grant of exemption resulted in duty being levied short by Rs. 14.9 lakhs.

The Ministry of Finance have confirmed the facts (December 1994).

### 2.21 Heat exchanger

In terms of notification no.276/92-Cus dated 23 September 1992 as amended, full exemption from basic customs duty is available to machinery, instruments etc. when imported for renovation or modernisation of a fertiliser plant. The notification was silent regarding additional duty.

A consignment of 'heat exchanger(lower)' imported through a major Custom House during September 1993, was assessed to basic customs duty under sub heading 8419.50 in terms of the aforesaid notification. Additional duty was also not levied by granting the benefit of notification no.59/87-Cus.

It was pointed out (February 1994) in audit that as the importer had availed of the benefit of notification no.276/92 for basic customs duty, the goods should have been charged to additional duty at 10 per cent ad valorem in terms of notification no.51/93-CE. The exemption from additional duty extended to the importer in terms of notification no. 59/87-Cus was irregular in as much as it is not applicable to the imported item in the instant case.

The short levy of duty due to irregular grant of exemption worked out to Rs. 2.92 lakhs.

The Ministry of Finance have confirmed the facts (December 1994).

**2.22 Other objections**

In 15 other cases, duty was short levied by Rs.93.73 lakhs, out of which Rs.52.33 lakhs had been recovered as mentioned below:

(Rupees in lakhs)					
Sl. No.	Product on which exemption granted	Amount of short levy involved	Amount of short levy accepted	Amount of short levy re-covered	Amount still to be recovered
1.	Dutiable articles of different kinds	23.06	23.06	22.99	0.07
2.	Dead burnt magnesite	21.04	21.04		21.04
3.	Offset Press	10.27	10.27	10.27	
4.	Tools	9.09	9.09	6.01	3.08
5.	Thermal mechanical stimulator	7.47	7.47	7.47	
6.	Electrical & Electronic component parts	5.95	5.95		5.95
7.	Solid Carbide end mills	4.20	4.20		4.20
8.	Electrocast Refractories in block form	3.38	3.38		3.38
9.	Electro galvanised steel sheets in coil form and galvanised sheets	1.78	1.78	1.78	
10.	Polyester mono filament of linear density 2450 deniers 4150 deniers	1.67	1.67		1.67
11.	Monosodium salt	1.41	1.41	1.41	
12.	Wearing Apparel Press	1.31	1.31		1.31
13.	Humiseal paint and thinner	1.23	1.23	1.23	
14.	Dyestuffs (golden Jari)	1.17	1.17	1.17	
15.	Aluminium Magnesium Alloy bars	0.70	0.70		0.70
<b>TOTAL</b>		<b>93.73</b>	<b>93.73</b>	<b>52.33</b>	<b>41.40</b>

**MISTAKES IN ASSESSMENT OF CUSTOMS DUTY****2.23 Non levy of additional duty**

Goods imported and assessed to basic customs duty in terms of notifications 60/88 dated 1 March 1988, 87/91 dated 25 July 1991 and 72/93 dated 1 March 1993, were exempt from additional duty in terms of the said notifications. The exemption from levy of additional duty in respect of the above cited notifications was, however, withdrawn vide notification no.129/93 dated 11 June 1993. In the following cases, it was noticed that additional duty was not levied even after this date.

- a) In respect of 10 consignments of various goods imported in June 1993, additional duty was not levied resulting in short levy amounting to Rs.27.56 lakhs. The department recovered short levied amount between September 1993 and January 1994.

The Ministry of Finance have confirmed the facts.

- (b) On a consignment of "RHD Day Cab Sub assemblies" imported through a major Custom House and cleared during September 1993, additional duty at 25 percent ad valorem was not levied. This resulted in duty being levied short by Rs. 17.94 lakhs.

This was pointed out in audit in November 1993.

The department accepted the audit objection(May 1994). Report on recovery has not been received.

The matter was referred to the Ministry of Finance; reply has not been received (December 1994).

- (c) In respect of eight dutiable consignments of goods consisting of "Integrated circuit, parts for cordless telephones, Polycrystalline Alumina tubes, Tungsten electrodes and component parts of motor vehicles" imported through an Air Customs Collectorate between 14 June 1993 and September 1993, countervailing duty at the prescribed rates varying between 15 per cent

and 25 per cent was not levied. This resulted in duty being levied short by Rs. 7.83 lakhs. This was pointed out in audit between October 1993 and January 1994.

The Ministry of Finance, while confirming the facts, stated (October 1994) that out of the amount of Rs.7.83 lakhs short levied, an amount of Rs.7.44 lakhs had been recovered.

#### **2.24 Non levy of additional duty due to misclassification**

A consignment of parts of centrifugal pumps (viz. retaining ring, booster, impeller etc.) imported in June 1993, was assessed to basic customs duty at 35 per cent ad valorem without levy of any additional duty thereon although these parts were classifiable under heading 84.13 of Central Excise Tariff and were chargeable to additional duty at 10 per cent ad valorem. This resulted in duty being levied short by Rs. 8.75 lakhs.

The department admitted (March 1994) the audit objection and stated that the amount had been recovered in March 1994.

The Ministry of Finance have confirmed the facts.

#### **2.25 Short levy of additional duty due to misclassification**

a) In terms of note 1(a) under Chapter 28 of the Customs Tariff, separate chemically defined compounds whether or not containing impurities are to be classified under that Chapter. As per details in Explanatory Notes to HSN(page 297), "Borates" obtained by crystallisation fall out of the purview of Chapter 25 and are covered under heading 28.40 thereby attracting basic customs duty at 65 per cent advalorem, auxiliary duty at 45 per cent advalorem and additional duty at 15 per cent advalorem plus special excise duty 15 per cent thereof. The special excise duty was leviable only upto 28 February 1993.

Fourteen consignments of "Borax Penta Hydrate" imported from Turkey on clearance for home consumption from a customs bonded warehouse (between September 1992 and March 1993) were incorrectly classified under

sub heading 2528.10 and subjected to levy of basic Customs duty at 65 per cent, auxiliary duty at 45 per cent and 'nil' additional duty in terms of notification no. 33/90-cus dated 20 March 1990.

It was pointed out in audit (March 1993/June 1993/September 1993) that as per the test report, the imported goods were inorganic chemicals in the form of white powder and not natural borates. Consequently, the said goods were more appropriately classifiable under heading 28.40 which attracted additional duty at 15 per cent, special excise duty at 15 per cent thereof, there being no difference in rates of basic and auxiliary duties. The incorrect classification had resulted in duty being levied short by Rs.60.54 lakhs. Audit also pointed out the short collection of duty of Rs. 6.35 lakhs due to difference in quantity warehoused and subsequently cleared.

The department defended their original assessment (August 1993/December 1993/April 1994) quoting the following points :-

- i) Borax occurring in Turkey is not from salt lakes but only as deposits of pandermite and colemanite.
- ii) Borax Penta Hydrate is found in nature as a fine grained deposit formed by dehydration of borax.
- iii) As per the revised laboratory opinion, the imported goods were crude borax containing impurities.

The reply of the department is not acceptable in view of the following :-

- i) Pandermite and colemanite are calcium borates ( $\text{Ca}_4\text{B}_{10}\text{O}_{19}\cdot 7\text{H}_2\text{O}$  and  $\text{Ca}_2\text{B}_6\text{O}_{11}\cdot 5\text{H}_2\text{O}$ ), while the imported goods are Borax Pentahydrate ( $\text{Na}_2\text{B}_4\text{O}_7\cdot 5\text{H}_2\text{O}$ ) a sodium borate as established by the Customs Laboratory, in test reports.
- ii) It is accepted that Borax Pentahydrate is found in nature as a fine grained deposit (with reference to details in Encyclopedia of Chemical Technology-Vol. IV page 83 By Kirk Othmer). However, in Turkey, Sodium

Borate is available as deposit of Tincal. Tincal is Borax Decahydrate ( $\text{Na}_2\text{B}_4\text{O}_7 \cdot 10\text{H}_2\text{O}$ ) and Borax Pentahydrate is obtained by crystallising Borax Decahydrate at over  $1097^\circ\text{C}$  (according to test book of Inorganic Chemistry by Cotton and Wilkenson).

Therefore, the goods merit classification more appropriately under heading 28.40 with levy of additional duty.

As regards shortage in clearance of the quantity warehoused involving short collection of duty of Rs. 6.35 lakhs, the department stated that a separate reply would be sent; the reply has not been received as of November 1994.

The short realisation on both counts works out to Rs. 66.89 lakhs.

The matter was referred to the Ministry of Finance in August 1994; reply has not been received (December 1994).

b) Solder mask in film or ink form is classifiable under sub heading 3204.90 of Central Excise Tariff with additional duty of customs at the rate of 35 per cent ad valorem with special excise duty at 10 per cent thereof.

Three consignments consisting of (i) 84 rolls of vacrel, a solder mask film for manufacture of printed circuit board (ii) solder mask in ink form and (iii) solder mask in film form were imported through an Air Customs collectorate between July and November 1991. While two consignments of solder masks in film forms were assessed under sub heading 3707.90/3702.90 of the Central Excise Tariff and were charged to additional duty at 20 per cent ad valorem, the third consignment of solder mask in ink form was assessed under heading 32.15 at 15 per cent ad valorem.

The misclassification resulting in duty being short levied by Rs.6.24 lakhs was pointed out in audit (May 1992 and April 1994).

The department, while accepting the misclassification, stated (November 1993 and May 1994) that an amount of Rs.0.38 lakhs had been recovered while a sum of Rs.2.55 lakhs could not be collected due to delay in



raising demands and had become time barred. Particulars of recovery of the balance amount of Rs.3.31 lakhs were not intimated.

The matter was referred to the Ministry of Finance in July and August 1994; reply has not been received (December 1994).

#### **2.26 Non levy of additional duty due to application of incorrect exemption notification**

A consignment of 'Calcined Petroleum Coke' imported through a major Custom House during March 1992 was assessed at 35 per cent ad valorem (basic duty) and nil auxiliary duty under sub heading 2713.12 of Customs/Central Excise Tariff. Additional duty was not levied by allowing exemption under notification no.95/83-CE dated 1 March 1983.

As per notification no.95/83-CE, the set off of duty on calcined petroleum coke classifiable under sub heading 2713.12 was admissible only when they were produced out of specified input of 'Petroleum coke' on which central excise duty had been paid already. The notification being conditional, its application to the imported 'calcined petroleum coke' was not in order as the condition regarding the duty paying character of input viz., 'petroleum coke' could not have been fulfilled by the imported goods. Additional duty was, therefore, leviable at 21 per cent ad valorem with 10 per cent special excise duty. The short levy of Rs.10.94 lakhs was pointed out in audit in September 1992.

The department admitted the objection and recovered the entire amount of Rs.10.94 lakhs in November 1992.

The Ministry of Finance have confirmed the facts.

#### **2.27 Short levy of additional duty due to application of incorrect rate**

Seven consignments consisting of "plain polyester films, p.v.c. cloth/sheets, synthetic sheets, p.v.c. leather cloth" imported between May and October 1993, were assessed to additional duty under heading 39.20/39.21 of

Central Excise Tariff at 35 per cent ad valorem instead of 40 per cent ad valorem leviable thereon, in terms of notification no.14/92-CE dated 1 March 1992. This resulted in duty being levied short by Rs. 8.44 lakhs.

This was pointed out in audit in May 1993 and March 1994.

The department accepted the objection in all the eight cases and recovered an amount of Rs. 3.31 lakhs in four cases between November 1993 and March 1994. In the remaining cases, recovery particulars are still awaited.

The matter was referred to the Ministry of Finance in August 1994; reply has not been received (December 1994).

### 2.28 Other objections

In 16 other cases, mistakes in assessment resulted in short levy of customs duty amounting to Rs.52.33 lakhs of which Rs.50.04 lakhs had been recovered, as per details given below:

Sl.No.	Item on which duty not levied; type of duty	(Rupees in lakhs)		
		Amount short levied	Amount of short levy recovered	Amount still to be recovered
1.	Copperwire rod 8 MM diameter (Auxiliary)	5.47	5.47	
2.	Machinery parts for process control instruments (Additional)	5.39	5.39	
3.	Different kinds of goods (Additional)	4.96	3.75	1.21
4.	Polyamide Nomex paper (Additional)	4.77	4.77	
5.	Conveyor parts (Additional)	4.05	4.05	
6.	Components of cement machinery, Gear box (Additional)	4.00	4.00	

## MISTAKES IN ASSESSMENT

2.28

				(Rupees in lakhs)
Sl.No.	Item on which duty not levied; type of duty	Amount short levied	Amount of short levy recovered	Amount still to be recovered
7.	Ginseng Extract powder (Additional)	3.98	3.98	
8.	Component screws(Steel) (Auxiliary)	3.68	3.68	
9.	Iodine crude of 99.8 percent purity. (Additional)	2.93	2.93	
10.	Electric yarn cleaner/ yarn evenness tester (Additional)	2.77	2.77	
11.	Apron Dryer (Additional)	2.59	2.59	
12.	Nomex polyamide Armid paper (Additional)	2.27	2.27	
13.	Machinery parts for process control instruments. (Additional)	1.94	1.94	
14.	Power supply system (Additional)	1.38	1.38	
15.	Spares of Cigarette packing machine (Additional)	1.08		1.08
16.	Plasdone K 29 --- 32 (Additional)	1.07	1.07	
Total		52.33	50.04	2.29

**SHORT LEVY DUE TO MISCLASSIFICATION****2.29 Turbo chargers**

Several consignments of turbo chargers imported during 1987-88 and 1988-89, through a major Custom House were classified under sub heading 8414.80 of the Customs Tariff as air compressors and basic customs duty at 45 per cent and auxiliary duty at 45 per cent were levied in terms of customs notification no.59/87-Cus dated 1 March 1987. In respect of imports during 1990-91 and 1992-93 the above mentioned duties were levied at the rates of 35 per cent plus 45 per cent and 25 per cent plus 30 per cent respectively, in terms of the same notification.

"Turbo chargers" are however a combination of a turbine wheel and a compressor wheel mounted on a common shaft and used to increase the combustion efficiency of the internal combustion piston engine and should be appropriately classified under sub heading 8409.99 and assessed to basic customs duty at 100 per cent, auxiliary duty at 45 per cent and additional duty at 15 per cent ad valorem in terms of notification no.68/87-Cus dated 1 March 1987. In respect of imports during 1990-91, the turbo chargers attracted, in addition to the duties specified above, a special excise duty of 5 per cent. For imports during 1992-93, the turbo chargers attracted basic customs duty at 65 per cent, auxiliary duty at 45 per cent and additional duty at 15 per cent with special excise duty at 15 per cent ad valorem.

The incorrect classification of turbo chargers under sub heading 8418.80 instead of sub heading 8409.99 resulted in short levy of duty of Rs.20.14 lakhs in nine cases of imports during 1987-88 to 1992-93.

On the incorrect assessment being pointed out in audit, the Custom House justified (August 1992) the classification adopted and stated that the turbo chargers were only compressors and quoted a Collector's Conference decision of March 1978 in support thereof. The reply of the Custom House is not acceptable for the following reasons:

- i) The term "turbo pump" which existed in the erstwhile tariff heading 84.11 is not included in the present tariff heading 84.14. Hence application of Collector's conference decision pertaining to the earlier tariff is incorrect. There is no specific classification available in the present tariff for turbo charger.
- ii) The technical write-up submitted along with bills of entry indicates that turbo charger is not a mere compressor meriting assessment under heading 84.14 but it is a combination of turbine wheel and a compressor wheel connected on a common shaft and improves the volumetric efficiency of the engine.
- iii) The turbo chargers being inseparable from the internal combustion piston engines on which they are fitted, their classification under sub heading 8409.99 would be appropriate. The principles adopted for classification of a carburetter for the ICP Engine enunciated in harmonised description of commodity and coding system at page 1314 would equally apply to turbo chargers also.
- iv) The use of the turbo charger is solely and principally with the internal combustion piston engine and hence, by application of note 2 (b) of Section XVI of the Customs Tariff, classification under sub heading 8409.99 is appropriate.

The matter was referred to the Ministry of Finance in August 1994; reply has not been received (December 1994).

### **2.30 Photo dispenser booth**

Seven consignments of goods described as 'photo dispenser booth' in CKD condition imported during December 1989 to November 1990 were assessed to customs duty at 100 per cent, auxiliary duty at 45 per cent and additional duty at 15 per cent ad valorem and special excise duty at 5 per cent thereof under sub heading 9010.10 of Customs Tariff treating them as apparatus and equipment for developing photographic film.

The goods in question were appropriately classifiable as 'Instant Print Camera' under sub heading 9006.40 of Customs Tariff. Though the suggested

reclassification did not entail changes in the rate of basic and auxiliary duties of customs, additional duty was leviable at 25 per cent ad valorem plus 5 per cent thereof as special excise duty under heading 90.06 of the Central Excise Tariff. The incorrect classification resulted in additional duty being levied short by Rs. 16.92 lakhs.

The Custom House admitted the objection (December 1993). Report on recovery has not been received.

The Ministry of Finance have confirmed the facts (June 1994).

### **2.31 Impregnating oil for condensor (capacitor)**

Eight consignments of "Jarylec" an insulating and impregnating oil for condensor cleared for home consumption from a bonded warehouse were assessed to basic customs duty under chapter heading 27.10 of the Customs Tariff at 40 per cent ad valorem, auxiliary duty at 50 per cent ad valorem and additional duty at Rs.3675 per tonne plus 5 per cent thereof as special excise duty. These goods were, however, classifiable as "an insulating and impregnating oil for condensor (capacitor)" under sub heading 3823.90 of the Customs Tariff as chemical preparations not elsewhere specified and assessable to duty at 70 per cent ad valorem with auxiliary duty at 50 per cent ad valorem together with additional duty at 15 per cent advalorem plus 10 per cent thereof as special excise duty. The incorrect classification resulted in duty being levied short by Rs.15.02 lakhs.

This was pointed out in audit in September 1991 and May 1992.

The department accepted the objections(July 1994) and recovered the short levied amount of Rs.0.85 lakh in one case and stated that efforts were being made to recover the balance amount of Rs.14.17 lakhs in the remaining cases.

The matter was referred to the Ministry of Finance in August 1994; reply has not been received (December 1994).

**2.32 Insulating varnish**

One consignment of the product C-3 core plate (tinted) imported in June 1990 was assessed to basic customs duty at 70 per cent ad valorem, auxiliary duty at 45 per cent ad valorem and additional duty at 25 per cent ad valorem plus 5 per cent advalorem thereof as special excise duty, under heading 34.02 of both the Customs and Central Excise Tariffs treating the product as an organic surface-active preparation.

The imported product, as per the technical write-up, was basic ingredient for insulation coating on CRNO type of steel. The product was, therefore, insulating varnish and could not be considered as an organic surface active preparation which is used as a cleansing material. The product should have been appropriately classified under heading 32.08 and assessed to basic customs duty at 150 per cent ad valorem in terms of notification no.42/90 dated 20 March 1990, auxiliary duty at 45 per cent ad valorem plus additional duty at 15 per cent ad valorem vide notification no.52/88 C.E. dated 1 March 1988 together with special excise duty at 5 per cent ad valorem thereof. The incorrect classification resulted in duty being levied short by Rs.8.61 lakhs.

This was pointed out in audit in January 1991. The Custom House admitted the objection (June 1993) and stated that efforts were being made to realise the short levied amount.

The matter was referred to the Ministry of Finance in August 1994; reply has not been received (December 1994).

**2.33 Alloy steel wire rods**

Alloy steel wire rods/bearing steel wire rods are classifiable under the sub heading 7227.90 of the Customs Tariff.

Three consignments of alloy steel wire rods were imported during October to December 1991 through an Inland Container Depot and assessed to customs duty under sub heading 7229.90 of the Customs Tariff at 40 per cent ad valorem vide notification no.88/86-Cus dated 17 February 1986.

The said notification was applicable to only cold drawn products of any cross sectional shape of which no cross section exceeded 13 mm. The imported goods were wire rods of cross sectional dimension exceeding 13mm and also hot rolled and cold formed and therefore, did not qualify for assessment under the said notification but were liable to duty at the rate of 70 per cent ad valorem.

The short levy due to misclassification and incorrect grant of exemption amounting to Rs.8.59 lakhs was brought to the notice of the department in November 1992 and January 1993.

The Ministry of Finance have confirmed the facts.

#### **2.34 Induction hardening machines**

"Induction Hardening Machines" are classifiable under heading 85.14 of the Customs Tariff and are subject to levy of basic customs duty at 40 per cent, auxiliary duty at 50 per cent and additional duty at 15 per cent ad valorem with 5 per cent thereof as special excise duty.

One Induction hardening machine imported (August 1991) was classified incorrectly under sub heading 8419.89 ibid and assessed to basic customs duty at the rate of 35 per cent and auxiliary duty at 50 per cent ad valorem in terms of customs notification no.59/87 dated 1 March 1987.

The Custom House admitted the fact of incorrect classification and stated that the amount of Rs.4.32 lakhs short levied had been recovered (June 1994).

The matter was referred to the Ministry of Finance in August 1994; reply has not been received (December 1994).

#### **2.35 Airconditioners with dehumidifiers**

Two air conditioners with dehumidifiers valued at Rs. 8.17 lakhs imported (August 1992) as accessories of computerised numerically controlled



vertical boring machine were assessed to basic customs duty at 75 per cent ad valorem under sub heading 8459.31 of the Customs Tariff with auxiliary duty at 5 per cent ad valorem and nil additional duty in terms of notifications 154/86 dated 1 March 1986 and 124/92-cus dated 1 March 1992.

It was pointed out in audit (January 1993) that the correct classification for the goods was under heading 84.15 of Customs and Central Excise Tariffs and basic duty was leviable at the rate of 65 per cent ad valorem with auxiliary duty at 45 per cent ad valorem plus additional duty of Rs.74,000 per air conditioner. The incorrect classification had resulted in short levy of duty amounting to Rs.3.93 lakhs.

The Ministry of Finance, while confirming the facts, stated that the short levied amount of Rs.4.15 lakhs and not Rs.3.93 lakhs as pointed out had since been realised.

### **2.36 Polyester cord**

Two consignments of "Polyester Table Cord" were classified under heading 59.02 of both Customs and Central Excise Tariffs and assessed (August 1992 and January 1993) to additional duty at the rate of Rs. 2.10 per kilogram in terms of notification no.157/83-CE dated 21 May 1983 as amended, treating the subject goods as tyre cord fabrics of polyester.

Polyester cord being yarn of man made fibres having linear density of more than 10,000 decitex, was appropriately classifiable under sub-heading 5607.50 of Customs Tariff in terms of Table I appended to sectional note 3A(b) of section XI as specified in the H.S.N. Explanatory Notes (Page 708) instead of under heading 59.02. The goods falling under sub heading 5607.50 of Customs Tariff attracted additional duty at the rate of 12 per cent ad valorem under sub-heading 5607.90 of Central Excise Tariff. The misclassification resulted in duty being levied short by Rs.3.59 lakhs.

The Ministry of Finance have confirmed the facts and stated that the short levied amount had been realised in March and October 1993.

**2.37 Alcoholic aperitives of bitter variety**

Two consignments of alcoholic aperitives of bitter variety commercially known as "Bitter Campari" imported through a major port in September 1993, were assessed to basic customs duty under sub heading 2204.29 of Customs Tariff at 45 per cent ad valorem plus Rs.30 per litre in terms of notification no. 40/88-Cus dated 1 March 1988. Additional duty was also levied at Rs.9 per litre in terms of Sl.No.6 of notification no. 32/89-Cus dated 1 March 1989. However, alcoholic aperitives of bitter variety are classifiable under sub heading 2208.90 of Customs Tariff in terms of Explanatory Notes of Harmonised System of Nomenclature and assessable to basic duty at the tariff rate of 400 per cent ad valorem and 'nil' additional duty in terms of Sl.No.18 of notification no.32/89-Cus. The incorret classification resulted in duty being levied short by Rs. 3 lakhs. The department accepted the objection and recovered the short levied amount (May and June 1994).

The matter was referred to the Ministry of Finance in August 1994; reply has not been received (December 1994).

**2.38 Other objections**

In 16 other cases, incorrect classification of imports resulted in short levy of customs duty amounting to Rs.28.87 lakhs of which Rs.23.55 lakhs had been recovered, as per details given below :

(Rupees in lakhs)					
Sl.No.	Product and sub heading under which classifiable (CT-Cus Tariff CE-Excise Tariff)	Heading under which wrongly classified	Amount short levied	Amount of short levy re-covered	Amount still to be recovered
1.	Elements Air Cleaner CT 3926.10	CT 8421.90	2.82	2.82	
2.	Tyres of power Cranes CE 4011.91	CE 84.26	2.75	2.75	
3.	SKYDROL/LD-4 CT & CE 34.03	CT & CE 2710.00	2.60	2.60	

**CLASSIFICATION**

**2.38**

(Rupees in lakhs)					
Sl.No.	Product and sub heading under which classifiable (CT-Cus Tariff CE-Excise Tariff)	Heading under which wrongly classified	Amount short levied	Amount of short levy recovered	Amount still to be recovered
4.	Spares for boiler water circulating pumps CT 8483.90	CT 8503.00	2.55	2.85 (.30 excess recovery)	
5.	Spare for gear box CT 8483.90	CT 8483.40	2.39	2.39	
6.	Insert Electrodes & Graphite Crucibles CT 6903.90	CT 9027.90	2.32	2.32	
7.	EPIS Festooning Machine CT 8479.89	CT 8445.40	2.06		2.06
8.	Tyres of power cranes CE 4011.91	CE 4011.99	1.62	1.62	
9.	Syntheso HT 1000 CT 3403.99 CE 34.03	CT 2710.00 CE 2710.60	1.57	1.57	
10.	Steel belt drive screening device drive, transport roller drive CT 8483.40	CT 8479.90	1.57		1.57
11.	Condenser Tissue paper CE 4823.90	CT 4805.60	1.29	1.29	
12.	Plain Shaft bearing CT 8483.90	CT 8414.90 CT 7326.90	1.28	1.28	
13.	Calcined Clay CT & CE 38.02	CT 2508.40 CE 2505.10	1.21	0.04	1.17
14.	Rubber Stitcher Rolls CT 4016.11	CT 8477.90	1.19	1.19	
15.	Tyres of Power crane CE 4011.91	CE-4011.99	1.13	1.13	
16.	Ring Varistors CT 85.33	CE 85.03	0.52		0.52
			28.87	23.85 (0.30 excess recovery)	5.32

**SHORT LEVY OF DUTY DUE TO UNDERVALUATION**

Underassessments of customs duties amounting to Rs.40.94 lakhs in eleven cases due to 'undervaluation' were brought to notice of the Department/Ministry in the course of audit, the results of which are included in this report. Duty amounting to Rs.16.68 lakhs was realised on demands raised. The remaining amount of Rs.24.26 lakhs had not been recovered so far. The 11 cases are broadly categorised as under:

Sl.No.	Nature of audit objection	Number of objections	Additional revenue recovered	Additional revenue still to be recovered
(Rupees in lakhs)				
1.	Application of incorrect exchange rate	3	2.33	0.85 9.26
2.	Adoption of incorrect method of computation of valuation of second hand machinery	1		4.48
3.	Adoption of incorrect sale price on high seas for valuation.			
	a) non inclusion of canalising agency commission	2	7.13	
	b) other elements	3	1.60	9.67
4.	Non inclusion of			
	a) element of freight charges in the assessable value	1	3.57	
	b)Inclusion of third party inspection charges in the assessable value	1	2.05	
		11	16.68	24.26

A few illustrative cases out of the above are mentioned in the following paragraphs:

### **2.39 Application of incorrect exchange rate**

As per proviso to Section 14 (1) (a) of the Customs Act, 1962, the rate of exchange for conversion of value expressed in foreign currency in respect of any imported goods is the rate of exchange in force on the date of presentation of the bill of entry under Section 46.

i) In respect of an import, the bond bill of entry was presented on 6 June 1991 and the rate of exchange of Japanese Yen 707.50 equivalent to Rs.100 was adopted as against the correct rate of Yen 661.50 prevalent on that date. This resulted in duty being levied short by Rs.0.86 lakh for a part clearance of a consignment from the bonded warehouse (August 1991).

The mistake was brought to the notice of the department in March 1993. The department stated (December 1993) that the notice for demand had been issued.

The matter was referred to the Ministry of Finance in August 1994; reply has not been received (December 1994).

ii) In another case of import, the bond bill of entry was presented on 21 June 1991 and the rate of exchange of U.S. Dollars 5.095 equivalent to Rs.100 was adopted as against correct rate of \$4.7600 prevalent. This resulted in duty being levied short by Rs. 9.26 lakhs on clearances of such goods from bonded warehouse (July 1991).

When the mistake was brought to the notice of the department, the department contended (April 1993) that the relevant date for application of the exchange rate was the date on which the goods were cleared from the warehouse. This was not correct in view of the provision of the Customs Act cited. This was intimated to the department in May 1993. The department stated (February 1994) that the notice for demand had been issued. Report on further progress is awaited.

The matter was referred to the Ministry of Finance in August 1994; reply has not been received (December 1994).

**2.40 Short levy due to adoption of incorrect method of computation of valuation of second hand machinery**

In terms of Board's letters F.No.493/124/86-Cus.VI, dated 19 December 1987 and dated 4 January 1988, for determining the assessable value of second hand machines, depreciation should be calculated on the original value of the machinery at the time of manufacture and if the same is not available, on the basis of CIF value of the machinery as certified by the Chartered Engineer.

The actual cost of freight, insurance and packing or wherever such actuals are not ascertainable, 21 per cent of the f.o.b. value should be added to the depreciated value.

As per the established practice of Custom House, the value thus arrived at or the value declared as per invoice, whichever is higher, shall be taken into account for the purpose of levy of customs duty.

In a case of import (February 1989) of 3 numbers of second-hand 'Special Purpose Double Cam Turning and Boring Lathes' through a major Custom House, although the Chartered Engineer certified 8000 DM towards freight, insurance and packing, the department deducted 21 per cent of C.I.F. value to arrive at f.o.b. value for depreciation. The adoption of notional amounts towards freight, insurance and packing resulted in the imported machines being undervalued by Rs. 4,98,055 and consequent short levy of duty of Rs. 4.48 lakhs.

On this being pointed out in audit (August 1989), the department merely stated (June 1994) the method adopted but did not furnish any reasons for adopting an amount notionally arrived at towards freight, insurance and packing despite the availability of amount certified by the Chartered Engineer.

The matter was referred to the Ministry of Finance in August 1994; reply has not been received (December 1994).

**2.41 Short levy due to non adoption of sale price inclusive of canalising agency commission on high seas for valuation**

As per rule 3(i) of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, the value of goods shall be the transaction value of goods bought on high seas and shall include expenses including commission charges incurred by the importer over and above the transaction value of goods brought by the original buyer (i.e., price charged by foreign seller).

a) Four consignments of "fully refined paraffin wax", imported by a private importer during August 1990, were sold to two buyers (public sector undertakings) on high sea.

The goods were incorrectly assessed to duty on sale price excluding the canalising agency commission collected by the importer resulting in short collection of duty of Rs.4.01 lakhs. The department accepted the objection in March 1993 and recovered the amount (March 1993 and January 1994).

The Ministry of Finance have confirmed the facts.

b) In the case of an import in August 1992, Agency commission of US \$ 7,633.80 equivalent to Rs.2,32,738 was not included in the assessable value, although in terms of rule 9(1)(a)(i) of Customs Valuation Rules, 1988, the value of imported goods shall include all commissions except buying commission. This resulted in duty being levied short by Rs.3.12 lakhs.

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

**2.42 Short levy due to adoption of incorrect high seas sales price**

Consignments of 101.152 tonnes of defective/secondary/seconds non-grain oriented steel strip in narrow coils valued at US \$28,828.32(CIF)

imported by a firm were sold to another firm on high sea sales basis by loading 1.5 per cent and the assessable value was arrived at Rs.9.32 lakhs. As per the high sea sales contract, the goods were sold on high sea at Rs.10500 per tonne (cost and freight). Adding 1.125 per cent of this cost towards insurance charges and 1 per cent of CIF towards landing charges, the assessable value worked out to Rs.10.85 lakhs as against Rs.9.32 lakhs adopted by the department. The undervaluation resulted in short levy amounting to Rs.1.65 lakhs.

On this being pointed out in audit (December 1993) the department admitted the objection (June 1994). Report on recovery is awaited.

The matter was referred to the Ministry of Finance in August 1994; reply has not been received (December 1994).

#### **2.43 Short levy due to non inclusion of the element of freight charges in the assessable value**

As per Rule 9(2) of the Customs Valuation (Determination Of Price Of Imported Goods) Rules, 1988 and for purposes of subsections (1) and (1A) of Section 14 of the Customs Act, 1962, the value of imported goods shall be the value of such goods for delivery at the time and place of importation and shall include the cost of transport of the imported goods to the place of importation.

In the case of goods imported by air, where the freight charges are not ascertainable, such cost shall be 20 per cent of f.o.b. value of goods as per proviso to rule 9(2) amended by a notification dated 19 December 1989.

In respect of one consignment of "Plate with gaskets and accessories" and "tightening bolts" imported in June 1992, the f.o.b. value indicated in the invoice was erroneously taken as cost and freight value and the element of freight was omitted while arriving at the assessable value. This resulted in duty being short levied by Rs.3.57 lakhs.

The department accepted the objection (March 1993) and recovered the short levy of duty of Rs.3.57 lakhs (March 1993).



The Ministry of Finance have confirmed the facts.

#### **2.44 Short levy due to non inclusion of inspection charges in the assessable value**

In an import (March 1993) through a major Custom House, third party inspection charges of U.S. \$ 20,823.37 equivalent to Rs.6.77 lakhs were not included in the assessable value as required in terms of Rule 9 (1) (e) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. This resulted in a short levy of duty of Rs. 2.05 lakhs.

The department admitted (January 1994) the objection and stated that the short levied amount had been realised in December 1993.

The matter was referred to the Ministry of Finance in August 1994; reply has not been received (December 1994).

### **IRREGULARITIES IN THE FIXATION AND PAYMENT OF DRAWBACK**

#### **2.45 Irregular fixation of drawback**

Rule 7(1) of the Customs and Central Excise Duties Drawback Rules, 1971, provides that where in respect of any goods, the manufacturer or exporter finds that the amount or rate of drawback determined under rule 3 or rule 4 for the class of goods is less than four-fifth of the duties paid on the materials or components used in the production or manufacture of the said goods, he may apply for fixation of the appropriate amount or rate of drawback (Brand Rate) and such drawback rate is to be fixed on the basis of the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components. Therefore, separate Brand rate is to be allowed only when the All Industry Rate is less than fourfifth of the duties paid on materials or components used in the production or manufacture of the goods exported.

An exporter exported 38,832 pieces of Colour Picture Tubes during the period from June 1990 to September 1990 and was allowed drawback at the rate of Rs.663.60 per unit for the first 17,280 tubes and Rs.676.00 per unit for the remaining 21,552 quantity.

It was observed in audit (August 1992 and January 1993) that in the case of 24,846 Colour Picture Tubes, Raw Panels were imported and were coated indigenously. In the case of remaining quantity of 13,986 tubes, however, the coated panels themselves were imported. While working out the brand rates, the department had taken the average of the duties paid on the raw panels and the coated panels imported and checked against the All Industry Rate of drawback to determine the admissibility of drawback in terms of Rule 7 (i) of drawback rules. This method was not correct as the components were countable and usable unit wise. In respect of coloured picture tubes manufactured out of raw panels imported, the condition of Rule 7(i) *ibid* were not satisfied. Permitting a brand rate in these cases also based on the average resulted in excess payment of drawback of Rs.16.39 lakhs.

The Ministry of Finance have confirmed the facts (June 1994).

#### **2.46 Inadmissible payment of drawback**

Leather shoes exported during 1990-91 were eligible for drawback at the rate of 6 per cent of f.o.b. value. The applicable drawback rate would be only 3 per cent of the f.o.b. value, in cases where the leather shoes were manufactured in bond under section 65 of the Customs Act, 1962.

In one case drawback of Rs.45,422 was paid in excess because of the application of higher rate of 6 per cent of f.o.b. value, although the shoes were manufactured in bond.

In the case of three other consignments exported during August 1990 and August 1991, an amount of Rs.72,158 was paid to an exporter in August 1990 and November 1991 at the rate of 3 per cent of f.o.b. value, although the leather shoes were manufactured with duty free leather. As no drawback is

permitted to goods manufactured out of duty free finished leather or leather chemicals, the drawback allowed at 3 per cent f.o.b. value was inadmissible.

These irregular payments were pointed out in December 1992, January 1993 and February 1993.

The department accepted the objections and stated that out of a total irregular payment of Rs. 1,17,580, an amount of Rs. 74,063 had already been recovered and notice of demand had been raised on the exporter for the remaining amount. The matter was referred to the Ministry of Finance in August 1994; reply has not been received (December 1994).

#### **2.47 Irregular payment of drawback**

Nineteen consignments of goods described as knitted garments, readymade garments and powerloom fabrics were entered for export through a minor port in October 1991. These goods were regulated for drawback purposes under sub serial nos. 2704, 2707 and 2605(b) of Drawback schedule and payment of drawback was made at 6 per cent, 8 per cent and 4 per cent of f.o.b value to the exporters, treating the goods as having been exported prior to 25 October 1991.

The dates of 'let export order' as prescribed in Sections 16 and 51 of the Customs Act, 1962, were not indicated in the relevant shipping bills. It was, therefore, pointed out in audit (September 1992) that as the goods were examined on or after 25 October 1991 the dates of 'let export order' could be only after that date and hence the reduced rates of drawback of 5 per cent, 7 per cent and 3 per cent f.o.b. notified on 25 October 1991, would only be applicable to the subject goods, in accordance with the rule 5(2) of Drawback Rules, 1971, read with Section 16 of the Customs Act, 1962. The incorrect application of higher drawback rates resulted in payment of drawback being made in excess by Rs.83,656.

The Ministry of Finance have confirmed the facts(November 1994) and stated that the entire amount of drawback paid in excess had since been recovered.

### IRREGULAR GRANT OF REFUNDS

#### 2.48 Irregular grant of refunds

i) A consignment of 'Spark erosion machine and spare parts' imported by Ministry of Defence in July 1989 was initially assessed to duty (under customs tariff sub heading 8479.89) at the rate of 70 per cent ad valorem (basic) and 30 per cent ad valorem (auxiliary) in terms of notification no.109/89-cus dated 1 February 1989 and to countervailing duty at the rate of 15 per cent ad valorem under sub heading 8479.00 and an amount of Rs.100.80 lakhs was accordingly collected. On production of the duty exemption certificate dated 4 August 1989 in terms of notification no.16/89-cus dated 1 February 1989, a refund of duty of Rs.92.31 lakhs pertaining to the machine was made in August 1990, after retaining an amount of Rs.8.49 lakhs by way of duty on spares, which were not covered by the exemption notification.

The imported spares consisted of various mechanical and electrical items requiring assessment on merits under various headings of the Customs and Central Excise Tariffs, instead of the sub heading 8479.89/8479.00 at which these were assessed initially. Consequently, the total duty payable on spares worked out to Rs.13.73 lakhs as against Rs.8.49 lakhs retained. This resulted in refund being granted in excess by Rs.5.24 lakhs.

This was pointed out in August 1991.

The Ministry of Finance have confirmed the facts.

ii) Two consignments of 'forged alloy steel work rolls' and backup rolls imported on 26 March 1992 were assessed to duty under Customs tariff sub heading 8455.30 at 15 per cent ad valorem (basic) plus 45 per cent ad valorem (auxiliary) in terms of notification no.172/89 dated 29 May 1989. The

additional duty was levied at 15 per cent ad valorem plus 15 per cent thereof was levied as special excise duty.

On a claim made by the importer that the imported goods attracted auxiliary duty only at 30 per cent ad valorem vide notification no.125/92-Cus.dated 1 March 1992 and additional duty at 10 per cent ad valorem vide notification no.69/90-C.E.dated 20 March 1990 the department re-assessed the goods in March 1993 and refunded an amount of Rs.3.96 lakhs.

Although auxiliary duty and additional duty were reassessed correctly at appropriate rates, the fact that by virtue of the amendment (vide notification no.151/92-cus) issued on 26 March 1992 to notification no.172/89-Cus, basic customs duty was leviable at 25 per cent ad-valorem as against 15 percent levied was not kept in view at the time of re-assessment. This resulted in refund being granted in excess by Rs.1.70 lakhs.

The Ministry of Finance have confirmed the facts.

### **OTHER TOPICS OF INTEREST**

#### **2.49 Delay in recovery of duty on the sale of imported cars to State Trading Corporation by Foreign privileged persons**

According to Rule 5(4)(1) of the Foreign privileged persons (Regulation of Customs Privileges) Rules, 1957, the State Trading Corporation of India (STC) is liable to pay customs duty in respect of motor vehicles purchased or otherwise acquired from foreign privileged persons if the purchase or acquisition of the motor vehicles is within three years from the date of their duty free importation into India (notification no.3/57 dated 8 January 1957).

i) In respect of such purchases through Madras regional office of the STC, the duty amounting to Rs.15.25 lakhs recoverable on the sale of two cars remained unrealised by the Madras Custom House from 1991-92 onwards. There was also a short collection of duty amounting to Rs.16.41 lakhs in respect of 23 cars for which duty had been paid.

ii) Bombay regional office of the STC purchased five cars during 1992-93 and 3 cars during 1993-94 from foreign privileged persons. Although the regional office furnished the details of these purchases to the department on 21 April 1993 and 28 April 1994 respectively, the department had not raised demand of custom duty as of July 1994. The customs duty payable in these 8 cases amounted to Rs.49.37 lakhs.

The Ministry of Finance confirmed the facts (December 1994) in respect of duty amounts pertaining to Madras region and stated that an amount of Rs.15.25 lakhs relating to two cars had since been realised and the recovery of balance amount of Rs.16.41 lakhs was under pursuance with the STC authorities.

The Ministry's reply in respect of duty recoverable for purchases of cars through Bombay regional office has not been received (December 1994).

**2.50 Loss of revenue due to non observance of the provision of section 72 of the Customs Act, 1962**

a) In terms of sub section (1) (b) of section 61 of Customs Act, 1962, failure to remove warehoused goods of the specified categories, by owners after the maximum permissible period of 30 days, attract under section 72 penalty besides payment of full amount of duty, rent, interest and other charges.

In four cases, although goods were allowed to be cleared from a warehouse between January and March 1993, after expiry of stipulated period of 30 days, the department neither raised demand for duty nor levied penalty. On the contrary, the clearances were allowed on payment of duties at the rates in force on the dates of clearances which were lower than the rates prevailing on the respective dates of expiry of specified period of 30 days. This resulted in loss of revenue of Rs.5.22 lakhs.

The Ministry of Finance have confirmed the facts (December 1994).

b) Twelve consignments of 'Electronic goods' dutiable at different rates imported and warehoused by a private bonded warehouse during the period from December 1990 to September 1991 were not cleared till the end of 1993 even though the periods of warehousing had expired by December 1991. The revenue that remained to be realised on account of the delay in removal of the goods worked out to Rs.39.38 lakhs (approx).

The Ministry of Finance have confirmed the facts(November 1994).

c) In a Custom House, consumable stores viz. liquors and cigarettes were permitted to remain warehoused in a private bonded warehouse for a period of 3 months (which was the maximum permissible period prior to the Amendment Act, 1991) in 1987 and 1989. After a period of 7 to 34 months after the expiry of the warehousing period the goods were inspected and notice for removal and payment of duty was issued in October 1990. Thereupon the importer relinquished the title of the goods as the goods had become unfit for human consumption. The Assistant Collector who adjudicated the case ordered withdrawal of demand of Rs.1.40 lakhs in January 1993, on the ground that duty cannot be demanded if the importer relinquished the title of the goods before an order for clearance for home consumption was passed.

The matter was referred to the Ministry of Finance in August 1994; reply has not been received (December 1994).

### **2.51 Non initiation of penal action under section 116 of the Customs Act, 1962**

Under Section 116 of Customs Act, 1962 read with section 148, if any goods loaded in a conveyance for importation into India are not unloaded at the destination in India or short landed, the master of the vessel or the steamer agent is liable for penal action as provided therein.

a) In a Custom House refunds of import duty amounting to Rs.11.66 lakhs were made to three importers on account of shortage/short landing of the goods noticed between December 1990 and November 1991. On being

enquired in audit (November 1991, February 1992 and May 1992) whether penal action under section 116 of the Customs Act, 1962 was taken by the department against the steamer agents for shortages, the department accepted the audit objection and stated that the penalty amount of Rs.11.63 lakhs had been recovered from the steamer agents.

The Ministry of Finance have confirmed the facts.

b) In another Custom House, although penalty amounting to Rs.7.53 lakhs was imposed in 10 cases, the amount was not recovered. No appeal proceedings were also pending in these cases.

The Ministry of Finance confirmed (November 1994) the facts and stated that in one case an amount of Rs.0.55 lakh had been realised and necessary legal steps had been taken in other cases for recovery of the outstanding amounts.

## **2.52 Short levy of light dues**

As per an order dated 7 January, 1993 issued by Government of India, Ministry of Surface Transport (Shipping Wing) charges for light dues payable at all ports in India in respect of foreign going vessels shall be at the rate of Rs.8 per tonne.

In a Custom House, Light dues were collected at the rate of Rs. 6 per tonne instead of Rs. 8 per tonne. The consequent short levy of light dues for the period from 6 February 1993 to 30 November 1993 amounted to Rs.12.58 lakhs.

The Ministry of Finance, while confirming the facts, stated (November 1994) that in 23 cases short levy amounting to Rs.10.18 lakhs had been recovered. In 10 cases of short levy amounting to Rs.2.87 lakhs pertaining to one unit, the party had asked for refund as the correct amount had already been paid at another port and the issue was under examination.



**2.53 Short levy of duty due to incorrect assessment of duties**

'Polyethylene Granules' based on sheathing compound or insulation compound falling under Customs Tariff heading 39.01 are leviable to basic customs duty at 60 per cent ad valorem, as per customs notification no. 49/90 as amended.

A consignment of 20 metric tonnes described as 'Polyethylene Granules' of grade BPH 420 imported in July 1992, was assessed under Customs Tariff sub heading 3901.10 to basic customs duty at the incorrect rate of 5 per cent ad valorem plus Rs.3,000 per metric tonne instead of the correct rate of 60 per cent ad valorem. This resulted in duty being levied short by Rs.5.36 lakhs.

The Ministry of Finance have confirmed the facts. The short levied amount has since been recovered.

**2.54 Short levy of interest chargeable for delayed clearance of warehoused goods**

According to section 59A of the Customs Act, 1962 the importer of certain specified dutiable goods which have been permitted to be warehoused, shall deposit fifty per cent of assessed duty subject to adjustment against the duty finally payable on the date of clearance of the goods from the warehouse. Interest at the rate of 20 per cent per annum would be levied if the goods are not cleared from the warehouse within 7 days from the date on which the bill of entry is returned to the importer.

A major Custom House assessed duty of Rs.39.55 lakhs on the goods and returned the bill of entry to the importer on 14 February 1992, for warehousing the goods. Fifty per cent of the duty amounting to Rs.19.77 lakhs was deposited on 16 November 1992 and the goods were warehoused on 17 November 1992. On the date of clearance (28 December 1992) the duty chargeable on the goods worked out to Rs.35.30 lakhs. The goods were cleared on payment of balance amount of duty of Rs.15.53 lakhs (after adjusting the amount of duty already paid) and interest of Rs.2.65 lakhs

thereon. However, interest should have been recovered on the entire amount of duty of Rs.35.30 lakhs. There was, thus, a short levy of interest of Rs.2.91 lakhs.

The Ministry of Finance have confirmed the facts (November 1994).

#### **2.55 Loss of revenue due to non levy of interest**

A hundred per cent export oriented unit imported a consignment of Hydraulic pack and accessories of an assessable value of Rs.6.65 lakhs through a major port and after warehousing the goods at that place on 3 February 1989, the goods were transported in bond for rewarehousing at another port. However, as the imported goods were not found eligible for exemption in terms of notification no. 13/81-Cus dated 9 February 1981 the department directed the unit (January 1990) to clear the goods from the warehouse by filing a bill of entry for home consumption. The goods were cleared by the importer on 24 January 1990 on payment of duty of Rs. 14.79 lakhs.

It was pointed out in audit (March 1992) that since the imported goods were ineligible for exemption in terms of notification 13/81 ibid, the importer was not entitled to warehousing facility also. Therefore, the department should have levied interest amounting to Rs.1.94 lakhs for the period the goods were warehoused beyond the permissible period of three months i.e. 3 May 1989 to 23 January 1990. The department realised the interest amount in April 1993.

The matter was referred to the Ministry of Finance in August 1994; reply has not been received (December 1994).

## CHAPTER 3

## UNION EXCISE DUTIES

## 3.01 Budget estimates vis-a-vis actual receipts

The budget estimates vis-a-vis actual receipts of central excise duties and number of factories paying excise duty during the year 1993-94 alongside the corresponding figures for preceding four years are given below :-

Year	Budget estimates	Revised Budget estimates	Actual receipts	No. of factories paying excise duty
	(in crores of rupees)			
1989-90	22,702	22,103	22,406	68,880
1990-91	25,125	24,500	24,514	75,094
1991-92	26,888	27,696	28,110	77,642
1992-93	32,211	32,500	30,832	84,662
1993-94	33,751	31,750	*31,548	**54,454

\* Provisional figures.

\*\* Figures furnished by the Ministry of Finance for 33 out of 36 Collectorates.

## 3.02 Trend of receipts

The receipts during the year 1993-94 from levy of basic excise duty and from other duties levied as excise duties are given below alongside the corresponding figures for the preceding year:-

		(in crores of rupees)	
		Receipts from Union	Excise duties
		1992-93	1993-94*
A.	Shareable duties :		
	Basic excise duties	22712.42	26305.44
	Auxiliary duties of excise	0.06	0.01
	Special excise duties	2463.52	21.08
	Total (A)	25176.00	26326.53
B.	Duties assigned to States :		
	Additional excise duties in lieu of sales tax	2102.92	2285.99
	Total (B)	2102.92	2285.99
C.	Non-shareable duties :		
	Additional excise duty on T.V.sets	5.03	—
	Special excise duties	353.49	0.60
	Additional excise duties on textiles and textile articles	378.60	440.25
	Other duties	0.14	0.39
	Total (C)	737.26	441.24

		(in crores of rupees)	
		Receipts from Union	Excise duties
		1992-93	1993-94*
D.	Cess on commodities	2626.12	2374.05
E.	Other receipts	189.20	119.80
Total : (A to E)		30831.50	31547.61

- Figures furnished by Controller of Accounts (Central Board of Excise and Customs).

\* Provisional figures.

ii) The products which yielded revenue amounting to more than Rs.100 crores during 1992-93 and 1993-94 are as under :

Sr. No.	Budget Head	Description	Amount		
			(in crores of rupees)		
			1992-93	1993-94	1993-94
			(Actual)	(BE)	(Actual)
1.	27	Cigarettes & cigarillos of tobacco or tobacco substitutes	2767.68	3050.00	2739.57
2.	31	Cement clinkers, cement all sorts	1769.03	2013.15	1887.14
3.	79	Synthetic filament yarn & sewing thread including synthetic monofilament and waste	1740.94	1760.38	1814.82
4.	102	Iron and steel	1560.45	1895.00	1928.93
5.	34	Motor spirit	1287.16	1345.96	1358.56
6.	61	Plastics and articles thereof	1221.49	1375.00	1416.53
7.	119	All other goods falling under chapter 84	1037.40	1270.00	961.82
8.	62	Tyres, tubes & flaps	836.61	890.00	1050.54
9.	125	All other goods falling under chapter 85	780.70	950.00	844.30
10.	36	Refined Diesel Oil	742.68	747.17	795.17
11.	45	Organic chemicals	714.46	855.00	652.59
12.	128	Motor cars and other motor vehicles for transport of persons	710.51	750.00	596.99
13.	17	Cane or beet sugar and chemically pure sucrose in solid form	650.49	701.52	705.86
14.	130	All other goods falling under chapter 87	624.65	725.00	741.54
15.	106	Aluminium and articles thereof	614.85	758.30	538.64
16.	46	Pharmaceutical products	527.35	650.00	550.79
17.	103	Articles of iron and steel	442.92	515.00	429.76
18.	71	Paper and paper board, articles of paper pulp or paper or paper board	430.14	490.00	488.21
19.	40	All other goods falling under chapter 27	427.41	500.00	477.27
20.	124	Insulated wires, cables and other electric conductors	421.27	510.00	403.38
21.	80	Fabrics of man-made filament yarn	377.61	440.00	478.33
22.	81	Artificial or synthetic staple fibres and tow including waste	357.78	396.00	452.96
23.	44	All other goods falling under chapter 28	349.61	406.70	367.76
24.	84	Fabrics of man-made staple fibre	346.44	365.00	436.33
25.	75	Cotton and cotton yarn	333.27	360.00	383.30

**EXCISE RECEIPTS**

**3.02**

Sr. No.	Budget Head	Description	Amount		
			(in crores of rupees)		
			1992-93 (Actual)	1993-94 (BE)	1993-94 (Actual)
26.	51	Essential oils and resinoids, perfumery, cosmetics or toilet preparation	294.66	380.00	263.72
27.	49	Paints and varnishes	294.24	382.00	288.53
28.	99	Ceramic products	262.03	315.00	272.73
29.	116	Refrigerations and airconditioners & parts thereof	260.94	275.00	263.53
30.	53	Organic surface active agents	255.41	260.00	285.40
31.	100	Glass and glassware	241.58	264.00	249.85
32.	35	Kerosene	239.17	287.83	246.85
33.	60	Miscellaneous chemical products	228.36	294.00	259.50
34.	28	Biris	220.36	235.00	206.52
35.	52	Soap	216.05	260.00	253.82
36.	63	All other goods falling under chapter 40	201.26	226.00	229.60
37.	120	Electrical motors and generators, electric generating sets and parts thereof	192.75	242.00	134.54
38.	82	Spun yarn containing Polyester or other Synthetic yarn	185.92	220.00	257.79
39.	129	Public transport type passenger motor vehicles and motor vehicles for the transport of goods	177.77	N.A.	N.A.
40.	115	Internal combustion engines and parts thereof, steam and other vapour turbines, hydraulic turbines, turbojets, other engines and motors	172.43	190.00	151.48
41.	118	Ball or roller bearings	145.32	195.00	172.94
42.	121	Electrical transformers, static converter and inductors	142.26	N.A.	N.A.
43.	122	Electric accumulators, primary cells and primary batteries	141.33	220.00	268.87
44.	23	Miscellaneous edible preparations	141.32	175.00	161.52
45.	76	All others falling under chapter 52	140.81	150.00	162.25
46.	24	Natural or artificial mineral waters and aerated waters	133.29	170.00	137.26
47.	122A	Consumers electronic goods - others	132.17	N.A.	N.A.
48.	123A	Electronic components including T.V. picture tubes	128.50	N.A.	N.A.
49.	43	Soda ash	124.60	147.00	130.73
50.	83	Other man-made blended yarn	122.69	130.40	150.39
51.	98	All other goods falling under Chapter 68	119.73	130.00	142.13
52.	104	Copper and articles thereof	118.88	120.00	122.41
53.	126	Railway or tramway locomotive rolling stock and parts thereof etc	117.71	N.A.	N.A.
54.	42	Caustic soda and caustic potash peroxides thereof	117.24	122.50	118.52
55.	133	Optical, Photographic, Cinematographic measuring checking, precious parts thereof	101.36	N.A.	N.A.
56.	21	Preparations of flour starch or milk pastery	100.83	N.A.	N.A.
57.	123	Reception apparatus for radio broadcasting etc.	60.82	225.00	194.25
58.	29	Chewing tobacco including kimam	79.27	92.00	113.75

-Figures for 1993-94 in respect of items at Sr. No.39,42,47, 48,53, 55 and 56 not supplied by the Ministry.

**3.03 Cost of collection**

The expenditure incurred during the year 1993-94 in collecting Union Excise duties is given below alongside the corresponding figures for the preceding four years :-

Year	Receipts from excise duties	Expenditure on collection	(Amount in crores of rupees)	
			Cost of collection as percentage of receipts	
1989-90	22,307	116.49	0.52	
1990-91	24,409	126.19	0.52	
1991-92	28,110	158.74	0.57	
1992-93	30,832	197.17	0.64	
1993-94	31,548	223.93	0.71	

- Figures furnished by Controller of Accounts (Central Board of Excise and Customs).

**3.04 Exemptions, rebates, refunds and rewards****(i) Exemptions**

The number of subheadings in the Central Excise Tariff, (each with a rate against it) under which goods are required to be classified was 1691 during the year 1992-93 and 1701 during the year 1993-94. The number of exemption notifications in force during the years 1992-93 and 1993-94 aggregated to 583 and 646 respectively.

The amount of revenue foregone by grant of exemptions through issue of notifications by the Ministry of Finance under sub sections (1) and (2) of Section 5A of the Central Excises and Salt Act, 1944 during the year 1992-93 and 1993-94 was as under :

	No. of cases		(Amount in crores of rupees)	
	1992-93	1993-94	Estimated amount of duty foregone	
			1992-93	1993-94
Under sub section (1)	112	8624	1844.60	21290.97*
Under sub section (2)	16	2932	N.A.	4803.63

\* The Ministry of Finance was requested (January 1995) to recheck the figures for the year 1993-94 as there is big increase from previous year's figures.

**(ii) Rebate**

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

		(Amount in crores of rupees)		
		1991-92	1992-93	1993-94
(a)	Rebate under rule 12	568.06	1714.56	*5017.94
(b)	Rebate under rule 12A	41.47	53.26	65.93
(c)	Duty not levied under rule 13- Revenue foregone as a result of export under bond	2242.19	3014.40	3253.64
(d)	Differential duty recovered on unrebated amount of goods exported under bond	0.04	8.42	0.49

- Figures furnished by the Ministry of Finance cover 33 out of 36 Collectorates.

\* The Ministry of Finance was requested (January 1995) to recheck the figures for the year 1993-94 as there is big increase from previous year's figures.

**(iii) Refunds**

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

		(Amount in crores of rupees)		
		1991-92	1992-93	1993-94
	Number of cases	2678	2515	2722
	Amount of refunds (other than rebate)	3740.80	656.37	634.90

- Figures furnished by the Ministry of Finance for 33 out of 36 Collectorates.

**(iv) Reward to informers and departmental officers**

The amount of rewards paid to informers and departmental officers and amount of additional duty realised as a result of payment of rewards in recent years are as under :

		(in lakhs of rupees)		
		1991-92	1992-93	1993-94
(a)	Amount of rewards paid to informers	198.93	22.30	13.81
(b)	Amount of rewards paid to the departmental officers	250.68	*927.23	77.19
(c)	Additional duty realised as a result of payment of rewards	4646.16	3763.24	419.11

- Figures furnished by the Ministry of Finance for 33 out of 36 Collectorates.

\* The Ministry of Finance was requested (January 1995) to recheck the figures for the year 1992-93 as there is big increase from previous year's figures.

**3.05 Outstanding demands**

The number of cases and amounts involved in demands for excise duty outstanding as on 31 March 1993 and 31 March 1994 are given below :-

	as on 31.03.1993		as on 31.03.1994*	
	Number of cases	Amount (in crores of rupees)	Number of cases	Amount (in crores of rupees)
(a) Pending with Adjudicating officers	25853	2335.18	32788	17910.23
(b) Pending before Appellate Collectors	2329	226.09	2187	1627.66
(c) Pending before Board	414	124.78	3985	226.38
(d) Pending before Government	1072	17.48	184	492.81
(e) Pending before Tribunals	7545	1487.59	9044	8015.55
(f) Pending before High Courts	2792	369.20	2615	3667.53
(g) Pending before Supreme Court	857	280.95	1215	824.65
(h) Pending for coercive recovery measures	6844	319.05	27525	2311.03
<b>Total</b>	<b>47706</b>	<b>5160.32</b>	<b>@79543</b>	<b>@35075.83</b>

\* Figures furnished by the Ministry of Finance for 33 out of 36 Collectorates.

@ The Ministry of Finance was requested (January 1995) to recheck the figures for the year 1993-94 as there is big increase from previous year's figures.

**3.06 Provisional assessments**

The amount of excise duties assessed provisionally and pending finalisation and the amount of revenue involved as on 31 March 1993 and 31 March 1994 are indicated below :-

	as on 31.03.1993		as on 31.03.1994*	
	Number of cases	Duty involved (in crores of rupees)	Number of cases	Duty involved (in crores of rupees)
a) Pending decision by Courts of Law	2652	1024.54	724	871.06
b) Pending decision by Govt. of India or Central Board of Excise & Customs	420	51.28	423	173.40
c) Pending adjudication by the department	780	56.18	1932	74472.07
d) Pending finalisation of classification lists	3317	401.90	4389	451.04
e) Pending finalisation of price lists	6522	801.05	9327	772.93
f) Other reasons	311	237.42	851	740.75
<b>Total</b>	<b>14002</b>	<b>2572.37</b>	<b>17646</b>	<b>@77481.85</b>

\* Figures furnished by the Ministry of Finance for 33 out of 36 Collectorates.

@ The Ministry of Finance was requested (January 1995) to recheck the figures for the year 1993-94 as there is big increase from previous year's figures.



### 3.07 Failure to demand duty before limitation and revenue remitted or abandoned

#### (i) Revenue not demanded before limitation

The amount of demands for duty barred by limitation owing to demands not having been raised in time during the last three years was Rs.595.58 lakhs as detailed below :-

Year	Amount (in lakhs of rupees)
1991-92	455.00
1992-93	92.08
1993-94	48.50

#### (ii) Revenue remitted or abandoned

The amount of demands remitted, abandoned or written off during the last two years as non-recoverable are given below :-

	1992-93		1993-94	
	Number of cases	Amount (in lakhs of rupees)	Number of cases	Amount (in lakhs of rupees)
<b>Remitted due to :</b>				
a) Fire	77	234.01	57	14.57
b) Flood	17	207.51	5	2.44
c) Theft	1	0.18	Nil	Nil
d) Other reasons	33	146.54	36	14.77
<b>Total</b>	<b>128</b>	<b>588.24</b>	<b>98</b>	<b>31.78</b>
<b>Abandoned or written off due to :</b>				
a) Assessee having died leaving behind no assets	15	0.01	12	0.63
b) Assessee untraceable	16	6.09	39	3.40
c) Assessee left India	Nil	Nil	Nil	Nil
d) Assessee incapable of payment of duty	48	1.38	125	2.05
e) Other reasons	471	40.90	94	0.12
<b>Total</b>	<b>550</b>	<b>48.38</b>	<b>270</b>	<b>6.20</b>

- Figures furnished by the Ministry of Finance for 33 out of 36 Collectorates.

**3.08 Writ petitions and appeals****(i) Writ petitions pending in courts**

Number of writ petitions involving excise duties which were pending in courts as on 31 March 1993 and 31 March 1994 are given below:-

	In Supreme Court		In High Courts	
	as on 31.3.93	as on 31.3.94	as on 31.3.93	as on 31.3.94
Pending for over 5 years	1847	1557	3166	1576
Pending for 3 to 5 years	695	373	832	984
Pending for 1 to 3 years	1058	431	983	908
Pending for not more than 1 year	375	165	364	759
<b>Total</b>	<b>3975</b>	<b>2526</b>	<b>5345</b>	<b>4277</b>

- Figures furnished by the Ministry of Finance for 33 out of 36 Collectorates.

**(ii) Appeals pending with others**

The number of appeals and petitions pending with Collectors/Board/Government as on 31 March 1994 are given below :-

	With Collectors	With Tribunal	With Board	With Govt.
a) Number of appeals instituted during 1993-94	3132	2754	26	4
b) Pending as on 31 March 1994 {out of (a) above}	806	2645	10	6
c) Number of appeals/petitions instituted in earlier years and pending on 31 March 1993	1301	9883	15	38
d) Pending as on 31 March 1994 {out of (c) above}	534	8585	29	38
<b>Total (b) &amp; (d)</b>	<b>1340</b>	<b>11230</b>	<b>39</b>	<b>44</b>

Figures furnished by the Ministry of Finance for 33 out of 36 Collectorates.

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

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

**EXCISE RECEIPTS**

**3.09**

	Relating to preceding years and pending on 1 April 1993	In 1993-94
1. a) Number of appeals filed before Collectors (Appeals)	2133	4178
b) Number of appeals disposed of during 1993-94 out of (a) above	*3739	3486
2. a) Number of appeals filed before the Tribunal by the assessees	6771	2388
b) Number of appeals decided during 1993-94 in favour of the assessees	601	608
3. a) Number of appeals filed before the Tribunals by the department	2276	900
b) Number of appeals decided in favour of the department during 1993-94	417	415
4. a) Number of appeals filed in the High Courts by the assessees	1224	384
b) Number of appeals disposed of in favour of the assessees during 1993-94	120	217
5. a) Number of appeals filed by the department before the High Courts	93	28
b) Number of appeals decided in favour of the department during 1993-94 (including appeals filed by assessees)	261	354
6. a) Number of appeals filed in the Supreme Court by assessees	38	49
b) Number of appeals decided in favour of the assessees during 1993-94	25	31
7. a) Number of appeals filed in Supreme Court by the department	475	46
b) Number of appeals decided in favour of the department during 1993-94	35	30

- Figures furnished by the Ministry of Finance for 33 out of 36 Collectorates

\* The Ministry of Finance was requested (January 1995) to recheck the figures as it is more than the number of appeals filed before Collector (Appeals).

**3.09 Seizures, confiscation and prosecution**

The number of cases of seizures, confiscation and prosecution relating to the excise duties during the last two years are given below :-

(Amount in lakhs of rupees)

	1992-93		1993-94*	
	Number	Amount	Number	Amount
(i) Seizure cases	1883	6465.58	1863	11656.93
(ii) Goods seized	90088	11278.50	1475	@8323.35
(iii) Goods confiscated				
a) in seizure cases	585	1198.69	755	1379.50
b) in non-seizure cases	114	132.79	40	1175.07
(iv) Number of offences prosecuted				
a) arising from seizure	82	588.40	29	217.01
b) arising otherwise	68	874.70	46	310.05
(v) Duty assessed in respect of goods seized or confiscated	898	2817.39	1316	7592.20
(vi) Fines levied				
a) on seizure and in confiscation cases	712	319.51	588	155.60
b) in other cases	104	23.71	108	43.91
(vii) Penalties levied	1438	786.05	782	415.23
(viii) Goods destroyed after confiscation	6	0.22	98	2.98
(ix) Goods sold after confiscation	33	12.68	12	3.30
(x) Prosecution resulting in conviction	6	9.65	19	28.17

\* Figures furnished by the Ministry of Finance for 33 out of 36 Collectorates.

@ The Ministry of Finance was requested (January 1995) to recheck the figures for the year 1993-94 as there is big increase from previous year's figures.

### 3.10 Outstanding audit objections

The number of audit objections raised in audit upto 31 March 1994 and which were pending settlement as on 30 September 1994 was 14620. The duty involved in the objections amounted to Rs.1417.50 crores. These objections broadly fall under the following categories:-

Sl.No.	Nature of objection	(Amount in crores of rupees)	
		No. of objections	Amount
1.	Short levy of duty due to undervaluation	2232	191.92
2.	Short levy of duty due to incorrect grant of exemption	976	223.58
3.	Short levy of duty due to misclassification	1060	150.37
4.	Non-levy of duty	1933	209.91
5.	Exemption to small scale manufacturers	398	20.11
6.	Irregular grant of credit for duty paid on inputs and irregular utilisation of such credit	3261	193.61
7.	Cess	354	111.05
8.	Demands for duty not raised	242	24.68
9.	Irregular rebates and refunds	161	15.68
10.	Others	4003	276.59
	<b>Total</b>	<b>14620</b>	<b>1417.50</b>

Details of the number of outstanding objections and amount involved are given below:

Sl. No.	Collectorate	(Amount in crores of rupees)					
		Raised upto 1992-93		Raised in 1993-94		Total	
		No.	Amount	No.	Amount	No.	Amount
1.	Hyderabad	1573	27.16	239	15.63	1812	42.79
2.	Guntur	227	3.48	48	2.38	275	5.86
3.	Visakhapatnam	76	0.17	16	1.15	92	1.32
4.	Bangalore	417	98.82	111	11.13	528	109.95
5.	Belgaum	97	13.63	12	1.21	109	14.84
6.	Indore	400	15.46	218	4.98	618	20.44
7.	Raipur	275	7.57	142	0.87	417	8.44
8.	Delhi (U.T.)	314	7.24	26	2.39	340	9.63
	-do- (Haryana)	276	66.25	101	7.72	377	73.97
9.	Kanpur	181	1.75	104	2.09	285	3.84
10.	Allahabad	225	8.31	88	1.34	313	9.65
11.	Meerut	693	17.60	313	8.52	1006	26.12
12.	Chandigarh (Pun.)	181	28.24	117	15.00	298	43.24
	-do- (H.P.)	207	8.36	113	6.80	320	15.16
	-do- (J & K)	18	0.74	Nil	Nil	18	0.74
	-do- (U.T.)	17	1.30	7	0.86	24	2.16
13.	Nagpur	71	2.78	47	0.50	118	3.28
14.	Jaipur	187	13.69	46	1.04	233	14.73

**EXCISE RECEIPTS**

**3.11**

Sl. No.	Collectorate	(Amount in crores of rupees)					
		Raised upto 1992-93		Raised in 1993-94		Total	
		No.	Amount	No.	Amount	No.	Amount
15.	Cochin	50	7.94	22	0.68	72	8.62
16.	Patna	72	10.63	39	1.82	111	12.45
17.	Jamshedpur	130	43.41	65	16.79	195	60.20
18.	Shillong	128	146.28	44	15.31	172	161.59
19.	Bombay I	351	18.08	127	6.64	478	24.72
20.	Bombay II	686	40.99	177	11.07	863	52.06
21.	Bombay III	1261	113.92	340	16.69	1601	130.61
22.	Pune	328	29.91	176	15.55	504	45.46
23.	Aurangabad	255	12.28	97	4.84	352	17.12
24.	Goa	42	1.20	6	0.14	48	1.34
25.	Calcutta I	292	22.52	135	16.37	427	38.89
26.	Calcutta II	483	70.54	147	20.00	630	90.54
27.	Bolpur	118	36.83	51	8.81	169	45.64
28.	Madras	323	11.24	431	12.35	754	23.59
29.	Coimbatore	46	1.65	94	1.75	140	3.40
30.	Madurai	8	1.31	4	0.18	12	1.49
31.	Trichy	41	1.92	60	2.57	101	4.49
32.	Bhubaneswar	128	33.23	92	52.05	220	85.28
33.	Ahmedabad	123	8.66	31	1.87	154	10.53
34.	Baroda	221	26.99	68	33.04	289	60.03
35.	Surat	80	3.08	35	128.61	115	131.69
36.	Rajkot	13	0.22	17	1.38	30	1.60
Total		10614	965.38	4006	452.12	14620	1417.50

**3.11 Results of audit**

Test check of records in audit in the various Central Excise Collectorates and audit of excise records in selected manufacturing units during the year revealed short levies of duty amounting to Rs.83.30 crores where replies received were not satisfactory or objections were accepted. Ministry of Finance/department of excise have accepted short levies of Rs.66.94 crores. Recoveries amounting to Rs. 16.47 crores have been made so far.

The audit objections raised fell under the following categories :-

- (a) Short levy of duty due to misclassification
- (b) Short levy of duty due to undervaluation
- (c) Short levy of duty due to incorrect grant of exemption
- (d) Non levy of duty
- (e) Irregular grant of exemption to small scale manufacturers

- (f) Short levy of cess
- (g) Non recovery of duty
- (h) Other topics of interest

A review on 'Modvat Scheme' was undertaken during the year of Report. The study revealed short levy of duty of Rs. 25.25 crores of which the department accepted avilment of excess credits amounting to Rs.8.09 crores. Of these, Rs.2.42 crores have been recovered/adjusted so far. The findings of the review are mentioned in Para 1.03 of this Report.

### **SHORT LEVY OF DUTY DUE TO INCORRECT CLASSIFICATION**

The rates of duty leviable on excisable goods are indicated under various headings in the Schedule to the Central Excise Tariff Act, 1985. Different rates may be applicable to items of different classification.

Some of the illustrative cases of incorrect classification of goods which resulted in short levy/non levy of duty are given below:-

#### **3.12 Optical fibre cables**

Heading 85.44 read with explanatory note below the heading in the Harmonised Commodity Description and Coding System (HSN page 1404) covers optical fibre cables used as equipments in telecommunication.

An assessee manufactured optical fibre cable made of individually sheathed pair of fibres of different colours in a tube and supplied to Telecommunication department. The nature of use and functional character of the product suggested that the product was classifiable under heading 85.44 and chargeable to duty at 25 per cent ad valorem. The product was, however, classified under heading 90.01 and cleared on payment of duty at 15 per cent ad valorem. Incorrect classification resulted in short levy of duty amounting to Rs.4.67 crores on clearances of cables from August 1989 to October 1991. The audit objection was raised in January 1992.

The Ministry of Finance have admitted the objection and stated (May 1994) that recovery particulars would be intimated in due course.

**3.13 Crane lorries**

Cranes are classifiable under heading 84.26 and chargeable to duty at 15 per cent ad valorem, while 'crane lorries' under heading 87.05 attract duty at 25 per cent ad valorem. Such 'crane lorries' are, however, exempt from the whole of duty by a notification dated 1 March 1986 as amended, provided appropriate duty on 'chassis' or 'equipments' has already been paid.

An assessee manufactured crane lorries under the description Husky 45/50 TSC, Hydro 815(1) etc., cleared the goods on payment of duty at 15 per cent ad valorem after classifying them as 'cranes' under sub heading 8426.00. The instant truck cranes consisted of motor vehicle chassis on which cabs and cranes were permanently mounted. The assessee availed of Modvat credit of duty paid on chassis brought from outside. He also captively consumed equipments manufactured within the factory for the manufacture of the subject goods without payment of duty as per notification dated 2 April 1986. As per explanatory notes to HSN (sub heading 8705.10), the truck cranes are special purpose motor vehicles e.g. crane lorries, other than those principally designed for the transport of goods or persons and are correctly classifiable under heading 87.05. Moreover, the goods in question were primarily self propelled vehicles for special purposes and not the machinery or mechanical appliance. Accordingly, the goods merited classification under chapter 87. As the equipments captively consumed were not duty paid, the goods were also not eligible for duty exemption under notification dated 1 March 1986. The incorrect classification of the products resulted in short levy of duty of Rs.3.27 crores (updated) on the clearances made during the period from August 1986 to March 1994. This was pointed out in audit in May 1990.

The department issued show cause notices demanding duty aggregating to Rs.298.66 lakhs, of which demands worth Rs.261.63 lakhs pertaining to different periods have already been confirmed. Details of period involved have not been furnished.

Reply of the Ministry has not been received (December 1994).

**3.14 Polycoated paper**

i) An assessee manufactured 'printed polycoated paper', classified it under sub heading 4811.30 instead of under sub heading 4811.90. The incorrect classification of the product resulted in short levy of duty of Rs.1.74 crores during the period from April 1992 to March 1993. This was pointed out in audit in August 1993.

The Ministry of Finance have admitted the objection (November 1994).

ii) Another assessee manufactured sheets out of paper and paper board (chapter 48) laminated with films of plastic (heading 39.20) meant for use as packaging material and cleared such composite product under sub heading 4811.30. But, such product of paper laminated with fibre of plastic which merited classification under sub heading 4811.90 was chargeable to duty at 35 per cent ad valorem plus Rs.2100 per tonne till 27 February 1993 and at 30 per cent ad valorem thereafter. Incorrect classification of the product thus resulted in short levy of duty of Rs.72.52 lakhs during the period from April 1992 to October 1993. This was pointed out in audit in November 1993.

The Ministry of Finance, while confirming the facts, stated (November 1994) that the concerned Collector was being asked to reconsider the classification.

**3.15 Sanitary napkins**

Heading 48.18 inter alia, covers sanitary or hospital articles of paper pulp, paper, cellulose wadding or webs of cellulose fibres.

An assessee engaged in manufacture of sanitary napkins classified the product under heading 56.01 and paid duty at 12 per cent ad valorem. The raw materials used in the manufacture of sanitary napkins were wood pulp crushed into fine mesh particles and in defibrated form which served as an absorbant mass covered by inner and outer covers of non woven fabrics. During the manufacturing process, the crushed wood pulp in wadding form is first wrapped in polyfoil which is then covered with inner and outer fabrics. A



siliconised paper with hotmelt glue adhesive sticks on the non woven fabrics and seals the longitudinal ends of the outer wrapper. As the cellulosic wadding is predominant in weight in the sanitary napkin so manufactured, it was correctly classifiable under heading 48.18 as an article of cellulosic wadding and chargeable to duty at 15 per cent ad valorem. The incorrect classification of the product under heading 56.01 resulted in short levy of duty amounting to Rs.91.50 lakhs for the period from April 1991 to July 1992. The audit objection was raised in September 1992.

The department admitted the objection and stated (August 1993) that a show cause-cum demand notice for the period from April 1992 to December 1993 for Rs.381.17 lakhs had been issued and another draft show cause-cum demand notice for the earlier period i.e., April 1990 to March 1992 for Rs.1.12 crores was under scrutiny.

The Ministry of Finance have confirmed the facts (July 1994).

### **3.16 Machinery and mechanical appliances**

#### **i) Washing machines**

Household or laundry type washing machines, including machines which both wash and dry, are classifiable under heading 84.50 and chargeable to duty at 20 per cent ad valorem.

An assessee manufacturing industrial washing/dry cleaning machine and allied equipment for drying and ironing, classified the product under sub heading 8451.00 instead of under sub heading 8450.00. This resulted in short levy of duty of Rs.8.59 lakhs during the period from April 1991 to March 1993. The incorrect classification was pointed out in audit in December 1992.

The department intimated (March 1994) that a show cause-cum demand notice demanding duty of Rs.14.76 lakhs covering the period from April to September 1993 had been issued (October 1993) and the same was pending adjudication. Demand of Rs.43.92 lakhs for the preceding five years (July 1988 to March 1993) could not, however, be issued as the relevant

classification lists were approved by competent authority and hence the charge of suppression or misdeclaration was not sustainable. It was subsequently ascertained by Audit that the Assistant Collector had dropped the demand in adjudication but the Collector has decided to review the adjudication order.

Reply of the Ministry has not been received (December 1994).

**ii) Screen strainers**

As per note 8 to chapter 39 of the Schedule to the Central Excise Tariff Act, 1985, plastic tubes, pipes and hoses of heading 39.17 have been defined as hollowed products of a kind generally used for conveying, conducting or distributing gases or liquids (for example ribbed garden hoses, perforated tubes). Further, as per section note 1(g) of section XVI, parts of general use defined in note 2 to section XV of base metal or similar goods of plastic (chapter 39) are excluded from the purview of section XVI. Thus, in both the aforesaid notes, stress has been laid on general use of the articles and parts of plastics for its classification under chapter 39. Products of plastics which are not meant for general use are, therefore, not classifiable under chapter 39 and as per note 2(b) to section XVI, if they are suitable for use solely or principally with a particular kind of machine, are to be classified with the machine of that kind.

A small scale unit manufacturing 'fibre glass reinforced screen strainers' of plastic for deep tube well pumps cleared the product as per approved classification under heading 39.17 without payment of duty in terms of a notification issued on 1 March 1988. Such strainers are manufactured by punching plastic tubes with numerous narrow slits so as to filter water at a depth under the surface of earth by eliminating sand particles from water. As the product was specially designed and solely suitable for use in deep tube well pumps, it merited classification under heading 84.13 as parts of pumps for liquid with the applicable rate of duty at 15 per cent ad valorem and not under heading 39.17 as tubes of plastic meant for general use. Incorrect classification of the product, thus, resulted in non levy of duty of Rs.5.93 lakhs during the

period from 1 April 1989 to 27 February 1994 (updated) after allowing admissible small scale exemption under a notification dated 1 March 1986. The incorrect classification was originally pointed out in audit in June 1991.

The Ministry of Finance, while not admitting the objection, commented (March 1994) that strainers were perforated tubes and performed the function of conducting, conveying or distributing water by sucking from beneath the earth and, therefore, classification of the product under heading 39.17 was correct.

Contention of the Ministry is not acceptable as: 'screen strainers' of plastics in the instant case are not meant for general use but are used for specific purpose, namely filtering of liquid at a depth under the surface of earth and, therefore, as per note 8 to chapter 39, are not covered under chapter 39.

**iii) Hydraulic access platform**

Works trucks fitted with lifting or handling equipment are classifiable under heading 84.27 and chargeable to duty at 20 per cent ad valorem (25 per cent ad valorem from 28 February 1993). As per an explanatory note under heading 84.27 of the HSN, the machines falling under the heading include trucks with mechanically elevating platform. Further, as per another explanatory note to the HSN under heading 87.05, self propelled wheeled machine in which the chassis and the working machine are specially designed for each other and form an integrated mechanical unit are excluded from the purview of chapter 87.

An assessee manufactured 'hydraulic access platform', mounted the system on a duty paid chassis supplied by customers and cleared the integrated unit as special purpose motor vehicle under heading 87.05 without payment of duty as per a notification dated 1 March 1986. The assessee, however, paid duty on such internally consumed portion of 'lifting platform' under heading 84.26 at 15 per cent ad valorem (10 per cent ad valorem from 28 February 1993). The product was meant for use as lifting and handling equipment, power being provided for the hydraulic system installed on the platform by a

pump driven off the vehicle power through a power take off unit. Thus, the product merited classification under heading 84.27. The incorrect classification of the product, therefore, resulted in short levy of duty of Rs.3.90 lakhs during the period from April 1991 to March 1993. The audit objection was raised in August 1993.

The department, while not admitting the objection, contended (May 1994) that as per explanatory notes to the HSN under heading 84.26 and 87.05, hydraulic lifts platform mounted on duty paid chassis satisfy the condition for becoming goods classifiable under heading 87.05 as special purpose motor vehicle having essential features, such as propelling engine, gear box and control for gear changing, steering and braking facility. The department added that entire control of the lifting platform was located on the platform itself.

Contention of the department is not acceptable. Although the hydraulic control of the lifting platform was located on the platform itself, power thereto is provided by a pump driven off the vehicle power through a power-take-off-unit thus making the whole arrangement an integrated mechanical system. Hence, as per the HSN notes, the product is rightly classifiable under heading 84.27.

Reply of the Ministry has not been received (December 1994).

### **3.17 Products of chemical and allied industries**

#### **i) Talcum powder**

As per notes 2 and 5 of chapter 33, toilet and talcum powders prepared for the care of skin are classifiable under heading 33.04 with rate of duty at 120.75 per cent ad valorem even if these preparations contain subsidiary pharmaceutical and antiseptic constituents or held out as having subsidiary curative or prophylactic value. However, if the cosmetic and toilet preparations contain alcohol, they will go outside the purview of central excise

and will come under the Medicinal and Toilet Preparation (Excise Duties) Act, 1955.

A manufacturer of talcum powder in which a small quantity of alcohol was reported to have been added, cleared the same on payment of duty under the Medicinal and Toilet Preparations Act, 1955. The product being cosmetic and toilet preparation, the alcohol had no use either as preservative or for therapeutic purpose. Chemical tests of samples established absence of alcohol in certain batches. It was noticed that whenever the central excise duty on cosmetic was reduced, the assessee switched over from state excise to central excise, holding that the product did not contain any alcohol. Since alcohol had no purpose in respect of functioning of the product as cosmetic and toilet preparation and the presence of alcohol in certain batches was not found, the talcum powder manufactured by the assessee would merit classification under heading 33.04 with a duty rate of 120.75 (including SED) per cent ad valorem. The incorrect classification resulted in non levy of duty of Rs.87.38 lakhs on clearances of the product during April 1990 to January 1992. The irregularity was pointed out in audit in June 1992 and March 1993.

The department intimated (January 1994) that during the year 1992-93, samples of 88 batches were drawn for test, and non-presence of alcohol in 22 samples was reported by the Chemical examiner. Regarding earlier period, the department did not give a reply.

As the product attracted duty as high as 120.75 per cent ad valorem (including SED) under the Central Excise Tariff Act, 1985 and the assessee changed the formulation of the product from time to time with the changes of duty rate under Central Excise Tariff Act, 1985, the sample of each batch ought to have been drawn to see the application of duty.

Reply of the Ministry has not been received (December 1994).

**ii) Synthetic resin**

Varnishes classifiable under sub heading 3208.90 were chargeable to duty at 30 per cent ad valorem till 27 February 1993 and at 35 per cent ad valorem thereafter till 28 February 1994. As per note 3 to chapter 32, heading 32.08 includes solutions (other than collodions) consisting of any of the products specified in heading 39.01 to 39.13 in volatile organic solvents when the weight of the solvent exceeds 50 per cent of the weight of the solution. The Tribunal in the case of Tansi Polish Unit Vs. Collector of Central Excise {1993 (67) ELT 173 (T)} held that volatile organic solvent less than 50 per cent of the weight of the solution is classifiable under heading 32.08.

An assessee engaged in manufacture of alkyd resin solution in which the weight of the solvent was less than 50 per cent of the weight of the solution, classified the product under sub heading 3907.50 as alkyd resin and cleared the products on payment of concessional duty as applicable from time to time. On chemical test, the product was found to be synthetic resin, alkyd type dissolved in volatile organic solvent in the form of light brown coloured thick viscose liquid (solid content 66.4 per cent by weight). It gave tack free transparent adherent coating at elevated temperature. The product was, therefore, varnish and despite the weight of the solvent being less than 50 per cent of the weight of the solution, it was classifiable under sub heading 3208.90 attracting duty at 30/35 per cent ad valorem. The incorrect classification of the product resulted in short levy of duty of Rs.21.42 lakhs during the period from August 1991 to October 1993. The irregularity was pointed out in audit in March 1994.

Reply of the Ministry has not been received (December 1994).

**iii) Barrier cream**

As per note 5 to chapter 33, heading 33.04 applies, inter alia, to barrier creams to give protection against skin irritants.

An assessee engaged in manufacture of patent or proprietary medicines (chapter 30) also manufactured barrier cream named as Miradex (consisting of

zinc oxide I.P. 1% w/w, light kaoline I.P. 3% w/w, cream base q.s.), and classified the product under sub heading 3003.10 and paid duty at 15 per cent ad valorem treating it as medicament. As the product contained 96 per cent cream base and only 4 per cent light kaoline and zinc oxide, the product should have been classified under heading 33.04 attracting duty at 105 per cent ad valorem upto 27 February 1993 and at 70 per cent from 28 February 1993 onwards. The short levy involved on the clearances effected from January 1993 to July 1993 worked out to Rs.3.17 lakhs. The irregularity was pointed out in audit in August 1993.

The Ministry of Finance stated (October 1994) that classification of the product under heading 33.04 was being considered and a show cause notice for Rs.2.90 lakhs for the period from January to June 1993 had been issued which was pending adjudication.

### **3.18 Miscellaneous manufactured products**

#### **i) Atactic - polypropylene**

'Polypropylene' in its primary form is classifiable under sub heading 3902.10 and chargeable to duty at 30 per cent ad valorem upto February 1992 and 40 per cent ad valorem thereafter under notifications dated 1 March 1988 and 1 March 1992 respectively.

An assessee engaged in manufacture of various grades of 'polypropylenes' cleared 'Atactic-polypropylene' as waste/wax after classifying it under sub heading 2712.20. The result of chemical test of the product in April 1990 showed that the sample was polypropylene. The incorrect classification resulted in short levy of duty of Rs.51.93 lakhs (figures updated) on clearances during the period from April 1990 to October 1993. The incorrect classification for the period upto October 1992 was pointed out in audit in November 1992.

The department issued show cause-cum demand notice for Rs.18.23 lakhs for the period from November 1992 to October 1993. Details regarding

issue of show cause-cum demand notice for Rs.33.70 lakhs for the period prior to November 1992 have not been furnished (February 1994).

The Ministry of Finance stated (August 1994) that the matter was under examination.

**ii) Carpets of acrylic yarn**

The classification of carpets and other textile floor coverings falling under chapter 57 consisting of a base fabric and a pile or looped surface is to be determined on the basis of textile material in pile or looped surface alone, without taking into account the textile material contained in the base fabric.

An assessee manufacturing floor coverings of acrylic yarn classified the product under subheading 5702.20 as floor coverings of jute on the ground that jute yarns predominated in the product. In the product, the base fabric was composed of cotton yarn (warp) and jute yarn (weft) with raised tuft of multi-coloured acrylic yarn piles. Report of the Chemical Examiner on the sample of the product indicated that the product was a patterned fabric made of jute and cotton yarns with raised tuft of multicoloured acrylic piles gripped with jute yarn and cotton yarns. The percentage of jute, cotton and acrylic being 44.4, 13.4 and 42.2 respectively by weight, it may find use as floor covering and has the characteristic of carpet. The Chemical Examiner's report clearly indicated that the piles were exclusively of acrylic yarns and as such, the subject product was correctly classifiable as floor coverings of acrylic yarn under heading 57.01. The incorrect classification of the product under sub heading 5702.20 resulted in short levy of duty of Rs.76.68 lakhs (since updated) during the period from December 1991 to March 1994. The irregularity was pointed out in audit in December 1992.

On a reference made by the Ministry, the Textile Commissioner in a test report on the subject product, advised that the product was woven carpet manufactured by interlacing three types of yarn viz. pile yarn, warp yarn and weft yarn. Based on the aforesaid report, the department had since issued (March 1994) a show cause-cum demand notice for Rs.30.59 lakhs for the



period from October 1993 to February 1994. Details of the demands raised for the period prior to October 1993 have not been furnished.

Further reply of the Ministry has not been received (December 1994).

**iii) Twines of flax fibre**

Flax yarn, whether or not multiple folded, and twines of flax are covered under sub headings 5301.31 and 5607.90 respectively. Explanatory note 3 under Section XI of the Harmonised System of Nomenclature (HSN) prescribes that yarn of flax, polished or glazed and having a measurement of 1429 decitex or more (i.e. weight of the yarn, 142.9 gm per km of length), shall be treated as twines for the purpose of its classification. Accordingly, yarn measuring 1429 decitex or more is classifiable under chapter 56.

A composite textile mill manufacturing, inter alia, yarn and twine of flax fibre (of wholly imported origin) was allowed to clear a part of the product measuring more than 1429 decitex after polishing and glazing, on payment of duty at the rate as applicable to flax yarn (sub heading 5301.31). Since the product conformed to the definition of twine as per the physical standard set in the HSN, the same merited classification as twine under sub heading 5607.90 with a higher rate of duty at 12 per cent (15 per cent from 28 February 1993) ad valorem. The incorrect classification of the product resulted in short levy of duty of Rs.70.73 lakhs during the period between March 1986 and November 1993. The irregularity was pointed out in audit in March 1992.

The department, while not admitting the objection, contended (November 1992) that explanatory notes of HSN had no legal backing although it might have persuasive value. The department justified classification of the product under chapter 53 on the ground of absence of any note under Section XI, similar to those in the HSN. The department also added that products falling under heading 56.07 were exempt under a notification dated 1 March 1987, if appropriate duty on base single yarns had already been paid.

The contention of the department is not acceptable as:-

- i) the explanatory notes to the HSN may not have legal backing but for the purpose of determining classification of a product, its persuasive value cannot be ignored particularly in cases where Section notes/chapter notes to the Central Excise Tariff Act, 1985, are silent on the issue; and
- ii) the product used for manufacture of multifold twines was also twine as per the definition of the product, and the exemption granted under notification dated 1 March 1987 in respect of twine is not applicable in this case because as per the conditions under it, the input product should be duty paid yarn and not twine as was the case here.

Reply of the Ministry has not been received (December 1994).

**3.19 Other cases :** In 22 other cases of incorrect classification the Ministry/department have accepted the objections involving duty of Rs.253.14 lakhs. Show cause notices demanding duty of Rs.142.41 lakhs have been issued in 12 cases, of which recovery of Rs.15.42 lakhs has so far been effected in one case. Details of these cases are given below:-

Sl. No.	Particulars	Classifications adopted Ch./Hd./SHd.	Correct classification Ch./Hd. Shd.	Amount of duty short levied (Rs. in lakhs)	Period
01.	Ethylene glycol	2905.90	3907.80	5.50	April 1990 to November 1993
02.	Hardner for adhesives	29	35.06	10.73	September 1991 to January 1994
03.	Chromium oxide	3206.10	2819.00	18.10	April 1991 to July 1992
04.	Toilet soap noodles (as other soaps)	3401.10	3401.10 (as TS noodles)	21.29	March 1993 to July 1993
05.	Softners	3402.90	3809.00	5.40	April 1990 to Marh 1991
06.	Typewriter rollers	4009.99	4016.99	6.63	April 1990 to July 1993
07.	Paper laminated with plastic film	4811.30	4811.90	37.34	April 1991 to March 1992
08.	PVC compound	Ch.39	3904.22	3.73	October 1988 to December 1992

**CLASSIFICATION**

**3.19**

Sl. No.	Particulars	Classifications adoptedCh./Hd./SHd.	Correct classification Ch./Hd. Shd.	Amount of duty short levied (Rs. in lakhs)	Period
09.	Border tapes	5306.26	5806.90	5.77	March 1986 to March 1994
10.	HDPE sacks	63.01	3923.90	31.53	October 1992
11.	Cuttings of steel plates (waste)	72.04	Corresponding to the final product	6.51	upto November 1993
12.	Hot rolled sheets (waste)	72.04	Corresponding to the final product	3.04	1989-90 to 1991-92
13.	Parts of material handling equipment	7308.90	84.31	7.29	October 1992 to September 1993
14.	Polyester laminated sheets	76.07	39.20	27.28	May 1992 to March 1993
15.	Parts of conveyor system	84.55	84.31	3.39	July 1992 to August 1992
16.	Transfer trolley	84.55/84.28	86.06	11.47	August 1992 to March 1993
17.	Sintered tungsten carbide flats and rods	84.66	82.09	4.40	August 1988 to July 1990
18.	Titanium	84.79	81.08	14.01	March 1993 to August 1993
19.	Reed valve assembly	85.03/87.14	84.09	12.80	March 1993 to February 1994
20.	Deflection yokes	85.29	85.40	3.42	September 1993 to December 1993
21.	Rear view mirrors	87.08	70.06	11.28	1991-92
22.	Seats for motor vehicles	87.08	94.01	2.23	1991-92 to 1992-93
<b>TOTAL</b>				<b>253.14</b>	

**UNDERVALUATION OF EXCISABLE GOODS**

As per Section 4 of the Central Excises and Salt Act, 1944, where goods are assessable to duty ad valorem, the normal price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal would be the assessable value provided that the price is the sole consideration for sale. Where the price is not the sole consideration, the assessable value of such goods, as per the provisions of rule 5 of the Central Excise (Valuation) Rules, 1975, shall be based on the aggregate of such price and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.

Some of the important cases of undervaluation noticed in audit are mentioned in the following paragraphs:-

**3.20 Price not the sole consideration for sale****i) Interest charges**

The Central Board of Excise and Customs clarified on 13 June 1990 that in the light of the decision of the Bombay High Court in the case of M/s. Britannia Industries Limited {1989 (44) ELT 630}, interest accrued on advance deposits received from customers should be included in the assessable value since the manufacturer would have incurred the said interest had he borrowed or taken loans from banks or other financial institutions and it was, therefore, not necessary to establish separately the nexus between the deposits and the price.

(a) During test check of records it was seen that fourteen assesseees in seven collectorates took advance deposits from their customers, but did not include the amount of interest thereon in the assessable value. Non inclusion of this additional consideration resulted in undervaluation of goods and consequent short levy of duty of Rs.290.35 lakhs during the years between 1986-87 and 1993-94.

On the short levy being pointed out in audit (between September 1987 and March 1994), the department stated that the matter was under examination with the Board and also reported (August, December 1992 and September 1993) issue of show cause-cum demand notices in six cases.

The Ministry of Finance stated (July, August and December 1994) that the Collectors have been advised to keep the matter of inclusion of interest charges in assessable value pending as the same was under examination in the Central Board of Excise and Customs.

(b) A manufacturer collected security deposits of Rs.2087.50 lakhs from dealers during the year 1988-89 and paid interest at the rate of 10 per cent per annum. The said deposits were utilised by the assessee in its investments which earned interest at the rate of 18 per cent per annum. Thus the assessee derived indirect additional consideration of Rs.16.68 lakhs from the dealers at the rate of 8 per cent per annum on the investment of security amount. This was, however, not included in the assessable value of the final product resulting in short levy of duty amounting to Rs.4.38 lakhs.

On the irregularity being pointed out in audit (February 1990), the department reported (September 1993) that demand on this issue had been raised for the period from 1988-89 to 1991-92.

The Ministry of Finance have stated (November 1994) that the issue was being re-examined by the Board.

**ii) Escalation charges**

An assessee engaged in manufacture of structural castings of iron and steel (sub heading 7308.90) had supplied his product to various buyers under agreement which provided a price variation clause in respect of goods manufactured and supplied. During the period between 1982-83 and 1992-93 (October 1992), the assessee received escalation of Rs.519.31 lakhs on which central excise duty of Rs.69.06 lakhs became payable but the assessee actually paid only Rs.48.10 lakhs resulting in short realisation of duty of Rs.20.96 lakhs.

On this being pointed out in audit (December 1992), the department accepted the objection and stated (May 1994) that out of the total amount of Rs.20.96 lakhs, an amount of Rs.16.99 lakhs had since been recovered and the balance amount of Rs.3.97 lakhs would be realised soon.

The Ministry of Finance have confirmed the facts (September 1994).

**iii) Trade discount**

As per Section 4(4)(d)(ii) of the Central Excises and Salt Act, 1944, 'value' in relation to any excisable goods does not include trade discount, provided that such discount is being uniformly allowed to all buyers in the course of wholesale trade. In other words, trade discount is not an admissible deduction from the assessable value, if there is no sale or trading of excisable goods.

An assessee engaged in manufacture of various models of watch cases and straps (chapter 91) cleared the goods on payment of duty to his other unit for further use in manufacture of watches. While determining the assessable value, an abatement of 12 per cent of the value towards trade discount was claimed by the assessee and was approved by the department. Since there was no sale of goods, the trade discount would not be passed on to the customers and hence the abatement allowed from value was not in order. The incorrect abatement resulted in short levy of duty of Rs.10.61 lakhs on the goods of value of Rs.144 lakhs cleared during February 1991 to October 1993.

The Ministry of Finance have accepted the facts and intimated (August 1994) recovery of the entire amount.

**iv) Commission**

The Supreme Court in the case of M/s. Seshasayee Paper and Paper Board Limited {1990 (47) ELT 202}, have held that trade discount allowed to dealers acting as an indenter is in the nature of commission and therefore, not permissible for abatement from price.

Two assessees manufactured and cleared goods (chapters 85 and 90) based on invoice value under rule 173C and paid duty after abatement of 20 per cent shown as trade discount from the price. The goods were sent directly to the customers but invoices were raised on a sole distributor, as per the terms of agreements with them. As mere raising of invoices without transfer of goods does not amount to sale and as the distributor acted only as an agent for procuring orders, the discount abated was nothing but 'commission' for service rendered and did not qualify for deduction as trade discount. This resulted in short levy of duty of Rs.8.98 lakhs for the period from April 1989 to March 1994. This was pointed out in audit in October 1991.

The Ministry of Finance while not admitting the objection stated (November 1994) that as per agreement between the distributor and the assessee, the distributor was the buyer of the goods (since he purchased the goods and paid for the same) and not an agent or indenter, hence transactions between them were on principal to principal basis and within the ambit of Section 4(1)(a).

Reply of the Ministry is not acceptable. In the case of M/s. Sheshasayee Paper and Paper Boards Limited, the Supreme Court have held {1990 (47) ELT 402} that even where the goods are consigned to parties but bills are raised on the dealer (indenter) the trade discount allowed for such transaction is not an abatable item. In the instant case the distributor had acted as an indenter for procuring orders and arranging delivery and the mere fact that invoices were raised on the distributor would not mean that the transactions were on principal to principal basis.

**v) Technical knowhow charges**

According to advice of the Ministry of Law communicated by the Central Board of Excise and Customs in December 1983, if the agreement to sell goods includes payment by the buyer to the assessee towards technical know-how (engineering, design, drawings etc.) then such payments should be taken into consideration for computing assessable value for the purpose of levy of central excise duty.

An assessee engaged in manufacture, *inter alia*, of cigarette packing machinery (heading 84.22) realised Rs.43 lakhs from the customer towards development cost for preparation of drawings, specifications etc., which were not included in the assessable value of goods supplied. This resulted in short levy of duty of Rs.6.45 lakhs during 1991-92.

On the short levy being pointed out in audit (February 1994), the department admitted the objection and stated (July 1994) that action had been initiated for issue of show cause-cum demand notice.

Reply of the Ministry of Finance has not been received (December 1994).

**vi) Supervision charges**

An assessee was engaged in manufacture of exhaust fans and electric motors (all branded goods) for certain big manufacturers (brand name owners) on job work basis. However, the expenses such as (i) supervision charges of the employees of big manufacturers; (ii) testing, inspection charges, promotional expenses and expenses on account of after sales services incurred by the big manufacturers and (iii) delayed payment charges received from the customers on account of "credit sale", were not included in the assessable value while discharging the duty liability. Non inclusion of the same in the assessable value, therefore, resulted in undervaluation of the goods to the extent of Rs.37.28 lakhs and short levy of duty amounting to Rs.6.35 lakhs on clearances made during the period from April 1990 to March 1993.

On this being pointed out in audit (December 1993), the department raised a demand of Rs.0.67 lakh for the period December 1993 to February 1994 and another draft show cause notice for the extended period from April 1990 to November 1993 had been submitted to Collector for approval.

Reply of the Ministry of Finance has not been received (December 1994).



**3.21 Excisable goods not fully valued****i) Profit element not included in assessable value**

As per Section 4 of the Central Excises and Salt Act, 1944, read with rule 6(b) of the Central Excise (Valuation) Rules, 1975, the assessable value of the goods which are not ordinarily sold in the course of wholesale trade or in respect of which the value of comparable goods is also not available, should be determined on the basis of cost of production plus the profit that could have been earned on the sale of such goods.

A subsidiary company engaged in manufacture of chemical products and gum rosin concentrates (chapter 38) as a job worker was amalgamated with the assessee (holding company) with effect from 1 January 1992. While determining the assessable value of the intermediate goods captively consumed in the exempted final products, the assessee reckoned the value of the products after including the profit of the subsidiary company instead of the profit of the holding company in respect of assessments made after amalgamation. Failure to adopt the correct element of profit on the assessable value resulted in undervaluation of goods and consequential short levy of duty amounting to Rs.9.02 lakhs during the period June 1992 to September 1993.

On this being pointed out in audit (October 1993), the department did not accept the objection and contended (March 1994) that the procedure followed prior to 1 January 1992 regarding payment of duty on the value arrived at by adding cost of raw material plus job charges would be applicable even after amalgamation.

The contention of the department is not acceptable. As the subsidiary company had lost its identity with effect from 1 January 1992, the element of profit of the amalgamating company had to be included in order to determine the value of the goods for purposes of assessments.

Reply of the Ministry has not been received (December 1994).

**ii) Shrinkage loss of fabrics**

In the case of M/s. Ujagar Prints Vs. Union of India, the Supreme Court have held that when the textile fabrics are subjected to process like bleaching, dyeing, printing, mercerising etc., by a processor on job charges basis, it amounts to manufacture, and that the value for the purpose of assessment under Section 4 of the Act *ibid* will be intrinsic value of the processed fabrics i.e., value of grey cloth required for obtaining each metre of processed fabric, job expenses and element of profit earned by the job worker/processor {1987 (27) ELT 567; 1988 (38) ELT 535}.

Three assessees in two collectorates engaged in processing textile fabrics were obtaining man made grey fabrics from customers for processing. The processes carried out by the assessees on such grey fabrics included bleaching, dyeing, printing, etc. In the course of these processes, there was some loss of grey fabric due to shrinkage. Thus, for obtaining one metre of processed fabric, the quantity of grey fabrics required was more than one metre. However, the assessable value per metre of processed fabric was determined taking into account the cost of only one metre of grey fabric. The undervaluation of processed fabrics, due to non inclusion of the value of grey fabrics lost in shrinkage, resulted in short levy of duty aggregating to Rs.23.27 lakhs during the period between April 1990 and September 1992. The audit objections were raised in August 1991 and November 1992.

The Ministry of Finance, while confirming the facts in two cases, stated (August and October 1994) that recovery of Rs.3.96 lakhs had been effected in one case and show cause notices were under issue in the second case. Reply to the third case had not been received (December 1994).

**iii) Value of raw material taken at lower rate**

An assessee engaged in manufacture, *inter alia*, of stampings (heading 83.12) undertook manufacture of the said product on job work basis on behalf of another manufacturer who supplied raw material (punched silicon steel strips) on payment of duty which was taken as credit under the Modvat

scheme. The assessee cleared the product to the principal manufacturer on payment of duty on a value determined with reference to cost of raw material and conversion charges. It was noticed in audit (December 1993) that while the principal manufacturer had paid duty on the raw material on a value of Rs.18 per kilogram (on an average), the assessee adopted only of Rs.14.50 per kilogram (on an average) as the value while determining the finished cost of the stampings. This resulted in undervaluation of the stampings by Rs.10.50 per kilogram and consequent short levy of duty of Rs.5.99 lakhs on 275.6 tonnes of such stamping cleared during the period from December 1992 to November 1993. The objection was raised in December 1993.

The Ministry of Finance have confirmed the objection (October 1994).

### **3.22 Irregularities in valuation of goods on cost basis**

The Central Board of Excise and Customs issued instructions in December 1980 that the data for determining the value on cost basis should be based on cost data relating to the period of manufacture and if such data are not available at the time of assessment, duty should be levied provisionally and finalised when data for the relevant period becomes available. The cost value should hold good only for one year and only if there is no major fluctuation in the price of raw materials or margin of profit.

#### **i) Non revision of price lists**

(a) An assessee engaged in manufacture of motor vehicles and parts and accessories of motor vehicles falling under chapter 87 of the Schedule to the Central Excise Tariff Act, 1985, cleared the goods to his other unit situated elsewhere on the basis of price declared in Part VI(b). It was seen in audit that the price list filed in Part VI(b) was not revised for 1990-91 (effective from 1 April 1990) even though the annual report for the year ending 31 March 1990 was finalised in February 1991. The goods were cleared adopting the price declared in Part VI(b) on 26 September 1989, which was effective from 1 January 1989.

On this being pointed out in audit (May 1991), the department stated (October 1993) that differential duty payable for the period April 1990 to March 1991 worked out to Rs.1.47 crores and the same had been debited by the assessee in his PLA in May 1993.

The Ministry of Finance have confirmed the facts.

(b) An assessee engaged in manufacture of I.C. engines and parts thereof falling under heading 84.07 and 84.08 respectively of the Schedule to the Central Excise Tariff Act, 1985, cleared most of the goods to his own unit situated elsewhere on payment of duty under claim of rebate by filing price list in Part VI(b) on the basis of cost data. These prices were approved provisionally by the proper officer under rule 9B of the Central Excise Rules, 1944. It was seen in audit in August 1992 that these prices were revised last on 5 September 1989 and thereafter there was no revision of prices even though there was increase in the cost of raw materials. Considering a moderate increase of 10 per cent per year in the prices due to increase in cost of the inputs and the overhead etc., the total underassessment on the clearance of 16548 IC engines during the year April 1991 to March 1992 worked out to Rs.10.45 crores involving short levy of duty of Rs.1.14 crores. The objection was raised in August 1992.

The department stated (November 1993) that the assessee had revised the cost structure upwards and filed revised price lists and paid differential duty of Rs.3.26 crores for the period from April 1991 to October 1992.

The Ministry of Finance have confirmed the facts.

(c) An assessee engaged in manufacture of parts of motor vehicles falling under heading 87.08 of the Schedule to the Central Excise Tariff Act, 1985, cleared them to other units on stock transfer basis under Part VII price lists. Though the assessee received debit notes periodically for price increases, prices prevailing in March 1991 were continued to be adopted for assessment purposes. This resulted in short levy of duty of Rs.26.09 lakhs on the

clearances of test checked components cleared from April 1991 to March 1992 and from June to August 1992.

On this being pointed out in audit (March 1993) the department accepted the objection and intimated (September 1993) recovery of Rs.31.88 lakhs out of total demand of Rs.58.25 lakhs issued (July 1993) for the period January 1992 to January 1993.

The Ministry of Finance have confirmed the facts.

(d) Four assesseees in four collectorates engaged in manufacture of different excisable goods manufactured and captively consumed the said goods. It was noticed in audit that the cost data for the relevant year were available but assessments were not revised/finalised as per the relevant data resulting in short levy of duty of Rs.50.55 lakhs relating to the clearances for the different periods between April 1989 and March 1993. The omissions were pointed out to the department in April and August 1992 and February and May 1993.

The Ministry of Finance have admitted the objections in all cases and intimated (September to December 1994) recovery of Rs.97.42 lakhs and issue of show cause notice for Rs.11.34 lakhs for different spells of clearances including the short levy pointed out by Audit.

**ii) Price list revised downward based on incorrect figures**

A manufacturer of glass bottles (heading 70.07), inter alia, manufactured beer bottles for use in their sister unit. Duty on the value arrived at on cost construction basis (Rule 6(b)(ii) of the Central Excise (Valuation) Rules, 1975), was paid initially (November 1990) but value under rule 6(b)(i) of the rules, *ibid*, - (comparable price) which was slightly more than the earlier price, was adopted subsequently. The value based on comparable price was, however, revised downwards (March 1991) on the ground that the stock of such bottles as on that date was substandard and the same value was adopted for clearances to the sister unit also from that date. A scrutiny of the relevant records, however, revealed that while the entire substandard bottles were

cleared only to the dealers under Part I price, the clearances to the sister unit were from the stock of bottles manufactured subsequently. Thus adoption of the reduced value under rule 6(b)(i) was not in order, as the goods were not comparable. The incorrect adoption of value resulted in short levy of duty of Rs.71.75 lakhs on clearances from March 1991 to August 1992. This was pointed out in audit in March 1994.

The department did not furnish a reply; the Ministry of Finance stated (October 1994) that the matter was under examination.

**iii) Price list revised but duty paid at lower rate**

An assessee engaged in manufacture of motor vehicle parts entered into contract with a customer for supply of the products at an agreed price. The customer also agreed to enhance the price of the products effective from 1 April 1992, 1 July 1992, 1 October 1992 and 1 January 1993. Accordingly the assessee filed price list in Part II on 18 March 1993. However, differential duty at enhanced rate was not paid till the date of audit (May 1993). This resulted in short levy of duty amounting to Rs.8.24 lakhs for clearances made during the year 1992-93.

On this being pointed out in audit (June 1993), the department stated (December 1993) that total short payment of duty for the period 1992-93 worked out to Rs.20.74 lakhs and the same had been recovered in October 1993.

The Ministry of Finance have admitted the objection.

**3.23 Undervaluation of goods sold to the same class of buyers**

**i) Sale through regional depots**

According to proviso (1) under Section 4(1)(a) of Central Excises and Salt Act, 1944, if the assessee sells the excisable goods at different prices to different class of buyers (not being related persons) each such price shall be

deemed to be the normal price of such goods in relation to each such class of buyers.

The Central Board of Excise and Customs in their letter dated 25 January 1990 clarified that dealers/bulk consumers/distributors of different regions could not be considered as different class of buyers simply because they were located at different regions.

(a) An assessee manufacturing glass and glass wares (chapter 70) declared different price lists in Part I for different regions. In all price lists excepting the price lists declared for sales of its products at the factory gate and in the State of West Bengal, the assessee claimed trade discounts to arrive at the assessable value and discharged duty accordingly. The department approved (7 March 1992) all price lists declared by the assessee. However, in such cases the duty was required to be paid on the price at which the goods were normally sold at the factory gate to buyers, covered under Part I price list. This not being done, there was undervaluation of goods and consequential short levy of duty to the extent of Rs.23.30 lakhs for the period from April 1990 to March 1994. Objection was raised in July 1992.

The department did not admit the objection and stated (December 1992) that the assessee declared different wholesale prices for different regions of the country to suit its sale activity and different assessable value were arrived at by allowing trade discount at different rates for different regions as per normal trade practice.

(b) Another assessee manufacturing formaldehyde, hexamine and pentaerythritol falling under chapters 29 and 38 cleared the goods for sale on payment of duty at the factory gate and for sale through different regional sales depots. The price for sale at the factory gate was more than the price declared for sale through regional sales depots. Since the ex-factory wholesale price was available the assessable value of the goods should have been computed on the basis of ex-factory price in the case of sales through various depots in terms of Board's order of 25 January 1990. Non-determination of assessable value at

the ex-factory price resulted in short levy of duty of Rs.20.88 lakhs on the clearances made during the period from April 1991 to September 1992. Objection was raised in April 1993.

The department did not admit the objection and contended (May 1994) that in view of the facility of payment of duty on the basis of invoice value allowed by the Collector under rule 173C(11), there was no undervaluation.

The contention of the department in the above cases is not acceptable because:-

- i) the invoice value ought to represent the value as determined under Section 4 of the Central Excises and Salt Act, 1944, which was actually not;
- ii) there was sale of goods at the factory gate in the course of wholesale trade and as per provisions of section 4 of the Central Excises and Salt Act, 1944, the normal price at which such sales were effected would be the assessable value;
- iii) as per Board's clarification dated 25 January 1990 the ex-factory wholesale price being available, the sale through regional sales depots are to be assessed at normal price of the goods sold at factory gate; and
- iv) in a similar case pointed out by Audit, the Ministry had agreed that the price list for sale of goods at the factory gate should be taken into consideration for levy of excise duty instead of the different prices declared in different regions.

Replies of the Ministry have not been received (December 1994).

**ii) Sale to preferred buyer**

An assessee engaged in manufacture of goods falling under chapter 28 (organic chemicals) of the Schedule to the Central Excise Tariff Act, 1985, filed two price lists declaring two different prices, one for general sale and the



other for sale to a particular consignee, for removal at the same time in respect of two of their products, viz., sodium tripolyphosphate (STPP) and tetrasodium pyrophosphate (TSPP). It was seen in audit that while the rate for general sale of STPP was Rs.23,300 per tonne from 2 September to 17 December 1991, the rate for the particular consignee was Rs.21,300 per tonne during that period. Similarly, the prices charged for TSPP from general buyers were Rs.23,000 and Rs.25,000 per tonne during the period from 27 June to 8 July 1991 and from 2 September to 17 December 1991 as against Rs.20,500 and Rs.23,000 respectively from the particular consignee. Adoption of two different prices for the same product during the same period resulted in short levy of duty of Rs.8.02 lakhs during the period between 27 June and 17 December 1991. The assessee had been charging uniform prices for these products from 18 December 1991.

The objection was raised in April 1993. Department's reply has not been received. Subsequent verification (July 1994), however, revealed that two show cause-cum demand notices demanding duty of Rs.8.22 lakhs were under issue.

Reply of the Ministry has not been received (December 1994).

### **3.24 Valuation of goods manufactured at site**

The Supreme Court in the case of M/s. Narne Tulaman Manufacturer (P) Limited {1988 (38) ELT 566} held that assembly of various components at site, bringing out a different product amounted to manufacture.

An assessee manufactured boiler auxiliaries (heading 84.04), against contracts for manufacture and erection of boilers. The auxiliaries were sent to site and the work of fabrication, erection etc. executed through sub contractors. The contract included cost of components, charges for fabrication, erection and commissioning. The activity of fabrication and erection of boilers at site brought into existence, a distinctly identifiable new product, classifiable under heading 84.02, which attracted duty at 15 per cent ad valorem. The duty due on boilers fabricated and erected through

contractors during 1988-89 and 1990-91 was Rs.46.81 lakhs (approximately). As a sum of Rs.12.70 lakhs was already paid, the differential duty of Rs.34.11 lakhs was recoverable.

On this being pointed out in audit (July 1991), the department contended (November 1992 and March 1993) that the term 'goods' was not defined in the Act, and the goods fixed to the earth could not be considered as dutiable. The site at which fabrication and commissioning were carried out was not under the jurisdiction of the collectorate for demanding duty.

The contention of the department is not acceptable, as the boiler could not be delivered in a ready to use condition at factory gate and a new product came into existence only after its assembly at site which is liable to duty as held by the Supreme Court in the aforesaid case. Further, Tariff itself recognises Nuclear reactor, central heavy boilers, steam turbines, lifts, escalators, conveyors etc. as excisable goods falling under chapter 84:

Reply of the Ministry has not been received (December 1994).

### **3.25 Undervaluation of goods manufactured on behalf of others**

An assessee engaged in manufacture of 'Reflectors and light fittings' (Tariff heading 94.05) as per an agreement with another company (hereinafter referred to as 'buyer company') manufactured and supplied products under the brand name 'X' to that company. The examination of the purchase order and the excisable records revealed that:

- i) the buyer company is licensed user in India of the brand name 'X';
- ii) the assessee company was authorised by the buyer company during the period of agreement, to affix the brand name on the said goods on behalf of the buyer company;
- iii) the assessee manufactured the said goods in accordance with the detailed instructions and specifications given by the buyer company;

- iv) the entire production under the brand name 'X' was cleared to the buyer company on the value agreed upon between the two;
- v) the assessee company had no right to sell these products directly to any other company/customer.

All these conditions established that the assessee was not an independent manufacturer in real terms but an on-account manufacturer (job worker) manufacturing branded goods on behalf of the buyer company.

Since the buyer company was also manufacturing similar goods, the price charged by the buyer company for its own product in wholesale was required to be taken as the assessable value but this was not done. Incorrect adoption of lower assessable value resulted in avoidance of duty of Rs.15.67 lakhs for the clearances during the period from April 1991 to March 1993.

On the omission being pointed out in audit (August 1993), the department while not admitting the audit objection contended (February 1994) that in view of the Supreme Court's decision in appeal by the department in case of Collector of Central Excise Vs. M/s. Bhangur Industries {ELT (Vol.54) dated 1 July 1991 Page A 25}, the valuation of the goods was correct.

The department's reply is not acceptable as judgement of Supreme Court in the above case is not relevant since in that case the brand name owner did not manufacture similar goods on their own account but got their product manufactured by other manufacturer. The Supreme Court has held in the case of M/s. Sidhosons and ANR Vs. UOI {1986 (26) ELT 881 (SC)} that where a manufacturer produced and sold goods under his own brand name or under a brand name for which he acquired a right to use, the same price fetched by sales effected by him under such brand name in the wholesale, would be the assessable value.

Reply of the Ministry has not been received (December 1994).

### **3.26 Undervaluation of output goods to the extent of duty element on input goods**

Where excisable goods are wholly consumed within the factory of production, the assessable value under Section 4(1)(b) of the Central Excises and Salt Act, 1944, read with rule 6(b) of the Central Excise (Valuation) Rules, 1975, is to be determined on the basis of the value of the comparable goods or cost of production if the value of comparable goods is not ascertainable. The Attorney General of India opined on 3 October 1985 that raw material/component parts continued to retain their duty paid character even after duty paid thereon was taken as credit in the proforma account. However, in a contrary opinion dated 19 April 1991, the Attorney General held that the element of excise duty paid on inputs might not be included while determining the assessable value of goods consumed captively so that the consumer was not burdened in the matter of finished goods coming in the market. However, the Supreme Court in the case of *M/s. Kirloskar Brothers Limited Vs. Union of India* {1992 (59) ELT 3 (SC)} while discussing the validity of Section 4(4)(d)(ii) have held that abatement for excise duty is allowable only for the duty payable on the goods to be assessed and not for the duty already paid on raw materials/components.

An assessee engaged in manufacture of stainless steel cold-rolled strips falling under sub heading 7220.20 with a chargeable duty of 10 per cent ad valorem, on job work basis initially manufactured stainless steel hot rolled strip out of stainless steel square/bars and took Modvat credit of duty paid on such square/bars and utilised such credit towards payment of duty on finished goods. In computing the assessable value of the finished product on cost basis, the assessee included the cost of raw material and conversion charges but did not include the element of duty paid on raw materials. Non-inclusion of element of excise duty paid on inputs in the cost data, led to undervaluation of finished goods. Consequently, duty of Rs.4.73 lakhs was short levied on the clearance made during the period from April to July 1992.

On the irregularity being pointed out in audit (October 1993) the department did not accept the objection and stated (June 1994) that as per Appellate Collector's order dated 17 August 1993 in the case of M/s. Standard Batteries Limited {1994 (69) ELT 620 (Col Appl.)} the element of duty paid on input goods on which Modvat credit was taken was not to be included in the assessable value. The department added that as an abundant precautionary measure, a draft show cause-cum demand notice for Rs.15.37 lakhs for the period from March 1992 to March 1993 was being processed for issuance.

The contention of the department is not acceptable in view of Supreme Court's judgement supra.

Reply of the Ministry has not been received (December 1994).

### 3.27 Undervaluation of goods consumed captively

The Tribunal in the case of M/s. Orient Paper Mills {1987 (27) ELT 272 (T)} held (August 1986) that if two normal prices are available and of which one is applicable to industrial consumer, then the same price has to be adopted in respect of goods consumed captively by the assessee for his own industrial use also.

An industrial company engaged in manufacture of glass bottles cleared certain variety of glass bottles (375 ml. size) to its sister unit (a brewery unit) for captive consumption. Duty was paid on price fixed at Re.0.98 per bottle (with adjustment of Re.0.13 per bottle) determined under rule 6(b)(i) of Central Excise (Valuation) Rules, 1975, based on the value (as per price list in part I) approved for wholesale buyers (which was Rs.1.11 per bottle packed in carton boxes). It was observed in audit that similar bottles of 375 ml size duly packed in carton boxes were cleared to an industrial unit on an approved price of Rs.1.40 per bottle (as per price list in part II). But the assessee adopted the lower price of Re.0.98 per bottle instead of Rs.1.27 per bottle (Rs.1.40 less Re.0.13) for levy of excise duty. This resulted in short levy of duty of Rs.6.73 lakhs on clearance of glass bottles to the sister unit for captive consumption during the period from July 1992 to March 1994 (since updated).

On the irregularity for the period of two months (July and August 1992) being pointed out in audit (September 1992), the department contended (December 1992/November 1993) that as long as there were clearances based on approved wholesale price, recourse can not be taken to prices relating to industrial consumers and that price adopted for smaller industrial consumers can not be adopted for bulk consumers, as held by the Tribunal in the case of Rayon Corporation Limited {1984 (15) ELT 201}.

The reply of the department is not acceptable as the clearances to the brewery unit (sister unit) amounted to clearances to industrial consumers and value for industrial consumers is the comparable value and adoption of the value for wholesale dealers was not correct.

The Ministry of Finance have stated (October 1994) that the matter is under examination.

**3.28 Other cases:** In nineteen other cases, undervaluation of goods resulted in short levy of duty of Rs.149.05 lakhs, of which Rs.58.01 lakhs was recovered in six cases. The details are given below:-

Sl. No.	Particulars	(in lakhs of rupees)		
		Amount accepted	Amount demanded	Amount recovered
01.	Aluminium	4.54	11.48	11.48
02.	Hydroturbines	10.12		
03.	Aluminium	12.96	20.80	
04.	Automobile parts	6.99		
05.	Motor vehicles	37.77	11.44	11.44
06.	Bulkdrugs	3.65		
07.	Motor vehicle parts	9.00	9.00	9.00
08.	Asbestos products	2.11	8.91	
09.	Formaldehyde latex	3.81		
10.	Micro earth stations	8.87	8.87	8.87
11.	Terminal bushings	3.14		
12.	Bulkdrugs	9.77	9.77	
13.	Bus duct	6.42		
14.	Machinery	2.90	9.69	9.69
15.	Head lamps	6.73	7.53	7.53
16.	Engineering products	2.46	2.46	
17.	Electrical goods	2.76	10.25	
18.	Circuit board	5.79		
19.	Dry yeast	9.26		
TOTAL		149.05	110.20	58.01

**NON LEVY/SHORT LEVY OF DUTY DUE TO INCORRECT GRANT  
OF EXEMPTION**

**3.29 Plastics and articles thereof**

**i) Polyethylene laminated films**

Under a notification issued on 1 March 1988, as amended, films (other than of regenerated cellulose) classifiable under heading 39.20 are chargeable to concessional rate of duty if produced out of goods falling under headings 39.01 to 39.15 and no credit of such duty is availed of under rule 57A of Central Excise Rules, 1944.

Six assessees in four collectorates engaged in manufacture of 'polyethylene laminated films' (sub heading 3920.38) were allowed to clear the products on payment of duty at the concessional rate although the films were not manufactured out of goods falling under headings 39.01 to 39.15. The incorrect levy of duty at concessional rate resulted in short levy of duty of Rs.44.22 lakhs on the clearances made during the different periods from August 1989 to March 1994. The irregularity was pointed out in audit between October 1991 and March 1994.

The Ministry of Finance stated (October 1994) that the goods in question though manufactured from the laminated plastic sheets, did not cease to be articles manufactured from plastic material falling under headings 39.01 to 39.15. The material had been first converted into film and film had been subsequently converted into pouches in independent manufacturing process. The Ministry added that the condition of the notification which led to dispute had since been removed by issue of a notification dated 1 March 1994.

Ministry's contention is not acceptable as the notification dated 1 March 1988 was not applicable to those films which were manufactured from goods falling under the same heading 39.20. This view also gets support from the Supreme Court judgement in a similar case of M/s. Mahindra Engineering and

Chemical Products Limited Vs. Union of India and others {1992 (40) ECR I SC}.

**ii) Powder coating paint**

Under a notification issued on 1 March 1986, as amended, 'polyester resins' falling under sub heading 3907.99 and moulding powders of such resins are chargeable to concessional rate of duty of 15 per cent ad valorem upto 27 February 1993 and at 20 per cent ad valorem thereafter. If powder is made of two resins viz., polyester and epoxide with other ingredients like filler, pigments etc., concessional rate is not admissible, as the product is not a moulding powder of polyester resins alone.

An assessee manufacturing a product called 'powder coating paint' cleared the same from May 1991 classifying it under sub heading 3907.99 on payment of concessional rate of duty at 15 per cent ad valorem till 27 February 1993 and thereafter at 20 per cent ad valorem under the aforesaid notification dated 1 March 1986 treating the product as a moulding powder of polyester resin although it was made out of two resins (polyester and epoxide) and duty was payable at 40 per cent ad valorem upto 27 February 1993 and thereafter at 35 per cent ad valorem. Incorrect application of exemption notification thus resulted in short levy of duty of Rs.35.94 lakhs on the clearances made during May 1991 to January 1994. Audit objection was raised in November 1991.

The Ministry of Finance have confirmed the facts (August 1994).

**3.30 Iron and steel products**

**i) Bottom plates**

As per a notification issued on 13 May 1988, as amended, 'bottom plates' falling under heading 73.26 are fully exempt if used within the factory of production in the manufacture of steel ingots and melted during or after such use in the said factory. The goods, however, attract duty at 15 per cent ad valorem if the above condition is not fulfilled.



An integrated steel plant manufactured 'bottom plates' (heading 73.26) and cleared a part of the product without payment of duty for sale outside. As the bottom plates were not used within the factory duty at 15 per cent ad valorem was leviable. The duty not levied on this account amounted to Rs.73.48 lakhs during 1991-92. Short levy for the period 1993-94 could not be calculated for want of details. There were no such clearances during 1992-93.

On the non levy being pointed out in audit (March 1993), the department stated (June 1993) that a demand for Rs.3.12 lakhs covering clearances of 602 tonne during the month of March 1992 has been raised. The department added that the amount of non levy for the remaining period was being ascertained.

Reply of the Ministry has not been received (December 1994).

**ii) Metal containers**

As per a notification dated 1 August 1983 and subsequent notifications dated 1 March 1988 and 20 May 1988, specified final products falling under chapters 72 and 73 or heading 84.54, if made from specified inputs falling under chapter 72 or 73 on which duty of excise or additional duty of customs, as the case may be, has already been paid, are exempt from whole of the duty of excise leviable thereon provided no credit of duty paid on the inputs has been taken under rule 56A or 57A.

An assessee engaged in manufacture of metal containers (heading 73.10), also manufactured for their captive use varnished/lacquered sheets (sub heading 7210.30) from various inputs on which credits under rule 57A had been taken. The assessee also cleared some of its consignments at nil rate of duty under notification dated 13 May 1988 by following the Chapter X procedure. This was irregular since varnished/lacquered sheets which were manufactured from duty paid inputs were also captively consumed without payment of duty for manufacture of exempted metal containers. Grant of irregular exemption thus resulted in non levy of duty amounting to Rs.10.48

lakhs during the period from August 1986 to March 1991. Audit objection was raised in June 1990 and September 1991.

The Ministry of Finance stated (October 1994) that the assessee had reversed the entire credit involved.

### **3.31 Battery cells**

Primary batteries under heading 85.06 are eligible for concessional rate of duty at 30 per cent ad valorem in terms of notification dated 20 March 1990. Primary cells, though classified under the same heading are not covered by this notification.

An assessee engaged in manufacture of primary cells and primary batteries under heading 85.06 cleared the goods on payment of duty at 30 per cent ad valorem. Since exemption notification covered batteries only, the application of concessional rate of duty to cells was irregular. This resulted in short levy of duty of Rs.57.73 lakhs on clearances of primary cells during the period from 20 March 1990 to 31 August 1991. The irregularity was pointed out in audit in June 1991.

The Ministry of Finance have admitted the objection (October 1994).

### **3.32 Petroleum products - raw naphtha**

As per a notification dated 1 March 1984 as amended, the effective rate of duty for clearance of raw naphtha was Rs.5 per KL at 15°C, if the same was used in the manufacture of fertiliser and ammonia, provided that if such ammonia is used elsewhere in the manufacture of fertiliser, the procedure set out under Chapter X has to be followed. Otherwise, duty at normal rate of Rs.2750 per KL at 15°C as basic excise duty plus 5 per cent ad valorem of basic excise duty as special excise duty would be chargeable.

An assessee had been receiving raw naphtha under Chapter X procedure from another assessee for use in manufacture of ammonia and fertiliser under the aforesaid notification. The assessee received and used 107

KL raw naphtha at 15°C in manufacture of ammonia which was used in the cracking section for maintenance of manufacturing apparatus, instead of using the same in manufacture of fertiliser. This resulted in avoidance of duty amounting to Rs.3.08 lakhs during the period from March to August 1991. The omission was pointed out in audit in September 1991.

The Ministry of Finance stated (October 1994) that Collector issued show cause-cum demand notice in November 1991 and confirmed the demand of Rs.11.30 crores covering the period from August 1986 to June 1991 and a penalty of Rs.50 lakhs was also imposed in September 1992. Assessee has gone in appeal in CEGAT against the order. Further developments are awaited (December 1994).

### 3.33 Blankets and towels

As per a notification issued on 1 March 1987 as amended, blankets and towels falling under heading 63.01 can be cleared at nil rate of duty provided appropriate duty of excise leviable on fabrics falling under chapters 51 to 56 or 58, which correspond to these articles, has already been paid.

An assessee manufacturing blankets out of unprocessed cotton fabric cleared these blankets without payment of duty under the aforesaid notification dated 1 March 1987, as amended. Since the raw material unprocessed cotton fabric used in manufacture of blankets was not duty paid, the availment of exemption under the notification *ibid* was incorrect. This resulted in short levy of duty amounting to Rs.19.90 lakhs on clearances of blankets during the years 1990-91 and 1991-92. The objection was raised in November 1992.

The Ministry of Finance have admitted the objection (October 1994).

### 3.34 Sugar

As per two notifications both dated 27 April 1983, as amended, the additional quantity of sugar (sub heading 1701.39) manufactured and cleared under Sugar Incentive Scheme by a new sugar factory or any expansion project of sugar factory, was liable to basic excise duty and additional excise duty at

the concessional rates of Rs.17 and Rs.21 per quintal against the effective rates of Rs.34 and Rs.37 per quintal respectively. A "new sugar factory" or "expansion project sugar factory" means a sugar factory to which a letter of indent or industrial licence was issued between 1 October 1980 and 30 September 1985 by the Ministry of Industries for setting up a new sugar factory and certified as such by the Chief Director, Directorate of Sugar, Department of Food, Government of India.

A sugar factory to which letter of indent, was issued on 20 April 1988 and licence granted on 12 March 1991 cleared 48028 quintals of sugar during the period March 1992 to February 1993 at concessional rate(s) of duty under the aforesaid notifications, which was not admissible to the said factory. This resulted in short levy of duty of Rs.15.85 lakhs.

On this being pointed out in audit (January 1993), the department stated (February 1994) that the assessee had since debited the amount of Rs.15.85 lakhs in his personal ledger account (January 1994).

The Ministry of Finance have confirmed the facts (August 1994).

### **3.35 Dicalcium phosphate**

As per a notification issued on 6 November 1986, 'dicalcium phosphate' conforming to I.S. specification No.5470-1969, falling within chapter 28 or 31 is fully exempt from duty of excise leviable thereon, if the same is intended for use as an ingredient in the manufacture of animal feed supplements.

An assessee manufacturing dicalcium phosphate (heading 28.35) was allowed to clear the product from the factory under full exemption from duty to various traders/manufacturers for its intended use as provided in the said notification, without carrying out any chemical test of the product evidencing its conformity to I.S. specification No.5470-1969. The grant of exemption, therefore, was incorrect and resulted in non levy of duty amounting to Rs.10.19 lakhs on clearances made during August 1989 to January 1993.

On this being pointed out in audit (July 1991), the department intimated (January 1992/September 1993) that their field officers had verified that all buyers of the product had since produced the requisite certificates in evidence of its end use as animal feed. However, as per chemical examiner's test report dated 27 August 1993, the product dicalcium phosphate manufactured by the assessee did not conform to I.S. specification No.5470-1969. The department added (February 1994) that, in the light of the chemical examiner's test report an offence case had been booked against the party and that, from the year 1993-94, the party had started paying duty at 15 per cent ad valorem under protest.

Reply of the Ministry has not been received (December 1994).

### **3.36 Other manufactured products**

#### **i) Parts of seats**

'Seats, whether or not convertible into beds, and parts thereof' are classifiable under heading 94.01 and assessable to duty at 25 per cent ad valorem. Under a notification dated 20 March 1990, 'Non wooden furniture' falling under heading 94.01 are, however, chargeable to duty at a concessional rate of 20 per cent ad valorem. Parts of such non-wooden furniture being not specifically covered by the notification *ibid*, shall be chargeable to duty at the tariff rate of 25 per cent ad valorem.

An assessee manufactured 'chair seats, made of plastic (heading 94.01) and cleared the goods on payment of duty at the concessional rate of 20 per cent ad valorem under the notification *ibid*. However, the goods were identifiable as parts of chair designed for mounting on a base structure, and would become complete items of furniture (i.e., chair) only with such base fittings. Hence the exemption otherwise admissible to items of non wooden furniture was not available to such plastic chair seats which were parts of chair. Incorrect grant of exemption, therefore, resulted in short levy of duty of Rs.8.74 lakhs on the clearances made during the period from April 1990 to August 1992. The irregularity was pointed out in audit in September 1992.

The Ministry of Finance, while admitting the objection stated (January and July 1994) that demands for Rs.13.48 lakhs for the period from April 1990 to May 1993 had been issued.

**ii) Unvarnished fibre glass tapes**

As per a notification issued on 10 February 1986, 'glass fabrics, unvarnished/uncoated etc.,' falling under heading 70.14 were exempt from payment of whole of the duty of excise leviable thereon. Goods other than glass fabrics, unvarnished/uncoated etc. and falling under the same heading are, however, chargeable to duty at 20 per cent ad valorem under the same notification.

'Unvarnished fibre glass tape' is a product which is distinctly different from 'glass fabrics' in the common trade parlance. Hence, 'glass tapes', being not expressly covered as per wordings of the notification, are not eligible for that exemption granted to glass fabrics.

An assessee manufacturing 'unvarnished fibre glass tapes (woven)' falling under heading 70.14 was granted full exemption as per the notification dated 10 February 1986 which was not admissible. The incorrect grant of exemption thus resulted in short levy of duty of Rs.7.85 lakhs between April 1990 and February 1992.

On the irregularity being pointed out in audit (June 1993), the department did not admit the objection and contended (June 1993) that 'fibre glass tapes' would be classifiable as fabrics if they were wholly made of glass and would be entitled to exemption available to fabrics under a notification dated 16 March 1976. The department added that the dispute was considered in their adjudication order in appeal dated 23 March 1982 wherein glass tapes, glass sleeveings and glass cords were found to be the same as glass fabrics.

The contention of the department is not acceptable on the following grounds:-

- i) fabrics and tapes of 'glass fibres' have distinctly different trade identity;

- ii) in the case of M/s. Unitec Indus Vs. Collector of Central Excise {1994 (70) ELT 141} Tribunal has held that fabrics and tapes are treated differently for the purpose of classification;
- iii) explanatory notes III(4) under heading 70.19 of the HSN is indicative of separate entity of the two products, 'glass fabrics' and 'glass tapes';  
and
- iv) the point of dispute in the instant case deals with grant of exemption to a particular product as per terms and expressions used in the notification and not with matters of classification.

Reply of the Ministry has not been received (December 1994).

### 3.37 Goods captively consumed

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

As per a notification issued on 2 April 1986, specified inputs manufactured in a factory and used within the factory of production in the manufacture of specified final products are exempted from duty provided the final products are not exempted from duty or are not chargeable to 'nil' rate of duty. Under another notification issued on 25 March 1986, the said benefit has been extended to the same specified inputs got manufactured from outside on job work basis and used in the manufacture of specified final products on which duty is leviable in whole or in part. The specified inputs would, therefore, be assessable to duty if such inputs are used in the manufacture of specified final

products which are either exempted from duty or are chargeable to 'nil' rate of duty.

Some of the cases of irregular grant of exemption noticed in audit are given below:-

**i) Prefoam granules of polystyrene for moulded thermocol articles**

An assessee manufactured thermocol articles such as packaging item and pipe section of expanded polystyrene falling under sub heading 3923.90 and heading 39.26 respectively and cleared them at 'nil' rate of duty under a notification issued on 1 March 1992. The assessee also manufactured prefoam granules as intermediate product and captively consumed the same in manufacture of moulded thermocol articles. Polystyrene granules falling under sub heading 3903.10 were first pre expanded in a machine called 'prefoamer'. The prefoamed granules, termed as expanded polystyrene granules were then used in manufacture of moulded articles or thermocol articles or blocks. The prefoam granule is nothing but another primary form obtained from conversion of one primary form. The assessee did not pay appropriate central excise duty on such goods used captively in the exempted final product during the years 1989-90 to 1991-92. However, from January 1990 onwards the assessee expunged Modvat credit taken on raw material viz. polystyrene granules used in manufacture of exempted final product. Such expunging of Modvat credit would not compensate the duty payable on intermediate product viz. expanded polystyrene granules (prefoam granules) captively consumed during manufacture of the exempted final products. The short levy of duty on such clearances during the period April 1989 to March 1992 after considering the Modvat credit reversed (Rs.5.56 lakhs) worked out to approximately Rs.208.26 lakhs.

On the objection being pointed out in audit (March 1994), the department did not admit the objection and contended (May 1994) that provisions of note 6(b) under chapter 39 would apply to conversion of goods in primary form of the nature mentioned in note 6(a)(i) to those mentioned in note



6(a)(ii) and vice versa and not from one primary form of the nature referred to note 6(a)(ii) to another of the same nature.

The reply is not acceptable. Provisions of note 6(a) and 6(b) of chapter 39 are mutually exclusive. Besides, note 6(b) stipulates, without any qualification, that primary form obtained from conversion of another primary form shall amount to manufacture.

Reply of the Ministry has not been received (December 1994).

**ii) Parts of batteries**

An assessee manufactured batteries and parts thereof (heading 85.07) and cleared a particular type of battery without payment of duty as it was exempt under a notification issued on 10 February 1986. The assessee also manufactured PVC sheet (heading 39.20) and 'lead ingot' (heading 78.01) out of lead waste and scrap partly within the factory of production and partly from outside on job work basis and consumed them internally as inputs in the manufacture of batteries and parts thereof without payment of duty as per notifications dated 2 April 1986 and 25 March 1986. This resulted in non levy of duty of Rs.15.16 lakhs and Rs.28.90 lakhs on 'PVC sheets' and 'lead ingots' respectively, consumed captively during the period from April 1992 to February 1993. The irregularity was pointed out in audit in May 1993.

The Ministry of Finance, while confirming the facts, stated (December 1994) that show cause notice demanding duty of Rs.533.60 lakhs had been issued to the assessee in January 1994.

**iii) Rubber in primary form**

**(a) Compounded rubber for tyres**

An assessee used compounded rubber manufactured within the factory and also got compounded rubber manufactured on job work for manufacture of specified tyres and tubes which were cleared at 'nil' rate of duty. No duty was levied on such compounded rubber resulting in short levy of duty amounting to

Rs.20.60 lakhs on clearances during the period from April 1988 to June 1992. Objection was raised in July 1992.

The Ministry of Finance have confirmed the facts (October 1994).

**(b) Compounded rubber sheets for parts of storage batteries**

An assessee engaged in manufacture of parts of storage battery namely covers, containers, cell boxes etc. (heading 85.07), took credit of excise duty paid on inputs, for captive use in the manufacture of the final product i.e. the electric accumulators (storage batteries). The assessee, removed the said parts for manufacture of storage batteries without payment of duty in terms of a notification dated 10 February 1986. The process of manufacture of the said parts of batteries involved conversion of raw materials into compounded rubber which was unvulcanised and in the form of sheets (heading 40.04). As soon as the sheets emerged, the same were taken to the mould for manufacture of the parts. Since the storage batteries of certain varieties and parts thereof manufactured by the assessee were exempt from payment of the whole of duty of excise, the compounded rubber sheets, unvulcanised, attracted levy of duty at 15 per cent ad valorem in terms of a notification dated 29 July 1986. This resulted in non levy of duty of Rs.8.99 lakhs on the removal of compounded rubber sheets during the period from April 1990 to March 1992. Objection was raised in March 1993.

The Ministry of Finance have confirmed the facts (October 1994).

**iv) Components of ball bearings**

An assessee engaged in manufacture of ball or roller bearings (heading 84.82) also manufactured their components parts, namely cages, rings, balls etc. (heading 84.82) chargeable to duty at 20 per cent ad valorem. These component parts, were also used captively as inputs without payment of duty under the notification dated 2 April 1986, in manufacture of ball bearings, which were exempted from duty as per another notification dated 8 October 1985 for use in manufacture of diesel operated internal combustion engines.

As the final product was exempt from duty, the component parts were not eligible for duty exemption under notification dated 2 April 1986. The assessee instead of paying duty on such component parts expunged the Modvat credit taken on inputs like strips, pipes, tubes, wires etc., used in manufacture of such components parts. This resulted in non levy of duty of Rs.19.68 lakhs during the period from September 1989 to February 1994 (figure updated), after taking into account the Modvat credit of Rs.0.40 lakh expunged by the assessee.

On the non levy being pointed out in audit (May 1992), the department while not admitting the objection contended (September 1992) that the components internally consumed for manufacture of ball bearings were ultimately utilised as components of internal combustion engine and, therefore, were entitled for exemption under notification dated 8 October 1985. They added that the Modvat credit taken on inputs for such components being expunged, the objection did not stand.

The reply of the department is not acceptable since

- i) components of ball bearing falling under sub heading 8482.00 are not covered under the exemption notification dated 8 October 1985;
- ii) components used captively in manufacture of exempted final product are not eligible for exemption under notification dated 2 April 1986; and
- iii) the amount of credit expunged was less than the amount of duty payable.

On subsequent verification it was ascertained (June 1994) that the assessee submitted a classification list effective from 28 February 1993 classifying the components under sub heading 8482.00 with rate of duty at 20 per cent ad valorem, which was approved by the department on 27 May 1993. Although the assessee did not claim exemption on the components under notification dated 8 October 1985, it continued to clear the goods for captive

consumption without payment of duty. The department issued a show cause-cum demand notice for Rs.2.02 lakhs for the period October 1992 to January 1993 which was confirmed on adjudication.

Reply of the Ministry has not been received (December 1994).

**v) Preparation of graphite for pencils**

An assessee engaged in manufacture of 'lead pencils' (heading 96.09) cleared these pencils without payment of duty availing exemption under a notification issued on 10 February 1986 as amended. No duty was paid on lead manufactured and consumed captively for making the pencils. The preparation of graphite and clay in the form of paste used in manufacture of pencil leads, however, attract central excise duty under heading 38.01 at 10 per cent ad valorem. No duty was paid on such preparation of graphite resulting in short levy of duty of Rs.17.18 lakhs for the period from 1987-88 to 1990-91.

On this being pointed out in audit (July 1992), the department did not accept the objection and stated (September 1994) that no graphite pastes came into existence at any intermediate stage.

The department's reply is not acceptable since these goods come into existence as an intermediate item which is in paste/plate form. This is a preparation based on graphite and clay and will attract duty under heading 38.01. In respect of a similar case (pertaining to Bombay II collectorate) department had issued show cause-cum demand notice and gone in appeal against Collector's adjudication order which was in favour of the assessee.

Reply of the Ministry has not been received (December 1994).

**vi) Vitamin premixes for cattle/poultry feed**

An assessee manufacturing vitamin premixes for use in cattle feed/poultry feed, falling under heading 23.02 was allowed exemption from duty for 'betaionone' (heading 29.14) produced at intermediate stage of

manufacture of vitamin A premix. Since the final product was chargeable to nil' rate of duty, intermediate product was not eligible for the exemption.

On this being pointed out in audit (December 1993), show cause-cum demand notices were issued (December 1993) by the department for Rs.5.86 lakhs for the period from January to December 1993 which were confirmed (June 1994) on adjudication.

The Ministry of Finance confirmed the facts (December 1994).

**vii) Prepared waxes for printed waxed paper**

An assessee manufactured printed waxed paper falling under sub heading 4811.90 and cleared the goods without payment of duty as per a notification dated 1 March 1987 as amended. The assessee also manufactured prepared waxes (heading 34.04) in the same factory from paraffin wax and ethylene vinyl acetate co-polymer and used the product captively as inputs for manufacture of the final product. The prepared waxes manufactured by the assessee was, therefore, not eligible for exemption under the notification dated 2 April 1986. The irregularity resulted in non levy of duty of Rs.5.31 lakhs during 1991-92 and 1992-93.

The department did not accept the objection and stated (October 1994) that the prepared wax manufactured internally for further use within the factory in the manufacture of printed wax paper was not an excisable product as the product was meant for internal consumption and had very short shelf life and hence not marketable.

The contention of the department is not acceptable. It has been held by CEGAT {1991 (37) ECR 303} in Safari Industries Limited Vs. Collector of Central Excise that where specific entry in the tariff is applicable to the goods manufactured, they become excisable and marketability is not the determining factor. In the instant case the assessee captively consumed a coating composition prepared within the factory from paraffin wax and resin for coating printed paper. The coating composition being waxy in character and

containing paraffin wax and resin, it was nothing but prepared wax falling under heading 34.04, as per note 5 of Chapter 34, on which duty was chargeable.

Reply of the Ministry has not been received (December 1994).

**viii) Equipments for special purpose vehicles**

An assessee manufactured certain equipments for captive use in the special purpose vehicle but duty thereon was not levied under a notification dated 1 March 1986, resulting in short levy of duty amounting to Rs.3.20 lakhs.

On this being pointed out in audit (February 1993), the department stated (August 1993) that an identifiable independent equipment did not emerge, as the equipment was fabricated piece by piece on the duty paid chassis and the duty exemption allowed on the special purpose vehicle was in order.

The contention of the department is not acceptable since equipments manufactured for captive use, though fabricated piece by piece on the chassis, should also suffer duty as the final product was cleared without payment of duty.

Reply of the Ministry has not been received (December 1994).

**3.38 Other cases:** In ten other cases, incorrect grant of exemption resulted in short levy of duty of Rs.61.35 lakhs of which an amount of Rs.2.54 lakhs has so far been recovered in one case as per details given below:

(in lakhs of rupees)				
Sl. No.	Particulars	Amount accepted	Amount demanded	Amount recovered
01.	Adhesives	3.90	3.90	
02.	Glasswars	4.46	2.66	
03.	Tragers (parts of metal containers)	2.86		

		(in lakhs of rupees)		
Sl. No.	Particulars	Amount accepted	Amount demanded	Amount recovered
04.	Plastic seats	12.43	6.36	
05.	Signal generators	1.48	6.68	
06.	Heat exchangers	9.03	9.03	
07.	Plastic pouches	3.39		
08.	Mixers & grinders	9.32	2.54	2.54
09.	Stampings & laminations	5.14	6.43	
10.	EF coaxial connectors	9.34	3.10	
<b>T O T A L</b>		<b>61.35</b>	<b>40.70</b>	<b>2.54</b>

### NON LEVY OF DUTY

Under rule 9 read with rule 173G of the Central Excise Rules, 1944, no excisable goods should be removed from any place where they are produced, manufactured or cured whether for consumption, export or manufacture of any other commodity, in or outside such place unless the excise duty leviable has been paid.

Some of the important cases of non levy of duty, noticed in audit are given below:-

#### **3.39 Duty not levied on production suppressed or not accounted for**

As per rule 53 of the Central Excise Rules, 1944, every manufacturer is required to maintain an account of stock in prescribed form (RG.I) wherein quantity of goods manufactured, goods removed on payment of duty and quantity delivered from the factory without payment of duty for export or other purposes, are required to be entered.

i) A comparison of the annual physical verification report of stock (31 March 1991) with daily stock account (RG.I) in a public sector steel plant manufacturing iron and steel products (chapters 72 and 73) revealed (May 1992) that clearances of 13.393 tonne of SWP pipes and galvanised sheets were short accounted in the RG.I account during the period 1990-91. This resulted in non levy of duty amounting to Rs.153.78 lakhs.

The Ministry of Finance have intimated (October 1994) that out of demand for Rs.218.59 lakhs raised under Section 11A, a demand for Rs.99.43 lakhs had since been confirmed and penalty of Rs.7 lakhs imposed.

ii) Another manufacturer of steel wires (heading 72.17) brought wire rods as input. A scrutiny of the central excise records as well as the final accounts of the manufacturer disclosed (July 1993) that the production of 2535 tonne of steel wires was short entered in the daily stock account of central excise records. The short accounting of production resulted in escapement of duty of Rs.25.35 lakhs during 1991-92.

The department issued show cause-cum demand notice in July 1994.

Reply of the Ministry has not been received (December 1994).

### **3.40 Non levy of duty on excisable goods used as packaging material**

Rule 9 read with rule 173G of the Central Excise Rules, 1944, provides that goods used for captive consumption by an assessee may be removed without payment of duty if the final product is neither exempt from the whole of the duty of excise leviable thereon nor is chargeable to nil rate of duty.

A manufacturer of patent or proprietary medicines (chapter 30) manufactured inter alia, intravenous (I.V.) fluids which were exempt from payment of duty. For packing these I.V. fluids, the assessee manufactured pouches (sub heading 3923.19) from lay flat tubings falling under heading 39.17. The assessee neither paid duty nor followed central excise procedure in respect of the pouches manufactured and removed for captive consumption in exempted final products. The lay flat tubings were classified under heading



39.17 entitled to exemption under a notification issued on 1 March 1988. Failure to levy duty on the pouches manufactured and used captively for packing the exempted I.V. fluids resulted in non recovery of duty of Rs.49 lakhs during February 1991 to August 1992.

The Ministry of Finance have confirmed the facts (September 1994).

### **3.41 Goods cleared without levy of duty**

i) A manufacturer of motor vehicles cleared waste/scrap of aluminium and of iron and steel generated in the production process, without payment of duty during the period from 1987-88 to 1990-91 (upto May 1990). No record of accounting of such scrap was maintained. This resulted in non levy of duty amounting to Rs.25.55 lakhs payable on clearance of such scrap.

On this being pointed out in audit (June 1991), the department issued a show cause-cum demand notice (May 1992) which was subsequently (May 1993) confirmed and in addition, a penalty of Rs.one lakh was also imposed under rule 173Q.

The Ministry of Finance, while admitting the objection, stated (November 1994) that the assessee deposited Rs.21.38 lakhs as per condition of stay order granted by the CEGAT.

ii) Another assessee engaged in manufacture of cathode ray television picture tubes (sub heading 8540.12) stopped manufacturing black and white tubes of 51 cms. in November 1991, when 3437 numbers of such tubes were lying in stock. Of these, 488 tubes were cleared on payment of duty in December 1992. The remaining 2949 tubes were shown as cleared for reprocessing without payment of duty in March 1992, whereas the balances in RGI as well as in RT12 return were shown as nil. Thus duty amounting to Rs.8.92 lakhs leviable on these tubes was not paid at the time of removal from stores. Audit objection was raised in August 1992.

The department stated (September 1993) that the demand for Rs.8.92 lakhs had been confirmed and also a penalty of Rs.50,000 imposed.

The Ministry of Finance confirmed the facts and added (October 1994) that the recovery has been stayed by the CEGAT.

### **3.42 Levy of duty at incorrect rates**

#### **i) Wires of iron and non alloy steel plated or coated**

Wires of iron or non-alloy steel plated or coated with base metal, were chargeable to duty at 15 per cent ad valorem plus Rs.3000 per tonne from 14 May 1992 to 25 June 1992. Thereafter, the rate of duty was reduced to Rs.1000 per tonne.

An assessee cleared galvanised wires of non-alloy steel (sub heading 7217.90) on payment of duty at Rs.1000 per tonne from 14 May 1992 to 25 June 1992 though duty was chargeable at the tariff rate of 15 per cent ad valorem plus Rs.3000 per tonne. This resulted in short levy of duty of Rs.19.09 lakhs on the clearances of 324.276 tonne of said wires during the above period. The audit objection was raised in July 1993.

The Ministry of Finance have admitted the objection and stated (August 1994) that demand notice had been issued.

#### **ii) Aluminium conductors and wire rods**

An assessee engaged in manufacture of aluminium conductors and aluminium wire rods under heading 76.14, raised supplementary invoices during 1993-94 due to retrospective escalation of the price of its product. The goods were originally cleared to the customers during 1991-92 and 1992-93 but duty on these escalation charges was paid at the tariff rate applicable in financial year 1993-94. This resulted in short levy of central excise duty of Rs.8.59 lakhs due to application of the tariff rate of 1993-94, when the basic excise duty was reduced from 30 to 25 per cent ad valorem and also the special excise duty was withdrawn from that year.

The Ministry of Finance have admitted the objection and stated (September 1994) that demand notice had been issued.

**3.43 Duty not levied on goods destroyed**

Under proviso to rule 49(1) of the Central Excise Rules, 1944, a manufacturer shall, on demand, pay the duty leviable on any goods which are not shown to the satisfaction of the proper officer to have been lost or destroyed by natural causes or by unavoidable accident.

In course of test check of records of two assesseees, it was noticed that excisable goods falling under chapters 53, 56 and 63 and chargeable to duty and cess worth Rs.24.04 lakhs were reported to have been destroyed by fire and water logging between August 1986 and January 1991. Both the assesseees lodged claims with the insurance company which paid compensation for the finished excisable goods destroyed but the central excise duty of Rs.20.10 lakhs was not realised.

On the omission to pay duty being pointed out in audit (August 1992), the department accepted the objection in one case and stated (January 1994) that a show cause-cum demand notice for Rs.2.22 lakhs was sent to the Collector (March 1993) for issue. In the second case, the department stated (March 1993) that the case was forwarded to the Collector (February 1992) for condonation of duty and the matter was still under consideration of the Collector.

Reply of the Ministry has not been received (December 1994).

**3.44 Waste of cotton yarn**

As per a notification issued on 1 March 1987, doubled or multifold yarns falling under chapter 52, 54 or 55 are exempted in full, if manufactured from duty paid single or doubled yarns. Thus duty was to be paid at single yarn stage and the doubled/multifold yarns were to be cleared at nil rate of duty.

i) An assessee manufactured single yarn of synthetic or artificial staple fibre (headings 55.04, 55.05 and 55.06) and consumed the same captively without payment of duty in manufacture of doubled or multifold yarns falling under the aforesaid headings. Duty was finally paid on doubled or multifold

yarns at the point of clearance. Thus the quantity of single yarns, wasted in the process of doubling or multifolding and which was subsequently cleared as hard waste (heading 55.03) at nil rate of duty, escaped duty amounting to Rs.2.12 lakhs during the period from April 1988 to December 1993. The irregularity was pointed out in audit in February 1991 with a request to ascertain the amount of duty escapement on actual calculation basis.

The department stated (March 1994) that a demand for Rs.5.13 lakhs had been issued in March 1994.

Reply of the Ministry has not been received (December 1994).

ii) Another assessee manufactured single yarn falling under chapters 52 and 55 and removed the same without payment of duty for the manufacture of doubled/multifold yarn. Duty was paid on the clearance of doubled/multifold yarn. By applying this procedure, the quantity of single yarn wasted in the process of doubling/multifolding which was subsequently cleared as hard waste at nil rate of duty, escaped levy of duty amounting to Rs.3.07 lakhs during the period April 1992 to March 1993. This was pointed out in audit in May 1993.

The Ministry of Finance have stated (December 1994) that remedial measures had already been taken by issue of notification dated 1 March 1994 exempting cotton yarn used captively for conversion into hank yarn whether single or multifold.

The Ministry's reply is, however, silent on the remedial action taken for recovery of duty short levied for the period pointed out in audit.

### **3.45 Duty not paid on goods manufactured on job work basis**

Note 6 of section XVI of the Central Excise Tariff Act, 1985, stipulates that in respect of goods covered under the section, *ibid*, conversion of an article which is incomplete or unfinished but having the essential character of complete or finished article or part and is capable of being used into complete or finished article or part shall amount to manufacture.

An assessee engaged in manufacture of electric meters (heading 90.28) also did job work of machining/drilling/boring on jig boring machines falling under heading 84.30. Audit scrutiny of the ledger accounts of the assessee revealed that the assessee had a receipt of Rs.28,58,296 under the head "Miscellaneous receipts" during the year 1991-92. These receipts included a sum of Rs.17,54,550 on account of drilling, boring and machining which were realised in cash without disclosing the identity of the customers on whose behalf the 'job work' was done. The procedure prescribed under rule 56B/57F(2) was also not followed. Since the activity of job work done was in the nature of manufacture, the assessee was liable to pay duty of Rs.2.86 lakhs.

On the omission being pointed out in audit (December 1992), the department reported (May and October 1993) that details of parties on whose behalf the job was undertaken, were not available with the assessee and an enquiry had been instituted against the assessee.

The Ministry of Finance have stated (November 1994) that the matter was under examination/investigation.

**3.46 Other cases :** In five other cases, non levy of duty of Rs.70.43 lakhs was pointed out, of which Rs.56.59 lakhs had been recovered in three cases; the details are given below:-

Sl. No.	Particulars	Amount accepted	(in lakhs of rupees)	
			Amount demanded	Amount recovered
01.	Parts of oxygen plants	6.22	6.22	
02.	Copper coils	43.41	43.41	43.41
03.	Moulders - G	7.64	7.64	7.64
04.	HRS sheets of iron and steel	7.62	7.58	
05.	SED or transmission towers	5.54	5.54	5.54
<b>TOTAL</b>		<b>70.43</b>	<b>70.39</b>	<b>56.59</b>

## GRANT OF EXEMPTION TO SMALL SCALE MANUFACTURERS

Duty reliefs and exemptions are allowed to small scale manufacturers of specified excisable goods under various exemption notifications issued under the Central Excises and Salt Act, 1944. These reliefs and exemptions are subject to fulfilment of conditions prescribed in the notifications.

A few illustrative cases of non levy or short levy of duty, arising from irregular grant of exemptions to small scale manufacturers are given below:-

### 3.47 Registration by Industries department becoming invalid

As per a notification issued on 1 March 1986, concessional rate of duty is applicable to a factory which is an undertaking registered with the Director of Industries of any State or Development Commissioner (SSI) as a small scale industry under the provisions of Industries (Development and Regulation) Act, 1951.

For registration of an industrial unit as a small scale industry, investment in plant and machinery should not exceed Rs.35 lakhs, raised to Rs.60 lakhs from 2 April 1991.

The SSI registration is not required in cases (a) where the value of clearances from a factory during the preceding financial year or in the current financial year is not likely to exceed Rs.7.5 lakhs; or (b) where a manufacturer had been availing of small scale exemption under any of the twelve notifications specified therein.

In the following cases, SSI concession was incorrectly availed of by the units:

- i) Five assesseees which were registered with the Director of Industries as small scale industrial units availed of the benefit although the value of investment in plant and machinery had exceeded the prescribed limits of Rs.35/60 lakhs in each case. This resulted in short levy of duty of Rs.95.24

lakhs in respect of the clearances made during different periods between April 1988 and March 1994.

The Ministry of Finance in one case confirmed the facts and an amount of Rs.18.98 lakhs has been recovered. In respect of two other cases, the Ministry stated (May 1994) that as long as the factory was duly registered with the Director of Industries as a small scale industry, the benefit of exemption envisaged under the notification issued in March 1986 could not be denied. Reply in the remaining two cases has not been received (December 1994).

ii) An assessee availed of benefit admissible to small scale industry although it was neither registered with the Director of Industries nor it had availed of concessions in terms of the specified notifications. This resulted in short levy of duty of Rs.29.04 lakhs during the period from April 1986 to February 1993. The Ministry of Finance have accepted the objection in principle.

iii) A certificate of registration issued for one particular type of manufacturing activity is valid only for that manufacturing activity.

An assessee to whom a registration certificate was issued for the activity "repair shop for radio, TV and household appliances" by the Industries department cleared switches, sockets, buzzers, connectors and distribution amplifiers (chapter 85) on payment of duty at concessional rate. This resulted in non levy/short levy of duty amounting to Rs.27.82 lakhs during the period from 1988-89 to 1991-92.

The Ministry of Finance have confirmed the facts and stated (September 1994) that remedial action was being taken by the Collector.

iv) From 1 September 1989, the benefit of small scale exemption was extended to the units registered with Directorate General of Technical Development (DGTD) also. The exemption available to units registered with DGTD was, however, withdrawn with effect from 1 April 1992.

However, two assesseees in two collectorates which were registered with DGTD, were allowed the benefit of exemption admissible to small scale industry even during 1992-93. This resulted in non levy of duty of Rs.15.80 lakhs.

The department in one case stated that the classification list was reviewed and the department has filed an appeal with the Collector (Appeal) on 8 November 1993. Ministry, in the other case, admitted the objection.

Reply of the Ministry has not been received in the first case (December 1994).

### **3.48 Legal avoidance of duty due to fragmentation of units**

According to the notification dated 1 March 1986, as amended, full or partial exemption on value of clearances of specified goods is allowed to a small scale unit upto an aggregate value of Rs.75 lakhs provided the value of clearances of all excisable goods from one or more factories of the same manufacturer for home consumption had not exceeded Rs.200 lakhs in the preceding financial year. For the purpose of arriving at the value of clearances, the clearances made for home consumption by a manufacturer from one or more factories are to be clubbed together.

The Supreme Court in the case of M/s. McDowell and company Vs. Commercial Tax Officer {1985 (5) ECR 259 (SC)} had held that even corporate entity can be disregarded if it is used for tax evasion or to circumvent tax obligations.

i) Two units, which had two common members, common office and common business transactions, and were engaged in the manufacture of the same product (viz. commercial plywood) but had two separate legal entities had availed of the concessions applicable to small scale units. Non clubbing of clearances of the two units belonging to the same manufacturer resulted in avoidance of duty of Rs.18.62 lakhs during the period from April 1986 to March 1990.



The Ministry of Finance have confirmed the facts (August 1994). A demand of Rs.18.62 lakhs with a penalty of Rs.5 lakhs was confirmed by the department.

ii) Three small scale units engaged in manufacture of electric storage batteries under the same brand name were individually allowed to avail of SSI benefits although the three units were partnership firms having four members as common partners. This resulted in legal avoidance of duty amounting to Rs.2.95 lakhs during the years 1987-88 to 1989-90.

The department while not offering any comment on the issue stated (February 1993) that a show cause-cum demand notice had been issued to the assessees.

Reply of the Ministry has not been received (December 1994).

iii) (a) A unit manufacturing motor vehicle parts, had four partners and was availing SSI concession. A second unit which was a partnership firm between one person of the first unit and a close relative (wife) of another person of first unit and engaged in the manufacture of identical goods was also allowed SSI benefits. The partners of both the units had proprietary interest in each others unit and are covered under the definition of same management within the meaning of section 370 (IB) read with section 6 of Companies Act, 1956. The irregular availment of SSI benefits in these cases resulted in avoidance of duty amounting to Rs.8.25 lakhs in the year 1991-92. In the year 1992-93, no concession was available at all as the clearances exceeded Rs.200 lakhs. The irregular availment resulted in avoidance evasion of duty amounting to Rs.17.25 lakhs in the year 1992-93.

(b) Another assessee engaged in production of LPG stoves of various types, parts of gas stove and LPG pressure regulators was allowed SSI concession. All the three directors of the unit started another partnership firm in 1992 in the adjoining plot and produced identical goods. The second unit was also allowed SSI benefit separately although all of them had proprietary interest in both the units and are covered under the definition of same

management within the meaning of section 370 (IB) read with section 6 of Companies Act, 1956. The irregular availment of SSI benefits in these cases resulted in avoidance of duty of Rs.4.25 lakhs during the year 1992-93.

The department in both cases stated (December 1993 and February 1994) that each unit had a separate legal entity hence the SSI concession availed was in order. The fact, however, remains that this was done to circumvent the provisions of the law and should have been disallowed as held by the Supreme Court in the case of McDowell Company Vs. Commercial Tax Officer.

Reply of the Ministry has not been received (December 1994).

### 3.49 Concession availed on branded goods

According to para 7 of the notification dated 1 March 1986 SSI exemption shall not apply to the specified goods, where a manufacturer affixes the specified goods with a brand name or trade name (registered or not) of another person, who is not eligible for the grant of exemption under the said notification.

i) An assessee in small scale sector engaged in manufacture of aerated water was allowed to avail full exemption on a product 'X' upto clearance value of Rs.20 lakhs. Since the product 'X' was being sold by the assessee under the brand name of another manufacturer who was not eligible for SSI exemption, the assessee was not entitled to SSI benefit. Incorrect grant of exemption resulted in short levy of duty of Rs.29.28 lakhs on clearances during the period from August 1991 to September 1993.

The Ministry of Finance have admitted the objection (October 1994).

ii) A small scale unit engaged in manufacture of paints (Chapter 32), also manufactured a product in the brand name of another firm which did not have its own factory. The goods manufactured by the assessee under the brand name were thus not eligible for the small scale concession. The irregular

availment of concession resulted in short levy of duty of Rs.4.55 lakhs on goods cleared during the period from April 1990 to September 1992.

The Ministry of Finance did not accept the objection and contended (November 1993) that the affixation of the brand name was always done by the brand name owner outside the factory premises of the assessee who sold to them unbranded goods.

Ministry's reply is not tenable as subsequent verification (December 1993) revealed that the assessee had clearly stated (December 1992) to the department that they manufactured their own products simultaneously with the branded products of the brand name owner within their factory. This was pointed out again in July 1994. Ministry's reply has not been received (December 1994).

### **3.50 Use of job working SSI units to evade duty**

The Central Board of Excise and Customs in consultation with Ministry of Law, clarified (20 September 1988) that if the inputs are supplied by the principal manufacturer for the manufacture of any goods on job work basis, the goods so produced would not be entitled for small scale exemption unless the principal manufacturer himself is entitled to similar concession.

Four small scale manufacturers under three collectorates engaged in manufacture of different goods under chapters 29, 84, 85, 87 and 90 etc., on job work basis on behalf of principal manufacturers who supplied raw materials free of cost to the job workers, cleared them back to the suppliers of raw material, on payment of duty at concessional rates under the notification issued on 1 March 1986. As the principal manufacturers were themselves not entitled to the concessional rates, their availment by the job workers was irregular and resulted in short levy of duty of Rs.35.55 lakhs on goods cleared during different periods between April 1989 and March 1994. This had further helped a principal manufacturer to avail of higher notional Modvat credit of Rs.7.62 lakhs (approximately) under rule 57B of the Central Excise Rules, 1944.

The Ministry of Finance, while not accepting the objection in two cases, stated (November and December 1994) that the Central Board of Excise and Customs, in consultation with the Ministry of Law, clarified (14 September 1994) that cases where the goods were manufactured by a job worker out of raw materials supplied by a person or a manufacturer and where the relationship between the raw material supplier and the job worker was on principal to principal basis, the job worker would be the actual manufacturer and in the instant cases accordingly, the job workers were the actual manufacturers and not dummy of the raw material suppliers.

Reply of the Ministry is not acceptable since the raw material was supplied to the assessee without cost (free supply). Hence transaction between them were not on principal to principal basis.

Reply of the Ministry in the remaining cases has not been received (December 1994).

### **3.51 Exemption availed beyond the prescribed limit**

According to notification dated 1 March 1986, exemption based on value of clearances would be available to a manufacturer at concessional rates of duty upto an aggregate value of clearances of Rs.75 lakhs. However, the notification is not applicable or the exemption is not admissible if the aggregate value of clearances of all excisable goods for home consumption from one or more factories belonging to the same manufacturer had exceeded Rs.200 lakhs in the preceding financial year.

An assessee manufacturing excisable goods falling under chapters 72 and 73 did not include in 1992-93, the value of clearances of iron and steel wastes and scraps (chapter 72) cleared at specific rates of duty for determining the eligibility in 1993-94 under the said notification. As the total value of clearances of all excisable goods including such wastes and scraps exceeded Rs.200 lakhs during 1992-93, the assessee was not eligible for the duty concession during 1993-94. The irregular availment of SSI exemption resulted

in short levy of duty of Rs.5.51 lakhs on the clearances made during the period from April to August 1993.

The Ministry of Finance have admitted the objection and reported (October 1994) issue of show cause notice for Rs.5.33 lakhs for the period from May to September 1993.

### **3.52 Clearance of inputs used in exempted final products**

As per a notification issued on 25 March 1986, specified goods manufactured in a factory as job work and used as inputs in manufacture of specified final product on which duty of excise is leviable whether in whole or in part, are fully exempt from payment of duty of excise leviable thereon. According to clarification given by the department in the Regional Advisory Committee (Small Scale) meeting held in Indore Collectorate on 15 October 1992 {ECR Vol.44 Part III 1 February 1993-P/39}, the benefit of exemption of duty on the inputs under the said notification cannot be availed of, if the final products manufactured therefrom are cleared under full exemption of duty.

An assessee, a small scale manufacturer, was manufacturing final products falling under chapters 73, 84 and 86 from the inputs manufactured by another manufacturer on job work basis. The manufacturer, on clearance of such final products, and the job worker, on the clearance of their inputs, were availing full exemption of duty under notifications issued on 1 March 1986 and 25 March 1986 respectively. As the final products were fully exempt from duty, the benefit of exemption of duty on inputs was not admissible. The incorrect grant of exemption resulted in non levy of duty amounting to Rs.5.50 lakhs on clearances of inputs during the years 1989-90 and 1990-91 (upto September 1990).

The department did not accept audit view and justified the benefit of exemption of duty on the inputs on the ground that the supplier is required to discharge the duty liability only to the extent it is leviable on the manufacturer of the final product and since the rate levied was nil, the supplier was not liable to pay any duty.

The reply of the department is not acceptable. The notification dated 25 March 1986 makes it abundantly clear that the benefit of exemption of duty on inputs in such cases is available only when the final products are liable to duty either in whole or in part. Further, the contention of the department that 'nil' rate of duty implies levy of duty for the purpose of the said notification is not correct as nothing was actually paid on the final product, hence nothing was levied.

Reply of the Ministry has not been received (December 1994).

### CESS COLLECTION AS EXCISE DUTY

Cesses are levied and collected in the same manner as excise duties by the department of Central Excise under the provision of Acts administered by other Ministries and departments. The major cesses collected are detailed below:-

Name of cess	Levied and collected on behalf of Ministry or department	Amount collected in		Products on which levied
		1992-93	1993-94	
Oil Industry (Development) Act, 1974	Ministry of Petroleum	2276.82	2141.01	Crude oil
Produce Cess Act, 1966 (Sugar Cess Act, 1982)	Ministry of Agriculture	168.71	165.47	Sugar produced by any factory in India
Jute Manufactures Cess Act, 1983	Ministry of Textile	16.04	19.16	Jute manufactures
Beedies Workers Welfare Cess Act, 1976	Ministry of Labour	12.42	14.07	Manufactured biris
Tea Act, 1953	Ministry of Commerce	10.39	11.24	Tea

Name of cess	Levied and collected on behalf of Ministry or department	Amount collected in		Products on which levied
		1992-93	1993-94	
Industries (Development and Regulation) Act, 1951	Ministry of Industry	10.61	12.88	Automobiles (Motor cars, buses trucks, Jeep type vehicles, Vans, Scooters, Motor cycles, Mopeds, and the like)
Industries (Development and Regulation) Act, 1951	Ministry of Industry	6.42	8.24	Paper and paper board all sorts produced in big units
Textiles Committee Act, 1963	Ministry of Textile	13.39	N.A.	Textiles and textile machinery (other than textile manufactured from out of hand-loom or power-loom)
Produce Cess Act, 1966	Ministry of Agriculture	0.32	0.15	Oil extracted from oil seeds crushed in any mill in India
Produce Cess Act, 1966	Ministry of Agriculture	0.08	0.06	Cotton
Produce Cess Act, 1966	Ministry of Agriculture	0.07	0.44	Vegetable oil

Some of the cases in which cess was short levied/ collected/incorrectly refunded are given below:-

### 3.53 Non levy of cess

#### i) Jute yarn

As per Section 3(1) of the Jute Manufactures Cess Act, 1983 (effective from 1 May 1984), cess is leviable on every article of jute manufactures specified in the Schedule to the aforementioned Act.

Rule 3 of Jute Manufactures Cess Rules, 1984 (notified on 15 September 1984), prescribes that consumption within the country would attract cess. The words "consumption within the country" cover captive consumption also. Supreme Court held in the case of M/s. Baranagar Jute Factory Company Vs. Inspector of Central Excise {1992 (57) ELT 3(SC)} that cess was leviable even when jute yarns/twines were captively consumed for further manufacture of jute products. Thus, jute yarns captively consumed for further manufacture of jute products are liable to levy of cess.

Two jute mills captively consumed jute yarn within the factory for manufacture of jute products but did not pay cess on removal of such yarn internally. Cess amounting to Rs.75.75 lakhs on the captive consumption of 47118 tonne of jute yarn during the period from April 1992 to February 1994 in the case of one mill and of 10577 tonne of jute yarn from March 1993 to February 1994 in respect of the other was neither paid by the mills nor demanded by the department.

On the non levy being pointed out in audit (March 1994), the department admitted the objection and stated that a show cause notice had been forwarded to the Collector.

Reply of the Ministry has not been received (December 1994).

**ii) Jute products**

A factory manufactured jute bags (heading 63.01) from jute fabrics (heading 53.06) obtained from jute mill on payment of basic excise duty and cess at appropriate rate. The jute bags so manufactured were cleared without payment of basic excise duty under an exemption notification dated 1 March 1987 but no cess was levied by the department even though there was no exemption. This resulted in non levy of cess amounting to Rs.2.09 lakhs during the period from November 1990 to March 1992. Audit objection was raised in May 1992.



The department did not accept the objection and stated (December 1992) that cess was to be collected only once and not at different stages of production. Department also stated that show cause-cum demand notice for Rs.0.96 lakh had been served for the period from April 1992 to August 1992 and another show cause-cum demand notice for Rs.2.09 lakhs for the period from November 1990 to March 1992 was under issue.

The department's contention is not acceptable as the Board issued a clarification on 29 October 1986 in consultation with the Ministry of Law, that whenever exemption from levy and collection of cess was intended, a specific exemption shall have to be made.

The Ministry of Finance have confirmed the facts regarding issue of show cause notices (December 1994).

**iii) Body built on duty paid chassis**

As per Industries (Development and Regulation) Act, 1951, read with orders issued by Ministry of Industry on 22 December 1983 and 22 March 1990, cess at 1/8 per cent ad valorem is leviable on automobiles from 1 January 1994. Consequent on the introduction of Central Excise Tariff Act, 1985, with effect from 28 February 1986, central excise duty is leviable on the chassis as well as the body of the motor vehicles under chapter 87 of the schedule to the Central Excise Tariff Act, 1985. As per chapter note 3 of chapter 87 of the Act, the activity of body building or fabrication or mounting or fitting of structures or equipment on the chassis shall amount to manufacture of a motor vehicle. Thus, cess was payable on the value of bus body built on chassis.

Three assessee engaged in fabrication of bus/truck bodies on duty paid chassis either procured from outside or supplied by customers cleared the body mounted buses on payment of duty under heading 87.02. However, cess leviable thereon was not paid. This resulted in non levy of cess amounting to Rs.10.90 lakhs on clearances of body built buses during the periods between 1989-90 and 1993-94.

On the irregularity being pointed out in audit (between December 1990 and March 1994), the department stated (January 1991 and November 1993) that the assessee had built bus bodies on duty paid chassis and cess was also paid on these chassis. Therefore, cess was not payable on body built buses.

The department's reply is not acceptable as body building activity amounts to manufacture of motor vehicle and cess was also payable on the value of the bus body alongwith central excise duty.

The Ministry of Finance have stated (November 1994) that the matter is under examination.

### **3.54 Irregular refund of cess**

As per Board's clarification dated 29 October 1986, issued in consultation with Ministry of Law, whenever exemption from levy and collection of cess is intended to be given, a specific exemption shall have to be made to that effect.

A composite jute mill manufactured, inter alia, jute fabrics and cleared the product on payment of cess to an independent processor for stitching as bags. The jute bags were then brought back into the factory for baling and final clearance on payment of further cess. The assessee subsequently secured refund of cess amounting to Rs.4.52 lakhs paid on the jute bags on the ground that it was paid twice. This was irregular as cess had correctly been paid at two stages of manufacture in terms of rule 3 of the Rules, *ibid* read with Law Ministry's opinion cited. The irregularity was pointed out in audit in March 1991.

The department, while not admitting the objection, contended (July 1991) that the refund had correctly been allowed in terms of a trade notice issued on 12 September 1989 containing instructions that cess was not leviable on multiple stages of manufacture of jute products on or after 1 May 1984.

The contention of the department is not acceptable as under rule 3 of the Jute Manufactures Cess Rules, 1984, cess is leviable on finished jute

products removed for sale or for further consumption in the manufacture of other jute products whether within the factory or outside to a processor for processing and subsequent return. It has also been clarified in Ministry's letter F.No.262/11/86-CX8 dated 29 October 1986 that cess under Jute Manufactures Cess Act is leviable unless the same is specifically exempted under rule 8(1) of the Central Excise Rules, 1944.

Reply of the Ministry has not been received (December 1994).

### NON RECOVERY/DELAY IN RECOVERY OF DEMANDS

#### 3.55 Non vacation of stay orders from Courts

In para 1.9 of their 9th Report (Eighth Lok Sabha) presented on 16 August 1985, the Public Accounts Committee desired that Government should review all cases pending in Courts and take all steps to get the stay orders vacated and dues collected immediately.

In the following two cases, inordinate delays in getting the stay orders vacated not merely delayed the collection of Government revenues, but also resulted in undue financial assistance to the assessees.

i) The issue regarding payment of central excise duty on oxygen used captively is pending in Delhi High Court since 1981 when the Court had issued a stay order.

An assessee engaged in manufacture of chemicals (chapter 29) also manufactured oxygen (sub heading 2804.00) and used it captively in manufacture of ethylene oxide (sub heading 2942.00). The duty payable on oxygen for the period from January 1979 to August 1991 worked out to Rs.5.6 crores whereas the assessee had furnished a bank guarantee of Rs.1.41 crores. This was pointed out in July 1992.

The Ministry of Finance stated (October 1994) that on department's persuasion, the assessee had paid an amount of Rs.345.45 lakhs on 4 October 1993 despite the stay being operative and department has also filed

miscellaneous petition for vacation of the stay order and demanded interest at the rate of 17.5 per cent from 2 December 1981 to 4 October 1993.

ii) The Delhi High Court granted stay order directing an assessee company not to pay any other duties except basic excise duty and furnish bank guarantee of 50 per cent of disputed duty amount. Although in two similar cases the High Court had vacated the stay orders in December 1987, no action was taken by the department to get the stay order vacated in the instant case. It was noticed (November 1992) that during the period from 25 December 1987 to 31 July 1991, the assessee was collecting other duties as well, and after retaining them for a period of 9 to 21 months, credited them to the government account. As a result, there was a financial accommodation to the assessee to the extent of Rs.2 to 4 crores for 9 to 21 months and gain of interest benefit at 17.5 per cent per annum thereon which worked out to Rs.10.52 lakhs (approximately) for the period from April to July 1992 alone.

The department stated (May 1993) that although information regarding disposal of the instant case by Hon'ble Delhi High Court was received in May 1991, follow up action could not be taken in the absence of a certified copy of the Court's order.

Reply of the Ministry has not been received (December 1994).

### OTHER TOPICS OF INTEREST

#### 3.56 Irregular retention of duty

As per Section 11D of the Central Excises and Salt Act, 1944 (as amended on 20 September 1991) every person who has collected any amount from the buyers of any goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government. The amount so paid shall be adjusted against the duty of excise payable by the person on finalisation of assessment and where any surplus is left after such adjustment, the amount of such surplus shall be credited to the Consumer Welfare Fund or as the case may be, refunded to the person who has

borne the incidence of such amount in accordance with the provisions of Section 11B.

- i) Watches (chapter 91) were assessable to duty at 5 per cent ad valorem upto 28 February 1992 and at 10 per cent ad valorem thereafter.

A Public sector undertaking engaged in manufacture of watches was clearing the goods from the factory to its marketing division for subsequent sale to the wholesale dealers. In respect of such sales to dealers during March 1992, the assessee charged and collected duty at 10 per cent ad valorem although some of the watches had suffered duty at 5 per cent ad valorem as these were cleared from the factory before 1 March 1992. This resulted in excess realisation of duty to the extent of Rs.110.64 lakhs. The excess duty so realised was, however, not credited to the Government account but was retained by the assessee.

On the irregular retention of duty by the assessee being pointed out in audit (March 1993), the department stated (June 1993) that an offence case was registered against the assessee company in May 1993 and an investigation was under progress.

The Ministry of Finance have endorsed the comments of the department.

- ii) Three assessees in three collectorates availed duty exemptions under various notifications but continued to collect duty from their customers and retain the same in contravention of the provisions of Section 11D. Irregular retentions aggregating to Rs.45.35 lakhs between November 1991 and January 1993 were pointed out in audit in September 1992 and February 1993.

The Ministry of Finance stated (July, August and October 1994) that demands for Rs.91.95 lakhs for the period from September 1991 to March 1993 had been raised against the concerned assessees and that in one case, the assessee has got stay orders from the Court.

**3.57 Irregular refund of duty**

The Ministry of Finance note dated 27 October 1988, as circulated by the Central Board of Excise and Customs on 11 November 1988, stipulated that any amount collected by Government under mistake of law or purported authority of law was not to be refunded unless the ultimate person who had paid the money was found.

An assessee manufactured five number of open railway bogies (heading 86.06) and cleared them during May, July and August 1989 on payment of duty at tariff rate of 20 per cent ad valorem as effective from 1 March 1989. The assessee also took Modvat credit of duty paid on inputs. The buyer, viz., Indian Railways, however, reimbursed to the manufacturer duty at the tariff rate of 15 per cent ad valorem for these supplies, which would have been payable, had the goods been supplied within the stipulated date, i.e., 31 December 1988. On 3 November 1989, the assessee filed a revised classification list claiming the concessional rate of duty of Rs.24,000 per wagon under a notification issued on 20 November 1986, as amended, on the ground that the credit taken on inputs had been reversed in RG23A account before removal of goods from the factory. The assessee also filed a refund claim of Rs.7.94 lakhs stated to be the surplus duty which had already been paid on removal of such goods from the factory. The department approved the revised classification list and refunded duty of Rs.7.94 lakhs on 9 February 1990. The refund claim to the extent of Rs.5.64 lakhs was, however, inadmissible because after issue of the Government instructions dated 11 November 1988, such claims for refund of duty, the incidence of which had been passed on to the buyer, was not admissible to the manufacturer.

On the irregularity being pointed out in audit (June 1993), the department justified (January 1994) the action, stating that the surplus duty was paid due to ignorance/inadvertence and as such, no amount was to be retained by the department.

The contention of the department is not correct as the Government instructions do not permit any such refund to the assessee. Further, the assessee was given unjust benefit at the cost of Indian Railways, which bore the ultimate incidence of duty.

Reply of the Ministry has not been received (December 1994).

**3.58 Non levy of interest on arrears of duty paid in instalments**

The Central Board of Excise and Customs issued instructions on 20 April 1985 to the Collectors that whenever facility of paying arrears of central excise dues in instalments was accorded, interest at the rate of 17.5 per cent per annum would be chargeable. The Board also clarified on 1 October 1985 that interest should be charged in all cases of deferment of duty from the date of initial confirmation of demand.

An assessee engaged in manufacture of different excisable goods cleared, inter alia, bridge sections (sub heading 7308.10) during the period from 11 February 1992 to 23 February 1993 without any gate pass and without payment of duty of Rs.115.54 lakhs in contravention of rules 9 and 173G of the Central Excise Rules, 1944. Entries for production and clearance of such goods under rule 53 of the rules, *ibid.* were also not made in the statutory records. Subsequently, the assessee, on his own, paid the arrears of duty involved in a number of instalments between March and July 1993 when gate passes were prepared and entries were made in statutory records. For violation of rules, the assessee was liable for penal action under rule 173Q. But the department did not initiate action against the assessee under the rules. The payment of central excise duty in instalments resulted in notional loss of interest of Rs.9.32 lakhs. The irregularity was pointed out in audit in March 1994.

Reply of the Ministry has not been received (December 1994).

**3.59 Short realisation of supervision charges**

By a notification issued on 1 April 1992, the Board enhanced the rates per hour of supervision charges under the Customs (Fees for rendering services by Customs Officers) Regulations 1968. The same rates were also applicable to central excise officers performing customs duty.

Refinery and marketing divisions of a public sector undertaking had obtained the services of central excise officers for performing customs duty. The department, however, charged supervision charges for services rendered by its officers at old rates even on and after 1 April 1992 when the rates were enhanced. This resulted in supervision charges of Rs.9.07 lakhs being short realised during the period from April 1992 to March 1993. The mistake was pointed out in September 1993.

The Ministry of Finance, while admitting the objection, stated (August 1994) that out of the total amount of Rs.12.09 lakhs short paid during the period from April 1992 to June 1993, an amount of Rs.10.02 lakhs has already been realised and realisation of the remaining amount was in progress.

**3.60 Delay in issue of notification leading to loss of revenue**

In Budget 1992, the rates of duty applicable to most of iron or steel products were changed from specific rates to ad valorem rates. Rates of duty applicable to Sl. No.2 to 4 of the notification issued on 23 June 1988 were changed to 10 per cent ad valorem vide notification issued on 1 March 1992. This notification, however, did not cover items appearing against Sl. No.5 relating to forged or forged articles of stainless steel falling under chapters 72, 73, 84, 86 or 87. Apparently, it was not the intention of the Government to exclude items of Sl. No.5 of the notification, *ibid*, as the rates against these items were also changed vide notification issued on 10 March 1992.

An assessee engaged in manufacture of forged or forged articles of stainless steel falling under chapters 72, 73, 84, 85, 86 and 87 cleared the goods at specific rate of duty at Rs.2000 per tonne and 15 per cent special



excise duty thereon from 1 March 1992 to 9 March 1992. Had the notification been issued on time, the assessee would have been liable to pay duty at ad valorem rates. The late issue of the notification on 10 March 1992 instead of 1 March 1992 resulted in unintended grant of concessional rate of duty at Rs.2000 per tonne instead of at 10 per cent ad valorem and consequently led to loss of revenue to the Government to the extent of Rs.2.42 lakhs. This was pointed out in audit in December 1993.

The Ministry of Finance did not accept the objection and stated (September 1994) that duty was correctly charged at the specific rate prevailing during the relevant period.

Ministry's reply is, however, silent on the circumstances warranting non introduction of ad valorem rates from 1 March 1992 itself alongwith other items.

**3.61 Other cases :** In five other cases, the irregularities resulted in short levy of duty of Rs.24.62 lakhs, of which recovery of Rs.4.80 lakhs has so far been made in two cases. The details are given below:-

(in lakhs of rupees)

Sl. No.	Particulars	Amount accepted	Amount demanded	Amount recovered
01.	Petroleum Products	12.07	4.24	
02.	FM tubes & Seamless pipes	5.62	2.75	2.75
03.	Diesel generating sets	2.05	3.12	2.05
04.	Oil field equipments	2.04	17.91	
05.	Articles of rubber	2.84		
<b>TOTAL</b>		<b>24.62</b>	<b>28.02</b>	<b>4.80</b>

## CHAPTER 4

RECEIPTS OF THE UNION TERRITORIES (NOT HAVING  
LEGISLATURES)4.01 Tax and non-tax receipts of Union Territories (not having  
legislatures)

The tax and non-tax revenue receipts of the Union Territories which do not have legislature, are given below for the year 1993-94 and two preceding years.

(Amount in crores of rupees)

	Delhi	Chand- igarh	Dadra and Nagar Haveli	Anda- man & Nicobar Islands	Mini- coy & Laksh dweep Islands	Dam- an & Diu	Total re- cei- pts
<b>A. Tax Revenue</b>							
<b>Sales Tax</b>							
1991-92	777.83	60.65	1.24	Nil	Nil	23.85	863.57
1992-93	929.84	65.52	1.77	Nil	Nil	20.55	1017.68
1993-94	737.93	71.66	2.71	Nil	Nil	18.38	830.68
<b>State Excise</b>							
1991-92	215.44	34.71	0.14	0.98	Nil	2.90	254.17
1992-93	278.46	43.19	0.14	1.31	Nil	3.49	326.59
1993-94	186.50	44.76	0.16	3.51	Nil	3.73	238.66
<b>Taxes on Goods and Passengers</b>							
1991-92	39.04	1.13	Nil	Nil	Nil	0.12	40.29
1992-93	33.09	1.26	Nil	Nil	Nil	0.22	34.57
1993-94	0.22	1.44	Nil	Nil	Nil	Nil	1.66
<b>Stamp duty and Registration Fee</b>							
1991-92	47.88	6.04	0.06	0.14	0.07	0.55	54.74
1992-93	48.68	7.09	0.11	0.12	0.06	0.87	56.93
1993-94	46.68	8.22	0.42	0.15	0.08	1.42	56.97

## U.T. RECEIPTS

4.01

(Amount in crores of rupees)

	Delhi	Chand- igarh	Dadra and Nagar Haveli	Anda- man & Nicobar Islands	Mini- coy & Laksh dweep Islands	Dam- an & Diu	Total re- cei- pts
<b>Taxes on Motor Vehicles</b>							
1991-92	37.64	2.39	0.46	0.08	Nil	1.27	41.84
1992-93	38.97	2.41	0.48	0.09	Nil	1.03	42.98
1993-94	33.74	2.34	0.57	0.10	Nil	1.02	37.77
<b>Land Revenue</b>							
1991-92	0.15	Nil	0.02	0.06	0.01	0.11	0.35
1992-93	0.45	Nil	0.09	0.09	0.01	0.54	1.18
1993-94	0.18	Nil	0.15	0.17	0.02	0.90	1.42
<b>Other Taxes and Duties</b>							
1991-92	25.49	4.45	Nil	0.52	Nil	0.19	30.65
1992-93	29.08	5.16	Nil	0.84	0.01	0.20	35.29
1993-94	16.03	1.02	Nil	0.05	Nil	0.27	17.37
<b>Total A. Tax Revenue</b>							
1991-92	1143.47	109.37	1.92	1.78	0.08	28.99	1285.71
1992-93	1358.57	124.63	2.59	2.45	0.08	26.90	1515.22
1993-94	1021.28	134.08	4.00	5.10	0.10	25.97	1190.53
<b>Total B. Non-tax Revenue</b>							
1991-92	37.70	74.73	23.73	33.62	3.15	9.08	182.01
1992-93	92.42	88.68	26.41	42.41	3.13	0.80	253.85
1993-94	43.56	5.81	40.60	58.93	3.39	3.91	156.20
<b>Total - Tax and Non-tax revenue</b>							
1991-92	1181.17	184.09	25.66	35.40	3.24	38.06	1467.72
1992-93	1450.99	213.31	29.00	44.86	3.21	27.70	1769.07
1993-94	1064.84	251.94	44.61	63.03	3.49	29.89	1457.80

Figures for 1993-94 are provisional subject to certification of Finance Accounts.

Total A - Tax Revenue comprises all other major heads not specified above.

The figures for Delhi upto November 1993 only.

**4.02 Recovery at the instance of Audit**

In Chandigarh, following recoveries were made at the instance of Audit;

- i) Underassessment of Sales Tax amounting to Rs.2.61 lakhs was recovered in August 1993.
- ii) Interest amounting to Rs.2.08 lakhs for delayed payment of Tax by four wine contractors was recovered in May 1994.
- iii) Short recovery of assessed licence fee amounting to Rs.32,619 was recovered in January 1993 from a club.
- iv) Permit fee amounting to Rs.1.34 lakhs was recovered from a Transport Undertaking in May 1994.



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20 FEB 1995

Countersigned



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New Delhi  
The

20 FEB 1995