EIGHTY-FOURTH REPORT

PUBLIC ACCOUNTS COMMITTEE (1981-82)

(SEVENTH LOK SABHA)

CUSTOMS, RECEIPTS AND UNION EXCISE DUTIES

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

Presented in Lok Sabha on.

Laid in Rajya Sabha on. . .

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Corrigenda to 84th Report of the Public Accounts Committee (Seventh Lok Sabha)

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55	5.7	1 from bottom	proceging	preceding
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PUBLIC ACCOUNTS COMMITTEE ....
(1981-82)

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22. Shri Indradeep Sinha

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*Ceased to be a Member of the Committee consequent on his appointment as a Deputy Minister with effect from 15-1-1982.

**Ceased to be a Member of the Committee consequent on his appointment as a Minister of State with effect from 15-1-1982.

SECRETARIAT

1. Shri H. G. Paranjpe—*Joint Secretary*
2. Shri D. C. Pande—*Chief Financial Committee Officer*
3. Shri Ram Kishore—*Senior Legislative Committee Officer*

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this 84th Report of the Public Accounts Committee (7th Lok Sabha) on paragraphs 1.08(ii), 1.12(ii), 1.19, 2.10, 2.11, 2.16(a), 2.34, 2.42, 2.47(a) and 2.54(a) of the Report of the Comptroller and Auditor General of India for the year 1979-80, Union Government (Civil), Revenue Receipts, Volume-I. Indirect Taxes, respectively relating to Non-levy/short-levy of additional duty, Mistakes in calculation of duty, Non-realisation of duty on goods not cleared, Non-levy of duty under executive orders. Exemption Notifications (relating to small scale units) Patent or proprietary medicines, Stencil paper, Cess on jute yarn and twine, Excess rebate on sugar exported and Equalised freight.

2. Referring to 12 auction sales of uncleared imported goods made by the International Airport Authority of India, Bombay, from March 1978 to June 1980 and non-realisation of Customs duty reported in Audit paragraph 1.19, the Committee have expressed regret at the fact that the formula for determining the expenses of sale of such goods has not been decided even after a lapse of 5 years. The expenditure on account of auction sales comes to a sizeable amount for each auction and after meeting these expenses of sales in most of the cases, there is very little left to meet the customs duty payable, not to speak of the Import Trade Control fine. The Committee have suggested that the procedure laid down for the custody and disposal of uncleared goods at Bombay and other Airports in India should be reviewed so as to make sure that there are no pilferages, losses or substitutions, that disposals are quick and business like and that the sale expenses are kept to the minimum.

3. While referring to audit objection revealing non-collection of excise duty to the extent of Rs. 23.49 crores from 7 factories as reported in paragraph 2.10, the Committee have expressed their amazement that a concession of a far reaching consequence, i.e. duty exemption under "the later the better principle" in the case of certain intermediary goods manufactured in an integrated factory should have been continued for so many years on 'equitable consideration' merely under the executive instructions of Government without any formal legal backing. The Committee have observed that the Central Excise Law contains ample provision to enable the Government to grant general as well as

specific exemptions from duty, total or partial, by issue of formal notifications which have to be laid on the table of Parliament but the Government have not taken recourse even to these provisions in the present case and have chosen to appropriate to themselves the total legislative function. In the Committee's view apart from the unconstitutionality and the impropriety involved, such a course is also likely to result in highly arbitrary use of power at various levels. The Committee have recommended that the whole matter should be thoroughly examined and the tax concession to the extent it is considered necessary and justified should be given by way of proper amendment to the Central Excise Law and not by executive instructions.

4. With regard to paragraph 2.11 relating to irregularities in the implementation of scheme of duty relief to small scale manufacturer the Committee noticed cases of gross negligence in the drafting of exemption notifications under the Central Excise and Salt Act. The Committee have expressed amazement that a concession specially designed to encourage small manufacturers should be embodied in a notification having no definition of a small manufacturer. There is no excuse whatsoever for initial failure to provide for an overall limit on the aggregate clearances of all excisable goods without which it should have been apparent that the concession could be availed of by all manufacturers, big or small, in respect of clearances of specified goods.

The manner in which piecemeal amendments have been carried out subsequently to the condition designed to limit the concession to small manufacturers leaves room for doubt about the bonafides of the action taken. The concession expressly designed for small scale manufacturers was extended to the large scale sector through the device of defective drafting of the exemption notification. The amendments were only haltingly carried out at every stage of criticism so as to plug only a little of the loophole every time leaving much of the gap open. The Committee have strongly recommended that this matter should be thoroughly investigated so as to fix responsibility for the repeated lapses in drafting notifications resulting in unintended benefits to large manufacturers to the deteriment of revenue.

5. The Committee considered and finalised this Report at their sitting held on 5 March, 1982. The Minutes of the sitting of the Committee form Part-II of the Report.

6. A statement containing conclusions and recommendations of the Committee is appended to this Report (Appendix VI). For facility of reference these have been printed in thick type in the body of the Report.

7. The Committee place on record their appreciation of the assistance rendered to them in the examination of these paragraphs by the Office of the Comptroller and Auditor General of India.

8. The Committee would also like to express their thanks to the Officers of the Ministry of Finance (Department of Revenue) for the cooperation, extended by them in giving information to the Committee.

NEW DELHI;
March 12, 1982
Phalguna 21, 1903 (*Saka*)

SATISH AGARWAL,
Chairman
Public Accounts Committee.

REPORT

INTRODUCTORY

The report of the Comptroller and Auditor General of India for the year 1979-80 Union Government (Civil), Revenue Receipts, Volume I—Indirect Taxes was laid on the Table of the House on 17-3-1981. It contains 96 paragraphs comprising 171 sub-paragraphs.

The Committee selected 13* of these 171 sub-paragraphs for seeking detailed information, both written and oral, from the Ministry of Finance. In the past, the Committee's attention has been mainly confined to the paragraphs so selected. For the remaining paragraphs, the Committee's practice has been to make a general recommendation exhorting Government to take suitable action in these cases as well. This year, making a major departure from the past practice, the Committee called for written replies to all paragraphs not selected for detailed examination.

The Ministry of Finance have sent written replies to all the 158 non-selected sub-paragraphs. After considering these replies, the Committee have made specific suggestions/recommendations in respect of a few cases which have been dealt with in the chapters that follow.

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*1.21, 1.23, 1.24, 2.12, 2.29, 2.41, 2.51, 2.65(b) and 2.66(i), (ii), (iv) & (v).

CUSTOMS RECEIPTS

I

NON LEVY/SHORT LEVY OF ADDITIONAL DUTY

1.1 Audit Paragraph: A consignment of goods described as "Moores precision jigborer matric machine and parts" imported in February 1979 through a major port was assessed to customs duty at 40 per cent *ad valorem* under heading 84.23 of the Customs Tariff Act, 1975. Though the bill of entry was presented on 22 February 1979, the "entry inwards" of the vessel carrying the goods was given only after 28 February, 1979 after the presentation of the Finance Bill, 1979. Hence the goods falling under heading 84.23 also attracted additional duty at 8 per cent *ad valorem* under item 68 of the Central Excise Tariff, but this was not levied. On this being pointed out by Audit (August 1979) the department recovered the short levy of Rs. 58940 (November 1979).

The Ministry of Finance have confirmed the facts.

[Paragraph 1.08(ii) of the Report of the C.&A.G. of India for the year 1979-80, Union Government (Civil) Revenue Receipts, Volume I—Indirect Taxes].

1.2 In a note to the Committee the Ministry of Finance stated:

> "Since the additional duty under item 68 of the Central Excises Tariff became chargeable from 1-3-79 and the Bill of Entry in question was noted on 22-2-79 under prior Bill of Entry system, additional levy escaped notice. The error being of non repetitive nature, no further action was considered."

While offering their comments on the aforesaid reply of the Ministry the Audit suggested that reply might be amplified to indicate:

> "(i) Whether the Bill of Entry presented under prior Entry system had been checked by I.A.D. or not?
>
> (ii) Whether I.A.D. had been entrusted with the check of the list of vessels (prepared by the import department) which have entered finally inwards/entered outwards as per Boards instructions F. 491/13/71-Cus. VI dated 16-8-1972.

(iii) Whether the list of vessels had been checked that year? If not, why not?

(iv) Had this check of list of vessels been made by I.A.D., would the non-levy of C.V. duty have escaped the notice of I.A.D.?

(v) Action Taken by the Ministry to avoid such errors in future, as these are likely to happen in cases of new levies in the budget."

1.3 In several other cases, the Audit Report mentions cases of non levy/short levy of additional duty, short levy due to misclassification of goods, mistakes in calculation of duty, adoption of incorrect rate of exchange, irregular/excess payment of drawback and irregular refund. In all these cases the Ministry of Finance have confirmed the facts stated in the paragraphs.

1.4 On an earlier occasion (21st Report of Public Accounts Committee, 3rd Lok Sabha), the Committee had taken a serious view of the mistakes occurring in the levy of customs duty despite the cent per cent check conducted by the Internal Audit department.

Subsequently the Ministry of Finance had again informed the Committee (Para 1.49 of 8th Report of P.A.C. 5th Lok Sabha) that the Internal Audit wing of the department go into all the bills of entry and other documents and pass them. In their action taken note on the recommendation of the Public Accounts Committee contained in paragraph 1.43 of their 43rd Report (5th Lok Sabha) the Ministry of Finance (Department of Revenue and Insurance) had stated that the Directorate of Inspection had been asked to undertake a review of the working of the Internal Audit department in major custom Houses and that on receipt of the report of the Directorate of Inspection, steps considered necessary to improve the working of the Internal Audit department would be taken.[2]

1.5 In all the cases mentioned in the Audit Report and referred to above, apart from confirming the facts mentioned in the concerned paragraphs, the Ministry of Finance have not indicated how the mistakes/ omissions escaped the scrutiny of their internal audit which is required to check all documents.

1.6 In respect of the particular case reported in the Audit Paragraph the Ministry of Finance have contented themselves with the statement that

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[2]Page 12 of 71st Report of PAC. 5th Lok Sabha.

the error being of non-repetitive nature no further action is considered necessary.

1.7 The Committee regret that despite their earlier recommendations on the subject the efficiency of Internal Audit in the Customs department does not show any sign of improvement and a very large number of simple mistakes continue to be detected in the test check conducted by Revenue Audit. In para 3.25 of their 44th Report (Seventh Lok Sabha) the Committee have recently had occasion to suggest that the Director of Audit should play a much more meaningful role to tone up the efficiency of Internal Audit and that both the Board itself as well as the Collectors in the field should treat it as an important instrument of management control. The Committee cannot but reiterate their earlier recommendation and suggest that the Ministry of Finance should study the present working of the Internal Audit department and take positive steps to improve its efficiency.

1.8 The Committee are unable to accept the Ministry's reply in this particular case to the effect that the error was of non-repetitive nature. The risk of similar mistakes is there every time there are new or additional levies through the annual budget or otherwise. The Committee would, therefore, suggest that the Ministry of Finance should give more serious thought to this problem and lay down suitable guidelines to make sure that such mistakes do not recur.

1.9 The Committee would also like the Ministry of Finance to look into the points suggested by Audit so far as the present case is concerned and inform the Committee accordingly.

II

MISTAKES IN CALCULATION OF DUTY

2.1 Audit Paragraph: According to a notification of March 1978 the effective rate of basic customs duty on Polyester filament yarn falling under heading 51.01/03 of the Customs Tariff Act, 1975 is 200 per cent ad valorem. In respect of Polyester filament yarn imported through a major port in August, 1978, the department levied basic Customs duty at 100 per cent ad valorem as against the correct rate of 200 per cent ad valorem. On this being pointed out by Audit (May 1979), the department stated (April 1980) that the short collection of Rs. 18,446 could not be recovered owing to the late receipt of the audit point.

In this case, when the bill of entry of 26 August 1978 was sent to audit on 21 March, 1979, it was already time barred. The late submission of the documents to audit thus resulted in loss of revenue of Rs. 18,446.

The Ministry of Finance have confirmed the facts.

[Paragraph 1.12(ii) of the Report of the C.&A.G. of India for the year 1979-80—Union Government (Civil) Revenue Receipts Volume I—Indirect Taxes.]

2.2 In a note to the Committee the Ministry of Finance have stated as follows:—

> "Request for voluntary payment has not yet been honoured by the importer. With a view to avoiding recurrence of such cases Collector has already issued Departmental order for the guidance of the staff."

While offering their comments on the aforesaid reply the Audit suggested the reply might be amplified inter alia to indicate:

(i) When was the bill of entry sent to CRA in this case for audit?

(ii) Are there any Government of India instructions to the effect that the original bills of entry should be sent to audit within a prescribed period?

2.3 According to Section 28 of the Customs Act, 1962 when any duty has not been levied or has been short levied or erroneously refunded the proper officer may,—(a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within one year; (b) in any other case,

within six months, from the relevant date, serve notice on the person chargeable with the duty which has not been levied or which has been short levied or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

2.4 In view of the above limitation of time within which a demand based on remedial action can be raised, the Government issued instructions in February 1975, (Appendix I) on a suggestion from Audit, that the original bills of entry should be forwarded to the Customs Revenue Audit for audit purposes within a maximum period of 120 days from the date of payment of duty. The field formations were also requested to fix certain time schedules for movement of the bills of entry through various processes in different departments and to devise suitable checks to ensure that such time schedules were strictly adhered to.

2.5 On the question of delay in receipt of papers in the Internal Audit Department, the Committee on Public Accounts in para 3.21 of their 44th Report (Seventh Lok Sabha) had recommended:

> "....The Ministry of Finance should enquire into the reasons for delay..... and then devise effective measures to ensure that such delays do not take place and the documents are received in the Internal Audit Department at the earliest for them to complete their work and furnish the documents to the Customs Revenue Audit within the stipulated period of 120 days".

2.6 It is apparent that if such documents are not checked in Internal Audit and sent also, where required, for test audit by Customs Revenue Audit well within the prescribed limitation period of six months the results of such checks by audit would be rendered nugatory, as in this case, merely by the operation of time bar. The time limit of 120 days for submission of documents to Revenue Audit is salutory and needs to be strictly observed.

2.7. The Committee cannot but deprecate the manner in which the Ministry, in their written reply to the Committee, have sllurred over this important matter. The Ministry have not given any reasons for the delay in forwarding the documents to the Customs Revenue Audit nor have they indicated whether the control mechanism suggested in 1975 has actually been laid down in different collectorates and how it is working.

The Committee desire that the Ministry of Finance should inquire into the precise reasons for delay in this case and apprise them of the same.

2.8 The Committee would strongly recommend that the Ministry of Finance should review the checks designed in various Collectorates in terms of their instructions of 1975 as well as their actual implementation so as to ensure that the checks are effective both in design and observance.

III

NON-REALISATION OF DUTY ON GOODS NOT CLEARED

3.1 Audit Paragraph: Section 48 of the Customs Act, 1962 provides for disposal of goods imported but not cleared within two months. Accordingly goods for home consumption or transhipment may be sold by the persons having the custody thereof after taking permission from customs authorities, and giving due notice to the importers.

Prior to 1 March, 1976, the Air unit of a major port was dealing with the clearance of all consignments imported by air in the Customs House itself. From 1 March, 1976 the Air Unit attached to the Customs House started functioning in the international air port. With the commissioning of a new international air cargo complex near the air port from May 1977, the International Airport Authority of India have been appointed as the custodian for the goods imported by air and lying uncleared. They are also responsible for periodical auctioning of the imported goods remaining uncleared and/or abandoned in the Air Port.

For this purpose sale lists are prepared by the undertaking (I.A.A.I.) and transmitted to the Customs Officer for indicating Customs duty (including additional duty) and also the Import Trade Control fine imposable on such goods. The fine is presently levied at 50 per cent or industrial raw material and machinery and at 100 per cent for all other goods. After the sales are made in respect of uncleared and abandoned goods allocation of sale proceeds is made in the following order:—

(i) Payment of freight to the carriers.
(ii) Expenses of sale.
(iii) Customs duty.
(iv) Import Trade Control fine.
(v) Warehouse charges.
(vi) Surplus, if any will be paid to the importers provided they prefer a claim within one year of the sale.

As soon as the sales are completed and allocation of the sale proceeds has been done, a cheque is required to be forwarded to the customs department indicating the total amount of customs duty along with the fine.

In all, twelve auction sales were held from March 1978 to June 1980 and demands aggregating to Rs. 12,96,462 were issued to the undertaking from time to time against which only a sum of Rs. 5,62,382 was paid by

the undertaking as confirmed by the Ministry of Finance. The Ministry have added that the allocation of sale proceeds was according to the formula but the amounts claimed by the undertaking as expenses of sale are yet to be finalised.

Particulars of recovery of the balance are awaited (December 1980). [Paragraph 1.19 of the Report of the Comptroller & Auditor General of India for the year 1979-80 Union Government (Civil) Revenue Receipts, Volume I—Indirect Taxes.]

3.2 In a note to the Committee the Ministry of Finance have stated "The Collector of Customs, Bombay has examined the procedure of distribution of action proceeds followed by Bombay Port Trust in respect of similar auctions conducted by them. The BPT have confirmed that 'expenses of sales' constitute (i) Auctioneer's commission (ii) Advertisement charges and (iii) Establishment charges (consisting of expenditure on the staff predominenly employed on conducting sale.) The matter was taken up with IAAI, Bombay to adopt the same practice. The IAAI have, however, declined to accept the formula followed by the B.P.T. The matter is now being taken up with the Chairman, IAAI, New Delhi".

3.3 According to the Audit Paragraph the International Airport Authority of India were appointed as the custodian for the goods imported by air and lying uncleared at the Bombay airport in May 1977. The allocation of the sale proceeds of such goods is made in accordance with the formula laid down in Section 150 of the Costoms Act,' 1962. According to this formula the expenses of sales take precedence over the Customs duty and Import Trade Control fine payble to the Customs department. Against total demands of Rs. 12.96 lakhs on account of Customs duty and Import Trade Control fine in respect of the sales held between March 1978 and June 1980, an amount of Rs. 7.34 lakhs had not been paid by the International Airport Authority for the reason that the expenses of sale were yet to be finalised.

3.4 The Committee understand from Audit that in their reply to the Audit Paragraph sent in November 1980, the Ministry of Finance had stated that, ". . . .expenditure on account of auction sales comes to a sizeable amount for each auction and after meeting these expenses of sales in most of the cases there is very little lift to meet the Customs duty payable. Further, in all the cases there is no amount available to meet the Import Trade Control fine."

3.5 A similar dispute between the Bombay Port Trust and the Customs Department in respect of the allocation of sale proceeds of uncleared goods imported through the Bombay Port had come to the notice of the Public Accounts Committee some years ago. (Para 77 of the Commitee's Twenty

first Report, Third Lok Sabha). This dispute had been going on for over 11 years and it was only in pursuance of the recommendations of the Committee that it was sorted out in May 1965 (*Vide* para 1.67 of the Committee's Twenty Fourth Report, Fourth Lok Sabha).

3.6 The Committee also learn from Audit that the procedure for the custody and disposal of such uncleared goods is not uniform at the various International airports in the country.

3.7 The Committee cannot but express regret at the fact that despite their earlier exhortations in the matter of a similar dispute between the Bombay Port Trust and the Customs Department, such disputes between different Government Agencies should not only continue to arise but should persist for years together. The International Airport Authority were appointed the custodian in May 1977. The auction sales of uncleared goods were made from March 1978. It is most regrettable that the formula for determining the expenses of sale has not been decided even after a lapse of 5 years. The position stated by the Ministry of Finance in Deember 1981 is also not different from that stated by them in November 1980. The Committee would strongly urge that the question should be sorted out without any further delay with the intervention, if necessary, of the Ministry of Civil Aviation. The Committee would like to be apprised of the final decision within 3 months from the date of presentation of this report to the House.

3.8 The Committee do not feel happy also about the statement that the expenditure on account of auction sales comes to a sizeable amount for each auction and after meeting these expenses of sales in most of the cases there is very little left to meet the Customs duty payable, not to speak of the Import Trade Control fine. This gives the impression that all is not well with the method of custody and disposal of these goods. The Committee would suggest that the procedure laid down for the custody and disposal of uncleared goods at Bombay and other airports in India should be reviewed so as to make sure that there are no pilferages, losses or substitutions, that disposals are quick and businesslike and that the sale expenses are kept to the minimum.

UNION EXCISE DUTIES

IV

NON LEVY OF DUTY UNDER EXECUTIVE ORDERS

4.1 Audit Paragraph: Under Section 3 of the Central Excises and Salt Act, 1944, any exciseable goods mentioned in the tariff attract duty as soon as these are produced or manufactured. According to rules 9 and 49 or 173-G of the Central Excise Rules, 1944 duty has to be paid on excisable goods at the time of their removal from any place where they are produced, cured or manufactured or any permises appurtenant thereto, whether for consumption, export or manufacture of any other commodity in or outside such place. In this connection the Ministry of Law opined (August 1976) as under:—

(i) The expression 'any other commodity' used in rule 9 would be construed to mean any commodity excisable or non excisable other than that was taken for such use as is understood in the market; and

(ii) the stage of collection of duty would be before such goods are removed for further production.

It, therefore, follows that in an integrated factory, duty is leviable at each stage of manufacture unless the goods at that stage are specifically exempted thereform. Instead of issuing any notification exempting the intermediary goods from payment of duty, the Central Board of Excise and Customs issued from time to time, latest (*vide* letter dated 3rd November, 1977) executive instructions to charge duty in the form in which the following excisable goods leave the factory of production:—

(i) Synthetic resins and articles made therefrom (tariff item 15A) or non-ferrous metals such as copper, aluminium, zinc and lead where the semis and manufactures fall under one and the same item; and

(ii) Iron, steel ingots and iron/steel products which fall under different items of the tariff.

The Board also stated that the question of providing legal cover for the aforesaid principle namely "the later, the better principle" was under examination. It was also added that the demands of duty, if any, issued because of the absence of legal cover for this principle should not be pressed for payment until further orders.

No legal backing to the said principle has yet been given (December 1980).

A review of records of seven factories in five collectorates, revealed non collection of duty to the extent of Rs. 23.49 crores as detailed in the succeeding paragraphs under the aforesaid 'later, the better principle'.

(a) Aluminium in crude form and specified manufactures therefrom are dutiable under tariff item 27.

A factory in a collectorate manufactured aluminium billets and captively consumed a portion of the produce in the manufacture of extruded shapes and sections without payment of duty. This resulted in non-levy of duty of Rs. 2,256.49 lakhs during the period April 1965 to March 1980. The records for pre April 1965 period were not produced to audit.

(b) (i) Steel ingots and steel products are assessable to duty under tariff item 26 and 26AA respectively.

Four integrated factories in two collectorates, manufactured steel ingots and used them captively for the manufacture of steel products. These factories did not pay duty at the ingot stage and paid it at the final product stage on the weight of the steel products manufactured. This resulted in non-levy of duty of Rs. 88.19 lakhs at the ingot stage on 43,579 metric tonnes of steel ingots lost during melting/heating in the course of their conversion into steel products duing the period 1974-75 to 1979-80.

(ii) Steel melting scraps and steel castings are assessable to duty under two different tariff items namely tariff item 26 and tariff item 26AA respectively, the effective rates applicable with effect from 18th June, 1977 being Rs. 330 per metric tonne in the case of the former and Rs. 200 per metric tonne in the case of the latter.

In a third collectorate an integrated steel plant manufactured steel castings out of steel melting scraps obtained by it in the course of manufacture of other steel products. Steel castings thus manufactured, were cleared on payment of duty of Rs. 200 per metric tonne. Though steel melting scraps were chargeable to duty under a different tariff item, no duty was levied thereon at the intermediate stage of production. Non-levy of duty in respect of 832.345 metric tonnes of steel castings cleared by the plant during 18th June, 1977 to 31st March, 1978 owing to payment of duty only at the final stage of manufacture worked out to Rs. 1,08,564 assuming that the same quantity of steel melting scraps were used in the manufacture of castings.

(c) Copper cathode is assessed to duty under sub item (1) of the tariff item 26A.

A factory in a fourth collectorate manufacturing cathodes, used part of the production for manufacture of wire bars by casting process without payment of duty. The duty was assessed and realised only at the time of clearances of wire bars from the factory. Non realisation of duty on cathodes before their clearance for captive consumption led to non-levy of duty of Rs. 23,20,453 on 516.726 metric tonnes of cathodes lost in the process of manufacture of wire bars during the year 1975-76 to 1979-80 (October 1979).

The paragraphs pertaining to these cases were sent to the Ministry of Finance in July 1980 and September 1980. In one case the Ministry have stated (December 1980) that the matter is under examination. Replies in other cases are awaited (December 1980). Paragraph 2.10 of the Report of the Comptroller and Auditor General of India for the year 1979-80 Union Government (Civil) Revenue Receipts Volume I-Indirect Taxes.

4.2 The seven cases dealt with in the aforesaid audit paragraph relate to the following factories:—

1. Indian Aluminium Company Ltd., Alupuram, Kerala;
2. M/s Pratap Steel Rolling Mills Pvt. Ltd. Chhehratta (Amritsar);
3. M/s Upper India Steel Manufacturing and Engineernig Co. Pvt. Ltd., Ludhiana;
4. M/s. Punjab Con-cast Steel Ltd., Ludhiana;
5. M/s. Viswesvaraya Iron & Steel Ltd., Bhadravati;
6. M/s Hindustan Copper Ltd., Khetri Nagar, Rajasthan;
7. M/s. Durgapur Steel Plant Ltd., Durgapur.

In reply, the Ministry of Finance in their note to the Committee dated 18-12-1981 stated:

> "The audit objection contained in this paragraph has not been admitted as a whole and hence question of taking any corrective action does not arise".

4.3 The Committee understand from Audit that earlier while replying to the draft audit paragraph contained in sub para (a) of the above Audit Paragraph, the Ministry of Finance had been more explicit. In their letter No. 232/166/80-CX 7 dated 3-1-1981 to Audit, the Ministry had stated:

"It has been contended by the audit that aluminium in crude form was dutiable and no exemption notification existed for captive consumption and therefore the assessee should have paid duty first on aluminium in crude form and then again on the end products which were made out of crude aluminium.

The correct position is that although no notification existed providing for exemption of duty on crude aluminium leviable under tariff item 27A (i) when used captively for the production of other aluminium products mentioned in other sub-tariff items, tariff item 27 has been notified under Rule 56A. As a result of it, if crude aluminium was used in the manufacture of any other product and such crude aluminium was purchased from any other factory, the duty paid on crude aluminium was available as credit for payment of duty on end-products of aluminium manufactured therefrom. The result was that in the later case, the manufacturer of aluminium products would have to pay duty only at the final product since he would have got back the duty paid on aluminium in crude form. This would have, therefore, created an anamolous position which was sought to be rectified by issue of executive instructions providing for payment of duty according to the later the better principle, *i.e.*, on the end products. Thus parity was sought to be introduced between the two situations, *i.e.*, one where crude aluminium is captively used in the manufacture of other aluminium products and the other where crude aluminium is purchased from another factory.

The genesis of a fiscal measure is tested by the fact that it treats all the situations alike and does no lead to discriminatory treatment even though the situations may differ. The executive instructions, therefore, only sought to supplement the intention behind the construction of tariff item 27. A strict judicial interpretation of tariff item 27, should not override the fair implementation of the fiscal measures. Accordingly, when proforma credit was available to a party when aluminium in crude form was purchased from other factory, it was in the fitness of things that in other situations, where aluminium in crude form is captively used, should have also be bear the same quantum of duty. Accordingly, from the point of view of propriety and fair implementation of fiscal law, the audit point of view cannot be accepted, and hence the audit objection is not admitted".

4.4 It was appear that Government have propounded, this "later the better principle' by executive instructions with a view to securing 'propriety and fair implementation of fiscal law'. This principle is followed

in cases where, in a factory of production, intermediate products and finished products fall under different sub-items of the same tariff item or by an extension under different tariff items of the Central Excise Tariff Schedule so that strictly, under the law, both are independently excisable. Thus where iron in crude form falling under item 25 of Central Excise Tariff can be converted into iron products falling under a different item 26AA duty is attracted at an intermediate stage under Central Excise Rule 9 but the collection of duty is postponed to the later stage of the finished product.

4.5 According to Audit in such cases, under the Central Excise law, duty has to be collected before the removal of intermediate goods for further production and the "later the better principle" has no legal force unless it is regularised either through amendment of the Act/Rules or through isue of formal exemption notifications under the delegated powers of Government. This issue was featured in paragraph 41 of the Audit Report 1977-78.

4.6 The Committee understand that the question of providing legal cover to "later the better principle" had been under consideration of the Government since 1977, when the Central Board of Excise and Customs in their letter F.No. 139/8/77-CX 4 dated 8-11-1977 (Appendix II) issued instructions to the effect that demands of duty, if any, issued because of the absence of legal cover for this principle may not be pressed for payment until further orders.

4.7 In 1979, the Board, in their letter F. No. 261|27|5|79-CX 8 dated 22-9-1979 (Appendix III) issued clarification to the effect that aluminium ingots obtained at intermediate stage were excisable and should be accounted for in R.G.I. Evidently this clarification ran counter to the Board's clarification contained in their earlier letter quoted in the preceding paragraph. Since the earlier instruction is not superseded or amended by this later clarification dated 22-9-1979 two contradictory instructions remain in force simultaneously. The Committee understand from Audit that this contradiction in the Board's instructions was specifically pointed out to them by Audit in December, 1979.

4.8 The tax effect in the seven cases pointed out in the present audit para alone comes to over Rs. 23 crores. Apparently, the total tax effect of this so-called 'later the better principle' would be very high indeed. It is amazing that a concession of such far reaching consequence should have been continued for so many years merely under the executive instructions of Government without any formal legal backing.

4.9 The Ministry of Finance feel justified in continuing this concession on equitable considerations. The Ministry are no doubt aware of Justice Rowlatt's famous dictum to the effect that tax and equity are strangers, which has been approved of by the Supreme Court of India in a number of cases. While considerations of equity could, therefore, be a justification for suitable amendment of the Central Excise law there could be no possible apology for continuing an illegal practice merely by executive instructions for so long.

4.10 In fact, the Central Excise law contains ample provision to enable the Government to grant general as well as specific exemptions from duty, total or partial, by issue of formal notifications which have to be laid on the Table of the Parliament. The Committee are distressed to note that Government have not taken recourse even to these provisions in this case but have chosen to appropriate to themselves the total legislative function. In the Committee's view, apart from the unconstitutionality and the impropriety involved, such a course is also likely to result in highly arbitrary use of power at various levels. This is clear also from the act that the Central Board of Excise and Customs, while continuing to swear by this so-alled principle of 'later the better' issued contradictory instructions in respect of aluminium ingots in September 1979, and have failed to amend or modify the same till date despite the contradiction having been specifically pointed out by Audit in December 1979.

4.11 The Committee would strongly recommend that his whole matter should be thoroughly examined and the tax concession, to the extent it is considered necessary and justified should be given by way of proper amendment to the Central Excise law and not by executive instructions.

4.12 The Committee would also recommend that encroachment on the legislative power should not be resorted to in any circumstances.

V

SMALL SCALE UNITS

5.1 *Audit paragraph*: (a) The Government introduced under a notification dated 1st March, 1978, a scheme of duty relief to encourage small scale manufacturers. The scheme came into force from 1st April 1978. Initially, the scheme applied to 69 specified commodities. Subsequently, as a result of addition to/deletions from the list operated in respect of 70 commodities.

A test audit of the assessment records of the manufacturers covered by the scheme was conducted. Following irregularities were noticed.

1. Under the scheme, the first clearance of the specified goods for home consumption upto an aggregate value not exceeding Rs. 5 lakhs, made by or on behalf of a manufacturer from one or more factories, was exempt from duty subject to the following conditions.

(i) The value of clearance during the previous financial year should not exceed Rs. 13.75 lakhs during the period 1st April 1977 to 28th February 1978 for availing of the concession in the year 1978-79 and Rs. 15 lakhs for the subsequent years.

(ii) The aggregate value of clearance made during any financial year should be computed separately for each of the specified goods.

(iii) Where the factory producing specified goods was run at different times in any financial year by different manufacturers, the value of specified goods to cleared from such factory in any such year at 'nil' rate of duty was not to exceed Rs. 5 lakhs.

By a notification of 30th March, 1979, manufacturer who produced excisable goods falling under more than one tariff items and if the aggregate value of all excisable goods cleared by him or on his behalf for home consumption during the preceding financial year exceeded Rs. 20 lakhs, was excluded from the purview of the said scheme.

Incorrect availment of exemption in the following cases resulted in underassessment of Rs. 3.84 lakhs.

(i) A unit manufacturing patent or proprietary medicines was allowed concession of Rs. 1.20 lakhs in duty during the years 1977-78 and 1978-79. This was irregular as the clearances

of medicine for home concumption were Rs. 23.84 lakhs and Rs. 32.11 lakhs respectively during these years.

The case was reported to the Ministry of Finance in September 1980; reply is awaited (December 1980).

(ii) A unit manufacturing electric motors (specified goods) as also power driven pumps (non specified goods), was allowed exemption of Rs. 99.173 in espect of clearances of electric motors upto Rs. 5 lakhs during the period 1st April 1979 to 19th July 1979, on the ground that the value of clearances of electric motors during 1978-79 did not exceed Rs. 20 lakhs. The exemption granted was, however, not admissible as the value of such clearances of electric motors exceeded Rs. 15 lakhs during that year. On this being pointed out in audit, the department accepted (August 1980) the objection and issued a show cause notice for realising the duty.

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

(iii) Four units manufacturing excisable goods availed of the exemption amounting to Rs. 56,875 during the financial year 1979-80, even though the aggregate value of the excisable goods cleared during the preceding financial year 1978-79 had exceeded Rs. 20 lakhs. On this being pointed out in audit, the department issued show cause notices in all the four cases. In one case a sum of Rs. 4,055 has been recovered (July 1979); recovery particulars in the remaining three cases are awaited (June 1980).

The paragraph was sent to the Ministry of Finance in May 1980. reply is awaited (December, 1980).

(iv) Two licensees manufactured specified goods as well as goods falling under tariff item 68. They were allowed concession of Rs. 72,982 in duty on the clearances of specified goods during the period 1st April 1979 to 31st December 1979. As the total value of clearances of specified goods and goods falling under tariff item 68 which were not so specified, exceeded Rs. 20 lakhs during the preceding year 1978-79, those licensees were not eligible for the aforesaid concession When this was pointed out by Audit (September 1979 and February 1980), the department recovered Rs. 17,458 in one case and issued show cause notice for Rs. 55,524 in the other case.

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

(v) A manufacturer was allowed to avail of the exemption of Rs. 34,972 in respect of a variety of barley classifiable as prepared or preserved food cleared from one of his units during the financial year 1978-79, though the aggregate value of other varieties of barley manufactured and cleared during the period 1st April 1977 to 28th February 1978 had exceeded Rs. 13.75 lakhs. On this being pointed out in audit (September 1979), the department stated that the Assistant Collector concerned was being advised to raise demand after ascertaining the duty liability.

The paragraph was sent to the Ministry of Finance in September 1980, reply is awaited (December 1980).

2. (i) A manufacturer of synthetic organic products, cleared the goods on payment of duty and also collected the same from the customers even though he was eligible to avail of the exemption from duty as a small manufacturer.

Subsequently, when he preferred a refund claim in respect of duty already paid by him on 6th November, 1978, the department sanctioned a refund of Rs. 1,10,575. The incorrect computation of the limit of Rs. 5 lakhs in this case by excluding the element of duty recovered by the manufacturer from the customers, resulted in short levy of Rs. 30,918. On this being pointed out in audit, the department issued a show cause notice and had a personal hearing. Final decision is awaited (August 1980).

The paragraph was sent to the Ministry of Finance in September 1980. reply is awaited (December 1980).

(ii) Similarly in the case of six other units, the element of duty recovered from customers was not included in the computation of the limit of Rs. 5 lakhs. This resulted in short levy of duty of Rs. 98,000, out of which Rs. 2,000 were recovered; demands were raised for Rs. 12,000 and reply from the department is awaited for the balance of Rs. 84,000.

The case was reported to the Ministry of Finance in September 1980; reply is awaited (December 1980).

3. Under the notification of 1st March, 1978, the value of goods exempted from duty under any other notification, was to be taken into account for computing the limits for exemption as well as clearance specified therein. This was also clarified by Government on 22nd January 1979.

By an amending notification issued on 30th March 1979, it was provided that for the purposes of computing the aggregate value of clearances,

the clearances of any specified goods which were exempt from duty by any other notification should not be taken into account with effect from 1st April, 1979.

It was noticed in audit that two units manufacturing rubber products, claimed exemption on the first clearances of goods upto Rs. 5 lakhs prior to 1st April 1979 without taking into account the value of the clearances of the goods which were exempt from duty under another notification. This resulted in understand of duty Rs. 92.247.

The department accepted the underassessment of duty of Rs. 37,598 in one case and issued a show cause notice for the recovery of Rs. 54,649 in the other case. Recovery particulars in both the cases are awaited (January and February 1980).

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

4. In paragraph 38(a) of the report of the Comptroller and Auditor General of India for the year 1976-77 (Revenue Receipts, Volume—1), a few cases of legal avoidance of duty by manufacturers due to change in proprietor was commented upon. The issue engaged the attention of the Public Accounts Committee. In paragraph 1.16 of their 149th Report (Sixth Lok Sabha) the Committee urged Government to examine the matter carefully and to take urgent rectificatory steps to plug the loopholes for future so that legal avoidance of duty does not recur. The matter was still under consideration of Government and their final decision was awaited (November 1980).

In another case of a partnership firm manufacturing rubber products, it was noticed (January 1979) that the value of clearances during the period 1st April 1977 to 28th February 1978 exceeded Rs. 13.75 lakhs and as such the firm was not entitled to the concession under the notification *ibid.* The partnership was, thereafter, dissolved and the factory was sold to another partnership firm whose partners were close relations of the partners in the dissolved firm. A new Central Excise licence was issued and the licensee claimed exemption for clearance of goods valued at Rs. 4,99,938 during the period 14th July 1978 to 29th September 1978 without payment of duty amounting to Rs. 1,88,977.

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

5. An assessee engaged in the manufacture of domestic electrical appliances cleared goods worth Rs. 6,05,412 during the year 1978-79 without payment of duty even in respect of the clearances exceeding Rs. 5 lakhs. The omission escaped the notice of the department till it was pointed out by Audit in September 1979 and resulted in non levy of duty of Rs. 27,670.

The said amount together with a penalty of Rs. 150 for improper maintenance of accounts was realised from the assessee in December, 1979 and April 1980.

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

6. The value of excisable goods cleared for captive use in the same factory in further manufacture of other goods is taken into account for calculating the value of clearances as clarified by Government in December 1978.

A unit manufacturing power driven pumps did not take into account the value of electric motors cleared for captive consumption in computation of total value of clearances during the year 1978-79, resulting in short payment of duty of Rs. 27,000 during the period August 1978 to March 1979. On this being pointed out by Audit (April 1979), the department stated that the demand of Rs. 27,525 had been raised (May 1979) and confirmed. Recovery particulars are awaited.

The case was reported to the Ministry of Finance in September 1980; reply is awaited (December 1980).

(b) By a notification issued on 18th June 1977, clearances upto Rs. 30 lakhs of goods falling under tariff item 68 during a financial year were exempt if the total value of the capital investment made from time to time on plant and machinery installed in the industrial unit in which the said goods were produced was not more than Rs. 10 lakhs. Subsequently, the concession was restricted to the first clearances for home consumption upto a value not exceeding Rs. 30 lakhs during the preceding financial year subsequent to 1977-78, the exemption being limited to Rs. 24 lakhs for the year 1977-78. By another superseding notification issued on 1st March 1979, the aforesaid goods were totally exempt from duty upto Rs. 15 lakhs and leviable to duty at 4 per cent *ad valorem* on clearances after the first clearances of Rs. 15 lakhs during the year 1979-80 subject to the conditions notified earlier.

(i) A unit in a collectorate manufacturing parts of textile machinery, available of the concession under the aforesaid notification of 18th June 1977. Thereupon its licence was cancelled in October 1977. As the value of the goods cleared by the unit exceeded the prescribed limits during the years 1977-78 and 1978-79, it was not entitled to the concession. On this being pointed out in audit (July 1979), the department issued (September and December 1979) show cause notices demanding Rs. 5,09,780 for the period 18th June 1977 to 31st December 1979 calculated at the rates

of duty prevalent on the dates of clearances. Since the clearances were made without observing the central excise formalities, the unit was liable to duty as the rate and valuation in force on the date of payment in terms of rule 9A(5) of the Central Excise Rules 1944. The total non levy would thus work out to Rs. 6,23,379.

The unit was brought under the licensing control from January 1980 onwards and was paying duty under protest since then. Final reply of the Collector is awaited.

The paragraph was forwarded to the Ministry of Finance in September 1980; reply is awaited (December, 1980).

(ii) It was noticed in audit (March 1980) that a unit in another collectorate manufacturing boiled sweets, availed of the said concession even though the investment on plant and machinery installed in the industrial unit exceeded Rs. 10 lakhs. This resulted in short levy of duty of Rs. 1.81 lakhs during the period 1st April 1979 to 29th February 1980.

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

[Paragraph 2.11 of the Report of Comptroller and Auditor General of India for 1979-80, Union Government (Civil) Revenue Receipts—Volume—I—Indirect Taxes].

5.2. The Audit paragraph relates to the following 23 units:

1. M/s. Comtech Laboratories, Bombay.
2. /s. Hafi Elektra, Thane.
3. M/s. Poly Feb Industries, Bombay.
4. M/s. Ciffis Chemicals & Pharmaceuticals (India) Ltd., Bombay.
5. M/s. Ansons Electro Mechanical Works, Bombay.
6. M/s. K. T. Kubal & Co. (P) Ltd., Bombay.
7. M/s. Beechem (India) Pvt. Ltd.
8. M/s. Electro Equipment Corporation Ltd., Muland.
9. M/s. Machine Products (India) Private Ltd., Odhav, Ahmedabad.
10. M/s. Labros Chemicals, Lucknow.
11. M/s. Northern India Press Works, Lucknow.
12. M/s. U.P. State Agro-Industrial Corpn., Lucknow.
13. M/s. Pee Medica, Agra.
14. M/s. Meenakshi Foundry, Coimbatore.
15. M/s. Tansi Farm Implements, Tiruchy.

16. M/s. Patel Bras Service Engineering Pvt. Ltd., Muland, Bombay.
17. M/s. Rackitt & Colman of India Ltd., Calcutta.
18. M/s. Universal Dye Stuff Industries, Baroda.
19. M/s. Mansfield Rubber Co. (P) Ltd., Ghaziabad.
20. M/s. Supreme Rubber and Allied Industires, Vapi, Baroda.
21. M/s. Stella Rubber Works, Bangalore.
22. M/s. Correct US G. T. Karnal Road, New Delhi.
23. M/s. National Products, Bangalore.

The Ministry of Finance in their written notes dated 27-11-81 and 31-12-81 stated as under *ad seriatum.*

2.11(a)1(i) M/s. Comtech Laboratories, Bombay. Audit objection has not been admitted. The question of taking any corrective action does not arise.

2.11(a) (ii)—Demand for Rs. 99,971.20 was confirmed by the jurisdictional Assistant Collector. This demand was restricted to Rs. 39,249.28 for the period 8.6.1979 to 19.7.1979 and the remaining amount was struct off as time-barred by the Appellate Collector. The enforcement of the demand has been stayed by the Madras High Court.

2.11(a)1(iii)—Demand for Rs. 19,153.55 against M/s. Pee Medicos, Agra, was confirmed the Jurisdictional Assistant Collector and out of same a sum of Rs. 3,742.80 has been realised. Another demand for Rs. 9,605. 52 in respect of Northern India Press Works, Lucknow has been confirmed by the Jurisdictional Assistant Collector and is pending realisation. Demand for Rs. 24,060.80 against M/s. Labros Chemicals Limited, Lucknow is under adjudication. The present position is being ascertained.

Corrective measures were taken to realise the Central Excise duty and the duty has been fully realised in two cases *viz.* M/s. U.P. State Agro Corpoartion Ltd., Lucknow and M/s. Northern India Press Ltd., Lucknow. In respect Sitapur Road, Lucknow a demand for Rs. 24,787 on account of duty involved on excess value of clearance was raised which has since been confirmed. It is further reported that P. P. Medicines worth Rs. 25,073.80 have been attached (for extracting the amount of duty involved) and will be auctioned after following necessary process.

2.11(a)1(iv)—Demand for Rs. 17,458 has been realised. An amount of Rs. 55,523 has been realised.

2.11(a)1(v)—The demand for Rs. 35,670.09 is under the process of adjudication.

2.11(a)2(i)—The demand for Rs. 30,917.72 has been confirmed by the Jurisdictional Asstt. Collector. The assessee has preferred an appeal against the same.

2.11(a)2(ii)—*M/s. Poly Feb. Industries, Bombay.*

Demand for Rs. 7,613.95 has been confirmed by the Jurisdictional Asstt. Collector. The assessee has preferred an appeal against the same.

M/s. Ciffis Chemicals & Pharmaceuticals India Ltd., Bombay.

Demand for Rs. 4,404.49 for the period 1.4.78 to 3.7.78 has been raised and is under adjudication.

M/s. Ansons Electro Mechanical Works, Bombay.

Demand for Rs. 32,701.00 has been confirmed and out of this Rs. 15,000 have been realised.

M/s. K. T. Kubal & Co. (P) Ltd. Bombay

The demand for Rs. 1,875.39 has been recovered from the assessee.

M/s. Beechem (India) Pvt. Ltd.

Demand for Rs. 1,21,422.92 and Rs. 4,965.90 have been confirmed by the Jurisdictional Asstt. Collector and the amounts have been realised.

M/s. Electro Equipment Corpn. Ltd., Muland

A short levy of Rs. 5,780 has been recovered from the assessee.

2.11(a)3—The demand for Rs. 54,649.12 against M/s. Mansfield Rubber Co. (Pvt.) Ltd. has been confirmed by the Jurisdictional Asstt. Collector and is under process of realisation.

Demand for Rs. 37,598.41 against M/s. Supreme Rubber & Allied Industries has been confirmed by the Jurisdictional Asstt. Collector and is under process of realisation.

2.11(a)4—The audit objection has not been admitted by the Ministry and hence question of taking corrective action does not arise.

2.11(a)5—The amount of Rs. 27,670 has been realised.

2.11(a)6—*M/s. Hafi Elektra*

Demand for Rs. 27,525 has been confirmed by the Jurisdictional Asstt. Collector and realised.

2.11(b)(i) The Asstt. Collector concerned has confirmed the demand for Rs. 6,23,378.72. The assessee has filed an appeal to the Appellate Collector, Bombay which is pending decision.

2.11(b)(ii) The demand was confirmed by the jurisdictional Asstt. Collector but the assessee has filed a writ petition in Karnataka High Court and the matter has become *sub-judice*.

5.3 While introducing this scheme of duty relief the Finance Minister in his budget speech for the year 1978-79 had stated:

> "First of all, consistent with the policy of the Government to encourage the small manufacturer and to widen the entrepreneurial base in the country, I propose to provide sufficient relief to small manufacturers so as to enable them to compete successfully with larger units. The duty exemptions at present available to small scale manufacturers are not based on any one pattern. Over the course of years, a number of *ad hoc* concessions have been given and the principles of relief have varied very widely. In defining the small units, a variety of formulae have been adopted, such, as value of clearances per annum, quantity of clearances per annum, value of capital investment on plant and machinery, number of workers, use of power, and a combination of two or more of these criteria. Keeping in view the need for rationalising the pattern of relief to small industries and bearing in mind the recommendations made by the Jha Committee, I propose to exempt all small scale units manufacturing specified goods, whose clearances in the preceding year did not exceed Rs. 15 lakhs, from the duty payable on the first clearance of Rs. 5 lakhs. The exemption will cover 69 items including, amongst others, medicines, soap and detergents, paints and varnishes, household electrical goods, steel furniture, metal containers, aerated waters, vegetable non esential oils, ceramics and other items notified. This measure will benefit about 24,000 units currently under excise control".

5.4 An exemption notification was issued accordingly by Government *vide* No. 71/78 dated 1.3.1978 allowing total exemption from duty to the first clearance for home consumption of specified goods upto an aggregate value of Rs. 5 lakhs cleared in a financial year by or on behalf of a manufacturer from one or more factories. The exemption was available provided the aggregate value of the specified goods cleared by the manufacturer or on his behalf for home consumption from one or more factories during the preceding financial year did not exceed Rs. 15 lakhs (for the initial financial year 1978-79 a lower limit of Rs. 13.75 lakhs provided).

5.5. The concession was liberalised in 1980 when the aforesaid exemption notification of 1st March 1978 was replaced by exemption notification No. 80/80-CE dated 19.6.1980. Under this notification, in addition to the total exemption in respect of the first clearances of the aggregate value of Rs. 5 lakhs, a partial exemption to the extent of 25 per cent of duty was allowed in respect of the next clearance of specified goods of an aggregate value not exceeding Rs. 10 lakhs.

5.6 In 1981, the concession was further liberalised, when under exemption notification No. 50/81 CE dated 1st March, 1981, the limit of clearances for total exemption was raised from Rs. 5 lakhs to Rs. 7.5 lakhs and that for partial exemtpion was brought down from Rs. 10 lakhs to Rs. 7.5 lakhs.

5.7 In the original notification of 1st March, 1978 the essential condition for the admissibility of the concession was that the aggregate value of all clearances of specified goods in the preceding financial year should not exceed Rs. 15 lakhs. There was nothing to prevent even large manufacturers to avail of this concession in respect of their clearances of specified goods. The Committee understand that Audit did in fact come across a number of cases where this concession meant for small scale sector was availed of by large scale units whose investments in plant and machinery ranged upto Rs. 47 crores and whose total annual turnover varied upto over Rs. 116 crores. To plug this loophole the notification of 1st March, 1978 was amended vide notification No. 141/79-CE dated 30-3-1979 which introduced another condition to the effect that in the case of an excisable goods falling under more than one tariff item, the concession would not be available to a manufacturer if the aggregate value of all excisable goods cleared by him or on his behalf for home consumption from one or more factories during the preceding financial year had exceeded Rs. 20 lakhs.

5.8 The Committee understand that the Audit pointed out in December 1980 that even this amendment was not adequate in so far as this overall limit of Rs. 20 lakhs would still not exclude a large manufacturer who manufactures specified goods falling under only one item of the tariff along with other non-specified goods. It was also pointed out by Audit at the same time that earlier, while giving an analogous concession under tariff item 68 vide notification No. 176/77-CE dated 18-6-1977, the benefit had been denied to large manufacturers through the simple device of making the concession conditional on the total value of all clearances of excisable goods by the manufacturer or on his behalf in the preceding financial year not exceeding Rs. 30 lakhs.

5.9 The relevant condition was amended further in the amending notification No. 50/81-CE dated 1st March 1981 to provide that the concession would not be admissible where the aggregate value of clearances of all excisable goods by the manufacturer or on his behalf for home consumption from one or more factories during the preceding financial year had exceeded Rs. 20 lakhs.

5.10 It is clear from the above recountal of events that, to say the least, there was a gross negligence in the drafting of exemption notifications. It is amazing that a concession specially designed to encourage small manufacturers should be embodied in a notification having no definition of a "small manufacturer". This is all the more painful when viewed in the context of the fact that the need for stipulating an overall limit on clearances of all excisable goods in such cases was not unknown or unrealized at the relevant time; it had, on the other hand, been earlier provided for in 1977 in an exemption notification giving an analogous concession under tariff item 68. The Committee are unable to find any excuse whatsoever for this initial failure to provide for an overall limit on the aggregate clearances of all excisable goods without which it should have been apparent that the concession could be availed of by all manufacturers, big or small, in respect of clearances of specified goods.

5.11 The manner in which piecemeal amendments have been carried out subsequently to the condition designed to limit the concession to small manufacturers leaves room for doubt about the bonafides of the action taken. The amendment made in March 1979 still left the gap open as pointed out by Audit in December 1980. Even the subsequent amendment of March 1981 does not adopt the simple formula of the 1977 notification which placed the limit on the basis of the aggregate value of all clearances of excisable goods, and not only those for home consumption.

5.12 The Committee cannot help the feeling that this concession expressly designed for small scale manufacturers was extended to the large scale sector through the device of defective drafting of the exemption notification. The amendments were only haltingly carried out at every stage of criticism so as to plug only a little of the loophole every time leaving much of the gap open. The Committee would strongly recommend that this matter should be thoroughly investingated so as to fix responsibility for the repeated lapses in duafting notifications resulting in unintended benefits to large memfacturers to the detriment of revenue.

5.13 The Audit Paragraph points out twenty-three cases in whcih irregular concessions were allowed which did not flow even from the defective notifications. In a number of cases the exemptions were allowed even where the aggregate value of the base clearances of specified goods in the preceding financial year exceeded the stipulated limit. In many other

cases the initial limit of Rs. 5 lakhs to which alone the concession was admissible was incorrectly computed either by including therein clearances exempt under other notifications or clearances meant for captive use or for other reasons. The Ministry of Finance have admitted the objections in tweny-one of these cases. In ten cases the short levy of duty is stated to have been realized, in six cases the matter is either in the process of adjudication or realization, three cases are pending in appeal and two cases are sub judice in High Courts. The Committee trust that all these cases would be properly followed up by the Ministry of Finance.

5.14 As for the two cases which are not admitted by the Ministry of Finance, while on merits the points may be sorted out by Audit and the Ministry of Finance, the Committee cannot but express regret at the fact that the Ministry of Finance had failed to give any replies to the draft audit paragraphs in these two cases before the printing of the Audit Report even though those draft paragraphs had been sent to them in September 1980. The Committee would like to reiterate the recommendation made in Para 1.46 of their 67th Report (Seventh Lok Sabha) to the effect that the Ministry of Finance must ensure that replies to draft audit paragraphs are sent well within the prescribed period.

VI

PATENT OR PROPRIETARY MEDICINES

6.1 *Audit Paragraph*: By a notification dated 8th October, 1966 as amended, the manufacturers of patent or proprietary medicies falling under tariff item 14E were given the option to have the assessable value fixed at prices specified in the price lists for sale to retailers less 10 per cent discount or retail prices specified in the price lists less 25 per cent discount, such price lists being the price lists referred to in paragraph 8 of the Drugs (Price Control) Order 1970 issued under section 3 of the Essential Commodities Act 1955.

Three Pharmaceutical factories in three collectorates manufactured, *inter alia*, medicines in special packs with distinct markings for exclusive supply to Government departments like hospitals, Central Government Health Scheme, etc. Assessment in respect of such packs for which special prices were charged, was done after deducting the *ad hoc* discount of 25 per cent from these prices. Such deduction was not admissible as the prices of hospital packs were neither covered by the Drug (Price Control) Order 1970, nor were such packs sold to consumers. This resulted in short levy of duty of Rs. 3,58.887 during the period 1st January 1978 to 30th November 1979.

These cases were reported to the Ministry of Finance in August and September 1980; replies are awaited (December 1980).

[Paragraph 2.16 (a) of the Report of the Comptroller and Auditor General of India for the year 1979-80, Union Government (Civil), Revenue Receipts, Volume-I-Indirect Taxes].

6.2 The Ministry of Finance in a written note to the Committee dated 27.11.1981 stated:

> "Show cause-*cum*-demand notice for Rs. 1,32,002.78 for the period 1-1-1981 to 31-7-1981 has been issued against M/s. Searle India Ltd., Thana, and the same is under process of adjudication.
>
> Demand for Rs. 24,009.89 for the period January-October, 1979 and for Rs. 13,753.68 for November, 1979 was raised against M/s. German Remedies Ltd. Andheri and the same is under process of adjudication.

Demand for Rs. 6,226.63 against M/s. Samith Klin and French India Ltd., Bangalore has been raised and is under process of adjudication".

6.3 The Committee understand from Audit that in their reply to the draft paragraph in respect of the case of M/s Smith Klin and French India Ltd., Bangalore, the Ministry of Finance had stated:—

"It has been stated by the Collector concerned that the irregularity was within the knowledge of the department and the internal audit party had in their Audit Report No. 79/79 dated 9.7. 1979 pointed out the same. It has also been reported that the actual short levy on verification is Rs. 6,225.63 as against Rs. 2,26,793 pointed out initially".

6.4 According to Audit the objection in this case covered a large number of clearances made between 1st March 1978 to 31st August 1979. The Internal Audit had pointed out a short levy of only Rs. 254 in respect of a clearance of May 1979.

6.5 The short levy of Rs. 6,225.63 mentioned by the Ministry of Finance related to 32 cases only. According to Audit there were at least 73 more cases for the period 1977-78 to 1979-80. The Ministry had also not taken into account 'veterinary preparations' cleared during the same period. The total short levy would, therefore, be much more than that indicated by the Ministry.

6.6 A similar case of underassessment was also pointed out in paragraph 35(c) of the Report of the Comptroller and Auditor General of India for the year 1977-78—Union Government (Civil), Revenue Receipts-Volume I Indirect Taxes. The Committee understand from Audit that the Ministry of Finance in reply to audit paragraph had stated as under:—

"The objection raised in the draft para is similar to the objection raised in draft para No. 6/70-71, comments in respect of which were forwarded under this Department's F. No. 332/14/71-CX 7. The technical issues raised by the Audit have been referred to the Ministry of Petroleum and Chemicals for examination and their reply is awaited".

The Committee learn from Audit that the final decision of the Government in this regard is still awaited.

6.7 The Committee regret to observe that in spite of such mistakes having been pointed out earlier both by Revenue Audit and Internal Audit these have continued to occur. Apparently sufficient attention is not being paid by the departmental authorities including Internal Audit to the

examination of the assessment records relating to medicines cleared under contract prices. The fact that in their reply sent to the Committee in respect of the third case M/s Smith Klin and French India Ltd. Bangalore, the Ministry of Finance covered only a small portion of the underassessment pointed out in audit is also indicative of a very careless attitude. The Committee would re-commend that the failures of the departmental authorities in these cases should be thoroughly investigated and responsibility fixed. The Committee would like to be informed of the details of investigation and action taken as a result thereof.

6.8 The Committee would also suggest that in the interest of revenue and to avoid recurrence of such cases, Government should issue clear cut instructions whenever any scope of misuse of concession is brought to light. The Committee expect that necessary instructions in this case will be issued by the Central Board of Excise and Customs.

6.9 The Committee also feel that it is not unlikely that similer cases of underassessment in respect of other medicine manufacturing units might have occurred in other Collectorates as well. The Committee would, therefore, suggest that the position in this regard may be checked up in all the collectorates, remedial action taken, wherever necessary, and the Committee apprised of the results thereof.

VII

STENCIL PAPER

7.1 Audit Paragraph With effect from 16 March 1976, paper board and all kinds of paper other than printing and writing paper subjected to various treatments such as coating and impregnation, are assessable to duty under tariff item 17 (2).

A unit manufacturing stencil paper by coating paper with chemicals paid duty on stencil paper under tariff item 68 instead of tariff item 17(2). On the incorrect classification being pointed out in audit, the collectorate issued show cause notices in May and June 1980 for the payment of differential duty amounting nearly to Rs. 9.29 lakhs for the clearances made during the period 25th September 1979 to 29th February 1980. Information about the action taken for collecting the differential duty due for the earlier period 16th March 1976 to 24th September 1979 is awaited (July 1980).

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

[Para 2.34 of the Report of the Comptroller and Auditor General of India for 1979-80 Union Government (Civil) Revenue Receipts Volume I. (Indirect Taxes) relating to Union Excise duties].

7.2 In reply the Ministry of Finance in their note to the Committee dated 18-12-1981 stated:

> "The assistant Collector concerned demanded (treating the demand from 25-9-1979 to 22-11-1979 as time barred) differential duty for the period from 23-11-1979 to 31-12-1979, amounting to Rs. 2,39,360.45 in his order dated 29-12-1980. With reference to show cause notice dated 22-8-1980, for payment of Rs. 6,61,988.89. The party had gone in appeal and the Appellate Collector has allowed the appeal with consequential benefits. In regard to show cause notice for January, 1980 for Rs. 1,28,638.75 the same was confirmed by the Assistant Collector on 13-9-1980 the Appellate Collector has allowed the appeal. In regard to show cause notice of February 1980 for an amount of Rs. 1,38,279.80 confirmed by the Assistant

Collector, the appeal has been allowed by the Appellate Collector on appeal. Similarly the demand for Rs. 95,781.24 relating to March 1980 was also confirmed but the same was allowed on appeal by the Appellate Collector. Another show cause notice relating to April 1980 for Rs. 1,42,307.73 is pending adjudication."

7.3 Prior to 16-3-1976 all paper and paper boards were categorised into four sub-items under tariff item 17 as under:—

	Description	Tariff rate of duty
1.	Cigarette tissue	Rs. 3.00 per kg.
2.	Blotting, toilet, target, tissue other than cigarette tissue, teleprinter, type-writing manifold, bank, bond, art paper, chrome paper, tubsized paper, cheque paper, stamp paper, cartridge paper, waxed paper, polythlene coated paper, parchment and coated board (including art board, chrome board and board for playing cards)	Rs. 1.20 per kg.
3.	Printing and writing paper, packing and wrapping paper, straw board and pulpboard, including grey board, corrugated board, duplex and triplex boards, other sorts	90 paise per kg.
4.	All other kinds of paper and paperboard, not otherwise specified	Rs. 1.20 per kg.

7.4 From 16-3-1976 the tariff was revised to provide for only two sub-items as under:—

	Description	Tariff rate of duty
1.	Uncoated and coated printing and writing paper (other than poster paper)	30 per cent *ad valorem*
2.	Paper board and all other kinds of paper (including paper or paper boards which have been subjected to various treatments such as coating, impregnating, corrugation creping and design printing), not elsewhere specified.	30 per cent *ad valorem*

7.5 The Committee learn from Audit that in their reply to the draft paragraph the Ministry of Finance had stated as under:—

> "The facts stated in the Draft Para are substantially correct. It may, however, be pointed out that the matter regarding the classification of (duplicating) stencil paper under item No. 17(2) is sub-judice in the Calcutta High Court. In this connection, attention of audit is invited to the comments furnished by this Ministry *vide* F. No. 232/226/80-CX 7 dated 11th December, 1980 in respect of the draft audit para No. 129/79-80."

7.6 The Ministry of Finance in reply to draft audit para No. 129/79-80* had stated:

> "The objection raised by Audit is *prima facie* correct.
>
> The classification of 'Carbon paper' and 'Stencil Paper' as articles of stationery falling outside the purview of Item 17 of Central Excise Tariff was confirmed by the Board under Tariff Advice No. 45/76 dated 12-2-1976. As position had changed after the Budget of 1976, Item 17(2) covers coated varieties of paper specifically.
>
> The issue was discussed in 5th East Zone Tariff Conference on 14-8-1978, and it was held that if the intermediate product does not come to the market to be bought and sold it was not excisable; when audit was informed there was fresh objection on 'Stencil Paper', on similar grounds.
>
> The Board after discussing the issue in 10th South Zone Tariff Conference held on 21-8-1979 issued Tariff advice No. 40/79 dated 25-9-1979 that coated varieties of paper would be liable for classification under item 17(2). Specific instructions were also issued to classify Stencil Paper under Item 17(2) by the Boards in its Circular No. 1/80 dated 30-6-1980.
>
> Action taken by the field officers to reclassify Stencil Paper under Tariff Item 17(2) resulted in a Writ Petition in the High Court at Calcutta. The High Court has since issued a Rule and interim order of injunction of 9-9-1978 reviving classification of stencil paper under Tariff Item 68.
>
> The matter is sub-judice."

7.7 The Committee further understand that the Central Board of Excise and Customs in their tariff advice No. 25/81 dated 27-2-1981 (Appendix

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*Not featured in the Audit Report.

IV) clarified that Stencil Paper and duplicating Stencil Paper are two ristinct products classifiable under tariff item 17(2) and tariff item 68 respectively.

7.8 The Committee are constrained to observe that consequent upon structural changes made in tariff item 17 with effect from 16-3-1976 no steps were taken to review the instructions of the Board of February 1976 to see that it is not in conflict with the changes made. The Committee would like to know if there is a system to review past tariff advices/instructions in the light of changes made in tariff structure and if so what. The Committee would, in particular like to know the circumstances in which the Board's clarification of February 1976 could not be reviewed resulting in loss of revenue to the tune of lakhs of rupees.

7.9 The basic issue was discussed in a Tariff Conference on 21-8-1979. The Central Board of Excise and Customs took more than 9 months thereafter to issue specific instructions on 30-6-1980 to classify Stencil Paper under tariff item 17(2). The Board took another 8 months to clarify that 'duplicating stencil paper' and 'stencil paper' are two different commodities classifiable under two different tariff items viz. tariff item 68 and 17(2) respectively. The Committee cannot but deprecate the delay on the part of the Board to decide the classification of duplicating stencil paper/ stencil paper particularly when the misclassification had been pointed out by Audit even in October 1978 and April 1979. The Committee would, like the Ministry of Finance to investigate the reasons for this inordinate delay and apprise the Committee about the results thereof.

7.10 The Committee are also constrained to observe that in the particular case the question of the classification of stencil paper under tariff item 68 instead of tariff item 17(2) was raised by Audit in April 1979, but action to issue show cause notice was taken by the department only in May 1980. The inordinate delay resulted in the demands prior to 23-11-1979 becoming time barred. The time barred demand for the period 25-9-1979 to 22-11-1979 alone works out to Rs. 4,22,628 in this case. The Committee would like to know the precise loss of revenue for the period 16-3-1976 to 24-9-1979 and also the reasons for the delay.

7.11 The Committee apprehend that similar cases of misclassification of stencil paper might have occurred in other units also. The Committee would, therefore, suggest that the position should be checked up in all the collectorates and the results thereof intimated to them.

7.12 The Committee find that the Ministry have not only admitted the objection but have also issued instructions on 30-6-1980 regarding classification of stencil paper under tariff item 17(2). The Appellate Collector, however, set aside the demands for the period 23-11-1979 to March 1980. The show cause notice relating to April 1980 for Rs. 1,42,308 is pending adjudication. The Committee would like to be apprised of the precise grounds on which these demands were set aside by the Appellate Collector. The Committee would also like to know whether the case has been considered for filing a review application to the next Appellate Authority.

VIII

CESS ON JUTE YARN AND TWINE

8.1 *Audit Paragraph*: Under a notification dated 25th February 1976, cess at different rates was leviable on all the jute manufacturers with effect from 1st March 1976. In their letter dated 19th April 1977, the Central Board of Excise and Customs clarified that cess should be levied on jute yarn or jute twine consumed within the factory of production for the manufacture of jute goods.

It was noticed in audit that four jute mills did not pay cess, whereas in the cess of a fifth mill demand raised was based on the weight of finished goods and not on the weight of the yarn/twine used in their manufacture, thus leaving the goods lost as processing waste unassessed. The total short collection of cess for the period March 1976 to December 1979 was Rs. 5.75 lakhs. When the ommission was pointed out, the department stated (July 1980) that in two cases demands were being raised; reply in two other cases was awaited (August 1980). In the fifth case a supplementary demand for Rs. 7,821 was raised (August 1979).

The paragraph was sent to the Ministry of Finance in September 1980; reply is awaited (December 1980).

[Paragraph 2.42 of the Report of the Comptroller and Auditor General of India for 1979-80 Union Government (Civil) Revenue Receipt Volume I—Indirect Taxes relating to Union Excise Duties].

8.2 In reply the Ministry of Finance in their note to the Committee dated 18.12.1981 stated as under:

(i) *M/s. Nellimarala Jute Mills, Nellimarla.* In this case the matter was adjudicated by the Asstt. Collector and necessary demands covering the period pointed out in the Draft Para were raised. The Party went in appeal and the Appellate Collector has upheld the Asstt. Collector's contention but the demands are restricted to the period of six months immediately proceeding the date of receipt of show cause notice. However action is presently being taken to collect the short levy.

(ii) *East Coast Commerical Co., Ltd. Vizianagaram.* The matter was adjudicated by the department and necessary demands

covering the period pointed out in the audit were raised. The Party went in appeal against the cess demanded for the period from April 1976 to December 1978. The Appellate Collector has upheld the Asstt. Collector's orders but the demands are restricted to the period of six months immediately preceding the receipt of the show cause notice. The Department is taking steps to realise the short-levy.

(iii) *M/s. Chittivalasa Jute Mills, Ltd. Chittivalasa.* In this case, the matter was originally adjudicated by the department. The Party went in appeal and the appeal went in party's favour The department has approached the Government of India for reviewing the appellate decision. Show cause notice has been issued by the Government of India in this case and the final decision is awaited.

(iv) *M/s. General Industiral Society Ltd., Vizianagaram.* The matter has been adjudicated by the department and demands covering the period pointed out in the audit were raised. The party preferred an appeal to the Appellate Collector and the Appellate Collector upheld the orders of the Assistant Collector but the demands are restricted to the period of six months immediately preceding the date of receipt of show cause notice. Action is being taken to collect the short levy.

(v) *M/s. East India Commercial Co. (P) Ltd., Eluru*: Demands were issued for the short levies involved. The party filed a writ petition in the High Court of Andhra Pradesh and obtained stay order. This covers the period from 1.3.76 to 31.12.1980. The writ matter has not so far come up for hearing.

8.3 The Committee understand from Audit that a cess at the rate of Rs. 3.75 per metric tonne was imposed with effect from 1.3.1976 on sakings, jute twines and yarns by a notification of 25th February 1976 under the Industries (Development and Regulation) Act, 1951. It was later clarified by the Central Board of Excise and Customs in consultation with the Ministry of Commerce in their letter F. No. 262/4/76-CX 8 dated 19.4.1977 that unless and until section 9(2) and Section 30 of the Industries (Development and Regulation) Act, 1951 were amended to provide for exemptions, no exemptions from the levy of cess could be granted so that jute yarn or jute twine produced and consumed within the factory of production in the manufacture of other jute products would also be subjected to the levy of cess.

8.4 The Committee observe that in spite of clear instructions of the Board of 19th April 1977, the Central Excise Department raised no demands in the case of four assessees for the cess due on the jute yarn and twine used for captive consumption till the issue was raised by Audit. In the fifth case the demand raised was based on the weight of the final finished product manufactured ignoring the weight of yarn/twine issued for manufacture but wasted in the process. The five cases alone revealed non-levy of cess to the extent of Rs. 5.75 lakhs.

8.5 The Committee note that in three cases the demands have been restricted by the adjudicating officers to a period of six months immediately preceding the date of receipt of show cause notice. The delay on the part of the departmental officials to raise demands against the assessees has thus resulted in loss of revenue of about Rs. 5 lakhs due to the demands becoming time barred.

8.6 The Ministry of Finance have not indicated in how many other cases similar default occurred and with what results. The Committee would like the Ministry to review the position in all cases and report the results to the Committee together with the action taken to avoid such defaults in future.

8.7 The Committee would also like Government to investigate why the Inspection Groups and Internal Audit Parties of the Central Excise department could not detect the non-levy of cess on jute yarn and twine in the cases mentioned in this paragraph. The Committee are constrained to observe that despite their earlier recommendations on the subject, the efficiency of Internal Audit in the Central Excise department has not shown any signs of improvement and a very large number of such simple mistakes/lapses continue to be detected in the test check conducted by Revenue Audit especially when there are new or additional levis through the annual budgets or otherwise. This is a very sorry state of affairs and the Government must give more serious thought to this problem and lay down suitable guidelines to make sure that such lapses do not occur in future.

IX

EXCESS REBATE ON SUGAR EXPORTED

9.1 *Audit Paragraph*: Government by notifications issued from time to time, announced rebates in duty on sugar produced in excess over that produced in the base period. As soon as the excess production is determined, the amount of rebate allowed is credited in the personal ledger account of the factory in anticipation of the clearance of such sugar. The amount of rebate is to be adjusted against the payment of duty at the time of clearance of such sugar at full rates.

A sugar factory in a collectorate, was allowed rebate in duty at the rate of Rs. 20.00 per quintal on sugar produced during the period December 1972 to February 1973 in excess of 115 per cent of the sugar produced during the corresponding base period from December 1971 to February 1972. It was noticed in audit in April 1977 and April 1978 that 6,858 quintals out of the excess sugar produced in February 1973, was exported under bond without payment of duty, and a sum of Rs. 1,37,160 had been allowed as rebate thereon also.

Similarly, during 1976-77 season also the factory was allowed rebate on 3,464 quintals of excess sugar produced during the period October 1976 to November 1976 and on 46,023 quintals of excess sugar produced during the period December 1976 to September 1977, out of which 103 quintals and 1,377 quintals respectively were exported under bond without payment of duty and rebate aggregating to Rs. 47,366 had been allowed. Since no duty was paid on sugar exported out of excess production, the rebate given in advance to the extent of Rs. 1,84,526 was inadmissible.

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

[Paragraph 2.47 (a) of the Report of the Comptroller and Auditor General of India for the year 1979-80, Union Government (Civil), Revenue Receipts, Volume I—Indirect Taxes]

9.2 In a note dated 18th December 1981, to the Committee the Ministry of Finance stated:

> "Necessary demands have been raised and efforts are being made to realise the same".

9.3 Dealing with the question of grant of double concession to the sugar factories in respect of sugar removed for export, the Public Accounts Committee had in Paragraph 4.37 of their 155th Report (Fifth Lok Sabha) observed:

> "It is distressing that the Ministry of Finance should have remained ignorant of this extra concession till it had been pointed out by the Committee. That such a concession should have been allowed all these years over and above a full refund of the excise duty and the additional subsidy given to the industry in the form of recoupment of export losses, which amounted to Rs. 89 crores till 1972, is a matter which causes concern to the Committee".

9.4 The Ministry of Finance in their Action Taken Note dated 22nd September, 1975 had, *inter alia,* stated:

> "It is ascertained that normally sugar is being exported in bond only. If, however, any sugar from excess production were to be exported on payment of duty, then in respect of such sugar also an advance credit to the extent of the concession under the relevant notification would be admissible, provided that, in terms of the rebate scheme, such sugar is cleared on payment of duty at full rate. On final export of such sugar, refund would be admissible to the manufacturer of the full duty paid at the time of clearance from the factory, less such amounts as have already been allowed to him by way of advance credit.
>
> It has been ascertained from the Ministry of Agriculture, however, that by and large the question of sugar mills delivering sugar for export out of their excess production does not arise. According to that Ministry the export quotas should normally be well within the base level production of the sugar mills and would not affect their excess production rebate entitlements".

9.5 Emphasizing that the rebate of excess production on sugar exported should not be granted, the Committee had in paragraph 1.25 of their 30th Action Taken Report (Sixth Lok Sabha) reiterated:

> "It hardly matters whether the exportable sugar is drawn from the base level production or from the excess production as a result of the rebate as long as such a quantity is accounted for in the total production of the mill for the purpose of excise rebate entitlement.

The Committee would like to have a categorical assurance from Government that this point has been taken into account while granting refund of the full duty paid on the exported sugar less such amounts as have already been allowed by way of advance credits on account of excise duty rebate".

9.6 The Ministry of Finance in the Action Taken statement furnished on 20th September, 1978 had stated.

"Instructions have since been issued to all Collectors of Central Excise to ensure compliance with the observations made by the Committee".

9.7 The Committee are perturbed to note that despite their earlier recommendations on the subject, this irregularity is still persisting. In the Audit Report, 1975-76 (Paragraph 40), 1977-78 [Paragraph 92(i)] and 1978-79 [Paragraph 48(b)] such cases of excess grant of rebate to sugar factories on sugar exported were commented upon. The Ministry of Finance had admitted the objections and had stated that necessary instructions had been issued to all Collectors of Central Excise. The Committee are unhappy to note that the Excise Officers continue to default in checking that the sugar in question had been exported and continue to pass the rebate claims incorrectly. The Committee desire that necessary action should be taken against the officers concerned for their negligence.

9.8 The Committee would also like Government to analyse the reasons for such repeated irregularities and to give a serious thought to the problem and lay down suitable guidelines to make sure that such irregularities do not occur in future.

9.9 The Committee would further suggest that Government should review carefully all rebate claims of excess production of sugar unit wise during the last five years to determine how far these involved double concession to sugar factories on this count. The Committee may be apprised of the results of such a review with details about the base level production and excess production of each sugar production unit and such rebate claims made by respective units and granted by Excise Officers.

X

EQUALISED FREIGHT

10.1 *Audit Paragraph*: Under section 4 of the Central Excises and Salt Act, 1944, in cases where value forms the basis for assessment, such value shall be deemed to be the normal price at which goods are ordinarily sold in the course of wholesale trade for delivery at the time and place of removal. Where those goods are sold by the assessee at different prices to different classes of buyers (not being related persons), each such price shall be deemed to be the normal price of those goods in relation to each such class of buyers. The Ministry of Law, Justice and Company Affairs clarified in March 1976 and July 1976, that dealers of different regions to whom goods may be sold at different prices, constitute different classes of buyers and that when the price is inclusive of equalised freight, no deduction is permissible to arrive at the assessable value.

The term 'equalised freight' has not been defined in the Act or Rules but has been clarified by the Central Board of Excise and Customs in their letter dated 9th December, 1969, which envisages the sale of the product throughout the country.

A unit manufacturing motor cycles/scooters, recovered freight charges on the clearance of vehicles for deliveries to various stations, including the place of manufacture. These charges were uniform for each station and were more than those actually paid by the unit to the transporter. The assessable value was, however, fixed without taking into account the freight charges. This resulted in fixation of lower assessable value and consequently resulted in short levy of duty. A show cause notice for payment of differential duty of Rs. 58,233 for the period 1st October, 1975 to 15th August, 1976 issued by the department was pending adjudication even after more then three years. The unit stated paying duty from 24th May, 1979 after adding Rs. 40 per vehicle as freight charges in the assessable value. No action was, however, taken by the department to raise demand of Rs. 4,80,400 in respesct of clearance during the period 16th August, 1976 to 23rd May, 1979.

On this being pointed out in Audit (February 1980), the department issued a show cause notice for the said amount in May 1980. Further progress is awaited (June 1980).

The paragraph was sent to the Ministry of Finance in July 1980; reply is awaited (December 1980).

[Paragraph 2.54(a) of C&AG's Report for the year 1979-80-Union Government (Civil) Revenue Receipts-Vol. I-direct Taxes].

10.2 The Ministry in a note dated 27-11-1981 to the Committee stated:

"Demands for Rs. 58,233 for the period 1-10-75 to 15-8-1976 and Rs. 4,80,400/- for the period August, 1976 to May, 1979 are under process of adjudication and the same are being expedited".

10.3 The Committee note that the demand for Rs. 58,233 raised against M/s Escorts Ltd. (Motor Cycle Division) Faridabad is still pending adjudication even after a lapse of five years. The Committee desire that the Ministry of Finance should enquire into the precise reasons for such inordinate delay in finalising this case and apprise the Committee of the same.

10.4 The Committee are also concerned at the avoidable delay of over 3 years in raising the demand for Rs. 4,80,400. The Committee feel that after the issue of the show cause notice in September, 1976, this irregularity should have been set right and not allowed to persist for Audit to point if out. The Committee would, therefore, like to know the reasons for not issuing this demand before it was pointed out by Audit.

10.5 The Committee further observe from the information furnished by the Ministry of Finance that there are several other cases reported in the various paragraphs of the Audit Report as given in the Appendix V, where the demands have been pending adjudication for long periods of time. The Committee suggest that the Ministry of Finance should find out the basic reasons for such inordinate delays and devise effective measures to ensure that the adjudication proceedings are not allowed to drag on unnecessarily. Government may also consider the desirability of fixing some reasonable time limit within which adjudication proceedings should be finalised.

NEW DELHI;
March 5, 1982
Phalguna 14, 1903 (*Saka*).

SATISH AGARWAL,
Chairman,
Public Accounts Committee.

APPENDIX I

Instruction No. 1/75.

F. No. 442|2|73-Cus. IV
Government of India
Ministry of Finance
Department of Revenue & Insurance
New Delhi, dated the 14th February, 1975.

From

H. Narayan Rao,
Under Secretary to the Govt. of India.

To

The Collector of Customs,
Bombay|Calcutta|Cochin|Madras.

Sub:—Procedure—Fixation of time-limit for submission of B|E to C.R.A. for Audit Instruction reg.

Sir,

I am directed to refer to your letter No. (i) C-2170|71-I|C-1731|72|c-1564/73 dated 9-8-74 (ii) 10-51|74|dated 14-6-74 (iii) c-1|109|74 Cus. dated 10-6-74 (iv) 845|10| 74-IAD dated 29-5-74 on the above subject and to say that it has since been decided that the Original Bills of Entry should be forwarded to the Customs Revenue Audit for audit purposes well within a maximum period of 120 days from the date of payment of duty. It may please be stressed upon the staff concerned that this time-limit should be adhered to scrupulously and that if for any reason any batch of original bills of entry cannot be forwarded to the C.R.A. within three and a half months from the date of payment of duty the fact should be brought to the notice of the concerned Deputy Collector of Customs so that it could be ensured that the Bills of Entry are forwarded to the C.R.A. within the time-limit of 120 days referred to above.

It is also requested that certain time-limits may please be fixed for movements for the Bills of Entry through the various processes in different Departments and also some checks devised to ensure that the time-limits referred to above are strictly adhered to.

The receipt of this communication may please be acknowledged.

Yours faithfully,
Sd/-
(H. Narayan Rao)
Under Secretary to the Govt. of India.

APPENDIX II

Copy of the letter F. No. 139|8|77-CX.4 dated 3-11-1977 from Central Board of Excise & Customs, New Delhi (Shri L.C. Mittal) to all Collectors of Central Excise.

I am directed to say that under executive instructions issued from time to time, it has been clarified that the intention is to charge duty in the form in which the excisable goods, viz., the following:

(i) Synthetic resins and articles made therefrom (Item 15A) of non-ferrous metals such as Copper Aluminium, Zinc and Lead where the semis and manufactures fall under one and the same item; and

(ii) Iron, Steel Ingots and Iron|Steel Products which fall under different items of the tariff,

leave the factory of production.

2. The question of providing legal cover for the "later the better" principle as enunciated above is under examination. Meanwhile, it is requested that demands of duty, if any, issued because of the absence of legal cover for this principle, may kindly not be pressed for payment untill further orders.

3. All concerned may please be advised accordingly.

4. The receipt of this letter may kindly be acknowledged.

APPENDIX III

Copy of letter No. 261|27|5|79-CX.8 dated 22-9-1979 from Central Board of Exise & Customs, New Delhi (S.D. Khare, US) to all Collectors of Central Exise.

Subject: Aluminium-Reclaimed ingots—Accounting of in R.G.I.—Instructions regarding.

I am directed to say that a doubt has been raised whether ingots obtained as intermediaries for further manufacture of alloy within the factory should be accounted for in R. G. I. or not.

2. The matter has been considered in consultation with the Directorate of Inspection (Customs and Central Excise). Since Tariff description of aluminium under Item 27 covers aluminium in any crude form, ingots obtained at intermediate stage are exisable and should be accounted in R.G.I.

3. Receipt of this letter may be acknowledged.

APPENDIX IV

TARIFF ADVICE NO. 25/81

F. No. 61/3/80-CX.2
Government of India
Central Board of Excise & Customs

New Delhi, the 27th Feb. 1981

To

All Collectors of Central Excise,
All Collectors of Customs,
All Appellate Collectors of Central Excise/Customs.

Subject: Central Excise-Paper-Item 17-Classification of Duplicating Stencil under item 17(2) or Item 68 of CET.

Sir,

A doubt has been raised whether duplicating stencil paper should be classified under Item 68 or under 17(2) of CET.

2. The process of manufacture of Stencil Paper and of duplicating stencil paper reported by the Collector is as under:

(a) Base paper for stencil paper is unpasted "Eltoline" tissue paper treated with chemical solution called melt prepared by mixing mitrocellulose, Ocenol, Titamine-Dioxide, Acetate, Castor Oil, denatured spirit and Barium Sulphide and is passed through a heat chamber for drying and rewinding on a roll. This product is called stencil paper.

(b) A stencil is mounted on a machine called "Cross Grains Machine" in roll form with a roll of backing sheet placed underneath, and a roll of carbon paper interleaved in between these materials with a head strip/at the top, and gumming system for pasting head strip with the stencil paper and backing sheet. The whole process of manufacture viz. assembling of stencil paper, backing sheet and carbon paper with a head strip by pasting and cutting to sizes are done by a single operation by this automatic machine to produce "Duplicating stencil". The product thus obtained is put to "Mann's offset Printing Mac-

hine" for printing the individual sheet with scale and other indication on the front page of stencil paper. After printing, the product is put to the punching and trimming machine for punching its head strip, and trimming of edges. This is how the duplicating stencil paper is manufactured in the factory. It is then sorted, checked, and packed in boxes in quire for sale.

3. The matter was discussed in the 11th East Zone Tariff Conference held at Calcutta on 27th to 29th January, 1981. From the manufacturing process, it appears that two distinct products, viz "Stencil Paper" and "Duplicating Stencil" are manufactured.

4. The Conference came to the conclusion that duplicating stencil cannot be considered as paper because it is a composite article consisting of coated issue paper carbon paper and backing paper with a head strip and also printing scale and other instructions on the stencil indicating its use etc. Moreover, duplicating stencil is sold in sets, and is also not known in the trade as paper. It was decided unanimously that such "Duplicating Stencil Paper" should be classified under Item 68 of CET.

5. The Board has accepted the views expressed by the Conference that "duplicating stencil paper" will fall under Item 68. However, tissue paper used after coating to form a "stencil paper" will pay duty after coating, with proforma credit facility under Rule 56-A as indicated under Board's Circular letter No. 1/80 dated 30.6.80.

6. A model Trade Notice is enclosed for reference.

Receipt of this Tariff Advice may please be acknowledged.

Yours faithfully,
Sd/-
(D. Mehta)
Under Secretary
Central Board of Excise & Customs.

Copy to: as usual.

MODEL TRADE NOTICE

It is considered that the "duplicating stencil paper" which is a composite article consisting of coated tissue paper, carbon paper, and backing paper with a head strip and also printed scale and other instructions on the stencil indicating its use etc; is correctly classifiable under Item 68 of the CET. The tissue paper after being coated to form "stencil paper" will pay duty under Item 17(2) with proforma credit facility under Rule 56A.

APPENDIX V

List of Paras of Audit Report 1979-80, where the cases are stated to be under adjudication.

2. 11 (a) (i) (iii), 2. 11 (a) (i) (v); 2.13 (i) (b);
2. 13 (B); 2. 16 (a); 2. 16 (b); 2. 20; 2. 21; 2. 23 (a);
2. 25; 2. 26; 2. 34; 2. 37; 2. 40; 2. 47 (c); 2. 49 (a);
2. 50 (a), 2. 50 (c), 2. 50 (d); 2.54 (b); 2. 54 (c) and
2. 65 (c)

APPENDIX VI

CONCLUSIONS AND RECOMMENDATIONS

S. No.	Para No.	Ministry concerned	Recommendations
1	2	3	4
1	1.5	Ministry of Finance (Deptt. of Revenue)	In all the cases mentioned in the Audit Report and referred to above, apart from confirming the facts mentioned in the concerned paragraphs, the Ministry of Finance have not indicated how the mistakes/omissions escaped the scrutiny of their internal audit which is required to check all documents.
2	1.6	-do-	In respect of the particular case reported in the Audit Paragraph the Ministry of Finance have contented themselves with the statement that the error being of non-repetitive nature no further action is considered necessary.
3	1.7	-do-	The Committee regret that despite their earlier recommendations on the subject the efficiency of Internal Audit in the Customs department does not show any sign of improvement and a very large number of simple mistakes continue to be detected in the test check conducted by Revenue Audit. In para 3.25 of their 44th Report (Seventh Lok Sabha) the Committee have recently had occasion to suggest that the Director of Audit should play a much

			more meaningful role to tone up the efficiency of Internal Audit and that both the Board itself as well as the Collectors in the field should treat it as an important instrument of management control. The Committee cannot but reiterate their earlier recommendation and suggest that the Ministry of Finance should study the present working of the Internal Audit department and take positive steps to improve its efficiency.
4	1.8	-do-	The Committee are unable to accept the Ministry's reply in this particular case to the effect that the error was of non-repetitive nature. The risk of similar mistakes is there every time there are new or additional levies through the annual budget or otherwise. The Committee would, therefore, suggest that the Ministry of Finance should give more serious thought to this problem and lay down suitable guidelines to make sure that such mistakes do not occur. The Committee would also like the Ministry of Finance to look into the points suggested by Audit so far as the present case is concerned and inform the Committee accordingly
5	2.6	-do-	It is apparent that if such documents are not checked in Internal Audit and sent also, where required, for test audit by Customs Revenue Audit well within the prescribed limitation period of six months the results of such checks by audit would be rendered

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			nugatory, as in this case, merely by the operation of time bar. The time limit of 120 days for submission of documents to Revenue Audit is salutory and needs to be strictly observed.
6		Ministry of Finance (Deptt. of Revenue)	The Committee cannot but deprecate the manner in which the Ministry, in their written reply to the Committee, have slurred over this important matter. The Ministry have not given any reasons for the delay in forwarding the documents to the Customs Revenue Audit nor have they indicated whether the control mechanism suggested in 1975 has actually been laid down in different collectorates and how it is working. The Committee desire that the Ministry of Finance should inquire into the precise reasons for delay in this case and apprise them of the same.
7	2.8	-do-	The Committee would strongly recommend that the Ministry of Finance should review the checks designed in various Collectorates in terms of their instructions of 1975 as well as their actual implementation so as to ensure that the checks are effective both in design and observance.
8	3.7	-do-	The Committee cannot but express regret at the fact that despite their earlier exhortations in the matter of a similar dispute between

			the Bombay Port Trust and the Customs Department, such disputes between different Government Agencies should not only continue to arise but should persist for years together. The International Airport Authority were appointed the custodian in May 1977. The auction sales of uncleared goods were made from March 1978. It is most regrettable that the formula for determining the expenses of sale has not been decided even after a lapse of 5 years. The position stated by the Ministry of Finance in December 1981 is also no different from that stated by them in November 1980. The Committee would strongly urge that the question should be sorted out without any further delay with the intervention, if necessary, of the Ministry of Civil Aviation. The Committee would like to be apprised of the final decision within 3 months from the date of presentation of this report to the House.
9	3.8	-do-	The Committee do not feel happy also about the statement that the expenditure on account of auction sales comes to a sizeable amount for each auction and after meeting these expenses of sales in most of the cases there is very little left to meet the Customs duty payable, not to speak of the Import Trade Control fine. This gives the impression that all is not well with the method of custody and disposal of these goods. The Committee would suggest that the procedure laid down for the custody and disposal of uncleared goods at Bombay and other airports in India should be reviewed so as to

1	2	3	4
			make sure that there are no pilferages, losses or substitutions, that disposals are quick and business-like and that the sale expenses are kept to the minimum.
10	4.8	Ministry of Finance (Deptt. of Revenue)	The tax effect in the seven cases pointed out in the present audit para alone comes to over Rs. 23 crores. Apparently, the total tax effect of this so-called 'later the better principle' would be very high indeed. It is amazing that a concession of such far reaching consequence should have been continued for so many years merely under the executive instructions of Government without any formal legal backing.
11	4.9	-do-	The Ministry of Finance feel justified in continuing this concession on equitable considerations. The Ministry are no doubt aware of Justice Rowlatt's famous dictum to the effect that tax and equity are strangers, which has been approved of by the Supreme Court of India in a number of cases. While considerations of equity could, therefore, be a justification for suitable amendment of the Central Excise law there could be no possible apology for continuing an illegal practice merely by executive instructions for so long.
12	4.10	-do-	In fact, the Central Excise law contains ample provision to enable the Government to grant general as well as specific exemptions

			from duty, total or partial, by issue of formal notifications which have to be laid on the Table of the Parliament. The Committee are distressed to note that Government have not taken recourse even to these provisions in this case but have chosen to appropriate to themselves the total legislative function. In the Committee's view apart from the unconstitutionality and the impropriety involved, such a course is also likely to result in highly arbitrary use of power at various levels. This is clear also from the fact that the Central Board of Excise and Customs, while continuing to swear by this so-called principle of 'later the better' issued contradictory instructions in respect of aluminium ingots in September 1979, and have failed to amend or modify the same till date despite the contradiction having been specifically pointed out by Audit in December 1979.
13	4.11	-do-	The Committee would strongly recommend that this whole matter should be thoroughly examined and the tax concession, to the extent it is considered necessary and justified should be given by way of proper amendment to the Central Excise law and not by executive instructions. The Committee would also recommend that encroachment on the legislative power should not be resorted to in any circumstances.
14	5.7	-do-	In the original notification of 1st March, 1978 the essential condition for the admissibility of the concession was that the aggregate value of all clearances of specific goods in the proceding financial

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	Ministry of Finance (Deptt. of Revenue)	year should not exceed Rs. 15 lakhs. There was nothing to prevent large manufacturers to avail of this concession in respect of their clearances of specified goods. The Committee understand that Audit did in fact come across a number of cases where this concession meant for small-scale sector was availed of by large scale units whose investments in plant and machinery ranged upto Rs. 47 crores and whose total annual turnover varied upto over Rs. 116 crores. To plug this loophole the notification of 1st March, 1978 was amended vide notification No. 141/79-CE dated 30-3-1979 which introduced another condition to the effect that in the case of excisable goods falling under more than one tariff item, the concession would not be available to a manufacturer if the aggregate value of all excisable goods cleared by him or on his behalf for home consumption from one or more factories during the proceeding financial year had exceeded Rs. 20 lakhs.
15	2.8	do. The Committee understand that the Audit pointed out in December 1980 that even this amendment was not adequate in so far as the overall limit of Rs. 20 lakhs would still not exclude a large manufacturer who manufactures specified goods falling under only one item of the tariff along with other non-specified goods. It was also pointed out by Audit at the same time that earlier, while giving an

			analogous concession under tariff item 68 *vide* notification No. 176/77-CE dated 18-6-1977, the benefit had been denied to large manufacturers through the simple device of making the concession conditional on the total value of all clearances of excisable goods by the manufacturer or on his behalf in the preceding financial year not exceeding Rs. 30 lakhs.
16	5.9	do.	The relevant condition was amended further in the amending notification No. 50/81-CE dated 1st March, 1981 to provide that the concession would not be admissible where the aggregate value of clearances of all excisable goods by the manufacturer or on his behalf for home consumption from one or more factories during the preceding financial year had exceeded Rs. 20 lakhs.
17	5.10	do.	It is clear from the above recountal of events that, to say the least, there was a gross negligence in the drafting of exemption notifications. It is amazing that a concession specially designed to encourage small manufacturers should be embodied in a notification having no definition of a "small manufacturer". This is all the more painful when viewed in the context of the fact that the need for stipulating an overall limit on clearances of all excisable goods in such cases was not unknown or unrealized at the relevant time; it had, on the other hand, been earlier provided for in 1977 in an exemption notification giving an analogous concession under tariff item 68. The Committee are unable to find any excuse whatsoever for this initial failure to provide for an overall limit on the aggregate clearances

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			of all excisable goods without which it should have been apparent that the concession could be availed of by all manufacturers, big or small, in respect of clearances of specified goods.
18	5.11	Ministry of Finance (Deptt. of Revenue)	The manner in which piecemeal amendments have been carried out subsequently to the condition designed to limit the concession to small manufacturers leaves room for doubt about the bonafides of the action taken. The amendment made in March, 1979 still left the gap open as pointed out by Audit in December, 1980. Even the subsequent amendment of March, 1981 does not adopt the simple formula of the 1977 notification which placed the limit on the basis of the aggregate value of all clearances of excisable goods, and not only those for home consumption.
19	5.12	Do.	The Committee cannot help the feeling that this concession expressly designed for small-scale manufacturers was extended to the large scale sector through the device of defective drafting of the exemption notification. The amendments were only haltingly carried out at every stage of criticism so as to plug only a little of the loophole every time leaving much of the gap open. The Committee would strongly recommend that this matter should be thoroughly investigated so as fix responsibility for the repeated lapses in drafting notifications resulting unintended benefits to large manufacturers to the detriment of revenue

20	5·13	Do.	The Audit Paragraph points out twenty-three cases in which irregular concessions were allowed which did not flow even from the defective notifications. In a number of cases the exemptions were allowed even where the aggregate value of the base clearances of specified goods in the preceding financial year exceeded the stipulated limit. In many other cases the initial limit of Rs. 5 lakhs to which alone the concession was admissible was incorrectly computed either by including therein clearances exempt under other notifications or clearances meant for captive use or for other reasons. The Ministry of Finance have admitted the objections in twenty-one of these cases. In ten cases the short levy of duty is stated to have been realized. in six cases the matter is either in the process of adjudication or realization. three cases are pending in appeal and two cases are sub judice in High Courts. The Committee trust that all these cases would be properly followed up by the Ministry of Finance.
21	5.14	Do.	As for the two cases which are not admitted by the Ministry of Finance, while on merits the points may be sorted out by Audit and the Ministry of Finance, the Committee cannot but express regret at the fact that the Ministry of Finance had failed to give any replies to the draft audit paragraphs in these two cases before the printing of the Audit Report even though these draft paragraphs had been sent to them in September, 1980. The Committee would like to reiterate the recommendation made in Para 1.46 of their 67th

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			Report (Seventh Lok Sabha) to the effect that the Ministry of Finance must ensure that replies to draft audit paragraphs are sent well within the prescribed period.	
22	6.7	Ministry of Finance (Deptt. of Revenue)	The Committee regret to observe that in spite of such mistakes having been pointed out earlier both by Revenue Audit and Internal Audit, these have continued to occur. Apparently sufficient attention is not being paid by the departmental authorities including Internal Audit to the examination of the assessment records relating to medicines cleared under contract prices. The fact that in their reply sent to the Committee in respect of the third case M/s. Smith Klin and French India Ltd. Bangalore, the Ministry of Finance covered only a small portion of the under assessment pointed out in audit is also indicative of a very careless attitude. The Committee would recommend that the failures of the departmental authorities in these cases should be thoroughly investigated and responsibility fixed. The Committee would like to be informed of the details of investigation and action taken as a result thereof.	
23	6.8	Do.	The Committee would also suggest that in the interest of revenue and to avoid recurrence of such cases, Government should issue clear cut instructions whenever any scope of misuse of concession	

			is brought to light. The Committee expect that necessary instructions in this case will be issued by the Central Board of Excise and Customs.
24	6.9	Do.	The Committee also feel that it is not unlikely that similar cases of under assessment in respect of other medicine manufacturing units might have occurred in other Collectorates as well. The Committee would, therefore, suggest that the position in this regard may be checked up in all the collectorates, remedial action taken, wherever necessary, and the Committee apprised of the results thereof.
25	7.8	Do.	The Committee are constrained to observe that consequent upon structural changes made in tariff item 17 with effect from 16-3-1976, no steps were taken to review the instructions of the Board of February, 1976 to see that it is not in conflict with the changes made. The Committee would like to know if there is a system to review past tariff advices/instructions in the light of changes made in tariff structure and if so what. The Committee would, in particular, like to know the circumstances in which the Board's clarification of February, 1976 could not be reviewed resulting in loss of revenue to the tune of lakhs of rupees.
26	7.9	Do.	The basic issue was discussed in a Tariff Conference on 21-8-1979. The Central Board of Excise and Customs took more than 9 months thereafter to issue specific instructions on 30-6-1980 to classify

1	2		3	4
			Stencil Paper under tariff item 17(2). The Board took another 9 months to clarify that 'duplicating stencil paper' and 'stencil paper' are two different commodities classifiable under two different tariff items, *viz.* tariff item 68 and 17(2) respectively. The Committee cannot but deprecate the delay on the part of the Board to decide the classification of duplicating stencil paper/stencil paper particularly when the misclassification had been pointed out by Audit even in October, 1978 and April, 1979. The Committee would, like the Ministry of Finance to investigate the reasons for this inordinate delay and apprise the Committee about the results thereof.	
27	7.10	**Ministry of Finance (Deptt. of Revenue)**	The Committee are also constrained to observe that in the particular case the question of the classification of stencil paper under tariff item 68 instead of tariff item 17(2) was raised by Audit in April 1979, but action to issue show cause notice was taken by the department only in May 1980. The inordinate delay resulted in the demands prior to 23-11-1979 becoming time barred. The time barred demand for the period 25-9-1979 to 22-11-1979 alone works out to Rs. 4,22,628 in this case. The Committee would like to know the precise loss of revenue for the period 16-3-1976 to 24-9-1979 and also the reasons for the delay.	

			The Committee apprehend that similar cases of misclassification of stencil paper might have occurred in other units also. The Committee would therefore, suggest that the position should be checked up in all the collectorates and the results thereof intimated to them.
29	7.12	Do.	The Committee find that the Ministry have not only admitted the objection but have also issued instructions on 30-6-1980 regarding classification of stencil paper under tariff item 17(2). The Appellate Collector, however, set aside the demands for the period 23-11-1979 to March 1980. The show cause notice relating to April 1980 for Rs 1,42,308 is pending adjudication. The Committee would like to be apprised of the precise grounds on which these demands were set aside by the Appellate Collector. The Committee would also like to know whether the case has been considered for filing a review application to the next Appellate Authority.
30	8.4	Do.	The Committee observe that in spite of clear instructions of the Board of 19th April 1977, the Central Excise Department raised no demands in the case of four assessees for the cess due on the jute yarn and twine used for captive consumption till the issue was raised by Audit. In the fifth case the demand raised was based on the weight of the final finished product manufactured ignoring the weight of yarn/twine issues for manufacture but wasted in the process. The five cases alone revealed non-levy of cess to the extent of Rs. 5.75 lakhs.

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31	8.5	Ministry of Finance (Deptt. of Revenue)	The Committee note that in three cases the demands have been restricted by the adjudicating officers to a period of six months immediately preceding the date of receipt of show cause notice. The delay on the part of the departmental officials to raise demands against the assessees has thus resulted in loss of revenue of about Rs. 5 lakhs due to the demands becoming time barred.
32	8.6	-do-	The Ministry of Finance have not indicated in how many other cases similar default occurred and with what results. The Committee would like the Ministry to review the position in all cases and report the results to the Committee together with the action taken to avoid such defaults in future.
33	8·7	-do-	The Committee would also like Government to investigate why the Inspection Groups and Internal Audit Parties of the Central Excise department could not detect the non-levy of cess on jute yarn and twine in the cases mentioned in this paragraph. The Committee are constrained to observe that despite their earlier recommendations on the subject, the efficiency of Internal Audit in the Central Excise department has not shown any signs of improvement and a very large number of such simple mistakes/lapses continue to be detected in the test check conducted by Revenue Audit especially when there are new or additional levies through the annual

			budgets or otherwise. This is a very sorry state of affairs and the Government must give more serious thought to this problem and lay down suitable guidelines to make sure that such lapses do not occur in future.
34	9.7	-do-	The Committee are perturbed to note that despite their earlier recommendations on the subject, this irregularity is still persisting. In the Audit Reports, 1975-76 (Paragraph 40), 1977-78 (Paragraph 92(i) and 1978-79 (Paragraph 48(b) such cases of excess grant of rebate to sugar factories on sugar exported were commented upon. The Ministry of Finance had admitted the objections and had stated that necessary instructions had been issued to all Collectors of Central Excise. The Committee are unhappy to note that the Excise Officers continue to default in checking that the sugar in question had been exported and continue to pass the rebate claims incorrectly. The Committee desire that necessary action should be taken against the officers concerned for their negligence.
35	9.8	-do-	The Committee would also like Government to analyse the reasons for such repeated irregularities and to give a serious thought to the problem and lay down suitable guidelines to make sure that such irregularities do not occur in future.
36	9.9	-do-	The Committee would further suggest that Government should review carefully all rebate claims of excess production of sugar unitwise during the last five years to determine how far these in-

1	2	3	4
			volved double concession to sugar factories on this count. The Committee may be apprised of the results of such a review with details about the base level production and excess production of each sugar production unit and such rebate claims made by respective units and granted by Excise Officers
37	10.3	Ministry of Finance (Dept. of Revenue)	The Committee note that the demand for Rs. 58,233 raised against M/s Escorts Ltd. (Motor Cycle Division) Faridabad is still pending adjudication even after a lapse of five years. The Committee desire that the Ministry of Finance should enquire into the precise reasons for such inordinate delay in finalising this case and apprise the Committee of the same.
38	10.4	-do-	The Committee are also concerned at the avoidable delay of over 3 years in raising the demand for Rs. 4,80,400. The Committee feel that after the issue of the show cause notice in September, 1976, this irregularity should have been set right and not allowed to persist for Audit to point it out. The Committee would, therefore, like to know the reasons for not issuing this demand before it was pointed out by Audit.

39	10.5	-do-	The Committee further observe from the information furnished by the Ministry of Finance that there are several other cases reported in the various paragraphs of the Audit Report as given in the Appendix V, where the demands have been pending adjudication for long periods of time. The Committee suggest that the Ministry of Finance should find out the basic reasons for such inordinate delays and devise effective measures to ensure that the adjudication proceedings are not allowed to drag on unnecessarily. Government may also consider the desirability of fixing some reasonable time limit within which adjudication proceedings should be finalised.

PART II

MINUTES OF THE SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (1981-82) HELD ON 5 MARCH, 1982.

The Committee sat from 1530 to 1830 hours.

PRESENT

Shri Satish Agarwal—*Chairman*

Members

2. Shri Mahavir Prasad
3. Shri M. V. Chandrashekara Murthy
4. Shri Hari Krishna Shastri
5. Shri Satish Prasad Singh
6. Shri K. P. Unnikrishnan
7. Shri Indradeep Sinha
8. Prof. Rasheeduddin Khan

REPRESENTATIVES OF THE OFFICE OF C&AG

Shri R. C. Suri—*ADAI (R)*

Shri S. R. Mukherji—*Director of Audit, Commerce, Works and Misc.*

Shri R. S. Gupta—*Director of Receipt Audit-I*

Shri N. Sivasubramaniam—*Director of Receipt Audit-II*

Shri G. R. Sood—*Joint Director (Reports)*

Shri N. C. Roychoudhary—*Joint Director (C&CX)*

SECRETARIAT

Shri D. C. Pande—*Chief Financial Committee Officer*

Shri K. C. Rastogi—*Senior Financial Committee Officer*

Shri K. K. Sharma—*Senior Financial Committee Officer*

Shri Ramkishore—*Senior Legislative Committee Officer*

The Committee considered the following draft Reports and adopted the same with amendments/modifications as shown in Annexure I to V:

* * * * *

4. Draft 84th Report on Non-selected paragraphs of the Report of C&AG of India for the year 1979-80, relating to Indirect Taxes.

* * * * *

The Committee also approved certain other modifications arising out of factual verification by Audit in the aforesaid draft Reports.

The Committee then adjourned.

ANNEXURE-IV

Amendments/modifications made by the Public Accounts Committee in the Draft 84th Report

Page	Para	Line(s)	Amendments/modifications
25	4.10	1 from bottom	*Omit* the words 'without authority'.
26	4.10	2	*For* the word 'conduct' *read* 'a course'.
26	4.12	1-3 from bottom	*For* the words 'such encroachment on the legislative power should be avoided in future'. *read* 'encroachment on the legislative power should not be resorted to in any circumstances'.
44	5.7	2-4 from bottom	*For* 'a manufacturer..... available' *read* "excisable goods falling under more than one tariff item, the concession would not be available to a manufacturer".
46	5.10	1-5	*For* 'It is clear from.....Ministry of Finance' *read* 'It is clear from the above recountal of events that, to say the least, there was a gross negligence in the drafting of exemption notifications'.
47	5.11	1.2	For the words 'leaves room in the Committees' mind'. *read* leaves room for doubt.
47	5.12	4-7 from bottom	*For* the words 'thoroughly investigated.....from time to time'. *read* 'thoroughly investigated so as to fix responsibility for the repeated lapses in drafting notifications resulting in unintended benefits its to large manufacturers to the detriment or revenue'.
47-48	5.13		*Omit* the whole para.
54	6.7	18-19	*For* 'so as to fix responsibility'. *read* ' and responsibility fixed'.
60	7.8	4 and 12	*For* the word 'clarification' *read* 'instructions'
61	7.9	6	For 'details of the results'. *read* 'results thereof'.
62	7.12	1-4 from bottom	*Omit* the words 'Information..... the House. bottom
68	8.6	1	*Delete* costly'
74	9.9	3	*For* 'account' *read* 'count'.
78	10.3	1	*Omit* 'are distressed to'.