

THIRTY-FOURTH REPORT
PUBLIC ACCOUNTS COMMITTEE
(1985-86)

(EIGHTH LOK SABHA)

**UNION EXCISE DUTIES—PRICE NOT THE
SOLE CONSIDERATION FOR SALE**

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Presented in Lok Sabha on 30-4-1986
Laid in Rajya Sabha on 30-4-1986

LOK SABHA SECRETARIAT
NEW DELHI

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Minutes of the sittings of PAC held on—

13-9-84 (FN & AN)

25-4-85 (AN)

Not Printed. One cyclostyled copy laid on the Table of the House and five copies placed in the Parliament Library.

PUBLIC ACCOUNTS COMMITTEE

(1985-86)

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2. Shri K. H. Chhaya—*Chief Financial Committee Officer.*
3. Shri Brahmanand—*Senior Financial Committee Officer.*

INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this Thirty-Fourth Report of the Committee on Para 2.13 of the Report of the Comptroller & Auditor General of India for the year 1982-83—Union Government (Civil) Indirect Taxes—Union Excise Duties—Price not the sole consideration for sale.

2. The Report of the Comptroller & Auditor General of India for the year 1982-83—Union Government (Civil) Volume I—Indirect Taxes, was laid on the Table of the House on the 3rd April, 1984.

3. In this Report, the Committee have found that certain Cigarette Companies viz., M/s. Golden Tobacco Co., M/s. Godfrey Phillips Co., Indian Tobacco Co. have been obtaining security deposits from their wholesale buyers which were interest free or were bearing a very low rate of interest. The Committee are of the view that the deposits which far exceeded their capital in certain cases cannot obviously be treated simply as earnest money. Prima facie, these contributed towards working capital which was used to finance production and sale of cigarettes at depressed prices and can be treated as additional consideration which should be included in the value of the cigarettes for purposes of assessment under Rule 5 of the Central Excise (Valuation) Rules. The Committee have accordingly desired the Department to examine the matter in depth and take necessary action so that the companies are prevented from reaping undue benefits at the cost of National Exchequer consequent on underassessment on account of the depressed prices of cigarettes.

4. The Committee have pointed out that certain guidelines have already been laid down by the Ministry of Industry in 1984 regarding utilisation of advance deposits received by manufacturers of cars, scooters etc. from customers as a portion of price of their products. These guidelines require *inter-alia* depositing not less than 50 per cent of such deposits with public financial institutions/undertakings, nationalised banks etc. and payment of a minimum of 7 per cent interest thereon. The Committee have recommended that similar guidelines need to be laid down in respect of cigarette companies also without delay.

5. The Public Accounts Committee (1984-85) examined the Audit Paragraph at their sitting held on the 13th September, 1984.

6. The Public Accounts Committee (1985-86) considered and finalised this Report at their sitting held on 25 April, 1986 based on the evidence already taken and written information furnished by the Ministry of Finance (Department of Revenue). The Minutes of the sitting form *Part II of the Report.

7. For reference, facility and convenience, the observations and recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in Appendix VI to the Report.

8. The Committee place on record their appreciation of the commendable work done by the Public Accounts Committee (1984-85) in taking evidence and obtaining information for the Report.

9. The Committee would 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.

10. The Committee also place on record their appreciation of the assistance rendered to them in the matter by the Office of the Comptroller and Auditor General of India.

NEW DELHI;
April 28, 1986
Vaisakha 8, 1908(S)

E. AYYAPU REDDY,
Chairman,
Public Accounts Committee.

REPORT

Audit Paragraph

Price not the sole consideration for sale

1. As per Section 4 of the Central Excises and Salt Act, 1944, where duty is chargeable on excisable goods with reference to their value, such value shall be the price at which such goods are ordinarily sold in the course of wholesale trade. Where such goods are sold, at different prices to different class of buyers (not being related persons), each such price shall be deemed to be the price charged in the course of wholesale trade. Where price is not the sole consideration, the value of goods shall be based on the aggregate of such price and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee as per provisions of Rule 5 of the Central Excise (Valuation) Rules, 1975.

2. (i) A manufacturer of cigarettes recovered security deposits from wholesale buyers and allowed interest at six per cent per annum on the deposits. However, on his sales made to the wholesale buyers on credit, he was charging interest at eighteen per cent per annum. His financial accounts for the year 1979-80 revealed that the security deposits received by him amounted to Rs. 14.76 crores where as the amount deposited by him with scheduled banks in fixed deposits amounted to only Rs. 1.05 crores. He therefore, utilised Rs. 13.71 crores of deposits received as his working capital for his manufacturing and trading activity. At the differential interest rate of 12 per cent (18 minus 6), the manufacturer derived indirect additional consideration of Rs. 1.65 crores from the buyers during the year. Since deposit was a condition of sale and sale price was not the sole consideration, on the additional consideration of Rs. 1.65 crores also excise duty was leviable at the rates of duty leviable on value of cigarettes. The failure to add the additional consideration to the assessable value had resulted in duty being levied short by about Rs. 5 crores per year.

3. The short levy was pointed out in audit (September 1981) to the department which has stated (September 1982) that the matter is under examination.

4. The Ministry of Finance have stated (December 1983) that the matter is under examination.

5. (ii) A manufacturer of cigarettes recovered interest free security deposits from wholesale buyers. His financial accounts for the year ending 31 December 1980 revealed interest-free security deposits received amounting to Rs. 12.72 crores from his customers in accordance with one of the conditions for the sale of cigarettes. The benefit which accrued to the company by way of interest on the deposits amounted to Rs. 1.52 crores per year computed at the normal rate of interest of 12 per cent per annum.

6. Since the sale price was not the sole consideration and the interest on the deposits was an additional consideration which flowed indirectly from the buyers to the manufacturer, the assessable value was not computed correctly by including this indirect consideration received. The mistake in computing the assessable value resulted in duty being realised short by Rs. 4.56 crores on clearances made during the year 1980.

7. On the short levy being pointed out in audit (May 1982) the department stated (November 1982) that security deposits are obtained from the buyers as an assurance towards taking delivery of goods for marketing and to save the company from any loss resulting by their not lifting the goods. But since the company utilised the interest-free deposits towards its working capital thereby depressing the price chargeable to its customers who had perforce to make the sizeable interest-free deposits, indirect consideration was received as per provisions of the Act.

8. The Ministry of Finance have stated (November 1983) that the matter is under examination.

9. (iii) The price of oxygen supplied in cylinders by a manufacturer to a buyer was lower than that charged from other buyers and the price was approved by the department by treating this buyer as being in a special class. But this buyer had provided the manufacturer with rent free accommodation for manufacture of the oxygen. Even if the buyer was treated as being in a special class, the additional consideration flowing indirectly on account of the rent free accommodation provided by the buyer to the manufacturer should have been taken into account and added to the price before approving the price as the assessable value. Failure to do so resulted in duty being realised short by Rs. 1,50,028 on clearances made during the period from April 1979 to January 1982.

10. On the mistake being pointed out in Audit (April 1982), the department issued a notice in August 1982 to show cause why the approved price lists should not be revoked and stated (September 1982) that the case was under adjudication.

The Ministry of Finance have stated (November 1983) that the show cause notice has been withdrawn but the reasons for the withdrawal have not been stated.

[Paragraph 2.13 of the Report of the Comptroller and Auditor General of India for the year 1982-83, Union Government (Civil), Revenue Receipts, Vol. I—Indirect Taxes]

11. The Committee wanted to know the names of the manufacturers of the products referred to in the Audit Paragraph. In reply the Ministry of Finance (Department of Revenue) have stated in a written note as under:

“The concerned manufacturers in Para 2.13 (i) is M/s. Golden Tobacco Co. Bombay, while in Para 2.13 (ii) it is M/s. Godfrey Philips India Ltd. Bombay and in para 2.13 (iii) it is Bombay Oxygen Corporation Ltd., Kalwa, Thane”.

12. Enquired in regard to the other Cigarette manufacturers who are taking security deposits from their buyers and the details of such arrangements, the Ministry of Finance (Department of Revenue) have in a note stated us under:

“The names of cigarette manufacturers known to be taking security deposits from their buyers and the details thereof are indicated below:—

(a) *M/s. I.T.C. Calcutta*

One of the conditions of sale, as printed on the reverse of the invoice of M/s. I.T.C. Ltd. reads as below:—

“Every customer purchasing goods from the company shall deposit with the company a sum equivalent in value to 15 days of the customer's normal monthly purchases to ensure prompt despatch of stocks to the customer by the company and also as security (interest free) with payment of price unpaid by the customer. The company reserves the right to apply the amount of

security deposit towards payment of unpaid price or any other amounts which may be due by the customer to the company on any account whatsoever. On termination of the selling arrangements with the customer, the company will return the security deposit or the balance, if any, remaining after the company has deducted/adjusted any amount due to the company by the customer on any account whatsoever and this will strictly without prejudice to and in addition to the company's other rights'.

In addition M/s. I.T.C. Ltd. has also selling arrangements on annual orders basis with effect from 1st September, 1981. According to their circular this scheme is purely optional and those wholesale dealers who do not wish to place annual orders may continue trading with the company as before on the terms and conditions. The annual order scheme involves such wholesale dealers giving a security deposit (interest free) to the company of 10 per cent of the estimated value of the annual order which shall remain in deposit with the company until adjusted against the last delivery towards the end of the 12 months period of the annual order.

(b) *M/s. Golden Tobacco Company Ltd., Bombay*

According to the standard terms and conditions of business with the wholesale buyers "Golden Tobacco Company reserves the right to ask security deposit from the wholesale buyers and to vary the amount of such security deposits from time to time on its own discretion. Golden Tobacco Company shall pay interest on such security deposit at the rate of 3 per cent per annum or such rates as may be decided by Golden Tobacco Company from time to time.

(c) *M/s. National Tobacco Co., Calcutta*

In view of a circular dated 15-3-82 issued by M/s. National Tobacco Company, the Co. takes security deposits from such wholesalers whose off-take of cigarette in terms of total value had increased substantially. Initially such deposits are for a short period of one year only

and the amount of deposit is fixed by the Company keeping in view the average or estimated value of off take. It is further provided that such deposits will bear simple interest at 21 per cent p.a. subject to deduction of I.T. etc. as applicable and the interest shall be paid quarterly."

(d) *M/s. Godfrey Philips (India) Ltd.*

Serial No. 4 of the conditions of sale printed on the reverse of the invoice contains the provision regarding the payment of deposit and reads as below:

"Every customer purchasing goods from the company shall deposit by way of security (interest free) such sum as may be determined in accordance with the Company's current policy, keeping in view the extent of orders placed and accepted by the Company or for any other purpose from time to time. The company reserves the right to apply the amount of security deposit towards any dues of the customer payable to the Company on any account whatsoever. This security will be strictly without prejudice to and in addition to the Company's other rights."

In addition M/s. Godfrey Philips have also a system of 'annual orders' which would benefit the wholesale dealers in that they would get guaranteed supplies and will also get preference in supply of their requirements as against other wholesale dealers. According to the scheme the "wholesale dealers who desire to place annual orders would be required to give a security to the Company in support thereof, to remain in deposit till the complete value thereof." The circular issued by M/s. Godfrey Philips further clarifies the position as below:

"if any wholesale dealer fails to lift supplies as per the aforesaid firm order, the Company would be entitled to forfeit the security deposit to that extent and the balance amount would be refundable to the wholesale dealer after deduction of all dues of the Company." The Company has also considered request from several wholesale dealers for keeping into consideration the prevailing market conditions practice in the trade extending credit facilities may also be granted to wholesale dealers. This

facility can only be extended by the Company upon each wholesale dealers giving sufficient security in this behalf."

13. The Ministry of Finance (Department of Revenue) have also furnished the following information in respect of the maximum amount of security deposits received by various manufacturers from wholesale buyers alongside the subscribed share capital as well as the short and long term loans received from banks and financial institutions which was available to each during the year in each of the last 5 years:

1. M/s. I.T.C. Ltd.

"M/s. I.T.C. have made provision to receive security deposits in their 'conditions of sale' only from the year 1980-81 onwards. The position from 1980-81 to 1982-83 is given below:

Year	Deposits received in terms of clause 3 of the conditions of sale printed on the invoice.	Deposit received in terms of annual orders scheme	Total deposits received
	(In crores)	(in crores)	(In crores)
(1)	(2)	(3)	(4)
1980-81	23.13	Nil	23.13
1981-82	11.31	33.00	44.17
1982-83 (Upto 30-6-83)	4.76	38.04	42.80
Share capital as per balance sheet		Loans secured and unsecured	
(in crores) (5)		(in crores) (6)	
27.28		49.49	
27.28		47.48	
27.28		49.00	

2. M/s. Golden Tobacco Comp any Ltd.

Year	Security deposit received (in crores)	Subscribed capital (in crores)	Loans (short term & long term)
1979-80	14.76	5.00	10.64
1980-81	17.51	5.00	12.62
1981-82	19.00	5.00	12.62
1982-83	24.38	5.00	14.88

3. M/s. National Tobacco Company, Agarpara, W.B. (A. division of Duncan Agro Industries Ltd.)

Year	Security deposit received (in lakhs)	Subscribed Capital (in lakhs)	Loans-short term and long term (in lakhs)
1979-80	5.96	251.80	1675
1980-81	5.87	251.80	2064
1981-82	36.79	251.80	1852
1982-83	26.79	251.80	1998

Note : The date given above relate to M/s. Duncan Agro Industries Ltd., of which M/s. National Tobacco Company is a unit. Separate figures for the tobacco unit is not available.

4. M/s. Godfrey Philips (India) Ltd.

Year ending	Security deposit as on 31st December	Subscribed share Capital				Deferred payment guaranteed by companies bankers against hypothecation of machineries purchased to be purchased.
		Rs. in Crores	Secured loans from Bank, IBDI (Long Term loan)	Shorter loan from Financial institutions	Unsecured loans fix deposits from Public	
	Rs. in Crores	Rs. in Crores	Rs. in crores	Rs. in crores	Rs. in crores	
Dec., 1979		0.30	2.00	Nil	0.99	0.30
		2.34				
Dec., 1980	12.73	0.30	1.45	Nil	1.18	0.59
		2.34				
Dec., 1981	14.42	0.30	1.19	Nil	1.11	1.10
		2.60				
Dec., 1982	24.77	0.30	0.18	Nil	1.02	1.39
		2.60				
Dec., 1983	24.89	0.30	0.12	Nil	0.99	1.18
		2.60				

14. The Committee wanted to know the scope of the provision under Section 4 of the Central Excise Act for including in the assessable value the various types of additional consideration flowing directly or indirectly from the buyer to the manufacturer. In a written note the Ministry of Finance (Department of Revenue) have stated as under:

“Section 4 of the Central Excises and Salt Act 1944. provides that for the purpose of assessment the value of the excisable goods shall be the normal price i.e., to say, the price at which such goods are ordinarily sold by the assessee in the course of wholesale trade for delivery at the time and place of removal. This is subject to the condition that the buyer is not a ‘related person’ and the price is the sole consideration for the sale. If the normal price of excisable goods is not ascertainable, the valuation for the purpose of assessment is determined in accordance with the provisions of Central Excise (Valuation) Rules 1975. Rule 5 of the valuation rules provides that where the price is not the sole consideration for the sale of the excisable goods, the value of such goods shall be based on the aggregate of such price and the amount of the money value of any additional consideration flowing directly or indirectly from the buyer to the assessee. The additional consideration may be in cash or in any other form such as supply of raw material free of cost by the buyer to the assessee, supply of packing material etc.

Additional consideration may not be direct payment from the buyer to the assessee. It may be a payment to some other person who receives it on behalf of the assessee or additional consideration may reach the assessee through an intermediary. The consideration flowing directly or indirectly from buyer to assessee is a question of fact which is to be determined in each case on the basis of evidence available.”

15. The Committee desired to know if the Ministry had examined whether arrangements or adjustments in assessable value done as between a manufacturer and his sole selling agents or between inter-

related companies (where one is manufacturer and the other the distributor) can be brought within scope of the term "additional considerations flowing directly or indirectly". The Ministry of Finance (Department of Revenue) have in a written note intimated as follows:

"Proviso (iii) to section 4(i)(a) of Central Excise and Salt Act provides that where the assessee so arranges that the goods are generally not sold by him in the course of wholesale trade except to or through 'related person', the normal price of the goods sold by the assessee to or through such 'related person' shall be deemed to be the price at which they are ordinarily sold by the related person in the course of wholesale trade at the time of removal. The expression "related person" has been defined in Section 4(4)(c) of the Act. This provision pertaining to related person has been upheld by the Supreme Court in Bombay Tyre International case. It was held in the case that "it is a well known legislative practice to enact provisions in certain limited cases where an assessee may be taxed in respect of income or property truly belonging to another. . . . With the aid of legal fiction the legislature fastens the liability on the assessee."

It was, therefore, required to be examined whether a sole-selling agent or inter-related companies satisfy the definition of 'related person' given in the Act. Once they fall in the category of related person the price at which the excisable goods are sold by them in the course of wholesale trade will be taken as assessable value under the Act. If they are not treated as related person, the transactions between the assessee and sole-selling agents or inter related companies will be examined whether price is the sole consideration or not for the sale. If facts of the case reveal that the price is not sole consideration and some other considerations are flowing, the assessable value in that case will be determined in accordance with the provisions of Rule 5 of the valuation rules."

16. On being asked in regard to the reaction of the Ministry of Finance (Department of Revenue) on the observations of the audit in

the Audit Paragraph with regard to the security deposits taken by the manufacturers, the Member (Excise) replied during evidence:

"The main point which the audit has raised as a principle is that certain deposits have been taken by the manufacturers from the wholesale dealers or stockists by whatever name they call it—and against that they pay a small interest and in some cases no interest at all is being paid. As against that, on the outstandings from the purchaser a higher rate of interest, i. e., 18 per cent interest which is the bank rate is being charged. Therefore, this differential is a sort of extra benefit to them. As a general proposition this taking of deposits from the wholesaler is nothing peculiar to cigarette industry. In every industry, almost this type of taking deposits exists. It is called in different names but generally they are deposits taken from the wholesaler or from the stockists for various considerations. Considerations in the sense that when a contract for dealership is generally entered into they specify what are the obligations of one and what are the obligations of the other and what are the rights of each party. As far as we can see almost all these contracts relate to the wholesaler getting certain benefits in the form of assured supplies and timely supplies so that he can conduct the business smoothly and similarly these manufacturers get certain benefits in the sense that there is an assured market available to them and in case the buyer does not take the goods by any chance or for any reason or if he refuses or if there is any delay in lifting the stocks, these deposits give him protection against any of these things happening. So, in view of this situation, how far these should be related to the depression in prices and even in cases where there are no excisable goods involved, the practice of taking deposits is in existence. For example, even in a small matter like hiring a locker in a bank, the first question you are asked is whether you will make a deposit and they say 'Then I will give you a locker'. There is no nexus between this deposit or the rental. Here also you will see that in none of the cases there is no differential price between one wholesale buyer and another wholesale buyer though one man gets higher deposit due to higher volume of transactions and the other gets less because his volume of

transaction is less. Still the prices is the same and there is no differential price."

17. Supplementing in this connection the Chairman, CBEC stated during evidence:

"The factors which were responsible for collection of deposits and paying lower rates of interest should be forgotten since the goods become excisable. For example, Britannia bread and Modern bread are not excisable and there also they are receiving deposits from the dealers. The Government still assumes that he is benefiting himself in finding the cheaper funds. The fellow who deposits the money gets benefits like assured supply of goods. The manufacturer also is benefiting. The manufacturer is benefiting because he is getting cheaper funds and capital. So, there were certain considerations. The moment the commodity becomes excisable we are compelled to enter and add that differential interest of the assessable value and charge the commodity. The fact that they have deposited because the commodity is excisable, to my mind, is not a very logical proposition."

18. The Committee desired to know whether the Department could disapprove of the sale price fixed by it if the information furnished to them earlier for fixation of sale price was found to be wrong subsequently. In reply the Member (Excise) stated during evidence:

"In a number of cases if the price is found to be wrong subsequently on investigation or information the law provides to go back and review all the assessments."

19. Asked why the sale price was not revised in the cases quoted by Audit, the witness stated in evidence:

"Before I open a case, I should have *prima facie* evidence to suggest that this was not correct."

20. Enquired in regard to the action taken after the mistake was pointed out by Audit, the Chairman, CBEC replied during evidence:

"More than that in 1981, before the audit came into the picture, this issue had come up and two Collectors operating differently having seen these facts came to the conclusion in their judgement that this differential was not

to be added to the price, because in their judgement it as not attributable to the goods. When the Audit raised this question and even before the report came to the Board somebody said that we should have a second look at it. There, the matter was not finalised and some searches were carried out; the documents are under investigation. When the audit brought this to our notice, in order to see that the things do not get time-barred, show cause notices were issued."

21. Asked to furnish details of the searches made and the outcome of the show cause notices issued, the Ministry of Finance (Department of Revenue) have stated as under in a written note:

"Searches were carried out in September 1982 by the Directorate of Anti-Evasion, Customs & Central Excise at the factories, branch offices, wholesale buyers etc. of Messrs Golden Tobacco Co. In February 1984, searches were carried out by the Collector, Central Excise, Calcutta at the factory, depots, transporters, wholesale buyers etc. of Messrs National Tobacco Co. Huge number of documents were seized which are under examination to determine the culpability of the firm under the Central Excise Law. It would not be proper to reveal the progress of investigation at this stage."

22. The Committee wanted to know whether the Government was prepared to accept the interpretation of the Audit as correct in view of the admitted fact that the cigarette Companies were receiving deposits much more than their capital. In reply, the Member (Excise) stated in evidence:

"This could be divided into two parts. In so far as the macro-level philosophy with regard to the deposits is concerned, we have not taken a decision as yet. In so far as this case is concerned, a show cause notice has been issued."

23. Enquired about the views of the Ministry of Law whether the deposits were to be treated as earnest money or as capital contribution to meet manufacturing cost thereby reducing the cost of the capital to the manufacturer, the Ministry of Finance have furnished a copy of the note received from the Ministry of Law which is annexed as Appendix I.

24. In the aforesaid note the Ministry of Law have *inter alia* observed as under:—

“The security deposit made by the wholesale buyer in these cases might constitute an additional consideration for entering into the dealership agreement between the manufacturer and the wholesale buyer. It will be for the Department to establish that such additional consideration has a nexus with the sale price of the excisable goods. The Department also should be in a position to determine the amount of the money value of such additional consideration. If there is no such nexus or if the Department is not in a position to determine the money value of the additional consideration, the provisions of Rule 5 of the Central Excise (Valuation) Rules, 1975 would not be applicable.”

25. The Committee desired to know the reaction of the Government to the growing practice whereby manufacturers of cars, scooters and many others types of manufactured goods were getting a sizeable percentage of the price of the final product in advance as deposits from the customers at a low rate of interest. In a written note the Ministry of Finance (Department of Revenue) have informed the Committee as under:

“The Ministry is given to understand that manufacturers of cars, scooters etc. are realising a portion of a price of the product as advance deposits from the customers. According to the information before this Ministry the acceptance of these deposits are not barred in any of the enactments available. However, the Ministry of Industry had examined the question of acceptance of deposits in context of the automotive manufacturers. That Ministry had considered it desirable to prescribe a few guidelines as to the utilisation of the amount received as deposits. A copy of the guidelines is enclosed. (Appendix II).

26. Asked whether the Ministry had examined whether the receipt of such deposit could be treated as an additional consideration to reduce the price of the product and excise duty should therefore be levied because of the consideration flowing indirectly, the Ministry of

Finance (Department of Revenue) have replied as under in a written note:

“Acceptance of advance deposits from the customers of a portion of the price of the products does not ipsofacto constitute an additional consideration or indirect monetary flow back from the buyer to the manufacturer so as to attract the provisions of Rule 5 of the Central Excise Valuation Rules of 1975. There is also no evidence to suggest that such deposits are instruments of manipulation for depressing the price charged from the customers. Reduction in the price of a product is usually the cumulative result of various factors, such as availability of cheaper capital from various sources, bulk purchases of raw materials, increase in production capacity, efficient management etc. The Ministry does not endorse the view that such deposits should ipsofacto be treated as special consideration effecting the assessable value. Moreover, such deposits made by the buyers within a short span of time for products supplied over a period of several years cannot be directly quantified in terms of money value. Therefore, the notional quantum of ‘Additional consideration’ would, if quantification was possible, vary from buyer to buyer. The Ministry would consider such deposits purely contractual stipulation between the manufacturer and the buyer in regard to making available the product to the customer at a priority basis, unless there is evidence to the support that the deposits have actually become the consideration for a manipulation in prices.”

27. The Committee wanted to know the basis for assessment of duty on cigarettes. In reply the Member (Budget) stated during evidence:

“The duty structure is linked to the retail prices printed on the cigarette packets. As you are aware, there was a Committee named Tobacco Excise Tariff Committee which went into the question of duty on tobacco and its products. It was suggested that the duty on unmanufactured tobacco would be removed and the duty should be adjusted on tobacco products. Accepting this recommendation of the Committee in the Budget of 1979, the duty on non-manufactured tobacco was withdrawn and the duty on tobacco products including

cigarettes was suitably adjusted. Duty is charged only on the end-products, so as to avoid duplication. At that time, the rate of duty statutorily was fixed at 440 per cent plus Rs. 32 per thousand. Actually the duty on cigarettes is in three components. One is the basic excise duty. The second is the special excise duty which is 10 per cent of the basic excise duty, and the third is the additional excise duty which is in lieu of sales tax. A graded level of duty was being levied by virtue of an exemption notification. Now this was the structure of excise duty which was prevailing till 1982, November 30, 1982 when the Government decided to revise it considering the fact that large amount of duty were locked up in court cases. what the cigarette companies were doing was deducting from the wholesale price of the Cigarettes the statutory duty of 40 per cent plus Rs. 32 per thousand and paying only the effective rate which is applicable to the slab. This was the method adopted by the Cigarette Companies as a result of which huge amount of revenue was locked up in the courts. It was decided to withdraw that duty structure and move over to the statutory duty irrespective of the prices of the cigarette. One of the recommendation of the same Tobacco Tariff Committee namely to link up the duty with retail price of cigarettes was taken note of. I will send you a copy of the recommendation. Right from 1979, this recommendation has been with us. In the context of the recommendation of the Committee, Government considered the question whether it would be possible to move over from the whole sale price on which the duty was charged on *ad valorem* basis to specific rate which is linked to the retail printed price. In that context it was observed the duty is on goods manufactured and whatever is taken as the basis for determining the value of the goods is really a formula through which the actually amount of duty payable is ascertained. So it was possible to have the basis a formula which is linked to the retail price."

28. Subsequently in a written note the Ministry of Finance (Department of Revenue) have furnished the following information in regard to the recommendations of the Tobacco Excise Tariff Committee and the duty structure of cigarettes regulated thereafter:

"Tobacco Excise Tariff Committee in its report submitted in

1975 had suggested, *inter alia*, that in the long run, from both fiscal and administrative angles, the ideal would be to move away from a tax on unmanufactured tobacco to one on the finished manufactured products, in case of which an *ad valorem* tax can be efficiently operated. Committee also suggested that the feasibility of relating the cigarette excise duty to the retail selling price of cigarettes should be explored.

In the Budget of 1979-80, full exemption from excise duty was granted in the case of unmanufactured tobacco. The revenue foregone was proposed to be recouped through a suitable adjustment in the rates of duty on manufactured tobacco products, including cigarettes. The rates structure on cigarettes was also modified to net more revenue. While in November, 1982 the concessional rate of duty on cigarettes was made liable to pay statutory rates, as part of Budget proposals of 1983-84, with a view for ending a room of uncertainty, it was proposed to fix the revised rate of duty in respect of cigarettes linked to the retail sale price printed on the cigarette packs. Keeping in view the fact that the consumption of the cheaper cigarettes was large, a graded levy based on retail price was introduced in March, 1983."

29. Enquired if the duty was related to the price of the goods or the value of the goods, the Member (Budget) stated during evidence:

"It is leviable on the goods. It is the basis for classification of the goods for determining the duty payable. The formula would depend upon the amount which the government would like to realise by way of excise duty. What we are interested is to collect a certain amount of duty from a particular industry. The rate of duty is accordingly fixed. *Ad valorem* duty is based on the value of the goods. Specific rate is directly related to the product. So, it was decided that we could adopt a formula linked to printed retail price for classification of the goods for deciding the amount of duty that this particular commodity should bear. Even at that time we were conscious of the fact that there could be an over charging of the prices by the retailers. But according to Packaged Commodities Rules, the retailers were bound to sell

the goods at that particular price; and if the prices were more there was a legal provision for taking action against the retailers. As far as this particular industry is concerned, there is no strict correlation between the cost of individual brand and the price that is printed on the tobacco. In some cases, it is more; in some cases, it is less, because each company is having a particular percentage of share of the market in relation to a particular brand of cigarette. I have got details of the various companies and the share of the market each one is having as given by the industry. The industry is highly competitive, each one is trying to hold on to the area where they are having large shares. So, we thought that the market forces would take care of the situation. As far as revenue from this commodity is concerned, we have put a particular target for this commodity and as long as it is coming from that commodity, we should not worry ourselves too much on this account. There is no doubt that there is a certain extent of avoidance or contravention of the law which relates to the selling of cigarettes at a price higher than what is printed; and that is nothing new. This did not come about after our moving over to the retail price as a basis for charging excise duty; it was already there. After taking into account all these matters and then a conscious decision was taken that instead of keeping large amounts of revenue blocked we should move over to a system on a purely experimental basis and if we succeed we could even consider adopting this method as a possible alternative for collecting revenue on other commodities, where also the packaged commodities rules will be applicable."

30. Asked when was this shift in practice made and how it increased the duty realisation, the witness stated:

"From 1983 Budget, when we changed it from the un-manufactured commodities as it was done earlier, to the manufactured products, the revenue collected in 1979-80 was Rs. 583 crores, in 1980-81 it was Rs. 613 crores, in 1981-82 it was Rs. 686 crores and in 1982-83 it was Rs. 687 crores. The increase of only Rs. one crore in one year may be noted. In 1983-84 it was Rs. 908 crores which is on the basis of the rate of duty which is linked to level of prices."

31. Enquired whether there was no classification prior to the year 1983-84 and what was the basis of classification under the present system, the witness stated in evidence:

"Classification was there. In the case of the cigarettes, the retail price is a measure of classification under the present scheme. If the price is less say a rupee then the rate of duty is something and if it is more than or between Rs. 2 or 3 per packet then the rate of excise duty is different. So the retail price is only used as a method of classification."

32. Asked how duty was determined on the retail price, the witness explained:

"For the purpose of determining the duty the printed price is taken. Seventy-five percent of the retail printed price minus three paise in respect of any packet, on that will be the actual duty payable. Copies of Notifications No. 211/CE dated 4-8-83, 100/85-CE dated 25-3-85 and 201/85-CE dated 2.9.85 specifying the rates of central excise duty on cigarettes since 1983 furnished by the Ministry of Finance (Department of Revenue) are annexed as Appendices III, IV & V."

33. The Committee asked whether the revised system for levy of duty had certain discrepancies because of which there was loss of revenue as pointed out by Audit. In reply the Chairman, CBEC stated during evidence:

"In this case, in 1982 and 1983 we opted for the specific rate of duty. For the purpose of calculation, since the printing of the price is a legislative requirement, we will go by that and have specific duty. Another system is *ad valorem*, which has created enormous problems. The third system is the tariff value; the duty will be assessed on the market value. Somebody went to the court. Since we do the average for the purpose of tariff value during a particular period of time, the average will certainly be lower than that of somebody and higher than that of somebody else. That did not operate well. They went to the court stating that it should be brought down. So, we were hesitating. Our effort is continuing."

34. Asked about the difficulty in following the tariff value, the witness explained:

"Once it becomes justiciable, however rational it may be, sometimes it becomes the rule of the thumb and it has to be justified in a court. It is easier to explain it to the assessee than to the court. So, the problem was in regard to averaging it. I think having a weighted average would have been a very simple method. But I was afraid of having another litigation. May be if it is found a tenable solution, we may depart from it and go back on that kind of a thing. For a person the average may be higher than somebody's prices. This litigation on important Central Excise is a new phenomena. Earlier, unlike the Income-tax people, they were content so long as the levy was uniform."

35. The Committee pointed out that in the Income Tax Laws and the recent Bill which the Parliament enacted, if there was difference between the normal rate of interest and the low rate of interest at which employer granted advance to the employee for construction of buildings etc. that was regarded as some sort of income for the employee and that was taxable. They wanted to know why in this case difference between the nominal interest on capital given by the manufacturer and the normal interest payable be not regarded as income and brought within the tax net. In reply the witness stated:

"Sir, I do deal with Income-tax, but I would submit, as you have seen, it needed a law to say that this will be done. Now, on my side it is already an income and for another it becomes a payment. We have suggested through the Secretary to amend the Income-tax law that unless you have actually paid the tax, you will not be allowed to take advantage. Now, the State Governments are worried. They have tax holidays and income-tax will be charged. That is another thing. We are operating in an economy where there are so many inter-linked conflicts. Now, if the suggestion is we can have a similar law and make it on the price available, but then the fact is that it needd a law but ipso-acto you cannot reach that conclusion that you can impose it. Again I will not be able to do so without going into litigation.

36. The Committee wanted to know the effect of the amendment of section 4 of the Central Excise Act. In reply, the Member (Excise) stated in evidence:

"Prior to the amendment, the basis was the whole sale price and after the amendment, they have made it as the normal market price."

37. Asked if after the amendment made on the basis of Supreme Court judgement, the Department felt empowered to cover all the contingencies, the Chairman, CBEC explained:

"You have referred to the Supreme Court judgement. That is there for everyone to see. Earlier, the expression used in the provision was different. The term used now is "normal market Price". But whatever words you may use, these may be interpreted differently. The Courts do it.

Earlier, there was the concept of *ad valorem* value. We have had a long experience of it, not only on the Customs and Excise side but also on other sides, not only in India but everywhere in the world. There is an internationally accepted definition of *ad valorem* value concept. There also, they found certain difficulties. The trend now is towards accepting "transaction value". We may also have to accept it. But basically, whatever be the phraseology, that is subjected to different interpretations. Normally, we accept "transaction value" which is reflected in the invoice. But we retain the right to challenge it if we suspect that it has been manipulated. Then, it is a question of what is manipulation. When you use that phraseology, there are lawyers who try to interpret it differently as to what are the elements which go in favour of us or which go against us. There is an inherent difficulty in trying to convey the instructions.

The question posed is, whether after we amended the law, it has become foolproof. Certain loopholes may be there; we do not visualise all the loopholes. The situation where anybody is able to take advantage of the law is not necessarily a loophole. It is only an interpretation of the law. There may be a situation whereby some people may be able to contrive at it and take undue

advantage of the law and that may call for some legislative action. If necessary, we may have to go back to Parliament for that. At the present moment, I do not find anything serious in the provisions of Section 4."

38. Asked whether the concept of "transaction value" could not be availed of by the Department under the present law, the witness stated:

"I am sorry for the confusion created. The present law does not speak of the transaction value. When I referred to the concept of transaction value, I was trying to mention about the trend prevailing in many of the other countries in the world and to point out in which way the trade and commerce is moving there. It is accepted by all the Governments of those countries. That is not my law today. I am entitled under the Present Section 4 of the Act to make an assessment at a value which may be different from the one given in the invoice. But that is subject to certain conditions. Under the Present Law, I can recognise different Prices charged for the same commodity from different classes of buyers. I can recognise Purchases by a Particular class of buyers and supplies to a Particular class of buyers. For example, the DGS&D supplies can be assessed on the basis of a different value."

39. Enquired if the inclusion of the concept of transaction value could be helpful in making the law foolproof, the witness explained.

"Depending on how a situation emerges, whatever remedial action is considered necessary will be placed before the Government. They have to take a view. If I do that, I will be departing from the basic concept which is incorporated in the present law. It is for the Government to take a view. I was only trying to say in another context. We have had a long tradition and experience of going by *ad valorem* value. Now, the departure is being made and other countries are going in for the concept of transaction value. About 95 per cent of the countries in the world have adopted that. The discussion on that is still going on. This difficulty is not peculiar to us. That will also throw up its own kind of

problems. But even when you give a legal sanction to the acceptance of transaction value no administration will surrender the right to challenge such a value."

40. The Committee wanted to know the types of avoidance and evasion of duty in cigarettes which came to the notice of the Department after the sale price declared in the cigarette package was made the assessable value. In a written note the Ministry of Finance (Department of Revenue) have stated as under:—

"The effective rates of Central Excise Duty on cigarettes are relatable to the adjusted sale price of cigarettes as defined in notification No. 211 of 1983 dated 4.8.83 as amended. After the introduction of this system, the *modus operandi* adopted by one of the companies was to declare a lower retail sale price to the Central Excise Department, but to print on the packet of the cigarettes a higher retail price at which the cigarettes were actually sold in the market and thus evading payment of duty. Another method adopted was to print a lower retail sale price on the packet and pay duty on this lower price, but later sell them in wholesale at a higher price level."

41. Asked about the name of the Company and the action taken against it, the Ministry of Finance (Department of Revenue) have informed as under in a written note:

"Investigations in case of Messrs. National Tobacco Co. have revealed that after issue of Notification 35/83, they adopted a *modus operandi* by which the slides of cigarette packets were printed in such a way that the figures may be easily misread e.g. Rs. 1.00 is printed in such a way as to be read as Rs. 1.90. Duty is paid at the lower price of Rs. 1.00 but the cigarettes are actually sold in retail at the higher rates of approximately Rs. 1.90. The SC (Slow Cause Notice) is under issue."

42. Asked about the action taken if the sale price declared on the package on the basis of which duty was levied differed from the price at which it was sold, the Ministry of Finance (Department of Revenue) have intimated as under in a written note:

"The declaration of the maximum retail price on all commodities dealt with in packaged form including cigarettes is a requirement under the standards of weights & Measures (Packed Commodities) Rules, 1977. This declared price has been taken as a basis for determining the slabs at which the excise duty would be charged in terms of Notification No. 211/83 dated 4.8.83. If the retailer sells the packet of cigarettes at a price higher than the declared price then it is an infringement of the standards of Weights & Measures (Packed Commodities) Rules, 1977 which is being enforced by the State Governments and the Union Territories. Only if there is evidence to show that the difference between the declared price and the higher price charged by the retailer or any wholesaler flows back to the manufacturer in some form or the other the question of application of the Central Excise Law would arise."

43. Enquired in regard to the cases detected where the actual price was more than the consideration declared to have been received by the cigarette manufactures, the Ministry of Finance (Department of Revenue) have in a written note informed as under:—

"It is reported that many cases where retailers have charged prices higher than the declared prices have come to notice and cases have been booked by the state authorities for infringement of the Weights & Measures (Packed Commodities) Rules, 1977.

A case has been recently detected wherein evidence was available that the goods were sold to wholesaler at a lower price and higher prices have been subsequently realised through debit notes. The case is still under investigation."

44. Asked about the name of the Company, details of the *modus operandi* and action taken, the Ministry of Finance (Department of Revenue) have informed as under:—

"After the Budget of 1979, Messrs Golden Tobacco Co.

started a new security deposit scheme, ostensibly to recover the extra margin of profit from the wholesale buyers. A system was started apparently keeping in view the company's intention to recover amount at some fixed rates on the popular brands from each wholesale buyer. Although the scheme for obtaining security deposits was prevalent prior to this new scheme, the amount of deposit under the new scheme was increased considerably.

The buyers being unable to make huge deposits were asked to build new security deposits (NSD) from payment made by them against the invoices of cigarettes supplied by Messrs Golden Tobacco Co. In this way, the New Security Deposit amount went up creating corresponding outstandings in the supply account of wholesale buyers. Messrs Golden Tobacco Co. paid interest @ 6 per cent on credit balance of New Security Deposit so built on quarterly basis by way of credit notes. But they charged 18 per cent interest from wholesale buyers on outstandings in supply from them every month by way of debit notes. The debit notes were not for the differential in prices but for differential in interest rates. The charges against this firm on this account are still under investigation and have not been finalised. In the meantime a show cause notice for short levy of Rs. 28.93 crores have been issued to Golden Tobacco Co. by Collector, Central Excise, Bombay".

45. Enquired in regard to the cases booked by the State Governments under the Weights & Measures (Packed Commodities) Rules, 1977, the Ministry of Finance (Department of Revenue) have intimated as under:

"According to the reports received so far from the Collectors of Central Excise, Baroda has reported 9 cases, Hyderabad 31 cases and Aurangabad 2 cases of infringement of Weights & Measures (Packed Commodities) Rules, 1977, while Collector of Central Excise, Ahmedabad, Bangalore, Calcutta, Chandigarh, Indore, Jaipur, Madurai, Kanpur, Poona, Shillong, West Bengal, Belgaun, Coimbatore and Thana have sent 'nil' reports. Collector,

Central Excise, Bombay has reported that the standard of these Rules have not yet been made applicable to the State of Maharashtra. The reports from Collector of Central Excise, Bhuvaneshwar, Cochin, Madras, Meerut, Patna, Trichi, Rajkot, Bolpur are still awaited and would be furnished on receipt."

46. Asked whether the high rate of duty acted as a temptation to reduce the declared price and because of which was it not essential for the Excise authorities to examine the complete commercial records of the cigarette companies for the detection of the receipt of indirect consideration in addition to direct declared consideration, the Ministry of Finance (Department of Revenue) have stated as under:—

"It is true that high incidence of duty on any commodity would act as an incentive for evasion. Rules 173(G) (5) & (6) provide for calling for private records maintained by the assesseees for scrutiny by the Central Excise Officers. Wherever information is available that there receipt of indirect considerations the private records are called for and examined by the staff concerned."

47. The Committee desired to know the number of cases of indirect benefit flowing from the buyer to the manufacturer detected by the valuation cells of the collectorate of Excise and the action taken in each. In a written note the Ministry of Finance (Department of Revenue) have stated as under:—

"It is reported by the Collectors that valuation cells in the Collectorates examine price lists with reference to the documents produced by the assesseees. Normally such documents do not show any indirect benefit derived by the manufacturer from the buyer. Generally such cases are detected on the basis of information/intelligence gathered by the Preventive/Anti-Evasion parties.

A few important cases involving flow of indirect benefit from the buyer to the manufacturer detected during the last few months by the Anti-Evasion are enumerated below:—

- (i) A factory had been charging extra amounts towards warranty, after sale service, pre-delivery inspection and installation charges from its dealers on which it

did not pay any duty. Where any such services are not rendered by the dealer, there was a flow back of the amount to the manufacturer through debit notes. Show cause notice had been issued demanding duty to the extent of Rs. 29.82 lakhs.

- (2) A manufacturer collected from his dealers extra amounts, almost equivalent to the assessable value, by way of warranty charges, delivery-cum-inspection charges and guarantee charges on which duty was not paid.

A show-cause notice demanding duty of Rs. 44 lakhs has been issued in this case.

- (3) A manufacturer of cigarettes was allegedly printing the retail price on the packets in a very skilful manner by which the retail price appeared to be Rs. 1.00 instead of actually Rs. 1.90 which has charged from the customers for a particular brand for a packet of 10 cigarettes. The difference was being repatriated to the Company by debit notes.

- (4) A manufacturer of Gas stoves (falling under T.I. 68) had entered into written agreements with distributors. These agreements stipulated certain obligations like after sales service, sales promotions, advertising expenses etc. on the distributors. The manufacturer was raising debit notes against distributors for such expenses and was charging commission on the orders booked by them. Supplies against these orders were effected from the distributors stock. The manufacturer was selling goods to dealers at higher price but the goods were routed through distributors and the duty was paid at lower price. Since the price to distributor was not the sole consideration, they should have paid duty on ex-works dealer's price declared by them to various oil companies.

Also during the scrutiny of records it has come to notice that the manufacturer was not entitled for exemption under notification No. 120/75 (assessment and invoice/value) as the conditions for the notification

were not satisfied. He should have paid duty on the price at which the goods were sold to the dealers.

A show cause notice demanding duty of approx. Rs. 18.30 lakhs for the period 1.6.83 to 20.5.84 has been issued.

- (5) A computer manufacturer in the Western Zone got the computers manufactured by supplying raw material, designs and specifications of computers through a dummy unit, from two independent units. This computer manufacturer as a customer manufacturer, did not comply with the provisions contained in Notification No. 305/77 dated 5.11.1977 (Exempting the manufacturer who gets his goods manufactured on his behalf from any other person from the licensing control subject to the condition that the actual manufacturer complies with all procedural formalities under the Central Excise law).

Besides, the under-valuation of computers was also resorted to by suppressing the fact of collecting the service charges in respect of the computers sold through the dummy unit. The service charges included the charges on account of installation and cost of softwares which are essential for operation of computers.

The estimated evasion of duty in the past five years is approximately Rs. 3.32 crores."

48. The Committee desired to know if the provisions of MRTTP Act would be attracted in case the cigarettes were supplied by a manufacturer only to the wholesaler. In a written note the Ministry of Finance (Department of Revenue) have furnished a copy of the advice of the Ministry of Law which is annexed as Appendix (V). The Ministry of Law have *inter-alia* expressed the view that "it would appear to be difficult to hold that the provisions of the Act are applicable to the cases of dealership agreement between the manufacturers who supply cigarettes and the wholesalers under the dealership agreement of the type mentioned above."

49. The Committee wanted to know the facts of the case highlighted by Audit in sub-para 3 of the Audit Paragraph. In a written note the Ministry of Finance (Department of Revenue) have furnished the following information:

"The facts of the case are that M/s. Bombay Oxygen Corporation Ltd. manufacture oxygen gas falling under T.I. 14H of the Central Excise Tariff, in their plant at Kalwa (Thane). This plant is situated on a piece of land given free of charge by M/s. Mukund Iron & Steel Works Ltd. in their steel Mill compound in terms of an agreement entered into between them. Under this agreement, M/s. Bombay Oxygen Corporation Ltd. are obliged to meet the entire requirement of oxygen of M/s. Mukund Iron & Steel Works Ltd. and it is only after meeting such requirement, the surplus quantity of oxygen gas if any, can be sold to other consumers (About 95 per cent of the oxygen gas produced by M/s. Bombay Oxygen Corporation Ltd. is supplied to M/s. Mukund Iron & Steel Works Ltd. and 5 per cent supplied to certain consumers). M/s. Bombay Oxygen Corporation Ltd. would sell this gas to M/s. Mukund Iron & Steel Works Ltd. at the DGS&D rate contract price. In case they (M/s. Bombay Oxygen Corporation Ltd.) are not on the rate contract list, then the rate applicable would be mutually agreed upon between them."

50. Asked to elucidate in regard to the pointed raised by Audit that the price was not the sole consideration in respect of sale of Oxygen by Bombay Oxygen to Mukund Iron & Steel Company, the Member (Excise) explained during evidence:

"The main point is that because of the land being given free for erecting the plant by the Bombay Oxygen, the price at which the Bombay Oxygen sold it to Mukund Iron & Steel Company does not conform to Section 4(1)(a) of the Act. Price is not the sole consideration and, therefore, the quantification should be made with reference to the land available free. This is the substance of the point. Please see Section 4(1)(a). From the data point of view, all the conditions are satisfied except for the fact that price is not the sole consideration. The

fact that land has been given *ipso facto* does not make it a special consideration unless Department could prove that because of this, there is depression in prices. This applies to Mukund Iron & Steel Company”.

51. The Committee wanted to know the provisions of Section 4(1)(a) and the reasons which led the Department to take the view that the prices could not be influenced by the indirect consideration of providing rent free land when the agreement between Mukund Iron & Bombay Oxygen provided that the price of oxygen was to be fixed as per mutual agreement. The Ministry of Finance (Department of Revenue) have in a written note informed as under:

“According to provisions of Section 4(1)(a) the value for assessment is the normal price of the goods that is to say the price at which such goods are ordinarily sold to a buyer in the case of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for sale. Recourse to the provisions of Section (1) (b) would be made only where the normal price of such goods is not ascertainable. The prices charged by Bombay Oxygen Kalve from Messrs Mukund Iron & Steel Works, during the years from 1979 to 1982 were found to be the normal prices as the sale was between principal to principal who are not related persons and the price was the sole consideration for sale. In the absence of any evidence to show that the prices charged were depressed on account of rent free land provided to Bombay Oxygen the contracted prices were acceptable as normal prices in the case.”

52. The Committee desired to know the actual figures of year-wise production of oxygen of Bombay Oxygen Company for the last 5 years and the quantity supplied to Mukund Iron & others. In a written note the Ministry of Finance (Deptt. of Revenue) have informed as under :

“Year-wise production of oxygen by the Bombay Oxygen Corporation set up within the premises of Messrs Mukund Iron & Steel Co. and supplies made to Messrs Mukund

Iron and other companies during the last 5 years is given below:

Year	Quantity supplied to Mukund (in cu. mtrs.)	Quantity supplied to others (in cu. mtrs.)
1979-80	28,96,068	12,383
1980-81	41,90,435	Nil
1981-82	44,68,142	3,596
1982-83	N.A.	15,777
1983-84	25,56,028	9,969

The names of the other Companies are :

1. Messrs Talaja Rolling Mills(I) Ltd.
2. Messrs Adarsh Industries
3. Messrs Ramlal Kapoor & Sons
4. Messrs Gupta Seieudifie, Pal Engg. & Fabricators
5. Messrs G.P. Steel
6. Messrs Rajesh Trading Co.
7. Messrs Basaniwal Bros. P. Ltd.
8. Messrs Special Steel Ltd., Tarapur
9. Messrs Sarabhai & Sons
10. Messrs Gashiram Gokaichand (Ship breaking yard).
11. Messrs Bombay Ispat Udyog
12. Messrs Wdiau Metal Traders
13. Messrs Choudhary & Co.
14. Messrs Shivani Ampoules & Allied Industries
15. Messrs Damania Bros.
16. Messrs Ramaship Breaker, Bombay
17. Messrs Rajeev Ship Breaking Yard
18. Messrs Xcitisteel Corporation
19. Messrs Sharma & Co.
20. Messrs Vishwanath Gupta & Co.
21. Messrs Usmania Bros., Darukhana
22. Messrs Maharashtra Gas Co..

53. Enquired in regard to the rate at which oxygen was sold by Bombay Oxygen to Mukund Iron & others, the Member (Excise) replies during evidence:

"Bombay Oxygen sold it to Mukund at the rate of Rs. 280/- or so. They also sold to others at the price of Rs. 279—289 and at Rs. 236—240, to two different parties. One is Zenith Steel and another is Mahendra Ugine. To Mukund Iron & Steel Company it is sold at the rate of Rs. 280/-".

54. Subsequently in a written note the Ministry of Finance (Department of Revenue) have furnished the following information in regard to the price charged by Bombay Oxygen from Mukund Iron & others during the last 5 years:

(Prices represent sales made in Cylinders)

Year	Price charged from Mukund Iron & Steel (per 100 cu. mtrs.)	Price charged from others (per 100 c. mtrs.)		Remarks
		Rs.	Rs. Rs.	
1979-80	270	From 300	to 425	Prices shown for third partners are for destination and include the cost of transportation up to 31st Dec., 1982; The party did not claim any deduction towards cost of transportation."
1980-81	244	" 300	to 425	
1981-82	275	" 490	to 550	
1982-83	279 to 293	" 475	to 575	
1983-84	312 to 218	" 445	to 500	

55. The Committee wanted to know the other Units of Bombay Oxygen located in Bombay, the prices charged by them on their production and how these compared with the price charged by the Unit located within the premises of Mukund Iron. In a written note, the Ministry of Finance (Deptt. of Revenue) have informed as under :

"Bombay Oxygen Corporation Ltd., are reported to have three oxygen manufacturing units in Bombay including the one in Mukund Plant in Kalwe. The others are located in Mahendra Ugine Plant in Khapoli and another in Mulund. Bombay Oxygen, Khapoli, had charged a

uniform rate of Rs. 236/- per 100 cu.m. from Mahendra Ugin, Khapoli, during the period from 1979-80 to 1982-83. While the prices charged by Mulund plant of Bombay Oxygen from Mukund Iron & Steel, Kalwe per 100 cu. metre were Rs. 253/- in 1979-80, Rs. 350/- in 1980-81 Rs. 366/- in 1981-82 and Rs. 376 to 397 in 1982-83. The difference in prices charged by the Kalwe plant and Mulund plant is reported to be on account (1) almost the entire supply of oxygen gas from Kalwe Plant is supplied to Mukund, from Mulund plant, (2) cost of transportation between Mulund to Kalwe is much more than the cost involved in supplying within the factory and (3) Quick turnover of cylinders within the Kalwe plant. In comparison, the prices charged by Bombay Oxygen from other industrial purchasers during the recent years is given below:

Name of the manufacturer	Name of purchaser	Price per 100 c. metrs.
Bombay Oxygen, Khapoli	Zenith Steel, Khapoli	Rs. 240
Bombay Oxygen, Khapoli	Mukund Iron & Steel Works, Kalwe	376.22
Bombay Oxygen, Khapoli	Mukund Iron & Steel Works, Kurla	299.86
Bombay Oxygen, Mulund	Mukund Iron & Steel Works Kurla	279.22
Bombay Oxygen, Mulund	Mukund Iron & Steel Works Kalwe	365.58

In addition, Bombay Oxygen, Khapoli charged prices ranging from Rs. 350-440 in 1980-81, Rs. 500-550 in 1981-82, Rs. 475-600 in 1982-83, from other buyers. Similarly, Bombay Oxygen, Mulund is reported to have charged prices ranging from Rs. 217-460 in 1979-80, Rs. 217-570 in 1980-81, Rs. 262-700 in 1981-82 and Rs. 275-750 in 1982-83 from other buyers. It would thus be observed that while the price for this commodity shows considerable fluctuations the prices charged by units of Bombay Oxygen Corporation, Thane from its various purchasers in the same class compares favourable with the prices charged by the units of Bombay Oxygen, Kalwe

from Mukund Iron & Steel Works, Kalwe (the unit located within the premises of Mukund Iron & Steel Works.) The prices quoted represent the prices of oxygen sold in cylinders for purposes of comparisons."

56. The Committee wanted to know the names of other units like Mukund Iron who had provided land for the location of gas producing companies within their premises and how the price charged by such gas companies from the firm which provided the land compared with the prices charged from other Companies. In a written note, the Ministry of Finance (Department of Revenue) have furnished the following information :

"According to the information available with this Ministry, there are two other units in the country producing oxygen gas who have been provided land for the location of their gas producing plant within the premises of another manufacturer for the guaranteed supplies of gas, viz., Bombay Oxygen, Khapoli, in the premises of Messrs Mahendra Ugine, Khapoli and Indian Oxygen Ltd. in the premises of Messrs Tisco Ltd., Jamshedpur. The price charged by Bombay Oxygen Khapoli from Mahendra Ugine (incylinders) was Rs. 236/- per 100 cu. mtrs. uniformly in the year 1979-80 to 1982-83, while Messrs Indian Oxygen Supplied oxygen gas to Tisco Ltd., Jamshedpur in cylinders @ Rs. 120 per 100 cu. mtrs. for the period from 1979-80 to 1981-82. This company also supplied small quantities of oxygen gas during this period to other purchasers i.e. Messrs Telco Ltd., Jamshedpur @ Rs. 120/-, Messrs Indian Tube Co., Jamshedpur @ Rs. 120/- (both from Tata group of Industries) and Messrs Hindustan Copper Ltd., Ghatshila @ Rs. 179.17 to 199.17 in 1979-80, Rs. 212.17 to Rs. 232.87 in 1980-81 and Rs. 238.88 to Rs. 251.81 in 1981-82 (This rate corresponds to the DGS&D rate contract)."

57. The Committee wanted to know whether the cost of manufacturing gas could vary from factory to factory. In reply, the Chairman, CBEC stated during evidence :

"It can. With my little knowledge of pricing policy of these companies, I would say that they have to go by the cost of production in a particular factory. In a particular factory, the labour may be cheaper. Also

you have to take into account the other factors, whether the price was for gas alone or it included the cylinder also, whether it included any freight element. Suppose some purchaser is at a distance from the factory then there is the element of transport, and so on."

58. According to Audit the Department had issued a show cause notice to Bombay Oxygen which was subsequently withdrawn. Asked for the details and reasons therefor, the Ministry of Finance (Department of Revenue) have in a written note informed as under:—

"On receipt of the Audit objection, a show cause notice, proposing enhancement of the assessable value and for recovering the differential duty involved was issued to M/s. Bombay Oxygen Corporation Ltd. But as a result of subsequent investigation, the Assistant Collector came to the conclusion that the price charged by Messrs Bombay Oxygen Corporation for supply of oxygen to Messrs Mukund Iron in their factory compound did not become tainted simply because rent free accommodation was provided for erecting their plant. The Assistant Collector found that the price charged by Messrs Bombay Oxygen from Messrs Mukund Iron & Steel at Kalwa was in fact comparatively higher than the price charged for the same unit of oxygen gas produced at other places of their plants at Mulund & Khapoli. In his adjudication order dated 7.2.1983, the Assistant Collector held that the agreement between Messrs Bombay Oxygen and Messrs Mukund Iron did not contain any clause or provision which indicated that the transaction between them was either extra commercial or that some special consideration other than purely commercial had been shown to the supplier so as to reach a conclusion that the price charged by the supplier i.e. Messrs Bombay Oxygen from the buyer Messrs Mukund Iron was not a (normal) price under Section 4 of the Central Excise & Salt Act, 1944. It is stated that by providing rent free accommodation to Messrs Bombay Oxygen it was they i.e. Messrs Mukund Iron & Steel who stood to gain more both on a short term and long term basis. The manufacturing activities of Messrs Mukund who were engaged in the production of Iron & Steel Products were normally carried on round the clock and for these operations they

required regular and uninterrupted supply of oxygen gas. There could be no better way to ensure such constant, continuous and regular flow of oxygen, than to have an agreement by which they had the oxygen plant within their factory compound itself which apart from ensuring speedy and continuous supply of oxygen badly needed for their steel Mill would also drastically cut down the cost of transportation of oxygen gas in cylinders if they were to procure the same from a distance.

That Messrs Mukund Iron & Steel Works could be treated as a special or separate class is not disputed in as much as 95 per cent of the total supply of oxygen was made from Messrs Bombay Oxygen to Messrs Mukund Iron & Steel Works. It has been further held by the Assistant Collector that the price charged for the supplies made to Messrs Mukund Iron was not a tainted one and was not influenced by any such considerations as the same would be established by the fact that clause 16 of the agreement between the parties (which stipulated what price should be charged), stated that the DGS&D rate contract price would be the price applicable to the supply of oxygen made to them and that only if the supplier is not borne on the DGS&D rate contract list, the price will be determined mutually between the supplier and the buyer.

Finally the Assistant Collector observed that during the relevant period Messrs Bombay Oxygen had charged the same price (as they had charged M/s. Mukund Iron) from other customers (steel mills) also in respect of supplies effected from their oxygen plants at Mulund and Khapoli. The price charged was thus comparable to the supplies effected to other buyers from other plants.

In view of the above facts the show cause notice was withdrawn by the Assistant Collector."

59. Enquired whether the order of the Asstt. Collector was reviewed either by the Collector or Appellate Collector. The Member (Excise) stated during evidence :

"It was reviewed by the Collector. He did not find any evidence to conclude that there was a special consideration. So he has also dropped the case."

60. The Committee desired to know the reasons for the withdrawal of the notice since the Department could refuse to accept the price if it found that it was depressed one in cases where purchaser and the supplier stipulated in their agreement for the mutual settlement of the price. In reply, the witness stated:

“Clause 16 of the agreement provides two parameters. One is that if there is a DGS&D contract, they should be supplied. If it is not available, then that should be a mutually agreed price. Since here there is no DGS&D contract, that question does not arise. Then the mutual agreement comes and we have to see whether the agreement has any taint because of the fact of the land being available free. That is what the adjudicating authority had to do—whether there was any depression in the price. For that only he went into a comparison with the prices at which the same supplier is giving and at the prices other suppliers are giving and whether there is any depression in prices. Since he came to the conclusion that there is no depression in price, he withdraw the notice.”

61. Enquired as to why the Department at all issued the notice when they were aware that the agreement provided for the mutual settlement of the sale price. In reply the witness stated during evidence:

“As soon as the audit paragraph came, with a view to safeguard the revenue and the time limit will apply, first the notice was issued so that we can have advantage of the arguments of the opposite side also so that a quasi judicial decision can be taken.”

62. The Committee desired to know whether the Department was armed with the power to prohibit the sale by the manufacturer of his production which was saleable for Rs. 100/-at Rs. 50/-. In reply the Chairman, CBEC stated during the evidence:—

“As an Excise Officer, I have no power to prohibit any sale at a particular price. That is not part of my function, nor do I have any power to do it. I only see whether the basis on which the duty has to be levied is correct or not. I do not have any regulatory functions. Here in this case, two persons acting differently according to

their judgement came to the conclusion that the price was acceptable."

63. Enquired if the difference in the two prices quoted for Mukund Iron and other buyers could not be treated as consideration and computed in terms of money for levy of duty on that basis, the witness explained during evidence:

"With great respect, I cannot agree for a simple reason. If in principle we concede that the price charged by Bombay Oxygen to Mukund Iron is not the sole consideration, then Rule 5 does give me a power and equip me to determine and find the monetary value of whatever intangible consideration is flowing from Mukund Iron to Bombay Oxygen. But the monetary formula will not be that simple. The criticism here is about the benefit that Mukund Iron is deriving by providing rent free accommodation to Bombay Oxygen. I am talking of the fact regarding rent free accommodation provided by Mukund to Bombay Oxygen. I am collecting the facts myself to make a monetary evaluation and find out the quantitative money value of that component of the facility which is attributable to the goods which can be in the nature of consideration indirectly flowing from Mukund to Bombay Oxygen. This will be exercised."

64. Subsequently in a written note the Ministry of Finance (Department of Revenue) have intimated as under:

"The matter relating to the approval of assessable value for Bombay Oxygen Plant at Kalwe during 1979-80 to 1981-82 was re-examined by this Ministry in consultation with the jurisdictional Collector of Central Excise, Bombay. The approved prices were examined with reference to the comparable prices of oxygen gas manufactured and sold in this region during the period of audit objection. Cost data of oxygen gas produced by the plant of Bombay Oxygen Gas Corporation, Thane, the comparative quantities of oxygen sold to Messrs Mukund Iron & Steel Works, Kalwe and other purchasers and other allied factors, to determine if there was any depression in the prices on account of free supply of land. The Ministry, after such examination would

like to reiterate its earlier view, submitted before the Public Accounts Committee during the oral evidence on 13-9-1984, that the prices approved in this case were correct and in accordance with the requirements of Central Excise Law."

65. The Committee desired to know that but for the provision of the land which was very costly, the costs would have been very high. In reply the witness stated in evidence:

"In the conceptual term, there is no difference. There is a benefit accruing to Bombay Oxygen by reasons of the land being made available without rent."

66. The Committee observe that Section 4 of the Central Excise and Salt Act, 1944, provides that where duty is chargeable on excisable goods with reference to their value, such value shall be the price at which such goods are ordinarily sold in the course of wholesale trade. Where such goods are sold, at different prices to different class of buyers (not being related persons), each such price shall be deemed to be the price charged in the course of wholesale trade. Where price is not the sole consideration, the value of goods shall be based on the aggregate of such price and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee as per provisions of Rule 5 of the Central Excise (Valuation) Rules, 1975.

67. M/s. Golden Tobacco Co. obtained security deposit from the wholesale buyers according to the standard terms and conditions of business with them. The Company reserved the right to vary the amount of such security deposit from time to time. It paid interest @ 3 per cent per annum or at such rates as was to be decided by it from time to time. However the Company charged interest @ 18 per cent on the sales made to the wholesale buyers on credit. Likewise M/s. Godfrey Phillip (India) Ltd. recovered security deposits from the dealers according to the conditions of sale of their cigarettes but no interest was paid by them on such deposits. M/s. Indian Tobacco Co. Ltd., also asked for security deposit from its customers on which it paid no interest at all.

68. M/s. Golden Tobacco Co. Ltd. obtained a security deposit amounting to Rs. 14.76 crores in the year 1979-80, Rs. 17.51 crores in 1980-81, Rs. 19.00 crores in 1981-82 and Rs. 24.38 crores in 1982-83 against a total subscribed capital of Rs. 5 crores only in all

these years. M/s. Godfrey Phillips Ltd. recovered security deposits to the tune of Rs. 12.73 crores in the year 1980, Rs. 14.42 crores in the year 1981, Rs. 24.77 crores in 1982 and Rs. 24.89 crores in 1983 against a subscribed capital of Rs. 2.64 crores in the years 1980, and of Rs. 2.90 crores in the years 1981, 1982 and 1983. M/s. I.T.C. Ltd. received security deposit of Rs. 23.13 crores in the year 1980-81 and 11.31 crores in the year 1981-82 against a share capital of Rs. 27.28 crores for both these years.

69. The Committee find that the aforesaid companies have been obtaining security deposits from their wholesale buyers which were interest free or were bearing a very low rate of interest. The utilisation of such deposits as their working capital for manufacturing and trading activity have thus indirectly led to depression on account of the cost of manufacture of cigarettes on which duty is leviable. The manufacturers thereby derived extra indirect benefit due to underassessment of the cost of manufacture. The Department have however argued that security deposits are obtained from the buyers only as an assurance towards taking delivery of goods for marketing and to save the Company from any loss resulting by their not lifting the goods. They have further contended that the practice of taking deposits is in existence even in case of goods which are not excisable. However the Committee find that the cigarette companies have obtained deposits which far exceeded their capital in certain cases and cannot obviously be treated simply as earnest money. Prima facie it contributed towards working capital which was used to finance production and sale of cigarettes at depressed prices. The Committee therefore find force in the Audit view that the supply of such deposits without interest or at low rates of interest can be treated as additional consideration which should be included in the value of the cigarettes for purposes of assessment under Rule 5 of the Central Excise (Valuation) Rules. The Committee accordingly desire the Department to examine the matter in depth and take necessary action in this regard so that the Companies are prevented from reaping undue benefits at the cost of National Exchequer consequent on underassessment on account of the depressed prices of cigaretees.

70. The Committee find that M/s. Golden Tobacco Co. started a new security deposit scheme after the Budget of 1979. Under this scheme the buyers were asked to build the new security deposits from payments made by them against the invoices of cigarettes supplied by the Company with the result that security deposit amount went up creating corresponding outstandines in the company account of wholesale buyers. The Company paid interest @ 6 per cent. on credit

balance of the scheme so built on quarterly basis by way of credit notes. The Company however charged interest 18 per cent from wholesalers on outstandings in supply from them every month by way of debit notes. The debit notes were not for the differential in prices but for differential in interest rates. This system appears to have been started by the Company with a view to recover amount at some fixed rates in order to make extra margin of profit from the wholesale buyers. The Committee are surprised at the modus operandi adopted by the Company about which the Government have informed that a show cause notice for short levy of Rs. 28.93 crores has been issued and the matter is under investigation. The Committee would like to be apprised of the final outcome and also of the measures taken to plug the loopholes taken advantage of by the Company to defraud the National Exchequer.

71. The Committee would also like to be informed if the income so derived by the Company was shown in their tax returns and duly taxed by the Department.

72. The Committee find that employees in various establishments and concerns are advanced loans by their employers for the purpose of building a house or purchasing a site or a house or for purchasing a motor car and either no interest is charged by the employer on the amount of such loans or interest is charged at a rate lower than the specified rate of interest. According to Income Tax Act provision in force upto 30-4-1985 either the interest at the rate specified by the Government on the interest free loan or the difference between the rate so specified and the actual lower rate charged by the employer on the loan was treated as income of the employee and taxed accordingly. The Committee therefore recommend that in order to deter the Cigarette Companies from obtaining deposits either without interest or at very low rates, an identical provision may be made in the Income Tax Act whereby the interest payable by the Cigarette Companies on the interest free deposits at the specified rate or the difference between the specified rates of interest and the actual rates of interest paid by them is treated as income of the Companies and taxed under the Act.

73. The Committee find that manufacturers of cars, scooters etc. are realising a portion of a price of the product as advance deposits from the Customers. The Ministry of Industry has prescribed certain guidelines in regard to the utilisation of such deposits which inter-alia require that—

- (1) Not less than fifty per cent of the deposit received should be deposited with the nationalised banks/public sector or

financial institutions/public sector undertakings/Unit Trust of India and Housing Development Finance Corporation.

- (2) The balance amount could be utilised by the Company as its working capital or for deposits with private sector Companies. However, deposit with the private sector will not be more than twenty five per cent of the total deposits received by the Company.
- (3) The minimum interest payable on the deposits should be seven per cent per annum compounded annually.

74. It is surprising that the aforesaid guidelines were laid down by the Ministry of Industry sometime in the year 1984 and the Ministry of Finance (Department of Revenue) has not considered it expedient so far to prescribe guidelines on similar lines in respect of the deposits obtained by the Cigarette Companies. The Committee feel that such guidelines are very essential to act as a deterrent to the Companies from obtaining deposits either without interest or on payment at very low rates of interest and recommend the Ministry of Finance (Department of Revenue) now to move swiftly in the matter and have the necessary guidelines prescribed without any further loss of time.

75. The Committee observe that the question whether the acceptance of security deposits by cigarette manufacturers either without interest or on payment of interest at lower rates than the nominal specified rate constituted an additional consideration, was examined by the Ministry of Law. They had inter alia opined that the security deposit made by the wholesale buyer in such cases might constitute an additional consideration for entering into the dealership agreement between the manufacturer and the wholesale buyer. They had however stated that it was only the Department which could assess and establish whether such additional consideration in terms of money value had a nexus with the sale price of the exisable goods thereby necessitating the applicability of the provisions of Rule 5 of the Central Excise (Valuation) Rules 1975. The Committee are surprised that the above advice was given by the Ministry of Law sometime in the year 1984 but even after a lapse of more than two years they have not yet been apprised whether the same was examined and if so with what results. They would therefore like to be informed of the outcome of such examination and of the action taken in the matter.

76. The Committee find that by a notification No. 211/CE issued on 4-8-1983 the pattern for levy of duty on Cigarettes was changed from 4-8-1983 and is related to the retail sale price which continues to be the measure of valuation for assessment even now. After the issue of the aforesaid notification the duty structure has been changed twice by notifications Nos. 100/85-CE dt. 25-3-85 and 201/85-CE dt. 2-9-85 but the declared retail selling price continues to be the basis for determining the slabs at which excise duty is to be charged. The duty is levied according to graded rates with reference to the retail sale price of Cigarettes—the duty charged increases corresponding to the increase in the retail sale price of Cigarettes. The duty is charged on the basis of the retail sale price printed on each packet of cigarettes. M/s National Tobacco is reported to have adopted a modus operandi by which the slides of the cigarette packets were printed in such a skilful manner that the figures may be easily mis-read e.g. Rs. 1.00 was printed in such a way as to be read as Rs. 1.90. They paid duty at the lower price of Rs. 1.00 but the cigarettes were actually sold in retail at the higher rate of Rs. 1.90. Even though the Department had issued a show cause notice but had failed to intimate subsequent developments despite repeated reminders with the result that it has not been possible for the Committee to arrive at any conclusion. The Committee feel that the resort to such practice aimed at cheating and defrauding the National Exchequer of the revenues due should be viewed in all seriousness and desire that exemplary action should be taken against the company so as to serve as a lesson to deter it and others from indulging in similar practice in future. They would also like the Government to examine if this practice could be brought within the ambit of cognizable offence by making, if necessary, suitable provision to that effect in the Act.

77. The Committee find that retail sale of the packet of cigarettes at a price higher than the declared printed price amounts to an infringement of the Standards of Weights and Measures (Packed Commodities) Rules, 1977 which is being enforced by the State Governments and the Union Territories. The Committee have been informed that a number of cases have been booked by the various State Governments for the violation of the provisions of the said Rules but they have yet to be apprised of the action taken in the matter. They would, therefore, like to be informed of the details of such cases including the action taken in each as also of the measures adopted to deter the traders from adopting similar practices. The Committee would also like to know whether the difference between the declared

price and higher price charged by the dealer or any wholesaler has flowed back to the manufacturer in some form or the other necessitating the application of the Central Excise Law.

78. The Committee find that the concept of ad valorem duty based on the value of goods had been creating enormous difficulties and trend is now shifting towards accepting "transaction value" which has been adopted by 95 percent of the countries in the world. The "transaction value" is reflected in the invoice and is accepted for purposes of levy of duty. However, there is no provision to that effect in the existing Central Excises Act. In the Committee's view it is time that Government examine whether the adoption of that concept in excise taxation can help in mitigating the difficulties now encountered by the Department or plugging the loopholes taken advantage of by the unscrupulous manufacturers and if so, take necessary steps for the induction of similar concept in our Act. The Committee would like to be apprised of the review undertaken by Government in this behalf.

79. The Committee find that the valuation cells of various Excise Collectorates have detected a number of cases involving flow of indirect benefit from the buyer to the manufacturer. The common modus operandi of the manufacturers was to enter into written agreements with the dealers stipulating certain obligations like after sale service, sales promotion, advertising expenses. The manufacturers raised debit notes against dealers or distributors for charges on these obligations but these fact were suppressed from the Department in order to avoid payment of duty on such charges. The duty was accordingly paid at lower price which was not the sole consideration. The evasion of duty in these cases ran in the ranges of Rs. 30 lakhs to 3.32 crores and the Department is going ahead by issue of show cause notices demanding the differential amount of duty evaded. The Committee observed that since the modus operandi resorted to in a number of cases is identical or nearly similar there is some lacunae which makes possible for the manufacturers to reap undue benefits. They would therefore like the Government to examine the matter in depth and consider the desirability of introducing suitable provision in the Rules or the Act whereby resort to such practices is eliminated.

NEW DELHI;
April 28, 1986
Valsakha 6, 1908(S)

E. AYYAPU REDDY,
Chairman,
Public Accounts Committee.

APPENDIX I

(Para 23)

Ministry of Law
Department of Legal Affairs
Advice (B) Section

The question for consideration is whether acceptance of deposits at lower rates of interest and utilisation of such deposits as working capital by the manufacturers could be considered as an additional consideration and accordingly, whether the value for assessment purposes could be enhanced in terms of Rule 5 of the Central Excise (Valuation) Rules, 1975.

2. Proviso (i) under sub-section (1) of section 4 of the Central Excises and Salt Act, 1944 provides that where, in accordance with the normal practice of the wholesale trade, goods are sold by the assessee at different prices to different classes of buyers (not being related persons), each such price shall, subject to the existence of the other circumstances specified in clause (a), be deemed to be the normal prices of such goods in relation to each such class of buyers. Rule 5 of the Rules provides that where the excisable goods are sold in circumstances specified in clause (a) of sub-section (i) of Section 4, except that the price is not the sole consideration, the value of such goods shall be based on the aggregate of such price and the amount of the money value of any additional consideration flowing directly or indirectly from the buyer to the assessee.

3. In para 2.13 of the CA&G's Report for the year 1982-83, the Audit had pointed out certain instances where manufacturers of products like cigarettes, motorcars, scooters, etc., accept from the whole sale buyers or from the consumers certain fixed sums as deposits. In many cases, no interest is paid on these deposits and when it is paid, it is paid at a lower level of six per cent or twelve per cent. These amounts are being utilised by the manufacturers as part of their working capital. According to the trade practice, it appears that acceptance of security deposits may be a pre-condition for becoming a wholesale dealer. Audit has referred to two instances

where such deposits are received by manufacturers in accordance with the conditions for sale.

4. The matter was referred to us earlier by the Department for advice. The note dated 25.7.1984 recorded by us will be found at Flag 'C'. It was pointed out in our note that there is no authoritative pronouncement of the Supreme Court as to whether the acceptance of such security deposits by the manufacturers would constitute an additional consideration. It was further pointed out that until such a decision is available, it would be advisable to proceed on the basis that the acceptance of such deposits would constitute additional consideration. In this context, reference was also made to the decision of the Supreme Court in *Punjab Distilling Industries vs. Income Tax Commissioner* (AIR 1959 S.C. 346) and in *Union of India vs. Bombay Tyre International Ltd.* (AIR 1984 S.C. 420 at 436 & 440).

5. The Department has sought a re-examination of the matter. In the meanwhile the public Accounts Committee has also taken the evidence of the officers of the Department on para 2.13 of the C&CA's Report. During the meeting of the PAC, the officers of the Department expressed the view that the differential interest at the hands of the manufacturers has no nexus or link with the sale price. Whatever be the differential interest, the price charged by the manufacturer is the same. However, if it is found in any case that the additional consideration has nexus with the sale price, the matter will be reviewed.

6. In our previous note, reference was made to the decision of the Supreme Court in *Punjab Distilling Industries* case only by way of analogy. In that case, the assessee's trade consisted in selling in bottles liquor produced in its distillery to wholesalers. The assessee took from these wholeseller the price of the liquor, a certain sum fixed by the Government as price of the bottles in which the liquor was supplied and a further sum described as security deposits for the return of the bottles. The moneys taken as price of the bottles were returned as and when the bottles were returned. The moneys described as security deposits were also returned as and when the bottles were returned. It was held that the consideration for the sale was constituted by several amounts respectively called "the price of the liquor", "the price of the bottles and the security deposits". The amount which was called security deposit was actually a part of the consideration for the sale and, therefore, part of the price of what

was sold. The Court further observed that the moneys towards security deposits when paid were the moneys of the assessee and where thereafter in no sense the moneys of the persons who paid them.

7. In the case of *Bombay Tyre International Ltd.* the Supreme Court observed, *inter alia*, that under section (4)1 of the Central Excises and Salt Act, the Revenue is empowered to determine the true value of the excisable article, after taking into account any concession shown to a special or favoured buyer because of extra commercial considerations, in order that the price be ascertained only on the basis that it is a transaction at arm's length. In every such case, it will be for the Revenue to determine on the evidence before it whether the transaction is one where extra commercial considerations have entered and if so, what should be the price to be taken as the value of the excisable article for the purposes of excise duty.

8. In the present referring note, it has been pointed out that the nexus that is observable between the security deposits and the individual transaction as in the *Punjab Distilling Industries case* is not so obviously seen in respect of all the cases covered by para 2.13 of the C&AG's Report.

9. The security deposit made by the wholesale buyer in these cases might constitute an additional consideration for entering into the dealership agreement between the manufacturer and the wholesale buyer. It will be for the Department to establish that such additional consideration has a nexus with the sale price of the excisable goods. The Department also should be in a position to determine the amount of the money value of such additional consideration. If there is no such nexus or if the Department is not in a position to determine the money value of the additional consideration, the provisions of Rule 5 of the Central Excise (Valuation) Rules, 1975 would not be applicable.

10. As the reference has arisen out of an Audit para and the matter has been discussed by the Public Accounts Committee on 13.9.1984, Law Secretary also may kindly see.

Sd/-
(P. K. KARTHA)
27-9-84

Illegible.

Sd/- 28.9.84

Ministry of Finance (Deptt. of Revenue)

(Shri T. S. Swaminathan, Addl. Secry.)

Dy. No. 23653/84,
date 29.9.84.

APPENDIX II

(Para 25)

Guidelines for Deployment of Funds Taken by the Companies as Advance for Booking of Vehicles:

The question of automotive manufacturers accepting deposits as advance for booking of vehicles has been engaging attention of the Government for some time. While these advances may be essentially in the nature of a Civil contract. It is not unusual for the depositors to expect a reasonable return in the form of interest and seek re-assurance about their deposits even through Government intervention. It is, therefore, essential that amounts received from depositors are deployed in a manner which would enable the company to make prompt refunds of the principal amount alongwith the interest. With a view to maintaining adequate security of depositors money, Government have considered it desirable to prescribe the following guidelines:

1. Not less than fifty percent of the deposits received should be deposited with nationalised banks/public sector financial institutions/public sector undertakings/Unit Trust of India and Housing Development Finance Corporation.
 2. The balance amount could be utilised by the company as its working capital or for deposit with private sector companies. However, deposit with the private sector will not be more than twenty-five per cent of the total deposits received by the company.
 3. The deployment of funds on the above basis will be relatable to the deposits available with the company on 30.6.84 and at the end of each of the subsequent quarter i.e. 30.9.84, 31.12.84 and so on.
2. The minimum interest payable on the deposits should be seven percent per annum compounded annually.
3. Government trusts that automobile manufacturers will take suitable steps for implementation of these guidelines with immediate effect. The position of deposits and their deployment may kindly be reported to the Department of Heavy Industry every quarter i.e. 30.5.84, 30.9.84 and so on.

APPENDIX III

(Para 32)

Notification No. 211/CE dt. 4.8.1983

In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, read with sub-section (3) of Section 3 of Additional Duties of Excise (Goods of special Importance) Act, 1957 (58 of 1957) and in supersession of the notification of the Govt. of India in the Ministry of Finance (Deptt. of Revenue) No. 36/83-Central Excises dated the 1st March, 1983, the Central Govt. hereby exempts cigarettes of the description specified in column (1) of the table below and falling under sub-item II(2) of item No. 4 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) from so much of the duty of excise leviable thereon under the said Acts, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (2) of the said table:

Provided that the amount of duty so levied shall be apportioned in the ratio of 2.75:1.00 between the duty leviable under the Central Excises and Salt Act, 1944 (1 of 1944), and the Additional Duties of Excise (Goods of special importance) Act, 1957 (58 of 1957), respectively.

TABLE

Description	Rate
Cigarettes (being cigarettes packed in packages) of which the adjusted sale price per one thousand.	
(i) does not exceed rupees fifty.	Thirty five rupees per one thousand.
(ii) exceeds rupees fifty but does not exceed rupees sixty.	Thirty five rupees per one thousand plus three rupees and fifty paise per one thousand for every increase of rupees five or fraction thereof in the adjusted sale price in excess of rupees fifty.
(iii) exceeds rupees sixty.	Forty two rupees per one thousand plus three rupees and seventy five paise per one thousand for every increase of five rupees or fraction thereof in the adjusted sale price in excess of rupees sixty.

Explanation:—For the purposes of this notification

(1) "adjusted sale price" in relation to each cigarette contained in a package of cigarettes, means the unit price arrived at by dividing the sale price of such package by the number of cigarettes in such package;

Provided that—

- (a) where such cigarettes are packed in packages containing the same number of cigarettes but the sale prices of such packages are different, the adjusted sale price in relation to each such cigarette shall be the unit price arrived at by dividing the highest of such sale prices by the number of cigarettes in such package; and
- (b) where such cigarettes are packed in packages containing different number of cigarettes, the unit price for each such package shall be determined by dividing the sale price of each such package by the number of cigarettes therein and the highest of such unit prices shall be the adjusted sale price in relation to each such cigarette;

(2) "cigarettes packed in packages" means cigarettes which are packed for retail sale, in packages which—

- (a) contain 10 or 20 cigarettes, and
- (b) bear a declaration specifying the maximum sale price thereof as the amount specified in the declaration plus local taxes only;

(3) "sale price", in relation to a package of cigarettes, means the maximum price (excluding of local taxes only) at which such package may be sold in accordance with the declaration made on such package.

(F. No. 349/2/82-TRU)

APPENDIX IV

(Para 32)

TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (i)
OF THE GAZETTE OF INDIA EXTRAORDINARY DATED
25 MARCH, 1985/4, CHAITRA, 1907 (Saka)

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(Department of Revenue)

NEW DELHI 25TH MARCH, 1985

4, Chaitra, 1907 (Saka)

NOTIFICATION

No. 100/85-CENTRAL EXCISE

In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, (58 of 1957) and sub-clause (4) of clause 47 of the Finance Bill, 1985, which clause has, by virtue of the declaration made in the said Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), the force of law, the Central Government hereby exempts cigarettes of the description specified in column (1) of the Table below and falling under sub-item II(2) of item No. 4 of the first schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from so much of the duties of excise leviable under the said Acts and the special duty of excise leviable under sub-clause (1) of the said clause, as is in excess of the amount calculated at the rate specified in corresponding entry in column (2) of the said table:

Provided that the amount of duty so levied shall be apportioned in the ratio of 1.82:0.18:1.00 between the duty leviable under the Central Excises and Salt Act, 1944 (1 of 1944) the special duty of excise leviable under sub-clause (1) of clause 47 of the Finance Bill, 1985 and the duty leviable under the Additional Duties of Excise (Goods of special importance) Act, 1957 (58 of 1957), respectively.

THE TABLE

Description	Rate
(1)	(2)
Cigarettes (being cigarettes packed in packages) of which the adjusted sale price per one thousand.	
(i) does not exceed rupees fifty.	Thirty five rupees per one thousand.
(ii) exceeds rupees fifty but does not exceed rupees sixty.	Thirty five rupees per one thousand plus three rupees and fifty paise per one thousand for every increase of rupees five or fraction thereof in the adjusted sale price in excess of rupees fifty;
(iii) exceeds rupees sixty but does not exceed rupees three hundred.	Fifty two rupees per one thousand plus three rupees and seventy five paise per one thousand for every increase of rupees five or fraction thereof in the adjusted sale price in excess of rupees sixty;
(iv) exceeds rupees three hundred but does not exceed rupees five hundred.	Two hundred and thirty two rupees per one thousand plus three rupees and eighty paise per one thousand for every increase of rupees five or fraction thereof in the adjusted sale price in excess of rupees three hundred; and
(v) exceeds rupees five hundred.	Three hundred and eighty four rupees per one thousand plus four rupees per one thousand for every increase of rupees five or fraction thereof in the adjusted sale price in excess of rupees five hundred.

Explanation:—

For the purposes of this notification

(1) "adjusted sale price" in relation to each cigarette contained in a package of cigarettes, means the unit price arrived at by dividing the sale price of such package is fixed after the date of issue of this package;

Provided that in the case of cigarettes having a sale price exceeding rupees seventy per thousand, the adjusted sale price in relation to each cigarette contained in a package of cigarettes shall, where the sale price of such package is fixed after the date of issue of this notification, and;

- (a) such sale price is in excess of the sale price of a like package as sold immediately before such date; or
- (b) such packages are packed for retail sale for the first time only after such date,

mean, the unit price arrived at;

- (i) in a case falling under clause (a) by reducing the sale price by an amount equal to such excess or an amount calculated at the rate of rupees ten per thousand whichever is less, and by dividing the sale price, of such package as so reduced by the number of cigarettes in such package; and
- (ii) in a case falling under clause (b), by reducing the sale price of such package by an amount calculated at the rate of rupees ten per thousand, and by dividing the sale price of such package as so reduced by the number of cigarettes in such package;

Provided further that where the cigarettes are packed in packages (whether or not containing the same number of cigarettes) but the unit prices of the cigarettes in different packages as arrived at in Accordance with the foregoing provisions of this *Explanation* are not the same, the adjusted sale price in relation to each cigarette in every such package shall be the highest of such prices:

2. "cigarettes packed in packages", means cigarettes which are packed for retail sale, in packages which.

- (a) contain 10 or 20 cigarettes, and
- (b) bear a declaration specifying the maximum sale price thereof as the amount specified in the declaration, plus local taxes only;

(3) "sale price", in relation to a package of cigarettes, means the maximum price (exclusive of local taxes only) at which such packages may be sold in accordance with the declaration made on such package.

Sd/-

K. S. VENKATAGIRI
UNDER SECRETARY TO THE GOVT. OF INDIA.

APPENDIX V

(Para 32)

TO BE PUBLISHED IN PART II, SECTION 3, SUB SECTION (i)
OF THE GAZETTE OF INDIA EXTRAORDINARY DATED
THE 2ND SEPTEMBER 1985

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

NEW DELHI, the 2nd SEPTEMBER 1985

NOTIFICATION

No. 201/85-Central Excise

In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Central Government hereby exempts cigarettes of the description specified in column (1) of the table below and falling under sub-item II(2) of item No. 4 of the first schedule to the Central Excises and Salt Act, 1944 (1 of 1944) from so much of the duties of excise leviable under the said acts as is in excess of the amount calculated at the rate specified in the corresponding entry in column (2) of the said table:—

Provided that the amount of duty so levied shall be apportioned in the ratio of 2:1 between the duty leviable under the Central Excises and Salt Act, 1944 (1 of 1944) and the duty leviable under the Additional Duties of Excise (Goods of special importance) Act, 1957 (58 of 1957) respectively.

TABLE

Description	Rate
Cigarettes (being cigarettes packed in packages) of which the adjusted sale price per one thousand.	
(i) does not exceed rupees sixty.	Forty two rupees per one thousand.
(ii) exceeds rupees sixty but does not exceed rupees one hundred and seventy.	One hundred and twenty five rupees per one thousand.
(iii) exceeds rupees one hundred and seventy but does not exceed rupees three hundred.	Two hundred and twenty five rupees per one thousand.
(iv) exceeds rupees three hundred but does not exceed rupees five hundred and fifty.	Four hundred rupees per one thousand; and
(v) exceeds rupees five hundred and fifty.	Six hundred rupees per one thousand

Explanation: For the purposes of this notification—

- (1) “adjusted sale price”, in relation to each cigarette contained in a package of cigarette means the unit price arrived at by dividing the sale price of such package by the number of cigarettes in such package;

Provided that where the cigarettes are packed in packages (whether or not containing the same number of cigarettes) but the unit price of the cigarettes in different packages as arrived at in accordance with the foregoing provision of this Explanation are not the same, the adjusted sale price in relation to each cigarettes in every such package shall be the highest of such prices;

- (2) “cigarettes packed in packages” means cigarettes which are packed for retail sale, in packages which—

(a) contain 10 or 20 cigarettes, and

(b) bear a declaration specifying the maximum sale price thereof as the amount specified in the declaration, plus local taxes only

- (3) “sale price”, in relation to a package of cigarettes, means the maximum price (exclusive of local taxes only) at which such packages may be sold in accordance with the declaration made on such package.

Sd/-

(K. S. Venkatagiri)

Under Secretary to the Government of India.

F. No. 352/4/84-TRU(Pt.)

APPENDIX VI

Conclusions/Recommendations

Sl. No.	Para No.	Ministry Department Concerned	Conclusions/Recommendations
1	2	3	4
1	66	M/o Finance (Deptt. of Revenue)	<p>The Committee observe that Section 4 of the Central Excise and Salt Act, 1949, provides that where duty is chargeable on excisable goods with reference to their value, such value shall be the price at which such goods are ordinarily sold in the course of wholesale trade. Where such goods are sold, at different prices to different classes of buyers (not being related persons), each such price shall be deemed to be the price charged in the course of wholesale trade. Where price is not the sole consideration, the value of goods shall be based on the aggregate of such price and the amount of money value of any additional consideration flowing directly or indirectly from the buyer to the assessee as per provisions of Rule 5 of the Central Excise (Valuation) Rules, 1975.</p>
2	67	Do.	<p>M/s. Golden Tobacco Co. obtained security deposit from the wholesale buyers according to the standard terms and conditions of business with them. The Company reserved the right to vary the amount of such security deposit from time to time. It paid interest</p>

@ 3 per cent per annum or at such rates as was to be decided by it from time to time. However the Company charged interest @ 18 per cent on the sales made to the wholesale buyers on credit. Likewise M/s. Godfrey Phillip (India) Ltd. recovered security deposits from the dealers according to the conditions of sale of their cigarettes but no interest was paid by them on such deposits. M/s. Indian Tobacco Co. Ltd., also asked for security deposit from its customers on which it paid no interest at all.

68

M/o
Finance
(Deptt. of
Revenue)

M/s. Golden Tobacco Co. Ltd. obtained a security deposit amounting to Rs. 14.76 crores in the year 1979-80, Rs. 17.51 crores in 1980-81, Rs. 19.00 crores in 1981-82 and Rs. 24.38 crores in 1982-83 against a total subscribed capital of Rs. 5 crores only in all these years. M/s. Godfrey Phillips Ltd. recovered security deposits to the tune of Rs. 12.73 crores in the year 1980, Rs. 14.42 crores in the year 1981, Rs. 24.77 crores in 1982 and Rs. 24.89 crores in 1983 against a subscribed capital of Rs. 2.64 crores in the years 1980, and of Rs. 2.90 crores in the years 1981, 1982 and 1983. M/s. I.T.C. Ltd. received security deposit of Rs. 23.13 crores in the year 1980-81 and 11.31 crores in the year 1981-82 against a share capital of Rs. 27.28 crores for both these years.

The Committee find that the aforesaid companies have been obtaining security deposits from their wholesale buyers which were interest free or were bearing a very low rate of interest. The utilisation of such deposits as their working capital for manufacturing and trading activity have thus indirectly led to depression on account of the cost of manufacture of cigarettes on which duty is leviable. The manufacturers thereby derive extra indirect benefit due to under assessment of the cost of manufacture. The Department have however argued that security deposits are obtained from the buyers only as an assurance towards taking delivery of goods for marketing and to save the Company from any loss resulting by their not lifting the goods. They have further contended that the practice of taking deposits is in existence even in case of goods which are not excisable. However the Committee find that the cigarette companies have obtained deposits which far exceeded their capital in certain cases and cannot obviously be treated simply as earnest money. *Prima facie* it contributed towards working capital which was used to finance production and sale of cigarettes at depressed prices. The Committee therefore find force in the Audit view that the supply of such deposits without interest or at low rates of interest can be treated as additional consideration which should be included in the value of the cigarettes for purposes of assessment under Rule 5 of the Central Excise (Valuation) Rules. The Committee accordingly desire the Department to examine the matter in depth and take necessary action in this regard so that the Companies are prevented from reaping un-

due benefits at the cost of National Exchequer consequent on under-assessment on account of the depressed prices of cigarettes.

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M/o
Finance
(Deptt. of
Revenue)

The Committee find that M/s. Golden Tobacco Co. started a new security deposit scheme after the Budget of 1979. Under this scheme the buyers were asked to build the new security deposits from payments made by them against the invoices of cigarettes supplied by the Company with the result that security deposit amount went up creating corresponding outstandings in the supply account of wholesale buyers. The Company paid interest @ 6 per cent on credit balance of the scheme so built on quarterly basis by way of credit notes. The Company however charged interest @ 18 per cent from wholesalers on outstandings in supply from them every month by way of debit notes. The debit notes were not for the differential in prices but for differential in interest rates. This system appears to have been started by the Company with a view to recover amount at some fixed rates in order to make extra margin of profit from the wholesale buyers. The Committee are surprised at the *modus operandi* adopted by the Company about which the Government have informed that a show cause notice for short levy of Rs. 28.93 crores has been issued and the matter is under investigation. The Committee would like to be apprised of the final outcome and also of the measures taken to plug the loopholes taken advantage of by the Company to defraud the National Exchequer.

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6 71 M/o
 Finance
 (Deptt. of
 Revenue)

The Committee would also like to be informed if the income so derived by the Company was shown in their tax returns and duly taxed by the Department.

7 72 Do.

The Committee find that employees in various establishments and concerns are advanced loans by their employers for the purpose of building a house or purchasing a site or a house or for purchasing a motor car and either no interest is charged by the employer on the amount of such loans or interest is charged at a rate lower than the specified rate of interest. According to Income Tax Act provision in force upto 30-4-1985 either the interest at the rate specified by the Government on the interest free loan or the difference between the rate so specified and the actual lower rate charged by the employer on the loan was treated as income of the employee and taxed accordingly. The Committee therefore recommend that in order to deter the Cigarette Companies from obtaining deposits either without interest or at very low rates, an identical provision may be made in the Income Tax Act whereby the interest payable by the Cigarette Companies on the interest free deposits at the specified rate or the difference between the specified rates of interest and the actual rates of interest paid by them is treated as income of the Companies and taxed under the Act.

8 73 M/o
 Finance
 (Deptt. of
 Revenue)

The Committee find that manufacturers of cars, scooters etc. are realising a portion of a price of the product as advance deposits from the Customers. The Ministry of Industry has prescribed certain

guidelines in regard to the utilisation of such deposits which *inter-alia* require that—

- (1) Not less than fifty percent of the deposit received should be deposited with the nationalised banks/public sector or financial institutions/public sector undertakings/Unit trust of India and Housing Development Finance Corporation.
- (2) The balance amount could be utilised by the Company as its working capital or for deposits with private sector Companies. However, Deposit with the private sector will not be more than twenty five percent of the total deposits received by the Company.
- (3) The minimum interest payable on the deposits should be seven per cent per annum compounded annually.

It is surprising that the aforesaid guidelines were laid down by the Ministry of Industry sometime in the year 1984 and the Ministry of Finance (Department of Revenue) has not considered it expedient so far to prescribed guidelines on similiar lines in respect of the deposits obtained by the Cigarette Companies. The Committee feel that such guidelines are very essential to act as a deterrent to the Companies from obtaining deposits either without interest or on payment

at every low rates of interest and recommend the Ministry of Finance (Department of Revenue) now to move swiftly in the matter and have the necessary guidelines prescribed without any further loss of time.

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The Committee observe that the question whether the acceptance of security deposits by cigarette manufacturers either without interest or on payment of interest at lower rates than the nominal specified rate constituted an additional consideration, was examined by the Ministry of Law. They had *inter alia* opined that the security deposit made by the wholesale buyer in such cases might constitute an additional consideration for entering into the dealership agreement between the manufacturer and the wholesale buyer. They had however state that it was only the Department which could assess and establish whether such additional consideration in terms of money value had a nexus with the sale price of the excisable goods thereby necessitating the applicability of the provisions of Rule 5 of the Central Excise (Valuation) Rules 1975. The Committee are surprised that the above advice was given by the Ministry of Law sometime in the year 1984 but even after a lapse of more than two years they have not yet been apprised whether the same was examined and if so, with what results. They would therefore like to be informed of the outcome of such examination and of the action taken in the matter.

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The Committee find that by a notification No. 211/CE issued on 4-8-1983 the pattern for levy of duty on Cigarettes was changed

from 4-8-1983 and is related to the retail sale price which continues to be the measure of valuation for assessment even now. After the issue of the aforesaid notification the duty structure has been changed twice by notifications Nos. 100/85-CE dt. 25-3-85 201/85-CE dt. 2-9-85 but the declared retail selling price continues to be the basis for determining the slabs at which excise duty is to be charged. The duty is levied according to graded rates with reference to the retail sale price of Cigarette—the duty charged increases corresponding to the increase in the retail sale price of Cigarettes. The duty is charged on the basis of the retail sale price printed on each packet of cigarettes. M/s. National Tobacco is reported to have adopted a *modus operandi* by which the slides of the cigarette packets were printed in such a skilful manner that the figures may be easily misread e.g. Rs. 1.00 was printed in such a way as to be read as Rs. 1.90. They paid duty at the lower price of Rs. 1.00 but the cigarettes were actually sold in retail at the higher rate of Rs. 1.90. Even though the Department had issued a show cause notice but had failed to intimate subsequent developments despite repeated reminders with the result that it has not been possible for the Committee to arrive at any conclusion. The Committee feel that the resort to such practice aimed at cheating and defrauding the National Exchequer of the revenues due should be viewed in all seriousness and desire that exemplary action should be taken against the company so as to serve as a lesson to deter it

and others from indulging in similar practice in future. They would also like the Government to examine if this practice could be brought within the ambit of cognizable offence by making, if necessary, suitable provision to that effect in the Act.

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M/o
Finance
(Deptt. of
Revenue

The Committee find that retail sale of the packet of cigarettes at a price higher than the declared printed price amounts to an infringement of the Standards of Weights and Measures (Packed Commodities) Rules, 1977 which is being enforced by the State Governments and the Union Territories. The Committee have been informed that a number of cases have been booked by the various State Governments for the violation of the provisions of the said Rules but they have yet to be apprised of the action taken in the matter. They would, therefore, like to be informed of the details of such cases including the action taken in each as also of the measures adopted to deter the traders from adopting similar practices. The Committee would also like to know whether the difference between the declared price and higher price charged by the dealer or any wholesaler has flowed back to the manufacturer in some form or the other necessitating the application of the Central Excise Law.

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The Committee find that the concept of *ad valorem* duty based on the value of goods had been creating enormous difficulties and trend is now shifting towards accepting "transaction value" which has been adopted by 95 per cent of the countries in the world. The "transaction value" is reflected in the invoice and is accepted for pur-

poses of levy of duty. However there is no provision to that effect in the existing Central Excises Act. In the Committee's view it is time that Government examine whether the adoption of that concept in excise taxation can help in mitigating the difficulties now encountered by the Department or plugging the loopholes taken advantage of by the unscrupulous manufacturers and if so, take necessary steps for the induction of similar concept in our Act. The Committee would like to be apprised of the review undertaken by Government in this behalf.

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M/o
Finance
(Deptt. of
Revenue

The Committee find that the valuation cells of various Excise Collectorates have detected a number of cases involving flow of indirect benefit from the buyer to the manufacturer. The common *modus operandi* of the manufacturers was to enter into written agreements with the dealers stipulating certain obligations like after sale service, sales promotion, advertising expenses. The manufacturers raised debit notes against dealers or distributors for charges on these obligations but these effects were suppressed from the Department in order to avoid payment of duty on such charges. The duty was accordingly paid at lower price which was not the sole consideration. The evasion of duty in these cases ran in the ranges of Rs. 30 lakhs to 3.32 crores and the Department is going ahead by issue of show cause notices demanding the differential amount of duty evaded.

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The Committee observe that since the modus operandi resorted to in a number of cases is identical or nearly similar there is some lacunae which makes possible for the manufacturers to reap undue benefits. They would therefore like the Government to examine the matter in depth and consider the desirability of introducing suitable provision in the Rules or the Act whereby resort to such practices is eliminated.
