TWO HUNDRED AND EIGHTH

REPORT

PUBLIC ACCOUNTS COMMITTEE

(1983-84)

(SEVENTH LOK SABHA)

UNION EXCISE DUTIES—COSMETICS AND SUPPRESSION OF PRODUCTION

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Presented to Lok Sabha on 24 April, 1984
Laid in Rajya Sabha on 24 April, 1984

LOK SABHA SECRETARIAT
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CONTENTS

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(1983-84)

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*Ceased to be members of the Committee consequent upon their retirement from Rajya Sabha w. e. f. 2.4.1984.

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Two Hundred and Eighth Report on Paragraphs 2.17 and 2.40 of the Report of the C&AG of India for the year 1981-82, Union Government (Civil) Revenue Receipts, Vol. I—Indirect Taxes relating to Union Excise—Duties Cosmetics and Suppression of Production.

2. The Report of the C&AG of India for the year 1981-82, Union Government (Civil) Revenue Receipts, Vol. I—Indirect Taxes was laid on the Table of the House on the 3rd April, 1983. The Public Accounts Committee examined the Audit Paragraphs at their sitting held on 5 October, 1983. The Committee considered and finalised the Report at the sitting held on 12 April, 1984. The Minutes of the sittings of the Committee form Part II* of the Report.

3. In this Report, the Committee have dealt with the case of classification of a product "boroline" manufactured by M/s. G. D. Pharmaceuticals which contains 1% of boric acid. This product has been classified as a patent and proprietary medicine which falls under tariff item 14E and attracts duty at the rate of 12½ per cent *ad valorem* and not under Tariff item 14F—"cosmet cs and toilet preparations" on which rate of duty is 100 per cent *ad valorem*. The Central Board of Excise and Customs have failed to give any convincing reason for classifying "boroline" as a P&P medicine when according to their own clarification issued in July 1975, the classification depend upon whether the product has more of the properties of a drug or that of a cosmetic. It is well known that "boroline" is commonly used as a cream and seldom as a medicine and its antiseptic qualities are admittedly weak. The Committee have recommended that Government may re-examine the matter and re-classify "boroline" taking into consideration its properties, therapeutic value and its general usage. The Committee have further desired that in order to remove any ambiguity, Government should examine the feasibility of re-defining tariff item 14E on the pattern of international nomenclature under Tariff heading 33.06.

4. The Committee have found certain disquietening features about the working of the Central Excise Department from the facts contained in Audit

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Para on Suppression of Production relating to a manufacturer of soap. Although during 1973-74 to 1976-78, the factory's records were inspected several times, the inputs and outputs do not seem to have been correlated even once. The Internal Audit Party working under the Collector of Central Excise was also required to examine the accounts maintained by the manufacturer, but it also did not appear to have played any meaningful role.

5. The Committee have observed that since 1969, Self Removal Procedure for a number of commodities has been introduced. Under this procedure, the only way to detect supression of production and consequent evasion of duty is by means of cross checking of records and books of accounts of the manufacturer. This casts a duty on the officers of the Excise Department to be thorough in the examination of records and accounts of the manufacturer, as it is well known that the malady of suppression of production and evasion of duty is quite widespread. The Committee have recommended that the Department should ensure that the check of records and accounts are carried out every year in respect of all big manufacturers and by random selection in case of small manufacturers.

6. One of the cases of evasion of excise duty involving more than Rs. 5 crores detected by the Department relates to the Golden Tobacco Co. Ltd., Bombay. The Company is reported to have adopted a novel *modus operandi* aimed at under-valuation of their cigarettes by *inter alia*, creating notional security deposits of huge amounts against their dealers by diverting a large part of the value of the goods realised on sale. Further, the wholesale buyers were required to incur heavy expenses on behalf of the Company which otherwise would have formed part of the wholesale price to arrive at the assessable value. Show-cause notice for short levy of Rs. 28.93 crores in respect of one of the factories is stated to have already been issued to the said company. Investigations regarding production in some other cigarette companies are also stated to be going on. The Committee have urged that the investigations should be completed with utmost expedition. They have also desired to be informed of the steps taken and methodology adopted by the Department to plug the loopholes, if any, in the system taken advantage of by the Company to evade huge sums of duty.

7. For facility of reference 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 a consolidated form in the *Appendix to the Report.

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*Not Appended.

8. The Committee would like to express their thanks to the Ministry of Finance (Department of Revenue) and Drug Controller of India for the co-operation extended by them in giving information to the Committee.

9. The Committee also place on record their appreciation of the assistance rendered to them in the matter by the Office of the C&AG of India.

NEW DELHI ;
April 23, 1984
Vaisakha 3, 1906(S)

SUNIL MAITRA,
Chairman,
Public Accounts Committee.

REPORT

CHAPTER I

Audit Paragraph

COSMETICS

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

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

1.3 The mistake was pointed out in audit in December 1977 and again in December 1979. In July 1982 the Central Board of Excise and

Customs decided that the antiseptic cream fell under tariff item 14F, being a cosmetic for care of skin.

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

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

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

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

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

1.9 A manufacturer of cosmetics paid duty on clearances of cream sachets' (alcohol free concentrated perfumes) till March 1978 after classifying them as cosmetics. Thereafter, he appiled for reclassification of the product under tariff item 68 on the plea that they were cream based perfumes. The plea was turned down by the department and he paid duty under protest. His claim for refund was rejected by the department in October 1978. However, in October 1980 his appeal was allowed on the ground that such cream sachets were not like normal creams used for the care and beautification of the skin and were therefore classifiable under tariff item 68 as perfume and a refund of Rs. 2,28,355 repersenting the duty paid on clearances of the product made during the period 16 November 1976 to 25 March 1980 was allowed (May 1981). The department did not apply for review of the appellate order.

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

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

[Audit Paragraph 2.17 of the Report of the Comptroller and Auditor General of India for the year 1981-82 Union Government (Civil)-Revenue Receipts-Volume I-Indirect Taxes.]

1.12 The Audit Paragraph has highlighted the conflict in classifying an excisable product as patent and proprietary medicine or as cosmetic and toilet preparation. From this arises the loss of revenue to Government on excisable products which are not essential drugs. This is because the rate of duty is 100 per cent ad valorum on cosmetic and toilet preparation 12½ per cent *ad valorem* on medicines and 10 per cent on goods not elsewhere specified.

1.13 The Committee wanted to know how the "patent and proprietary medicines" and "Cosmetics and Toilet preparations" are defined in the Excise Tariff and how the same correspond with international tariff nomeclatures. In a written reply the Ministry of Finance (Department of Revenue) have stated as under :

"The Tariff Item 14E of Central Excise Tariff reads as follows—

(a) 14E-P OR P. MEDICINES

Tariff Item No.	Description of goods	Rate of duty	
		Basic	Special Excise
14E	PATENT OR PROPRIETARY MEDICINES NOT CONTAINING ALCOHOL, OPIUM, INDIAN HEMPOR OTHER NARCOTIC DRUGS OR OTHER NARCOTICS OTHER THAN THOSE MEDICINES WHICH ARE EXCLUSIVELY AYURVEDIC, UNANI, SIDHA OR HOMOEOPATHIC.	12 1/2% Adv.	10% of the basic duty chargeable

Explanation I

'Patent or Proprietary medicines' means any drug or——medicinal preparation, whatever form, for use in the internal or external treatment of, or for the prevention in of ailments in human beings or animals, which bears either on itself or on its container or both, a name which is not specified in a monograph in a pharmacopoeia Formulary or other publications notified in this behalf by the Central Government in the Official Gazette, or which is a brand name, that is a name or a registered trade mark under the Trade and Merchandise Marks Act, 1958 (43 of 1958) or any other mark such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to that medicine for the purpose of indicating or so as to indicate a connection in the course of trade between the medicine and some person having the right either as proprietor or otherwise to use the name or mark with or without any indication of the identity of that person.

Explanation II

'Alcohol' 'Opium' 'Indian Hemp' 'Narcotic Drugs' and 'Narcotics' have the meanings respectively assigned to them in Section 2 of the Medicinal and Toilet preparations (Excise Duties) (Act, 16 of 1955).

(b) Section VI Chapter, 30 Heading No. 30.01 to 30.05 of Customs Cooperative Council Nomenclature cover Pharmaceutical products. (The coverage of these tariff heading are not restricted to the P. or P. medicines alone corresponding to Item 14 E of the Central Excise Tariff).

Tariff Item 14 F Central Excise Tariff reads as follows :

(c) 14—F—COSMETIC & TOILET PREPARATIONS

Tariff Item No.	Description of goods	Rate of duty	
		Basic	Special Excise
1	2	3	4
14 F	COMETICS AND TOILET PREPARATIONS NOT CONTAINING ALCOHOL OR OPIUM INDIAN HEMP, OR OTHER NARCOTIC DRUGS OR NARCOTICS, NAMELY :	100% Ad-valorem.	10% of the basic duty chargeable.
	(i) Preparations for the care of the skin including beauty creams, vanishing creams, make-up creams		

1	2	3	4
	cleansing creams, skin foods and tonics, face powders, baby powders toilet powders, talcum powders and lipstics.		
	(ii) Preparations for the care of the hair—		
	(a) Hair lotions, creams and pomades.		
	(b) Perfumed hair oils.		
	(c) Shaving creams, whether or not containing soap or detergents.		

(d) Coverage of Tariff Headings "Perfumery Cosmetics & Toilet Preparations" 33.06 of C.C.C. No. which covers perfumery, cosmetics and toilet preparations and room deodorisers is far wider than that of Tariff Item 14 F of Central Excise Tariff. It covers :

(i) Perfumery, cosmetics and toilet preparations (as indicated by the wording of the heading).

(ii) Prepared room deodorisers.

(iii) Products, whether or not mixed, suitable for use as perfumery, cosmetics or toilet preparations or as room deodorisers, put up in packings of a kind sold by retail for such use.

These products remain within the present heading whether or not they contain subsidiary pharmaceutical or disinfectant constituents, or are held out as having subsidiary curative or prophylactic value."

1.14 According to Audit, Boroline contains 1 per cent of boric acid, 3 per cent zinc oxide, 5.5 per cent anhydrous lanolin, 5 per cent hard paraffin, 3 per cent microwax, 5.6 per cent talcum powder and 0.9 per cent perfume—all of which are contained in white petroleum jelly base constituting 76 per cent of the product.

1.15 The Central Board of Excise and Customs issued instructions in 1961 that for the purpose of deciding whether a medicated product should be assessed to duty as a medicine or not, it should be verified whether the product is intended only for therapeutic purpose or merely for toilet or prophyleotic purpose. Only in the event of its use for therapeutic purpose the product will qualify for assessment as medicine under tariff item 14E. Mere possession of a drug licence would not entitle the manufacturer to claim assessment of his

product under tariff item 14E. The Central Board of Excise and Customs in a Tariff Advice issued on 10 July, 1975 again clarified that for purposes of levy of excise duty, the classification of a product as between tariff item 14E and 14F should depend on whether the product has more of the properties of a drug or that of a cosmetic. Further, the classification should be made on the basis of the literature, ingredients and usage in respect of the product and it is not to be decided merely on the fact that the product has been brought under the control of the Drugs Controller.

1.16 The Committee desired to know the background in regard to the classification of "Boroline" under Tariff Item 14 E as a P & P Medicine. In a note the Ministry of Finance (Department of Revenue) have stated as follows :

> "In the year 1961, when Tariff Items 14 E and 14 F were introduced in the First Schedule to the Central Excises and Salt Act, 1944, by the Finance Act, 1961, the issue of classification of 'boroline' as a cosmetic under Tariff Item 14 F was considered by the Department. The party M/s. G. D. Pharmaceuticals Pvt. Ltd. Calcutta, classified boroline as a medicine under Tariff Item 14 E and filed a Writ Petition in the High Court. The Drugs Controller of India, the Chief Chemist, and the Law Ministry were consulted on the subject and it was decided that boroline was a Patent and Proprietary medicine and advised to settle the matter out of Court.
>
> The issue of classification of boroline was again taken up in the wake of the changes, modifying the Finance Act, 1964, and the composition of boroline was also examined. The Drugs Controller of India, who was consulted in the matter, stated that according to the British Pharmacopoeia, 1958, and the then current edition of the British Pharmaceutical Codex (1963), a boric ointment should contain 1% boric acid which would mean that boroline contains boric acid in therapeutic quantity. The Drugs Controller also mentioned that boric acid was hardly ever used as a preservative ; as such the presence of boric acid should be taken to be for its therapeutic values. The Drugs Controller was of the view that the use of boroline as a cosmetic, if any, was only incidental. In view of the opinion of the Drugs Controller, it was decided that notwithstanding the change in the tariff description of the cosmetic and toilet preparations, made by the Finance Act, 1964, boroline should continue to be treated as "Patent or Proprietary medicine" and should be so assessed.

A further development took place in 1969, when the Director, Drugs Control, West Bengal, considered boroline as a cosmetic and the Central Excise authorities were also informed. However, the Director, Drugs Control, West Bengal, lost the case in the High Court and the Department, in consultation with the Drugs Controller of India, upheld the classification of boroline as a Patent or Proprietary medicine under Tariff Item 14 E.

The issue of classification of boroline was again taken-up in 1975 while deciding the classification of Pamila Bleaching Cream. However, the classification of boroline continued to remain under Tariff Item 14E.

The classification of boroline was revised under Tariff Advice No. 39/82 dated 15.7.1982 in the wake of the recommendation of the 17th North Zone Tariff Conference held in November 1981. But the classification of boroline under Tariff Item 14F was revised in consultation with the Drugs Controller of India and the Tariff Advice No. 39/82 dated 15.7.1982 was withdrawn. It was considerd that since the ingredients of boroline continued to remain as before, there was no sufficient reason for change in the classification of boroline as a Patent or Proprietary medicine.

Copies of the Tariff Advice, (39/82 dated 15.7.1982) and Telex dated 4.10.82 withdrawing the Tariff Advice are enclosed, as Annexure I & II, respectively. (Appendix I & II)".

1.17 The Committee desired to know the other preparations comparable to Boroline which contained zinc oxide lanolin or talcum powder or any or all of them in petroleum jelly base or other base. In a note the Ministry of Finance (Department of Revenue) have informed as under :

"In the sphere of cosmetics or medicines ordinarilly no two products are identical. The composition and the manufacturers claim as to the qualities etc. of such products, are generally, found to vary. It is not easy, therefore, to make a judgement as on what criteria preparations can be said to be comparable. That two products may have somewhat similar use would not necessarily make them comparable. Unless a particular products is excisable and manufactured in a duty paying unit, the Central Excise Department is not likely to come to know of its composition as to whether it does, or does not, contain zinc oxide or lanolin or talcum powder."

1.18 The Committee desired to know whether Boroline should be treated as medicine and in case it was to be so treated what are the propertes

attributed to this product justifying its classification as medicine. In reply, the Durg Controller of India stated before the Committee :

> "So far as Boroline is concerned, this is a preparation in an ointment form containing 1% boric acid, On its label, an indication is made that it is an anti-septic perfume cream. Boric acid in 1% concentration in the form of ointment has certain mild antiseptic properties. Consequently, all who had examined Boroline had opined that it would be considered as a drug under the provisions of Drugs and Cosmetics Act."

1.19 Since the preparation in question contained only 1% of boric acid, the Committee wanted to know whether this much percntage could convert it from cosmetic to medicine and what preventive or curative qualities such medicine possessed. In reply, the witness stated :—

> "So far as the concentration is concerned, that really depends upon the drug. I have got ointments that contain hardly a few milligrams in several grammes of a base and yet it has got properties. It is not the quantity that matters, nor is it the concentration so far as boric acid is concerned. Its therapeutic effect would depend upon what is the concentration of boric acid. 1% boric acid ointment is the British Pharmaceutical Codex 63. If it has 1% boric acid concentration, it has bacterio static properties. it is considered feeble. It has no strong bacterio static properties. For this reason,, 1% boric acid of the ointment is really nothing else but 1% boric acid and 99% of other base material. It is considered as a drug in the British pharmceutical Codex."

When asked about the latest view in British Pharmaceutical Codex, the witness stated :—

> "It was deleted in 1968."

1.20 The Committee desired to know if 1% of boric acid content could create the requisite strength to fight out the disease. In reply, the witness stated in evidence :—

> "You have to see what is the preparation being indicated for, not for treatment of wounds. The indication says it is a protective and soothing emollient for chapped skin, and dry skin disorders. In cases where you have a little bit of possibility of infections like cracked nipples, it is an emollient and it might prevent infection. The preparation is not indicated for deep cuts or wounds for which you must use a strong

ointment like Savlon ointment. You have the boric acid ointment which is a very mild anti-septic one."

1.21 The representative of the Central Board of Excise & Customs stated as follows before the Committee :—

"It is not merely the boric acid content of the product but of the total effect etc. which are important points for consideration. It is not sold as a product like Betnovate ointment."

1.22 The Committee wanted to know whether an antiseptic not having a therapeutic or prophylactic purpose was classifiable as medicine or drug as per international classification. In a note, the Ministry of Finance (Department of Revenue) have stated as under :—

"The Durg Controller (India) who was consulted has advised as follows :—

"An antiseptic is an agent that counters sepsis by destroying or inhibiting growth of pathogenic organism on living tissues. Under the Drugs & Cosmetics Act an antiseptic is considered as a drug and a licence for manufacture and sale is required for this item."

We have no information regarding the international classification of antiseptics and the definition given above spells out correctly the function and action of antiseptic."

1.23 The Committee desired to know the distinction between the terms 'antiseptic' and 'prophylactic'. In a note, the Ministry of Finance (Department of Revenue) have stated as follows :—

"The above point was referred to the Drug Controller of India, who has stated that :

"The term 'antiseptic' means a substance opposing sepsis by arresting the growth and multiplication of micro-organism but not bacterial spores in living tissue *e. g.* Iodine, phenol, Chloroxylenols etc. The term 'Prophylactic' means a measure that tends to prevent disease e. g. boiling water in rainy season is a prophylactic measure against water-borne disease. Vaccination is a prophylactic measure to prevent certain bacterial and viral infections."

1.24 The Committee desired to know whether a face cream preparation with the addition of 1% or 2% boric acid would render it as a drug or it would be a cosmetic. In reply, the Member (Excise) stated in evidence :

> "Only two points have to be kept in view. It is recognised in an authoritative" book "Cosmetics Sciences and Technology that undoubtedly many durgs conform to the definition of both drugs and cosmetics under the Act. The term 'Cosmetics' may mean one thing to the average user and a number of things to others. One has to take the correct meanings.....If it is drug manufacturing, a drug licence is required. He cannot sell it to anybody."

1.25 The Committee wanted to know how the medicinal and therapeutic preparations under the heading "perfumery, Cosmetics and Toilet preparations under International Customs Cooperative Council Nomenclature' were classified. In reply, the Ministry of Finance (Department of Revenue) have stated in a note :

> "It has been mentioned in Tariff Heading 33.06 that products covered by the said Heading will remain within its purview whether or not they contain subsidiary pharmaceutical or disinfectant constituents or are held out as/having a subsidiary curative or prophylactic value. However, medicinal preparations having a subsidiary use as perfumery, cosmetics or toilet preparations are not covered under Tariff heading No. 33.06 but are covered under Tariff Heading No. 30.03 of C. C. C. N."

1.26 The Commitsee desired to know whether the Department was agreeable to follow the aforesaid pattern for purposes of classification and assessment of duty. In reply the Member (Excise) deposed during evidence :

> "I am happy to have this opportunity to refer to the CCCN. I take advantage of this paragraph in the CCCN. I wish we had made a provision in this that regardless of therapeutic value, it will continue to be assessed".

1.27. Asked if the excise tariff was patternised on international standards as spelt out in the Nomenclature, the Member (Excise) clarified :

> "This is a misconception which has to be cleared. The Central Excise Tariff is not based on CCCN at all. Only the Customs Tariff was patterned a few years ago on CCCN. Even there we have taken the liberty to project the items to suit the requirements of our country. Central

Excise does not purport to be based on CCCN. So far as this particular item is concerned, we did draw from the CCCN. The significant difference was, under their item 'Cosmetics', the products for the care of the skin, beauty and make up products, medicine and pedicure preparations, are included. We took up only one part, our tariff items. For preparations for the care of skin, one has to give a meaning. The normal assumption is when you write, there must be given a reason. In the beauty make products, manicure is not intended to be covered. It goes further, beauty creams, cold creams etc. Then there are lip-sticks, eye-shadow and eyebrow pencils, nail polishes and varnishes and other preparations".

1.28 The Committee wanted to know when Boroline as a tariff item was first introduced. In reply, the Secretary, Ministry of Finance (Department of Revenue) stated during evidence :

"It was itself not a specific item. It fell under another item. It could be either under 14(E) or under 14(F). When the system of excise was extened-ed in 1961 to these products, they applied for inclusion under 14(E). They were included under 14(F). They went to court. When the case was examined by the Government in consultation with the Law Ministry and technical people the advice which was given was that the item should fall under 14(E) rather than 14(F). Therefore, the case was settled out of the court in 1963".

1.29 Asked as to why the case was settled outside the court before the Court pronounced their judgement, the witness replied :

"It was in consultation with the Law Ministry and experts who advised that it could fall under the category of proprietary medicines, 14(E)."

1.30 The Committee desired to know the advice given by the Drug Controller, Calcutta against which the party went to the Court of Law. In reply, the Member (Excise) stated during evidence :

"He merely said they do not require drug licence for the manufacture of Boroline. Against that the party took them to court and in that matter the Drug Controller lost the case.

The net effect is having done it even the West Bengal Government did not go in for appeal against the judgement of the court. When the Drug Controller declined to give licence, the party went to court. The case was lost. .....The judgement said :

"The order of provisional assessment in respect of Boroline treating the product as cosmetic must, therefore, be quashed".

"The Respondents, the Central Excise Department, are at liberty to re-assess the petitioner in accordance with law."

1.31 The Committee desired to know as to why no appeal was preferred against the judgement of the Court. In reply, the witness stated :

"We are not a party to it. We are confusing two different distinct proceedings between two different parties with two different laws. The Drug Controller of West Bengal who was responsible for administration of the Drugs in the State took a view that since the Act had been amended, boroline did not require a licence. These people said, no, it is a drug. They went to the court. To those proceeding, we are not a party. As a result of that, during the period, we issued a provisional demand. Against our action to assess it as cosmetics, the party filed proceedings against us."

1.32 On being informed that 'Drugs' and ,poison' are in the Concurrent List, the Committee wanted to know if the Department was not a party to it. The witness stated during evidence :

"I do not come into the picture on the limited issue whether for drugs a licence is required or not; whether the Ministry should have had a say is a matter where my colleague can advise. His Ministry was taking a a view that it was a drug. I am not in the picture to advise in the matter."

1.33 The Secretary, Ministry of Finance (Department of Revenue) added in evidence :

"The point that has been made is that the Drug Controller of India had already taken this view that it is a drug. Now, in view of that there was no need for the Government of India, even if it was in doubt in the nature of things to go in for an appeal, because this was the view. If a contrary view was taken by the Government of West Bengal, it was for them to go in an appeal-not for the Central Government."

1.34 The Committee wanted to know how an item was categorised as medicine. In reply, the Drug Controller of India stated :

"Let me explain. The licensing of the manufacture is done by the State Drug Controller. Samples go to them. We have no fixed quantities to

decide its nature or what ingredients are used in its preparation. They have to be indicated for some therapeutic property. If you add 1 per cent or .01 per cent of alcohol it will not be materially affecting because in that concentration alcohol may not have any effect at all."

1.35 Since the licence is issued by the State Drug Controller and the Excise duty is levied by the Central Government, the Committee wanted to know the action taken by Government in the event of wrong certification made by the State Government. The Secretary, Ministry of Finance (Department of Revenue) stated during evidence :

"We do not just accept any certificate that is issued by the State authorities. We are at liberty to differ with the State authority and take a contrary view. In this case, what has happened is that the view expressed by our Central Government Drug Controller was at variance with the view expressed by the State Drug Controller in the sense that they took a contrary view and the State Government's Drug Controller had to accept the view that it was a drug. On the other hand it was the State Drug Controller who held that it was cosmetic. In such circumstances when our view was that Boroline was a drug, there was no question of going in on appeal."

1.36 The representative of the Central Board of Excise and Customs stated :

"It is a question of deter nining the background. The classification was done way back in 1961. At that time the marketing of the product and all the other factors were not taken into consideration. But nothing can be determined in isolation. We are only explaining as to how this decision of classifying it as a medicine was taken. The only thing, in retrospect, it appears to us to be wrong."

1.37 The Committee noted that the question of classification of 'Pamila Bleaching Cream' was discussed in Fourth Central Excise Tariff Conference held in Bombay on 20.5.1975 when it was decided to classify it as Cosmetic under Tariff item 14F. During the Conference it was opined to review the assessment of Boroline under Tariff item 14 F, since it was also used for the care of the skin. The Chief Chemist who was then consulted in the matter gave the following opinion in 1976 :

"In Martindale at page 1714, it is stated that the Council of the European Communities (Official Journal of the European Communities 1976, 19 L, 262 163) has issued a directive relating to cosmetic products limit-

ing the consumption of boric acid in talc products for oral hygiene and other products to 5.05% and 3% respectively. This establishes that the use of boric acid to the extent of 1% in boroline does not necessarily make it P&P medicine since antiseptic cosmetics preparations (talc) may use as high as 5% boric and still continue to be a cosmetic."

1.38 The Committee wanted to know the action taken on the advice of the Chief Chemist. In reply, the Ministry of Finance (Department of Revenue) have stated in a note :

"The issue of classification of 'Boroline' was discussed in the 17th North Zone Tariff-cum-General Conference held on 25th and 26th November, 1981. A copy of the minutes of the Tariff Conference is enclosed (Appendix III)."

1.39 The Committee pointed out that after the deliberations of the Conference, Government issued a tariff advice on 15.7.1982 for the classification of Boroline as cosmetics under T.I. 14F. After a lapse of a period of hardly 2 months thereafter the classification was revised to T.I. 14E on 5.10.1982. When asked about the reasons for the reversal of their decision, the Member (Excise) stated in evidence :

"It is a fact that after the tariff advice was issued in July, 1982 that it should be treated as Cosmetic, the orders were withdrawn in September, 1982. The reason for doing so was that this product is often used by the society as a patent and proprietary medicine. That was the additional information with the Department to cause this aberration. Not on one occasion, on a number of occasions, views were expressed, technical opinion was obtained, audit opinion was obtained, Law Ministry was consulted, Chief Chemist was consulted, Drugs Controller was consulted. It is not like the ponds Cream packet, it is like Betnovate. There can be dispute over this. At best I would say that one may treat it as a border line case but in that case also a valued judgement has to be made. One would not say it is a medicine like others but it is certainly not like a cosmetic."

1.40 The Committee wanted to know whether it was not possible to define each item in such an unambiguous manner so as to avoid anomalies in classification. The Member (Excise) stated in evidence :

"What you say is a very laudable objective and our effort continuously is to make the language as precise as it is possible. The problem arises on two accounts. Though the words are perfect, here vested interests are

in conflict. The aim of the Government is to extract more revenue through all possible means and the tax-payers are also trying all the time to employ various tools to find loopholes and other things. It is a question of reconciliation between the tax-payer and the tax-Collector... Nothing can be more specific than the word 'lipstick'. Various illustrations can be given in the customs. But it is in the form of stick and applied in the lip. All of us are aware of it. But some of the companies have manufactured it in the form of cake or cream to be applied to the lip with brush. From the revenue angle, I have put it as lipstick and I am going to charge duty as cosmetics. But they argue that it is not lipstick as there is no stick used. What more specific can I put than by saying lipstick. The intention is very clear. The legislature intended that the things of decoration or cosmetic should be under one category and lipstick will be under it. There is no variation in purpose, substance or essence but it is only in the form of stick, would it not be called lipstick? Nothing can be more specific than saying 'lipstick'. If I use any generic term, it would be difficult to assess. It is care, it is care for the health, care including beautification and so on and so forth."

1.41 Asked if the manufacturer was taking the best advantage in the present case, the witness stated :

"Yes, Sir. They are entitled to it."

1.42 The Committee wanted to know what action Government intended to take to remove the anomaly. The Secretary, Ministry of Finance stated in evidence :

"First of all, I would like to submit that there is no anomaly as such. It is basically the question of interpretation and given the judicial system that we have in the country and the remedies that are available to the people in the country, you cannot rule out the possibility of any type of language that is used or any type of decision in the matter of classification etc. being disputed. It could be challenged again and again."

1.43 The Committee desired to know that remedy that was available with the Department to plug loopholes and bring about rationalisation to remove all possible ambiguities in classification. The witness replied :

"The remedy would not be to take away this right from the people. To have a language so simple perhaps might ultimately lead to more difficulties than at present. At the time of drafting of any legislation, schedules lift of items etc. are made and adequate and maximum care

is taken. But as I submitted, it is the question of interpretation of that language. So long as that language is susceptible to alternative interpretation, we cannot help it.

But your suggestion is very good, I must say and I would agree notwithstanding the difficulties that I have pointed out and Mr. Misra has pointed out earlier, it is worthwhile for us to consider not only once but also continuously to consider what rationalisation can be brought about, and what steps can be taken to remove any possible ambiguities which might have come to our notice in the past We should also see that such challenges or disputes are minimised. I would agree that this is a useful suggestion and I would certainly keep that in mind."

1.44 The Committee wanted to know whether the Government now intended to reclassify Boroline under T.I. 14F. In reply the Secretary Ministry of Finance (Deptt. of Revenue) stated :

"This issue has been discussed right since 1961 and on a number of occasions and a view has been taken except in July 1982, that is a P & P medicine. In July 1982, a different view was taken. But subsequently that view was also changed and we want back to the earlier decision that it would continue to be classified as P & P medicine. Now, in the light of this, the history of this particular drug as to how it has been taxed and the discussions and consultations that have taken place in the past, I do not think it necessary for us to have any further reconsideration in this matter."

1.45 On being enquired that since there has been a controversy in regard to the classification of Boroline including the Court Judgement, was it not necessary for the Department to redefine the wording of the item for proper classification, the wiiness stated :

"The wording cannot be decided with reference to a particular item. The wording in all our tariff classification is a general or generic one which covers various items having certain properties or compositions or things like that. Now, having given that classification we have accepted the fact that the particular item which has a certain composition can fall under the category of P & P medicine rather than under the category of consmetics."

1.46 The Committee enquired if in view of an alternative classification in the international classification i.e. the CCCN and the existence of loophole in the classification of an item like Boroline, was it not desirable to have a different nomenclature in our Tariff. In reply, the witness explained :

"Our desire to tax cannot by itself be the final answer and judgement. Very often, the revenue man tries to err on the side of safety and tries to bring into the tax net as many items and as many people as possible and when it comes to the question of rate, it would be the highest. This is because of various factors. Once that is done, if there is a challenge, the position is examined and re-examined. On the basis of re-examination of the facts of this particular case, the composition. the end-use, the packing, method of marketing and selling, we came to the conclusion that it deserved to be classified as a medicine rather than as a cosmetic. The manufacture is being undertaken under a drug licence since the beginning. It is subject to the drug control regulations for everything. The manufacturing company is also a pharmaceutical company.

On the basis of each and every court decision, we cannot go and make a change which will only be to the benefit of revenue and will not give any credit to the party. After all, we are working in a judicial system in which there is a possibility of even the Government making a mistake. And if a Government agency does make a mistake, which is corrected later, I think, we should accept that gracefully, unless there is some major issue of principle involved".

1.47 The Committee desired to know the increased amount of duty realised on Boroline during the period from July, 1982 to October, 1982. In a note, the Ministry of Finance have stated as under :

"As far as G.D. Pharmaceuticals Ltd., Calcutta is concerned, no increased amount of duty was realised from 'Boroline' during the period 16.7.82 to 6.10.82 as the factory stopped production and clearance during this period and the clearance was resumed after 6.10.82. In so far as M/s. G.D. Pharmaceuticals Pvt. Ltd. Ghaziabad is concerned there was no clearance of the product during the relevant period."

1.48 Audit has, however, informed the Committee that clearances were made by these assesses during the aforesaid period and they have furnished the details of such clearances which are contained in the statement enclosed as Appendix IV.

1.49 According to these details M/s. G.D. Pharmaceuticals, Ghaziabad had cleared goods with assessed value of about Rs. 11 lakhs and paid a duty of about Rs. 1.45 lakhs. Likewise, M/s G.D. Pharmaceuticals Calcutta had cleared goods with assessed value of about Rs. 1.38 lakhs and paid a duty of about Rs. 18,000.

1.50 The Committee wanted to know that names of the manufacturers of Boroline, Eyebrow pencils, Bindi pencils and cream sachets, their annual turnover and duty relisation during the last 5 years. The information furnished by the Ministry of Finance (Department of Revenue) is at Appendix V.

1.51 The Committee desired to know the rationale for the classification of the following products and how the same were classified :

(i) Pamila bleaching creams and other brands of popular bleaching creams.

(ii) Vicco Turmeric Vanishing cream and other brands of popular venishing creams.

(iii) Anne French and other brands of popular depillatary cream (for care of skin in removal of hair).

(vi) Zinc oxide adhesive plaster.

(v) Nycil powder

(vi) Eucalyptus oil preparations.

(vii) Mascara far eye brows and lashes.

(viii) Eyeshadow.

(ix) Lip salve or chapstic.

(x) Emulsified hair oil or pomade.

(xi) Hair and hair dyes.

(xii) Scented oils for use on skin or hair.

(xiii) Thailam bath oil.

(xiv) Sandalwood oil.

(xv) Amla hair oil.

(xvi) Ayurvedic, Unani, Homeopathic or Siddha medicines.

In a written reply the Ministry of Finance (Department of Revenue) has stated as follows :

"Pamila bleaching cream is classified under tariff item 14 F of CET. Considering the ingredients used in the manufacture of pamila bleaching cream, usage, literature and the views of Drug Controller (India) and D.G.T.D. it was decided that the products had more properties of a

cosmetic, rather than that of a drug. Accordingly pamila bleaching cream was classified under tariff item 14F of CET. On the above rationale other brands of popular beaching creams would also be classifiable under T.I. 14F of CET.

(ii) Vicco Turmeric Vanishing cream is being classified under tariff item 14F. Against this classification a dispute is pending before Bombay High Court.

(iii) Anne French hair remover is classified under tariff item 68 of CET The rationale behind classification of Anne French Hair Removers under T.I. 68 is stated to be that this product is for the removal of unwanted hair and not for the care of sikin. It is substitute of razor and its use often leaves black spots. The literature and the product indicated that it was not to be used on inflammed skin. A warning is is also found in the literature that it should be tried on a small portion of the skin and if there was no reaction then only it could be used. This also indicates that the product is not for the care of skin or hair either.

(iv) Zinc oxide adhesive plaster, containing therapeutic properties and satisfying the requirements of definition of P or P Medicines, as given in tariff item 14F of C.E.T. is classifiable as P & P medicines Under T.I. 14F of CET.

(v) Nycial powder, is being classified under tariff item 14E.

Eucalyptus oil preparation

(vi) It is being marketed as a remedy for cold, pain etc. and therefore classified under T.I. 14E of Central Excise Tariff.
(vii) & (viii)

Mascara for eye brows and lashes, and eye shadows are classified under tariff item 14F of CET.

(ix) Lipsalve or chapstick is classified under tariff item 14F of CET. The rationale behind their classifications as 'cosmetic' is that these products do not have any therapeutic properties and the product is for chapped lips. Further, these products are also being manufactured under a licence issued by the State Drug Controllers, for the manufacture of cosmetic.

(x) Emulsified Hair oil or pomades are classified under tariff item 14F as tariff description specially covers these products,

(xi) M/s J.K. Helen Curtis Ltd. Bombay are the manufacturer of some popular brands of hair darkeners and hair dyes and their products are being classified as below :

(i) **Stardust powder** : It is being classified under tariff items 68.

(ii) **True Tone and Naturene** : Department classified this product under T.I. 14F but assessee challenged its classification in Bombay High Court. As per High Court order the product is being presently classified under tariff item 68.

(iii) **True tone hair dye creams** :Assessment is being provisionally made under tariff item 68.

(xii) & (xiii)

In respect of classification of perfumed hair oil's under tariff item 14F

(ii) of CET Law Ministry were consulted who opined that :

(a) the scope of the tariff "perfumed hair oil" would appropriately cover only products (hair oils) where in the perfume or odour has been impregnated by a deliberate effort.

(b) in the case of any ingredients imparting odour to hair oils the excisability or otherwise of hair oil having such ingredient has to be decided on the basis of the primary role of the ingredients i.e. if the ingredients were primarily added to give a pleasant odour to a hair oil then it (hair oil) would attract levy of duty under tariff entry "Perfumed Hair oil", but if the ingredients are added purely for medicinal/other purposes and not on account of their quality of perfume, the odour/fragrance imparted incidentally would not make the product (hair oil) as falling under the said entry ; and

(c) Where any manufacture claims that products are not commercially marketed as "perfumed hair oil" detailed verification as to how identical products are actually known in commercial parlance, bought or sold in the market. Should be made before deciding whether such products can be regarded or treated as covered by the said tariff entry, if the identical products are commercially known or marked as 'Perfumed hair oil' then similar products under disputes would also attract levy of excise duty as 'Perfumed Hair Oils'.

Sandalwood Oil

(xiv) This product is being assessed to duty under tariff item 68.

Amla Hair Oil

(xv) The product is being classified under tariff item 14F (ii) (b) of the Central Excise tariff.

(xvi) Ayurvedic, Unani, Homeopathic Siddha medicines, are classified under tariff item 68."

1.52 According to a Tariff Advice issued by the Central Board of Excise & Customs on 3.9.1981 all preparations which are in the nature of beautification aids are classifiable under tariff item 14F. The Committee wanted to know the basis for the issue of these instructions and whether this expression is compatible with the nomenclatures of tariff item 14F or the corresponding CCCN classification. In a note, the Ministry of Finance, Department of Revenue have stated as under :

> "While a 'preparation' specifically mentioned under tariff item 14F will, by reason of such mention, get undoubtedly covered by the said tariff item regardless of whether it does or does not satisfy the broad description in the tariff item, namely, "for the care of the skin" it is rather debatable whether a preparation, (not specifically mentioned in the item), which cannot be said to be for the care of the skin" will be covered by the said tariff item.
>
> So far as the instructions referred to in this question are concerned, these were issued on the basis of the legal advice received from the Ministry of Law, which is reproduced below :
>
> In this case, the question for consideration is regarding the interpretation of the word 'including' appearing in Tariff items 14F (i).
>
> The aforesaid item is as follows :
>
> "Preparations for the care of the skin, including beauty creams, vanishing creams, cold creams, make-up creams, cleansing cream, skin foods and tonics, face powders, baby powders, toilet powder, talcum powders and lipsticks."

Thus, the word 'including' appears after the general description i.e. preparations for the care of the skin. The items mentioned after the word 'including' are only by way of illustration. It has been held in a number of

of cases that the word 'include' is a word of enlargement rather than restriction. The words following the word 'include' are more in the nature of illustration than to exchaustively lay down the definition. In view thereof, we feel that all items which are meant for use on the skin and which are of the similar description as are appearing after the word 'including' would be liable to duty under this item.

Corresponding C.C.C.N. had tariff heading differently and includes many more items then the ones covered by T.I. 14-F of the C.E.T."

1.53 The Committee desired to know the rationale behind excluding 'perfumery' from the description of tariff item 14-F when it is generally included along with cosmetic and toilet preparation in international classification. In written reply the Ministry of Finance (Department of Revenue) have stated as under :

> "As to what commodities should be subjected to central excise duty and at what rates is a policy judgement which has to be made having regard to all relevent factors such as the expected yield of revenue, existence of small scale sector, existing duty incidence already on the inputs and the other competing products. While recourse to CCCN may be had for assistance or guidance when necessary, it has not been the practice carving a tariff item wholly to adopt a CCCN item without regard to our requirements for purposes of central excise levy.
>
> Even for the purpose of customs tariff which is based on CCCN, considerable abridgement/enlargement of the tariff items had to be carried out to suit to our needs and the pattern of India's foreign trade. The Central Excise Tariff has to take into account the conditions and practices of the trade and industry in India.
>
> While contemporaneous record is not available as to the reasons for excluding 'perfumery' from the scope of item 14-F, conceivably, this was done becuase of the non-existence of a substantial organised sector in the perfumery industry."

1.54 Preparations for the care of skin including beauty creams, vanishing creams, cold creams, skin foods, tonics are treated as 'cosmetics and toilet preparations' and are classified under tariff item 14F. The patent and proprietary medicines fall under tariff item 14E, The rate of duty on 'cosmetics and toilet preparations' is 100 per cent *ad valorem* while that on medicines, it is 12½ per cent *ad valorem* and on goods not elsewhere specified, the rate of duty is 10 per cent.

1.55 "Boroline" manufactured by M/s. G.D. Pharmaceuticals contains 1 per cent of boric acid, 3 per cent zinc oxide, 5.5 per cent anhydrous lanolin, 5 per cent hard paraffin, 3 per cent microwax, 5.6 per cent talcum powder and 0.9 per cent perfume—all of which are contained in white jelly base constituting 76 per cent of the product. It is not a specified item detailed in the excise tariff. In the year 1961, when Tariff items 14E and 14F were introduced in the First Schedule to the Central Excises and Salt Act, 1944 by the Finance Act, 1961, the issue of classification of boroline under Tariff item 14F was considered by the Department. However, the product has been classified under Tariff Item 14E, *i.e.*, P & P Medicine.

1.56 The Central Board of Excise and Customs issued instructions in 1961 that for the purpose of deciding whether a medicated product should be assessed to duty as a medicine or not, it should be verified whether the product is intended only for therapeutic purpose or merely for toilet or prophylactic purpose. Only in the event of its use for therapeutic purpose the product will qualify for assessment as medicine under tariff item 14E. Mere possession of a drug licence would not entitle the manufacturer to claim assessment of his product under tariff item 14E. The Central Board of Excise and Customs in a Tariff Advice issued on 10 July 1975 again clarified that for purposes of levy of excise duty, the Classification of a product as between tariff item 14E and 14F should depend on whether the product has more of the properties of a drug or that of a cosmetic. Further, the classification should be made on the basis of the literature, ingredients and usage in respect of the product and it is not to be decided merely on the fact that the product has been brought under the control of the Drugs Controller.

1.57 The classification of boroline was again discussed in a Tariff Conference of Collectors held in November 1981 wherein a view was expressed that everything which fails with in the ambit of Drugs Control Order may not necessarily be classified as a P&P medicine. The main purpose of usage has also to be seen mainly as to whether a product is used as medicine or is for the care of the skin or for beautifying the skin. The Conference felt that the classification of boroline should be reviewed in the context of the fact that "Pamilla bleaching cream" was classified as a cosmetic under tariff item 14F on the basis of the deliberations of the Fourth Central Excise Tariff Conference held in Bombay in May, 1975. After taking into consideration the deliberations of the Tariff Conference tariff advice was issued by the Central Board of Excise and Customs on 15 July, 1982, classifying "boroline" under tariff item 14F. But this advice was withdrawn by the Board in October, 1982 *i.e.*, within four months without assigning any reason and Boroline was reclassified under tariff

item 14E. The Central Board of Excise and Customs have failed to give any convincing reason for classifying "Boroline" as a P&P medicine when according to their own clarification issued in July 1975, the classification depends on whether the product has more of the properties of a drug or that of a cosmetic. It is well know that "boroline" is commonly used as a cream and seldom as a medicine and its antiseptic qualities are admittedly weak. A similar product "Pamila Bleaching Cream" and other bleaching creams are being classified as cosmetic. Even in advertisements, the use of boroline is highlighted as a cosmetic or face cream rather than as a medicine. The addition of just one per cent boric acid does not alter its basic use as a cosmetic,

1.58 The Committee find that the definition of "Cosmetics and toilet preparations" contained in Tariff item 14F of the Central Excise Tariff corresponds to international tariff heading 33.0 of "Customs, Co-operative Council Nomenclature". The products therein remain within the heading even if they contain subsidiary pharmaceuticals or disinfectant consistent or are held out as having subsidiary curative or prophylactic values. Boroline contains only 1% boric acid and 99% of other base material. It has been classified as a Drug under tariff item 14E as boric acid creates in it therapeutic value. The Committee ; however, find that the preparation is a protective and soothing emollient for chapped skin and dry skin disorders. It can prevent infection but cannot treat deep cuts or wounds as it is a very mild anti-septic. The representative of the Ministry of Finance admitted during evidence—"One would not say it is a medicine like others but it is certainly not like cosmetic...At best I would say that one may treat it as a border line case". It was further stated "we are only explaining as to how the decision of classifying it as a medicine was taken. The only thing is, in retrospect, it appears to be wrong."

1.59 The Committee also note that according to the advice given by the Chief Chemist in 1976, "the use of boric acid to the extent of 1% in boroline does not necessarily make it a P&P medicine since antiseptic cosmetic preparations (talc) may use as high as 5% boric and still continue to be cosmetic." Even in British Pharmaceutical Codex, an ointment with 1% boric acid has since been deleted from the definition of drugs, a fact which came out in evidence before the Committee. The Committee recommend that Government re-examine the matter and re-classify boroline taking into consideration its properties, therapeutic value and its general usage. The Committee further feel that in order to remove any ambiguity, Government should examine the feasibility of re-defining tariff item 14F on the pattern of international nomenclature under tariff heading 33.06. It should also be made clear that such products shall fall under Tariff Item 14F even if they contain subsidiary pharmaceutical or disinfectant constituents or are held out as having subsidiary curative or prophylactic value. The Committee would like to be informed of the decision taken in the matter.

1.60 According to the information furnished by the Ministry of Finance (Department of Revenue) during the period from 16.7.82 to 6.12.82 when "Boroline" was classified under Tatiff item 14F and subjected to 100% duty, no increased amount of duty was realised from G.D. Parmaceuticals Ltd., Calcutta as the factory is stated to have stopped production and clearance during that period. G.D. Pharmaceuticals Ltd., Ghaziabad is also stated to have made no clearance of the product during the aforesaid period. Audit has, however, furnished details based on reports received from their field officers which indicate that during the period in question G.D. Pharmaceuticals, Ghaziabad had cleared goods with assessed value of about Rs. 11 lakhs and paid a duty of about Rs. 1.45 lakhs. Likewise, the unit at Calcutta had also cleared goods with assessed value of about Rs. 1.38 lakhs and paid duty amounting to about Rs. 18,000. These amounts of duty were paid at the lower rate of 12½% *ad valorem* leviable to items classified as Drugs under tariff item 14E. The Committee would like the Ministry of Finance to re-examine the position and verify if their earlier statement that no clearance was made during this period is correct. If the same is found to be incorrect, the circumstances in which wrong information was furnished to the Committee along with the action taken against the officers responsible for the same may be intimated to the Committee. The Ministry may clearly indicate the rate of duty charged during this period.

1.61 The Committee find that lipstick has been classified as a cosmetic under tariff item 14F. It is in the form of stick and applied on the lips. There are certain companies who are reported to have manufactured it in the form of cake or cream which is applied with brush on the lips. These have been classified as cosmetics for levy of duty but the manufacturers are disputing that it is not lipstick as no stick is used. There is no difference in purpose, substance or essence except that it is only in the form of cake. The case of Boroline and the instance of lipstick show that present classification is vague and ambiguous which allows the manufacturers to take undue advantage. The Committee feel that there is a clear need for rationalising the Tariff structure. the Finance Secretary also admitted during evidence "It is worthwhile for us to consider not only once but also continuously what rationalisation can be brought about and what steps can be taken to remove any ambiguities which might have come to our notice in the past. We should also see that such challenge or disputes are minimised". The Committee therefore desire Government to rationalise the existing classification and make continuous and concerted efforts to ensure that all the tariff items are well defined leaving no scope for misinterpretation. The Committee would like to be informed of the specific steps taken in this regard.

1.62 The Committee note that according to the tariff advice issued by

the CBE&C on 3.9.1981, all preparations which are in the nature of beautification aids are classifiable under tariff item 14F. These instructions were issued on the basis of legal advice tendered by the Ministry of Law who, while defining the scope of expression "including" appearing in tariff item 14F (i), opined that the items like beauty creams etc. mentioned after the word 'including' are more by way of illustration than to exhaustively lay down the definition. According to the said legal advice, all items which are meant for use on the skin and which are of similar description as are appearing after the word 'including' would be liable to duty under tariff item 14F (i). "Eye brow pencils" and "Suhag Bindi pencils", which are used on eye brows and face are obviously in the nature of beautification aids. These have, however, been classified under tariff item 68 and duty is levied thereon only at 8 per cent *ad valorem* (since increased to 10%) instead of at 100 per cent under tariff item 14F (i), which resulted in duty amounting to about Rs. 4.41 lakhs not being demanded on the clearances made during the period from January, 1981 to January, 1982. It is not clear to the Committee how "Eye brow pencils" and 'Suhag Bindi pencils' which are apparently beautification aids could have been classified under tariff item 68 (non-specified items) rather than under tariff item 14F (i). This is yet another instance to show how irrational our present tariff classification is. The Committee would like to be apprised of the precise reasons for classifying the aforesaid articles under tariff item 68 and action taken, if any, or proposed to be taken to set right the classification.

1.63 The Committee find that tariff item 14F in the Central Excise Tariff does not mention "perfumes" but only mentions "Cosmetics and Toilet preparations". The corresponding international nomenclature covers "perfumery" under the heading 33.06 in addition to "Cosmetics and Toilet preparations". As to the reasons for not clubbing "perfumery" alongwith cosmetics, as has been clubbed done in the international nomenclature, the Ministry have stated that it is not the practice to carve a tariff item wholly to adopt a CCCN item without regard to our requirements even though recourse to CCCN be had of for assistance or guidance when necessary. As to the considerations for classifying "perfumery" differently from "Cosmetics", the Ministry have stated that no contemporaneous record is available, but conceivably it was done because of the non-existence of a substantial organised sector in the perfumery industry. The Committee feel that as per international nomenclature, "perfumery" should also be clubbed along with "Cosmetics and Toilet preparations" in the Central Excise Tariff so as to make the classification more rational and also to avoid any difficulty in classification of perfumery products. The Committee desire that this may be done at an early date.

1.64 The Committee note that "Cream Sachets" (alcohol free concentrated perfumes) were classified as cosmetics under tariff item 14F (i) and M/s.

Kemco Chemicals, Calcutta, the manufacturers of cosmetics paid duty on their clearances till March 1978. Thereafter, the manufacturers applied for reclassification of the product under tariff item 68 on the plea that it was perfume in cream base. The plea was turned down by the Department and the manufacturers paid duty under protest. Their claim for refund was also rejected by the Department in October, 1978. However, the assessee filed an appeal to the Appellate Collector who allowed it on the ground that such cream sachets were not like normal creams used for the care and beautification of the skin and were, therefore, classifiable under tariff item 68 as perfume and a refund of Rs. 2,28,355 representing the duty paid on clearance made during the period from November, 1976 to March 1980 was allowed. The ministry did not consider it to be a fit cass for review of the appellate order. The Committee are surprised at this explanation. They feel that as cream sachets had all along, till 1978, been classified as cosmetics Government, in exercise of their statutory power under Section 35 of the Central Excises and Salt Act, 1944, should have reviewed the order. The Committee would like to be apprised of the precise reasons due to which the order of the Appellate Collector was not reviewed.

CHAPTER II

Audit paragraph

SUPPRESION OF PRODUCTION

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

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

2.3 On the omission being pointed out in audit (December 1976), the department issued (July 1977) a show cause-cum-demand notice to the manufacturer. On the subsequent enquiry by audit (March 1980), the department stated (September 1980) that the opinion of the Chemical examiner was that process loss could account for the unexplained excess raw material. However, the notice was still being pursued in March 1982, on the basis of information collected from the manufacturer wherein the process loss between 1 to 47 kilogrammes reported by him as having occurred in manufacturing 23,000 to 23,800 kilogrammes of soap during the years 1973-74 to 1975-76 could hardly explain how the unexplained excess of 68,913 kilogrammes could have been process loss. No further report on action taken by the department had been received till September 1982. The Ministry of Finance have stated (November 1982) that the matter is under examination.

[Paragraph 2.40 of the Report of the C & AG of India for the year 1981-82 Union Government (Civil) Revenue Receipts Vol. I — Indirect Taxes]

2.4 The manufacturer referred to in audit paragraph is Z.B. Soap Factory, 134-B Ballimaran, Delhi. During the year 1973-74 to 1975-76, the manufacturer was producing shaving soap, toilet soap, transparent soap, and hair removing soap.

The percentage of oil, caustic soda, and soap stone used in the four varieties of soap produced was 65/15/20, 45/25/30, 67/33/Nil, 10/Nil/90 respectively. The weight of oil, caustic soda and soap stone used in 1973-74 was approximately 14 tonnes, 6 tonnes, and 9 tonnes respectively. In 1974-75 it was 19 tonnes, 8 tonnes and 6 tonnes respectively. In 1975-76 it was 19 tonnes, 7 tonnes and 5 tonnes respectively. During the three years the quantity of soap stone purchased was 25 tonnes, 28 tonnes and 29 tonnes respectively while the soap stone consumed was only 9 tonnes, 6 tonnes and 5 tonnes respectively. The balance quantity of 62 tonnes of soap stone valuing Rs. 12,400 is stated to have been wasted or destroyed in the three years.

2.5 The Committee wanted to know the value of clearances made by the assessee and the duty paid during each of the last 10 years. The Ministry of Finance, Department of Revenue have furnished the following information in a note :

"Being under exemption, no duty has been paid by the assessee. The value of the clearances made during the last 10 years is as under :

Year	Value of clearances	Duty
1973-74	1,92,817.50	—
1974-75	3,12,716.80	—
1975-76	2,58,619.00	—
1976-77	2,86,272.99	—
1977-78	3,12,813.88	—
1978-79	2,85,216.23	—
1979-80	2,97,943.30	—
1980-81	3,37,785.12	—
1981-82	3,60,844.71	—
1982-83	3,44,437.49	—"

2.6 The Committee desired to know whether the manufacturer maintained proper records in accordance with the prescribed procedure. The Member (Excise) stated during evidence :

"The manufacturer was maintaining a stock record in R.G.I. and was submitting regular RT 12 returns. Apparently, RTS return was not insisted upon. Even if we had obtained this return it would have been in respect of the major material *i.e.* oil, and not soap stone".

2.7 When asked why the submission of RT 5 returns was not insisted upon and who were the officers responsible for this lapse, the Ministry of Finance (Department of Revenue) have in a note stated as under :

"At the relevant point of time, the manufacturer was availing himself of full duty exemption under notification No. 144/68 dated 13.7.68. He was maintaining during this period the stock record in R.G. 1 and was submitting regularly the R.T. 12 returns. During the inspection of the factory, a remark regarding non-maintenance of form IV and non-submission of R.T. 5 was in fact made by the Inspection Group but the manufacturer apparently took the plea that since they remained under exemption limit throughout, there was no necessity for maintenance of this raw material account or submission of the R.T. 5 returns. Apparently no punitive or corrective action to ensure submission of R.T. 5 returns was taken, though the assessee was advised by the departmental officers to maintain the raw material account and submit the R.T. 5 returns. A study of quantum of production of soap *vis-a-vis* oil consumption conducted later, indicated that the declared production of soap during the relevant period was not incompatioble with the oil consumed in such production. There has, thus in fact been a critical study of the raw material consumption in the instant case and there appears to be no ground for holding that there has been any lapse on the part of the officials concerned. In view of the above, no action has been proposed against them".

2.8 The Committee desired to know the periodicity of checks conducted in respect of the concerned manufacturer. The Ministry of Finance (Department of Revenue) have in a note intimated as under :

"During the period from 73-74 to 77-78 (*i.e.* during 5 financial years) the factory's records were inspected 7 times. After 1.3.1978 the factory became a declarent and hence it was not subjected to any checks except verification of the particulars shown in the declarations filed by them from time to time. No irregularity relating to suppression of production was noticed".

2.9 Enquired in regard to the action taken by the departmental officers after the Audit pointed out in December 1976 the possible suppression of production, the Ministry of Finance (Department of Revenue) have explained the position as under in writing :

"After receipt of the audit paragraph, the revenue was safeguarded by raising a demand for Rs. 1,72,659.80 *vide* C. No. 20(15)1/77/3343 dated 21.7.77 by the concerned Range Officer. Thereafter the process of adjudi-

cation was set in motion. During the course of adjudication the party contested the validity of the demand on the ground that the consumption of soap stone could never become the basis of estimating the total production of soap. An on- the-spot study was also conducted to find out whether the grounds of the demand were sustainable. The matter was also in correspondence with the Audit. In the meantime, in lieu of the notification No.33/68, Notification No. 71/78 was issued providing exemption to small scale units manufacturing among other things soap. With the issue of this notification, followed by Notification No. 111/78, the factory became a declarant. In the case of declarants, the requirement is one of maintaining a simple account register."

2.10 The Committee desired to know the present position of the show cause-cum-demand notice issued by the Department to the manufacture. In reply, the Ministry of Finance (Department of Revenue) have stated in a note as follows :

"The show cause notice issued by the Department has been adjudicated upon by the concerned Assistant Collector. The proceedings initiated under the show cause notice have been dropped. The decision taken by the Assistant Collector was also examined by the Collector. In view of the reasons adduced in the order passed by the Assistant Collector, it has been decided by the Collector that the decision does not call for a revision."

2.11 When asked for the reasons for the undue delay in processing-show cause notice in this case and the remedial action taken to avoid similar delays in future, the Ministry of Finance (Department of Revenue) explained the position as under :

"The audit objection which led to the issue of the show cause notice was converted into a Draft Audit. Para which was not accepted by the department. The matter remaind in correspondence with the Audit and the decision in the adjudication case was apparently kept in abeyance to take note of the final observations in the matter. In order to avoid similar delays, the field formations are being advised to decide the issues arising out of audit objections on their own merits and in the normal course without waiting for the emergence of the final view, even though it may mean further work by way of appeals etc."

2.12 The Committee wanted to know the provisions in the Excise Act and Rules which enable the departmental officers to detect clearance of excis-

able goods if not declared in the periodical excise returns. In a written reply, the Ministry of Finance (Department of Revenue) have stated as under :

"Self Removal procedure for most of the commodities in excise was introduced in 1969. Under the SRP system, the quintessence of which is a large measure of trust in the assessees, there is no control over the clearance of the goods from the factory. Care was however taken that some important steps preliminary to assessment namely, classification and valuation of goods was done before-hand. Liability for declaring goods manufactured in a factory and giving price-list for goods intended to be cleared by him has been imposed on the assessee under Rules 173B and 173C respectively. So far as classification list is concerned, the asseessee is required under Rule 173B to give a list of all the goods manufactured by him. This list is actually verified by visits to the factory by the concerned Central Excise Officers namely Inspector of Central Excise, Superintendent of Central Excise and in some cases the Asstt. Collector of Central Excise. Having regard to the importance of classification list the responsibility for its approval has been given to the Asstt. Collector normally who is a senior officer of the Deptt. Similarly the price list filed by the assessee is verified by the concerned officers with referance to the actual invoices of sales made by the assessee. In some circumstances, price-list has to be approved before the assessee is allowed to clear the goods. Those circumstance are mentioned in Rule 173C itself.

Rule 173D gives a power to prescribed a principal raw material. This rule is normally invoked in those cases wherever a proper co-relation between raw material and the finished goods can be arrived at. A periodical return is also required under Rule 55 to be filed in respect of such raw materials received and consumed and the finished goods manufctured out of them.

The stock register of finished excisable goods is also prescribed under Rule 53. A monthly return RT 12 uuder Rule 173G is required to be furnished by the assessee which *inter alia* gives the quantity of goods manufactured, the quantity of goods cleared and the quantity of goods in balance at the end of each month.

It has also been provided in Rule 173G that the assessee gives a list all of the accouuts maintained by him either at his own or under directions from other authorities. This assist the Deptt. to ensure that what he is declaring in excies records is corroborated by entries in other records".

2.13 The Committee desired to know how the aforesaid legal provisions

were being enforced by the departmental officers. In reply, the Ministry of Finance (Department of Revenue) have in a note, stated as follows :

"Alongwith these legal provisions, there is a system of elaborte checks and counter-checks provided by executive instructions for various bodies in this Deptt. namely the Assessing Officers, the Internal Audit Parties and Preventive Parties.

Apart from these elaborate checks the quantum of penalities was raised to a high level under S.R.P. so as to provide a general deterrence.

Foregoing being the elaborate system of trust in the assessee by way of making him responsible for declaring of the supplemental system of checks and counter-checks by the Departmental officers, coupled with the antievasion activities of the Central Excise Deptt. are aimed at ensuring that duty due on all goods is collected. However, no system of collection of duty can be made foolproof. Any systsms of checks, has to be tempered with dictates of the other desirable principle that duty should be collected with the least possible harassment to the bonafide assessees".

2.14 The Committee wanted to know the legal powers of the department to examine commercial accounts of the manufacturers and how the same were being exercised. In a note the Ministry of Finance (Department of Revenue) have stated as under :

"Legal power to examine the commercial accounts of the manufacturer exist under Rule 173G(5) and 173G(6) of the Central Excise Rules, 1944 and also under Section 14 of the Central Excise Act. Normally the assessee produces all the accounts maintained by them and declared by them in pursuance of Rule 173-G(5) of the Central Excise Rules, 1944, which are examined by the Central Excise Officers during the course of performing their duties. As far as exercise of the legal power vested upon the Central Excise Officers under Section 14 of the said Act is concerned, this is used only in such cases where inquiries are undertaken by Central Excise Officer for any purpose under the Act and the manufacturer fails to produce the required documents. The exercises of such power is irrespective of any such consideration whether the manufacturer has been paying duty of more than Rs. 5 crores or less".

2.15 The Committee wanted to know how the Commercial accounts of manufacturers are examined by the Collectorate to see that the entries in the

excise returns are in agreement with the Commercial records. In a note, the Ministry of Finance (Department of Revenue) have stated as under :

"The internal audit parties working under the directions of Collectors of Central Excise are examining the accounts/maintained by the manufacturers. These accounts cover all statutory records relating to the accounting of raw material, production, clearances, etc. and also the private records maintained and returns filed by them under other laws. Instructions to this effect have also been issued that these records will be checked by the jurisdictional Central Excise Officers. The Central Excise records are thus checked with reference to other records maintained/other factors of production and clearance and their correctness examined".

2.16 Enquired in regard to the percentage of manufacturers whose commercial records are examined by excise officers every year, the Ministry of Finance (Department of Revenue) have informed in a note as under :

"Under Central Excise Rules all the licensees are under obligation to produce their commercial records for examination on demand by Central Excise Officers. There is no record prescribed or maintained by the Department to show the percentage of checks of manufacturers' commercial books with reference to statutory excise records and returns and hence it may not be possible to work out the percentage of manufacturers who get their commercial records so examined. The internal audit parties of the Collectorate however, invariably check the commercial accounts of the manufacturers to ensure that entries in the satutory Central Excise records correspond to those shown in the commercial records".

2.17 The Committee wanted to know if the Excise Inspectors were competent to determine whether production figures being reported to excise are different from production figures going into Commercial accounts and if any training was given to them. In reply, the Ministry of Finance (Deparment of Revenue) have stated in a note as under :

"The Directorate of Training, Customs and Central Excise has been conducting courses for the Superintendents and Inspectors of Central Excise on Cost Accountancy, Audit and Anti-evasion from time to time. During these courses the trainees are acqueinted with the basic concepts of Costs, scrutiny of balance sheets, trading accounts and profit and loss accounts with special reference to their utility for Central Excise purposes. Under the "Cost Accounting Record Rules" prescribed under the Companies Act for some of the industries engaged in production, processing, manufacturing and mining activities certain records have been prescribed to be maintained. Quite a few of these industries are engaged in manufacture of excisable

goods. Under these rules the manufacturers are required to maintain records showing the cost of materials purchased, cost of production and other utilities, cost of processing cost of intermediatary products main products, etc. The officers attending the cost accountancy and audit courses are taught how to make use of these records and the cost audit reports wherever these are available for the purpose of cross checking whether the details given in the statutory Central Excise records can be accepted. An attempt is also made to apparise the trainees about the modus-operandi adopted by the manufacturers to suppress production. During these courses the trainees are given training through lectures and ground discussions on how to make use of details of cost and production reported by the manufacturers to other departments like Sales-Tax, Income-tax and the banks etc. The basic objective of these training courses is to give these officers some working knowledge in the areas of cost accountancy and audit to equip them better in detecting evasion of duties through manipulation of accounts".

2.18 The Committee desired to know the details about the functioning of the Directorate of Anti-Evasion in the Central Board of Excise and Customs as also the number of cases detected by this Directorate so far. In reply, the Ministry of Finance (Department of Revenue) have stated as follows :

"The Directorate of Anti-Evasion (Control Excise) was set up in December, 1978 as an independent Wing of the Directorate of Revenue Intelligence. The Charter of functions envisaged for the New Directorate is annexed (Appendix-VI). After filling up of the posts, the new Directorate started functioning in January 1979. Initially, the man-power provided consisted of only 77 officers—43 in the executive grades and 34 in the Ministerial grades ; apart from the Headquarters office and the Zonal office located at Delhi, the new Directorate had four offices located at Kanpur, Calcutta, Bombay and Madras. The Zonal offices at Delhi and Bombay were headed by a Deputy Director each and those at Kanpur, Calcutta and Madras were headed by an Assistant Director each. In January 1983, 193 more posts were sanctioned—107 in executive grades, 36 in Ministerial grade and 50 in Group 'D' grades. As a result, the four zonal offices at Delhi, Bombay, Calcutta and Madras were headed by a Deputy Director each, new Regional Units, each headed by an Assistant Director, were created at Ahmedabad, Bangalore, Baroda, Cochin, Hyderabad, Indore, Ludhiana, Patna and Pune in addition to the existing Regional Unit at Kanpur.

The major contribution of the Directorate has been (a) in the field of detection of a number of important cases involving large scale evasion of Central Excise duty and (b) re-oprieting and promoting intensification of the anti-

evasion activity in the Central Excise Collectorates, which led to increased detections of cases of evasion of duty by the Collectorates. The following data may be seen in this regard :

Cases of duty evasion detected :

	By Dte. of Antievasion (CE)		By Collectorates	
Year	No. of cases	Estimated duty evasion (in Rs. lakh)	No. of cases	Estimated duty evasion in (Rs. lakh)
1978		*	3,481	2,65.71
1979	15	5,95.40	2,293	12,70.18
1980	73	6,36.59	3,259	12,05.12
1981	17	73.40@	5,257	50,06.09
1982	43	52,62.04+	7,191	51,72.29
1983 (upto Oct. '83)	25	4,05.20£	5,233	33,66.36

Note : * The Directorate started functioning from January, 1979 only.

@ Detections by the Dte in 1981 were less, because the investigations in a number of cases detected earlier were in hand and the entire staff resources were fully occupied in completing those cases.

+ Alleged evasion in GTC case taken at Rs. 50 crore Approximately.

£ In 5 cases only ; rest 20 cases intelligence remained to be worked out.

Apart from the detection of cases of evasion duty, some of the other important functions which the Directorate has been performing are :

(a) A data bank is being built up at the Hqrs. of the Directorate from information regarding 'intelligence, detections, etc. received from the Central Excise Collectorates, and the Directorate Offices. Till the end of November, 1983, a total of 3,236 index cards of various categories were prepared.

(b) *Modus operandi* circulars containing intelligence of new *modus operandi* coming to notice which are employed by unscrupulous manufacturers of excisable goods for evasion of Central Excise are also circulated to the various Collectors of Central Excise for

further action in booking cases and checking such evasion. The information in this regard is as follows :

Year	No. of Modus operandi Circulars issued
1980	32
1981	20
1982	15
1983 (upto Nov.)	14

As part of intensification of the anti-evasion activity, Action Plans were launched from time to time pursuant to the directions of the Ministry. As part of this exercise, surveys were also conducted by the various Collectorates to locate units manufacturing excisable goods which were either not licensed or were worngly availing of the benefits of exemption, particularly 'General Exemption' notifications for small scale sector units. The All India year-wise results obtained in this regard are indicated below :

Year	No. of small scale units brought under Central Excise control
1981	323
1982	1,524
1983 (upto Oct.)	1,025
	2,872

2.19 The Committee enquired if the Directorate had been able to achieve the objective for which it was set up. In reply the Ministry of Finance have stated as follows :

"The new Directorate started functioning from January 1979 with a handful of officers only. Inspite of limited resources apart from itself detecting a number of cases of evasion, the Directorate was instrumental in helping, to bring about reorientation of approach to Central Excise anti-evasion work in the Central Excise Collectorates and, as a result, there was considerable improvement in the total anti-evasion activity. Previously, the anti-evasion

work in the Collectorates generally placed emphasis on physical checks, like, road blocks, transit-checks, surprise visits to factories and checking of their stocks, etc. This approach was useful in the context of the 'physical control system which was in vogue earlier. After the introduction of S.R.P. and also in the changed situation, when almost entire Central Excise revenue came from manufactured products, a re-orientation of approach was called for, on the lines of the methods adopted on the customs side, namely, locating and cultivating useful informers, studying the trends of production and marketing, checking up of information furnished by manufacturers to other agencies, like D.G.T.D., S.T.C., M.M.T.C., Directorate of Industries of States, banking/financial institutions, etc. Although it cannot be said that the Directorate has been able to achieve all the objectives envisaged in its charter of functions, there is no denying the fact that in spite of severe constraints and limitations, it has been able to make a very impressive contributions to the total Central Excise anti-evasion activity".

2.20 The Committee desired to be furnished with the details of the cases of evasion of excise duty involving more than Rs. 5 crores detected by the Department in the last 2 years. In a note the Ministry of Finance (Department of Revenue) stated as under :

"Information called for from the field formations has revealed that the following five cases have been booked during the relevant period, wherein the revenue involved is more than Rs. 5 crores. It may, however, be seen that not all these ceases can strictly be called as cases of evasion because some of them relate to disputes regarding interpretation or applicability of an exemption notification etc.

Sl. No.	Name of the manufacturer or production of licensee	Amount of excise duty evaded/detected or suspected	Brief details of evasion detected or suspected and action taken
1	2	3	4
1.	M/s. SAIL Bokaro Steel Plant.	10,43,04,327.69	The assessee mis-constructed the provisions of Notification No. 198/76 dt. 16-6-76, which allowed rebate to the tune of 25% of duty on excess clearances of ISP only and they took this rebate of 25% on steel ingots also. This was done by not paying

1	2	3	4
			duty at ingot stage and at the same time taking rebate of 25% of gross rate of duty on ISP which was inclusive of duty payable on steel ingots falling under T.I. 26 of the Ist Schedule of the Central Excise Act. A show cause notice has been issued to the party.
2.	M/s. SAIL Bokaro Steel Plant.	10,31,76,959.81	The assessee has exported iron and steel products under bond under rule 13 of the Central Excise Rules. As the relevant time, the amount of rebate permissible to them under rule 12 was less than the duty chargeable on ISP. The Deptt's stand was that M/s SAIL BSS, should have paid the unrebated duty (under Rule 12) in respect of goods cleared under Rule 13 under bond so as to maintain parity in respect of ultimate and net incidence of duty under the two rules (i.e. Rule 13 and Rule 12)—A show cause notice has been issued to the assessee and the same is reported to be pending adjudication.
3.	M/s. TISCO Jamshedpur.	5,58,62,311.90	The facts of the case are the same as in respect of Sl. No. 2. In all 8 cases were booked against the assessee on the same issue and these were adjudicated by the Collector on 29.11.82. The assessee filed a writ before the High Court of Patna and the High Court, Patna *vide* their order dated 1st July 1983, have dismissed the writ at admission stage directing the assessee to seek alternative remedies available under the Central Excise and Salt Act, 1944.

1	2	3	4
4.	M/s. Fertiliser Corporation of India Ltd. Sindri.	8,29,73,362.27	M/s. FCI Sindri manufacturing fertilisers have also been manufacturing oxygen gas classificable under T.I. 14H of the 1st Schedule of the Central Excise & Salt Act, 1944. In the monthly R.T. 12 returns submitted by M/s FCI they had been declaring that the oxygen gas manufactured by them had been used in the manufacture of fertiliser falling under tariff item 14H of the Central Excise Tariff. However, it was noticed that the oxygen gas manufactured by M/s FCI was cleared by them to the gas ifier for manufacture of ammonia and carbon di-oxide which are inturn used for the manufacture of not only fertilisers but other items which are other than fertilisers. The quantity of oxygen gas not going into the manufacture of fertiliser is not eligible for exemption. Similarly NH 3 not used in manufacture of fertiliser would correspondingly exclude exemption for raw stock. A show cause notice demanding duty of Rs. 8,29,73,362.27 has been issued to them.
5.	M/s. Golden Tobacco Co. Ltd. Bombay.	Investigation are in progress. The quantum of evasion will be known only after completion of investigations which is under progress. However, suspected evasion is expected to be much more than Rs. 5 crores.	Investigations in this case are being conducted by the Directorate of Anti-evasion. Investigations made so far reveal that the company was adopting a novel *modus operandi* aimed at undervaluation of their cigarettes by *inter alia* creating notional security deposits of huge amounts against their dealers by diverting a large part of the value of the goods realised on sale. Further the whole-

1	2	3	4
			sale buyers were required to incur certain expenses on behalf of the company, which otherwise would have formed part of the wholesale price to arrive at the assessable value. The investigation of the case is not yet complete. However, in respect of one of the factories, show cause notice of short levy of Rs. 28.93 crores has already been issued to the said company by CCE, Bombay".

2.21 Asked in regard to the courses adopted for action against offenders found guilty of duty evasion, the Ministry of Finance (Department of Revenue) have stated as under in a note :

"Against offenders found guilty of duty evasion, action in accordance with the provisions of law is taken. In the departmental adjudication proceedings, the duty adjudged to be due from them is demanded and thereafter recovered in terms of the various statutory provisions and powers given thereunder ; redemption fine is imposed in lieu of confiscation of goods which may have been seized ; personal penalities are imposed having regard to the *malafides* and guilt involved etc. land, building, plant, machinery, materials, conveyance etc. used in connection with the manufacture, production, storage, removal or disposal of excisable goods may also be confiscated in those cases in which the duty evaded exceeded one lakh of rupees or the duty evaded in the second or any subsequent contraventions exceeds 10,000 rupees in terms of rule 173 Q of the Central Excise Rules 1944 as applicable to SRP goods. In addition, depending upon the gravity of the offence, licencees are also prosecuted under section 9 of the Central Excise and Salt Act 1944".

2.22 The Committee pointed out that the Directorate of Anti-Evasion had been able to detect only one case of more than Rs. 1 crore so far. The representative of the Central Board of Excise and Customs stated in evidence before the Committee :

"This was set up in 1978. Its job is not only to detect duty evasion. It has other functions also. . . . . I feel that they should have detected more cases. . . . In the initial period, it takes some time to pick up. You have

to organise so many things. I am confident that the Directorate will be able to give a very good account of its serving the purpose for which it was intended".

2.23 In regard to alleged evasion of duty worth several crores of rupees by the Cigarette manufacturing firm (Golden Tobacco Co.), the representative of the Central Board of Excise and Customs stated in evidence :

"Investigation is still on. One demand notice for Rs. 29 crores has already been issued to them. . . . Similarly, there is an allegation about Indian Tobacco, which is under adjudication. There is a case in respect of Geoffery Manners".

2.24 The Committee desired to know the *modus operandi* adopted by the cigarette manufacturer for evasion of duty of more than 5 crores and the steps taken to prevent such evasions. In a note, the Ministry of Finance (Department of Revenue) have stated as under :

"The case referred to above presumably relates to alleged evasion of Excise Duty by M/s. Golden Tobacco Company, a cigarette monufacturing company of Bombay. This case is being investigated by the Directorate of Anti-evasion, Central Excise. Investigations conducted by the Directorate so far seem to reveal that the company was adopting a novel *modus operandi* aimed at under-valuation of their cigarettes by *inter-alia* creating notional security deposits of huge amounts against their dealers by diverting a large part of the value of the goods realised on sale. Further; the wholesale buyers were required to incur certain expenses on behalf of the company, which otherwise would have formed part of the wholesale price to arrive at the assessable value.

As part of the invesigation a number of caces covering office and and factory premises of the said company and those of their dealers, advertising agents etc. were searched and a large number of statements were also recorded from various persons at Bombay, Delhi and other places. The investigation is not yet complete. However, in respect of one of the factories a show cause notice of short levy of Rs. 28.93 crores has already been issued to the said company by Collector of Central Excise, Bombay.

As regards the latter part of the question, it may be stated that as part of 1983 Budget proposals effective rate of duty on cigarette on specific basis linking to the price printed on the retail packets has been prescribed. Besides this statutory measure the audit as well as the perventive parties of

the different Centrat Excies Collectorate take all possible measures to prevent any evasion whatsoever by unscrupulous manufacturers in the trade".

2.25 As per rules 55 and 173G of the Central Excise Rules, 1944, every manufacturer of excisable goods is required to maintain an account of Principal raw materials used in his manufacturing process and submit to the Department, monthly, an account of the quantity of raw materials used, goods manufactured and raw materials wasted or destroyed. A manufacturer of soap (Z.B. Soap Factory, 134-B, Ballimaran, Delhi) who was manufacturing shaving soap, toilet soap, transparent soap and hair removing soap maintained during the period 1973-74 to 1975-76 stock record and was submitting regular returns. However, the manufacturer was not maintaining any raw material account nor was he submitting the relevant return in spite of an advice given to him by the officers of the Central Excise Department. The accounts revealed that one of the raw materials, *viz.*, soap stone purchased by the manufacturer was far in excess of the quantity needed for the production of soap required by the Factory. The records also did not disclose how the excess raw material was used. On the omission being pointed in Audit in December, 1976, the Excise Department issued in July, 1977 a show cause cum-demand notice to the manufacturer. Thereafter the process of adjudication was set in motion. The show cause notice issued by the Department has been adjudicated upon by the concerned Assistant Collector and the proceedings initiated under the show cause notice has been dropped on the ground that the declared production of soap during the relevant period was not incompatible with the oil—the principal raw material—consumed in such production. The decision of the Assistant collector was also examinned by the Collector who was of the opinion that the decision did not call for a revision.

2.26 The case as stated above brings out certain disquietening features about the working of the Central Excise Department. Although during 1973-74 to 1977-78, the factory's records were inspected several times, the inputs and outputs do not seem to have been correlated even once. The Internal Audit Party working under the Collector of Central Excise was also required to examine the accounts maintained by the manufacturer, but it also did not appear to have played any meaningful role. Further, although the Department issued a show cause-cum-demand notice to the manufacturer in July 1977, on an objection raised by Revenue Audit, it was only in 1980 that the Department stated that there had been no major suppression of production. However, the show cause-cum-demand notice was not withdrawn and the case has been decided in 1983 only.

2.27 The Committee observe that since 1969, Self-Removal Procedure for a number of commodities has been introduced. The quintessence of the system is

a large measure of trust in the assessee and there is no control over the clearance of the goods from the factory. The only way to detect suppression of production and consequent evasion of duty is by means of cross checking of records and books of accounts of the manufacturer. This casts a duty on the officers of the Excise Department to be thorough in the examination of the records and accounts of the manufacturer as it is well known that the malady of suppression of production and the consequent evasion of excise duty is quite widespread. The Committee would recommend that the department should ensure that the check of records and accounts of manufacturers are specifically carried out every year in respect of all major manufacturers and by random selection in case of small manufacturers.

2.28 The licensees have an obligation under the Central Excise Rules to produce their commercial records for examination on demand by the Central Excise Officers. The Committee are, however, surprised to find that no record is maintained by the Department about the percentage of checks of manufacturer's commercial book made with reference to statutory excise records and returns. The result is that it is not possible to work out the percentages of manufacturers who get their commercial records properly examined. It is not understood how in the absence of this information, the Department can ensure that the checking by the officers is really effective. The Committee feel that the Department should maintain a record of the selected manufacturers whose commercial accounts are thoroughly checked by the Central Excise officers every year and the type of irregularities detected. This will enable the Department firstly to assess the nature and quantum of check really exercised by the Central Excise officers thereby exposing the Central Excise Officers who fail to carry out thorough checks, and more importantly, to detect and prevent suppression of exciseable production.

2.29 The Committee find that one of the cases of evasion of excise duty involving more than Rs. 5 crores detected by the Department relates to the Golden Tobacco Co. Ltd., Bombay. The Company is reported to have adopted a noval modus operandi aimed at under-valuation of their cigarettes by *inter alia*, creating notional security deposits of huge amounts against their dealers by diverting a large part of the value of the goods realised on sale. Further, the wholesale buyers were required to incur heavy expenses on behalf of the Company which otherwise would have formed part of the wholesale price to arrive at the assessable value. Show-cause notice for short-levy of Rs. 28.93 croers in respect of one of the factories is stated to have already been issued to the said Company. Investigations regarding production in some other cigarette companies are also stated to be going on. The Committee would like that the investigation should be completed with utmost expedition. They would also like to be apprised of the final outcome of the case as well as the penalties imposed and other action taken against the offending Cigarette Companies. They would also like to be informed of the steps taken and

methodology adopted by the Department to plug the loopholes, if any, in the system taken advantage of by the Company to evade huge sums of duty.

2.30 The Committee find that the Directorate of Anti-Evasion of Excise duty was set up in December 1978 as an independent wing of the Directorate of Revenue Intelligence. The functions of this Directorate *inter alia*, are to detect or otherwise ascertain cases of evasion of duty, build up a data bank and to issue circulars indicating new *modus operandi* employed by unscrupulous manufacturers of excisable goods for evasion of excise duties. From the information made available to the Committee, it is seen that the Directorate detected 15 cases of duty evasion in the year 1979, 73 in 1980, 17 in 1981, 43 in 1982 and 25 upto October, 1983. However, the Directorate had been able to detect only one case of duty evasion amounting to more than Rs. 1 crore so far. The representative of the Central Board of Excise and Customs admitted in his evidence before the Committee "I feel that they should have detected more cases". Now that the Directorate is more than 5 years old and has overcome its teething troubles, the Committee expect that the Anti-Evasion Directorate will galvanise its activities to detect more cases of suppression of production and evasion of duty and serve as a deterent to unscrupulous manufacturers resorting to the unethical practices and evading excise duty. The Committee would like the Ministry of Finance to take steps to remove all constraints and limitations in the functioning of the Directorate and ensure its effective working as a vanguard of anti-evasion machinery.

NEW DELHI ;
April 23, 1984
Vaisakha 3,1906(S)

SUNIL MAITRA,
Chairman,
Public Accounts Committee.

APPENDIX I

(*Vide* Para 1.16)

Tariff Advice No. 39/82 Dated 15.7.1982

The question regarding classification of Boroline under T.I. 14E as P or P medicine or T.I. 14F as Cosmetics was under consideration.

It is considered that Boroline would merit classification under T.I. 14F of Central Excise Tariff as Cosmetics.

C.B.E. & C. Tariff Advice No. 39/82, dated 15.7.1982.

APPENDIX II

(*Vide* Para 1.16)

Tariff Advice Date 4.10.1982

To : CENEXCISE MEERUT

FROM : UNDER SECRETARY RAJENDRA PRASAD FINREV NEW DELHI F. NO. 102/16/81-CX3 (,) ON RECONSIDERATION BOARD HAS DECIDED TO WITHDRAW TARIFF ADVICE NO. 39/82 DATED 15TH JULY, 1982(.) BOROLINE WOULD MERIT CLASSIFICATION UNDER TARIFF ITEM 14E AS P OR P MEDICINE (.)

TELEX NO. 48/4/5X/82 TIME 9.30 IYER PL ACK.

APPENDIX III

(*Vide* Para 1.38)

Minutes of the Tariff Conference held in November, 1981

ANNEXURE—A

Point No. 2

Boroline—Classification regarding—(sponsored by C.C.E.. Meerut).

C.C.E., Meerut explained that 'Boroline' is manufactured in Ghaziabad in his Collectorate and also in the Collectorate of Central Excise, Calcutta. He explained that at present Boroline is being classified as P & P Medicine falling under Tariff Item 14E. A doubt has been raised as to whether the product should be classified as 'Cosmetics' falling under Tariff Item 14F. He explained that the product Boroline contains 76% of white petroleum jelly, 5.5% anhydrous Lanolin etc., apart from a small quantity of boric acid (1%) and zinc oxide (2%). C.C.E., Meerut also showed the advertisements issued by the manufacturers wherein it is clearly advertised as an 'antiseptic cream' for the care of the skin. He stated that the main purpose of the cream is for the care of the skin and that it has got antiseptic properties which is only an additional quality. Other Collectors also agreed with C.C.E., Meerut that as the product stands it should go under tariff item 14F i.e., cosmetics. C.C.E., Meerut also explained that as far as Calcutta Collectorate is concerned the matter had been agitated by the party in writ petition No. 348 of 196- but the matter was settled outside the Court. During the settlement it appears that the merits of the product were not considered and the main criteria was that whether the product falls within the definition of "drugs" for the Drugs Control Order. A view was expressed that everything which falls within the ambit of Drugs Control Order may not necessarily be classified as P & P Medicine. The main purpose of usage has also to be seen mainly as to whether a product is used as medicine or is for the care of the skin or for beautifying the skin. M(CX) stated that the product appears similar to 'Pamila Bleaching Cream' and the question of classification of the same was discussed in Fourth Central Excise Tariff Conference held in Bombay on 19/20th of 1975. During the Conference it was opined that the assessment

of Boroline might require review because the Pamila Bleaching Cream on merits is classifiable as cosmetics under Tariff Item 14F. However, M(CX) observed that the matter will have to be examined further keeping in view the classification of Pamila Bleaching Cream as also the Calcutta High Court settlement in case of Boroline. It will have to be seen as to what were the considerations for settlement of the matter before a final view could be taken on this point. He desired that the matter accordingly be examined further in the Board's Office in the light of the discussions.

APPENDIX IV

(*Vide* Para 1.48)

Statement showing details of clearance of 'Boroline' during the period 15.7.82 to 3.10.82

Sl. No.	Name of the assessee	Quantity cleared (Tubes No.)	Assessable Value	Rate of Duty		Duty Paid		
				Basic	Special	Basic	Special	Total duty paid
			Rs.			Rs.	Rs.	Rs.
1.	M/s G.D. Pharmaceuticals, Ghaziabad	4,50,000	11,07,000	12½% ad-valorem	5% ad-valorem	1,38,375	6,918.75	1,45,293.75
2.	M/s G.D. Pharmaceuticals, Ltd., Calcutta	56,081	1,37,959.26	—do—	—do—	17,244.91	862.25	18,107.16

APPENDIX V

(*Vide* Para 1.50)

Statement showing the names of manufacturers of Boroline, Eye brow pencils, Bindi Pencils & Cream Sachets, their annual turnover and duty realisation.

Name of the product	Name of manufacturers	Location of manufacturing units	Annual turnover of excisable goods unit wise (during last five years-year-wise)		Annual duty realisation unit wise (during last five years-year-wise)
1	2	3	4		5
BOROLINE	M/S G.D. Pharmaceuticals Ltd.	Ghaziabad	1978-79	1,16,99,380	15,28,996
			1979-80	1,51,02,836	18,87,815
			1980-81	1,53,15,552	19,84,906
			1981-82	2,33,73,379	22,67,578
			1982-83	2,26,32,000	29,70,450

1	2	3	4		5
	M/S G.D. Pharmaceuticals Ltd.	Calcutta	1978-79	1,67,30,000	25,27,713
			1979-80	1,68,74,000	24,78,408
			1980-81	1,76,05,000	27,00,936
			1981-82	2,93,16,000	44,76,735
			1982-83	2,41,26,000	36,57,376
EYE BROW PENCIL & BINDI PENCIL					
(i) Bindi Stick	Kamal manufacturing Chemists Ltd.	Waco House Masarani (Kurla West) Bombay.	1978-79	10,056	Availed of exemption in terms of Notification No. 89/79 dated 1.3.79 and 105/80 CE dt. 19.6.80 as amended.
			1979-80	2,016	
			1980-81	24	
			1981-82	288	
			1982-83	24	

(ii) Eye brow Pencil and bindi pencil	Lion Pencil Pvt. Ltd.,	SV Road Dahisar Dist. Thane.	1978-79	10,04,522	52,927
			1979-80	10,17,792	81,423
			1980-81	9,80,197	78,416
			1981-82	4,81,030	37,083
			1982-83	—	—
(iii) Eye brow pencil and bindi pencil.	Hindustan Pencil Pvt. Ltd.,	Pencil Bhavan Area, Ulhasnagar, Dist., Thane.	1978-79	40,343	2,020
			1979-80	60,418	4,833
			1980-81	32,635	2,608
			1981-82	17,353	1,388
			1982-83	Figures not available as factory is not manufacturing item No. 14F and is now governed by Notification No. 104/82-CE date 8.2.82.	
Cream Sachets	M/s Kemco Chemicals Calcutta.	Calcutta	1978-79	1,80,462	62,399 Refuund of total amount granted under declaration under notification 111/78 as they were wholly exempted under notification No. 105/80 dated 19.6.1980.
			1979-80	2,11,127	46,140
			1980-81	4,06,337	
			1981-82	4,33,490	
			1982-83	4,10,581	

APPENDIX VI

(*Vide* Para 2.18)

Statement showiug the Function of the Dir. of Anti-evasion

(i) Collection, collation and dissemination of intelligence relating to evasion of Central Excise duties on All India basis;

(ii) Studying the *modus operandi* of evasion peculiar to excisable commodities and to alert the Collectorates of their possible use;

(iii) Studying the price structures, marketing patterns and classification of commodities in respect of which possibilities of evasion are likely with a view to advising the Collectorates for plugging loopholes;

(iv) Supplementing and co-ordinating the efforts of the field formations in investigation in cases of evasion of duty of Rs. 10,000 and above wherever necessary;

(v) Co-ordinating action with Enforcement agencies like Income-tax, Sales-tax, etc. in respect of cases in which Central Excise evasion has come to notice;

(vi) Investigation of offences involving evasion of Central Excise duties having ramification in more than one Collectorate including investigation of complicated cases selected by the Directorate or entrusted by the Ministry to it;

(vii) Having at all times, a complete, detailed and upto-date study of the taxation laws and implementation machinery and to have proper appreciation and assessment of possibilities for evasion;

(viii) Assisting in an advisory capacity in proper deployment of the Central Excise Preventive staff in the Central Excise Collectorates for effective anti-evasion measures;

(ix) Examining and studying the effect and implementation of various tax concessions, exemptions and relaxation in controls; and to make recommendation to the Govt. from time to time see whether they are sources of evasion;

(x) Maintaining liaison with other Central Excise and State agencies in all matters pertaining to tax evasion.

APPENDIX VII

Conclusions/Recommendations

S. No.	Para No.	Ministry Deptt. Concerned	Conclusicns and Recommendations
1	2	3	4
1	1.54	M/o Finance (Deptt. of Revenue)	Preparations for the care of skin including beauty creams, vanishing creams, cold creams, skin foods, tonics are treated as 'cosmetics and toilet preparations', and are classified under tariff item 14F. The patent and proprietary medicines fall under tariff item 14E. The rate of duty on 'cosmetics and toilet preparations' is 100 per cent *ad valorem* while that on medicines, it is 12½ per cent *ad valorem* and on goods not elsewhere specified, the rate of duty is 10 per cent.
2	1.55	—do—	"Boroline" manufactured by M/s G.D.

1	2	3	4
			Pharmaceuticals contains 1 per cent of boric acid, 3 per cent zinc oxide, 5.5 per cent anhydrous lanolin, 5 per cent hard paraffin, 3 per cent microwax, 5.6 per cent talcum powder and 0.9 per cent perfume—all of which are contained in white jelly base constituting 76 per cent of the product. It is not a specified item detailed in the excise tariff. In the year 1961, when Tariff items 14E and 14F were introduced in the First Schedule to the Central Excises and Salt Act, 1944 by the Finance Act, 1961, the issue of classification of boroline under Tariff item 14F was considered by the Department. However, the product has been classifiied under Tariff Item 14E, *i.e.*, P & P Medicine.
3	1.56	M/o Finance (Deptt. of Revenue)	The Central Board of Excise and Customs issued instructions in 1961 that for the purpose of deciding whether a medicated product should be assessed to duty as a medicine or not. it should be verified whether the product is intended only for therapeutic purpose or

merely for toilet or prophylactic purpose. Only in the event of its use for therapeutic purpose the product will qualify for assessment as medicine under tariff item 14E. Mere possession of a drug licence would not entitle the manufacturer to claim assessment of his product under tariff item 14E. The Central Board of Excise and Customs in a Tariff Advice issued on 10 July, 1975 again clarified that for purposes of levy of excise duty, the classification of a product as between tariff item 14E and 14F should depend on whether the product has more of the properties of a drug or that of a cosmetic, Further, the classification should be made on the basis of the literature. ingredients and usage in respect of the product and it is not to be decided merely on the fact that the product has been brought under the control of the Drugs Controller.

4	1.57	M/o Finance (Deptt. of Revenue)	The classification of boroline was again discussed in a Tariff Conference of Collectors held in November, 1981 wherein a view was expressed that everything which falls within

1	2	3	4
			the ambit of Drugs Control Order may not necessarily be classified as a P&P medicine. The main purpose of usage has also to be seen mainly as to whether a product is used as medicine or is for the care of the skin or for beautifying the skin. The Conference felt that the classification of boroline should be reviewed in the context of the fact that "Pamilla bleaching cream" was classified as a cosmetic under tariff item 14F on the bas.s of the deliberations of the Fourth Central Excise. Tariff Conference held in Bombay in May, 1975. After taking into consideration the deliberations of the Tariff Conference tariff advice was issued by the Central Board of Excise & Customs on 15 July, 1982, classifying "boroline" under tariff item 14F. But th.s advice was withdrawn by the Board in October, 1982 *i.e.*, within four months without assigning any reason and Boroline was reclassified under tatiff item 14E. The Central Board of Excise and Customs have failed to give any convincing

			reason for classifying "Boroline" as a P & P medicine when according to their own clarification issued in July 1975, the classification depends on whether the product has more of the properties of a drug or that of a cosmetic. It is well known that "boroline" is commonly used as a cream and seldom as a medicine and its antiseptic qualities are admittedly week. A similar product "Pamila Bleaching Cream" and other bleaching creams are being classified as cosmetic. Even in advertisements, the use of boroline is highlighted as a cosmetic or face cream rather than as a medicine. The addition of just one per cent boric acid does not alter its basic use as a cosmetic.
5	1.58	M/o Finance (Deptt. of Revenue)	The Committee find that the definition of "Cosmetics and toilet preparations" contained in Tariff item 14F of the Central Excise Tariff corresponds to international tariff heading 33.06 of "Customs, Co-operative Council Nomenclature". The products therein remain within the heading even if they contain subsidiary pharmaceuticals or disinfectant constituents or are held out as having subsidiary

1	2	3	4
			curative or prophylactic values. Boroline contains only 1% boric acid and 99% of other base material. It has been classified as a Drug under tariff item 14E as boric acid creates in it therapeutic value. The Committee, however, find that the preparation is a protective and soothing emollient for chapped skin and dry skin disorders. It can prevent infection but cannot treat deep cuts or wounds as it is a very mild antiseptic. The representative of the Ministry of Finance admitted during evidence—"One would not say it is a medicine like others but it is certainly not like cosmetic ...At best I would say that one may treat it as a border line case". It was further stated "we are only explaining as to how the decision of classifying it as a medicine was taken. The only thing is, in retrospect, it appears to be wrong."
6	1.59	M/o Finance (Deptt. of Revenue)	The Committee also note that according to the advice given by the chief Chemist in 1976,

"the use of boric acid to the extent of 1% in boroline does not necessarily make it a P & P medicine since antiseptic cosmetic preparations (talc) may use as high as 5% boric and still continue to be cosmetic." Even in British Pharmaceutical Codex, an ointment with 1% boric acid has been deleted from the definition of drugs, a face which came out in evidence before the Committee. The Committee recommend that Government re-examine the matter and reclassify boroline taking into considration its properties. therapeutic value and its general usage. The Committee further feel that in order to remove any ambiguity, Government should examine the feasibility of re-defining tariff item 14F on the pattern of international nomenclature under tariff heading 33.06. It should also be made clear that such products shall fall under Tariff Item 14F even if they contain subsidiary pharmaceutical or disinfectant constituents or are held out as having subsidiary curative or prophylactic value. The Committee would like to be informed of the decision taken in the matter.

1	2	3	3
7	1.60	M/o Finance (Deptt. of Revenue)	According to the information furnished by the Ministry of Finance (Department of Revenue) during the period from 16.7.82 to 6.12.82 when "Boroline" was classified under Tariff item 14F and subjected to 100% duty, no increased amount of duty was realised from G.D. Pharmaceuticals Ltd, Calcutta as the factory is stated to have stopped production and clearance during that period. G.D. Pharmaceuticals Ltd., Ghaziabad is also stated to have made no clearance of the product during the aforesaid period. Audit has, however, furnished details based on reports received from their field officers which indicate that during the period in question G D. Pharmaceuticals, Ghaziabad had cleared goods with assessed value of about Rs. 11 lakhs and paid a duty of about Rs. 1.45 lakhs. Likewise, the unit at Calcutta had also cleared goods with assessed value of about Rs. 1.38 lakhs and paid duty amounting to about Rs. 18,000. These amounts of duty were paid at the lower rate of 12½% *ad velorem* leviable

to items classified as Drugs under tariff item 14E. The Committee would like the Ministry of Finance to re-examine the position and verify if their earlier statement that no clearance was made during this period is correct. If the same is found to be incorrect, the circumstances in which wrong information was furnished to the Committee alongwith the action taken against the officers responsible for the same may be intimated to the Committee. The Ministry may clearly indicate the rate of duty charged during this period.

8	1.61	M/o Finance (Deptt. of Revenue)	The Committee find that lipstick has been classified as a cosmetic under tariff item 14F. It is in the form of stick and applied on the lips. There are certain companies who are reported to have manufactured it in the form of cake or cream which is applied with brush on the lips. These have been classified as cosmetics for levy of duty but the manufacturers are disputing that it is not lipstick as no stick is used. There is no difference in purpose, substance or essence except that it is only in the form of cake. The case of

1	2	3	4
			Boroline and the instance of lipstick show that the present classification is vague and ambiguous which allows the manufacturers to take undue advantage. The Committee feel that there is a clear need for rationalising the Tariff structure. The Finance Secretary also admitted during evidence. "It is worthwhile for us to consider not only once but also continuously what relationalisation can be brought about and what steps can be taken to remove any ambiguities which might have come to our notice in the past. We should also see that such challenge or disputes are minimised". The committee therefore desire Government to rationalise the existing classification and make continuous and concerted efforts to ensure that all the tariff items are well defined leaving no scope for misinterpretation. The Committee would like to be informed of the specific steps taken in this regard.
9	1.62	M/o Finance (Deptt. of Revenue)	The Committee note that according to the

tariff advice issued by the CBE & C on 3.9.1981, all preparations which are in the nature of beautification aids are classifiable under tariff item 14F. These instructions were issued on the basis of legal advice tendered by the Ministry of Law who, while defining the scope of the expression "including" appearing in tariff item 14F(i), opined that the items like beauty creams etc. mentioned after the word 'including' are more, by way of illustration than to exhaustively lay down the definition. According to the said legal advice, all items which are meant for use on the skin and which are of similar description as are appearing after the word 'including' would be liable to duty under tariff item 14F(i). "Eye brow pencils" and "Suhag Bindi pencils", which are used on eye brows and face are obviously in the nature of beautification aids. These have, however, been classified under tariff item 68 and duty is levied thereon only at 8 per cent *ad velorem* (since increased to 10%) instead of at 100 per cent under tariff item 14F(i), which resulted in duty amounting to about Rs. 4.41 lakhs not

1	2	3	4
			being demanded on the clearances made during the period from January, 1981 to January, 1982. It is not clear to the Committee how "Eye brow pencils" and 'Suhag Bindi pencils' which are apparently beautification aids could have been classified under tariff item 68 (non-specified items) rather than under tariff item 14F(i). This is yet another instance to show how irrational our present tariff classification is. The Committee would like to be apprised of the precise reasons for classifying the aforesaid articles under tariff item 68 and action taken, if any, or proposed to be taken set right the classification.
10	1.63	M/o Finance (Deptt. of Revenue)	The Committee find that tariff item 14F in the Central Excise Tariff does not mention "perfumes" but only mentions "Cosmetics and Toilet preparations". The corresponding international nomenclature covers "perfumery" under the heading 33.06 in addition to "Cosmetics aad Toilet preparations". As

			to the reasons for not clubbing "perfumery" along with cosmetics, as has been clubbed done in the international nomenclature, the Ministry have stated that it is not the practice to carve a tariff item wholly to adopt a CCCN item without regard to our requirements even though recourse to CCCN may be had of for assistance or guidance when necessary. As to the considerations for classifying "perfumery" differently from "cosmetics", the Ministry have stated that no contemporaneous record is available, but conceivably it was done because of the non-existence of a substantial organised sector in the perfumery industry. The Committee feel that as per inrernational nomenclature, "perfumery" should also be clubbed along with "Cosmetics and Toilet preparations" in the Central Excise Tariff so as to make the classification more rational and also to avoid any difficulty in classification of perfumery products. The Committee desire that this may be done at an early date,
11	1.64	M/o Finance (Deptt. of Revenue)	The Committee note that "Cream Sachets" (alcohol free concentrated perfumes) were classified as cosmetics under tariff item 14F(i)

1	2	3	4
			and M/s. Kemco Chemicals, Calcutta, the manufacturers of cosmetics paid duty on their clearances till March, 1978. Thereafter, the manufacturers applied for reclassification of the product under tariff item 68 on the plea that it was perfume in cream base. The plea was turned down by the Department and the manufacturers paid duty under protest. Their claim for refund was also rejected by the Department in October, 1978. However, the assessee filed an appeal to the Appellate Collector who allowed it on the ground that such cream sachets were not like normal creams used for the care and beautification of the skin and were, therefore, classifiable under tariff item 68 as perfume and a refund of Rs. 2,28,355 representing the duty paid on clearance made during the period from November, 1976 to March, 1980 was allowed. The Ministry did not consider it to be a fit case for review of the appellate order. The Committee are surpised at this explanation. They feel that

			as cream sachets had all along, till 1978, been classified as cosmetics Government, in exercise of their statutory power under Section 35 of the Central Excises and Salt Act, 1944, should have reviewed the order. The Committee would like to be apprised of the precise reasons due to which the order of the Appellate Collector was not reviewed.
12	2.25	M/o Finance (Deptt. of Revenue)	As per rules 55 and 173G of the Central Excise Rules, 1944, every manufacturer of excisable goods is required to maintain an account of principal raw materials used in his manufacturing process and submit to the Department, monthly, an account of the quantity of raw materials used, goods manufactured and raw materials wasted or destroyed. A manufacturer of soap (Z.B. Soap Factory, 134-B, Ballimaran, Delhi) who was manufacturing shaving soap, toilet soap, transparent soap and hair removing soap maintained during the period 1973-74 to 1975-76 stock record and was submitting regular returns. However, the manufacturer was not maintaining any raw material account nor was he submitting the relevant return in

1	2	3	4
			spite of an advice given to him by the officers of the Central Excise Department. The accounts revealed that one of the raw materials, *viz.*, soap stone purchased by the manufacturer was far in excess of the quantity needed for the production of soap required by the Factory. The records also did not disclose how excess raw material was used. On the omission being pointed in Audit in December, 1976, the Excise Department issued in July, 1977 a show cause-cum-demand notice to the manufacturer. Thereafter the process of adjudication was set in motion. The show cause notice issued by the Department has been adjudicated upon by the concerned Assistant Collector and the proceedings initiated under the show cause notice has been dropped on the ground that the declared production of soap during the relevant period was not incompatible with the oil—the principal raw material—consumed in such production. The decision of the Assistant Collector was also examined by the Collector who was of the

			opinion that the decision did not call for a revision.
13	2.26	M/o Finance (Deptt. of Revenue)	The case as stated above brings out certain disquietening features about the working of the Central Excise Department. Although during 1973-74 to 1977-78, the factory's records were inspected several times, the inputs and outputs do not seem to have been correlated even once. The Internal Audit Party working under the Collector of Central Excise was also required to examine the accounts maintained by the manufacturer, but it also did not appear to have played any meaningful role. Further, although the Departmcnt issued a show cause-cum-demand notice to the manufacturer in July, 1977, on an objection raised by Revenue Audit, it was only in 1980 that the Department stated that there had been no major suppression of production. However, the show cause-cum-demand notice was not withdrawn and the case has been decided in 1983 only.
14	2.27	—do—	The Committee observe that since 1969, Self-Removal Procedure for a number of

1	2	3	4
			commodities has been introduced. The quintessence of the system is a large measure of trust in the assessee and there is no control over the clearance of the goods from the factory. The only way to detect suppression of production and consequent evasion of duty is by means of cross checking of records and books of accounts of the manufacturer. This casts a duty on the officers of the Excise Department to be thorough in the examination of the records and accounts of the manufacturer as it is well known that the malady of suppression of production and the consequent evasion of excise duty is quite widespread. The Committee would recommend that the department should ensure that the check of records and accounts of manufacturers are specifically carried out every year in respect of all major manufacturers and by random selection in case of small manufacturers.
15	2.28	M/o Finance (Deptt. of Revenue)	The licensees have an obligation under the

Central Excise Rules to produce their commercial records for examination on demand by the Central Excise Officers. The Committee are, however, surprised to find that no record is maintained by the Department about the percentage of checks of manufacturer's commercial books made with reference to statutory excise records and returns. The result is that it is not possible to work out the percentage of manufacturers who get their commercial records properly examined. It is not understood how in the absence of this information, the Department can ensure that the checking by the officers is really affective. The Committee feel that the Department should maintain a record of the selected manufacturers whose commercial accounts are thoroughly checked by the Central Excise Officers every year and the type of irregularities detected. This will enable the Department firstly to assess the nature and quantum of check really exercised by the Central Excise Officers . thereby exposing the Central Excise Officers who fail to carry out thorough checks, and more importantly,

1	2	3	4
			to detect and prevent suppression of exciseale production.
16	2.29	M/o Finance (Deptt. of Revenue)	The Committee find that one of the cases of evasion of excise duty involving more than Rs. 5 crores detected by the Department relates to the Golden Tobacco Co. Ltd., Bombay. The Company is reported to have adopted a novel *modus operandi* aimed at under-valuation of their cigarettes by *inter alia*, creating notional security deposits of huge amounts against their dealers by diverting a large part of the value of the goods realised on sale. Further, the wholesale buyers were required to incur heavy expenses on behalf of the Company which otherwise would have formed part of the wholesale price to arrive at the assessable value. Show-cause notice for short-levy of Rs. 28.93 crores in respect of one of the factories is stated to have already been issued to the said Company. Investigations regarding production in some other cigarette companies companies are also stated to be going on. The Committee would like that the investigation should be

17	2.30	—do—

completed with utmost expedition. They would also like to be apprised of the final ioutcome of the case as well as the penalties mposed and other action taken against the offending Cigarette Companies. They would also like to be informed of the steps taken and methodology adopted by the Department to plug the loopholes, if any, in the system, taken advantage of by the Company to evade huge sums of duty.

The Committee find that the Directorate of Anti-Evasion of Excise duty was set up in December, 1978 as an independent wing of the Directorate of Revenue Intelligence. The functions of this Directorate *inter alia*, are to detect or otherwise ascertain cases of evasion of duty, build up a data bank and to issue circulars indicating new *modus operandi* employed by unsrcupulous manufacturers of exciseable goods for evasion of excise duties. From the information made available to the Committee, it is seen that the Directorate detected 15 cases of duty evasion in the year 1979, 73 in 1980, 17 in 1981, 43 in 1982 and 25 upto October, 1983. However, the Direc-

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		torate had been able to detect only one case of duty evasion amounting to Rs. more than Rs. 1 crore so far. The representative of the Central Board of Excise and Customs admitted in his evidence before the Committee "I feel that they should have detected more cases". Now that the Directorate is more than 5 years old and has overcome its teething troubles, the Committee expect that the Anti-Evasion Directorate will galvanise its activities to detect more cases of suppression of production and evasion of duty and serve as a deterrent to unscrupulous manufacturers resorting to the unethical practices and evading excise duty. The Committee would like the Ministry of Finance to take steps to remove all constraints and limitations in the functioning of the Directorate and ensure its effective working as a vanguard of anti-evasion machinery.

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