

**TWO HUNDRED AND SIXTEENTH
REPORT**

**PUBLIC ACCOUNTS COMMITTEE
(1983-84)**

(SEVENTH LOK SABHA)

DRAWBACK PAYMENTS

**MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**



*Presented in Lok Sabha on 30.4.1984
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**LOK SABHA SECRETARIAT
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*PART II

Minutes of the sittings of Public
Accounts Committee held on :

21.9.1983 (FN & AN)
26.4.1984 (AN)

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(1983-84)

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INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Two Hundred and Sixteenth Report on Paragraph 1.21 and 1.22 (i) and (ii) 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 relating to Drawback Payments.

2. The Report of the Comptroller and Auditor General of India for the year 1981-82, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes was laid on the Table of the House on 3 April, 1983. The Committee examined the audit paragraph at their sittings held on 21 September, 1983, (FN & AN). The Committee considered and finalised the Report at their sitting held on 26 April, 1984. Minutes of these sittings of the Committee form Part II* of the Report.

3. In this Report, the Committee have examined certain cases of over-payments of drawback due to lack of rules for classification as also certain cases of irregular payments of drawbacks. The Committee have observed that the principles of classification for the purpose of payment of drawback suffer from a degree of conceptual ambiguity as distinct from problems of actual classification of items. There is a pronounced need for removing this ambiguity in the principles for classification in the context of the drawback schedule on a simple and practical basis. In the opinion of the Committee, every item in the drawback schedule should be precise and framed in relation to items of export in respect of which data have been collected for the purpose of computing the All Industry rates for that item, such description as "not elsewhere, otherwise specified" must be rare exceptions and for a minimum of duty incidence. The Committee have also recommended that the Ministry of Finance should clearly spell out the principles of classification in the Rules themselves with a view to minimising the scope for ambiguity, ad-hocism and arbitrariness.

4. The Committee have expressed their dis-satisfaction with the present system of collection of data for computation of the All Industry rates of drawback. Presently, data for determining such rates are based on *ad hoc* information furnished by exporters, Export Promotion Councils and scrutiny of the brand rate files. The Committee have recommended that the Ministry of Finance should aim at averaging of the data of at least 50 per cent of the exporters of a group of products. If a target of 50 per Cent is aimed at, the rates are not likely to be distorted by dominant exporters influencing the fixation of rates unduly.

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(vi)

5. The Committee have recommended that Government should conduct systematic periodical studies in order to assess the extent to which exports are actually encouraged by drawback rates and also what revisions may be effected in drawback rate to make the scheme more effective and purposeful. In this context, the Committee have observed that 80 per cent of the drawback payments made during the last three years were accounted for by not more than about 100 sub-heads, out of the total of 750 sub-heads. The Committee have recommended that the Ministry of Finance should concentrate their attention primarily on these sub-headings and restructure their schedule eliminating vague and purposeless headings and descriptions.

6. Presently, there are a number of export promotion schemes in operation such as Cash Compensatory Support, Import Replenishment scheme, Advance Licensing Scheme etc. The Committee have recommended that without prejudice to the data based on scientific basis underlying the drawback scheme, Government should examine the feasibility of having complementarity in rates and amounts fixed under the various export promotion schemes so that export markets are captured on a long term basis by using the schemes to benefit exporters who have genuine plans to hold and serve such export markets on a long term basis.

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

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

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

NEW DELHI ;
27 April, 1984

7 Vaisakha, 1906 (Saka)

SUNIL MAITRA
Chairman,
Public Accounts Committee.

REPORT

Audit Paragraph

DRAWBACK PAYMENTS

1.1 The grant of drawback of customs duty is authorised under the provisions of Section 75 of the Customs Act 1962 and rebate of excise duty under Section 37 of the Central Excise and Salt Act, 1944. Customs and Central Excise Duties Drawback Rules 1971 have been framed in exercise of the powers conferred by these two sections. 'Drawback, as defined in these rules in relation to any goods manufactured in India and exported, means the rebate of duty chargeable on any imported materials or excisable materials used in the manufacture of such goods in India.

1.2 Under the Rules, the rates of drawback (All industry rates) are determined by the Government, having regard to the average quantity or value of each class or description of duty paid materials from which a particular class of goods is ordinarily produced or manufactured in India. The class or description of exported goods are identified by the Ministry of Finance (and modified over the years) and a sub-serial number is allotted to each class or description in a table appended to the said drawback rules. The amount or rate of drawback, determined on the basis of the averages aforesaid, is mentioned against each class or description in the table.

1.3 Under the rules, every exporter can apply for fixation of a brand rate or amount of drawback to exclusively cover exports of his goods, if the amount or rate of drawback fixed on all Industry basis is less than three-fourths of the duties paid on the materials or components used in the production or manufacture of the goods exported.

1.4 The total payments of drawback made during the year 1981-82 and five preceding years are given below :

Year	Amount (In crores of rupees)
1976-77	120
1977-78	133
1978-79	150
1979-80	152
1980-81	164
1981-82	204

1.21 Over payment of Drawback due to lack of rules for Classification

1.5 A *quid pro quo* does not exist under the Drawback Rules enabling the Government to deny drawback at the average All Industry rates if the duties paid on the raw materials and components used in the exported goods, are *prima facie* less than the amount of drawback claimed by any margin. There is risk of gratuitous drawback being paid under sub-serial numbers with descriptions worded in a very general way or of a broad nature.

(i) On export of 'organic chemicals not specified elsewhere' drawback of duty is allowed at 3 per cent of *f.o.b.* value, under sub-serial No. 1123 of the drawback schedule. 'Drug intermediates, liquids (being organic chemicals)' are specifically mentioned against sub-serial No. 1204 of the schedule.

On four consignments of Beta-Ionone, a drug intermediate, used for the manufacture of Vitamin A, which were exported during the period from October, 1978 to January, 1979 drawback was allowed at 3 per cent of *f.o.b.* value under sub-serial No. 1123 of the drawback schedule, instead of at 2 per cent under sub-serial No. 1204 (b). The incorrect classification resulted in excess payment of drawback amounting to Rs. 21,044.

On the mistake being pointed out (January 1981) in audit, the Custom House justified its assessment on the strength of a letter received (September 1978) from the ministry of Finance stating that since Beta-Ionone is an organic compound of known structure, it would be classified under sub-serial No. 1123. This is not a basis for classification under drawback schedule, implying as it does that drug intermediates are of unknown structure. On the other hand, under the replenishment import licencing scheme of the Ministry of Commerce, Beta-Ionone is treated as a drug intermediate. In this case the goods exported were manufactured by a pharmaceutical company. Even on merits, the Custom House could not justify any higher duty element on the material going into the exported product than what is covered by the rate of 2 per cent fixed for drug intermediate under Rule 3 of the Drawback Rules. Unlike in the classification of goods for levy of duty, when it comes to payment of drawback; the classification cannot be divorced of the scheme for calculation of drawback rates under Rule 3 of the Drawback Rules, in the absence of any rules for interpretation therein.

The Ministry of Finance have stated (October 1982) that the matter is not free from doubt and it is proposed to discuss it in the conference of Collectors.

(ii) On seven consignments of hydraulic pumps exported between May 1976 and August 1977, drawback was allowed at All Industry rate of 3 per cent of *f.o.b.* value which was applicable to "parts of motor vehicles including tractors". There was however, no evidence on record to indicate that the exported goods were 'part of motor vehicles including tractors.' On export of complete hydraulic pumps and assemblies thereof, drawback was to be allowed at

the rate of Rs. 135 per tonne only, which was applicable both in respect of centrifugal and non-centrifugal pumps." The goods were physically examined, before export and the description in the shipping bills reading 'hydraulic pumps, was found to be in order. Therefore, allowance of drawback on the subject goods as 'part of Motor Vehicles including tractors' resulted in loss of Rs. 47,401 to Government.

On the mistake being pointed out in audit (August 1978,) the department stated that the hydraulic pumps were specially made for motor vehicles. The Ministry have stated (October 1982) that the goods exported are not used for pumping fluids or air but are used to generate hydraulic pressure which actuates the power lift mechanism of the tractors and these were specially designed parts of tractors. The replies are not relevant to the audit objection pointing out that the duty incidence on the materials going into the manufacture of the pumps (even if specially designed for motor vehicles) is on the average not more than the duty drawback of Rs. 135 per tonne prescribed for centrifugal and non-centrifugal pumps. The drawback schedule has to be read with the scheme of averaging in the drawback fully in view. Interpretation of the schedule cannot be done in the manner in which the Customs or Excise Tariff schedules are interpreted for purposes of classification. The real element of drawback due (based on the average duty paid on materials going into manufacture of exported product) will have to be the deciding factor. In respect of the specific item, 'centrifugal pumps', All Industry drawback rates having been prescribed, recourse to a residuary entry covering also many other parts of motor vehicles and to the detriment of revenue, was not in order.

(iii) On export of 'pressure stoves made of brass and metallic components' thereof drawback was payable at 22 per cent of the f.o.b. value as per sub-serial number 3816 (a) of the schedule of drawback rates, for the year 1979-80. This *ad valorem* rate was based on price of brass in 1978 because excise duty on brass is a specific duty per kilogram. On export of 'brass manufactures other than utensils and articles made out of sheets or strips and artware', covered by sub-serial number 3805 (c), the drawback was also payable at specific rate of Rs. 9.10 per kilogram. In the drawback schedule, effective from September 1980, the description of sub-serial number 3816 (a) was amended to exclude metallic components i.e. the rate was limited to brass stoves only. Further, the description of sub-serial number 3805 (c) was amended to read, 'articles made of copper' and the drawback rate thereon was fixed at Rs. 10 per kilogram.

On two consignments, containing 60,000 dozens of brass nipples for pressure stoves, exported in June 1980, the exporter was allowed drawback at 22 per cent of the f.o.b value under sub-serial number 3816 (a) though as components part of burners they were not strictly component part of pressure stoves. The goods exported being only articles made of brass, drawback was appropriately payable at specific rates under sub-serial number 3805 (c) as "other manufac-

tures of brass" and not at *ad valorem* rates as "metallic components of pressure stoves". Since the rates of drawback payable on exports are fixed taking into consideration the duty paid on the raw materials and by or its components' and payment at *ad valorem* rates was detrimental to revenue. The excise duty realised by Government on brass was specific and low and did not increase with rise in price of brass (and therefore of brass nipples) between 1978 and 1980. By allowing drawback at 22 per cent on value of brass, the drawback paid bore no relation to the duty realised on brass in 1980 and resulted in excess payment of drawback amounting to Rs. 1,46,894 on two export consignments.

On the excess payment of drawback being pointed out in audit (January 1981), the department did not accept the objection. The Ministry of Finance have stated that as the brass nipples were identifiable parts of the burners of pressure stoves the classification and payment of drawback was in order. When specific rate under sub serial number 3805 (c) for payment of drawback on brass articles had been fixed, classification of the brass nipples under sub-serial number 3816 (a) and payment at *ad valorem* rates without reference to the scheme of drawback rates and to the detriment of revenue was not in order.

(iv) On several consignments of materials for meter gauge wagons brass bearing (bronze bearing) exported between January 1978 to April 1978, drawback was allowed on content of copper, tin, lead and zinc used in the manufacture of the exported products, at the rates applicable to such metals as if they had been exported as finished products. The exports were not of metals but bronze bearings which were parts of railway wagons and brand rates were required to be fixed as per the drawback schedule. However, they were classified as articles of metal alloys and drawback amounting to Rs. 1.91 lakhs was paid accordingly on the contents of metal therein

On the basis for the classification being enquired in audit (July 1979), the department stated (July 1979) that bronze bearings were classifiable for purposes of claiming compensatory cash assistance as 'metal alloys' and not as 'wagon components' and, therefore, the bearings were classified as articles of respective metals *pro rate*. The basis for the drawback being the scheme underlying the drawback rules, the above reasoning is not in order. However, in a letter dated 6 October 1979, the Ministry of Finance, subsequently, advised the Custom Houses that where net weight of metals in exported goods are ascertainable the drawback may be calculated on each constituent metal as if it was exported individually. The Ministry of Finance have stated (November 1982) that the classification as articles of metal alloys instead of as parts of railway wagons was in order, since drawback is intended to relieve the export goods of the incidence of duties on imports. While this is logical, it is not so far covered by the provisions of the statutory Drawback Rules which require brand rates to be fixed in cases as above, and so long as the above advice is not incorporated in the rules, the payments made as above would not be as per the Drawback Rules. Further, such logic is not uniformly observed in practice (as in the case of brass nipples mentioned in the preceding sub-paragraph) because of the logic not having been incorporated in the rules.

(v) Eleven consignments of 'small and cutting tools all types' which were exported between February 1981 and April 1981 contained (a) tungsten Carbide tips and inserts and (b) Tungsten Carbide Tipped Augur Drills. Drawback amounting to Rs. 2,66,176 was paid at the rate of Rs 185 per Kilogram by classifying the consignment under sub-serial number 3905 of the relevant drawback schedule which had ceased to be effective from 19 September 1981. Therefore, the payment of drawback amounting to Rs. 42,697 in August 1981 was irregular. But even when sub-serial number 3905 was in existence it did not cover tungsten carbide tipped and augur drills and, therefore, payment of drawback thereon amounting to Rs. 44,593 was wholly irregular. Moreover, the Ministry of Finance had fixed in July 1981 brand rates of drawback for the period from September 1980 to June 1981 and the period from 19 September 1980 to 28 February 1981 respectively for the two items which were exported. The Custom House could not state why the payment was made and also why it was made in August 1981 under All Industry rates of an expired Schedule when brand rates had been declared in July 1981.

The Ministry of Finance have confirmed the facts (October 1982).

(vi) On bulk of castor oil B.P. exported in March 1981 drawback amounting to Rs. 42,243 was allowed in December 1981 in a major Custom House, at 5 per cent of f.o.b. value of the exports, by reference to sub-serial number 1205 of Drawback Schedule (as on 19 September 1980) covering 'Drugs and Pharmaceuticals not otherwise specified'. The drawback was allowed on the basis of Ministry's clarification, issued in July 1981 to the effect that the goods exported viz. castor oil B.P., were classifiable under sub-serial number 1205 of Drawback Schedule.

Castor oil B.P. in bulk is not covered by the description against any of the items in the Drawback Schedule covering the period of export. No duty is paid on any raw materials going into manufacture of castor oil but duty is paid on some imported chemicals used in preparation of the oil to the pharmaceuticals standard. Drawback on Castor Oil was allowed only with effect from 1 June 1981, but only in relation to the duty incidence on packing materials used for its export (the actuals being allowed depending upon the packing material used). Even under Central Excise Tariff Castor Oils fall under tariff item 12 (vegetable non-essential oils) indicating that Castor Oil is a prime product on which normally drawback cannot be claimed in relation to duty on raw materials. In a brand rate fixed in October 1982, about 1.25 per cent was allowed towards imported purifying chemicals and 1.7 per cent towards packing charges.

Instead of allowing brand rate, the grant of drawback on Castor Oil by classifying it wrongly as "Drugs and Pharmaceuticals" in 1981 was, therefore, irregular and resulted in loss of revenue of Rs. 16,897 to Government, being the difference between drawback at 5 per cent allowed and brand rate at 3 per cent which might have been fixed.

The mistake was pointed out in about (May 1982); the Ministry of Finance have stated (November 1982) that the Castor Oil was manufactured under a licence for manufacture of drugs and its classification as drugs was, therefore, correct. Such a view, however, only highlights the need for rules for classification under drawback schedule, since 5 per cent drawback as for drugs has been allowed against realisation by Government of duties not exceeding 3 per cent, resulting in net loss to Government.

1.22 Irregular payment of drawback

1.6 Under Rule 12 of the Central Excise Rules, rebate of the excise duty paid on exported goods is allowed. No drawback of excise duty paid on finished excisable goods is allowed in addition: only drawback of duty paid on excisable materials used in the manufacture of the finished goods is allowed.

(i) On articles made of polythene coated paper, drawback allowed at all industry rates is based on the duty already realised on such coated paper going into the manufacture of the articles. Separate drawback rates (other than those for articles) had not been provided for claiming drawback at all industry rate on export of coated paper *per se*. Provision existed only for claiming refund or rebate of the Central Excise duty paid on such coated paper, on its export *per se*.

In a Custom House claim for drawback on export of 'poly coated kraft paper' was allowed, but under the description on the drawback schedule reading 'articles made of polythene coated paper'. This resulted, effectively, in refund of excise duty payable on such paper. No Central Excise duty on the exported item had, however, been ever realised by the department at rates leviable on poly coated kraft paper, since the export was under bond.

It was pointed out in audit (September 1979) that payment of claim for drawback on articles made of polythene coated paper as if the item exported the paper *per se*, was contrary to the intention behind (as also the interpretation of) the Drawback Rules and Schedule thereunder. Further, there was provision in this schedule only for a specific rate (brand rate) for claiming drawback on coated paper *per se*, when exported. Therefore, drawback on the exported goods should have been allowed only under such brand rate and not under the all Industry rates, applicable to 'articles made of polythene coated paper'. The irregular payment of drawback resulted in excess payment of drawback amounting to Rs. 15,386. The Custom House was of the view (October 1981) that the payment was in order.

The Ministry of Finance have stated (September 1982) that as the matter is not free from doubt, it is proposed to discuss it in a tariff conference of Collectors of Customs.

(ii) Sections 74 and 75 of the Customs Act 1962, allow the payment of drawback when any goods imported into India are exported to any place outside India or if the imported goods are used in the manufacture of other goods, when such manufactured goods are exported to any place outside India.

A sum of Rs. 1,43,387 was paid (March 1981) as drawback on imported spare parts when placed on board two vessels owned by a public sector company controlled by a State Government. The vessels were engaged in transporting goods from one port in India to another. There was no export of the imported spare parts to any place outside India and accordingly the payment of drawback was not lawful.

The irregular payment of drawback resulting in loss of Rs. 1,43,387 was pointed out in audit (December 1981); the reply of the department is awaited (June 1982).

The Ministry of Finance have stated (December 1982) that the two vessels were touching only Indian ports but did entry international waters while going from one Indian port to another and thereby they were categorised as foreign going vessels. The drawback paid on equipment installed on board such vessels has been justified by the Ministry. The Ministry have also stated that foreign going vessels including permanent fittings on such vessels are exempt from customs duty.

However, under Section 74 of the Customs Act, drawback is payable only on export to any place outside India and the term export is defined in the Act, as "taking out of India to a place outside India". Therefore, mere passage of a coastal ship through international waters while going from one Indian port to another would not qualify as export. Further the expression "ocean going vessel" is not defined in the Act, but even assuming that it means the same as "foreign going vessel" defined in the Act, the very issue of an exemption notification allowing exemption from customs duty leviable on ocean going vessels implies that duty is leviable on ocean going vessels but that the levy of duty has been exempted subject to certain conditions. Such an exemption would not have been required if drawback of duty was available to such ships. This only confirms that drawback was not payable in respect of ocean going vessels or fittings thereon if the criteria of export was not fulfilled. There is not only no exemption notification in respect of fittings to allow of a claim for refund of duty but the spare parts in question in this case were not fitted on board the vessels but were merely carried as spare parts.

—Audit Paragraph 1.21 and 1.22 (i) & (ii) 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.

Duty Drawback Scheme—Introductory

1.7 The Committee desired to know the objectives underlying the duty drawback scheme. The Secretary, Ministry of Finance (Department of Revenue) stated in evidence :

“The Indian exporter has to compete in the international market. The price that he quotes or charges for his product has to be competitive and in order to make it competitive, the tax element in his cost is refunded to him through the system of drawback. The tax element can be divided into two parts : One is tax on the ultimate product, the end product and the other is the tax on the elements, the inputs, which go into the manufacture of the products.

So far as the final product is concerned, the system of drawback is not there because it is possible for an exporter to produce under a bond or to avail of exemption from the payment of Customs duty for the purpose of exports.

But so far as the inputs are concerned, it is not possible to make a refund at every stage of the tax that he is undergoing or is paying.

Therefore, an estimation of the tax is made on the basis of the various materials and components which have gone into the product and a figure is arrived at to determine the amount of drawback that could be paid.”

1.8. At the instance of the Committee, the Ministry of Finance have furnished the following details in respect of the total number of drawbacks allowed and the payments involved during each of the years 1979 to 1982 : —

Name of Collectorate	1979		1980		1981		1982		1983	
	No. of claims	Amount of drawback paid	No. of claims	Amount of drawback paid	No. of claims	Amount of drawback paid	No. of claims	Amount of drawback paid	No. of claims	Amount of drawback paid
	(Rs. in lakhs)		(Rs. in lakhs)		(Rs. in lakhs)		(Rs. in lakhs)		(Rs. in lakhs)	
Calcutta	34,025	1273	29,000	1620	31,616	1671	32,789	1795	31,373	1595
Calcutta (Prev)	4,260	112	4,716	216	3,335	314	3,671	211	2,545	131
Patna (Prev)	297	18	55	3	343	51	341	23	480	23
Bombay	1,84,717	6737	1,84,717	6737	1,63,551	9524	1,69,757	9953	1,49,207	14139
Delhi	45,909	576	68,447	1083	96,712	1586	83,207	1462	65,713	875
Madras	39,570	1499	30,485	1275	38,422	1530	41,704	2186	30,773	1486
G.C. Cochin					17,460	373	17,075	450	20,238	442
G.C. Bangalore					3,286	96	3,574	174	3,292	379

Collection of data for fixation of All Industry rates

1.9 The Committee wanted to know how the average "All Industry rates" were calculated and how the data was collected for computing such average rates. The Ministry of Finance (Department of Revenue) have in their note stated as follows :—

"The 'all-industry' rates of drawback are calculated as a broad average of the duties paid on raw-materials and components used in the manufacture of the export product. Rule (3) of the Customs & Central Excise Duties Drawback Rules, 1971, stipulates the method to be adopted for determining the amount or rate of drawback. Accordingly the drawback rates in respect of various categories of goods specified in the Drawback Schedule are reviewed every year after the announcement of the Central Budget. For this purpose data in Forms DBK-I, II and III is called for from major manufacturers/exporters. Form DBK-I indicates the bill of material utilised in the manufacture of a product, its technical characteristics, the quantum of wastages, etc. DBK-II form indicates the procurement of imported materials/components along with the details of c.i.f. value and the import duties paid. Form DBK-III similarly indicates the procurement of the indigenous materials/components, the assessable values and the central excise duties paid. The data is then analysed with a view to ascertaining whether the composition of the material used for the manufacture of various products continues to be what it was earlier or has undergone any change. It is also examined whether the proportion between the use of the imported and indigenous material continues to be the same or has materially changed. The quantum of wastages is another factor which is scrutinised and compared with the wastages taken for calculation of the rate of drawback earlier. The norms of consumption/wastages are some times adopted based on the recommendation of the Directorate General of Technical Development or other such Government organisations. Such recommendations are continued for purpose of determination of the rate unless there is a technological break-through and or specific recommendation is received from the Government organisations for changing such norms."

1.10 Asked what weightage was given to the data in fixing drawback rates, the Ministry of Finance replied :—

"Wherever a single norm of consumption for a particular product is not available the drawback rate is worked out on weighted average basis taking into consideration the data submitted by various manufacturers/exporters and their share in the total exports."

1.11 Enquired how representative such data was in fixing rates in respect of exports for the forthcoming year, the Ministry have stated in a note :—

“When ‘all-industry’ rate in respect of class of goods or groups of products is fixed under the residuary item under a particular head, as far as possible the department tries at the time of working out the ‘all-industry’ rates for drawback that the data relied upon is representative of the variety of known items that will fall under the general items. This representative character is ensured by :

- (a) Scrutiny of the brand rate files.
- (b) Collection of data from major exporters.
- (c) Collection of data from the Export Promotion Council.
- (d) By study of data and verification thereof by the departmental officers jointly with DGTD or C & AG officials. In this way it can be said that whereas a wide range of products falling under a group head is covered it would not be possible to cover all conceivable products that may fall under that description.

However, in this regard it may be mentioned that normally the rates determined in respect of such general items are kept fairly low so as to avoid over payments in respect of certain products which might have not been taken into consideration at the time of fixation of rates for the reasons that the products falling under the general description are varied.”

1.12 The Committee desired to know the extent to which Customs Houses were involved in collection of data for the purpose of computation of average rates and whether any standard information format had been prepared for obtaining data in respect of each sub-serial number. The Ministry of Finance (Department of Revenue) have stated :—

“The Customs Houses are associated when the data is required to be verified or any other relevant information is required by the Ministry.”

1.13 The Committee wanted to know about the extent to which data made available or capable of being made available by the National Information Center in giving to each Collector, list of addresses of exporters making exports every month under Drawback Serial number and other details of exports and drawback payments was being used. In reply, the Ministry of Finance have stated in a note :—

“The Ministry will explore the possibility of retrieving the data collected by the National Information Centre wherever it is available.”

1.14 Asked whether electronic data processing machine was used or contemplated to be used in handling collection of data, the Ministry replied :—

“Presently, there is no proposal for using electronic data processing machines in the Directorate.”

1.15 Asked whether it would not be desirable for the Ministry to ensure that it obtains information in forms DBK-1, II and III, from exporters who account for at least 80 per cent of the exports in one or more of the preceding three years in order to ensure the representative character of the data the Ministry of Finance (Department of Revenue) have stated :—

“The Ministry has been calling for the individual performance of the exporters who file their data for All Industry rate fixation. It is generally ensured that the data is representative in respect of commodities where weighted average is taken. It may not be necessarily covering 80% of exports. In cases where data is given by a few exporters and they form only a minor percentage of the exporters or export only a small percentage of the goods, reliance is placed on the consumption which is the minimum for manufacture of such products. In certain other cases, the consumption norms which are already agreed by the technical authorities are taken into consideration for adoption of data for rate working.”

1.16 The Committee desired to know how the Ministry of Finance proposed to use data generated by Custom Houses by using services available in any computer Centre giving facilities to customers for use of their computer. The Ministry of Finance have stated :—

“The Custom Houses generate data on c.i.f. values and duty incidence on the imported material through the Central Exchange. This data is being utilized for purpose of calculation of average duty incidence on imported materials. The data on f.o.b value and payment of drawback will be utilized to examine the adequacy or other wise of the existing rates. Similarly data from Central Excise Collectrates compiled by the Central Exchange is being utilised for finding out the average assessable value and the duty incidence on certain indigenous products where the rate is *ad valorem*. More and more use is likely to be made of this data in future.”

Classification of goods in Drawback Schedule

1.17 Under each serial number of the schedule of All Industry Rates of Drawback, sub serial numbers have been opened. The Committee desired to know whether rates for such sub-serial numbers were based on data which justified different rates of drawback. The Ministry of Finance (Department of Revenue) have stated :—

“The Drawback Schedule appended to the Drawback Rules provides for the main headings which total upto 59. The description of these headings is general. The various specific items that are considered to fall under general description of the respective items have been indicated under the sub-serial numbers under these headings. Since drawback rates are re-imbusement of the duties suffered by raw materials/components, these products have been categorised accordingly under each sub-serial number, based on the verified data.”

1.18 Asked what was the justification for a residual sub-serial to include all goods not elsewhere specified for which clearly there cannot be representative data to work out an average rate, the Ministry of Finance have replied :—

“With a view to have a wide coverage, reduction in the number of brand rate applications and ensuring prompt payment of drawback, the residuary sub-serial numbers have been included under some headings. The All Industry rates specified against such residuary sub-serial numbers are generally representative of the duties suffered in respect of raw materials/components used in the manufacture of the known products falling thereunder. However, it may be mentioned that it is not possible to take into consideration all items that may otherwise fall under the general item. This residuary rate covers only, sometimes, the duties suffered by the packing material. In some cases, it may be a very nominal amount covering only the duty incidence suffered by the basic raw materials used for the manufacture. Quite often, this residuary rate is based on the lowest duty incidence suffered by the metallic parts used generally for the manufacture of the export product.”

1.19 When asked about the extent to which representative data was collected for the class “not elsewhere specified”, the Ministry have replied :

“The rate of drawback for residuary items in the Drawback Schedule is worked out as an average of duty on various known products which may fall thereunder. The data relied upon for the purpose of the residuary rate emanates from the sources from which the data for specific items is collected. This rate is fairly low than the rate for the specific product falling under the main heading.

The data for this purpose is collected from various manufacturers/exporters, Exporters Associations brand rate applications and by the study team of this Directorate. The data so collected and relied upon for fixation of the all industry rate of drawback for residuary items is considered wide enough, sufficient and representative of the products falling under that group.

While reviewing the rate such items as are found to be manufactured out of material where the duty incidence is low are delinked from the residuary items. Thus a mechanism already exists for reviewing the rate after collecting data and also the general description where a group of products are covered. It may be mentioned that recently the Ministry reviewed the description under the heading 1202 for drugs, drug intermediates and pharmaceutical products. It was found that some items falling under the terms ‘drug intermediates’ were capable of two different classifications. Therefore the terms ‘drug intermediates’ was delete from the description.”

1.20 The Committee drew attention of the Ministry of Finance to the fact that the Central Excise Tariff descriptions covered only goods which squarely fitted the descriptions in the tariff and all other items were dutiable only under tariff item 68. Asked whether it was advisable to have generalised descriptions analogous to item 68 of Central Excise Tariff, under drawback schedule serial numbers, without having a fall back classification in which a token or minimum amount of drawback would only be paid on exported goods not classifiable under any sub-serial number, the Ministry of Finance have replied :—

“The description of items in the drawback schedule is partly in conformity with the description of items in the Central Excise Tariff and partly with description in the Customs Tariff (read with BTN). Thus the pattern of description of items in the drawback schedule cannot entirely be based on the pattern of Central Excise Tariff. The suggestion to have a residuary item in the drawback schedule with a token or a minimum amount of drawback in respect of export products on the pattern of tariff item 68 of Central Excise Tariff will not be suitable since it will not fit in the existing scheme of drawback under Section 75 of the Customs Act. Drawback is a re-imbusement of duty actually borne by the input materials used in the manufacture of products and is worked out on a weighted average of duty on such products. The concept of providing a general or residuary item in the drawback schedule will, therefore, not be correct in as much as that the duty drawback specified under this item will not be applicable to all the items classifiable thereunder as the duty on inputs may not change in the same ratio from time to time. It may, however, be mentioned that the existing schedule or drawback also provides for certain residuary items under the various heads to cover products which are not specifically mentioned under the specific heads. In such cases the ‘all-industry’ rate of drawback is provided for taking the average duty on various known products which may fall under the residuary item. The drawback rate provided for under such residuary item is thus representative of the duties that will normally be borne in the manufacture of such products.

In view of the above, the suggestion to have a residuary item on the pattern of tariff item 68 of the Central Excise Tariff does not seem to be practicable.”

1.21 The Committee pointed out that descriptions having the phrase “not elsewhere specified” or “not otherwise specified” were used in the Customs and Excise Tariff to bring into duty net all goods unless specifically exempted from duty. Asked whether the use of expression in a drawback sub-heading was not analogous to using the expression “not elsewhere specified” in an exemption notification, the Ministry have stated :

“There is no analogy between the descriptions in the Customs and Central Excise Tariff for ‘not otherwise specified’ items and the description in the Drawback Schedule with reference to ‘not otherwise specified’ products. For purposes of drawback only such products have been brought under a general description or residuary description reading as ‘not otherwise specified’ or ‘not elsewhere specified’ as have similar duty incidence on the raw materials and the products are identifiable as parts, accessories, etc. of the product under the general description. Similarly it cannot be said that the expression ‘Not elsewhere specified’ appearing in the drawback schedule is analogous to using such an expression in an exemption notification.”

1.22 Asked if it was fact that because of the existence of generalised descriptions such as “not elsewhere specified” or “not otherwise specified” in the drawback schedule, there was a certain amount of overlapping of items between the various headings in the drawback schedule, the Ministry have stated :

“The All Industry rates of drawback for residuary items in most of the engineering items have been kept at 3% of the f. o. b. value and even if there is overlapping of items between the different headings, the drawback payment is restricted to the same percentage. For example, in the case of engineering items, the overlapping is possible in respect of motor vehicle parts under the general description and diesel engine parts classifiable under separate sub-serial numbers respectively. However, in both the cases, the rate of drawback for the general headings under the two respective sub-serial numbers is restricted to 30% only.”

1.23 The Committee asked how the Ministry could rule out the possibility of drawback being overpaid as a result of arbitrary classification of products under a residuary heading and in view of the fact that it was not possible to take into consideration all the items that can conceivably be classified under such a general description in working out a rate for a residuary heading or general heading. The Ministry of Finance have stated as follows :—

“The possibility of drawback being over paid arbitrarily is minimum since the residuary rates have been kept fairly low. It may also be stated that any over-payment even if made in a few cases will be offset by the payment of lower drawback in a number of other cases where the exporters cannot submit elaborate data for fixation of special brand rates. Even brand rate applications do not qualify for fixation of a special brand rate under Rule 7 unless the duty on the input materials/components is 33% more than the All-Industry rate.”

1.24 On being asked whether the Ministry had examined with reference to all products exported during a year as to the value of exports of products which were likely to be classified as residuary items, the Ministry have replied :—

“The Ministry has already taken up the question of the items falling under certain group of products where a general description has been given with the Export Promotion Councils to indicate the name of manufacturers/exporters who export the items. This exercise has been undertaken in respect of export goods where the value of the export product was more than Rs. 10 lakhs. Collector of Customs, Bombay who handles major exports is also being requested to send us the names of manufacturers and the products exported by them which have been paid drawback under certain residuary items. Once the information is received from the Export Promotion Councils/Collector of Customs, Bombay, the data regarding inputs and duty incidence thereon will be examined and wherever the duty incidence on the input material is found to be low the items will be delinked and provided a suitable separate sub-heading.”

1.25 The Committee enquired whether there were any cases where the rates of the residuary items “not elsewhere specified” or “not otherwise specified” were higher than the all the Industry rates. The Ministry of Finance (Department of Revenue) have replied :

“This situation will not arise as the all-industry rates of drawback under residuary items have been kept fairly low. Special brand rates cannot be lower than residuary all industry rate for that particular item. Special brand rate fixation under Rule 7 of the Customs & Central Excise Duties Drawback Rules 1971 for any particular manufacturer always takes into consideration the residuary rate if any for that product. Even then there may be stray cases where the input materials may have lower duty incidence, such cases are delinked and classified separately by providing a separate sub serial number and separate All Industry Rate.”

Fixation of All Industry and Brand Rates

1.26 The Committee desired to know the total number of All Industry drawback rates in vogue. The Ministry of Finance (Department of Revenue) have stated :—

“The total number of All Industry rates of drawback announced in the current schedule is in respect of various items falling under the sub-serial numbers under the main headings from S. No. 1 to 59 (which may please be referred for details).”

1.27 From the Schedule of All Industry Rates of Drawback, it is seen that the number of All Industry rates under the 59 main headings is around 750.

1.28 The Committee enquired about the percentages of drawback payments made in the year 1982-83 based on All Industry rates and Brand rates respectively. The Ministry of Finance (Department of Revenue) have stated :—

“As regards percentage of drawback payments made on the basis of All-Industry rates and brand rates, it may be stated that separate figures are not maintained in the Custom Houses for payments made under brand rates or All-Industry rates because there will be overlapping cases where payments may have partly been made under the All-Industry rates and partly under the brand rate in respect of Rule 7 cases.”

1.29 Asked how the Ministry would assess the popularity of All Industry rates in respect of any product and the extent to which they were keeping down brand rate applications, the Ministry have stated :

“When All-Industry rates are truly representative of the average rates expected by the exporters, it does reduce the number of brand rate applications under Rule 7 of Drawback Rules 1971. However, there could still be cases where certain manufacturers using high duty paid raw materials/components in their products may come up for brand rate fixation to claim a higher rate. Yet, it is admitted that the reduction in the number of brand rate applications can be correlated to the fact that the All-Industry rate fixation is representative of the general average expected by the exporters. Moreover, a largely inadequate rate of drawback will be resented by the trade and their associations come up with the relevant data justifying a higher rate of drawback.”

1.30 When asked how the Ministry judged which all industry rates were too popular inasmuch as the rate was too generous, the Ministry have stated :—

“The question of the All-Industry rate being too generous does not arise since the criteria for fixation of All-Industry rate is the overall average of duties suffered by input material in the manufacture of products.”

1.31 Asked whether drawback paid in a year were taken into account while calculating the average rates for the subsequent year, the Ministry of Finance have stated :

“There is no correlation between the drawback payments made in a year to the calculation of average rates for drawback for subsequent year.”

1.32 At the instance of the Committee the Ministry of Finance (Department of Revenue) have furnished the details of the sub serial numbers in respect of which no drawback claims were received in any of the last three years. The Ministry have also furnished details in respect of the minimum serial numbers which accounted for upto 80% of the drawback payments made during the corresponding period. From the information furnished, it is seen that 80 per cent of the amount was accounted for by not more than about 100 sub-heads out of a total of about 750 sub heads. The most important commodities were textiles and garments of cotton, wood, made-up fabrics, chemicals drugs, phar-

maceuticals, dyestuffs, plastics, machinery, electrical goods, motor vehicles, paper, jute, cycles, metalware, footwear, leather goods, tyres and tubes and sports goods.

1.33 The Committee wanted to know the procedural safeguards observed in practice to ensure that the abnormal rise in FOB values of exports do not result in excess outgo of drawback because the average rates were revised only once a year or three months after the budget or changes in rates of duty. The Ministry of Finance have stated :

“The fob based rates are provided for in certain cases with a view to facilitating payment of drawback. As regards fluctuation/variation in the fob values from time to time, it is clarified that at the time of fixation of drawback rates in respect of these products, the Ministry calls for the prevailing fob values from the Custom Houses. Similarly, the manufacturers/exporters are also required to furnish the fob values in respect of their exports for the past one year. Wherever substantial variations in the fob value is observed over a period to time, the All-Industry rates are rationalised with a view to ensuring that no over payments are involved. In certain cases, the limiting value factor of drawback is also indicated along with the fob based rate so that a cut off point is observed at the time of sanctioning drawback rates. In certain cases a cushion is also provided in the All-Industry rate proposed so that even if marginal increase is there in fob value during the year, no undue benefit is availed of by the exporter by way of over-payment of drawback on that account. Thus, while working out the average fob based rates in respect of these products, it is ensured that the proposed rates are kept slightly lower than the general average arrived at.

It will, thus, be observed that procedural safe guards are already provided for in the case of fob based All-Industry rates.”

Classification of Beta-Ionone

1.34 Para 1.21 (i) the Audit Report has pointed out a case of excess payment of drawback amounting to Rs. 21,044 in respect of Beta-Ionone exported between October 1978 to June 1979 due to its incorrect classification as Organic chemicals not specified elsewhere (sub-serial No.1123) instead of “Drugs, Intermediates” (liquids being organic chemicals-sub-Serial No. 1204). The Committee wanted to know how the item was classified as organic chemicals. The Member (Customs) stated during evidence :

“There is no clear concept about drug intermediate. It is a somewhat loose conception. The expression chemical is probably more definite. In this particular case, the question came up as to how this should be classified and a decision was taken that it is not drug intermediate. We feel that the audit objection is not correct. On the basis of the

discussion in Collectors' Conference and also in consultation with chief chemists, we have taken the view that it would be sound to classify it as a chemical."

1.35 On being asked how the Ministry ensured that the item was used for drugs or for some other purposes, the witness replied :

"We do not go by the ultimate end-use because it is capable of different uses."

1.36 The Committee asked how the department justified a basis for classification of Beta-Ionone for payment of drawback which resulted in more outgo as drawback than income realised as excise or customs revenue. The Ministry of Finance have stated :

"The department had an occasion to examine specifically the classification of Beta-Ionone. The REP circular of 1972 referred to by the Audit issued by the DGTD classifying; Bete-Ionone as 'drug intermediate' was also considered while deciding the question of classification of Beta-Ionone. It was found that Beta-Ionone was generally used as perfumery material. Its use for the manufacture of Vitamin 'A' was also indicated. However, the distinction between Beta-Ionone being used in 'perfumary' or as a 'drug intermediate' was very thin and therefore, it was decided in the interest of revenue to classify Beta-Ionone as an organic chemical.

In the All-Industry rate schedule for the relevant period, drawback at 5% of f.o.b. value was payable on drug intermediates not elsewhere specified and at a rate of 3% of f.o.b. value on 'Organic Chemicals not elsewhere specified'. During the period 1979-80 Beta-Ionone was exported by some firms for whom brand rates were fixed. These rates were based on the actual payment of duty, by these manufacturers on the raw-materials used in the manufacture of Beta-Ionone. The brand rates of drawback for Beta-Ionone worked out between 43% and 47% of the f.o.b. value. The main raw material imported by them was pseudo Ionone for which the Bills of Entry indicated an average rate of import duty varying between Rs. 53 per kg. and Rs. 57 per kg. Other items were the sulphuric acid and the packing material. If we compare these brand rates with the 'all-industry' rate for organic chemicals not elsewhere specified we find that the brand rates are much higher than the 'all-industry' rate because the 'all-industry' rate was 3% for organic and inorganic chemicals not elsewhere specified."

1.37 Asked whether Beta-Ionone had been included in the calculation of average All Industry rate for 'organic' chemicals, the Ministry have replied :

"All Industry rate of drawback on 'organic and in-organic chemicals' for the year 1978 was fixed on the basis of the various brand rates

fixed in the recent past. Beta-Ionone was not specifically considered while fixing the All-Industry rates effective from 1.6.78 for 'organic chemicals'. It was, however, taken into consideration while fixing all-industry rate of drawback effective from 19.9.80."

1.38 On being asked why the average rate for drawback was fixed for organic chemicals 'not elsewhere specified' without collecting full data, the Ministry have stated :—

"Collection of detailed data from exporters and their associations is not feasible each year. In case data is not forthcoming from the exporters, studies in association with the officers of DGTD as a technical authority and of C & AG are periodically undertaken by visiting certain sections of industry which are considered representative. On the basis of such studies all Industry rate of drawback is fixed. This rate is allowed to continue or reduced after studying the brand rate files as also the general increase or decrease in the rates."

1.39 The Committee also wanted to know how the Ministry had arrived at the rate of three per cent in determining the rate for organic chemicals. The Ministry of Finance stated :—

"For the year 1977-78 A. I. R. for Organic Chemicals, inorganic chemicals not otherwise specified' was 3% of f. o. b. value. Data was called for from various sources. No data was received from other sources. But the data in the brand rate files (which is one of the sources from which data is relied upon) was available. Therefore, it was tabulated and it was found that duty drawback on the chemicals varied between 3.6% to 67.16%. With a view to ascertain the average rate of drawback actually paid by the Custom Houses it was noticed that it was only 5.5% of the f. o. b. value. Having regard to the fact that the lowest rate was 3.6% the rate of 3% of f. o. b. was allowed to continue. This rate became effective from 1.6.78."

1.40 The committee asked why the All Industry rates be at all based on brand rates which are exceptions to All Industry rate. The Ministry replied :

"Brand rates fixed by the Ministry is one of the sources relied upon for fixation of all industry rate. It brings out in clear terms the adequacy or otherwise of the All Industry Rate".

1.41 Asked whether it was logical to fix All Industry rates on the basis of brand rates only (as in the present case) since brand rates were sought only in order to have a higher rate, the Chairman, Central Board of Excise and Customs stated in evidence :—

"There is slightly a flaw. Here there is no all industries rate. People have been coming and saying that we have paid this much please give me back. Now, this is a data, because we have not given them higher

than all industries rates. Now, we have fixed all industries rates on the basis of this data. This is a good basis; may not be very thorough, because you are presuming that the brand rate is higher than whatever does not exist, but it is not so. Every case we are scrutinising individually and find that I paid 3 per cent and Mr. X paid 8 per cent”.

1.42 Referring to the method of computation of the All Industry average rate of drawback for ‘organic chemicals’ for the year 1978, the Committee asked whether it was scientific to base drawback on import replenishment or cash assistance. The Ministry have replied in a note :—

“An analysis of the various factors would be taken into consideration in case the data from manufacturers was not forthcoming. This analysis of various other factors is only indicative of an average of the duties which will be reimbursable to the exporters in case they exported the goods falling under the heading ‘organic chemicals’, inorganic chemicals, etc., Further it would be seen that the control rate *viz.*, the average amount of drawback paid under SS No. 1123 worked out to 5.5%. Therefore, the then existing rate of 3% was allowed to continue. It would thus be seen that drawback rate was not based on import replenishment or the cash assistance data that was analysed. These data were analysed only as a pointer to find out the extent of the input materials duty and whether the present rate could be revised in the light of that analysis.”

1.43 To a question of the Committee whether the Drawback Directorate was associated with verification of data on the basis of which import replenishment licence or cash assistance was allowed, the Ministry have replied :—

“Drawback Directorate is not associated with the Verification of data on the basis of which import replenishment licence or cash assistance is allowed. It may, however, be mentioned that Directorate General of Technical Development is one of the sources of technical data in the majority of the cases whether dealt with for the purpose of cash assistance, import replenishment licence or duty drawback.”

Hydraulic Pumps

1.44 In para 1.21 (ii), the Audit have highlighted a case of excess payment of drawback amounting to Rs. 47,401 on hydraulic pumps exported between May 1976 and August, 1977 due to uncorrected classification of the item as “parts of motor vehicles including tractors” instead of “complete hydraulic pumps and assemblies thereof”. The Committee wanted to know how the department justified classification of “pumps” as “parts of motor vehicles”. The Ministry have stated in a note :—

“Item ‘hydraulic pumps for motor vehicles’ are specially designed designed to be fitted on certain specialised vehicles for the purpose of lifting or rotating the carriage by the engine

driver. The product is a specialised catalogued part and has got an exclusive use on such specialised vehicles for the aforesaid purpose. Thus, item "hydraulic pump" is considered for the purpose of drawback as a part of motor vehicles only, and, therefore, appropriately classified as such. Accordingly, the item cannot be considered as power driven pump or a centrifugal pump for the purpose of drawback.

The all industry rate of drawback for motor vehicles is worked out taking into consideration a variety of raw materials and components which may total up to a few hundred numbers. Thus, duty incidence of a particular component may not contribute substantially to the overall rate for the vehicle. Incidentally, while working out the all industry rate of drawback for motor vehicle, item "hydraulic pump" was not taken into consideration.

As per technical literature, item hydraulic pump is required on specialised vehicles like construction vehicles, dumpers etc., which for tariff purposes are motor vehicles with a special feature."

1.45 The Committee pointed out that the Ministry were justifying payment of drawback at the three per cent on export of Beta Ionone instead of at two per cent because the drawback band rates justified around 45 per cent drawback. The Ministry had upheld the principle of classification that duty paid on inputs should govern/classification of "hydraulic pump" which were designed for use in motor vehicles (whereas in calculating all Industry drawback rate for parts of motor vehicles, pump was not taken into account). The Ministry were defending classification of the item as "parts of motor vehicles" instead of as "pumps". When asked to reconcile the contradictory stands, the Ministry have stated :

"For classification of any item for the purpose of drawback additional yardstick i.e. the duty borne by the input material is applied. This additional criterion is met both by Beta Ionone and Hydraulic Pumps for the purpose of classification of a particular item the literature and catalogue are scrutinised to find out whether the item under export is an identifiable part of the product under which it is being classified.

Beta Ionone could be classified as a chemical as well as a drug intermediate. In the interest of revenue it was decided to classify Beta Ionone as an organic chemical.

Hydraulic Pump was classified as a motor part on the strength of the catalogue and the literature available for the purpose.

Duty incidence in both the cases was much more than what was paid by the Department as drawback.

There is no contradiction in the stand taken by the Department in so far as classification and payment of drawback on hydraulic pump and Beta Ionone is concerned."

Brass nipples for pressure stoves

1.46 The Audit have further referred to a case of incorrect classification resulting in excess payment of drawback amounting to Rs. 1.47 lakhs in respect of two consignments of brass nipples for pressure stoves exported in June 1980. According to the Audit, the items were wrongly classified as "pressure stoves made of brass and metallic components thereof" instead of "brass manufactures other than utensils and articles made out of sheets or strips and artware." The Committee wanted to know the reasons for the misclassification. The Ministry of Finance have stated :

"Prior to 19.9.1980, item "metallic components of pressure stoves and pressure lamps lanterns" falling under Draw back SS No. 3816 were eligible to f.o.b. based rates. However, from the Drawback Year 1980-81 the description of relevant item under SS Nos. 3816 and 3815 for pressure stoves and pressure, lamps/lanterns, was modified to exclude items metallic components of "stoves and pressure lamps/lanterns pressure The mettalic components of stoves and pressure lamps/lanterns. were mainly made of brass ; and thus the f.o.b. value of components will be generally proportionate to the f.o.b. value of the complete stoves/lamps/lanterns. Therefore, the f.o.b. based rate of components of pressure stoves was fixed. However, when it was found that the f.o.b. rate for brass components of pressure stoves entailed a higher out go of revenue, the description was modified and metallic components were excluded.

Presently, item "pressure stoves, mainly made of brass" falling under SS No, 3813 and item "pressure lamps etc." falling under SS No. 3814, provide for a f.o.b. based All-Industry rate of drawback. In the first instance, it may be mentioned that these items, although have major duty incidence, attributed to input item brass, there are other components also made of other raw materials which are utilised in the manufacture. Thus, while working out the rate in respect of these items, the duty incidence in respect of other inputs materials/components are also taken into consideration. The f.o.b based rates in these cases, as in certain other cases also, are provided for with a view to facilitating payment of drawback. As regards fluctuation/variation in the f.o.b. values from time to time. It may be mentioned that international price of metal products depends upon the international price of the metals mainly used in the manufacture of the products. As the duty of customs on imported copper and zink which is advalorem is taken for purpose of fixation of the drawback rate of brass, it is presumed that the major fluctuations/variatiions are taken care automatically. Wherever substantial variation in the f.o.b. value is observep

the All-Industry rates are rationalised and fixed at a lower level to take care of normal fluctuations. In certain cases the limiting value factor or drawback is also indicated along with the f.o.b. based rate so that a cut off point is observed at the time of sanctioning drawback rates. As an example, this is being observed in the case of drawback rate for bicycles. Thus, while working out the average f.o.b. based rates in respect of products, care is taken that the proposed rates are kept slightly lower than the general average arrived at."

1.47 The Committee pointed out that in the case of Beta-Ionone the Ministry had maintained that while classifying a product for drawback purposes, end-use was not taken into account, whereas, in the case of brass components for pressure stoves, the department had gone by the end-use. The Member (Customs) stated in evidence :—

"That is slightly different. These cannot be used anywhere else..... This has been made for pressure stove only".

1.48 Asked whether the same nipple could not be used for burners also, the witness replied :—

"Perhaps in some cases it may be possible. But in this particular case it was only for pressure stove. Here the general concept of classification must prevail. Otherwise, there will be confusion. Even the Supreme Court has laid down the principles. We have the famous case of "fountain pens". The Supreme Court has said that a fountain pen is a fountain pen even if it is covered by diamond and precious stones. It depends on the general concept. I would not say that our view has always been right, but we have proceeded on this basis."

1.49 The Committee wanted to know whether the department, generally, took into account end use also, the witness stated :—

"Generally we do not go by the end use..... If it is a specific condition attached to that particular classification, only then we take that into account."

Bronze Bearings

1.50 In para 1.21 (iv) the Audit have pointed out a case of incorrect payment of drawback amounting to Rs. 1.91 lakhs on several consignments of materials for meter gauge wagons (brass bearing) exported between January 1978 to April, 1978. Justifying the classification basis applied by the department, the Member, Customs stated during evidence :—

"We have classified these goods under item 3709 and that item is for metal alloys not otherwise specified and articles made thereof not otherwise specified and the rate applicable is on the metal content of the articles."

1.51 The Committee pointed out that in the case under examination, the department had broken the contents of the components exported, for the purpose of fixing drawbacks whereas in certain other cases, the department had taken the end-use. Asked how the department could justify such contradictory steps, the witness replied in evidence :—

“In the latter classification, no rate is fixed. This is bronze-bearing. There is alternative classification of 4709. The rate was not fixed. It would have taken some time for the brand rate to be fixed. The exporter would not have got drawback promptly. That rate is on the contents only. That is, the duty he paid on the metal. We have the actual export. On the basis of his data, the rate is fixed. At that moment there was no rate available. In his desire to help; the Customs Officer has given alternative classification which gives the same amount had the brand rate been fixed on that.”

1.52 The Committee wanted to know how the classification for payment of cash compensatory support for Bronze bearings was relevant for classification for purposes of drawback. They also wanted to know whether the Cash Assistance tariff descriptions were prepared according to the same rationale as drawback tariff descriptions. The Ministry of Finance have stated :—

“The grouping of products for the purpose of cash compensatory allowance under broad headings—engineering goods; chemicals and allied products; plastic goods; leather and leather goods; sports goods; processed foods and fresh foods; handicraft and woollen carpets other than man-made; silk-rayon synthetic textiles and silk goods; handloom fabrics and made-up cotton textiles including readymade garments; woollen and wool mixed items and jute goods, is considered to be by and large on the same pattern as the various items under the schedule appended to the Customs and Central Excise Duties Drawback Rules, 1971, except that in the case of grouping for cash compensatory allowance, the list of items falling under each group is more detailed and specific but in the case of list of items falling under various headings of Drawback Schedule, besides certain items being specific, residuary items have also been provided for where it is considered that a single rate can be allowed in respect of products falling thereunder. The description of items under the various headings in the Drawback Schedule, is on the basis of the average duty incidence that a product has borne on the raw materials/components used in its manufacture whereas in the case of cash assistance, the considerations are different.”

Castor Oil

1.53 In para 1.21 (vi), the Audit have pointed out a case of over-payment of drawback amounting to Rs. 16,897 by classifying Castor Oil B.P. exported in March 1981 as “Drugs and Pharmaceuticals not otherwise specified” instead of allowing a brand rate. The Committee wanted to know whether the average

drawback rate calculation relating to drugs and pharmaceuticals included the figures in respect of castor oil and if not, how the Ministry justified classification of castor oil as a drug for purposes of drawback payment. The Ministry of Finance have stated :—

“There are numerous products which may be classified under the description ‘Drugs, Drug Intermediates and Pharmaceutical Products.’ Hence, it is not possible to take into account the duty incidence on each and every chemical product belonging to this class. Naturally this Directorate had to rely upon the verified data available in the Directorate itself. The analyses of the data available showed that only in 14% cases the drawback was 10% of f.o.b. value and in majority of cases it ranged from 15% to 40%. The average of the rate would have worked out to 20%. Since the fixation of drawback rate of 20% on the average basis would have given unintended benefit to certain products having low duty incidence, a single rate of 5% of f.o.b. value was announced. This was purposely kept on the lower side to take care of items on which input duty could be lower and the inflationary trends in the prices of the export products during the year.

The question of classification of Castor Oil B. P. was considered in the Ministry as a pure issue of classification without reference to the duty incidence borne by the input materials and the appropriateness of the rate of drawback in that context. However, while the revision of rate for ‘Drugs, Drug Intermediates and Pharmaceutical Products’ was undertaken in the year 1961 and it was decided to enhance the rate to 12.5% of the f.o.b. value, medicinal Castor Oil was delinked from the general rate by introducing a new sub-serial Number namely S. S. N1 1206 for it. It will thus be seen that adequate steps were taken to ensure that the outgo of revenue did not exceed the actual receipts in case of ‘Castor Oil’ also.”

1.54 The Committee enquired how castor oil was omitted from the purview of “Drugs and Pharmaceuticals” while calculating the All Industry rate. The Member (Customs) stated in evidence :

“As the drawback schedule was worked out, it was the intention to cover castor oil. But it was classified under BP quality and it was included in pharmaceutical category. If you go strictly by the drawback schedule, as it is, the classification was correctly done, but while working out the rate, we did not take castor oil into account.”

“When that heading was put in the Dak schedule, certainly we did have castor oil in mind. But as we gave expression to the particular entry, it covered castor oil BP quality. That was a mistake on our part. We discovered that mistake long before the Audit objection and we corrected it. The correction was done in June 1981.”

1.55 Asked what percentage of the exports under the description "Drugs, Drug intermediaries and pharmaceutical products" was considered in the analysis which resulted in an average drawback rate of 20 per cent and if the data was representative why 20 per cent was considered as giving unintended benefit with the result that an *ad hoc* rate of five per cent was fixed, the Ministry have replied :

"It has been stated that in 14% cases the drawback was 10% of the FOB value. This figure pertains to special brand rates. Special brand rates are 33 percent above the All Industry rate and, therefore, if this minimum special brand rate was taken as an indicator then the All Industry rate should have not more than 7.5 percent. Having regard to the fact that there were numerous Products which could be classified under the general description 'Drugs & Drug Intermediates and Pharmaceutical Products not otherwise specified' an All Industry rate of 5% was considered adequate.

As already pointed out this rate working was based on the brand rate files available in the office. No additional data was collected during the year 1979-80 and 1980-81. However during the year 1981-82 a study was conducted in association with the DGTD in respect of major exporters. On the basis of this duty and analysis of the brand rates fixed during the year 1980-81 the all industry rate of drawback for 'Drugs, Intermediates and Pharmaceuticals Products not otherwise specified' was enhanced to 12½ percent of F. O. B. value from 5 percent of the F. O. B. value. It is admitted that the data considered for fixation of All Industry rate during the year 1979-80 was not collected from major exporters and therefore, could be considered only as an indicative data and not a representative one."

1.56 The Committee wanted to know why the Ministry had not computed the total amount of drawback of duty (All Industry and Brand rates) paid out every year as a percentage of the f. o. b. value of products exported under each category. The Ministry have stated :—

"Under a sub-serial number of the Drawback Schedule which gives a general description of goods payment is made on export of a number of products that fall under that sub-serial number. Some products are paid at the All Industry rate and some are paid at a higher rate (called the special brand rate) and thus the ratio between the amount of drawback paid and the amount of the F. O. B. value as a percentage will be higher than the All Industry rate fixed for that group of products. This exercise, if undertaken, will at the most work out as a pointer beyond which the All Industry rate cannot go. However, this will not be as safe as the lowest special brand rate fixed

which was taken as an indicator upto which the All Industry rate could be fixed. Therefore, the necessity of computing such a ratio was not felt."

1.57 On being asked whether such a percentage would not serve as a control rate in fixing All Industry drawback rates for future years and whether such a control rate would not help to conclude if data available from various sources was fully available and representative or partly available and not representative, the Ministry have stated :—

"The ratio between the f. o. b. value and the amount of drawback paid will only work as an indicator or a broad pointer as to what extent the All Industry rate has been able to fill in the gap between the All Industry rate and the special brand rate. Even if this exercise is undertaken the possibility of higher payment of drawback on certain products is not completely ruled out, as these will continue to be paid at the all industry rate. The safer course is considered to find out the commodities (where exports have been to the extent of say Rs. 10 lakhs' and more) that have been classified for purposes of drawback payment under the general description item and then to calculate in individual cases the duty incidence borne by the input materials and delink such products as have borne lower incidence of duty. This exercise we have started this year in respect of 'drugs and Pharmaceuticals, Organic and inorganic chemicals' and 'Dyes & dye intermediates'. This will reduce the chances of higher payment of drawback on certain major commodities."

1.58 Asked if such a control had been computed in respect of Sub head "Drugs and Pharmaceutical not otherwise specified" would it not have resulted in a still lower figure than five per cent and prevented overpayment of drawback on Castor oil given the large number of export products which may not be taken into account in calculating average rate of drawback but were likely to be classified under residuary or general headings by officers in the field, the Ministry have replied :—

"Control rate was ascertained during the year 1981-82 which gave us an average rate of 21.8 percent of f. o. b. value. Brand rate applications similarly gave us an average rate of 20 per cent. From this specific analysis it would be seen that control rate will not serve the desired purpose except to the extent that it will only indicate the higher limit upto which the all industry rate can be fixed. As pointed out, control rate for the year 1980-81 was 21.5%. The lowest special brand rate for the same period was 10 per cent. From comparison of these two figures it would be seen that control rate would not lead us to fixation of a minimum rate as suggested by audit."

1.59 The Committee pointed out that the Ministry had on the one hand stated that the classification of a finished product was directly/related to the duties borne on the input materials used in a finished product under an appro-

appropriate description in the schedule. But, on the other hand, it had been stated that in the case of Castor Oil, the classification was decided independently of the above criterion and without relating it to the duties paid on input materials used in the manufacture of Castor Oil. When asked to reconcile these contradictory statements, the Ministry stated :—

“On a reference from a Custom House the question of Castor Oil B.P. was considered as a general issue as to whether it will fall under the general description of ‘drugs and pharmaceutical products’. It was decided that it was a drug and accordingly the Custom House was informed. Castor Oil B. P. is even today covered by the general heading drugs and pharmaceutical products.’ Later, when the question of review of the drawback rates was taken up it was found that the duty incidence on the inputs used in the manufacture of Castor Oil B.P. was less than the general rate applicable to drugs and pharmaceutical products ‘not otherwise specified’ the item was immediately delinked. It would thus be seen that the reason for delinking Castor Oil B. P. from the general rate was the duty incidence on the input materials.”

Framing of Rules for Classification of Products

1.60 In this connection, the Committee wanted to know the basis for classification of goods under the drawback schedule corresponding to the Rules for interpretation of the first Schedule given in the Customs Tariff Act 1975. The Ministry of Finance (Department of Revenue) have in their note stated as follows :

“Drawback is payable on the items mentioned in the Schedule appended to the Customs and Central Excise Duties Drawback Rules, 1971. In the existing Schedule, presently there are 59 items. The scheme followed in respect of these 59 items is by and large based on the scheme as in the Customs Tariff in so far as the description of the general items is concerned. No doubt modifications have been effected by putting under one heading more than one item and sometimes description from Central Excise Tariff has also been adopted. In respect of most of the items figuring in the Drawback Schedule under various sub-serial Nos., it will be seen that the description of goods is specific and, therefore, need for interpretation for the purpose of classification is not felt in respect of such items. However, there are some “general” or “NOS” items, where there is a possibility that classification problems may arise as to whether a particular product falls under the general item or not. In such cases, the following factors are taken into consideration while classifying a particular item :

- (i) Reference to classification of the product as per the existing Customs Tariff read with Brussels Tariff Nomenclature explanatory notes.

- (ii) Reference to the Central Excise Tariff and the rulings issued thereunder; and description of the items given in the central excise documents accompanying the consignment.
- (iii) Reference to the relevant case file with a view to ascertaining as to whether the date determined for the general product is based on similar raw materials/components/packing materials as are indicated for the product under classification. Drawback is reimbursement of duty borne by the input materials. If it is found that the raw materials meant for the manufacture of the product under dispute was taken into consideration at the time of arriving at the drawback rate for the general description, an opinion is expressed ruling out that the item does not fall under the general description, and wherever necessary separate sub-serial No. is provided for such product.

For the purpose of determination of classification of a particular product all the above factors are taken into consideration.

Recently, this matter was discussed in a Conference of Collectors and the recommendations are as under :

- (a) To the extent possible the Schedule should list out specific items on which drawback is eligible.
- (b) To avoid omnibus items and loose expressions, and
- (c) To reduce, over a period, the number of items, by averaging out the rates over a group of items of similar nature".

1.61 During evidence, the Committee enquired how the department had classified certain items mentioned in the Audit Paragraph on the basis of the end use of the product whereas in some cases classification had been made on the basis of the content of the input material. The member (Customs) stated :

"...there is one line which has been uniformly followed, viz., to be helpful to the exporter".

1.62 The Committee enquired about the basis for classification of a product if it could fall under two sub-serials in the Drawback Schedule and also desired to know whether the Department considered making provisions in the Drawback Rules for interpretation in making classification of a product under such circumstances. The Ministry of Finance have stated :

"Whenever a product can fall under the general description of 2 different sub-serial numbers then additional criterion is also applied and that is whether for determining the rate of drawback for a particular item in Drawback Schedule, the respective item was or was not taken into consideration. Thus, for classification of any item for the purpose of drawback, additional yard stick is also available which

can not be applied to the classification of products under Customs Tariff of the central Excise Tariff. Since Drawback is ultimately a reimbursement of average duties generally borne by the inputs of a product, the criteria as to whether the duties borne by a product are represented by the drawback rate under the specific sub-serial number of Drawback Schedule is predominant in deciding the classification of a disputed item.'

1.63 Asked who was to get the benefit in such circumstances, Member (Customs) stated before the Committee :

"The law of the land is what is beneficial to the exporter or assessee. If alternative classification is available then the benefit should go to the assessee."

1.64 Elaborating his point, the witness further stated :

"There is something incorporated in the Act itself. Goods cannot be classified by reference to A or B. They should be classified under the appropriate heading and of course, when more than one applies the latter; the latest among those would merit consideration. The general structure is this. The rate is going up. The item which comes later, will apply. For example between items 8465 and 8466, 8466 will apply".

1.65 The Committee wanted to know why the department had not made provisions for rules for classifying products in the drawback schedule and whether the basis for classification for drawback should not be different from the classification for purpose of classification as per Customs or Excise Tariff Schedule. In reply, the Ministry of Finance have stated :

"The basis for classification for purposes of drawback is different from the classification as per Custom and Excise Tariff Schedules inasmuch as since the drawback rates are primarily reimbursement of duties paid, this factor is given due consideration to determine whether a product falls under a particular item of Drawback Schedule or not."

1.66 In para 1.21 (iv), Audit have made a reference to the Ministry's letter dated 6 October, 1979 where in the Custom Houses were advised that where net weight of metals in export goods is ascertainable, the drawback may be calculated on each constituent metal as if it was exported individually. The Committee asked why the Department had not extended the rule of classification for purposes of drawback indicated in it letter of 6 October, 1979 as a general rule in the Drawback Rules. The Ministry of Finance have stated :

"In Audit Para 1.21 (iv) reference has been made to Ministry's letter dated 6.10.79 in accordance with which the Custom Houses were advised

that where net weight of metals in export goods is ascertainable, the drawback may be calculated on each constituent metal as if it was exported individually. A copy of the aforesaid letter is not readily available for reference. However, similar instructions were issued under Ministry's letter F. No. 602/16/79 DBK dated 14.10.79 in respect of drawback on export of parts of machinery and products. The aforesaid Ministry's letter clarified that for composite articles made of more than one metal drawback can be settled under SS. No. 3709 on the content based rates. It was further provided that in respect of certain sub-serial numbers where fob rates had been announced, the exporter could avail of the material content rates where the actual expectation was higher than the rates announced,

“The Drawback Schedule specifically provides for the content based rates in respect of metal alloys, NOS falling under SS No. 3709. We have also provided for the payment of drawback on material content basis in respect of certain items of machinery where the rates on the fob basis are very low. Therefore, the need for making a specific provision in the Drawback Rules in this regard is not considered necessary.”

1.67 Asked if the Ministry should not circulate their views explained to the Committee regarding the principle of classification of a product if it was capable of being classified under two sub serials as also the advice given in their letter dated 14 October, 1979, referred to above, as guidelines for their field staff, the Ministry have replied :

“Ministry do not have any objection in circulating the views as stressed above as guidelines for field staff. Similarly the contents of Ministry's F. No. 602/16/79-DBK dated 14.10.1979 can be circulated to the field staff for their guidance. But no useful purpose will be served by supplying calculation sheets to the field staff. It is clarified that most of the data even if collected in each case will be at variance with the data accepted for the purpose of working out all industry rate. For the purpose of all industry rate it is sometimes the weighted average of the duties borne by the inputs which is taken as the average all industry rate and some-times the data which leads to lowest rate is accepted for working out the average all industry rate. Moreover, in case the Custom Houses start collecting data about input materials, no drawback claim can be settled within a reasonable time whereas the present emphasis is on settlement of claims promptly.

Have regard to the above the limitations, it is felt that circulating the views will not be useful. Custom Houses no doubt keep on making references to the Ministry wherever they find that two different rates may be applicable because of different classifications of a particular export product. Further, instructions already exist under which

Custom Houses make references to the Ministry about any specific product where the duty borne by the input materials is lower in comparison to the all industry rate available for that general group of products."

1.68 Asked if Drawback Rules needed further classification and simplification so that the types of difficulties observed in the Audit Paragraphs could be obviated, the Secretary, Department of Revenue stated before the Committee :

"While every effort is made to see that the items are clearly and distinctly identified, and separate heading and rate of drawback based on appropriate calculations is prescribed, there are always certain generic items which cannot be included or classified under definite headings. The dispute, by and large, will arise in respect of items. As soon as, we come across an item which is capable of classification and identification, and a separate rate can be prescribed, it is done. But, this can be done only prospectively. I think, it is in the nature of things, off and on, certain cases of dispute, of uncertainty would arise and should arise, which would give rise to fresh thinking on the subject and lead to a further classification or sub-classification. Under the circumstances, it is just not possible to have a foolproof system, in which it can be ensured that at no stage, some mistake or the other would not be committed. It is perhaps out of these mistakes that we learn and try to take corrective action".

1.69 Commenting on the working of the system as a whole, the witness further added :

"Now the system is working in such a way that, because there are thousands and thousands of exporters of different commodities, we have to follow a rough and ready system of determining what will be the drawback on an average. In the system of averaging, therefore, it is quite conceivable that in certain cases a person may not be getting as much as he is spending or paying. In other words, the drawback may be less than the tax but there may be some odd cases here and there where, as a result of the system of averaging, the amount of drawback that he receives may be slightly in excess of what he has actually paid".

Irregular payment of drawback on polythene coated paper

1.70 In para 1.22 (i), Audit have pointed out a case of irregular payment of drawback on polythene coated paper amounting to Rs. 15,386. According to Audit, drawback should have been allowed only under brand rate and not under the All Industry rate applicable to "articles made of polythene coated paper". The Committee wanted to know whether duty paid on polythene

paper would not amount to duty paid on raw material/component insofar as the rate was for articles made of such paper. In reply, the Ministry of Finance have stated in a note :

“In the case referred to in Audit Paragraph 1.22 (i) relating to SS No. 2421 “articles not elsewhere specified, made of polythene coated paper”, the permissible rate of drawback for paper content under relevant sub-serial numbers and for polythene content under SS No. 1914, reflects ultimately the duty paid on the base material “paper” and ‘polythene’. The rates of drawback for various items under SS 2407 to 2411 and 2413 to 2414 relating to articles of paper, are equivalent to finished stage duty paid on paper plus element of wastage. Item polythene coated paper, as such, was subject to a finished stage duty of 12.5% *ad-valorem* in addition to the duty already paid in respect of base paper used in its manufacture in terms of Notification No. 71/76 dt. 16.3.76. Accordingly, polythene coated paper exported as such would have already suffered duty on paper at the initial stage and subsequently a duty of 12.5% *ad-valorem* was leviable on the finished product as polythene coated paper. The latter duty may or may not have been paid depending upon whether the goods were exported under bond etc. Thus, item ‘polythene coated paper’ can be treated as an article of paper for purpose of drawback since the product had earlier suffered, duty on base materials viz. “paper” and polythene and what has been re-imbursed is only this duty incidence. However, the position as to payment of duty on these paper and polythene is being ascertained from the Collector concerned”.

1.71 The Committee asked whether drawback could be allowed on export of the ‘paper’ *per se*, when no drawback rate for the export of paper had been prescribed and if it would not be correct to say that the duty paid on the ‘paper’ *per se*, could only be rebated under rule 12, provided the duty had been realised. The Ministry stated :

“Drawback at all industry rate cannot be allowed on “paper” when exported as such since the finished stage duty on paper would not have been paid, and if paid, it could be rebated. The existing items in the Drawback Schedule on paper are accordingly described as “articles of paper” which items would have suffered the finished stage duty on paper”.

1.72 Asked whether duty would not be deemed to have been effectively rebated (not having been realised) when the bond was allowed to expire or was cancelled in case of export under bond, the Ministry stated :

“When goods are exported under bond, the finished stage duty shall be deemed to have been effectively rebated (not having been realised)”.

1.73 On being asked whether the duty paid on raw materials going into the manufacture of paper would not be allowable as drawback only under a brand rate as stated by Audit, the Ministry have replied :

“When paper” is exported as such (and not “articles of paper”), the drawback admissible will be equal to the duty suffered, if any, on the input materials viz. wood pulp, bamboo pulp etc., chemicals, dyes. However, no finished stage duty on paper will be refunded as drawback if the export product is “paper” and not “article of paper.”

1.74 The Committee pointed out that the description used in the drawback schedule against sub-serial No. 2421 referred to “articles made of polythene coated paper” when in fact the drawback rate had been fixed as if the exported product was “polythene coated paper” (which had borne duty on raw materials, paper and plastics) and enquired if this was not a mistake. In reply, the Ministry have stated in a note :

“The Audit’s observation in regard to the description against sub serial No. 2421 appears to be correct to the extent that the finished stage duty on polythene coated paper was not taken into consideration for working out the rate for articles of polythene coated paper”.

1.75 When asked to indicate whether the duty was paid on the two raw materials in the case cited in para 1.22 (i) since export was under bond, the Ministry replied :

“It has been reported by one of the exporters that they had purchased the material from the market and, therefore, it is presumed that both paper and polythene had paid duty. In the other case, it is reported that the manufacturing unit is still under lock-out and the facts are being ascertained”.

1.76 Asked whether the duty paid on polythene coated paper is taken into consideration in the calculations leading to fixation of rates against sub-serial No. 2421, the Ministry have in a further note stated :

“It is confirmed that the finished stage duty on polythene coated paper was not taken into consideration while fixing the rates for sub-serial No. 2421”.

Rebate of Excise Duty on Exported Products

1.77 The Committee desired to know the rationale behind rebating excise duty paid on exported products under Rule 12 of the Central Excise Rules. The Ministry of Finance stated :

“Section 37 of the Central Excise & salt Act, 1944 empowers the Central Government to make rules to carry into effect the purpose of this Act, and inter-alia, Clause (xvi) of section 37 provides for the grant

of rebate of Central Excise duty paid on goods which are exported outside India or shipped for consumption on voyage to any port outside India. Thus Rule 12 of the Central Excise Rules, 1944 allows grant of rebate of duty paid on excisable goods if exported outside India. This statutory concession has been provided to make Indian goods competitive in the international market”.

1.78 When enquired about the relationship between Rule 13 (whereunder export is allowed to be made under bond without payment of duty) and rebate allowed under Rule 12, the Ministry have stated :

“Rule 12 requires payment of duty on the goods before their removal from the factory and envisages claiming rebate of duty paid thereon subsequently after the event of export is over. Rule 13, however, permits the export of goods without duty being required to be paid initially at the time of removal of the goods on execution of necessary bond. Nevertheless, Rule 13, stipulates that export without payment of duty under bond has to be in the like manner as the of Rule 12. Therefore, on execution of a bond for the purpose of Rule 13, a manufacturer is entitled to export goods without payment of and is limited to only that much of duty which is rebatable under Rule 12. Thus the provisions of Rule 12 and 13 are very much inter-related”.

1.79 Asked whether rebate was allowed nationally under Rule 12 when bond under Rule 13 was cancelled or allowed to expire , the Ministry have stated :

“Rebate of duty accrues only after duty is paid. In case the goods have been exported without payment of duty, there can be no question of paying any notional rebate. Export of goods without the cover of a valid bond is another matter who has to be dealt with in accordance with the provisions of Rule 14 B”.

1.80 Asked if rebate of excise duty which had been paid on finished product was allowed on its export, did it not cover also duty paid on raw materials and components used in its manufacture, the Ministry have replied :

“In terms of/Explanation 2 (ii)/to Rule 13, the term ‘goods’ includes excisable goods used in the manufacture of goods which are exported. This Explanation was perhaps inserted on account of the fact that under Rule 12A, rebate of duty paid on excisable material used in the manufacture of the goods which are exported is permissible. As a result of this explanation, when the export takes place under Rule 13, the finished product duty as well as the duty payable on raw material/component part, if such materials are notified under rule 12A, need not be paid at the time of export of finished goods.

This facility will be applicable only in respect of goods which covered under Rule/12A, of the Central Excise Rules. At present, there are no goods which are notified under Rule 12A. So, this provision is redundant in the present context. However, if there is an export under Rule 191/B, then in respect of the specified excisable materials notified in Rule 191B, duty need not be paid at the time of export under bond under Rule 191B. This facility is not available in case of exports under Rule 13. Therefore, the raw material duty would be required to be paid at the time of export of finished goods when exported under bond under Rule 13. However, if the export is in accordance with the provisions of Rule 191A, rebate of excise duty paid on excisable goods, used in the manufacture of goods under export, is permissible”.

1.81 The Committee desired to know the views of the Ministry on the desirability of deleting rule 12-A and explanation 2(ii) below rule 13, in view of the fact that they are redundant in the face of drawback rules 191-A and 191-B. In reply, the Ministry of Finance have stated :

“The matter is under active consideration.”

Drawbacks for imported spare parts of ships

1.82 For purposes of grant of drawback it is necessary that the product be exported out of India. The term “export” has been defined in Section 2(18) of the Customs Act 1962 as “taking out of India to a place outside India”. According to Section 2(21) of the Act, “foreign going vessel or aircraft” means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes :—

- (i) any naval vessel of a foreign Government taking part in any naval exercise;
- (ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;
- (iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever.

1.83 The Ministry of Finance issued executive instructions on 19 July 1969 clarifying that the following vessels may also be considered as foreign going vessels, when

- (a) more than half of the cargo of a vessels, when ment for foreign ports,
- (b) vessels are on a regular scheduled (cargo or passenger) service plying at specific frequencies and touching specific ports.

1.84 In para 1.22 (ii), Audit have pointed out another case of irregular payment of drawback in respect of spare parts imported for two vessels owned by a public sector company controlled by a State Government. According to Audit, there was no export of the imported spare parts to any place outside India and the payment of drawback was not lawful. During evidence, the Committee asked how the department justified payment of drawback as the components were used by an Indian ship which touched the Indian ports only. The Member, Customs stated in reply :

“All ocean going vessels or exempted from duty. In this particular case, the component which was put on the ship had been charged customs duty and on that drawback had been allowed. The ocean going vessel has been exempted from customs duty since long. Inland going vessels are given a separate treatment. If vessel from Tuticorin goes to Calcutta, it has to go round Sri Lanka.”

1.85 On being pointed out that they were defined as “Foreign going vessels” and not as “ocean going vessels”, the witness replied :

“Foreign going vessels are those vessels which carry 50% of the cargo as international cargo or otherwise which are visiting India or foreign coasts on a set itinerary. But here it is not relevant. Here it talks of ocean going vessels. It is in these circumstances that the duty charged on a particular vessel has been refunded to the extent of drawback. The drawback was only 98%. Indian vessels do not necessarily remain in Indian waters. We cannot go on giving them drawback or exempting them from duty every time they are touching Sri Lanka.”

1.86 Section 88 of the Customs Act allowed the payment of drawback on export, only in respect of stores taken on board foreign going vessels (even if legally the stores were not exported to a place outside India). The Committee wanted to know whether Section 88 had no application to coastal vessels which at the time of taking stores on board were not foreign going vessels. The Ministry of Finance have stated in a note :

“It is confirmed that the provisions of Section 88 of the Customs Act are applicable to foreign going vessels as defined in Section 2(21) of the Customs Act.”

1.87 In the context of the customs checks to which foreign going vessels were subjected to, every time they came into India (which checks were not exercised on coastal ships) the Committee wanted to know whether it would not be risky if coastal ships were allowed drawback on stores taken on board just because they passed through international waters. The Ministry have replied in a note :

“In terms of Section 97 and 98 of the Customs Act, all provisions which are applicable to vessel carrying import-export cargo are applicable to vessels carrying coastal cargo. Further, a detailed procedural drill has also been prescribed.”

1.88 Asked to furnish copies of executive instructions, if any, under which drawback on imported stores going on board coastal vessels were being paid by Customs Houses and to indicate how such instructions were justified, the Ministry have replied :

“Now drawback on imported stores supplied on board coastal vessels is admissible and accordingly there are no instructions on the subject”.

1.89 In the cases under examination, the Committee wanted to know the period for which the ships were “coastal” and “foreign going” and the dates when stores were taken on board and drawbacks amounts claimed. The Ministry have stated :

M. V. Tamil Anna : Foreign run-Madras-Chittagong-Calcutta from 19.11.75 to 12.12.75. Madras-Basara-Madras from 31.1.75 to 9.3.76.

Coastal run from 10.3.76 till 1978 when vessel was scrapped.

Ship spares supplied on 9th November, 1978 when vessel was scrapped.

Drawback sanctioned Rs. 49,152.88

M. V. Tamil Perier E.V.R.—Foreign run Madras-Chittagong-Madras from 17.2.76 to 6.3.76. Paradeep-Colombo-Calcutta from 24.4.1977 to 9.7.1977.

Coastal run—from 10.7.77 onwards.

Ship's spares supplied on 26.9.78 and 7.4.80

Amount of drawback sanctioned—Rs. 34,596.74 and Rs. 59,636.94, i.e., total amount of drawback sanctioned covering both the vessels—Rs. 1,43,386.56”.

1.90 The Committee desired to know whether customs duties were leviable when parts are imported in the ship building yard for the manufacture of a ship. The Member (Customs) stated :

“They are exempt from duty. Under Section 65 of the Customs Act any ocean-going vessel manufactured in the warehouse is exempt from customs duty leviable thereon when cleared from the warehouse and all spare parts are duty free. We do not proceed on the fact that a foreign-going vessel is in the foreign territory.”

1.91 Asked when the ship was drawing diesel oil, was it at a price on which it was available to an international ship, the witness replied :—

“No, it is duty paid.”

1.92 When further asked whether fuel constituted a part of the machinery, the witness stated :—

“No, consumable items are not part of the ship.”

1.93 The Committee wanted to know the authority/provisions of law under which drawback was granted and whether the conditions governing grant of drawback had been fulfilled in the cases under examination. The Ministry stated :—

“In terms of Notification No. 262/Cus. dated 11.10.58 ocean going vessels other than vessels imported to be broken up are exempt from payment of customs duty leviable thereon and in terms section 2 (21) of the Customs Act a foreign going vessel includes *inter alia*, “any vessel engaged in fishing or any operations outside the territorial water of India”. The two vessels in question were engaged in operations outside India and had in fact undertaken foreign voyages after registration under Merchants Shipping Act. M.V. Tamil Anna undertook voyages to Chittagong and Basara whereas M.V. Tamil Periyar E.V.R. had gone to Chittagong and Colombo. Even during their normal operations, the said two vessels used to ply between Calcutta, Madras and Tuticorin and the voyage to Tuticorin either from Madras or Calcutta involves skirting around Ceylon. Thus, in a way both the vessels were involved in trips like foreign going vessels and provided the same treatment as in the case of foreign going vessels. However, the legal position needs to be set right.”

1.94 During evidence, the Member, Customs added :—

“Audit strictly, speaking, certainly has a point that our system is wrong. We will definitely try to cover it up within the law, but we have no other option but to follow this procedure.”

1.95 The Committee desired to know whether the executive instructions issued over the years such as on 21 June 1943 and 19 July 1969 allowing drawback on stores and imported equipment issued to ocean going vessels have been reviewed in the light of definitions of export and foreign going vessels in the Customs Act. The Ministry have stated in a note :—

“The instructions have not been reviewed. Moreover, some of the instructions on the subject have been challenged in courts. In two cases the Department has filed appeals in the Supreme Court against the judgements of the lower courts. There is, therefore, no proposal to review the said instructions for the present.”

1.96 Asked whether the Ministry were in favour of claims being paid on parts issued to all vessels in India for repair etc., the Ministry have stated :—

“The Ministry are not in favour drawback claims being paid on spares issued to coastal vessels. (Collectors have been asked to give details of drawback claims granted to coastal vessels, if any).”

Duty drawbacks and Export Promotion

1.97 The Committee desired to know the products having All Industry drawback rates which have lost or almost lost the export market. The Ministry have stated :—

“The Ministry does not have any statistics to indicate the products which have lost the export market on account of low fixation of All Industry rates.”

1.98 Asked whether the department have found any correlation between increases in drawback rates and increases in exports the Ministry of Finance have stated in a note :—

“Department does not undertake any study to find out a correlation between the change in drawback rates and the consequential change in the quantum of exports as it is not necessary that there should be a correlation between the increase in drawback rates with the increase in exports. There are various factors responsible for increase in exports and the quantum of drawback is one of the factors only”.

1.99. On being asked whether the Ministry had noticed any negative correlation between drawback rates and exports and had investigated why value of exports went down despite increase in drawback rates and whether the rates were less than commercially critical levels for being able to face international competition in exports, the Ministry have replied :—

“The quantum of drawback is not the only factor in affecting export levels and, therefore, it is not considered necessary to undertake any study as to why the value of exports went down despite increase in drawback rates.”

1.100 During evidence, the Member (Customs) stated :

“It is not given as incentive for export promotion. It is part of the customs duty.”

1.101 The Ministry of Finance (Department of Revenue) had stated that the drawback rate for organic chemicals “not elsewhere specified” was kept at 5 per cent of f o.b. in both the years 1980-81 and 1981-82, because 40 per cent of brand rate cases justified 5 to 7.5 per cent in 1980-81 and 20 per cent rate in 1981-82. From the information furnished by the Ministry of Finance it was seen that though the same rates continued, their exports went up and in Bombay, drawback paid went up from Rs. 11 lakhs in 1980-81 to Rs. 14 lakhs in 1981-82 (increase of about 30 per cent in exports). In the case of drug intermediates the brand rates in 1979-80 varied between 19 to 59 per cent but All Industry rate was fixed at 5 per cent only. In the year 1981-82 studies covered exports amounting to Rs. 11 crores (corresponding to drawback payment of Rs. 55 lakhs out of a total drawback paid amounting to Rs. 98 lakhs). Against 21.8 per cent justified, a rate of 20 per cent was fixed. The brand rates were more than 20 per cent in 54 per cent of cases in 1980—81. Still the drawback payments went up from Rs. 22 lakhs 1979-80 to only Rs. 99 lakhs in 1981—82 (i.e. increase in export of only 12 per cent) after allowing for four fold increase in drawback rates.

1.102 Asked whether the Ministry considered conducting such systematic statistical checks on the extent to which exports were really encouraged by drawback rates, the Ministry have stated in a note :

“Payment of drawback, no doubt acts a stimulant to increase the exports but is not the only factor which affects the volume of exports of that particular item. Further the rate of drawback cannot be more than the average duty paid on the input material; and it is an obligation under the statute to refund the duty paid once the goods are exported. Therefore such a study is not considered necessary.”

1.103 The Committee further drew attention of the Ministry to an analysis made by the Audit showing the correlation between changes in drawback rates and export trends. The analysis had indicated that useful insights could be gathered towards fixing adequate Drawback Rates for products which can forge ahead in the highly competitive International market. When asked to indicate their comments on the study made by Audit, the Ministry replied :

“The analysis made by Audit showing correlation between changes in drawback rates and export trends indicates as under;

- (a) In some cases though the rates of drawback increased, the quantum of export decreased;
- (b) In some other cases drawback rates remained static exports decreased;
- (c) Drawback rates decreased exports decreased;
- (d) Drawback rates decreased exports increased;
- (e) Drawback rates remained static exports increased; and
- (f) Drawback rates increased exports increased.

The above analysis of Audit clearly indicates that an increase or decrease in drawback rates does not directly influence the trend of exports. As stated in our earlier reply, drawback rates no doubt made the export products competitive in the international market yet it is not the only factor which directly influences the trend of exports of a particular commodity.

Drawback is a statutory payment. It is based on the customs and Central excise duties borne by the input materials. Therefore whatever is paid by way of drawback cannot be either determined at a rate higher or lower than the one justified by duty incidence suffered by the input materials. Thus it cannot be used as an instrument for setting export trends. Analysis of duty clearly brings out that though in some cases the rates of drawback were enhanced yet the exports decreased and *vice versa*. In some other cases though the rates of drawback remained static yet the exports increased. This only

confirms what the Ministry had stated in its reply to the Advance Questionnaire that drawback rate is not the only factor which influences the exports."

1.104 Asked whether the analysis would not help in structuring the drawback schedule better in favour of products showing rising trends, the Ministry have stated :

"Every year an exercise is undertaken at the time of review of the 'All Industry Rate Schedule' consequent upon the presentation of the Central Budget, to find out whether under the general description of product group there are specific products which would qualify for a higher rate or lower rate. Such products are delinked from the General description and provided a separate sub-serial No. under that heading. Thus the structuring of the drawback Schedule is a continuous work in as much as that new export products are identified and provided a separate 'All-Industry' rate wherever necessary. The provision of the Customs Act also provide for the refund of import duty borne by the export products, irrespective of the competitiveness of the products."

1.105 The Committee asked whether the department considered profitability of the products in the export market while examining drawback payments. The Secretary, Department of Revenue stated during evidence :

"No. Drawback is not related to profit, It is related to the tax paid."

1.106 Asked whether it was a fact that certain people were drawing advantage from the drawback scheme, the witness replied :—

"nobody is taking an undue advantage of this. I cannot make any categorical statement about this. But I would make general statement that the all industry rate of drawback is fixed at a sufficiently low level which in certain cases (as you have seen in the instant case we have been discussing) is lower than the lowest level of taxes suffered in a brand case. So, therefore the possibility of any undue advantage being arrived at by anybody as a result of the drawback system seems to be minimum."

1.107 When asked to furnish the details of the top 20 beneficiaries of drawback scheme in the private sector in respect of each of the last three years, together with the details of the other export promotional facilities like cash assistance, import replenishment etc. availed of by them during a specific period, the Chairman, Central Board of Excise and Customs stated in evidence :—

"We will not be able to give for the top 20 individuals but commodity-wise we may be able to give. We do not maintain statistics that way...The total drawbacks can be given."

1.108 When asked if the Ministry of Commerce would not be able to supply the relevant data to the Ministry of Finance for furnishing the information sought by the Committee, the Chairman, Central Board of Excise and Customs stated before the Committee :—

“Yes, the Finance Ministry or the Commerce Ministry, in the Government of India, somebody probably will be maintaining the figures. We will check up.”

1.109 In a note submitted after evidence, the Ministry of Finance have furnished a list of the top 20 beneficiaries of the Duty Drawback Scheme in the private sector in respect of each of the last three years and the amount drawn by them respectively. The details are shown as Appendix I. While furnishing the information, the Ministry have added :—

“As explained during the oral evidence before the PAC in September, 1983, exporterwise information in respect of payment of drawback claims is not maintained by the Custom Houses. However, although it was a mammoth task, an exercise was undertaken by the Collectors of Customs to compile requisite data in respect of exporters with available records and the information has been given is duly indexed. In the case of Bombay and Delhi Custom Houses, which handle major share of the Country's export work, it has been possible to compile data of the last three months only in view of the stupendous volume of work involved as also the shortage of time.”

1.110 The grant of drawback of customs duty paid on material used in the manufacture of goods for exports is authorised under the provisions of Section 75 of the Customs Act, 1962 and similarly of excise duty under Section 37 of the Central Excise and Salt Act, 1944. Customs and Central Excise Duties Drawback Rules, 1971 have been framed in exercise of the powers conferred by these two sections. ‘Drawback’ as defined in these rules in relation to any goods manufactured in India and exported, means the rebate of duty chargeable on any imported materials or excisable materials used in the manufacture of such goods in India. The Drawback Rules provide for determination of All Industry rates for payment of drawback. The All Industry rates are determined by Government having regard to the average quantity or value of each class or description of duty paid materials from which a particular class of goods is ordinarily produced or manufactured in India. Such rates are intended to speed up payment of drawback immediately on export. If any exporter is not satisfied with the amount of Drawback that he gets under the All Industry rates, he may apply for fixation of a brand rate to exclusively cover exports of his goods. Brand rate will be allowed only if the amount or rate of drawback fixed on all Industry basis is less than three-fourths of the duties paid on the materials or components used in the production or manufacture of the goods exported by the applicant. The drawback payments have shown a significant increase over the years. The drawback payments made during the year 1981-82 amounted to Rs. 204 crores as against Rs. 120 crores in 1976-77.

1.111 Revenue audit has highlighted certain cases of over payments of drawback due to lack of rules for classification. The incorrect classification of consignments of beta-ionone exported during the period from October, 1978 to January, 1979, hydraulic pumps exported between May 1976 and April, 1977, brass nipples exported in June, 1980, brass bearings for railway wagons exported between January 1978 to April 1978, tungsten carbide tips and inserts and tungsten carbide tipped and auger drills exported between January, 1981 and April 1981 and castor oil B.P. exported in March 1981 resulted in excess payments of drawback amounting to Rs. 21,044, Rs. 47,401, Rs. 1.47 lakhs, Rs. 1.91 lakhs, Rs. 42,697 and Rs. 15,897 respectively. Audit has also found cases of irregular payments of drawbacks on poly-coated kraft paper and imported spare parts placed on board ships involving Rs. 15,386 and Rs. 1.43 lakhs respectively. A detailed examination of these cases by the Committee has revealed several shortcomings in the working of the Duty Drawback Scheme which are dealt with in the succeeding paragraphs.

1.112 Evidently the department had been applying ad hoc and contradictory principles of classification. In some cases, the Ministry have gone by the 'end-use' principle, while in some others, they have gone by the nature of component' principle. In some cases tariff description in respect of the Cash Compensatory Support Scheme and the Import Replenishment Licensing Scheme for classifying exported products has been applied to drawback payments. However, the Committee observe that beta-ionone which is regarded as a "drug intermediate" under the Import Replenishment Scheme has been classified as "organic chemicals" for the purpose of drawback attracting higher drawback rate. Further, bronze bearings for railway wagons has been classified as "metal alloys" for the purpose of drawback and not as "wagon components" in terms of cash assistance tariff description. According to the Ministry of Finance the "considerations are different" for the description of the item under Duty Drawback and the other schemes.

1.113 The Committee are surprised to find that data in respect of beta-ionone, hydraulic pumps and castor oil B. P. was not taken into consideration while determining the All Industry rates for these items. The Ministry of Finance have stated that in the case of beta-ionone and castor oil average rates were fixed purely on the basis of brand rate files. The Committee wonder how such an approach could be adopted as the brand rates are granted as exception to the All Industry rates and are bound to be on the higher side.

1.114 Yet another disquieting factor which largely contributes to misclassifications is the presence of various sub-serial items with descriptions as "not otherwise specified" and "not elsewhere specified". Presently, there are 59 main headings in the Drawback Schedule. Under many of these main headings, there are items such as 'not otherwise specified' and not elsewhere specified'. Such residuary descriptions are intended to cover under these descriptions products which are not specifically mentioned. The Committee find that because of such generalised and vague descriptions, there is a considerable ambiguity in classifying exported items as between the various headings in the Drawback Schedule.

1.115 The Committee cannot but conclude that the principles of classification for the purpose of payment of drawback suffers from a degree of conceptual ambiguity as distinct from problems of actual classification of items. There is a pronounced need for removing this ambiguity in the principles for classification in the context of the drawback schedule on a simple and practical basis. In the opinion of the Committee, every item in the drawback schedule should be precise and framed in relation to items of export in respect of which data have been collected for the purpose of computing the all industry rates for that item, such description as "not elsewhere/otherwise specified" must be rare exceptions and for a minimum of duty incidence. The Ministry of Finance should clearly spell out the principles of classification in the Rules themselves which principles should have nexus to the scheme of data collection and fixation of rates with a view to minimising the scope for ambiguity, adhocism and arbitrariness. This is essential not only to safeguard revenue against excess payments of drawbacks but also to provide rational and objective basis for drawback determination.

1.116 The Committee note that for proper classification of a product, collection of reliable representative data is most vital. The Committee, however, find that the present system of collection of data is not satisfactory. At present, data for determining such rates are based on *ad hoc* information furnished by exporters, Export Promotion Councils and scrutiny of the brand rate files. The Committee note that the Ministry have no guidelines on extent to which data for All Industry rate calculations must be representative. In the opinion of the Committee, the Ministry of Finance should aim at averaging of the data of at least 50 per cent of the exporters of a group of products. If a target of 50 per cent is aimed at, the rates are not likely to be distorted too much by brand rates, nor distorted by dominant exporters influencing the fixation of rates unduly.

1.117 The Committee are surprised to note that for collection of data for computing All Industry rates, presently, the Customs Houses are associated only when the data are required to be verified or any other relevant information is required by the Ministry. Equally surprising is the fact that, at present, the Ministry of Finance do not take into account the drawbacks paid in a year while calculating the All Industry rates for the subsequent year. The Committee feel that it is absolutely essential to associate the Customs Houses more effectively with the object of attaining maximum possible accuracy and representative character of the data. The Committee, therefore, recommend that the Ministry of Finance should obtain data for Customs Houses in respect of each item and from exporters covering at least 50 per cent of past year's exports after their drawback claims are paid.

1.118 The Committee further note that the Ministry have not taken any step so far to use computers for retrieval of information. In the view of the Committee, the Ministry of Finance should make increasing use of computers for storage, analysis and retrieval of the data collected from Customs Houses and exporters and in working out Drawback rates.

1.119 The Committee note that under the Drawback Scheme, excise duty payable or paid on the finished product is not to be reimbursed as drawback. Excise duty on the finished product is either not charged at all where the finished product is exported under bond (under Rule 13 of the Central Excise Rules) or it is refunded to exporter as a rebate (under Rule 12 of the Central Excise Rules) and not as drawback. The bond is cancelled when proof of export is furnished. Onart ciles made of polythene coated paper, drawback allowed at All Industry rate is based on the duty already realised on such coated paper going into the manufacture of the arte-unoes. Separate All Industry rate had not been provided for claiming drawback on export of coated paper per se. Provision existed only for claiming refecnd or rebate of the Central Excise duty paid on such coated paper, on export of articles made of such paper. The Committee find that a Custom House allowed claim for draweck on export of "poly coated Kraft paper". under the description "articles made of polythene coated paper" According to Audit, this resulted, effectively, in refund of excise duty payable on such paper but no Central excise duty on the exported item had been realised at all by the department at rates leviable on poly coated kraft paper, since the export was under bond. Further, according to Audit, there was provision in the schedule only for a specific rate for claiming drawback on coated paper per se, when exported. The irregular payment of drawback resulted in excess payment of drawback amounting to Rs. 15,386. The Ministry of Finance have admitted that the usage of the description "articles made of polythene coated paper" in the serial number under reference was a mistake. It was also conceded that the finished stage duty on polythene coated paper was not taken into consideration while fixing the rates for the item. The Committee desire that the Ministry should thoroughly look into all the aspects of the case and take appropriate measures in order to obrviate recurrence of such mistakes in future.

1.120 In this connection the Committee note that where a part of the duty is allowed as rebate under rule 12, only the same amount of duty is waived under bond under rule 13, in order to have both rules 12 and 13 on the same footing. An overlap was introduced when explanation 2 (ii) was introduced under rule 13 with effect from 2 May, 1970 which says that duty paid on excisable goods used in the manufacture of finished product need not also be paid if the finished goods are exported under bond. There is no such explanation under rule 12. The Ministry have stated that the explanation 2(ii) under rule 13 was perhaps needed when rule 12-A was in force. The Committee understand that presently no goods are notified under rule 12-A and the provision is redundant. Further, what is provided under explanation 2 (ii) is also provided for under rule 191-B. A provision also exists under rule 191-A for rebate of excise duty paid on excisable goods used in the manufacture of goods which are exported. Rules 191-A and 191-B provide for sufficient safeguards. The Committee feel that in the context of the need for simplification of rules, the Ministry should delete rule 12-A and explanation 2 (ii) below rule 13. This is necessary in order to maintain the clear cut distinction between drawback payable on duties paid on raw materials and components and rebate on duty paid on finished products which are exported

Otherwise, there is a risk of duty paid on raw material being claimed under drawback rules at All Industry rates and also as rebate under the rule 12-A or 191-A or got waived because of export under bond under the said explanation 2 (ii) or rule 191-B.

1.121 Under Section 74 of the Customs Act, 1962 drawback is payable only on export to any place outside India. Section 2 (18) of the Act defines the term "export" as taking out of India to a place outside India". The Committee find that a sum of Rs. 1.43 lakhs was paid as drawback on imported spare parts when placed on board two vessels owned by a public sector company controlled by a State Government. The vessels were engaged in transporting goods from one port in India to another. The said two vessels used to ply between Calcutta, Madras and Tuticorin and the voyage to Tuticorin either from Madras or Calcutta involved skirting around Sri Lanka. According to Audit, there was no export of the imported spare parts to any place outside India and accordingly the payment of drawback was not lawful. During evidence, the representative of the Ministry of Finance conceded, "Audit, strictly speaking, certainly has a point that our system is wrong". The Committee desire that the Ministry of Finance should examine the matter in depth and take necessary steps to set right the legal position in order to prevent such unintended payments of drawback due to any lacuna in the law.

1.122 During evidence, the Secretary, Department of Revenue stated that the purpose of the Drawback Scheme was to enable the Indian exporters to compete in the international market. Asked whether any study had been conducted to find out how far the Drawback Scheme had resulted in the achievement of the above objective, the Ministry have stated that no such study has so far been conducted. The Ministry have further stated that they do not see any purpose in undertaking any study to find out a correlation between the changes in drawback rates and the consequential changes in the quantum of exports. The Committee are surprised at this explanation. As the drawback scheme involves considerable sacrifice of revenue, the Committee feel that such a study should have been conducted by the Ministry of Finance, in coordination with the Ministry of Commerce. The Committee also find from a study made by the Office of the C & AG that useful insights could be gathered towards fixing appropriate drawback rates for enabling Indian products to forge ahead in the highly competitive international market. The Committee, therefore, recommend that the Government should conduct systematic periodical studies in order to assess the extent to which exports are actually encouraged by drawback rates and also what revisions may be effected in drawback rates to make the Scheme more effective and purposive. For this purpose, it is essential that Government compute the total amount of drawback of duty (both All Industry and brand rates) paid out every year as a percentage of the f.o.b. value of products exported under each category, which is not presently being done.

1.123 In this context, the Committee find that there are at present around 750 All Industry rates under the 59 Chapter headings. From the details furnished

by the Ministry of Finance at the instance of the Committee it is seen that 80 per cent of the drawback payments made during the last three years are accounted for by not more than about 100 sub-heads, out of the total of the 750 sub-heads. The Committee recommend that the Ministry of Finance should concentrate their attention primarily on these sub-headings and restructure their schedule eliminating vague and purposeless headings and descriptions.

1.124 There are at present a number of export promotion schemes in operation such as Cash Compensatory Support, Import Replenishment Scheme, Advance Licensing Scheme etc. The Committee recommend that without prejudice to the data based on scientific basis underlying the drawback scheme, Government should examine the feasibility of having complementarity in rates and amounts fixed under the various export promotion schemes so that export markets are captured on a long term basis by using the schemes to benefit exporter who have genuine plants to hold and serve such export markets on a long term basis.

NEW DELHI;

27 April, 1984
7 Vaisakha, 1906 (S)

SUNIL MAITRA,
Chairman,
Public Accounts Committee.

APPENDIX I

(Vide Para 1.109)

STATEMENT SHOWING LIST OF THE DETAILS OF THE TOP 20 BENEFICIARIES OF DUTY WBACK SCHEME

Bombay Custom House

1. Tata Engg. & Locomotive Co. Ltd	19888433.39
2. Dr. Beck & Co.	15282067.00
3. Hindustan Lever Ltd.	5860161.40
4. Metre Exporters Pvt. Ltd.	4691922.24
5. Simens India Ltd.	3347362.00
6. Hero Cycles Pvt. Ltd.	3257930.45
7. Sudarshan Chem. Industries Ltd.	2951378.66
8. Indian Dyestuff Industries Ltd.	2590646.11
9. Century Rayon Ltd.	2279419.31
10. Sriyans Knitwear	2032191.72
11. Kamani Engg. Corporation Ltd.	2012074.81
12. Oswal Woollen Mills Ltd.	1836227.55
13. Hoechst. Pharm Ltd.	1687817.59
14. Swadeshi Chem.	1475574.00
15. Asian Cables Corpn. Ltd.	1384114.65
16. Atlas Cycles Industries Ltd.	1315863.44
17. Reliance Textiles India Ltd.	1282257.29
18. Ceat Tyres of India Ltd.	1130258.98
19. Universal Cables Ltd.	1127621.10
20. Crompton Greaves Ltd.	1126857.30

Calcutta Custom House

Annexure—B Page—2

Names of top 20 beneficiaries in the private sector of duty drawback scheme in respect of each of the last three years and the amount drawn by them.

Ans :—

Sl. No.	Names of top 20 beneficiaries (In Private Sector)	Amount of drawback sanctioned		
		October 80 to September 81	October 81 to September 82	October 82 to September 83
		Rs.	Rs.	Rs.
1.	M/s. Union Carbide India Limited.	1486760.96	2639301.02	4858929.57
2.	M/s. Jay Engineering Works Limited.	1466684.57	2438527.75	1825013.05
3.	M/s. Bata India Limited.	3302568.27	1811228.69	1353836.02
4.	M/s. Fort Gloster Industries Ltd.	6633167.00	25363788.57	9968921.34
5.	M/s. Indian Cable Co. Limited.	2060125.00	14177450.25	16282815.38
6.	M/s. P.K. Corporation Limited.	2558037.86	2249191.56	1801695.75
7.	M/s. Times Product Limited.	365670.02	2355802.70	3337690.41
8.	M/s. Jenson & Nicholson	4472.46	646438.99	1282915.73
9.	East Asia Skin Corporation	2380381.75	795229.46	1040160.27
10.	M/s. Tata Engineering & Locomotive	882888.52	2832175.04	5989419.79

11.	M/s. Otto India	Nil	686940.00	1112580.00
12.	M/s. Jay Shree Insulators	105226.48	904415.33	1623470.69
13.	M/s. C.M. Raj Ghorla	86017.00	4050717.84	2061914.71
14.	M/s. Inder Chand Rajghoria	335.36	1017845.46	1516079.13
15.	M/s. Hindustan Lever Limited.	NIL	1172392.74	3475567.02
16.	M/s. Macniel & Magor (including its group)	513999.31	570357.06	1047743.91
17.	M/s. Brooke Bond India Ltd.	316973.65	995425.93	875164.07
18.	M/s. A Tosh	807233.33	446661.04	845411.92
19.	M/s. D.C. Ghosh	198674.00	299004.60	2205800.00
20.	J.V. Gokai	199228.02	884716.16	1410628.61
21.	M/s Nava Bharat	Nil	168011.83	1234452.27

C.C.P. (Calcutta)*Annexure—B Page—3***Names of 20 Top beneficiaries (year-wise)
1980**

Sl.	Name of beneficiaries	Amount of drawback paid
		<i>Rs.</i>
1.	Hindustan Motors Ltd.	10757592.00
2.	Raghubir Cycles (P) Ltd.	1055300.00
3.	Union Carbide of India Ltd.	1678390.00
4.	Laxmi Glass Works	242890.00
5.	Kanoria Chemicals & Industries Ltd.	91819.00
6.	Raftani International	832870.00
7.	Jay Eng. Works Ltd.	887670.00
8.	Texmaco Ltd.	314338.00
9.	Dunlop India Ltd.	138990.00
10.	Pioneer Protective Glass & Fibre Ltd.	610110.00
11.	Gayatri Trading Co.	67370.00
12.	Fylfet Engg. Ltd.	662620.00
13.	Arvinda Udyog	537700.00
14.	Pioneer Tube Well & Industries (P) Ltd.	161750.00
15.	Prakash Steel Products	232520.00
16.	Road Master Industries of India (P) Ltd.	80360.00
17.	Electric Manufacturing Co. Ltd.	93000.00
18.	Indus Services Ltd.	46400.00
19.	Hindustan National Glass & Industries Ltd.	209480.00
20.	Agrawalla Brothers	56810.00

C.C.P. (Calcutta)

Annexure—B Page—4

Names of 20 top beneficiaries (year-wise)
1981

Sl.	Names of beneficiaries	Amount of drawback paid
		Rs.
1.	Jay Eng. Works Ltd.	525070.00
2.	Hindustan National Glass & Industries Ltd.	179925.00
3.	Metro Exports (P) Ltd.	126845.00
4.	General Electric Co. of India Ltd.	155560.00
5.	Agrawalla Brothers	275145.00
6.	Pioneer Tube Well & Industries (P) Ltd.	1582255.00
7.	Pioneer Protective Glass & Fibres Ltd.	694014.00
8.	Nipha Exports	927391.00
9.	Atlas Industries	746210.00
10.	Rajesh Enterprises	167545.00
11.	Ragbhir Cycles (P) Ltd.	1220475.00
12.	Hindustan Motors Ltd.	11496165.00
13.	Dunlop India Ltd.	667045.00
14.	Arvind Udyog	1152500.00
15.	Fylfot Eng. Ltd.	1341935.00
16.	Union Carbide of India Ltd.	466845.00
17.	Shalimar Implex Ltd.	294270.00
18.	Johnston Pumps India Ltd.	613830.00
19.	Prakash Steel Products.	116220.00
20.	Gindal Pipes	67770.00

C. C. P. (Calcutta)*Annexure-8 Page—5***Names of 20 top beneficiaries (year-wise)
1982**

Sl.	Name of beneficiaries	Amount of drawback paid
1.	Ragbbir Cycles (P) Ltd.	Rs. 912080.00
2.	Shalimar Implex Ltd.	Rs. 414965.00
3.	National Insulated Cable Co. of India Ltd.	Rs. 434460.00
4.	Jaggit Industries Ltd.	Rs. 146645.00
5.	Dunlop India Ltd.	Rs. 400600.00
6.	Orissa Cement Ltd.	Rs. 853280.00
7.	Guest Keen William Ltd.	Rs. 298840.00
8.	Arvind Udyog	Rs. 803670.00
9.	Pieco Electronics & Electricals Ltd,	Rs. 120110.00
10.	Metro Exporters (P) Ltd.	Rs. 188540.00
11.	Demco Exports (P) Ltd.	Rs. 147330.00
12.	Grain Storing & Processing Industries	Rs. 243975.00
13.	Indus Services (P) Ltd.	Rs. 520745.00
14.	Pylfot Eng. Co. Ltd.	Rs. 970670.00
15.	Hindustan Motors Ltd.	Rs. 972565.00
15.	Tata Eng. & Locomotive Co. Ltd.	Rs. 2530685.00
17.	Premier Automobiles	Rs. 212895.00
18.	Johnston Pumps India Ltd.	Rs. 983670.00
19.	Rajesh Enterprises	Rs. 260630.00
20.	Texmaco Co. Ltd.	Rs. 789970.00

*Information in Respect of 20 Beneficiaries Who Got the Maximum
Amount of Drawback From January to March,
1983 (3 Months)*

S. No.	Name & Address of the exporters Messrs	Amount of Drawback paid
1.	Ramnath Exports (P) Ltd., New Delhi	9,57,075.00
2.	Mayor & Co., Jullundur	8,97,913.00
3.	K. C. Kapoor & Sons, Kanpur	8,56,712.00
4.	Tata Exports (P) Ltd., New Delhi	7,22,789.00
5.	Bremco Exports Agra	6,83,009.00
6.	Roger Exports, Agra	6,59,536.00
7.	Goodyear Shoe Factory, Agra	4,33,371.00
8.	Creative Handicrafts, New Delhi	4,32,003.20
9.	Balwant Bros., Jullundur	3,71,411.00
10.	Liberty Enterprises, Karnal	3,71,282.25
11.	Aero Shoe, New Delhi	3,71,023.00
12.	Hibs Exports, Agra	2,58,359.00
13.	Rai Bahadur Knitting Works, Ludhiana	2,52,048.55
14.	Franco Footwear Factory, Agra	2,43,572.00
15.	Tej Shoe Exports (P) Ltd., Agra	1,91,855.00
16.	Aero Shine, New Delhi.	1,85,670.00
17.	India Export House (P) Ltd., New Delhi	1,83,035.85
18.	Talpatra Enterprises, New Delhi	1,72,800.40
19.	Zeeko Shoe Factory Agra.	1,69,992.00

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Name of Top 20 Beneficiaries in the Private Sector of Duty Drawback Scheme and the amount Drawn by them for the year 1981.

1. Dunlop India Ltd., Madras.	1,27,96,708
2. Amco Batteries, Ltd., Bangalore	42,12,021
3. M. A. Khizar Hussain & Sons, Madras	33,43,815
4. Zenath International Madras	29,67,290
5. T. Abdul Wahid & Co., Madras	25,70,819
6. Addison & Co., Madras	17,91,023
7. Widia India Ltd., Bangalore	16,68,042
8. Farida Prime Tannery Madras	15,82,099
9. Ponds India Ltd., Madras	14,31,959
10. Sharda Industries, Madras	13,09,472
11. Lakshmi Machine Works Ltd., Coimbatore.	10,41,371
12. Wheels India Ltd., Madras	10,07,187
13. K. M. Mohamed Abdul Khader Fiem, Madras	9,28,238
14. Sun Sip Ltd., Bangalore	7,18,497
15. Sha Moolchand Kasturchand, Madras	7,05,043
16. K. H. Leather Industries Ltd. Madras	6,25,916
17. L. Abdul Shukkur & Co., Madras	6,14,511
18. Asia Tanning Co., Madras	4,91,259
19. A. Rafeeq Ahmed & Co., Madras.	3,01,027
20. Sout East Footwear Ltd. Madras.	2,91,547

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Name of Top 20 Beneficiaries in the Private Sector of Duty Drawback Scheme & the amount drawn by them for the year 1982.

1. Tata Engineering & Locomotive Ltd., Madras	1,71,62,062
2. Askok Leyland Ltd.,	87,86,810
3. Amco Batteries Ltd. Bangalore	60,87,871
4. T. Abdul Wahid & Co., Madras.	49 82,246
5. Florind Shoes Ltd., Madras	38,56,453
6. Addison & Co., Ltd., Madras	36,83,138
7. Farida Prime Tannery, Madras	30,61,784
8. M. A. Khizar Hussain & Sons, Madras	27,74,253
9. N.G.E.F.. Bangalore	24,70,743
10. Goyals Dressess Madras	22,62,449
11. C. Abdul Rahman & Co., Madras	21,14,383
12. Ponds India Ltd., Madras	18,60,453
13. South East Tanning Co., Madras	17,07,531
14. A. Rafeeq Ahmed & Co., Madras	15,73,956
15. Kejriwal Enterprises, New Delhi	14,26,964
16. K. M. Mohamed Abdul Khader Firm, Madras	11,84,957
17. K. H. Leather Industries Pvt. Ltd. Madras	11,28,764
18. United India Shoe Corp., Madras	10,76,102
19. A. Abdul Shukoor & Co., Madras	10,47,325
20. Maypar Leather Mfrs Co. Pvt. Ltd., Madras	10,09,065

CUSTOM HOUSE MADRAS

*Name of Top 20 Beneficiaries in the Private Sector of Duty Drawback Scheme
and the amount Drawn by them for the year 1983*

1. Addison & Co., Madras	85,47,383
2. Florind Shoe Ltd., Madras	70,01,082
3. M. A. Khizar Hussain & Sons, Madras	49,14,490
4. T. Abdul Wahid & Co., Madras	34,58,854
5. Ashok Leyland Ltd., Madras	27,88,375
6. South East Tanning Co., Madras	18,16,306
7. Amco Batteries Ltd., Bangalore	17,72,668
8. Elite Opticals, Madras	15,38,965
9. Addison Paints & Chemicals Ltd., Madras	15,09,143
10. Ponds India Ltd., Madras	14,84,427
11. United India Shoe Corp., Madras	14,35,953
12. Maypar Leather Mfrs. Co. Ltd., Madras	14,03,684
13. N. Mohamed Sayeed A. S. Nizar Ahmed, Madras	12,78,300
14. Romar Fashions, Madras	12,36,549
15. P. Khaleelur Rahman & Co., Madras	9,86,318
16. Goyals Dresses, Madras	9,19,687
17. Priya Exports, Madras	8,77,530
18. Masmeijer Aromatics India, Madras	8,57,512
19. Deccan Oevrseas Exports, Madras	7,37,623
20. Khizarai Leather, Madras.	7,27,527

COLLECTORATE OF CUSTOMS (PREVENTIVE), PATNA.

Name of the Top Beneficiaries of duty Drawback in respect of each of the last three years and amount drawn by them.

Year	Sl. No.	Name of the Beneficiaries	Amount drawn
1980	01.	M/s. Indo Industrial Complex C/o Exhibition Road, Patna.	1,10,073.93
	02.	M/s. Agrawal Hardware (P) Ltd., 3A, Shakespears Sarani, Calcutta.	1,12,817.85
1981	01.	M/s. Cemmco International ECE House, (3rd Floor), 28A, Kasturba Gandhi Marg, New Delhi.	23,94,577.00
	02.	M/s. Indo Industrial Complex, E/2, Industrial Area, Patna.	91,147.02
	03.	M/s. Exomet Ltd., 401, Kakod Chamber, 132, Dr. Annie Besant Road, Worli, Bombay.	16,86,188.59
	04.	M/s. Pulak Interprises, P/22, Shallow House, Calcutta, C/o Exhibition Road, Patna.	8,18,024.60
	05.	M/s. Perfect Engineering Export International (P) Ltd., Mehar House, 15, Cowasji Patel Street, Bombay.	98,144.80
1982	01.	M/s. Imkemex India Ltd., 34, Chowranghee Road, Calcutta.	4,87,519.90
	02.	M/s. Cemmco International ECE House, 23A, Kasturba Gandhi Marg, New Delhi.	1,22,102.20
	03.	M/s. Hindustan Wire Ltd., 3A, Shakespears Sarani, Calcutta.	2,88,514.62
	04.	M/s. Exomet Ltd., 401, Kakod Chamber, 132, Dr. Annie Besant Road, Worli, Bombay.	11,05,091.18
	05.	M/s. Steel Trading Corp., E/2, Industrial Area, Patna.	1,37,430.13

1983	01	M/s. Cemmco International ECE House, New Delhi	3,60,670.20
	02.	M/s. Hindustan Wire Ltd., 3, Shakespeass Sarani, Calcutta.	1,31,512.45
1983	03.	M/s. Aluminium Industries Ltd., P. O. Hiraakud, Sambalpur, Orissa.	5,35,708.00
	04.	M/s. Aluminium Industries Ltd., I, Ceramic Factory Road, Kundara, Kerala.	3,58,547.00
	05.	M/s. Exomet Ltd., 401, Kakad Cham- ber, 132, Dr. Annie Besant Road, Bombay.	1,44,349.40
	05.	M/s. Usha Martin Black Ltd., 46C, Chowranghec, Calcutta.	2,17,160.50
	07.	M/s. Bharat Electrical, 111/2-A, Haresh Nagar, Kanpur.	91,000.00
	08.	M/s. Jhonson Electric Co., Fateh Ganj, Chhandi Road, Baroda.	90,990.10

Collectoratr of Custom, Cochin

Names and total amount of Drawback paid to the 20 beneficiaries

	Rs.
1. LAKSHMI MACHINE WORKS	8,07,210.00
2. ADDISON AND CO. MADRAS	24,53,780.00
3. MADURA COATS LTD. AMBASAMUDRAM	3,59,254.00
4. T. T. (P) LTD., BANGALORE.	4,15,435.00
5. A MCO BATTERIES	9,22,819.00
6. KAMANI ENGINEERING CORPN, BOMBAY.	1,91,647.00
7. LUCAS T V S LTD., MADRAS	2,54,575.00
8. EIGI EQUIPMENTS	2,00,856.00
9. PONDS (INDIA) LTD., MADRAS	4,76,799.00
10. JAY ENGINEERING WORKS, HYDERABAD	1,86,431.00
11. FENNER INDIA LTD.	4,91,930.00
12. PREMIER TYRES, KALAMASSERY	5,38,905.00
13. CORBORANDUM UNIVERSAL	1,45,937.00
14. DUNLOP INDIA LTD.	2,43,823.00
15. BRAKES INDIA LTD., MADRAS	1,11,259.00
16. AUTOLEC INDUSTRIES CO.	1,38,155.00
17. MOTOR INDUSTRIES CO.	2,70,096.00
18. DARLCO CANNINGS, TRICHUR	3,18,821.00
19. VIJAYALAXMI CASHEW CO. QUILON	2,25,431.00
20. ABAD FISHERIES COCHIN-2.	1,10,465.00
1981-1982	
1. LAKSHMI MACHINE WORKS	6,10,546.00
2. ADDISON AND CO. MADRAS	7,73,992.00
3. AMCO BATTARIES	4,66,418.00
4. T. T. (P) LTD, BANGALORE	
5. ELGI EQUIPMENTS	5,85,959.00

6. NEEDLE INDUSTRIES	4,40891.00
7. UDAVI AUROSHIKA AGARBATHIES PONDICHERRY	1,29,467.00
8. MYSORE ELECTRO CHEMICAL WORKS LTD., BANGALORE.	10,89,825.00
9. BAFAKYH EXPORT HOUSE, CALICUT	2,12,806.00
10. PONDS (INDIA) LTD. MADRAS	7,13,0056.00
11. MOTOR INDUSTRIES CO.LTD	5,76,315.00
12. BRAKES INDIA LTD, MADRAS 1,44,380 (.)	
13. FENNER INDIA LTD 8,11,927 (.)	
14. DARCCO CANNINGS TRICHUR 2,28,431 (.)	
15. VIJAYALAKSHMI CASHEW CO. 2,43,843 (.)	
16. KARUNA TEXTILES, TIRUPUR 1,73,679 (.)	
17. CITY KNITTING CO. 2,15,539 (.)	
18. MADURA COATS, AMBASAMUDRAM 1, 72,003 (.)	
19. ABAD FISHERIES, COCHIN-2 1,35,015 (.)	
20. INDIAN ALUMINIUM CO. 1,06,098 (.)	

1982-1983

1. PONDS (INDIA) LTD, MADRAS 3,06,368 (.)	2. TRAVANCORE TITANIUM PRODUCTS LTD, TRIVANDRUM 1,38,833 (.)
3. SIVANADA STEELS 8,29,066 (.)	4. BAFAKYH EXPORT HOUSE, CALICUT 2,64,197 (.)
5. ULAVI AUROSHIKA AGARBATHIES, PONDICHERRY 1,95,800 (.)	6. NEEDLE INDUSTRIES 2,62,939 (.)
7. ELGI EQUIPMENTS 6,00,941 (.)	8. T. T. (P) LTD. BANGALORE 3,42,151 (.)
9. VIJAYALAKSHMI CASHEW CO. QUILON 2,15,15,435 (.)	10. CCROMANDAL GARMENTS 3,07,660 (.)
11. ZORO GARMENTS 1,28,450 (.)	12. CITY KNITTING CO., TIRUPUR 3,64,400 (.)
13. KARUNA TEXTILES, TIRUPUR 1,64,583 (.)	14. WHEELS INDIA LTD, MADRAS 2,17,676 (.)
15. BRAKES INDIA LTD, MADRAS 1,01,643 (.)	16. MOTOR INDUSTRIES CO. LTD. BANGALORE 1,67,111 (.)
17. ADDISON AND CO. 20,80,916 (.)	18. LAKSHMI MACHINE WORKS 7,70,512 (.)
19. ABAD FISHERIES COCHIN 1,35,484 (.)	20. POYILAKADA FISHERIES CHANDIROOR 1,20,637 (.)

Collector of Customs, Bangalore.

EXPORTER'S NAME	1980	1981	1982	1983 (Upto Sep. 83)
Co. Batteries Ltd., Bangalore	62,86,552.00	1,28,82,607.00	1,05,73,140.00	79,21,699.00
Sterling Foods, M' Lore	80,244.00	47,874.00	60,720.00	33,835.00
Karnataka food Packers, Mangalore	58,177.00	49,364.00	71,905.00	66,609.00
Mercedes India Ltd, Cochin	75,307.00	70,302.00	1,80,616.00	43,976.00
Samudra Fisheries Kalur	48,414.00	58,889.00	68,684.00	35,365.00
M.S.P. Exports, M' Lore.	1,14,422.00	49,493.00	66,462.00	18,513.00
Chande Exports (P) Ltd., Bangalore	18,060.00	23,034.00	30,229.00	12,138.00
Mysore Electro Chemicals (P) Ltd., Bangalore.	17,55,675.00	19,09,368.00	38,03,490.00	26,25,480.00
Wimco Ltd., Bombay	2,886.00	58,723.00	55,73,886.00	19,32,373.00
Mysore Electro Chemical Works Pvt. Ltd., Bangalore.	8,19,467.00	11,61,256.00	8,57,928.00	9,16,461.00
Themax Ltd., Poona	---	---	8,87,809.00	9,02,976.00
Mohan Meakin Ltd., Bangalore	---	---	14,42,953.00	81,086.00
Mysore Fruit products Pvt. Ltd., Bangalore	---	---	4,52,511.00	8,34,327.00
Ballarpur Industries Ltd.,	---	---	---	---
Benga, Karwar	55,874.00	89,539.05	89,500.00	22,500.00

APPENDIX II

Conclusions/Recommendations

Sl. No.	Para Number	Ministry Department concerned	Recommendations/conclusions
1	2	3	4
1.110	Ministry of Finance (Department Revenue)		<p>The grant of drawback of customs duty paid on material used in the manufacture of goods for exports is authorised under the provisions of Section 75 of the Customs Act, 1962 and similarly of excise duty under Section 37 of the Central Excise and Salt Act, 1944. Customs and Central Excise Duties Drawback Rules 1971 have been framed in exercise of the powers conferred by these two sections. 'Drawback' as defined in these rules in relation to any goods manufactured in India and exported, means the rebate of duty chargeable on any imported materials or exciseable materials used in the manufacture of such goods in India. The Drawback Rules provide for determination of All Industry rates for payment of drawback. The All Industry rates are determined by Government having regard to the average quantity or value of each class or description of duty paid materials from which a particular class of goods is ordinarily produced or manufactured in India. Such rates are intended to speed up payment of drawback immediately on export. If any exporter is not satisfied with the amount of drawback that he gets under the All Industry rates, he may apply for fixation of a brand rate to exclusively cover exports of his goods. Brand rate will be allowed only if the amount or rate of drawback fixed on all Industry basis is less than three-fourths of the duties paid on the materials or components used in the production or manufacture of the goods exported by the applicant. The drawback payments have shown a significant increase over the years. The drawback payments made during the year 1981-82 amounted to Rs. 204 crores as against Rs. 120 crores in 1976-77.</p>

1	2	3	4
2	1.111	—do—	<p>Revenue Audit has highlighted certain cases of over-payments of drawback due to lack of rules for classification. The incorrect classification of consignments of beta-ionone exported during the period from October, 1978 to January 1979, hydraulic pumps exported between May, 1976 and April, 1977 brass nipples exported in June, 1980 brass bearings for railway wagons exported between January 1978 to April 1978, tungsten carbide tips and inserts and tungsten carbide tipped and augur drills exported between January, 1981 and April 1981 and castor oil B. B. exported in March 1981 resulted in excess payments of drawback amounting to Rs. 21,044, Rs. 47,401, Rs. 1.47 lakhs, Rs. 1.91 lakhs, Rs. 42,697 and Rs 10,897 respectively. Audit has also found cases of irregular payments of drawbacks on poly-coated kraft paper and imported spare parts placed on board ships involving Rs. 15,386 and Rs. 1.43 lakhs respectively. A detailed examination of these cases by the Committee has revealed several shortcomings in working of the Duty Drawback Scheme which are dealt with in the succeeding paragraphs.</p>
3	1.112	—do—	<p>Evidently the department had been applying <i>ad hoc</i> and contradictory principles of classification. In some cases the Ministry, have gone by the 'and-use' principle, while in some others, they have gone by the 'nature of component' principle. In some case tariff description in respect of the Cash Compensatory Support Scheme and the Import Replenishment Licensing Scheme for classifying exported products has been applied to drawback payments. However, the Committee observe that beta-ionone which is regarded as a "drug intermediate" under the Import Replenishment Scheme has been classified as "organic chemicals" for the purpose of drawback attracting higher drawback rate. Further, bronze bearings for railway wagons has been classified as "metal alloys" for the purpose of drawback and not as "wagon components" in terms of cash assistance tariff description. According to the Ministry of Finance the "considerations are different" for the description of the item under Duty Drawback and the other schemes.</p>
4	1.113	—do—	<p>The Committee are surprised to find that data in respect of beta-ionone, hydraulic pumps and castor oil B. P. was not taken into consideration while determining the All</p>

- | 1 | 2 | 3 | 4 |
|----|-------|------|--|
| | | | <p>Industry rates for these items. The Ministry of Finance have stated that in the case of beta-ionone and castor oil average rates were fixed purely on the basis of brand rate files. The Committee wonder how such an approach could be adopted as the brand rates are granted as exception to the All Industry rates and are bound to be on the higher side</p> |
| 5 | 1.114 | —do— | <p>Yet another disquieting factor which largely contributes to misclassifications is the presence of various sub-serial items with descriptions as “not otherwise specified” and “not elsewhere specified”. Presently, there are 59 main headings in the Drawback Schedule. Under many of these main headings, there are items such as ‘not otherwise specified’ and ‘not elsewhere specified’. Such residuary descriptions are intended to cover under these descriptions products which are not specifically mentioned. The Committee find that because of such generalised and vague descriptions, there is a considerable ambiguity in classifying exported items as between the various headings in the Drawback Schedule.</p> |
| 6 | 1.115 | —do— | <p>The Committee cannot but conclude that the principles of classification for the purpose of payment of drawback suffers from a degree of conceptual ambiguity as distinct from problems of actual classification of items. There is a pronounced need for removing this ambiguity in the principles for classification in the context of the drawback schedule on a simple and practical basis. In the opinion of the Committee, every item in the drawback schedule should be precise and framed in relation to items of export in respect of which data have been collected for the purpose of computing the all industry rates for that item, such description as “not elsewhere/otherwise specified” must be rare exceptions and for a minimum of duty incidence. The Ministry of Finance should clearly spell out the principles of classification in the Rules themselves which principles should have nexus to the scheme of data collection and fixation of rates with a view to minimising the scope for ambiguity ad hocism and arbitrariness. This is essential not only to safeguard revenue against excess payments of drawbacks but also to provide rational and objective basis for drawback determination.</p> |
| 7. | 1.116 | —do— | <p>The Committee note that for proper classification of a product, collection of reliable representative data is most</p> |

vital. The Committee, however, find that the present system of collection of data is not satisfactory. At present, data for determining such rates are based on *ad hoc* information furnished by exporters, Export Promotion Councils and scrutiny of the brand rate files. The Committee note that the Ministry have no guidelines on the extent to which data for All Industry rate calculations must be representative. In the opinion of the Committee, the Ministry of Finance should aim at averaging of the data of at least 50 per cent of the exporters of a group of products. If a target of 50 per cent is aimed at, the rates are not likely to be distorted too much by brand rates, nor distorted by dominant exporters influencing the fixation of rates unduly.

8. 1.117 —do— The Committee are surprised to note that for collection of data for computing All Industry rates, presently, the Customs Houses are associated only when the data are required to be verified or any other relevant information is required by the Ministry. Equally surprising is the fact that, at present, the Ministry of Finance do not take into account the drawbacks paid in a year while calculating the All Industry rates for the subsequent year. The Committee feel that it is absolutely essential to associate the Customs Houses more effectively with the object of attaining maximum possible accuracy and representative character of the data. The Committee, therefore, recommend that the Ministry of Finance should obtain data for Customs Houses in respect of each item and from exporters covering at least 50 per cent of past year's exports after their drawback claims are paid.
9. 1.118 —do— The Committee further note that the Ministry have not taken any step so far to use computers for retrieval of information. In the view of the Committee, the Ministry of Finance should make increasing use of computers for storage, analysis and retrieval of the data collected from Customs Houses and exporters and in working out Drawback rates.
10. 1.119 —do— The Committee note that under the Drawback Scheme, excise duty payable or paid on the finished product is not to be reimbursed as drawback. Excise duty on the finished product is either not charged at all where the finished product is exported under bond (under Rule 13 of the

Central Excise Rules) or it is refunded to exporter as a rebate (under Rule 12 of the Central Excise Rules) and not as drawback. The bond is cancelled when proof of export is furnished. On articles made of polythene coated paper, drawback allowed at All Industry rate is based on the duty already realised on such coated paper going into the manufacture of the articles. Separate All Industry rate had not been provided for claiming drawback on export of coated paper per se. Provision existed only for claiming refund or rebate of the Central Excise duty paid on such coated paper, on export of articles made of such paper. The Committee find that a Custom House allowed claim for drawback on export of "poly coated kraft paper" under the description "articles made of polythene coated paper." According to Audit, this resulted, effectively, in refund of excise duty payable on such paper but no Central excise duty on the exported item had been realised at all by the department at rates leviable on poly coated kraft paper, since the export was under bond. Further, according to Audit, there was provision in the schedule only for a specific rate for claiming drawback on coated paper per se, when exported. The irregular payment of drawback resulted in excess payment of drawback amounting to Rs. 15,386. The Ministry of Finance have admitted that the usage of the description "articles made of polythene coated paper" in the serial number under reference was a mistake. It was also conceded that the finished stage duty on polythene coated paper was not taken into consideration while fixing the rates for the item. The Committee desire that the Ministry should thoroughly look into all the aspects of the case and take appropriate measures in order to obviate recurrence of such mistakes in future.

11. 1.120 —do— In this connection the Committee note that where a part of the duty is allowed as rebate under rule 12, only the same amount of duty is waived under bond under rule 13, in order to have both rules 12 and 13 on the same footing. An overlap was introduced when explanation 2 (ii) was introduced under rule 13 with effect from 2 May 1970 which says that duty paid on excisable goods used in the manufacture of finished product need not also be paid if the finished goods are exported under bond. There is no

such explanation under rule 12. The Ministry have stated that the explanation 2 (ii) under rule 13 was perhaps needed when rule 12-A was in force. The Committee understand that presently no goods are notified under rule 12-A and the provision is redundant. Further, what is provided under explanation 2 (ii) is also provided for under rule 191-B. A provision also exists under rule 191-A for rebate of excise duty paid on excisable goods used in the manufacture of goods which are exported. Rules 191-A and 191-B provide for sufficient safeguards. The Committee feel that in the context of the need for simplification of rules, the Ministry should delete rule 12-A and explanation 2 (ii) below rule 13. This is necessary in order to maintain the clear cut distinction between drawback payable on duties paid on raw materials and components and rebate on duty paid on finished products which are exported. Otherwise, there is a risk of duty paid on raw material being claimed under drawback rules at All Industry rates and also as rebate under rule 12-A or 191-A or got waived because of export under bond under the said explanation 2 (ii) or rule 191-B.

- 12 1.121 do Under Section 74 of the Customs Act, 1962 drawback is payable only on export to any place outside India. Section 2 (18) of the Act defines the term "export" as "taking out of India to a place outside India". The Committee find that a sum of Rs. 1.43 lakhs was paid as drawback on imported spare parts when placed on board two vessels owned by a public sector company controlled by a State Government. The vessels were engaged in transporting goods from one port in India to another. The said two vessels used to ply between Calcutta, Madras and Tuticorin and the voyage to Tuticorin either from Madras or Calcutta involved skirting around Sri Lanka. According to Audit, there was no export of the imported spare parts to any place outside India and accordingly the payment of drawback was not lawful. During evidence, the representative of the Ministry of Finance conceded, "Audit, strictly speaking, certainly has a point that our system is wrong". The Committee desire that the Ministry of Finance should examine the matter in depth and take necessary steps to set right the legal position in order to prevent such unintended payments of drawback due to any lacuna in the law.

13. 1.122 —do— During evidence, the Secretary, Department of Revenue stated that the purpose of the Drawback Scheme was to enable the Indian exporters to compete in the international market. Asked whether any study had been conducted to find out how far the drawback Scheme had resulted in the achievement of the above objective, the Ministry have stated that no such study has so far been conducted. The Ministry have further stated that they do not see any purpose in undertaking any study to find out a correlation between the changes in drawback rates and the consequential changes in the quantum of exports. The Committee are surprised at this explanation. As the drawback scheme involves considerable sacrifice of revenue, the Committee feel that such a study should have been conducted by the Ministry of Finance, in coordination with the Ministry of Commerce. The Committee also find from a study made by the Office of the C & AG that useful insights could be gathered towards fixing appropriate drawback rates for enabling Indian products to forge ahead in the highly competitive international market. The Committee, therefore, recommend that the Government should conduct systematic periodical studies in order to assess the extent to which exports are actually encouraged by drawback rates and also what revisions may be effected in drawback rates to make the Scheme more effective and purposive. For this purpose, it is essential that Government compute the total amount of drawback of duty (both All Industry and brand rates) paid out every year as a percentage of the f.o.b. value of products exported under each category, which is not presently being done.
14. 1.123 —do— In this context, the Committee find that there are at present around 750 All Industry rates under the 59 Chapter headings. From the details furnished by the Ministry of Finance at the instance of the Committee it is seen that 80 per cent of the drawback payments made during the last three years are accounted for by not more than about 100 sub-heads, out of the total of the 750 sub-heads. The Committee recommend that the Ministry of Finance should concentrate their attention primarily on these sub-headings and restructure their schedule eliminating vague and purposeless headings and descriptions.

1	2	3	4
15.	1.124	—do—	<p>There are at present a number of export promotion schemes in operation such as Cash Compensatory Support, Import Replenishment Scheme, Advance Licensing Scheme etc. The Committee recommend that without prejudice to the data based on scientific basis underlying the drawback scheme, Government should examine the feasibility of having complementality in rates and amounts fixed under the various export promotion schemes so that export markets are captured on a long term basis by using the schemes to benefit exporters who have genuine plans to hold and serve such export markets on a long term basis.</p>
