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**UNION EXCISE DUTIES—  
PROVISIONAL ASSESSMENTS**

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

**PUBLIC ACCOUNTS  
COMMITTEE  
1996-97**

**ELEVENTH LOK SABHA**

# FOURTEENTH REPORT

## PUBLIC ACCOUNTS COMMITTEE (1996-97)

(ELEVENTH LOK SABHA)

UNION EXCISE DUTIES—PROVISIONAL ASSESSMENTS

MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)



Presented to Lok Sabha on: 30.4.1997  
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## CONTENTS

	PAGES
COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE (1996-97).....	(iii)
INTRODUCTION.....	(v)
REPORT .....	1

### APPENDICES

I. Audit Paragraph 1.03 sub-para 4 (i to iv) and sub-para 8 (i to v) of the Report of C&AG of India for the year ended 31 March, 1995, No. 4 of 1996, Union Government (Revenue Receipts-Indirect Taxes).....	32
II. Statement of observations and recommendations	42

### PART II\*

Minutes of the Sitzings of Public Accounts Committee  
(1996-97) held on 16.1.1997 (FN) and 19.4.1997

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\* Not printed (one cyclostyled copy laid on the Table of the House and five copies placed in Parliament Library).

COMPOSITION OF THE PUBLIC ACCOUNTS COMMITTEE  
(1996-97)

Dr. Murli Manohar Joshi—*Chairman*

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6. Shri B.S. Dahiya — *Asstt. Director*

## INTRODUCTION

I, the Chairman, Public Accounts Committee having been authorised by the Committee, do present on their behalf, this Fourteenth Report on Paragraph 1.03 sub-para 4 (i to iv) and sub-para 8 (i to iv) of the report of the Comptroller & Auditor General of India for the year ended 31 March, 1995, No. 4 of 1996, Union Government (Revenue Receipts—Indirect Taxes) relating to “Union Excise Duties—Provisional Assessments”.

2. The Report of the C&AG for the year ended 31 March, 1995 (No. 4 of 1996), Union Government (Revenue Receipts—Indirect Taxes) was laid on the Table of the House on 8 March, 1996.

3. The Audit Paragraph was examined by Public Accounts Committee at their sitting held on 16 January, 1997. The Committee considered and finalised this Report at their sitting held on 19 April, 1997. Minutes of the sitting form Part-II\* of the Report.

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

5. 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 furnishing information and tendering evidence before the Committee.

6. 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.

NEW DELHI;  
21 April, 1997

*1 Vaisakha, 1919 (Saka)*

DR. MURLI MANOHAR JOSHI,  
*Chairman,*  
*Public Accounts Committee.*

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## REPORT

### I. Introductory

Under the provisions of rule 9 of the Central Excise Rules, 1944, excisable goods can be removed from the place of manufacture only after payment of appropriate amount of duty. Under Rule 9B the goods can be assessed to duty provisionally, where an assessee is unable to produce any document or furnish any information necessary for the assessment of duty of any excisable goods, or the excisable goods are required to be subjected to chemical or any other tests for the purpose of assessment of duty thereon, or when the proper officer deems it necessary to make further enquiry, for assessment of duty.

2. The goods can be assessed provisionally at such rate or such value as may be fixed by the proper officer and the rate need not be the rate or price declared by the assessee. In cases of provisional assessments, the assessee has to execute a bond with the proper officer. The bond has the effect of binding the assessee for payment of the difference between the amount of duty as provisionally assessed and as may be finally assessed. Provisional assessment is effective only from the date when the bonds are executed.

3. No time limit has been prescribed under the statute for finalisation of cases of provisional assessments. However, consequent upon the observations of the Public Accounts Committee pointing out the inordinate delay in finalisation and the high level of pendency, Government on 14 March 1976 through executive instructions provided that provisional assessments should be finalised normally within a period of three months and in any case not later than six months. In fact, Government have been issuing executive instructions atleast since 1964 impressing upon the need for timely finalisation of provisional assessments.

4. This Report is based on paragraph 1.03 of the Report of C&AG of India for the year ended 31 March 1995, No. 4 of 1996, Union Government (Revenue Receipts—Indirect Taxes) relating to Provisional Assessments which is reproduced as Appendix-I. The Audit paragraph sought a review of cases of provisional assessment in the Commissionerates of Central Excise for the period 1992-93 to 1994-95 conducted in 1994-95 with a view to ascertaining the adequacy of system and procedure obtaining in the Commissionerates for assessment of cases provisionally and for final assessment of provisional assessment cases. The Committee examined the Audit review particularly with reference to sub-paragraph 4 and 8 which dealt with the pace of finalisation of provisional assessments and monitoring.

## II. Pace of Finalisation

### (a) Findings of Audit

5. The following Table indicates the pace of finalisation of cases of provisional assessments as reported in the Audit paragraph under examination:

Table I

	(Rs. in crores)					
	1992-93		1993-94		1994-95	
	No.	Amount	No.	Amount	No.	Amount
Opening balance as on 1st April	7720	2001.68	9682	2519.17	12406	3084.88
Additions	3678	699.25	4256	840.16	4688	1196.11
No. of cases finalised	1733	134.33	1542	246.44	2710	223.82
No. of cases pending as on 31 March	9665	2566.60	12396	3112.89	14384	4057.17

Note: (i) The number of cases relates to 30 out of the 36 Commissionerates and the amount, covers 25 out of the 36 Commissionerates.

(ii) The closing balance of the number of cases of provisional assessments and the amounts in a financial year as reported in the Audit Report did not tally with the corresponding opening balance of the succeeding financial year.

6. The extent of pendency in the finalisation of provisional assessments as pointed out by Audit is shown in the following Table (II):

Table II

Period of Pendency	No. of cases	Amount involved (Rs. in crores)	Percentage	
			cases	Amount
Upto 6 months	2428	526.11	16.88	12.97
6 months to 1 year	2501	346.77	17.39	8.55
1 year to 2 years	2619	842.59	18.21	20.77
2 years to 3 years	1863	1111.50	12.95	27.39
More than 3 years	4973	1230.19	34.57	30.32

7. The Committee note from the Audit paragraph that during the years 1992-93 to 1994-95, the number of cases of provisional assessments of central excise duty had increased in 30 Commissionerates from 7720 to

14384 of which 35 per cent were pending for three years and more. The amount of differential duty involved in the cases in respect of 25 Commissionerates also went up from Rs. 2001.68 crores to Rs. 4057.17 crores during the above period. The percentage of cases settled with reference to the number of cases added was 47, 36 & 58 during the years 1992-93, 1993-94 and 1994-95 respectively. The Committee are deeply concerned about the extent of pendency and are constrained to observe that the Ministry of Finance (Department of Revenue) have failed in ensuring scrupulous implementation of their instructions to the field formations for finalisation of provisional assessment cases within the period stipulated by them.

8. The various aspects arising out of the Committee's examination of the delay in finalisation of cases of provisional assessments and the effectiveness of monitoring mechanism are dealt with in the succeeding paragraphs.

(b) *Discrepancies in figures*

9. It has been pointed out by the Audit that Monthly Technical Reports (MTR) prepared by the Directorate of Inspection (CBEC) for submission to the Central Board of Excise and Customs (CBEC) showed the pendency of provisional assessments as on 31 March 1993, 1994 and 1995 as 2114, 3310 and 15568 cases respectively in respect of all the 36 Commissionerates as against the figures of 9665, 12396 and 14384 reported in respect of 30 Commissionerates by the Directorate of Audit (CBEC). There were variations in the position of outstanding cases as reported by the Commissionerates to the Directorate of Audit and as reported to C&AG in respect of 15 Commissionerates. Thus, the Audit pointed out that there were no reliable figures available.

10. Audit also pointed out that there were variations in the number of cases reported as pending in the Commissionerates and the number as per records of the Ranges/Divisions. According to Audit, no system existed to reconcile the differences or to check the genuineness of the figures reported to the Ministry through the Directorate of Inspection. Discrepancies were particularly pointed out in respect of the Commissionerates of Aurangabad (No. 1 Division), Bhubaneswar, Bombay-I (A-Division), Bombay-II (No. X Division), Chandigarh (Punjab), Chandigarh (Himachal Pradesh), Guntur, Hyderabad, Indore, Jaipur, Pune (No. 5 Division) Rajkot, Vishakhapatnam etc.

11. Against this background, the Committee during examination desired to know the precise position of finalisation of provisional assessment cases Commissionerate-wise during each of the years 1992-93 to 1995-96. The Ministry of Finance (Department of Revenue) initially furnished the requisite data in respect of 29 out of 36 Commissionerates. Data in respect of six other Commissionerates namely, Belgaum, Bolpur, Calcutta-II, Cochin, Guntur and Bhubaneswar was subsequently furnished on 13 January 1997. They also made changes in the information in respect of

another six Commissionerates on 13 January 1997. However, on 15 January 1997 certain further corrections to the replies were intimated. Information in respect of Shillong Commissionerate was submitted to the Committee on 22 January 1997, i.e. after the evidence on the subject was recorded.

12. The data furnished by the Ministry Commissionerate-wise, accordingly, after consolidation revealed the pendency position as follows (Table III):

**Table III**

(Rupees in crores)

Period	Number	Amount
1993-94	3178	1766.54
1994-95	3439	2055.43
1995-96	2601	2109.11

13. Explaining the reasons for the manner of submission of the information to the Committee, the Ministry of Finance (Department of Revenue) in a note furnished to the Committee on 22 January, 1997 stated as follows:

“The Ministry was required to submit a time bound reply to the PAC questionnaire sent by Lok Sabha Secretariat under the O.M. F.No. 8/ 1/96/PAC dated 11.10.1996. For the purpose, a questionnaire of voluminous data was done within the scheduled time limit.

However, to make sure that the information furnished to the PAC, sent under the Ministry's O.M. dated 14.11.1996 and 13.1.1997 was correct, office made a review of the same on their own. While reviewing the replies to PAC questionnaire certain typographical errors were noticed. Accordingly, a corrigenda was issued under the Ministry's O.M. on 14.1.1997 thereby correcting the figures so that the correct position was made known to the Committee.....

Errors and the typing mistakes and the late submission of the corrigendum is very much regretted. In future every care shall be taken to ensure that such errors are not repeated.”

14. During evidence the Committee drew attention of the representatives of the Ministry of Finance (Department of Revenue) to the wide discrepancies in the figures of pending cases of provisional assessments as reported by the Ministry of Finance to the Committee *vis-a-vis* Director of Audit (CBEC) and Director of Inspection (CBEC) in respect of the years 1992-93 to 1994-1995. Illustrating the extent of discrepancies further, Committee pointed out that the number of cases of provisional assessments

pending as on 31 March, 1995 as reported by four different authorities was as follows (Table IV):

**Table IV**

Name of agency/authority	Name of cases of provisional assessment pending as on 31.3.1995
Directorate of Audit, CBEC	14384
Directorate of Inspection, CBEC	15568
Ministry of Finance (Department of Revenue)	2837*
Directorate of Statistics & Revenue Intelligence	21997

\*As furnished to the Committee till 12.1.1997.

The Committee also invited attention to the fact that the overall pendency reported by the Ministry of Finance to the Committee as on 31 December 1996 did not tally with the details of the outstanding cases furnished both age-wise and category-wise.

15. Commenting on the discrepancies, the Secretary, Ministry of Finance (Department of Revenue) stated in evidence:

".....regrettably, the anomaly of the tragedy is compounded by the fact that the source of information happens to be the same. It is the same source of information which different agencies are collecting from, i.e. the Range reports, which are being filed on a monthly basis. One set of figures are coming directly from the Range to the Commissionerates. The Director of Audit has obtained another set of figures. So, there has already been a slippage and there has been an inconsistency in the same set of figures being supplied differently from the Range to the Director of Audit. I concede that there has been a serious slippage or inconsistency in the figures."

16. While terming the discrepancy as a "serious slippage" the Chairman, CBEC sought the permission of the Committee to furnish a complete reconciled data.

17. The Committee desired to know the reasons for the discrepant reporting of figures of provisional assessment cases. In a note furnished after evidence, the Ministry of Finance (Department of Revenue) *inter-alia* stated:

"It is a fact that the offices under the Central Board of Excise & Customs have reported discrepant figures to different agencies relating to provisional assessment such as Director (Audit), C&AG and the P.A.C. But there was no *mala-fide* intention to suppress the figures of provisional assessment. The different figures were reported due to misconception on the concept of provisional assessment. Further the various reports relating to provisional assessment cases were compiled by different officers at different point of time.

However, in order to know the factual position, the Board had asked the Chief Commissioner of Central Excise to make detailed enquiries for the reasons of different reporting of the provisional assessment cases and fixation of responsibility on the concerned officers.

Some of the major reasons which have resulted in mis-reporting of provisional assessment cases are listed as under:

- (i) No proper provisional assessment Registers was being maintained at Range/Division level;
- (ii) Some of the offices listed the provisional assessment cases as per the RT-12 returns, whereas some of the offices maintained the figures as per case-wise/issue-wise/assessment-wise. In some of the cases though no provisional assessment order was issued in terms of Rule 9B of Central Excise Rules, 1944 but were included in the pendencies of provisional assessment cases;
- (iii) In some cases, there has been some typographical mistakes at the different levels i.e. Range level, Division level or at the Headquarter of the Commissionerate;
- (iv) Some of the officers were not fully aware of the instructions relating to the cases to be transferred to Call Book. Some of the Commissionerates included Call Book cases as live cases and some of them did not include Call Book cases;
- (v) Some of the Commissionerates have been reorganised. New Division have been created in some of the Commissionerates and distribution of ranges causes confusion in reporting figures which has led to reporting of duplicate figures in respect of some of the offices."

18. When asked about the action taken against the officers responsible for wrong reporting of figures of pendencies of provisional assessment cases, the Ministry in their note furnished after evidence further stated:

"As regards fixation of responsibility on the delinquent officers, the Chief Commissioner/Commissioner have been ordered for detailed enquiry in this regard. They have reported that such officers are being identified for the lapse in initiation of action. In the mean time, wherever it has come to light that the officers were responsible for discrepant reporting of the cases, explanation has been called for from the respective officers, after hearing from them, suitable action would be taken against them."

19. The Committee are surprised to note that the position of pendency of cases of provisional assessments revealed by the Directorate of Audit, Directorate of Inspection, both functioning under the Central Board of Excise and Customs was entirely different. Surprisingly, these figures were at gross variance with those furnished by the Ministry of Finance to the Committee which in turn, differed altogether from the data exhibited by the Directorate of Statistics and Revenue Intelligence in their publication "Central Excise Formations at a Glance 1994-95". The anomaly of this

tragedy in the candid opinion of the Secretary, Ministry of Finance (Department of Revenue) was compounded by the fact that the source of information happened to be the same. The Committee cannot but express their serious concern over this poor spectacle of affairs in the prime revenue earning Department of the country.

20. While admitting the discrepancies in the figures of provisional assessments as a "serious slippage", the Ministry of Finance attributed the same to non-maintenance of proper registers at Range/Division levels, different ways of reporting of the pendency by the officers, lack of awareness on the part of the officers about the Board's instructions, clerical errors etc. In the opinion of the Committee, these reasons themselves tantamount to a self-admission of dereliction of duty by all concerned. This is also indicative of the scant attention paid by the authorities concerned at all levels including the Board/Ministry in the compilation and publication of such vital data having important bearing in the collection of Central Excise Revenue. The Committee deplore the same and desire that responsibility of the officers including those in the Board/Ministry should be fixed for the gross negligence and dereliction of duty.

21. The Committee further recommend that the whole system of reporting, compilation and publication of data relating to finalisation of cases of provisional assessments should be comprehensively reviewed with a view not only for ensuring reliability of the information and uniformity in reporting but also for proper accounting and collection of the Central Excise Revenue. The review may be completed in a time bound programme, say one year and the Committee be apprised of the outcome.

(c) *Analysis of pendency*

(i) Reconciled figures

22. Subsequent to evidence the Ministry of Finance (Department of Revenue) furnished information in respect of the various Commissionerates in respect of the position of provisional assessment cases pending which after consolidation indicated as follows (Table V):

Table V

(Amount Rs. in crores)

Period	Other than the call book		*Call book		Total No.	
	No.	Amount	No.	Amount	No.	Amount
31.3.1995	3102	1522.81	469	830.46	3571	2353.27
31.3.1996	2464	1484.39	476	916.05	2940	2400.44
31.12.1996	1707	1116.69	450	962.86	2157	2079.55

\*See page 17 para 39

23. At the instance of the Committee, the Ministry of Finance (Department of Revenue) furnished the following details of pendency of provisional assessment cases assessec-wise, case-wise, RT-12-wise and issue-wise (Table VI):

Table VI

Sl. No	Pendencies as on											
	31.3.1995				31.3.1996				31.12.1996			
	Other Call No.	than Book Amount	Call No.	Book Amount	Other Call No.	than Book Amount	Call No.	Book Amount	Other Call No.	than Book Amount	Call No.	Book Amount
(i) Assessec-wise	2514	152490.91	397	83074.57	2149	147443.46	427	91633.41	1549	113067.60	408	97313.22
(ii) Case-wise	3002	152490.91	469	8366.01	2464	147443.46	476	91604.85	1697	113067.60	450	97268.22
(iii) RT-12-wise	75391	152490.91	22419	83074.57	684.92	147467.46	21970	91633.41	49975	113067.70	24853	97313.22
(iv) Issue-wise												
(a) Classification dispute	940	30058.12	138	64276.20	668	30754.20	163	76760.33	331	22511.12	159	79661.10
(b) valuation dispute	1892	103806.48	295	17333.08	1652	96762.32	271	13181.16	1305	78595.61	257	16634.74
(c) Others	184	12566.31	32	1465.39	133	12253.64	34	1691.92	80	11959.87	30	817.38

(ii) Age-wise pendency

24. The information furnished by the Ministry revealed the pendency of provisional assessment cases age-wise as follows (Table VII):

Table VII

	No. of cases	Amount (Rs. in lakhs)
Upto 6 months	300	4648.01
6 months to 1 year	331	6690.23
1 year to 2 years	579	22094.09
2 years to 3 years	361	75288.62
more than 3 years	475	68168.43
Total	2046	176889.38

Remarks: Data relates to 29 Commissionerates.

25. During the course of examination the Ministry of Finance (Department of Revenue) submitted different sets of figures to the Committee in respect of provisional assessment cases pending over three years. Initially the Ministry indicated that 479 cases of provisional assessments involving an amount of Rs. 705.12 crores were pending over three years. However, from the information made available to the Committee subsequent to evidence it was observed that the number of such cases actually reported was 816 involving an amount of Rs. 959.55 crores. The Ministry in their note also stated that the reasons for variation in respect of the position reported earlier to the Committee was being enquired into and explanation from the concerned officials were being sought.

(iii) Assessments pending—prior to 1985

26. A detailed analysis of the information furnished by the Ministry revealed that 43 cases of provisional assessments in 29 Commissionerates were pending since the period prior to 1 January, 1985. The amount of

differential duty had been quantified in respect of 29 out of the 43 cases which stood to Rs. 265.39 crores. A further analysis of these cases revealed that 16 of them were pending on account of valuation dispute including post manufacturing expenses. Consequent upon the Supreme Court judgment in MRF case, the reasons for not finalisation of those cases were not intimated to the Committee. Further, eight cases were pending for want of cost data and test reports. The reasons for delay of over 12 years in not finalising these cases were not intimated to the Committee. In one case the assessee had not furnished records. The reasons for non-finalisation of the case *ex-parte* and denial of lower assessment was not intimated to the Committee. In eight cases, bond/bank guarantee amount had not been indicated.

(iv) *Category-wise pendency*

27. A further analysis of the information revealed the pendency of the cases of provisional assessments in the following categories as on 31.12.96 (Table VIII):

Table VIII

(Amount in lakhs of Rupces)

	Upto 6 months		6 Month to 1 Year		1 Year to 2 year		2 Year to 3 year		More than 3 Year		Total	
	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.	Amt.
(a) Non production of document by assessee	166	1785.90	158	3169.71	286	12273.41	172	2568.52	146	25488.28	925	46285.85
(b) Result of chemical or any other test	21	235.72	15	179.41	31	1123.08	17	973.84	9	423.78	93	2935.83
(c) Further inquiry is required	65	1350.34	84	449.36	159	5133.69	55	1971.16	84	5995.04	447	14899.59
(d) Other cases	44	1552.44	88	4063.03	115	3056.82	115	71144.35	240	37605.99	602	117422.63
<b>Total</b>	<b>296</b>	<b>4924.40</b>	<b>345</b>	<b>7861.51</b>	<b>591</b>	<b>21587.06</b>	<b>359</b>	<b>76657.87</b>	<b>479</b>	<b>70512.09</b>	<b>2070</b>	<b>161542.93</b>

Remarks: Data relates to 29 Commissionerates

28. The Committee learnt from Audit that as per Board's instructions (1976), samples for tests were to be drawn by the Range Officers within three days of submission of classification list and sent to the chemical examiner with a request to send the report to the concerned officer within a fortnight. The Assistant Commissioner has to pursue with the examiner in cases where test reports are not received within a period of one month.

29. Commenting on the delay in finalising provisional assessments for want of result of chemical or any other test, the Chairman, CBEC deposed during evidence:—

“I would certainly concede that the delay of more than six months is to be viewed seriously.”

30. From the information made available by the Ministry of Finance (Department of Revenue) after evidence it was seen that 15 cases of provisional assessments were pending in 10 Central Excise Commissionerates over a period of three years for want of chemical or any other test reports. The differential duty which was indicated in respect of only eight out of those 15 cases amounted to Rs. 555.46 lakhs.

31. In the instruction issued on 29 August 1973, the CBEC had *inter-alia* stated:—

“It is likely that in some cases, assessees may in order to prolong the benefits of lower provisional assessments, delay in submission of documents relevant for finalisation of prices. Board desire that in such cases, officers must inform assessees to submit such documents within a reasonable time, say one month or so, failing which they should be warned that benefit of lower provisional assessment would be denied.”

To a question of the Committee about the delay in finalisation of cases of provisional assessments due to non-production of documents by assessees, the Chairman, CBEC replied in evidence:—

“...I certainly agree that there is no question of waiting for more than six months, that is, in case an information is to come from the assessee.

32. From the details of the pending cases of provisional assessments furnished to the Committee it was seen that 19 cases of provisional assessments relating to Hindustan Lever Group were pending in 12 Commissionerates of Central Excise in different parts of the country. Out of a total of Rs. 3905.74 lakhs differential duty involved, provisional assessments involving differential duty of Rs. 2968.74 lakhs was outstanding with the Department. However, in certain cases in the Commissionerates, viz., Patna, Cochin, Nagpur and Meerut the differential amount of duty had not been worked out whereas the total duty involved was stated to have been adequately covered. It was not made clear as to how in the absence of the differential duty the Department satisfied themselves

about the adequacy of the amount of bonds/bank guarantees executed by the assessee. In one case each in Kanpur and Bolpur Commissionerates it was found that the duty had not been covered adequately by means of bonds/bank guarantees. The reasons for not obtaining adequate bonds/bank guarantees were not intimated to the Committee. The reasons for not determining the differential duty in respect of the case pertaining to Pune Commissionerate was not intimated to the Committee. It was also noticed that the dispute in those cases of this assessee related to post-manufacturing expenses. After the decision of Supreme Court in the MRF case on post-manufacturing expenses it was expected that the finalisation of those cases would be expedited within a fixed time frame. The reasons for not doing so was not intimated to the Committee. Also the Ministry did not intimate as to why the assessee was not able to produce the records and also the failure of the authorities to finalise the same *ex-parte* after issuing a warning as per the Board's instructions.

33. It was further seen that in respect of ITC Group of Companies nine cases of provisional assessments involving an amount of Rs. 3462.58 lakhs were pending for want of prompt and decisive action by the Department. The total amount of differential duty involved in the case of this assessee was Rs. 4883.18 lakhs. In one case the finalisation was pending for want of cost data from the assessee. Though one case involving an amount of Rs. 50 lakhs had been shown as pending, neither the reasons for pendency nor the efforts being made to cover the amount had been indicated by the Ministry.

34. From the reconciled figures of provisional assessments furnished by the Ministry of Finance after evidence, the Committee find that 2157 cases of provisional assessment (including those transferred to 'call book) involving differential duty of Rs. 2079.55 crores were pending finalisation as on 31 December, 1996. Of these, 816 cases involving Rs. 959.55 crores were stated to have been pending over a period of three years. 836 cases involving a differential duty of Rs. 1434.57 crores were pending over a period of two years. This extent of pendency is indicative of not only a systemic neglect but also a possible connivance to extend financial benefits to the assessee. What is disconcerting to note is that 43 cases of provisional assessment in 29 Commissionerates have been pending since the period prior to January 1985. The amount of differential duty which had been quantified in respect of 29 out of the 43 cases stood to Rs. 265.39 crores. These facts clearly establish that there is an imperative need for CBEC to go into the age-wise pendency of cases of provisional assessments particularly those kept outstanding over two years in order to find out the precise reasons for the delay in finalisation. The Committee, therefore, recommend that the Ministry of Finance should frame a time bound programme for the disposal of such pending cases and also initiate appropriate action to detect cases of

collusion, if any. They would like to be informed of the action taken and a detailed report indicating the latest position of disposal of such cases and the age-wise pendency. The Committee further desire a detailed report in respect of the cases pending over ten years.

35. The Committee's examination of the pendency, category-wise, revealed certain further disquieting aspects. Out of a total of 2070 pending provisional assessments as on 31 December 1996, 928 cases involving differential duty of Rs. 462.86 crores were pending due to non-production of documents by assessees. While 93 cases involving duty of Rs. 29.36 crores were pending for want of result of chemical or any other test, 447 cases with duty effect of Rs. 148.99 crores were pending as further enquiry was required. 602 cases involving differential duty of Rs. 1174.23 crores were pending due to other reasons.

36. According to the instructions issued by the CBEC, the assessees are required to be warned and the benefit of lower provisional assessments denied on their failure to produce the records. The Committee are, however, surprised that 928 cases involving Rs. 462.86 crores were pending for want of documents/information to be produced by the assessees; out of which 146 cases involving Rs. 265 crores were pending for more than three years. The Ministry did not furnish any explanation for the failure of either the assessees to furnish the documents for 2-3 years or that of the Department in not resorting to *ex-parte* finalisation of such cases where the assessees failed to produce the documents within six months. Further, as per Board's instructions, sample tests are to be drawn by the Range Officers within three days of submission of classification list and sent to the chemical examiner with a request to send the report to the concerned officer within a fortnight. The Assistant Commissioner has to pursue with chemical examiner in cases where test reports are not received within a period of one month. Significantly, 93 cases involving duty of Rs. 29.36 crores are pending for want of result of chemical or any other test. Distressingly, 15 cases of provisional assessments were pending in 10 Central Excise Commissionerates for want of such reports over a period of three years. The differential duty in eight such cases amounted to Rs. 5.55 crores. The delay ranging from six months to three years are yet to be explained by the Ministry of Finance. The Committee also note that 447 cases involving Rs. 149 crores are pending where further enquiry is in progress. Of these, 139 cases involving Rs. 79.65 crores are pending for more than two years. The reasons for not finalising these cases were not indicated to the Committee.

37. The Committee cannot but conclude from the above that the Departmental Officers after ordering provisional assessments in most of the cases had not bothered to subject them for review in terms of the extent instructions of the Board/Ministry within the prescribed time. The Committee are convinced that the pendency of provisional assessments should be subjected to a review by the Board not only from the point of view of the

period since it is pending but also from the category-wise angle with a view to methodically analysing the exact reasons for the pendency and facilitating expeditious disposal of the cases within a specified time. The Committee would like to be furnished with a detailed report on the analysis together with the up-dated position. While undertaking the analysis, the Ministry should also look into those assessments kept pending under "other cases" and keep Committee apprised of the position. The Committee further desire that responsibility should be fixed for the delay in finalisation of provisional assessments in all the cases.

38. From the details of the information furnished by the Ministry of Finance the Committee find that in the case of ITC Group of Companies, provisional assessments involving differential duty of Rs. 48.83 crores were pending with various Commissionerates of Central Excise. Out of these assessments involving differential duty of Rs. 34.63 crores were pending with the Department only. Similarly, in the case of Hindustan Lever Limited provisional assessments involving differential duty of Rs. 39.05 crores were pending with various Commissionerates, of which assessment involving duty of Rs. 29.69 crores were found pending with the Department. Since those cases are pending with the Department only, the Committee do not find any valid justification for their non-finalisation. The Committee would like the Ministry to go into these cases and furnish them with a detailed report indicating the precise reasons as to why cases of provisional assessments to such a large extent in respect of these two assesseees have been kept pending and also to furnish an up-dated position of their disposal.

**(d) Transfer of provisional assessment cases to call book**

39. A call book was explained by the Ministry to the Committee as a register wherein cases pending for want of decision by (i) Judicial courts, (ii) Tribunals, (iii) Clarifications; and (iv) Test reports being awaited from the laboratories, cases which were not likely to be disposed of within six months were entered. Subsequently, during evidence, the Chairman CBEC clarified that cases where test reports were awaited from laboratories are not allowed to be transferred to call book as per the extant instructions, although in certain cases, the departmental officers had incorrectly done so. The Audit paragraph revealed that the test check of records in Bhubaneswar, Madras, Trichy, Madurai and Coimbatore Commissionerates had indicated that cases pending on account of provisional assessments were also being transferred to the call books and those cases were not reflected in the MTRs of the Commissionerates, thus resulting in under reporting. In Bhubaneswar Commissionerate, the number of cases finalised during the year 1992-93, 93-94 and 94-95 were shown as 1038, 2083 & 760 (in four divisions) respectively while the cases transferred to call book out of those were 568, 454 & 304 which resulted in incorrect exhibition of the actual pendency. It was also pointed out by Audit that the cases were transferred to the call books without approval of the competent authority.

40. The Committee enquired about the system of maintenance of call books. The Ministry of Finance (Department of Revenue) in a note stated that the call book system was introduced in pursuance of the directions from the Department of Personnel and Administrative Reforms. The cases which were taken to call book according to the Ministry were not shown as pending. They also stated that call book cases were reviewed periodically. The Ministry further stated that the Board had issued instructions on 8 March 1982, 4 March 1992, 14 December 1995 regarding maintenance and review of call book cases. As per the instructions issued on 4 March 1992, the Board had directed the Department to review the call book cases and asked the inspecting officers to scrupulously inspect the call book register and satisfy themselves as to whether only deserving cases had been transferred to the call book register. They also added that the instructions issued by the Directorate General of Inspection on 14 February 1996 also emphasised the need for monitoring of provisional assessment cases transferred to call book.

41. The initial information regarding the provisional assessments pending furnished to the Committee by the Ministry of Finance did not contain the details of such cases which were transferred to the call book. The Committee asked about the justification for keeping the cases transferred to call book outside the pendency of provisional cases. The Chairman, CBEC during evidence stated that the reason was that the cases which were transferred to the call book were of a kind where a decision was not capable of being taken immediately.

42. When enquired about the mechanism to dispose of the call book cases, the Chairman, CBEC deposed:—

“As far as the mechanism of it is concerned, the instructions provide that the call book must be reviewed by the officers every month. Firstly, the whole thing needs to be brought out in the form of a statement and every quarter it needs to be reviewed whether the issue is a dispute on the basis of which a case was transferred to the call book and if it has been resolved. In case the issue has been resolved through an issue of appellate order or a Board decision or by some other appellate forum which we can take those cases out of the call book and finalise them”.

43. From the details of the cases of provisional assessments pending, furnished to the Committee subsequent to evidence, it was seen that the

number of such cases transferred to call book and the differential duty involved thereon was as follows (Table IX):—

Table IX

Period	No. of cases	Amount (Rs. in crores)
31.3.1995	469	830.46
31.3.1996	476	916.05
31.12.1996	450	962.86

44. The Committee find that 450 cases of provisional assessments involving a total differential duty of Rs. 962.86 crores were transferred to the call book as on 31 December 1996. Significantly, these cases were neither included earlier in the details of the pending cases of provisional assessments nor were the data relating thereto separately available with the Board/Ministry. During evidence the Chairman, Central Board of Excise and Customs admitted that there had been instances where cases of provisional assessments kept pending for want of reports from laboratories were even transferred incorrectly to the call book. Undoubtedly, the present manner of transfer of cases to call book is not satisfactory. In fact, such transfers raise doubts regarding the manner of disposal of some of the provisional assessment cases themselves from the list of outstanding cases. What is further surprising is that although the Board had issued instructions to the Commissioners to review the cases transferred to call books on a monthly basis, the Committee's examination revealed that no such review had actually been done nor had the Board bothered to monitor the fate of those instructions. The Committee are unhappy with this situation. They desire that a special review of all the cases of provisional assessment transferred to the call book should be immediately undertaken and follow up action taken in order to ensure that the prevalent instructions have been complied with and proper revenue is collected. The Committee also desire that the Minister should take stern action against officers responsible for irregular and incorrect transfer of cases of provisional assessments to the call book. The Ministry should further review the system of transfer of cases to the call book and ensure that all such cases are transferred strictly in terms of the instructions and are properly subjected to the prescribed periodical review both by the Commissioners as well as the Board.

45. The Committee also desire that in future while exhibiting the details of the cases of provisional assessment pending, such cases which have been transferred to call book should also invariably be shown alongwith the relevant data. The Committee would like to be informed of the precise action taken in the matter.

### III. Enforcement of bonds/encashment of bank guarantee

46. According to Rule 9B of the Central Excise Rules, the officer is permitted to allow clearance of the goods provisionally assessed, on

execution of a bond with adequate security binding the assessee for payment of difference between the duty provisionally assessed and that finally assessed. For fixing the value of the bond, the proper officer considers the differential duty payable on these goods for three months. 25 per cent of the bonds value is fixed as security payable in cash/ Government securities/bank guarantees etc. The bank guarantees executed are valid for the period mentioned therein. Unless those were reviewed within the validity period the purpose of executing them gets defeated.

47. According to Audit paragraph, in 914 cases of provisional assessment in 27 Commissionerates, the prescribed bonds/sureties were not obtained and revenue remained unprotected. Of these, in 93 cases, the differential duty amounted to Rs. 48.15 crores. The Audit paragraph revealed that the deficiency in bond valued in 40 cases amounted to Rs. 121.02 crores. In 31 cases involving Rs. 2.66 crores, no action was taken to get the bank guarantees revalidated. In two cases involving Rs. 7.70 crores. the bonds were improper. The Committee did not examine the specific cases pointed out by Audit. However, during evidence they enquired about the position prevailing in various Commissionerates of Central Excise about the execution of bonds/bank guarantees after the orders for provisional assessments were passed and the details of the instances of enforcement/ encashment of bonds/bank guarantees in respect of the years 1992-93 to 1995-96. From the information furnished to the Committee in this regard after evidence it was seen that out of the 7817 cases of provisional assessment in 33 Commissionerates, bonds/bank guarantees were executed in respect of 6111 cases only. As regards enforcement/encashment of bank guarantees, it was seen that there had not been a single instance in 25 out of the 36 Commissionerates where bonds/bank guarantees were enforced/ encashed during the period 1992-93 to 1995-96. This included the Commissionerates of Calacutta I, II, Chennai, Delhi and Mumbai-I. Eleven Commissionerates had enforced/encashed bonds/bank guarantees involving an amount of Rs. 971.60 lakhs.

48. The Committee regret to note that out of the 7817 cases of pending provisional assessment relating to 1992-93 to 1995-96, bonds/bank guarantees were executed only in respect of 6111 cases. This clearly shows that the differential duty locked up due to the delay in finalisation of provisional assessments had not been securely protected. What has caused further concern to the Committee is that bonds/bank guarantees were enforced/ encashed in 11 out of the 36 Commissionerates only for realising the differential duty from the defaulters consequent upon the finalisation of the provisional assessments. The Ministry of Finance have not adduced any explanation for the failure of the Department in executing bonds/bank guarantees in a large number of cases and also in resorting to enforcement of bonds and encashment of bank guarantees from the defaulters. While expressing their displeasure over this state of affairs, the Committee desire

that all the cases referred to above should be reviewed by the Board and necessary steps taken to protect governmental revenue. Action should also be taken against the officers responsible for the lapses in following the rules/instructions laid down in the matter of execution of bonds and bank guarantees. The Committee would like to be informed of the specific action taken in the matter.

#### IV. Monitoring

##### (i) *Non-maintenance of registers*

49. As per the instructions of CBEC, Central Excise divisions were required to maintain a register of provisional assessment cases indicating the name of assessee, date of provisional assessment order, amount of bonds/bank guarantees furnished, their validity, differential duty involved, reasons for ordering provisional assessment etc. to keep a watch over the progress and speedy finalisation of the provisional assessment cases. It has been pointed out by Audit that the test check of selected divisions/range of the Commissionerates of Bombay I, II, III, Pune, Aurangabad, Chandigarh and Jaipur had revealed that the registers prescribed were not being maintained. Further, the registers maintained in the test check ranges/divisions of the Hyderabad, Guntur, Vishakhapatnam were incomplete and lacked information relevant to the assessments like rate of duty levied, differential duty involved, whether bonds/bank guarantees were furnished etc. It was also pointed out by Audit that monthly closing and analysis of pending cases were not being carried out in the divisions of Indore Commissionerate and correlation with the figures being reported in the Monthly Technical Reports could not be undertaken in two divisions of Jaipur Commissionerates for want of the details.

50. In the light of Audit observation, the Committee desired to know as to how it was ensured that the records were being maintained properly. The Ministry of Finance (Department of revenue) in a note submitted initially stated that while inspecting the division/range office it had been found that the records of provisional assessment was being maintained properly. However, in a note furnished subsequent to evidence, the Ministry while enumerating the major reasons for discrepancies and mis-reporting of provisional assessment figures stated that no proper provisional assessment register was being maintained at Range/Divisional level. The Ministry in another note added that fresh instructions had since been issued to the Commissioners for proper maintenance of records relating to provisional assessments.

##### (ii) *Role of Commissioners*

51. As per the instructions of CBEC issued in January 1973 and March 1976 cases pending for more than six months should be referred to the Commissioner every month after analysing the pendency and examination of each case. The Commissioners were required to give suitable instructions for clearance of those cases.

52. The Audit paragraph revealed that in 19 Commissionerates, no monitoring of the pending cases was being undertaken. No analysis of the cases pending for more than six months was undertaken and no action for clearance thereof was proposed. Ex-parte decision for the finalisation of the pending cases was also not reported in respect of seven Commissionerates. When enquired about the same the Ministry of Finance (Department of Revenue) in a note stated that provisional assessment cases were reviewed while sending the MTR at Commissioner's level and discussed in the monthly conference with Asstt. Commissioners.

53. On being asked about the month-wise details of review of cases of provisional assessments pending for more than six months at the level of the Commissioners and the instructions issued thereon for their clearance, the Ministry of Finance (Department of Revenue) stated in a note that the Month-wise review of the cases pending for more than six months could not be furnished as no such data was maintained.

54. In reply to another question Ministry in another note stated that instructions have since been issued that provisional assessment cases should be reviewed on quarterly basis by the Commissioners and consolidated report sent to the Chief Commissioners.

*(iii) Internal Audit*

55. Test check of records of 20 Commissionerates by Audit had revealed that Internal Audit Party had not made any review on the pending cases of provisional assessment of suggested any measures for clearance of the pending cases. In reply to a question as to whether at any point of time Internal Audit was asked to conduct any review of provisional assessment cases, the Ministry of Finance (Department of Revenue) in a note stated that no specific review of provisional assessment cases had been undertaken by the Internal Audit but during the course of Audit if they came across provisional assessment cases they discuss the same with the Units as well as Range Superintendent/Assistant Commissioner.

*(iv) Monthly Technical Report*

56. It has been pointed out by Audit that the Reports of pending provisional assessment cases from all the Commissionerates were received through the Monthly Technical Reports (MTR) and the All India total pendency position compiled Commissionerate-wise for submission to the Ministry. However, the information showed only the increase/decrease in the pendency and did not reveal the actual amount of differential duty involved in those cases. According to Audit it was also not evident from the records whether the differential duty was being adequately secured by bond/security. The Committee desired to know whether the actual amount of differential duty involved in those cases was reflected in the Monthly Technical Reports. The Ministry of Finance (Department of Revenue) in a note stated that prior to February, 1996 the proforma for reporting

provisional assessment cases in MTR provide for only the number of cases and not the amount involved. According to the Ministry, the actual amount of differential duty was now being reported separately since March, 1996 after being pointed out by Audit.

57. When asked as to how they ensured that the differential duty was being secured by bond/security, the Ministry in a note stated that whenever it was not possible to estimate the amount recoverable, the bond and bank guarantees were fixed on approximation basis.

*(v) Fixation of targets by Board*

58. From the information furnished by the Ministry of Finance it was seen that as per the Board's instructions dated 28 September, 1994 targets were being fixed as a part of Annual Action Plan of CBEC instructing the Commissionerates to bring down the pendencies of various items of work including provisional assessment. The targets fixed accordingly for 1994-95 was to liquidate 600 provisional assessment cases which were pending over one year. Explaining the basis for the target the Ministry in a note stated that as per the Director General of Inspection's Report for the month of February, 1994, 673 cases of provisional assessment were pending with the Excise Commissionerate. Regarding follow up, the Ministry stated that the same was taken up by the Directorate General of Inspection through the Monthly Technical Report and wherever necessary, suitable instructions were also given in this regard.

59. The facts stated in the foregoing paragraphs reveal a total break down in the system prescribed for monitoring the cases of provisional assessments. The registers prescribed for recording cases of provisional assessments were either not maintained or inadequately maintained at the Field/Commissionerate level. Though the cases pending for more than six months were required to be reported to the Commissioners for review, the reviews were hardly undertaken, and the Commissioners seldom cared to enquire why such reports were not submitted. The MTRs which was the instrument available at the Board/Ministry level for monitoring the pace of finalisation of provisional assessments did not even contain provisions for ascertaining the amount of differential duty — involved and assessing whether provisional assessments were adequately secured by bonds/bank guarantees etc. The annual targets for clearance of pending provisional assessments were fixed by the Board on the basis of the inaccurate and inadequate data which evidently, had no relation with ground realities. Further the Internal Audit Organisation of the Department which could have functioned as an effective tool of management control had hardly played any worthwhile role in bringing down the pendency of provisional assessments. The Committee are dismayed at this unfortunate state of affairs in the Department entrusted with the responsibility of contributing maximum revenue to the exchequer. It is astonishing that such an important area of administration of Central Excise involving substantial revenue was left ignored by all concerned. The Ministry of Finance while admitting

the shortcomings in monitoring have assured the Committee that steps have now been taken to make the system more effective. The Committee wish to emphasise that mere laying down of procedures are meaningless unless effective steps are taken to see that they are actually followed. They, therefore, desire that the Central Board of Excise and Customs should ensure the efficacy of monitoring of cases of provisional assessments through keeping a constant and continuous watch and initiation of timely corrective action and apprise the Committee of precise action taken.

(vi) *Inspection Report on Provisional Assessments relating to Mumbai Commissionerates by WRU Mumbai*

60. From the information furnished by the Ministry of Finance it was seen that inspections of Mumbai-I, II & III Commissionerates were undertaken by Western Regional Unit (WRU) Mumbai. The inspection reports revealed that of the 412 pending cases of provisional assessments, the amount involved in 305 cases was Rs. 195 crores. The reports indicated revenue loss of about Rs. 12 crores on account of time bar and non-availability of files in respect of 12 units in the Mumbai-II Commissionerate. The inspection reports also revealed that provisional assessment orders were issued in 136 cases (Commissioneratewise break-up being 21, 98 & 17 in Mumbai I, II & III respectively) without getting bonds/bank guarantees executed by the assessees. The reports further pointed out that bulk of the pending cases could have been finalised as the issued involved were by the large settled but the level of supervision was found to be totally lacking and there was no proper coordination of work from the Division to the Range level and also that ADC/DC in-charge of the division needed to visit Division and Ranges and supervise the correct disposal of pending cases.

61. During evidence the Committee drew attention to the inspection reports, particularly to the 136 cases where orders for provisional assessments were passed without getting bonds/bank guarantees executed. Commenting on the same, the Chairman, CBEC stated:—

“....if it has happened that way, there is no doubt that the officers have laid themselves open to serious action.”

The Committee desired to be furnished with an action taken report on those cases. Subsequent to evidence the Ministry furnished an action taken report in respect of the same. A perusal of the information furnished by the Ministry in this regard revealed that out of the 136 cases referred to in the inspection report, 114 cases had been finalised by the concerned Commissioners and according to the Ministry no revenue loss had been reported in respect of them. However, the remaining 22 cases had not been finalised and were under further examination with the concerned Commissioners.

62. The Committee find that the Inspection Report relating to the Commissionerates of Central Excise, Mumbai—I, II and III have revealed serious shortcoming with regard to the procedures applied in resorting to and disposal of cases of provisional assessments. The Committee took particular note of the 136 cases reported where provisional assessments were stated to have been ordered without getting bonds/bank guarantees executed by the assesseees, the cases of loss of revenue due to the operation of time bar and also about certain files being found non-traceable. The Committee are, however, amazed to note from the information furnished by the Ministry subsequent to the evidence that the further enquiry by them has revealed that most of the cases had since been finalised and no revenue loss had occurred. Curiously enough, the Ministry's reply did not indicate the position relating either to the non-execution of bonds/bank guarantees in a large number of cases or about the loss of revenue due to operation of time bar and the loss of files. In the circumstances, the Committee are unable to accept the reply of the Ministry. They, therefore, desire that the Ministry of Finance should move C&AG and get a special Audit done in respect of the cases mentioned in the Inspection Reports. The Committee would await the outcome.

(vii) *Inspection of the Commissionerate of Shillong*

63. During examination it was noticed that there was considerable delay in obtaining information particularly with reference to Central Excise Commissionerate of Shillong. When asked about the same the Chairman, CBEC stated in evidence:—

“I must admit that the response from the Shillong Collectorate left much to be wanted.”

64. Asked about the action taken against the officers responsible for the same, the Ministry of Finance (Department of Revenue) in a post-evidence note stated:—

“It is regretted that the Report pertaining to Shillong Central Excise Commissionerate in reply to the questionnaire could not be sent....The CCE Shillong was recalled from leave and was summoned by Chairman (CBEC) to Delhi on 21.1.1997 to submit the report on the questionnaire and have explanation.... She has tried to explain the reasons for delayed submission of the Report of her Commissionerate on account of sustained disturbance of the entire North East Region, resulting into poor communication facilities and poor staff support. She has regretted the lapse. After considering CCE, Shillong's explanation, a separate Report will be submitted to the PAC shortly.”

65. The Committee enquired about the role of the the officers concerned responsible for conducting periodic inspection of the Shillong Commissionerate. The Ministry of Finance (Department of Revenue) in a note furnished after evidence stated that two senior officers had inspected Shillong Commissionerate and submitted a comprehensive report which

*inter alia* made a special reference to the performance relating to provisional assessment cases. At the instance of the Committee, the Ministry subsequently furnished a copy of the inspection report. The Ministry also furnished data in relation to provisional assessment cases pending in that Commissionerate.

66. On scrutiny of the data relating to the pendency of provisional assessment cases it was observed that as on 31 March, 1996, 160 cases involving a total duty of Rs. 126.95 crores were pending finalisation in the Shillong Commissionerate. The issuewise break up of position of pendency revealed that out of the above amount, except for one item involving Rs. 19.16 lakhs all the other cases of provisional assessments were pending due to non-production of documents by assesseees.

67. From the copies of the Inspection Reports dated 22 December, 1995 and 11 April, 1996 it was noted that an inspection by the officer of Director General Inspection in respect of the Shillong Commissionerate was carried out to assess the impact of the decision of the Supreme Court dated 20 March, 1995 on classification of block board for the purpose of levy of Central Excise Duty. The Supreme Court had in its judgement held that the block board be classified under sub-heading 4408.90 instead of 4410.90 since 28 February, 1986. The Inspection report pointed out that there was negligence on the part of officers in not resorting to provisional assessments/protecting Government revenue by raising of protective demands in the matter of dispute over classification of block board particularly as the High Court and the Supreme Court had at no stage stayed the serving of demand notices under Section 11 A of the Central Excises and Salt Act, 1944. As a consequence, the Department was likely to lose substantial revenue due to the operation of the provision relating to time bar.

68. The Committee take a serious view of the inordinate delay in the submission of information relating to provisional assessments pertaining to the Commissionerate of Central Excise, Shillong. They desire that the action taken report of the Ministry of Finance after considering the explanation of the Commissioner, be expedited.

69. The Committee are anguished to note that the Department are likely to lose substantial revenue due to the negligence of the officers of the Commissionerate of Shillong in not resorting to provisional assessments in the matter of dispute over classification of block board. They consider it astonishing that while on the one hand the Department apparently seem to be resorting to provisional assessments even on trivial issues, the officers in the instant case, where substantial revenue was stated to be at stake had miserably failed in invoking the relevant provision of the Law for protecting the revenue. The Committee deplore the same and desire that the whole matter might be thoroughly inquired into and responsibility fixed for the lapses. They desire to be informed of the follow-up action taken in the

whole matter and also be furnished with a complete report on the precise extent of the revenue loss together with details of the position prevailing not only in the Shillong Commissionerate but also elsewhere in the light of the Supreme Court decision on classification of block board.

#### V. Follow up action taken

70. As already indicated earlier, according to the latest information furnished by the Ministry of Finance 2157 cases of provisional assessments involving a total differential duty of Rs. 2079.55 crores (including 450 cases transferred to call Book involving differential duty of Rs. 962.86 crores) were pending finalisation as on 31 December, 1996. Enumerating the various steps taken by them subsequent to the Audit review and examination of the subject by the Public Accounts Committee, the Ministry of Finance in a note furnished after evidence stated that the Ministry as well as the Director General of Inspection have issued various instructions regarding provisional assessment cases. According to them this had led to a greater awareness which would result in accurate reporting of provisional assessment cases and disposal thereof in future. The Ministry further stated that a format has now been devised for maintenance of provisional assessment register and for reporting provisional assessment cases in MTR. A quarterly statement on provisional assessment pendencies has been revived and now these would be put on the computer. The Ministry further added that the Commissioners have been advised to prevent recurrence of such lapses and to have accuracy in reporting provisional assessment cases through the following additional steps:—

- (i) A computerised software programme be developed to cover all aspects of the provisional assessment including the details of bonds/bank guarantee and moving differential amounts for consecutive RT. 12 Returns so that the pendencies and progress of disposal can be watched and pursued at all supervisory levels;
- (ii) Technical and Audit Wings at the Commissionerates Headquarters which have several inter-faces are headed by senior officers viz. Addl. Commissioner/Dy. Commissioner. They have been instructed to hold joint pendency meetings every month to avoid communication gap and also to improve;
- (iii) Commissionerates are being advised that alongwith the MTRs received from the Divisional offices, they must insist on a certificate of the Divisional officers that the Register of Provisional Assessment case is being maintained up-to-date; and
- (iv) It has also been proposed to hold training programmes for different level of officers highlighting different aspects of the provisional assessment cases so as to bring greater awareness in this regard at the grass root level.

71. While intimating the Committee of the follow up action taken subsequent to the CAG report and the PAC's examination, the Ministry of Finance (Department of Revenue) in a further note stated that a special drive for liquidating the pendencies of provisional assessment cases has been launched and various instructions have been issued by the Ministry as well as Director General Inspection to closely monitor the pending provisional assessments. According to the Ministry as a result of the special drive, about 1300 cases involving an amount of over Rs. 250 crores have been finalised upto 31 December, 1996. Further, the Ministry stated that an amount of Rs. 18.42 crores had been realised for instance from Chandigarh, Mumbai-III, Aurangabad, Belgaum and Jamshedpur commissionerates. In this connection, the Chairman, CBEC stated in evidence:—

“Within a short period, we have been able to achieve quite substantial results. We finalised nearly 500 cases of provisional assessments just in a couple of months involving substantial revenues....many of the assesses have also made the payment and it runs into several crores of rupees.”

The Ministry in their note further added:—

“To ensure effective monitoring, on 18.2.1997 in a specially called meeting of all the Chief Commissioners of Central Excise, they have been asked to personally monitor the pendency of provisional assessment cases and to bring down the pendency to minimum stage in the coming months. They have also been asked to keep a special watch in those commissionerates where in the amount involved in the provisional assessment, cases is more than Rs. 50 crores and to make a periodic review of all other cases. Even Director General Inspection, Central Excise & Customs has been asked to peruse cases for finalisation which were over three years old in the Commissionerates.

72. In another note furnished subsequent to evidence the Ministry stated that the Directorate General of Inspections (Customs and Central Excise) New Delhi, has been asked to make a thorough comprehensive study of the provisional assessments.

73. The Committee are happy to note that subsequent to their taking up the subject of provisional assessments for detailed examination, the Ministry of Finance/Central Board of Excise and Customs have reportedly taken various steps seeking to streamline the system in order to ensure accurate reporting of cases of provisional assessments and their disposal. The steps stated to have been taken include, issuing of certain detailed instructions for improving of the procedures, Maintenance of records, submission and review of reports, holding of Monthly pendency meetings, introduction of revised format of HTRs introduction of holding training programmes for different level of officers, evolution of a computer software programme, convening of a special meeting of Chief Commissioners of Central Excise by

the Board who had been asked to personally monitor the pendency of provisional assessment cases and initiation of a special drive for liquidating the pendency of cases of provisional assessments. According to the Ministry as a result of the special drive, about 1300 cases involving an amount of over Rs. 250 crores have been finalised upto 31 December 1996. Further, Ministry stated that an amount of Rs. 18.42 crores had been realised just from five Commissionerates. The fact that such a large number of cases could be finalised in such a short span of time at the instance of the Committee clearly show the lack of seriousness attached hitherto by the Department in this direction. The Committee cannot remain contented with the results now reported by the Ministry. They desire that the various steps initiated should be taken to their logical conclusions not only for ensuring clearance of the pendency within a specific time limit but also for ensuring accurate reporting and timely disposal of such cases in future. A group should be constituted in all the Commissionerates and an officer at appropriate level also nominated in the Board for monitoring the progress. Cases of non-compliance/violations of the instructions should be sternly dealt with. The Committee would like to be informed of the latest position of pendency/finalisation of cases of provisional assessments.

74. The Committee further note that the Ministry have now issued directions to the field formations to develop their own computerised software. The Committee wonder whether this would achieve the purpose of bringing uniformity, adoption of common criteria and proper monitoring of pendency. They are of the opinion that the Board should develop an appropriate computer programme at their level so that uniformity could be maintained in all the Commissionerates and consistency of data is ensured.

75. The Committee have been informed that the Director General of Inspection (Customs and Central Excise) has been asked by the Ministry to undertake a thorough comprehensive study of the provisional assessments. The Committee would like to be informed of the findings of the study and the follow up action taken thereon.

#### VI. Levy of interest in respect of provisional assessment cases

76. The Committee desired to know the net result of finalisation of provisional assessment cases during the last five years. The Ministry of Finance (Department of Revenue) in a statement furnished subsequent to evidence made available the requisite data in respect of all Commissionerates with the exception of Shillong. The data on consolidation revealed that additional revenue to the extent of Rs. 13578.07 lakhs had been realised as against refund of Rs. 474.45 lakhs during the corresponding period.

77. A new Section 11 AB was inserted in the Central Excises and Salt Act 1944 *vide* Finance (No. 2) Act, 1966 which came into force w.e.f. 28 September, 1996. Section 11AB *ibid* provides for charging of interest on delayed payment of duty in certain circumstances. As per the provisions of

the Section, interest in leviable when excise duty has not been levied or paid or has been short levied or short paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any other provisions of the Act or the Rules made thereunder with an intent to evade payment of duty. In certain cases, the person liable to pay duty would also be liable to pay interest at such rate as may be prescribed by the Board from first day of the month succeeding the month in which the duty ought to have been paid under the Act or the Rules made thereunder or from the date so such erroneous refund, till the date of payment of duty. A rate of interest of 20 per cent per annum has been prescribed by the Central board of Excise and Customs for the purpose of this Section.

78. The new inserted Section 11AB does not cover provisional assessment cases. The Committee asked whether it was intention of Government not to charge interest in such cases where the liability to pay duty arises much earlier than the actual realisation of the duty. The Ministry of Finance (Department of Revenue) in a note stated:—

“If during the course of test or enquiry conducted by the proper officer, it comes to light that assessee has tried to evade excise duty by reason of fraud, collusion, wilful mis-statement or suppression of facts etc. the provisions of Section 11AB for charging of interest will be attracted.”

79. During evidence the Committee pointed out that Government was losing a notional interest of about Rs. 350 crores per year on Rs. 1733 crores which was the differential amount of duty of 2153 provisional assessment cases as of 31 March, 1996 as per the figures reported by the Ministry to the Committee at that point of time. On being asked as to how the Ministry proposed to plug the loophole, the Chairman, CBEC stated in evidence:—

“Currently there is no provision in the law for levy of interest on provisional assessments till they are finalised.... The suggestion that has been made has been taken careful note of. We will certainly examine it comprehensively as part of our exercise.”

80. Expressing his views on the same, the Secretary Ministry of Finance (Department of Revenue) added:—

“I regard it as an infirmity in the present set of regulations. When we go into the various reasons as to why provisional assessments have been delayed we find that in a large number of cases, the provisional assessment are not converted into final assessment because the concerned parties and the assesseees have not been furnishing the required documentation in time. They do so because it is really in their interest. We are seriously examining this issue. In those cases where documents and other

material are not furnished in a time bound manner, I think, certainly levy of interest should be considered.”

81. In a note furnished after evidence the Ministry of Finance (Department of Revenue) stated that as per the deliberations taken place in the Committee meeting held on 16 January, 1997, the Ministry were considering the issue of levy of interest on delay in finalisation of provisional assessment cases by inserting suitable provisions in the Central Excise Law.

82. It is common knowledge that the delay in finalisation of provisional assessments leads to financial accommodation of assessee at the cost of the exchequer. However, the Committee are rather surprised that cases of provisional assessments were kept outside the purview of the provision incorporated in the Law in September, 1996 for levy of interest charges in delayed payments of central excise duty. Regretfully, despite the deputation made by the Secretary, Revenue, before the Committee recognising the need for enactment of a provision for levy of interest, the Finance Bill 1997 does not propose any amendment on that score. The Committee recommend that suitable provision may be incorporated in the Central Excise and Salt Act 1944 for levy of interest on delayed payments arising out of finalisation of provisional assessments also. The Committee would like to be informed of the precise action taken.

#### VII. Laying of statutory time limit

83. The Committee desired to know the background in which the time limit of six months had been laid through executive instructions and not through a provision in the law. The Ministry of Finance in a note stated that it has not been done so because provisional assessment was resorted to for a variety of reasons. It may not be possible according to the Ministry to complete the enquiries within a scheduled time limit. The Ministry also stated:—

“In such cases, having a fixed time limit would cost undue hardship to the assessee and would entail invoking penal provisions for project obligation/requirement, or may entail risk to revenue by hurried finalisation without full data.”

84. From the information furnished to the Committee it was seen that the executive instructions initially issued in the seventies prescribing time limit for finalisation of provisional assessments were reiterated by the Ministry on a number of subsequent occasions also. During evidence the Chairman Central Board of Excise and Customs agreed that in cases where the documents were required there was no question of waiting for more than six months for finalisation of such cases. When asked whether the Ministry intended to make any statutory provisions for time bound disposal, the Secretary, Ministry of Finance (Department of Revenue)

deposed that they would certainly give consideration to that. In this connection, the witness further deposed:—

“I think that it is necessary to change the system and to institute a system where the assessment is finalised early. Its advantages should clearly come to the Department. The question of liability of interest and the fact of the final assessment itself in finalising the matter to the advantage of the Department should be decided. Then only both sides will quickly take action. Unless both these are not there, it would be constantly the endeavour of the assessee to default in the finalisation of the documents and to prolong the issue. The current instructions on this need to be revised wherever the non-finalisation is due to non-supply of information and non-cooperation on the part of the assessee. If the final assessment needs to be done then it should be done in time-bound programme.”

In a note furnished subsequent to evidence the Ministry further stated that they were considering prescription of a time limit in the Central Excise Law for finalisation of provisional assessment case.

85. Considering the alarming rate of increase in all India pendency and the exceedingly slow pace of disposal, the Committee are of the firm conclusion that the executive instructions which the Ministry/Board have repeatedly been issuing over the years have woefully failed in making any perceptible improvement in clearing the cases of provisional assessments of central excise duty getting accumulated over the years. The Committee are of the view that a time has come to provide the executive instructions a statutory backing for securely protecting the revenue interests of Government. They, therefore, recommend that suitable provisions may accordingly be incorporated in the Central Excise Law prescribing an appropriate time limit for finalisation of the cases of provisional assessments.

#### VIII. Need for inclusion of data regarding provisional assessment cases in Annual Report

86. The data relating to the pendency in the finalisation of provisional assessment cases are presently not included in the Annual Reports of the Ministry of Finance. The Committee asked whether the Ministry of Finance would consider inclusion of the same henceforth. The Secretary, Ministry of Finance (Department of Revenue) stated in evidence:—

“We would revise the format of the Annual Report to reflect figures reflecting the total number of cases of provisional assessment and the amount involved.”

87. In a note furnished after evidence the Ministry of Finance (Department of Revenue) stated:—

“Ministry has since decided to review the format of Annual

Report of the Ministry of Finance which is submitted to Parliament incorporating the details of provisional assessment cases pending in the various Central Excise Commissionerates.”

88. The Committee desire that the age-wise/category-wise details of cases of provisional assessments pending alongwith the differential duty involved should be incorporated in the Annual Report of the Ministry of Finance relating to the financial year 1997-98 onwards.

#### IX. Delay in finalisation of RT 12 Assessment

89. Under Rule 173G of the Central Excise Rules, 1944, the assesseees have to file a monthly document called RT 12, commodity-wise giving the details of the excisable commodity, the quantity cleared, its value, rate of duty paid, details of payment of concession availed etc. The Department is required to scrutinise the document in time so as to ensure correct payment of duty and raise demand/order provisional assessments etc. as the case may be.

90. During evidence the Committee drew attention of the representatives of the Ministry of Finance to the fact that 2,65,835 RT 12 assessments were pending as on 31 March 1995 as per “Central Excise Formations At a Glance (1994-95)” brought out by the Directorate of Statistics and Revenue Intelligence.

91. The Committee desire that the Ministry of Finance should thoroughly look into the high level of pendency of RT 12 assessments with a view to ascertaining whether any revenue loss had occurred due to operation of time bar arising out of the delay in finalisation and also taking effective steps to ensure that such assessments are completed in time.

#### X. Inadequate response to Audit

92. The Audit paragraph reveals that though the points contained in the review had been referred to the Ministry of Finance in October, 1995, the same remained unreplied. When asked about the reasons for not replying to the Audit queries, the Ministry of Finance (Department of Revenue) in a note stated that the issue required co-ordination between the various wings of CBEC and collection and compilation of data from all commissionerates.

93. The Committee take a serious view of the inadequate response to the draft Audit paragraph. They desire that the Ministry of Finance should look into the reasons for their failure in this case and

**nominate a designated officer who shall be responsible for promptly and adequately responding to the draft Audit paragraphs.**

New Delhi;  
21 April, 1997

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1 Vaisakha, 1919 (Saka)

**DR. MURLI MANOHAR JOSHI,**  
*Chairman,*  
*Public Accounts Committee.*

## APPENDIX I

*Para 1.03 — Sub-Para 4 (i to iv) and Sub-Para 8 (i to v) of Report of the C & AG of India for the Year ended 31 March 1995 (No. 4 of 1996) Union Government (Revenue Receipts — Indirect Taxes) Relating to Pace of Finalisation of Provisional Assessment Cases and Monitoring*

### 1.03 Provisional assessments

#### Introduction

Under the provisions of rule 9 of the Central Excise Rules, 1944, excisable goods can be removed from the place of manufacture only after payment of appropriate duty. The goods can be assessed to duty provisionally, where an assessee is unable to produce any document or furnish any information necessary for the assessment of duty of any excisable goods, or the excisable goods are required to be subjected to chemical or any other test for the purpose of assessment of duty thereon, or when the proper officer deems it necessary to make further enquiry, for assessment of duty.

The goods can be assessed provisionally at such rate or such value as may be fixed by the proper officer and the rate need not be the rate or price declared by the assessee. In cases of provisional assessments, the assessee has to execute a bond with the proper officer. The bond has the effect of binding the assessee for payment of the difference between the amount of duty as provisionally assessed and as may be finally assessed. Provisional assessment under rule 9B is effective only from the date when the bonds are executed.

No time limit has been prescribed for final assessments in the Central Excise Rules. However, according to instructions issued by Central Board of Excise and Customs in March 1976, cases of provisional assessment should be finalised normally within 3 months and in any case not later than 6 months.

#### 2. Scope of audit

A review of provisional assessment cases in the Commissionerates during the years 1992-93, 1993-94 and 1994-95 was conducted in 1994-95 with a view to ascertain the adequacy of system and procedure obtaining in the Commissionerates for assessment of cases provisionally and for final assessment of provisional assessment cases.

### 3. Highlights

The results of the appraisal are contained in the succeeding paragraphs which highlight the following:

- (i) The finalisation of provisional assessment cases did not keep pace with the fresh cases assessed provisionally during the years 1992-93 to 1994-95 leading to increase in the number of pending cases. The number of pending cases has almost doubled in the 30 Commissionerates from 7720 to 14384. The amount of differential duty involved in the cases in respect of 25 Commissionerates also went up from Rs. 2001.68 crores to Rs. 4057.17 crores during the above period. Of the 14384 cases pending as on 31 March 1995, 4973 cases (35 per cent) were pending for a period beyond 3 years and involved differential duty of Rs. 1230.19 crores.

[Para 4(i)]

- (ii) There was variation in the pendency position reported by the Commissionerates to different authorities. In 16 Commissionerates, there was under reporting of provisional assessment cases by Divisions/Commissionerates to the Director of Inspection/Ministry etc.

[Para 4(ii), (iii), (iv)]

- (iii) In 640 cases in 11 Commissionerates, the assessments were made provisionally without following the prescribed procedure.

(Para 5)

- (iv) In 914 cases of provisional assessments in 27 Commissionerates the prescribed bounds/surety were not obtained and revenue remained unprotected. Of these, in 93 cases differential duty amounted to Rs. 48.15 crores.

[Para 6(a)]

- (v) The deficiency in bond value in 40 cases amounted to Rs. 121.02 crores. In 31 cases involving Rs. 2.66 crores, no action was taken to get the bank guarantees revalidated. In two cases, involving Rs. 7.70 crores, the bonds were improper.

[Para 6(c), (d) & (e)]

- (vi) Non-vacation of stay orders, non-finalisation/delay in finalisation, resulted in benefit or financial accommodation to the assesseees amounting to Rs. 26.56 crores in 17 cases.

[Para 7(i) to (iv)]

- (vii) Differential duty of Rs. 2.54 crores was not recovered in 10 cases finally assessed leading to loss of interest to Government and financial accommodation to assessees.

[Para 7(v)]

- (viii) The monitoring system for the provisional assessment cases in the Commissionerates was inadequate.

(Para 8)

#### 4. Pace of finalisation of provisional assessment cases

(i) The table below indicates the pace of finalisation of provisional assessment cases in respect of the 30 Commissionerates (out of 36 Commissionerates), as per the information furnished by the Directorate of Audit, CBEC. Though the information was made available in respect of 30 Commissionerates, in 5 Commissionerates the details of differential duty involved were not available. In respect of 3 Commissionerates the number of cases pending at the end of the year did not agree with the opening balance of the following year. The Director of Audit stated that the Commissionerates have been asked to reconcile the discrepancies.

(Amount in Crores of Rupees)

	1992-93		1993-94		1994-95	
	No.	Amount	No.	Amount	No.	Amount
Opening balance as on 1st April	7720	2001.68	9682	2519.17	12406	3084.88
Additions	3678	699.25	4256	840.16	4688	1196.11
No. of cases finalised	1733	134.33	1542	246.44	2710	223.82
No. of cases pending as on 31 March	9665	2566.60	12396	3112.89	14384	4057.17

The number of provisional assessment cases pending finalisation almost doubled in the 30 Commissionerates during the last 3 years, from 7720 in 1992-93 to 14384 in 1994-95. The amount of differential duty involved had also gone up from Rs. 2001.68 crores to Rs. 4057.17 crores in 25 Commissionerates for which the details were made available.

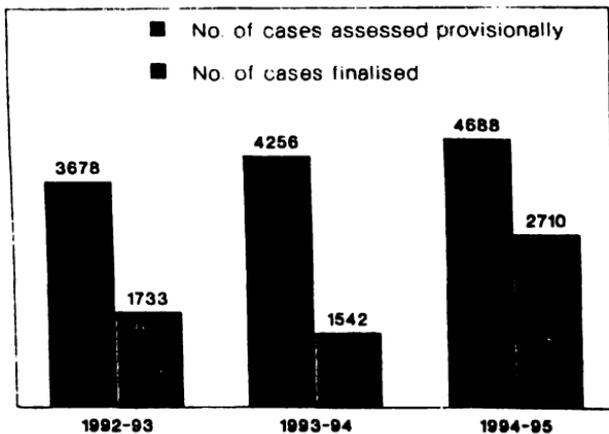
#### APPRAISAL

The percentage of cases settled to the number of cases added was 47, 36 and 58 during the years 1992-93, 1993-94 and 1994-95. In Belgaum and Vishakapattanam Commissionerates, the percentage of finalisation with reference to additions was 3 and 7 respectively, while in Indore, Bombay II and Trichy Commissionerates the finalisation was only about 25 per cent. Nearly 75 per cent of the total cases were

pending in Calcutta I (2307), Calcutta II (5966) and Bhubaneswar (2460) Commissionerates.

Contrary to Board's instructions, an analysis of 14384 cases of provisional assessment pending as on 31 March 1995 showed that a very large number of cases were outstanding for more than six months as shown in the chart:

**Pace of finalisation of provisional assessment cases**

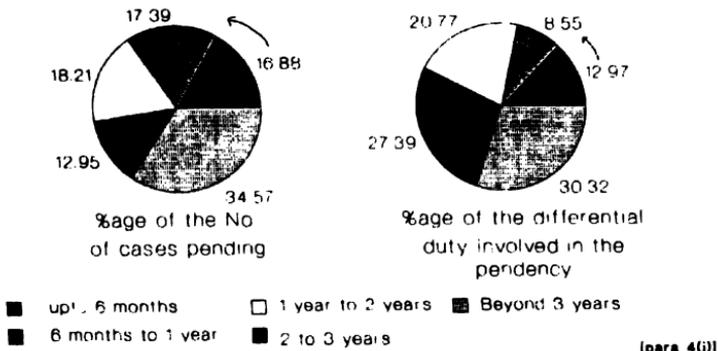


(para 4(i))

Period of Pendency	No. of cases	Amount involved (Rs. in crores)	Percentage of the total	
			Cases	Amount
Upto 6 months	2428	526.11	16.88	12.97
6 months to 1 year	2501	346.77	17.39	8.59
1 year to 2 years	2619	842.59	18.21	20.77
2 years to 3 years	1863	1111.50	12.95	27.39
More than 3 years	4973	1230.19	34.57	30.32

The number of cases pending for a period beyond 3 years was 4973 and constituted about 35 per cent of the total provisional assessment cases as shown in the chart:

### Analysis of the pending provisional assessment cases



(ii) The Monthly Technical Reports (MTR) prepared by the Directorate of Inspection, CBEC for submission to the Board showed the pendency as on 31 March 1993, 31 March 1994 and 31 March 1995 as 2114, 3310 and 15568 respectively in respect of all the 36 Commissionerates as against the figures of 9665, 12396 and 14384 reported in respect of 30 Commissionerates by the Directorate of Audit. There were variations in the position of outstanding cases as reported by the Commissionerates to the Directorate of Audit (CBEC) and as reported to Audit in respect of 15 Commissionerates. Thus there were no reliable figures available. Director of Audit, CBEC stated that the Commissionerates had been asked to reconcile the figures.

As per the MTR, Calcutta II Commissionerate which had a pendency of 37 and 30 cases on 31 March 1993 and 31 March 1994, has a pendency of 10188 cases as per the report of March 1995, the cases pending for more than 3 years being 1651. Thus the figures were not reliable.

(iii) There were variations in the number of cases reported as pending in the Commissionerates and the number as per records of the Ranges/

Divisions. No system existed to reconcile the difference or to check the genuineness of the figures reported to the Ministry through the Director of Inspection. Cases of discrepancies are as under:

Commissionerate/ Division	Month/ period	No. of cases as reported in MTR	No. of cases as per records of Divn./Range	Remarks
Aurangabad (No. I Divn.)	March 1995	Nil	3	
Bhubaneswar	March 1993	643	1359	
	March 1994	376	1421	
	March 1995	480	1602	
Bombay I (A-Divn.)	March 1995	Nil	*10	*4 cases more than 6 months
Bombay II (No. X Divn.)	August 1994 September 1994	19	*853	*853 cases pending as per records of Division/Range were grouped in 19 categories; instead of the number of cases actually outstanding as per the records of Division/Range, the number 19 only was reported in MTR.
Chandigarh (Punjab)	March 1995	20	*62	*24 cases were pending for more than 3 years.
Chandigarh (H.P.)	March 1995	7	*18	*5 cases were pending for more than 3 years.
Guntur	March 1993	59	118	
	March 1994	14	150	
	March 1995	2	179	
Hyderabad	March 1993	157	242	
	March 1994	118	380	
	March 1995	168	439	
Indore	September 1994	*38	53	*10 out of 38 cases were not appearing in the register maintained in the Divisions and 25 cases in the register were not appearing in the MTR.
Jaipur	March 1995	43	*107	As per records the pendency was 105. However in audit it was noticed as 107. Of these 54 cases were more than 6 months old.

**Appraisal**

Commissionerate/ Division	Month/ period	No. of cases as reported in MTR	No. of cases as per records of Divn./Range	Remarks
Pune (No. 5 Divn.)	March 1995	85	*85	* All the cases were shown less than 6 months whereas in divisions, of the 85 cases, 42 cases were pending for more than six months. (32 cases 6 months to 1 year, 5 cases, 1 to 2 years, 5 cases more than 2 years)
Rajkot	September 1994	20	72	The figures was changed as 121 in the MTR on discrepancy being pointed out by Audit.
Vishakapattanam	March 1993	3	272	
	March 1994	2	427	
	March 1995	12	538	

(iv) The Board in their circular letter dated 6 September, 1990 advised the Commissionerates to review the cases pending in the call book and to follow the procedure laid down in the manual of office procedure brought out by the Department of Administrative Reforms and Public Grievances in the maintenance of the call book which provides for transferring of cases pending for want of decision of Court or for similar reason and where there is no possibility of its disposal within a period of six months. During scrutiny of records in the 5 Commissionerates (Bhubaneswar, Madras, Trichy, Madurai and Coimbatore), it was noticed that cases pending on account of provisional assessment were also being transferred to the call books and these cases were not reflected in the MTRs of the Commissionerates, thus resulting in under reporting. In Bhubaneswar Commissionerate, the number of cases finalised during the years 1992-93, 1993-94 and 1994-95 were shown as 1038, 2083 and 760 (in four divisions) respectively while the cases transferred to call book out of these were 568, 454 and 304 which resulted in incorrect exhibition of the actual pendency. It was also observed that cases were transferred to the call books without approval of the competent authority as specified in the Board's circular.

**8. Monitoring****(i) Maintenance of Records**

The instructions issued by the Board in March 1970 prescribed that a register of Provisional assessment should be maintained by the Central Excise Divisions indicating the name of assessee, date of provisional assessment order, amount of bond/bank guarantee furnished, their validity, differential duty involved, reasons for ordering provisional assessment etc., to keep a watch over the progress and speedy finalisation of the provisional assessment cases.

Test check conducted in selected Divisions/Ranges pertaining to the Commissionerates of Bombay I, II, III, Pune, Aurangabad, Chandigarh and Jaipur revealed that the registers prescribed were not being maintained.

The registers maintained in the test checked ranges/divisions of Hyderabad, Guntur, Vishakapattanam were incomplete and lacked information relevant to the assessments like, rate of duty levied, differential duty involved, whether Bonds/bank guarantee were furnished, etc.

Monthly closing and analysis of pending cases were not being carried out in the divisions of Indore Commissionerate and co-relation with the figures being reported in the Monthly Technical Reports could not be undertaken in 2 divisions of Jaipur Commissionerate for want of these details.

(ii) The Central Board of Excise and Customs had issued instructions in March 1976 that cases pending for more than 6 months should be referred to the Commissioner every month after analysing the pendency and examination of each case. The Commissioners were required to give suitable instructions for clearance of these cases.

In 19 Commissionerates, scrutiny of records showed that apart from the Monthly Technical Reports being prepared in Division for submission to the Commissionerates and the monthly/quarterly reports compiled in the Commissionerates for submission to the Directorate of Inspection, New Delhi, no monitoring of the pending cases was being undertaken. No analysis of the cases pending for more than 6 months was undertaken and no action for clearance thereof proposed. Exparte decision for finalisation of the pending cases was also not reported in 7 of these Commissionerates.

#### (iii) Internal Audit Department

Test check of the records of 20 Commissionerates revealed that internal audit parties did not undertake any review on the pending cases of provisional assessment or suggested any measures for clearance of the pending cases.

#### (iv) Director of Inspection

The reports of pending provisional assessment cases from all the Commissionerates are received through the Monthly Technical Reports and All India total pendency position compiled Commissionerate-wise for submission to the Ministry. However the information only showed the increase/decrease in the pendency and did not reveal the actual amount of differential duty involved in these cases. It was also not evident from the records whether the differential duty was being adequately secured by bond/security.

**(v) Board**

Board *vide* circular letter No. 61/61/94/CX/6 dated 28 September, 1994 fixed certain targets for some Commissionerates to bring down the pendency. The reply to an audit enquiry relating to fixing of targets, system of monitoring and the pendency position as on 31 March, 1995 had not been received (December 1995).

## APPENDIX II

### CONCLUSIONS/RECOMMENDATIONS

Sl. No.	Para No.	Ministry concerned	Conclusions/Recommendations
1	7	Finance (Deptt. of Revenue)	The Committee note from the Audit paragraph that during the years 1992-93 to 1994-95, the number of cases of provisional assessments of central excise duty had increased in 30 Commissionerates from 7720 to 14384 of which 35 per cent were pending for three years and more. The amount of differential duty involved in the cases in respect of 25 Commissionerates also went up from Rs. 2001.68 crores to Rs. 4057.17 crores during the above period. The percentage of cases settled with reference to the number of cases added was 47, 36 and 58 during the years 1992-93, 1993-94 and 1994-95 respectively. The Committee are deeply concerned about the extent of pendency and are constrained to observe that the Ministry of Finance (Department of Revenue) have failed in ensuring scrupulous implementation of their instructions to the field formations for finalisation of provisional assessment cases within the period stipulated by them.
2.	19	-do-	The Committee are surprised to note that the position of pendency of cases of provisional assessments revealed by the Directorate of Audit, Directorate of Inspection, both functioning under the Central Board of Excise and Customs was entirely different. Surprisingly, these figures were at gross variance with those furnished by the Ministry of Finance to the Committee which in turn, differed altogether from the data exhibited by

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			<p>the Directorate of Statistics and Revenue Intelligence in their publication "Central Excise Formations At a Glance 1994-95". The anomaly of this tragedy in the candid opinion of the Secretary, Ministry of Finance (Department of Revenue) was compounded by the fact that the source of information happened to be the same. The Committee cannot but express their serious concern over this poor spectacle of affairs in the prime revenue earning Department of the country.</p>
3.	20	-do-	<p>While admitting the discrepancies in the figures of provisional assessments as a "serious slippage", the Ministry of Finance attributed the same to non-maintenance of proper registers at Range/Division levels, different ways of reporting of the pendency by the officers, lack of awareness on the part of the officers about the Board's instructions, clerical errors etc. In the opinion of the Committee, these reasons themselves tantamount to a self-admission of dereliction of duty by all concerned. This is also indicative of the scant attention paid by the authorities concerned at all levels including the Board/Ministry in the compilation and publication of such vital data having important bearing in the collection of Central Excise Revenue. The Committee deplore the same and desire that responsibility of the officers including those in the Board/Ministry should be fixed for the gross negligence and dereliction of duty.</p>
4.	21	-do-	<p>The Committee further recommend that the whole system of reporting, compilation and publication of data relating to finalisation of cases of provisional assessments should be comprehensively reviewed with a view not only for ensuring reliability of the information and</p>

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			<p>uniformity in reporting but also for proper accounting and collection of the Central Excise Revenue. The review may be completed in a time bound programme, say one year and the Committee be apprised of the outcome.</p>
5.	34	-do-	<p>From the reconciled figures of provisional assessments furnished by the Ministry of Finance after evidence, the Committee find that 2157 cases of provisional assessment (including those transferred to *call book) involving differential duty of Rs. 2079.55 crores were pending finalisation as on 31 December, 1996. Of these, 816 cases involving Rs. 959.55 crores were stated to have been pending over a period of three years. 836 cases involving a differential duty of Rs. 1434.57 crores were pending over a period of two years. This extent of pendency is indicative of not only a systemic neglect but also a possible connivance to extend financial benefits to the assesseees. What is disconcerting to note is that 43 cases of provisional assessment in 29 Commissionerates have been pending since the period prior to January, 1985. The amount of differential duty which had been quantified in respect of 29 out of the 43 cases stood to Rs. 265.39 crores. These facts clearly establish that there is an imperative need for CBEC to go into the age-wise pendency of cases of provisional assessments particularly those kept outstanding over two years in order to find out the precise reasons for the delay in finalisation. The Committee, therefore, recommend that the Ministry of Finance should frame a time bound programme for the disposal of such pending cases and also initiate appropriate action to detect cases of collusion, if any. They would like to be informed of the action taken and a detailed report indicating the latest position of disposal of such cases and the age-wise pendency. The Committee further</p>

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			desire a detailed report in respect of the cases pending over ten years.
6.	35	-do-	The Committee's examination of the pendency, category-wise, revealed certain further disquieting aspects. Out of a total of 2070 pending provisional assessments as on 31 December, 1996. 928 cases involving differential duty of Rs. 462.86 crores were pending due to non-production of documents by assessees. While 93 cases involving duty of Rs. 29.36 crores were pending for want of result of chemical or any other test, 447 cases with duty effect of Rs. 148.99 crores were pending as further enquiry was required. 602 cases involving differential duty of Rs. 1174.23 crores were pending due to other reasons.
7.	36	-do-	According to the instructions issued by the CBEC, the assesseees are required to be warned and the benefit of lower provisional assessments denied on their failure to produce the records. The Committee are, however, surprised that 928 cases involving Rs. 462.86 crores were pending for want of documents/information to be produced by the assesseees; out of which 146 cases involving Rs. 265 crores were pending for more than three years. The Ministry did not furnish any explanation for the failure of either the assesseees to furnish produce the documents for 2-3 years or that of the Department in not resorting to ex-parte finalisation of such cases where the assesseees failed to produce the documents within six months. Further, as per Board's instructions, sample tests are to be drawn by the Range Officers within three days of submission of classification list and sent to the chemical examiner with a request to send the report to the concerned officer within a fortnight. The Assistant Commissioner has to pursue with chemical examiner in cases where test reports are not received within a period of

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one month. Significantly, 93 cases involving duty of Rs. 29.36 crores are pending for want of result of chemical or any other test. Distressingly, 15 cases of provisional assessments were pending in 10 Central Excise Commissionerates for want of such reports over a period of three years. The differential duty in eight such cases amounted to Rs. 5.55 crores. The delay ranging from six months to three years are yet to be explained by the Ministry of Finance. The Committee also note that 447 cases involving Rs. 149 crores are pending where further enquiry is in progress. Of these, 139 cases involving Rs. 79.65 crores are pending for more than two years. The reasons for not finalising these cases were not indicated to the Committee.

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-do-

The Committee cannot but conclude from the above that the Departmental Officers after ordering provisional assessments in most of the cases had not bothered to subject them for review in terms of the extant instructions of the Board/Ministry within the prescribed time. The Committee are convinced that the pendency of provisional assessments should be subjected to a review by the Board not only from the point of view of the period since it is pending but also from the category-wise angle with a view to methodically analysing the exact reasons for the pendency and facilitating expeditious disposal of the cases within a specified time. The Committee would like to be furnished with a detailed report on the analysis together with the up-dated position. While undertaking the analysis, the Ministry should also look into those assessments kept pending under "other cases" and keep Committee apprised of the position. The Committee further desire that responsibility should be fixed for the delay in finalisation of provisional assessments in all the cases.

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9.	38	-do-	<p>From the details of the information furnished by the Ministry of Finance, the Committee find that in the case of ITC Group of Companies, provisional assessments involving differential duty of Rs. 48.83 crores were pending with various Commissionerates of Central Excise. Out of these assessments involving differential duty of Rs. 34.63 crores were pending with the Department only. Similarly, in the case of Hindustan Lever Limited provisional assessments involving differential duty of Rs. 39.05 crores were pending with various Commissionerates, of which assessment involving duty of Rs. 29.69 crores were found pending with the Department. Since those cases are pending with the Department only, the Committee do not find any valid justification for their non-finalisation. The Committee would like the Ministry to go into these cases and furnish them with a detailed report indicating the precise reasons as to why cases of provisional assessments to such a large extent in respect of these two assesseees have been kept pending and also to furnish an up-dated position of their disposal.</p>
10.	44	-do-	<p>The Committee find that 450 cases of provisional assessments involving a total differential duty of Rs. 962.86 crores were transferred to the call book as on 31 December, 1996. Significantly, these cases were neither included earlier in the details of the pending cases of provisional assessments nor were the data relating thereto separately available with the Board/Ministry. During evidence the Chairman, Central Board of Excise and Customs admitted that there had been instances where cases of provisional assessments kept pending for want of reports from laboratories were even transferred incorrectly to the call book. Undoubtedly, the present manner of transfer of cases to call book is not satisfactory. In fact, such transfers raise</p>

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doubts regarding the manner of disposal of some of the provisional assessment cases themselves from the list of outstanding cases. What is further surprising is that although the Board had issued instructions to the Commissioners to review the cases transferred to call books on a monthly basis, the Committee's examination revealed that no such review had actually been done nor had the Board bothered to monitor the fate of those instructions. The Committee are unhappy with this situation. They desire that a special review of all the cases of provisional assessment transferred to the call book should be immediately undertaken and follow up action taken in order to ensure that the prevalent instructions have been complied with and proper revenue is collected. The Committee also desire that the Ministry should take stern action against officers responsible for irregular and incorrect transfer of cases of provisional assessments to the call book. The Ministry should further review the system of transfer of cases to the call book and ensure that all such cases are transferred strictly in terms of the instructions and are properly subjected to the prescribed periodical review both by the Commissioners as well as the Board.

11. 45            -do-            The Committee also desire that in future while exhibiting the details of the cases of provisional assessment pending, such cases which have been transferred to call book should also invariably be shown alongwith the relevant data. The Committee would like to be informed of the precise action taken in the matter.
12. 48            -do-            The Committee regret to note that out of the 7817 cases of pending provisional assessment relating to 1992-93 to 1995-96, bonds/bank guarantees were executed only in respect of 6111 cases. This clearly shows that the differential duty locked up due to the delay in finalisation of provisional assessments has not

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been securely protected. What has caused further concern to the Committee is that bonds/bank guarantees were enforced-encashed in 11 out of the 36 Commissionerates only for realising the differential duty from the defaulters consequent upon the finalisation of the provisional assessments. The Ministry of Finance have not adduced any explanation for the failure of the Department in executing bonds/bank guarantees in a large number of cases and also in resorting to enforcement of bonds and encashment of bank guarantees from the defaulters. While expressing their displeasure over this state of affairs, the Committee desire that all the cases referred to above should be reviewed by the Board and necessary steps taken to protect governmental revenue. Action should also be taken against the officers responsible for the lapses in following the rules/instructions laid down in the matter of execution of bonds and bank guarantees. The Committee would like to be informed of the specific action taken in the matter.

13. 59

-do-

The facts stated in the foregoing paragraphs reveal a total break down in the system prescribed for monitoring the cases of provisional assessments. The registers prescribed for recording cases of provisional assessments were either not maintained or inadequately maintained at the Field/Commissionerate level. Though the cases pending for more than six months were required to be reported to the Commissioners for review, the reviews were hardly undertaken, and the Commissioners seldom cared to enquire why such reports were not submitted. The MTRs which was the instrument available at the Board/Ministry level for monitoring the pace of finalisation of provisional assessments did not even contain provision for ascertaining the amount of

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differential duty involved and assessing whether provisional assessments were adequately secured by bonds/bank guarantees etc. The annual targets for clearance of pending provisional assessments were fixed by the Board on the basis of the inaccurate and inadequate data which evidently, had no relating with ground realities. Further the Internal Audit Organisation of the Department which could have functioned as an effective tool of management control had hardly played any worthwhile role in bringing down the pendency of provisional assessments. The Committee are dismayed at this unfortunate state of affairs in the Department entrusted with the responsibility of contributing maximum revenue to the exchequer. It is astonishing that such an important area of administration of Central Excise involving substantial revenue was left ignored by all concerned. The Ministry of Finance while admitting the shortcomings in monitoring have assured the Committee that steps have now been taken to make the system more effective. The Committee wish to emphasise that mere laying down of procedures are meaningless unless effective steps are taken to see that they are actually followed. They, therefore, desire that the Central Board of Excise and Customs should ensure the efficacy of monitoring of cases of provisional assessments through keeping a constant and continuous watch and initiation of timely corrective action and apprise the Committee of precise action taken.

14. 62

-do-

The Committee find that the Inspection Reports relating to the Commissionerates of Central Excise, Mumbai-I, II and III have revealed serious shortcomings with regard to the procedures applied in resorting to and disposal of cases of provisional assessments. The Committee took particular note of the 136 cases reported where provisional assessments were

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stated to have been ordered without getting bonds/bank guarantees executed by the assesseees, the cases of loss of revenue due to the operation of time bar and also about certain files being found non-traceable. The Committee are, however, amazed to note from the information furnished by the Ministry subsequent to the evidence that the further enquiry by them has revealed that most of the cases had since been finalised and no revenue loss had occurred. Curiously enough, the Ministry's reply did not indicate the position relating either to the non-execution of bonds/bank guarantees in a large number of cases or about the loss of revenue due to operation of time bar and the loss of files. In the circumstances, the Committee are unable to accept the reply of the Ministry. They, therefore, desire that the Ministry of Finance should move C&AG and get a special Audit done in respect of the cases mentioned in the Inspection Reports. The Committee would await the outcome.

15. 68 -do- The Committee take a serious view of the inordinate delay in the submission of information relating to provisional assessments pertaining to the Commissionerate of Central Excise, Shillong. They desire that the action taken report of the Ministry of Finance after considering the explanation of the Commissioner, be expedited.
16. 69 -do- The Committee are anguished to note that the Department are likely to lose substantial revenue due to the negligence of the officers of the Commissionerate of Shillong in not resorting to provisional assessments in the matter of dispute over classification of block board. They consider it astonishing that while on the one hand the Department apparently seem to be resorting to provisional assessments even on trivial issues, the officers in the instant
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case, where substantial revenue was stated to be at stake had miserably failed in invoking the relevant provision of the Law for protecting the revenue. The Committee deplore the same and desire that the whole matter might be thoroughly inquired into and responsibility fixed for the lapses. They desire to be informed of the follow-up action taken in the whole matter and also be furnished with a complete report on the precise extent of the revenue loss together with details of the position prevailing not only in the Shillong Commissionerate but also elsewhere in the light of the Supreme Court decision on classification of block board.

17. 73

-do-

The Committee are happy to note that subsequent to their taking up the subject of provisional assessments for detailed examination, the Ministry of Finance/Central Board of Excise and Customs have reportedly taken various steps seeking to streamline the system in order to ensure accurate reporting of cases of provisional assessments and their disposal. The steps stated to have been taken include, issuing of certain detailed instruction for improving of the procedures, maintenance of records, submission and review of reports, holding of monthly pendency meetings, introduction of revised format of MTRs, introduction of holding training programmes for different level of officers, evolution of a computer software programme, convening of a special meeting of Chief Commissioners of Central Excise by the Board who had been asked to personally monitor the pendency of provisional assessment cases and initiation of a special drive for liquidating the pendency of cases of provisional assessments. According to the Ministry as a result of the special drive, about 1300 cases involving an amount of over Rs. 250 crores have been finalised upto 31 December 1996. Further, Ministry stated that an amount of Rs. 18.42 crores had been realised

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just from five Commissionerates. The fact that such a large number of cases could be finalised in such a short span of time at the instance of the Committee clearly show the lack of seriousness attached hitherto by the Department in this direction. The Committee cannot remain contented with the results now reported by the Ministry. They desire that the various steps initiated should be taken to their logical conclusions not only for ensuring clearance of the pendency within a specific time limit but also for ensuring accurate reporting and timely disposal of such cases in future. A group should be constituted in all the Commissionerates and an officer at appropriate level also nominated in the Board for monitoring the progress. Cases of non-compliance/violations of the instructions should be sternly dealt with. The Committee would like to be informed of the latest position of pendency/finalisation of cases of provisional assessments.

18. 74

-do-

The Committee further note that the Ministry have now issued directions to the field formations to develop their own computerised software. The Committee wonder whether this would achieve the purpose of bringing uniformity, adoption of common criteria and proper monitoring of pendency. They are of the opinion that the Board should develop an appropriate computer programme at their level so that uniformity could be maintained in all the Commissionerates and consistency of data is ensured.

19. 75

-do-

The Committee have been informed that the Director General of Inspection (Customs and Central Excise) has been asked by the Ministry to undertake a thorough comprehensive study of the provisional assessments. The Committee would like to be informed of the findings of the study and the follow up action taken thereon.

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20. 82

-do-

It is common knowledge that the delay in finalisation of provisional assessments leads to financial accommodation of assesseees at the cost of the exchequer. However, the Committee are rather surprised that cases of provisional assessments were kept outside the purview of the provision incorporated in the Law in September, 1996 for levy of interest charges in delayed payments of central excise duty. Regretfully, despite the deposition made by the Secretary, Revenue, before the Committee recognising the need for enactment of a provision for levy of interest, the Finance Bill 1997 does not propose any amendment on that score. The Committee recommend that suitable provision may be incorporated in the Central Excises and Salt Act, 1944 for levy of interest on delayed payments arising out of finalisation of provisional assessments also. The Committee would like to be informed of the precise action taken.

21. 85

-do-

Considering the alarming rate of increase in all India pendency and the exceedingly slow pace of disposal, the Committee are of the firm conclusion that the executive instructions which the Ministry/Board have repeatedly been issuing over the years have woefully failed in making any perceptible improvement in clearing the cases of provisional assessments of central excise duty getting accumulated over the years. The Committee are of the view that a time has come to provide the executive instructions a statutory backing for securely protecting the revenue interests of Government. They, therefore, recommend that suitable provisions may accordingly be incorporated in the Central Excise Law prescribing an appropriate time limit for finalisation of the cases of provisional assessments.

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22.	88	-do-	The Committee desire that the age-wise/category-wise details of cases of provisional assessments pending alongwith the differential duty involved should be incorporated in the Annual Report of the Ministry of Finance relating to the financial year 1997-98 onwards.
23.	91	-do-	The Committee desire that the Ministry of Finance should thoroughly look into the high level of pendency of RT12 assessments with a view to ascertaining whether any revenue loss had occurred due to operation of time bar arising out of the delay in finalisation and also taking effective steps to ensure that such assessments are completed in time.
24.	93	-do-	The Committee take a serious view of the inadequate response to the draft Audit paragraph. They desire that the Ministry of Finance should look into the reasons for their failure in this case and nominate a designated officer who shall be responsible for promptly and adequately responding to the draft Audit paragraphs.

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Sl. No.	Name of Agent	Sl. No.	Name of Agent
<b>ANDHRA PRADESH</b>		<b>UTTAR PRADESH</b>	
1.	M/s. Vijay Book Agency, 11-1-477, Mylargadda, Secunderabad-500 306.	12.	Law Publishers, Sardar Patel Marg, P.B. No. 77, Allahabad, U.P.
<b>BIHAR</b>		<b>WEST BENGAL</b>	
2.	M/s. Crown Book Depot, Upper Bazar, Ranchi (Bihar).	13.	M/s. Madimala, Buys & Sells, 123, Bow, Bazar Street, Calcutta-1.
<b>GUJARAT</b>		<b>DELHI</b>	
3.	The New Order Book Company, Ellis Bridge, Ahmedabad-380 006. (T.No. 79065)	14.	M/s. Jain Book Agency, C-9, Connaught Place, New Delhi, (T.No. 351663 & 350806)
<b>MADHYA PRADESH</b>		15.	M/s. J.M. Jaina & Brothers, P. Box 1020, Mori Gate, Delhi-110006. (T.No. 2915064 & 230936)
4.	Modern Book House, Shiv Vilas Place, Indore City. (T.No. 35289)	16.	M/s. Oxford Book & Stationery Co., Scindia House, Connaught Place, New Delhi-110 001. (T.No. 3315308 & 45896)
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5.	M/s. Sunderdas Gian Chand, 601, Girgaum Road, Near Princes Street, Bombay-400 002.	18.	M/s. Rajendra Book Agency, IV-DR59, Lajpat Nagar, Old Dobule Storey, New Delhi-110 024. (T.No. 6412362 & 6412131).
6.	The International Book Service, Deccan Gymkhana, Poona-4.	19.	M/s. Ashok Book Agency, BH-82, Poorvi Shalimar Bagh, Delhi-110 033.
7.	The Current Book House, Maruti Lane, Raghunath Dadaji Street, Bombay-400 001.	20.	M/s. Venus Enterprises, B-2/85, Phase-II, Ashok Vihar, Delhi.
8.	M/s. Usha Book Depot, Law Book Seller and Publishers' Agents Govt. Publications, 585, Chira Bazar, Khan House, Bombay-400 002.	21.	M/s. Central News Agency Pvt. Ltd., 23/90, Connaught Circus, New Delhi-110 001. (T.No. 344448, 322705, 344478 & 344508).
9.	M & J Services, Publishers, Representative Accounts & Law Book Sellers, Mohan Kunj, Ground Floor, 68, Jyotiba Fuele road Nalgaum, Dadar, Bombay-400 014.	22.	M/s. Amrit Book Co., N-21, Connaught Circus, New Delhi.
10.	Subscribers Subscription Service India, 21, Raghunath Dadaji Street, 2nd Floor, Bombay-400 001.	23.	M/s. Books India Corporation Publishers, Importers & Exporters, L-27, Shastrri Nagar, Delhi-110 052. (T.No. 269631 & 714465).
<b>TAMIL NADU</b>		24.	M/s. Sangam Book Depot, 4378/4B, Murari LaL Street, Ansari Road, Darya Ganj, New Delhi-110 002.
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